
(1994) 08 MP CK 0026

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 2038 of 1993

Mandu Distilleries Pvt. Ltd. and Another	APPELLANT
Vs	
Madhya Pradesh Pradushan Niwaran Mandal, Bhopal	RESPONDENT

Date of Decision : 01-08-1994

Acts Referred:

Constitution of India, 1950 — Article 14
Water (Prevention and Control of Pollution) Act, 1974 — Section 33(A)

Citation : AIR 1995 MP 57

Hon'ble Judges : A.R. Tiwari, J

Bench : Single Bench

Advocate : A.M. Mathur and Shrivastava, for the Appellant; Kulshrestha, for the Respondent

Judgement

1. This order also governs the disposal of M. P. No. 2037/93 (Kedia Leather v. The M. P. Pradushan Niyantran Board). M.P. No. 692/92(Kedia Leather v. The M. P. Pradushan Niyantran Board), M. P. No. 2129/93 (Kedia Distilleries Ltd. v. M. P. Pradushan Niyantran Board). M. P. No. 2040/93 (Vindhyachal Distilleries Pvt. Ltd. v. M. P. Pradushan Niwaran Mandal).

2. In each of these petitions, presented under Article 226/227 of the Constitution of India, order passed by the respondent (M. P. Pollution Control Board), directing stoppage of production, is under challenge.

3. The petition wise facts in brief are as under:--

(a) M. P. No. 2038/93. The petitioner No. I is a company and owns a factory located at village Sojwaya, District Dhar. It manufactures and distributes Indian made Foreign Liquor (IMFL). It procured registration as Small Scale Industries on 27-11-84. It constructed lagooning system of effluent treatment plant along with the distillery. The Respondent issued show cause notice on 28-08-93 objecting to discharge of polluted water in Pankhedi Nala (Annexure P/16). This is replied on 06-09-93 (Annexure P/16-A). Construction of Anaerobic Methane Gas digester

plant has been started but this work suffered delay for some time due to cancellation of permission. The Respondent passed adverse order on 16-10-93 (Annexure P/ 17). It is this order which is challenged. Order of status quo was granted on 2.1-10-93. On 25-03-94 this was modified with direction that" petitioners shall not pollute Mohini and , Chambal-rivers and shall thus keep these rivers free from pollution. The Respondent later filed application to vacate order into toto and alleged that contamination continued and direction was not strictly followed.

(b) M. P. No. 2037/93: The petitioner No. 1 is a company engaged in business pf manufacture and distribution of IMFL at its factory situated at village Ekaldone, District Dhar. The Government of India, through Respondent, required setting up of Anaerobic Methane Gas Digester Plant. This was established at colossal cost of Rupees six crores. On 20-12-91 (Annexure P/5). On 23-03-92, the petitioner received order u/s 33(A) of the Water (Prevention and Control of Pollution) Act, 1974 (for short "Act") which was stayed in M. P. No. 692/92. The petitioner received show cause notice of 28-08-93 (Annexure P/ 7). This was replied on 06-09-93 (Annexure P/8). The Respondent passed order on 16-10-93 (Annexure P/11). This order is challenged Orders of status quo was passed on 21-10-93 on 25-03-94, this was modified asking the petitioners not to discharge trade effluent through the stream reaching Mohini and Chambal rivers and thus to keep rivers free from pollution. Same application and same allegation, as noted above, are made.

(c) M. P. No. 692/92: This pertains to the petitioners of M. P. No. 2037/93. It challenges orders dated 24-03-92 (Annexure P/10) and 31-03-92 (Annexure P/9) passed by the Respondent. Show cause notice was issued on 24-02-92 (Annexure P/7) which was replied on 27-03-92 (Annexure P/8). Order (Annexure P/9) was passed. In reply letter of 28-12-91. Order (Annexure P/10) was passed. These orders (Annexures P/9 and P/10) are challenged.

(d) M. P. No. 2129/93: The petitioner No. 1 is a company owning a distillery at Bhilai and petitioner No. 2 is a company owning a distillery in village Khapri District Durg. Their registered offices are at Indore Notice dated 20-08-93 was replied on 02-09-93. The respondent passed order on 21-10-93 (Annexure P/7). Notice dated 28-8-93 was replied on 10-09-93. Order was passed on 21-10-93 (Annexure P/10). These orders An-nexures P/7 and P/10 are challenged. Order of stay was passed on 11-11-93. This was modified on 25-03-94 directing the petitioners not to discharge trade effluent through stream reaching Shoonath and. Kharoon rivers and thus, keep the rivers free from pollution.

