
(1995) 05 AHC CK 0040

In the Allahabad High Court

Case No : Criminal Misc. Writ Petition No. 27073 of 1992

M/s. Lipton India Ltd., G.T. Road, Ghaziabad

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 24-05-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 200, 32, 397

Water (Prevention and Control of Pollution) Act, 1974 — Section 25, 25(2), 26, 28, 44

Citation : AIR 1996 All 173 : (1995) 71 FLR 791

Hon'ble Judges : Jagdish Bhalla, J; B.M. Lal, J

Bench : Division Bench

Advocate : Sudhir Chandra Agarwala and Miss Bharati Sapru, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

B.M. Lal, J.—Petitioner No. 1 M/s. Lipton India Ltd. is a company incorporated under the Indian Companies Act, 1956, having its manufacturing Unit of Vanaspati at G.T. Road, Ghaziabad and petitioner No. 2 was the Factory Engineer of the Unit. This Unit in its process of manufacturing Vanaspati discharges certain trade effluents.

2. Under the provisions of Water (Prevention & Control of Pollution) Act, 1974 (hereinafter referred to as the Act), no person can discharge trade effluents without the previous consent of the State Board, (constituted under the Act) (hereinafter referred to as the Board), therefore, the petitioner company applied for the consent of the Board for discharging trade effluents until such time that a proper plant for treatment of the trade effluents was made in order to satisfy the provisions of the Act.

3. According to the petitioners, aforesaid application was made in the year 1983 and conditional consent was granted by the Board on 16-2-1983. Thereafter,

petitioners applied from time to time to extend the consent until such time that its plant which was under construction was completed. The plant was completed in the year 1988. However, the petitioner has placed on record the consent accorded by the Board on 6-10-1988 and has not brought on record any document to substantiate that any consent was accorded by the Board prior to 6-10-1988.

4. Further, according to petitioners, by an order dated 13-5-1988 Board refused to accord consent to the petitioners against which they preferred an appeal u/s 28 of the Act inter alia on the ground among others that the trade effluent was not being discharged in river Hindon rather it was being discharged in Dasna drain, Ghaziabad. It is alleged that the said appeal is still pending.

5. The aforesaid appeal was filed by the petitioners on 9-6-1988 and prior to that i.e. on 26-5-1988, the respondent No. 2 Board filed a complaint case through its Assistant Environment Engineer, (being Case No. 717 of 1988) in the Court of Chief Judicial Magistrate, Ghaziabad, u/s 200 of the Code of Criminal Procedure for taking suitable action u/s 44 of the Act against petitioner company and its officers viz. Sri Alok Gupta, Factory Engineer, Sri Bipin Ratilal Shah, Chairman, Dr. Ranjan Banerjee Director, Sri C.J. Mahimkar Director, Sri P.J.M. Panikar Director, Sri J.G.H. Thwaites Director, Sri P.L. Brazier Director and Sri O. P. Agarwal, Secretary, alleging therein that they have committed offence within the meaning of the provisions of Section 44 of the Act.

6. The Chief Judicial Magistrate, Ghaziabad having taken cognizance of the offence alleged u/s 44 of the Act, by his order dated 27-5-1988 issued process against all the accused persons.

7. Against aforesaid order dated 27-5-1988 issuing process to the accused persons, all the accused persons including petitioners, preferred revision u/s 397, Cr. P.C. inter alia on the ground that there is no valid resolution of the Board in respect of prosecution of the revisionists. However, this ground did not find favour of revisional Court and the revision was rejected by an order dated 21-5-1992 against which present writ petition is filed claiming following reliefs:

(a) an order, direction or writ in the nature of Certiorari quashing the order dated 21-5-1992 (contained in Annexure 8 to the writ petition) passed by the revisional Court.

(b) an order, direction or writ in the nature of Certiorari quashing the complaint dated 26-5-1988 (Annexure 5 to the writ petition) filed in the Court of Chief Judicial Magistrate, Ghaziabad.

(c) an order, direction or writ in the nature of Certiorari quashing proceedings in Case No. 717 of 1988 arising out of aforesaid complaint dated 26-5-1988.

(d) an order, direction or writ in the nature of Mandamus restraining the respondent No. 2 from taking any action to prosecute the petitioners 1 and 2.

8. By an order dated 3-8-1992 this Court stayed further proceedings in crime case No. 717 of 1988 pending in the Court of Chief Judicial Magistrate till 30th September, 1992 and directed respondents to file counter affidavit pursuant to which counter and rejoinder affidavit have been exchanged between the parties.

