

(2014) 10 SC CK 0006

In the Supreme Court Of India

Case No : W.P.(C) No. 3727/1985 and I.A. No. 103 in W.P.(C) No. 3727/1985, I.A. No. 106 in W.P.(C) No. 3727/1985, I.A. No. 343 and 380-381 in W.P.(C) No. 3727/1985, I.A. No. 378 in W.P.(C) No. 3727/1985, I.A. Nos. 382 and 383 in W.P.(C) No. 3727/1985, I.A. No. 384

M.C. Mehta

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 29-10-2014

Acts Referred:

Water (Prevention and Control of Pollution) Act, 1974 — Section 18(1)

Citation : 2014(13) SCALE 499

Hon'ble Judges : T.S. Thakur, J;R. Banumathi, J;A.K. Goel, J

Bench : Full Bench

Final Decision : Disposed Of

Judgement

1. This writ petition filed in public interest as early as in the year 1985 brings into sharp focus problems arising from unabated pollution in what is for our countrymen the holiest of the rivers that flow in the subcontinent. It all started with the publication of write-ups in Hindustan Times Issue dated 8-11.9.1984 pointing out that Bharat Heavy Electricals Limited in Bahadrapur near Haridwar Was discharging untreated industrial effluents into the holy Ganges. Moved by the prevailing state of affairs, Sh. M.C. Mehta, who happens to be a noted environmentalist filed the present writ petition in which he prayed for several reliefs primarily aimed at restraining the polluting industries that have mushroomed on, the banks of the river from polluting the holy river Ganga. This Court has over the past thirty years or so passed a series of orders to which we need not refer except a few that are specially notable. The first of these orders was passed as early as on 9.9.1985 by which this Court issued notices to all the industries situated in the urban areas on the banks of river Ganga to stop discharging effluents from their factories without treating the same properly in accordance with the standards prescribed by the Central Pollution Control Board. General notices were pursuant to the said direction issued and published in

various newspapers in response where to some of the industries filed affidavits while others did not even choose to appear. By another order dated 10.12.1991 this Court directed compliance with the earlier directions and closure of such of the industries as failed to do the needful.

2. The third significant order to which we must refer at this stage is an M.C. Mehta Vs. Union of India (UOI) and Others, whereby this Court directed closure of as many as 20 tanneries working on the banks of Ganga and discharging effluents into the river. The relevant passages from the said order read:

"14...It is unfortunate that a number of tanneries at Jajmau even though they are aware of these proceedings have not cared even to enter appearance in this Court to express their willingness to take appropriate steps to establish the pretreatment plants. So far as they are concerned an order directing them to stop working their tanneries should be passed. We accordingly direct M/s. Delight Tannery (respondent 14), M/s. Hindustan Tannery (respondent 15), M/s. Primer Allarmin Tannery (respondent 33), M/s. Mahaboob Tannery (respondent 37), M/s. Popular Tannery (respondent 38), M/s. Standard Tannery (respondent 39), M/s. Vikash Tannery (respondent 40), M/s. New Golden Tannery (respondent 41), M/s. D.D. Tannery (respondent 42), M/s. Himalaya Tannery (respondent 44), M/s. Commercial Industry (respondent 45), M/s. Madina Tannery (respondent 46), M/s. Kanpur Tannery (respondent 48), M/s. New Jab Tannery (respondent 49), M/s. Famous Tannery (respondent 50), M/s. Glaxy Tannery (respondent 53), M/s. Bengal Tannery (respondent 56), M/s. Chhanganal Tannery (respondent 59), M/s. Nadari Tannery (respondent 63), M/s. Jajmau Tanners (respondent 65), M/s. International Tanning Industry (respondent 66), M/s. Poorwanchal Tanning Industry (respondent 70), M/s. Navratan Tanning (respondent 71), M/s. Harouu Tannery (respondent 73), M/s. Himalaya Tanners (respondent 76), M/s. R.A. Traders (respondent 79), M/s. Alam Tannery (respondent 83), M/s. G.T. Tannery (respondent 84), and M/s. Awadh Tannery (respondent 86) to stop the running of their tanneries and also not to let out trade effluents from their tanneries either directly or indirectly into the river Ganga without subjecting the trade effluents to a pretreatment process by setting up primary treatment plants as approved by the State Board (respondent 8) with effect from October 1, 1987.