(a) M. P. No. 2040/93: The petitioner is a Company and owns a distillery at village Pilukhedi District Narsinghgarh. It commenced production of alcohol on 07-10-87. It established not only primary pollution control but also secondary pollution controls. It used the treated effluent on land for form irrigation on 13-08-93, the Respondent issued show cause notice. (Annexure P/9) Reply dated 20-08-93 (Annexure P/10) was submitted. The Respondent passed order on

16-10-93 (Annexure P/11). It is this order which is challenged. On 21-10-93, order of status quo was passed. On 25-03-94, this was modified asking the petitioner not to discharge trade effluent through the stream reaching Parwati river and thus to keep the river free from Pollution. Application for vacation of stay is moved. Contamination is alleged. Non-compliance of order is asserted.

4. The Respondent has filed returns in opposition. Water in two glasses was shown in the Court on 29-7-94 to demonstrate, by colour, the extent of pollution despite modification in orders.

5. I have heard Shri A.M. Mathur, learned Senior counsel with Shri Shrivastava for the petitioners in M.P. No. 2038/93, 2037/93, 692/92 and 2129/93 and Shri A. K. Chitale learned Senior counsel with Shri Satish Dagaonkar for the petitioner in M.P. No. 2040/93. I have also heard Shri S. Kulshrestha, learned Additional Advocate General and Smt. Shubhadha Waghmare for the respondents in all these petitions. As the learned counsels agreed for final hearing of these petitions, I treated the same as posted for final hearing and heard the same finally. In view of this, the consideration of the applications became unnecessary. M. P. No. 2129/93 is also opposed on the ground of absence of territorial jurisdiction as distilleries are located at Bhilai and village Khapri, District Durg. The counsel for the petitioner has, however urged that registered offices are located at Indore; notices are received at Indore; notices are integral part of cause of action in terms of Section 33A of the Act and as such this Court, in terms of Article 226(2), has the jurisdiction. Reliance is placed by him on Union of India (UOI) and Others Vs. Oswal Woollen Mills Ltd. and Others, and State of Rajasthan and Others Vs. Swaika Properties and Another, .

6. The counsel for the petitioner of M.P. No. 2040/93 has urged that it has set up secondary Pollution Controls and quality is best in the State. It is submitted that the respondent is unfair in attempting to secure closure of unit. Reliance is placed in AIR 1987 Kant 82 (Chaitanya Pulvarising Industry v. Karnataka State Pollution Control Board).

7. According to Scientists at the National Environment Engineering and Research Institute, a staggering 70 per cent of available water in India is polluted. It is sarcastically said that traditionally we are a pollution loving country. Rivers are polluted by disposal of dead bodies and other waste. We pay precious little attention to "Nature". Poet wordsworth Lamented on "what man has made of man" -- "Little do we see in nature that is ours". People are prone to feel comfort in holding that it is natural to err. They seem to be oblivious of the warning administered by St. Augustine that "To err is human, to persist in error is devilish". Slowly but surely people are becoming indifferent to bounties of nature. In Artharva Veda (5-30-6), it has been said that "Man's paradise is on earth. This living world is the beloved place of all. It has the blessing of Natures bounties. Live in a lovely spirit."

8. Living and loving are fine arts. Preservation of purity is the need of the hour.

The success of law does not rest on stiff penalties but on active participation of the public. Mindful of hazards, Article 48A, mandating as under, came to be incorporated in Constitution by 42nd Amendment Act, 1976.

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

It is significant to note that this was deemed necessary despite Act of 1974. And the obligation, by same amendment, was prescribed as fundamental duty vide Article 51A(g) in the following terms--

"It shall be the duty of every citizen of India--

(a) to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures."

9. Participation and awareness are thus, insisted upon. Environment has to be protected and kept suitable to sustain all concerned. Worth of earth has to be understood. The message is "Will solution, kill pollution", in the interest of purity.

10. To create awareness of the necessity of maintaining ecological balance and keeping environment pure and of hazards of pollution, the Dept. of Laws, Punjab University organised a three-day National Seminar in 1984 on "Law Towards Environmental Protection" which proclaimed--

(a) It's a fundamental human right to a live in an unpolluted environment.

(b) It's a fundamental duty of every individual to maintain purity of environment.

Today, it seems that right is foined and duty is for gotten. Pollution is born of twin factors--One: Race for industrialisation. Two: Rapid growth of population. One is contemporary of the other. Increase in population necessitates increase in industrialisation and ultimately both lead to increase in pollution. The attempt has to be directed towards keeping "evil" to minimum level without much interference with necessary industrialisation.

