
(1996) 08 OHC CK 0010
In the Orissa High Court
Case No : O.J.C. No. 1485 of 1996

Bhawani Shankar Satpathy and Others	APPELLANT
Vs	
State of Orissa	RESPONDENT

Date of Decision : 08-08-1996

Acts Referred:

Constitution of India, 1950 — Article 48A, 51A

Citation : (1996) 2 OLR 546

Hon'ble Judges : A. Pasayat, J;A. Deb, J

Bench : Division Bench

Advocate : None, for the Appellant; Additional Government Advocate and S.K. Padhi, S. Parida, S.K. Mohapatra and D. Mohapatra, for the Respondent

Judgement

A. Pasayat, J.—A letter addressed to the Hon'ble the Chief Justice of this Court highlighting alleged pollution of several tanks, named Rani Bandh, Talpari Bandh and Get Sarobar within the limits of Municipal Council, Balangir, has been registered as a writ application. In the said letter grievances made that water of said tanks has been turned green and is unfit for human consumption. As there is insufficient supply of water by the Public Health Department, the inhabitants use the water of these tanks for drinking purpose. Due to callous attitude of the authorities, no care or caution has been or is being taken to clean the water and to maintain its purity so that the inhabitants can use it for domestic purpose. Grievance is made that the tanks, because of non-cleaning regularly have proved to be the source of water pollution leading to unhygienic condition. Steps are not being taken to provide adequate water for domestic purposes, more particularly drinking purpose, and on the other hand, absence of care to clean the tanks has added to the problems.

2. Counter-affidavit has been filed by the Balangir Municipality (hereinafter referred to as "the Municipality")- Stand taken in the counter-affidavit is essentially as follows :

People of the localities nearby the tanks use the water for domestic purposes, in

view of inadequate pipe water-supply. Main tanks are Rani Sagar, Rani Bandh, Get Sarobara, Karangakata, Pratapsagar and Taipali Bandh. Watchmen have been engaged to keep watch over Ranibandh and Getsarobar, and some other tanks and to see that the water does not get polluted. The sides of the tanks are being cleaned at intervals. Disinfectants like bleaching powder are being used to keep the water free from further pollution. Employees of the municipality remove weeds with active help and co-operation of different non-Government organisations. The Getsarobar and Ranibandh were completely dewatered and renovated before ten years. Due to lack of funds, the Municipality is not able to take up intensive renovation work of the tanks. The expenditure involved would be around Rs. 5 lakhs for each tank. Effective steps are being taken to bring purity of the water and to make it pollution free. The Municipality is in constant touch with the State Government to make arrangements for adequate water-supply facilities through Mahanadi Water Supply Scheme which has been commissioned partially since 1994. Unless sufficient funds are provided to the Municipality by the State Government it would not be possible to take up renovation of the tanks. However, Rs. 3 lakhs had been provided for renovation and excavation work of Narasingh tank during the last year. Dewatering and renovation of Talapali tank is under process and the expected expenditure would be around Rs. 50,000/-. Though the Municipality is taking all necessary steps, unless adequate funds are provided by the State Government it would not be possible to undertake the renovation and dewatering work.

3. "Water, water everywhere. Nor any drop to drink" wrote S. T. Coleridge in "The Ancient Mariner". Grievance of the inhabitants as reflected in the letter addressed to this Court in that such a contingency as indicated by the learned author may befall majority of population of Balangtr and that is their primary concern. To protect and improve the environment is a constitutional mandate. It is a commitment for a country wedded to the ideas of a welfare State, The world is under an unpenetrable cloud. In view of enormous challenges thrown by the industrial revolution, the legislatures throughout the world are busy in their exercise to find out means to protect the world. Every individual in the society has a duty to protect the nature. People worship the objects of nature. The trees, water, land and animals had gained important positions in the ancient times. As Manu Vital, page 282 says different punishments were prescribed for causing injuries to plants. Kaurilya went a step further and fixed the punishment on the basis of importance of the part of the tree. (See Kautilya III, XIX, 197). "Rivers have always enjoyed a high position in the life of the society. They are considered as Goddesses with purifying ability and capacity. Fouling of the water of a river was considered a sin and it attracted punishment. The Academy Law Review at pages 137-138 says that a recent survey reveals that everyday millions of gallons of trade wastes and effluents are discharged into the rivers, streams, lake and sea etc. Indiscriminate water pollution is a problem all over the world but is now acute in densely populated industrial cities. Our country is no exception to this. Man in order to survive in his planetary home will have to

strike the harmonious balance with nature. There may be boundless progress scientifically which may ultimately lead to destruction of man's valued position in life. The Constitution of India, 1950. has laid the foundation in Arts. 48-A and 51-A for a jurisprudence of environmental protection. Today, the State and the citizens are under a fundamental obligation to protect and improve the environment, including forests, lakes, rivers, wild life and to have compassion for living creatures.

A learned Jurist has said, the Rig Veda praises the beauty of the dawn (usha) and worships Nature in all its glory. And yet today a bath in the Yamuna and Ganga is a sin against bodily health, not a saltation for the soul--so polluted and noxious are those "Holy" waters now. The anxiety to save the environment manifested in the Constitution (Forty-Second Amendment) Act, 1976 by the introduction of a specific provision for the first time to "protect and improve" the environment. Man is Nature's best promise and worst enemy. Several enactments have been made to combat pollution. "Pollution" is a noun derived from the transitive verb "pollute" which means to make foul or unclean, dirty, to make impure or morally unclean. In Halsbury's Laws of England {Fourth Edition. Volume 38, para 66} "pollution" has been indicated to mean the direct or indirect discharge by man of substances or energy into the aquatic environment resulting in hazard to human health, harm to living resources and aquatic ecosystems, damage to amenities or interference with other legitimate uses of water. These aspects were highlighted by one of us {Pasayat, J.} in *Samsad Khan v. Agrawal Graphite Industries and others* : 80 (1995) CLT 588.

