
(1983) 05 PAT CK 0003

In the Patna High Court

Dr. Z. Kotasek and Another

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 04-05-1983

Acts Referred:

Water (Prevention and Control of Pollution) Act, 1974 — Section 17, 20, 23, 24, 25

Citation : (1984) CriLJ 683 : (1983) PLJR 580

Hon'ble Judges : Anand Prasad Sinha, J

Bench : Single Bench

Judgement

Anand Prasad Sinha, J.—This application is directed against the order dated 19-8-1981 passed in Case No. 52 G. C. of 1981 by the Additional Chief Judicial Magistrate. Barh, who has taken cognizance under Sections 41 and 44 of the Water (Prevention and Control of Pollution) Act, 1973(hereinafter referred to as "the Act") against the petitioners and transferred the case to the file of Sri R. K. Mishra, Judicial Magistrate, Barh, for disposal. Further, he passed an order for the issue of summons fixing 30-9-1981 for appearance.

2. A complaint had been filed by the Bihar State Water Pollution Control and Prevention Board (hereinafter referred to as "the Board") against the Manager Bata India Shoe Company, Mokamah Ghat and also M/s. Bata India Limited, Mokamaghat, P. O. Hathidah, District Patna. The offences, alleged to have been committed, were stated to be under Sections 41 and 44 of the Act.

3. In the complaint petition, it has been stated that the main purpose of the Act, has been for establishing or restoring of wholesomeness of water for the benefit of the society at large and environmental protection. It has been found that the industries were mainly responsible for polluting water and the streams by discharging their poisonous effluents in the water of streams without getting them treated by some treatment plant, which is detrimental to society at large. The Board has been authorised to give direction requiring any person in charge of any establishment or any industry or trade being carried out to furnish to it information regarding the construction, installation or operation of such

establishment of any disposal system or of any extension or addition thereto in the establishment.

4. The Board had given notices to each establishment including the accused company to furnish the information in the prescribed form about their installation or their discharging of effluents system, if any. The accused, company is situate by the side of the river Ganges at Mokamaghat and it discharges vast; mass of effluent without proper treatment directly to river Ganges causing pollution giving rise to problems to the inhabitants and surrounding environments. The Board had asked the accused Company to file the consent application and the project report of the treatment plant, if any, for the approval and consent of the Board. The accused Company on 15-12-1979 filed an incomplete and irrelevant consent application to the Board for the purpose of consent.

5. Shri Shiv Kumar Singh, an Engineer of the Board had verified the said consent application and it was found faulty and it was not in accordance with the particulars which had been required. A letter bearing No. 215 dated 23-2-1980, which has been annexed as Annexure-1 to the complaint petition, had been sent to the accused Company by Board rejecting the consent application and that was communicated to the Company. The accused Company was asked to submit a detailed project report regarding the effluent treatment plant. The accused company did not file any application, in spite of the repeated reminders, to the, State Board, on the other hand the discharge of effluent continued. Ultimately, when even on repeated reminders no such consent petition had been filed by the accused Company, a registered letter on 11-9-1980 was sent to the accused Company to submit a project report at the earliest, but in spite of that the project report had not been submitted It appears that the accused Company by letter dated 26-9-1980 had acknowledged that registered letter and it had intimated that it would install the treatment plant very shortly, but in spite of that no treatment; plant had been installed.

6. On 5-1-1981 Shri Binod Bihari Sandwar, Assistant Chemist of the State Board submitted a report that he has made analysis of the water discharge made by the accused Company in the stream of Ganges and after due analysis, it was found that the effluent discharged by the accused Company had highly polluted Ganges water. A true copy of the report; has also been annexed with the complaint petition and marked as Annexure-2.

7. Ultimately, the Board on 5-1-1981 gave a registered letter to the Company giving them one month's time, as a last chance, to install the treatment plant, but they did not install the same. It appears that the accused Company situating just by the side of river Ganges at Mokamaghat pollutes mass of water of the river at that place continuously causing a great problem.

8. That being so, the accused Company had contravened Sections 20, 24, 25 and 30 of the Act which is punishable under Sections 41, 42(d) and 44 of the Act.

9-10. It appears from the statements made in the complaint petition that the

State Board in its 5th meeting held on 20-11-1980 had passed a resolution that the complaint should be filed against the defaulting industries including the accused company involved in the present case and consequently the complaint has been filed.

It appears that in spite of publication in the local daily newspapers "Indian Nation" and "Searchlight" dt. 16-9-1980, the project report had not been filed.

