
(1992) 03 OHC CK 0018
In the Orissa High Court
Case No : O.J.C. No. 115 of 1990

M.C. Mehta

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 06-03-1992

Acts Referred:

Constitution of India, 1950 — Article 226, 51A

Water (Prevention and Control of Pollution) Act, 1974 — Section 17

Citation : AIR 1992 Ori 225 : (1992) 74 CLT 147

Hon'ble Judges : S.K. Mohanty, J;A. Pasayat, J

Bench : Division Bench

Advocate : Bibhudhendra Misra and Karunakar Jena, for the Appellant; A.G.A., A.K. Baral, K. Roy and J.K. Khuntia, Jayant Das, B.S. Tripathy, B.K. Sahoo, S. Mallick and K.P. Misra, J.M. Das, J. Patnaik and H.M. Dhal, for the Respondent

Judgement

Pasayat, J.—"Water, water everywhere, Nor any drop to drink" wrote S.T. Coleridge in "The Ancient Mariner", Shall such a contingency befall majority of the populace of Cuttack city is the primary concern of petitioner, a practising advocate of the Supreme Court and General Secretary of the Indian Council for Enviro-Legal Action, a registered voluntary organisation. He has filed this writ application for a writ of mandamus to protect the health of thousands of innocent people living in Cuttack and adjacent areas, who are suffering from pollution being caused by the Municipal Committee, Cuttack and the S.C.B. Medical College Hospital, Cuttack, Several acts of the aforesaid authorities and the State of Orissa are alleged to be in violation of Article 21 of the Constitution of India, the National Health Policy, the Environment (Protection) Act, 1986, and the Water (Prevention and Control of Pollution) Act, 1974. The provisions of the last named Act being the pivotal statute in this application, the same is referred to as the "Act" hereinafter.

2. Since the allegations were found to be horrid, the Orissa Legal Aid and Advice Board was directed by this Court to engage a Senior Counsel for the petitioner. Notices were issued to the Health Department of the State of Orissa, the

Municipal authorities, the authorities of the S.C.B. Medical College Hospital and the State Prevention and Control of Pollution Board (in short the "Board").

3. Counter-affidavits have been filed by the aforesaid authorities and the functionaries.

4. The allegations, stated in brief, are to the following effect:

The petitioner came to visit the thousand year old silver city, Cuttack hoping to have a look at the rich and cultural heritage of the city. Instead what he found was a horrible pollution of water in the city. The petitioner visited certain areas nearby the Taladanda canal. This canal was excavated about one hundred years back for the purpose of irrigation of a part of Mahanadi delta of Cuttack district. But it has become a refuse of untreated waste-water of the hospital and some other parts of the city. The water of the canal consequently has become highly polluted. A large section of populace living in the bustees along the coast of the canal are using the water of the canal for bathing, drinking and other domestic purposes. The storm water drain which was constructed in the city for the purpose of discharge of excess water during heavy rains into the river Kathajori to avoid water stagnation was intended to discharge such water through a sluice-gate. Unfortunately, the storm water drain which is expected to remain dry except during the rainy season is full throughout the year and sewage water from various parts of the city gets into it and consequently to the river. The unsanitary condition of this drain creates health problem in the city. A sewage treatment plant was contemplated for the city waste-water at Matagajpur, but the project has been abandoned mid-way. Steps are necessary to complete and upgrade the sewage treatment plant so as to stop discharge of city waste-water into the storm water drain and into the Taladanda canal by constructing appropriate sewage system for the city, and installing waste-water treatment plant at the hospital. Because of unavoidable situations the people are bound to drink contaminated water and consequentially becoming victims of water-borne diseases. The authorities by their callous acts have inflicted suffering and pain on the thousands of people by forcing them to drink the contaminated/polluted water instead of acting for their welfare to prevent it. The Board constituted u/s 17 of the Act has also been deficient in its functioning.