11. This is stated to emphasise that stoppage of production and closure of units are not the only means to achieve the end of Pollution. A solution, in the interest of national progress and property, is to be settled whereby industrialisation and purity of environment may co-exist, and evil is adequately curbed or combated.

12. In exercise of the powers conferred by Section 64 of the Act, the State Government, after consultation of State Board, has framed rules known as "The Water (Prevention and Control of Pollution) (Consent) Madhya Pradesh Rules, 1975. Consent is defined as--

"Consent means the sanction of the authority of the Board for the discharge of effluent."

Consent is accordable on conditions and is revisable. It is procurable on application in prescribed form. The object is to "prevent" and "control" pollution.

The discharge of effluent has to be in accord with "consent". It can be for a specified period (Section 25(4)(a)(iii) of the Act).

13. The Board has power to give "directions" u/s 33A of the Act which includes the power to direct the closure, prohibition, regulation of industry, operation, process or stoppage or regulation of supply of electricity, water or any other service. The control is exercised through "consent" and conditions. However, as the scheme of law suggests State Pollution Control Board (Respondent), constituted under Sec. 4 of the Act, is controlled by the directions that the Central Government, may choose to give in matter of exercise of powers available u/s 33A of the Act.

14. The law permits State Pollution Control Board (For short "Board") to apply to JMFC for restraint order against pollution u/s 33 of the Act.

15. "Pollution means such contamination of water or such alteration of the physical, chemical or biological properties or such discharge of any sewage or trade effluent or any other liquid, gaseous or solid substance into water, directly or indirectly, as may or is likely to create a nuisance or render such water harmful or injurious to health or safety or to other legitimate uses or to life and health or plants or of aquatic organisms.

16. The Supreme Court in M.C. Mehta Vs. Union of India (UOI) and Others, found it fit to mandate as under (Para 7)-- "

"Licences should not be issued to establish new industries unless adequate provision has been made for the treatment of trade effluents, flowing out of the factories. Immediate action should be taken against the existing industries if they are found responsible for pollution of water."

The Environment (Protection) Act, 1986 also contains the provision relating to control prevention and abatement of pollution of water. The society should be saved from water borne diseases.

17. Ecological balance has to be sound. The ecologist. Wayne D. Devis remarked "Blessed be the starring Blacks of Mississippi with their out-door privies for they are ecologically sound and they shall inherit a nation." The crucial question here is whether petitioners received reasonable opportunity to avert drastic action like closure of unit which would rob several employees of their right of livelihood". I shall proceed to notice the position.

18. In pursuit now is the time to turn to the orders as challenged in each petition.

(i) M.P. No. 2038/93 Annexure P/16 is the show cause notice. The falcrum is that discharge of effluent goes to chambal river via Mohini river, through Pankhodi Nala. By Annexure P/17 closure is ordered due to nonconformity to standard i.e. 2490-1981 (This is not mentioned in Annexure P; 16). Reply Annexure P/16 A reciting digester plant, is not considered, news item in Nai Duniya of 27-07-94 showed the extent of Pollution of Chambal river. This would require scrutiny.

(ii) M.P. No. 2047/93 Annexure P/7 is the notice. It stated that renewal of consent is not obtained after 1990. Annexures P/8 is detailed reply. Annexure P/11 insisted on setting up of secondary treatment plant (Not stated in Annexure P/7).

(iii) M.P. No. 692/92 order Annexure P/9 spoke about cancellation of consent on 14-01-1980 and grant of consent on 23-07-85 on conditions. Directions were issued to limit hours (Eight per day) for production, order Annexure P/10 was issued to prohibit argumentation of capacity of production. These orders do not contain sufficient data to show due application of mind.

(iv) M.P. No. 2129/93 vide Annexure P/7 directions were issued to conform to standard i.e. 2490-1981 and to submit proposal. Order Annexure P/10 also reiterates this. The occasion for proposal is not very clear.

(v) M.P. No. 2040/93 order Annexure P/11 insisted on establishment of secondary treatment plant. Notice Annexure P/9 did not say so but stated about absence of consent. Annexure P/10 is the detailed reply.

19. The Board has wide powers. Lapses if curable should not be made to generate collapses. Pollution has to be curbed and controlled. The petitioners may itch to (sic) become rich but public "health cannot be seen in jeopardy on anxiety for personal "wealth".