11. Mr. Balbhadra Prasad Singh, learned Counsel appearing on behalf of the petitioners, has challenged the impugned order on the ground that no sanctions contemplated u/s 49 of the Act, has been obtained and that being so, the cognizance taken is bad in law. Mr. Tara Kant Jha, learned Counsel appearing on behalf of the Board, has submitted that there is compliance of the provisions of Section 49 of the Act regarding the mandate of sanction. 12. Section 49 of the Act reads as follows:

49. Cognizance of offences. - (1) No court shall take cognizance of any offence under this Act except on a complaint made by, or with previous sanction in writing of the State Board, and no court inferior to that of Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.

13. Therefore, perusal of Section 49 of the Act will make it clear that a complaint is to be made by or with previous sanction in writing of the Board. It will mean that a complaint made by the Board will be a valid complaint regarding its maintainability even taking into consideration, the element of sanction. Further, it will mean that if the complaint is made by some one else, meaning thereby, any Officer of the Board, in that situation that complaint can be said to be valid considering the element of sanction only when prior to making a complaint, sanction has been accorded in writing by the Board.

14. In the instant case, it has been specifically mentioned that the Board in its meeting held on 20-11-1980 had passed resolution for filing a complaint against the accused Company. In the instant case, it appears that the complainant is the Board itself. That being so, when the complainant is the Board itself and not any of its Officers and the Board has passed a resolution for filing a complaint against the accused Company, there is complete compliance of the provisions of sanction as laid down in Section 49 of the Act.

15. Therefore, absolutely there is no infirmity or illegality in the impugned order so far as the element of sanction both for presenting the complaint petition and for taking cognizance is concerned.

16. The another point raised on behalf of the petitioners is that the prosecution and the cognizance against petitioner No. 1, who has described himself as the Manager of Bata Shoe Company, is bad in law as no prosecution can be launched against him u/s 47 of the Act.

17. This submission has been based on the plea that only a person who at the time the offence was committed was in charge of, and was responsible to the

company for the conduct of the business of the company, as well as the company, can be liable to be proceeded against for punishment. Section 47 of the Act reads as follows:-

47. Offences by companies. - (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of, the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this Sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in Sub-section (1), where an offence under this Act has been committed by a company and it is proved or connivance, of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

18. In the facts and circumstances of the case, I do not find any substance in this contention even. It will appear from the complaint petition that the name of petitioner No. 1 had not been mentioned in the complaint petition, but accused No. 1 mentioned to be is the Manager of the Company. Thereafter, petitioner No. 1 appeared, himself describing to be the Manager of the Company. It will appear from the petition of complaint that several correspondences have been passed between the Board, and the accused Company. The details need not to be mentioned here. But, simply the only relevant fact arising out of the correspondences will be that the contraventions, the legal obligations. the duties both of the Company and the management and also the penal consequences had been well exposed and within the knowledge of the Company and its officers. Thereafter, the appearance of petitioner No. 1 as the Manager of the Company on the basis of the description in the complaint petition of accused being the Manager of the Company, will, prima facie, indicate that petitioner No. 1 happened to be the Manager of the Company, relevant for the purposes of the Act.

19. In the case of Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, this aspect of the case has been considered and it has been laid down that "so far as the Manager is concerned, we are satisfied that from the very nature of his duties it can be safely inferred that he would undoubtedly be vicariously liable for the offence; vicarious liability being an incident of an offence under the Act.... "We, however do not agree that even accused No. 3, respondent No. 1, who is Manager of the Company and, therefore, directly in

charge of its affairs, could fall in the same category as the Directors."

20. In the instant case, as discussed above, it can safely be said that petitioner No. 1 has taken the responsibility of being the Officer in charge of the affairs without any exception or objection and that being so, it is difficult to accept the plea raised on behalf of petitioner No. 1 that the prosecution or the cognizance against him is bad in law as provided u/s 47 of the Act.

21. It has been urged that the complaint filed was premature and the basis of the argument is that according to the statement made in the complaint petition, Sri B.B. Sandwar, Assistant Chemist of the Board had submitted his report on 5-1-1981. According to his analysis it has been found that the effluent discharged by the accused company was highly polluted and that being so, if the report had been submitted on 5-1-1981 then it will indicate that the resolution of the Board, which had been adopted in its meeting held on 20-11-1980 was without any material whatsoever.