5. The State of Orissa through the Secretary, Health Department and the Principal, S.C.B. Medical College Hospital have filed their counter-affidavit. Their stand in essence is that they have no information about the people suffering from pollution being caused by discharge of sewage. It is asserted that a Central Sewerage system has been installed in the S.C.B. Medical College Hospital campus and the sewage generated in the medical campus is being collected by this water carriage system from different buildings. All toilets inside the hospital have been connected to the Central Sewerage system, and there is no sewage flow into the Taladanda canal as alleged. It is also stated that no specific instance has been given by the petitioner as to how the people suffer from water pollution. The Health Department is not responsible for supply, of drinking water

to the people of Cuttack city and the surrounding areas. Supply of clean drinking water, it is stated, is the job of Urban Development Department. So far as discharge of storm water from the S.C.B. Medical College Hospital campus is concerned, it is stated that open drains have been installed. Sometimes waste-water other than sewage flows through these drains to Taladanda canal. No specific case of epidemic of water-borne diseases caused by contamination of Taladanda canal has been indicated, and no such instance has come to the notice of the Health Department. The Board have never reported since 1983 about pollution of Taladanda canal by discharge of waste-water from the medical college campus to it. As a matter of policy, government want to protect the water of Taladanda canal, and therefore, arrangements are being made to prevent discharge of water from the medical college hospital to the canal. For this purpose, a scheme has been prepared which will be implemented subject to availability of funds in the 8th Plan. It is also stated that the Health and Family Welfare department is not connected with the maintenance of the storm water drain constructed within the city for the purpose of discharge of excess water to river Kathajori.

6. More or less, in similar terms is the counter-affidavit filed by the Cuttack Municipality. It has been stated that Cuttack Municipality has provided water facilities by extending pipe points to the road. The people of the city are utilising water coming from the said pipes during fixed time-intervals. Where installation has not been made for storage of water, water is lifted from pumps operated through electricity. Occasional disruption is caused due to failure of electricity and the same is a general problem for the State. Therefore, pollution of water cannot be attributed to carelessness and callousness of the municipality.

7. The Indian Constitution, in the 42nd Amendment, has laid the foundation in Articles 48A and 51A 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, wildlife and to have compassion for living creatures. The two Articles read as follows.:

"Article 43A.-- 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 inter-relationship which exists among and between water, air and land and human beings, other living creatures, plants, microorganism and property. (Vide Section 2(a) of the Environment (Protection) Act, 1986).

The expressions "pollution", "sewage effluent", "sewer" and "stream" are defined in the Act as follows:

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

xxx xxx xxx (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;

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

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

xxx xxx xxx (j) "stream" includes--(i) river;

(ii) water course (whether flowing 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;

xxx xxx xxx."

8. The assertions in the counter-affidavit are in general terms and are full of contradictions. At one hand it has been accepted that Government has taken steps to protect water of Taladanda canal from pollution and arrangements are being made to prevent discharge of water from the medical campus to the canal, on the other it has been stated that there was no pollution of water, and/or that no specific instance of suffering from such pollution has been indicated. The counter-affidavit filed by the Board is, however, revealing. It has been asserted that during the period from November, 1987 to April, 1988 with the objective of assessing the prevailing water quality vis-a-vis the actual use of the canal water, since there are many existing and potential sources of pollution, eleven sampling points of survey were fixed during the entire length of the canal from its origin at Jobra in Cuttack to its end point near Atharabanki creek at Paradeep. The test report so far as it is relevant reveals as follows:

"Sampling Stations--

1. Jobra Ghat : A bathing ghat very close to the Mahanadi-Sirupa Barrage. The reservoir water just enters to the canal at this point.

2. Hind Cinema : About a kilometre downstream of Jobra, this site was chosen mainly because the discharge from the biggest hospital complex of Orissa (the

S.C.B. Medical College & Hospital), are let out to the canal, about 1/2 Km upstream of this sampling point.

Besides, there are a number of slums in its immediate upstream vicinity.

3. PHED Office : In between the second and this sampling station, there are a number of bathing ghats and two drainage outlets.