4. The two Articles, i. e.. 48A and 51A of the Constitution read as follows :

"Article 48A. Protection and improvement of environment and safeguarding of forests and wildlife--

The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country."

"Article 51A(g)--It shall be the duty of every citizen of India.....to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures"

"Environment" includes water, air and land and the interrelationship which exists among and between water, air and land and human beings, other living creatures, plants, micro-organisms and property, [Vide Section 2(a) of the Environment (Protection) Act 1986].

The expressions "pollution", "sewage effluent", "sewer" and "stream" are defined in the Water (Prevention and Control of Pollution) Act, 1974 (in short, "the Act") as follows :

"2. Definitions--In this Act. unless the context otherwise requires.-- "

XX XX XX

(e) "pollution" means such contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any sewage or trade effluent or of any other liquid gaseous or solid substance into water (whether directly or indirectly) as may, or is likely to create a nuisance or render such water harmful or injurious to public health or safety, or to domestic commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plants or of aquatic organisms ; xx xx xx

(g) "sawage effluent" means effluent from any sewerage system of sewage disposal works and includes sullage from open drains;

(g) "sewer" means any conduit pipe or channel open or closed, carrying sewage or trade effluent;

xx xx xx

(h) "stream" includes--

(i) river ; .

(ii) water course (whether following or for the time being dry);

(iii) inland water (whether natural or- artificial);

(iv) sub-terranean waters;

(v) sea or tidal water to such extent or, as the case may be. to such point as the State Government may, by notification in the official Gazette, specify in this behalf;

xx xx xx."

5. Like the Supreme Court in *Municipal Council, Ratlam Vs. Vardichan and Others*, , we are left wondering whether our municipal bodies and Government departments are functional irrelevances, banes, rather than boons, and "Lawless" by long neglect. A responsible Municipal Council is constituted for the precise purpose of preserving public health. Provision of proper drainage system in working condition cannot be avoided by pleading financial inability. Article 51A(g) mandates compassion for living creatures. Why is it lacking in them, whose primary function is to protect ? Man's inhumanity to man made Mark Twain remark : "Man is the only animal that blushes. Or needs to". "There are some men formed with feelings so blunt that they can hardly be said to be awake during the whole course of their lives", said Edmond Burke. That appears to be the case here.

The nature of water pollution problem has been highlighted by U. N. Mahed I. S. E. (Retd.) in the book "Water Pollution and Disposal of Waste-Water on Land". It is stated as follows :

"The introduction of modern water carriage systems transferred the sawage disposal from the streets and surroundings of townships to neighbouring streams

and rivers. This was the beginning of the problem of water pollution."

The urgency of the problem has been stated in the following words :

"The crucial question is not whether developing countries can afford such measures for the control of water pollution but it is whether they can afford to neglect them."

The enormity of the problem can be gauged from the following extract of the World Health Organisation (W. H O.) report.

".....One hospital bed out of four in the world is occupied by a patient who is ill because of polluted water.....Provision of a safe and convenient water supply is the single more important activity that could be undertaken to improve the health of people living in rural areas of the developing world."

6. As stated by Thomas Pule in Gnomologia, 5451, "we never know the worth of water till the well is dry". The authorities and functionaries must bear in mind that "nature never did betray the heart that loved her". (Wordsworth in Tintern Abbey). Nature's fury when aroused have been described by Robert Shervod in "The Petrified Forest". in the following words :

". ".....Nature is hitting back. Not with the old weapons --

Floods, plagues, holocausts. We can neutralize them. She's fighting back with strange instruments called neuroses. She's deliberately inflicting mankind with the jitters.....She's taking the world away from the intellectuals and giving it back to the apes."

Let all concerned continue as intellectuals and not become apes by provoking, antagonizing nature. Easiest way to provoke nature is by polluting water and/or remaining callous to pollution, because water is one of the greatest gifts of nature. The above aspects were highlighted by one of us (Pasayat, J.) in M.C. Mehta Vs. State of Orissa and Others, .

7. Absence of funds should not and cannot stand in the way of welfare of people. The Government exists for the people, their benefit, and health being most important aspect of human welfare, it deserves to have priority in the Government considerations. Preventive and remedial measures have to be taken, and whenever funds are allocated, proper utilisation thereof is to be ensured.

8. In the circumstances, we direct constitution of a Committee consisting of the Chief Secretary of the State, the Member-Secretary of the Pollution Board and the highest functionary of Balangir Municipality to make an in-depth study of the problems, which have been essentially detailed above. They shall do well to make the Committee broad-based, and may nominate persons interested in the welfare of the inhabitants so that the grass-root problems can be highlighted before the Committee. The Committee shall recommend measures to be undertaken for remedying the problems, relating to pollution of water in the tanks and steps to be taken to maintain their purity. Let the Committee meet

periodically at least once in three-months, and place its report before the State Government so that necessary steps can be taken.

The writ application is disposed of accordingly.

A. Deb. J.

I agree.