22. I do not find any force in this contention even. From a perusal of the complaint, it will appear that the prosecution has been launched for contravention of the provisions of Sections 20, 24, 25, 26 and 30 of the Act. Section 20 of the Act requires certain informations primarily with a view of preventing or controlling pollution of water. Section 24 of the Act is regarding prohibition on use of stream or well for disposal of polluting matter etc. Further it requires certain statutory obligations for the Company or factory to be fulfilled in order to check the pollution. One of the important and relevant condition laid down u/s 24 of the Act is Section 23(d) of the Act which runs as follows:

(d) causing or permitting, with the consent of the State Board, the deposit accumulated in a well, pond or reservoir to enter into any stream.

Section 25 of the Act puts restrictions on new outlets and new discharges. It will be relevant to mention Section 25 of the Act, which runs as follows:

25. Restrictions on new outlets and new discharges.- (1) Subject to the provisions of this section no person shall, without the previous consent of the State Board, bring into use any new or altered outlet for the discharge of sewage or trade effluent into a stream or well or begin to make any new discharge of sewage or trade effluent into a stream or well.

(2) An application for consent of the State Board under Sub-section (1) shall be made in the prescribed form and shall contain particulars regarding the proposed construction, installation or operation of the industrial or commercial establishment or of any treatment and disposal system or of any extension or addition thereto and such other particulars as may be prescribed.

Section 26 of the Act reads as follows:

26. Provision regarding existing discharge of sewage or trade effluent.--Where immediately before the commencement of this Act any person was discharging

any sewage or trade effluent into a stream or well, the provisions of Section 25 shall so far as may be, apply in relation to such person as they apply in relation to the person referred to in that section subject to the modification that the application for congeat to be made under Sub-section (2) of that section shall be made within a period of three months of the constitution of the State Board.

Section 30 of the Act relates to the provisions regarding the power of the Board to carry out certain works and this is primarily for the purpose of mitigating the acuteness of pollution.

23. It will appear from a perusal of the complaint petition, that the Board in all fairness, had given repeated and extensive opportunities to the accused, company for compliance of Sections 20, 24, 25, 26 and 30 of the Act with the sole purpose of implementing the social scheme of the Act for maintaining the minimum standard of the water by avoiding harshness of pollution for the general welfare of the inhabitants, their health and healthy conditions of living.

24. In the course of argument, it has been urged that Section 25 of the Act is concerned only with new outlets and new discharges and that being so, the prosecution is misconceived. If this argument is judged with the aid of Section 26 of the Act, the plea raised vanishes and becomes unacceptable as it will appear that the Act has been made applicable in a condition where immediately before the commencement of this Act any person was discharging the effluent into streams etc.

25. Therefore; from the facts stated above and also considering the nature of prosecution involved in the instant case, the contraventions alleged to have been committed by the accused Company had occurred before the resolution of the Board, as stated above, and the report of the chemist was not relevant for the resolution.

26. However, it appears that before filing of the complaint, a report of the Chemist had been obtained and simply it can be mentioned that a piece of evidence has been added to the allegation that there has been pollution of water quite independent of the fact, which existed, that the accused Company discharged the affluent rendering that portion of the Ganges completely polluted

27. The another point urged is that the State Board has no jurisdiction to launch a prosecution with respect to Ganges water as provided u/s 17(g) of the Act; the Ganges water being an Inter-State stream. Section 17(g) of the Act reads as follows:

(g) to lay down, modify or annul effluent standards for the sewage and. trade effluents and for the quality of receiving waters (not being water in an inter-State stream) resulting from the discharge of effluents and to classify waters of the State.

28. I am afraid, Section 17(g) of the Act has not been correctly appreciated. It has not limited the powers and the provisions involved in the instant case.

Moreover, according to the meaning of Section 17(g) of the Act, it relates to the water exclusively belonging to the inter-State stream. The flow of the Ganges water being continuous and the pollution alleged is for a particular point or spot, the jurisdiction of the State Board cannot be said to have been ousted.

29. The law pre-supposes organized society in the manner that any organisation or Company must be functioning in accordance with any law meant for regulation of its conduct. Law is thus an Instrument by which the legal functioning of any organisation or Company is achieved. It controls, individual purposes and helps in moulding them near to social or legal purposes. If there is failure in any legal duty, coercion by implementation of law is adopted for the realisation of the legal purpose in order to implement the legal system to secure the conditions of social life as in this case by the implementation of the Act, an attempt has been made to achieve the normal condition of healthy living.

30. In the result, I do not find any merit in this application which fails and is dismissed.