4. Railway Bridge : Besides a number of bathing ghats in between, at this place is located the sluice gate on the main sewerage drain of the city for discharging the storm water into the canal. On the opposite bank there is another storm water outlet coming from the railway stations and malgodown areas.

5. Nuabazar Bridge : There is a gate for letting out the sewerage from the Nuabazar --one of the upcoming down town residential and commercial areas.

6. Matagajpur : There are several outlets of storm water drains, besides a number of bathing ghats, in between the points 5 and 6.

7. Gandarpur : Mainly a residential and commercial area.

8. Raghunathpur Bridge : Rural residential area.

9. Thanagada : A thickly populated village.

10. Atharbanki Creek : End point of the canal.

At about 1.5 Km, of its upstream, on the left bank, the area is extensively used for fish drying.

i) November 3 & 4, 1987.

ii) December 28, 1987, and

iii) April 25, 1988."

The results of the survey undertaken clearly show that the water is unfit for human consumption and drinking water particularly in respect of Biochemical Oxygen Demand (BOD), Coliform and Turbidity. The report further reveals that the canal water is unfit for use as drinking water sources even with treatment. With respect to BOD, the entire canal and with respect to Coliform, most part of it was unsustainable for bathing. In conclusion the report shows that it is the biological pollution of Taladanda canal as reflected by the BOD and Coliform levels which is responsible for the down grading quality of water, in the following words :

"A survey along with the banks of the canal would clearly reveal that the most horrendous aspect of the present status of the canal is its use as a refuse for sewage and garbage. In its stretch within the municipal limits of Cuttack, one can observe at least half a dozen major sewage/domestic waste out lets to the canal. We have not, however, ascertained whether they are with the permission of the competent authority or the discharges are let out surreptitiously. From its

original at Jobra to Hind Cinema, in a distance of about 1.5 Km there are three major out falls, two of them coming straight from the SCB Medical College and Hospital, the largest hospital complex of Orissa. The third outfall is mercifully mixed with domestic waste from the residential areas of Orissa Schools of Engineering. The quality of discharge from one of the major outfalls from the hospital complex (measured more recently), along with the standards stipulated for discharge into inland surface water, are given in Table IX. Besides the undesirable quality of the effluent, the extent of pollution it causes to the canal water is also evident from a comparison of the upstream and downstream water qualities. The main sewage drain of Cuttack, which is euphemistically referred to as a storm water drain in official papers, runs parallel to the right bank of the canal during the stretch from the sampling station 3 (PHED Office) to 6 (Matagajpur). Somewhere in the half way between the stations 4 and 5 (Near Matrumandir), a sluice gate between the canal and the drain has been installed. Reportedly, during heavy rains, the drain is closed and the excess storm water is discharged to the canal."

The recommendations of the Board were to the following effect :

"In view of the various types of actual uses of Taladanda canal, it is imperative that the quality of canal water be improved and sincere efforts be made by all concerned towards this end. Since most of the organised discharges occur within its limits, the maximum responsibility in this connection perhaps lies with the Cuttack Municipality, which must take appropriate steps to stop all sewage/waste water discharges to the canal. All outfalls on the right bank can be diverted to the sewage drain. The medical college authorities appear to have been very callous in this matter by letting the undisinfected waste water from their premises into the canal. A health survey of the people using the canal water for various domestic purposes (other than irrigation and navigation) will reveal the health injury caused by the use of this polluted water."

The Board also undertook a thorough and detailed survey of the effect of pollution caused by the mass bathing in Mahanadi river at Cuttack during Kartik Purnima and Bali Yatra. The Board examined the water quality of stretch of Mahanadi river covering about 4 Kms at 5 points. The results of the survey/study revealed that the water at Gadagadia is not only unfit for outdoor bathing with respect to its bacteriological quality, but also has immense potential for causing serious epidemics and other kinds of ailments. It was concluded that the remedial measures undertaken by the Cuttack Municipality and the State Health authorities are inadequate. The recommendations of the Board were as follows:

1. From the nature of dispersion of the pollutants, it appears quite probable that the flow of the river is quite lean. Though this depends on climatological parameters, which may differ from year to year, it is not likely that there would be much variation (Kartik Purnima generally falls during the 2nd 4th week of November). Hence for all practical purposes the stretch of the river from Gadagadia to about 1 Km. downstream should be treated as a pond for public

health purposes and every care should be taken to maintain the water quality fit for bathing, by adequate chlorination, with the help of boats, if necessary.