20. Yet discretionary powers vested in the Board cannot be without due fetters. Lord Phansfield in John Wilke's Case (1770) 4 Burr 2527 (2528) stated that discretion means sound one guided by law and governed by rules, not by humour. Judicial review under Article 226 or 227 is limited to examination of decision making process, not decision itself. It is however, noticed that loud cry meant much ado about nothing". The core question is whether or not there is pollution needing to be prevented and controlled, and if so what exactly is required to be done in that behalf? In some cases, secondary pollution control is insisted upon but the distillery, located at Pilukhedi with such control is also made to suffer the same fate. The illation is that more data is necessary, more positive case is portray able and more, but reasonable, remedial measures are indictable.

21. As noted above, adverse orders, as impugned herein are vitiated as being in excess of the relevant show cause notices and thus being in violation of principle of natural justice. Article 19(i)(g) confers the fundamental right "to practise any profession or to carry on any occupation trade or business". Article 19(6) permits imposition of reasonable restrictions on exercise of this right in the interest of the general public. The Act of 1974 is in the nature of reasonable restriction. The Respondent is, thus under constitutional obligation to ensure that "restrictions" as indicated, are reasonable and that the same are in the interests of General Public. Prevention and Control of Pollution certainly is in such interests. The core question is how to prevent and control pollution of water? What shall be adequate-legooning system Anaerobic Mathane gas digester plantor secondary

Pollution controls to ensure quality as per standard and to keep the evil up to minimum level so that the public, plants or animals are not condemned to intake or inhale any thing which may plunge them in state of slow poisoning today and untimely end tomorrow.

22. It is different matter that Article 47 like Article 44, which demands the State to "endeavour to bring about prohibition of the consumption" rests in peace only on paper. In Wade's Administrative Law 6th Edn. It is succinctly stated at pp. 400-401 that--

"The whole conception of unfettered discretion is inappropriate to a public authority which possesses powers solely in order that it may use them for public good."

Dauglas J. in United States v. Wunderlich, (1951) 342 US 98: 96 Law Ed. 113, has stated in classic terms that "Law has reached its finest moments when it has freed man from the unlimited discretion of some ruler where discretion is absolute, man has always suffered."

23. Tucker L. J. said in Russell v. Duke of Norfolk (1949) 1 All ER 109).

"There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of inquiry the rules under which the tribunal is acting the subject-matter that is being dealt with, and so forth."

Again at page 638 the privy council observed as follows:

"The last general statement as" to the requirements of natural justice to which their Lordships would refer is that of Rarman J. In Byrne v. Kinematograph Renters Society Limited (1958) 2 All ER 579 of which their Lordships would express their approval. The learned Judge, said this:

"What then are the requirements of natural justice in a case of this kind? First I think that the person accused should know the nature of the accusation made: Secondly that he should be given an opportunity to state his case and thirdly, of course that the tribunal should act in good faith I do not think that there really is anything more.

24. The requirements thus are (a) Inform the nature of accusation (b) Give reasonable opportunity to respondent case (c) Act in good faith. Lord Denning put it fittingly in Breen v. Amalgamated Engineering Union (1971) 1 All ER 1148 and our Supreme Court stated in Khudiram Das Vs. The State of West Bengal and Others, that in a Government of Laws "there is nothing like unfettered discretion immune, from judicial review ability." The Courts stand between the executive and the subject alert and ever watchful to see that, powers are not exceeded or misused.

25. Water almost a universal solvent, is known as an elixir of life. A document

prepared for the United Nations World Conference, held in Argentina in March 1977 revealed that "If all the world water were represented by half a gallon bottle the quantity of fresh water would be about half a tea spoon." Pollution problem if uncontrolled can be termed as slow death. People, particularly industrialists are greatest pollutants today. Safety measures are thus inevitable. Epidemic problem has to be understood and solved ruthlessly. The function of Board may be termed as quasi judicial.

26. The Act, a beneficial legislation permits preventive measures in case of industries to be established and remedial measures in cases of industries already established. The focus has to be on remedial measures. Failure leads, as it ought to, to stringent steps like closure. The Board has thus onerous task to perform and should be left little free where problem threatens the very existence of mankind. The insistence is to exhibit fair play in action and adhere to basic requirements as chronicled above.

27. Macbeth of Shakespeare lamented that "The attempt and not the deed confounds us." Petitioners seem to have invested fortunes and as such cannot be expected to declare like Browning that "I give the fight up, let there be an end. "They have thus opted to impugn the orders.