15. M/s. Indian Tanning Industry (respondent 30), the U.P. Tannery (respondent 19), M/s. Zaz Tannery (respondent 28), M/s. Super Tannery India Ltd. (respondent 21), M/s. Shewan Tannery (respondent 20), M/s. Pioneer Tannery (respondent 23), and M/s. M.K.J. Corporation (respondent 89) who have already put up the primary treatment plants may continue to carry on production in their factories subject to the condition that they should continue to keep the primary treatment plants established by them in sound working order.

16. Shri S.K. Dholakia, Learned Counsel for the other tanneries who are members of the Hindustan Chambers of Commerce and the other tanneries who have entered appearance through Shri Mukul Mudgal submits that they will establish primary treatment plants within six months and he further submits that

in the event of their not completing the construction of the primary treatment plants as approved by the State Board (respondent 8) and bringing them into operation within the period of six months the said tanneries will stop carrying on their business. We record the statement made by the Learned Counsel and grant them time till 31.3.1988 to set up the primary treatment plants. If 300 any of these tanneries does not set up a primary treatment plant within 31.3.1988 it is directed to stop its business with effect from April 1, 1988.

17. We issue a direction to the Central Government, the Uttar Pradesh Board, established under the provisions of the Water (Prevention and Control of Pollution) Act, 1974 and the District Magistrate, Kanpur to enforce our order faithfully. Copies of this order shall be sent to them for information."

3. What is important is that this Court upon consideration of several reports including scientific studies recorded a specific finding to the effect that industrial pollutants were ten times more noxious than domestic waste no matter the latter is also one of the causes for the pollution of the river. The above directions were soon followed by a further order dated 12.1.1988 reported in *M.C. Mehta Vs. Union of India (UOI) and Others*, , by which this Court while reiterating the earlier directions ordered the municipalities concerned to set up Sewage Treatment Plants to ensure that untreated domestic sewage does not enter the river to pollute the waters. This Court observed:

"It is no doubt true that the construction of certain works has been undertaken under the Ganga Action Plan at Kanpur in order to improve the sewerage system and to prevent pollution of the water in the river Ganga. But as we see from the affidavit filed on behalf of the authorities concerned in this case the works are going on at a snail's pace. We find from the affidavits filed on behalf of the Kanpur Nagar Mahapalika that certain target dates have been fixed for the completion of the works already undertaken. We expect the authorities concerned to complete those works within the target dates mentioned in the counter-affidavit and not to delay the completion of the works beyond those dates. It is, however, noticed that the Kanpur Nagar Mahapalika has not yet submitted its proposals for sewage treatment works to the State Board constituted under the Water Act. The Kanpur Nagar Mahapalika should submit its proposals to the State Board within six months from today."

4. This Court also directed that applications for grant of licences to establish new industries shall be refused unless adequate provisions are made for the treatment of trade effluents flowing out of the factories and that immediate action should be taken against industries found responsible for polluting the river.

5. By yet another order dated 4.8.1992 this Court directed the State Pollution Control Boards of the three States through which the river passes to identify the industries discharging effluents in Ganga and to submit a report. Similarly, by order dated 23 July, 1993 various categories of industries were identified some of which were directed to be shut down while time was allowed to others to comply

with the directions to take anti pollution measures.