2. Chlorination should commence from a few days (at least a week) earlier and the dose should gradually be increased and then decreased slowly till about a week after the Bali Yatra a large carnival associated with the celebrations of the festival.

3. There should be continuous monitoring of water quality (particularly with respect of BOD and Total Coliform) all these days Which should indicate the adequacy (but not excess of chlorination).

4. Specific zones located at a distance should clearly be demarcated for defecation. This area should frequently be sprayed with bleaching powder and should be protected with a low level embankment to prevent run offs in case of rain. Trenches and pits should be filled up after use. Defecation at any other place in the area should be seriously dealt with.

5. It should be ensured that the hotels and sweetmeat vendors in Bali Yatra do not use the untreated river water under any circumstances.

6. Offerings inside the river should be discouraged. The potential health hazards of polluted water should be widely publicised and the public should be made aware that unless they conduct themselves properly, the river water which is believed by them to be so sacred, will become dangerously polluted. The sins of the faithful may be washed by the ritual bath but diseases are most likely to be acquired."

Ultimately the Board's stand point as revealed from the counter-affidavit is that the water of Taladanda canal is totally unfit for human bathing as well as consumption. This conclusion has been arrived at after thorough studies of the effect of pollution caused to Taladanda canal from the discharges of the S.C.B. Medical College Hospital, Cuttack and other discharges of the city and also the effect of pollution caused in river Kathejori from sewage flowing into the river from the storm water drain constructed on scientific line. The reports have been supplied to the different authorities including the Department of Health, Cuttack Municipality and the S.C.B. Medical College Hospital in time in order to create general public awareness of the fact of pollution in Taladanda canal as well as river Kathajori and in order to stop/prevent health hazards due to such pollution, but unfortunately no such remedial measure has been taken by them. Notices were issued by the Board to the Cuttack Municipality, Superintendent, S.C.B. Medical College Hospital, and the Government in the Department of Science, Technology and Environment as well as the Department of Housing and Urban Development on several occasions for obtaining consent of the Board for discharge of sewage effluent of Cuttack Municipality and other local bodies. The copies of correspondence have been appended to the counter-affidavit. The Board requested the Collector, Cuttack and the authorities of the Cuttack Municipality on a number of occasions to take necessary remedial measure in

consultation with the Public Health Department. But no action has been taken and consequentially, the proceedings for violation of various provisions of the Act have been initiated. In the letter dated 8-12-1987, the Board has specifically brought to the notice of the Collector, Cuttack that on analysis water quality of Taladanda canal as well as the river Kathajori was found to be polluted, and the coliform counts are too high and the water was found to be not potable. It was found that the water is unfit for human consumption as drinking water as well as for the purpose of bathing. The Public Health Department takes water for supply to the Khapuria Industrial Estate area at a point immediate down-stream of the sluice gate. It is, therefore, very likely that the water supply to Khapuria may not be of desired quality. Notice has also been issued to the Executive Officer of the Cuttack Municipality to apply for consent of the Board for discharge of Municipality waste-water from the municipal area in terms of Sections 25 and 26 of the Act. But unfortunately the authorities of Cuttack Municipality have never applied for consent of the Board and continued to discharge untreated waste-water and thereby causing pollution of river Mahanadi and Kathajori in sheer violation of the provisions of the Act. Prosecution has been launched against the Executive Officer, Cuttack Municipality for non-compliance with the direction of the Board and unlawfully discharging trade/sewage/ effluent without consent of the Board and thereby violating various provisions of the Act. By letter dated 2-1-1990 the Superintendent, S.C.B. Medical College Hospital was directed not to discharge any sewage or waste-water from the hospital premises into the stream including Taladanda canal or well or on land. Similarly, directions were issued to the Executive Officer, Cuttack Municipality.