28. In State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others, it is held that (Para 29)--

"On the point of denial of natural justice, we agree with conclusion of the High Court though not for the same reasons, that there has been such a denial in the proceedings culminating in the order of cancellation. The show cause notice itself is an impalpable congeries of suspicions and fears of relevant or irrelevant matter and has included some trivia. On a matter of such importance where the stakes are heavy for the lessees who claim to have made large investments on the project and where a number of grounds require the determination of factual matters of some complexity the statutory authority should, in the facts of this case, have afforded a personal hearing to the lessees. We therefore, agree with the conclusion of the High Court that both the show cause notice dated 9-1-1986 and the subsequent order dated 19-4-1986 would require to be quashed however leaving it open to the statutory authority should it consider it necessary, to issue a fresh show cause notice setting out the precise grounds and afford a reasonable opportunity including an opportunity of personal hearing and of adducing evidence wherever necessary to the respondent."

29. As to the question of objection in regard to territorial jurisdiction about M.P. No. 2129/93. I found it unnecessary to examine its worth due to features as stated below--

(a) The Division Bench of this Court entertained this petition and passed restraint order on the basis that similar petitions, with same orders were pending in this Court. On 11-11-93 the Division Bench while entertaining the petition observed that "however considering the fact that two similar petitions are pending before

this Court in which the points involved as asserted by the learned counsel, are the same."

(b) Order of stay continued for about 9 months.

(c) Separation of the case at this distance of time seemed inappropriate to save the parties from the State of being lugged in another inning when identical petitions heard analogously, were required to be disposed of on merits.

(d) The objection related to territorial jurisdiction in connection with notice admittedly served at Indore and similar notices unavoidably fell for scrutiny in other petitions.

In the peculiarity of facts and features, I thus deemed it unnecessary to prove and answer that question in the manner projected and decided to consider the issue of this petition too on merits. After all, between law and justice, there has to be harmony, not antinomy. Hence merits were considered.

30. Applying facts to law, I find that there is serious flaw in "decision making process" as indicated above and decision is taken on extraneous consideration and arbitrarily. Accordingly orders as assailed, are infirm. The grounds stated in show cause notices and basis of orders are not quite same, and these seem to be distant neighbours. There is thus, denial of principles of natural justice and consequent violation of in built procedural safeguards.

31. In the ultimate analysis order (An-nexure P/ 17J, order (Annexure P/11) orders (Annexures P/9 and P/10), orders (Annexure P/7 and P/ 10) and order (Annexure P/11) as challenged in M.P. No. 2038/93 M.P. No. 2037/93 M.P. No. 692/92 M.P. No. 2129/93 and M.P. No. 2040/93 respectively are quashed with directions as noted below.

32. In the result I quash the aforesaid orders as particularised in para 31 above and dispose of these petitions with directions as below.

(a) The Respondent may issue fresh show cause notice to the petitioners, setting out, without obscurity, all grounds specifically, like absence of consent or renewal, limit of production types of pollution controls objectionable discharge of effluent, non-conformity with standards, extent of detriment to public health etc. etc. and remedial measures necessary to incinerate pollution and shall give reasonable opportunity to them to represent their cases and then decide the question afresh justly and fairly in terms of Section 33A or other sections of the Act within a period of forty-five days from today. It is clarified that in this exercise the Respondent may if expedient, also consider the propriety of deputing expert or experts to inspect the places in terms of Section 23 of the Act and after hearing the occupiers to submit report in that behalf. It may also draw sample of water in presence of occupier and subject it to proper test in terms of Section 21(1) of the Act as an aid to take proper decision and to issue proper directions.

(b) The Respondents shall have freedom within limits of law to suggest proper ways and means to safeguard the interests of both petitioners and people in fulfillment of the objects of the Act in true spirit and to see that production and purity co-existed unless stoppage of the former became inevitable for maintenance of the latter.

(c) The petitioner till fresh decision by the Respondent, as directed above, shall remain restrained from discharging trade effluents through any stream channel or other source reaching rivers Mohni Chambal, Parwati, Sheonath, Kharoon or any other river or lake in use by the public and shall further ensure that discharge even on private lands as contended does not find its way to the river etc. by lack of adequate steps in this behalf.

33. As I have quashed orders only on violation of principles of natural justice, this order shall not be understood as an expression on merits of the matter in any way,

34. In order that people may love their country the country has to be made lovely. Thomas Paine on "Right of Man" went quite far when he voiced that "My country is the world and my religion is to do good." In my view, doing good also meant ensuring unpolluted environment and maintaining purity petitioners are naturally expected to abide by this principle and to do good deeds indeed, and to see lot in "nature" that is theirs and of every one else.

35. Time has thus, come to say that last word in these petitions, the omega then is that the petitions are disposed of, with remittal of matter, in terms indicated above.

36. I make no orders as to costs. A copy of this order shall be placed in the records of each petition as particularised above.