6. By an order dated 17.9.1993 the Central Government was directed to file an affidavit as to the work being done on the Ganga river project. An affidavit pursuant to that direction was filed on behalf of the Government by one Mr. Bhag Singh, Deputy Secretary, Ganga Project Directorate, Ministry of Environment and Forests, New Delhi, in which the Government identified as many as 68 grossly polluting Industrial Units in the State of Uttar Pradesh, Bihar and West Bengal. The affidavit disclosed the norms adopted for describing grossly polluting units as under: (1) Those directly discharging more than 1 million litre per day (MLD) effluent in Ganga; (2) Those having toxic substances in their effluent; (3) Those having a BOD concentration of more than 100 mg per litre.

7. Several orders were passed, on several subsequent dates of hearing to which the matter was posted including an order passed on 1.11.1995 that dealt with the question of construction of Sewage Treatment Plants (STPs) and the amount of expenditure that was said to have been incurred while implementing the Ganga Cleaning Project no matter without much change in the status of the river as such. The order also referred to the report submitted by NEERI on 11.8.1984 pointing out the deficiencies in the ongoing effort to stop the pollution in the river. This Court also expressed the view that the only way to save the river from pollution was to entrust the responsibility of keeping it pollution free solely to the National River Conservation Directorate.

8. In its order dated 10.10.2006 this Court took note of a report submitted by the Comptroller and Auditor General of India as to the expenditure incurred on Ganga Action Plan for the year ending March, 2000. The Court noted that the Comptroller and Auditor General had reported in the highlights that the Ministry had discontinued the water quality monitoring a key component for technical assessment of the success of the plan since September 1999, reportedly due to constraints of funds. The report went on to state that collateral findings reveal further deterioration of water quality in all its parameters. It also noted that the Ministry did not take action on the recommendation of the Expert Committee for control of bacterial load. Regarding the industrial pollution, the Comptroller and Auditor General reported that only 45% of the grossly polluting industrial units had installed Effluent Treatment Plants, but 18% of those plants did not function properly or meet the technical standards. Such units discharged industrial effluent to the extent of 2667.16 mld into the river. It also noted that N.R.C.D. had no mechanism to see that the installed plants functioned satisfactorily.

9. Regarding the financial aspects involved in the Clean Ganga Campaign the Comptroller and Auditor General reported that an expenditure of 587.63 crores had been incurred by the implementing agencies. Audit test check in the States, however, found many instances of financial mismanagement, such as funds diversion to unauthorized activities (Rs. 36.07 crores), incorrect reporting (Rs. 6.75 crores), parking of funds by B.R.J.P. in its own personal account (Rs. 1.17 crores) and funds remaining unutilized with the implementing agencies (Rs.

72.62 crores), etc. The Comptroller and Auditor General was of the view that the monitoring of the plan was inadequate both at the Central and State levels. Based on the CAG report, this Court concluded that even though hundreds of crores of rupees have been spent with a view to improving the water quality, the result was that water quality had instead of improving deteriorated and the pollution level increased instead of it being controlled leave alone reduced. The Court also in connected writ petition No. 276 of 2003 took note of the pollution of the river at Varanasi and directed the State of Uttar Pradesh to file an affidavit stating the measures taken for controlling such pollution.

10. A series of orders have been passed by us on several occasions even after the year 2006. It is in our view unnecessary to refer to each one of those orders at this stage in view of the order that we now propose to pass. Suffice it to say that apart from 68 grossly polluting industrial units that were identified in the affidavit filed by Mr. Bhag Singh to which we have already made a reference above, the Central Pollution Control Board has identified 17 different categories of industrial units described as highly polluting industrial units. This is evident from an order dated 5.2.2014 passed by the Central Pollution Control Board under Section 18(1)(b) of the Water (Prevention and Control of Pollution) Act, 1974, a copy whereof has been enclosed along with the affidavit filed by the Joint Secretary and Mission director, National Mission for Clean Ganga, Ministry of Environment & Forests, Government of India. The order enumerates these highly polluting industrial units in annexure II to the said order as under:

11. A reading of the directions issued by the Central Pollution Control Board in the order aforementioned would show that the State Pollution Control Boards have been directed to issue directions to identify all industrial units to take appropriate measures for compliance of the points enumerated in the said order in a time bound manner with immediate effect. One of the directions is that the industrial units shall within a period of three months but not later than 30th April, 2014 submit a time bound action plan for setting up of anti pollution measures to be completed before 31st March, 2015. The industrial units are directed to submit bank guarantees in terms of direction (e) contained in the order passed by the Central Pollution Control Board. In annexure 1 to the order passed by the CPCB 13 grossly polluting industries in the State of Bihar have been enlisted as under:

12. Mr. Vijay Panjwani, the learned Counsel appearing for the CPCB was unable to tell us whether any action plans have been submitted by the highly polluting or grossly polluting industrial units in terms of the directions issued by the CPCB. No one has also appeared on behalf of the State PCBs, although they are parties to these proceedings and have been duly served and were earlier represented before us.

13. We regret to say that the intervention and sustained efforts made by us over the past 30 years notwithstanding no fruitful result has been achieved so far except the shutting down of some of the polluting units. This is largely because

while orders have been passed by us their implementation remains in the hands of statutory authorities including the CPCB and the State PCBs which have done practically nothing to effectuate those orders or to take independent steps that would prevent pollution in the river. A total lack of monitoring by the statutory bodies has also contributed to the current state of affairs. The report of the Comptroller and Auditor General to the effect is a clear indictment of the statutory authorities and those at the helm of their affairs.

14. There is no gainsaying that river Ganga has for the people of this country great significance not only in the spiritual or mythological sense but also in material terms for it sustains millions who are settled on its bank or eke out their living by tilling lands that are fertilized by its water. Despite the experience of the past we have not lost hope, for the Central Government appears to be resolute in its efforts to ensure that the Mission of cleaning the holy river is carried forward and accomplished. How far will the Government's renewed zeal make any difference on the ground is for anyone to guess. What is, however, clear is that if the mission has to succeed, all those concerned will have to rededicate themselves to the accomplishment of the cause that will not only cleanse the holy river but comfort millions of souls that are distressed by the fetid in what is believed to be so holy and pure that a dip in its water cleanses all sins. Statutory Authorities that are charged with the duty to prevent pollution need to monitor and take action where they find any breach of the law. Failure of the authority to do so may also have to be noted for such action as may be required under law. This may call for a closer monitoring of the performance of all concerned. Time constraints unfortunately do not allow us to do that on a continuing basis no matter we have over the past thirty years devoted enough time and energy in that direction. We are comforted by the thought that the National Green Tribunal has been established under the National Green Tribunal Act, 2010. The Tribunal, it is evident from the provisions of the Act, has the power to take stock of the situation and pass necessary orders on the subject. It has the legislative mandate to undertake effective and speedy adjudication and disposal of issues touching preservation of environment by prevention of pollution. It is in the above backdrop that we consider it more appropriate to refer the issue relating to enforcement of the provisions of the statutes touching environment and its preservation arising out of discharge of industrial effluents into river Ganga to the National Green Tribunal. We are confident that the Tribunal which has several experts as its members and the advantage of assistance from agencies from outside will spare no efforts to effectively address all the questions arising out of industrial effluents being discharged into the river. This will include discharge not only from the grossly polluting industries referred to in the earlier part of this order but also discharge from "highly polluting units" also. As regards the remainder of the matter concerning discharge of domestic sewage and other sources of pollution we will for the present retain the same with us.

15. We accordingly request the Tribunal to look into all relevant aspects and to pass appropriate directions against all those found to be violating the law. We will

highly appreciate if the Tribunal submits an interim report to us every six months only to give us an idea as to the progress made and the difficulties, if any, besetting the exercise to enable us to remove such of the difficulties as can be removed within judicially manageable dimensions. The Registry shall forward a copy of the order to the National Green Tribunal alongwith a copy of the writ petition and the affidavits filed in reply from time to time. List these matters for further hearing with regard to other issues on 10.12.2014.