9. As indicated above, the stand of the State and its functionaries and the Municipal authorities is evasive and considering the counter-affidavits filed by them, it is found that while the Board has revealed the correct position, they have tried to suppress the truth. It is unfortunate particularly when the reports of the Board referred to above disclose a horrendous state of affair. The health of large number of people is at stake. Therefore, no amount of plea of helplessness or passing the buck to the other wings of the Department will be of any assistance. The Act intends to provide for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water for the establishment, with a view to carrying out the purposes aforesaid of Boards for the prevention, and control of water pollution for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith. After encapsulating materials collected after thorough research, Board submitted its reports. Instead of taking serious note thereof, the authorities have resorted to falsehood. While the State and its functionaries and the Municipal authorities feigned ignorance of any pollution, the Board in its counter-affidavit has referred to the correspondence made by it with these authorities, and functionaries in that regard. A highly fallacious plea that because of inadequate supply of electricity, there may be occasion for non-supply of standard drinking water has been taken. Be that as it may, it is high time that all concerned should

wake up to prevent water pollution in Cuttack city which has potentialities to become cause of epidemic of great proportions, which is looming large. It is not in good taste to say that supply of drinking water falls within the purview of another Department and therefore, the Health Department has no concern. State is one, the Government is one. For facilities of functioning, different departments have been created. We fail to understand as to how the Health Department is not concerned with supply of drinking water. Ultimately it is the health of the people which is affected.

There is no reason to disbelieve the findings of the Board. The approach of the functionaries and the authorities is evasive. They have brought no material on record to rebut the assertion of the Board about intimations, notices regarding pollution. There is no denial of the assertion that reports were sent to them and requests were made for compliance with statutory mandates. 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 "Lowless" 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 51-A(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. Mahida 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 sewage 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 Organization (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 most important activity that could be undertaken to improve the health of people living in rural areas of the developing world."

10. Be that as it may, the authorities should wake up before the matter slips out of their hands. Their approach should not smack of mercenariness. We direct the State Government to immediately act on the reports relating to Pollution Load in Taladanda Canal and Water Pollution from Mass Bathing in Mahanadi during Kartik Purnima annexed as Annexures 1/6 to 2/6 to the counter-affidavit filed by the Board. We also direct constitution of a committee consisting of the Executive Engineer, Public Health, Cuttack; the Chairman, Cuttack Municipality; the Collector, Cuttack; the Secretary to Government in the Urban and Housing Department; the Secretary to Government in the Health Department; the Executive Officer, Cuttack Municipality; the Vice-Chairman, Cuttack Development Authority; the Superintendent, S.C.B. Medical College Hospital; Cuttack; and such other functionaries and authorities as the State may feel necessary immediately to consider the reports, and take necessary steps to prevent and control water pollution and to maintain wholesomeness of water which is supplied for human consumption. Ways and means to prevent entry of sewage water and effluents to rivers Mahanadi and Kathajodi and Taladanda canal shall be worked out. If there is necessity and desirability of having Sewage Treatment Plant or Plants, the same be set up without further delay. The Storm Water Drain may be operated in such a manner as to prevent entry of sewage water through it to the rivers. The exercises indicated by us and such other decisions and exercises as may be necessary to prevent pollution of water may be taken within one year from today.

11. As stated by Thomas Fuller 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 E. Sherwood 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 jilters..... 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.

12. Our views and conclusions have their matrix on the materials placed before us. We shall not be understood to have expressed any opinion on the merits of several proceedings stated to have been initiated by the Board. They shall, if pending, be disposed of in accordance with law.

The writ application is disposed of.

S.K. Mohanty, J.

13. I agree.