9. The Board filed counter affidavit refuting the averments made in the writ petition and emerged with the plea that the complaint as framed and filed before the Chief Judicial Magistrate does not suffer from any legal infirmity rather completely satisfy the requirements of S. 49 of the Act. Once the Board resolved to file a complaint and for that purpose authorised an officer of the Board, to be nominated by the Assistant Secretary and the Assistant Secretary nominated Sri Pramod Misra, Assistant Environmental Engineer, that is the full compliance of the provisions of S. 49 of the Act.

10. In the counter-affidavit it is further submitted that the accused persons named in the complaint including petitioners have been discharging highly polluted trade effluents in Dasna drain, Ghaziabad which ultimately falls in river Hindon, The trade effluent was being discharged deliberately, knowingly and without the consent of the Board which clearly constitutes the offence punishable under S. 44 of the Act. It is also averred that no consent was granted by the Board to petitioner company and their application made for consent was rejected by the Board on 21-12-87 which was never challenged by the petitioners as such the same has become final and binding on the parties. These factual points also find place in the complaint itself presented before the respondent No. 3.

11. It is also averred that the cognizance of the offence has been taken by the Chief Judicial Magistrate and the same pertains to the period prior to 13-5-88, therefore, pendency of the appeal filed by the petitioners against the order dated 13-5-1988, that too much after the cognizance was taken, has nothing to do with the cognizance taken by the Chief Judicial Magistrate. Moreover, no appeal or revision was ever filed by the petitioners against the order dated 21-12-87. Thus, it is submitted that the complaint in question filed by the Board through its Assistant Environmental Engineer is completely in accordance with the provisions of S. 49 of the Act and the cognizance taken by the Chief Judicial Magistrate is perfectly correct, valid and legal and the revisional Court has rightly rejected the revision filed against the same. Accordingly the writ petition also deserved to be dismissed.

12. Learned counsel for the petitioners, Sri Sudhir Chandra strenuously contended that the sanction of the Board granted by its resolution dated 23-12-81 to file the complaint in question is not in consonance with the provisions of S. 49 of the Act and it suffers from the principle of DELEGATUS NON POTESIT DELEGARE which means that a delegated power cannot be further delegated and in the instant case not only delegated power has been further delegated rather the Board has allowed the sub-delegate to further sub-delegate the power by allowing the Assistant Secretary of the Board to nominate Sri Pramod Misra, Assistant Environmental Engineer of the Board to file the

complaint in question.

13. Before advertng to consider the contention raised by the learned counsel for the petitioners it is relevant to discuss the relevant provisions of the Act.

14. Section 44 of the Act provides that whoever contravenes the provisions of S. 25 or S. 26 of the Act shall be punishable with imprisonment for a term which shall not be less than six months but which may be extend to six years and with fine.

15. Section 25 of the Act deals with the restrictions on new outlets and new discharges and postulates that 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.

16. Section 26 of the Act provides that 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 S. 25 shall, so far as may be, apply in relations to such person as they apply in relation to the person referred to in that section subject to the modification that the application for consent to be made under sub-sec. (2) of that section shall be made within a period of three months of the constitution of the State Board.

17. Now before discussing the provisions of S. 49 of the Act it is necessary to make it clear that the provisions of S. 49 of the Act has undergone drastic changes by Act No. 53 of 1988 published in the Gazette of India on 3-10-88 whereby old provisions of S. 49 have been repealed and in its place new provisions have been substituted. Thus, since the amendment came into force with effect from 3-10-88 and the complaint in question was filed on 26-5-88, i.e. prior to the amendment, therefore, the complaint in question was required to have been filed in accordance with the unamended provisions of S. 49 of the Act, so, for the decision of this case, provisions of S. 49 as they stood on the date of complaint, are relevant and they read as under:

"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 a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.

(2) Notwithstanding anything contained in S. 32 of the Code of Criminal Procedure 1898 (5 of 1898) it shall be lawful for any Magistrate of the first class or for any Presidency Magistrate to pass a sentence of imprisonment for a term exceeding two years or of fine exceeding two thousand rupees on any person convicted of an offence punishable under this Act."

18. A perusal of above quoted provision makes it crystal clear that if the complaint is filed by the Board the provision does not require any sanction and if

the complaint is filed by person other than the Board, there should be previous sanction of the Board. It would not be out of place to mention here that the provisions of S. 49 of the Act as they stand today do not require any sanction of the Board irrespective of the fact whether the complaint is filed by the Board or any other person.

19. Now adverting to the contention raised by learned counsel for the petitioner, Sri Sudhir Chandra first of all it has to be seen as to who is the complainant in the complaint in question. A copy of the complaint is annexed by the petitioners as Annexure 5 to the writ petition, perusal of which shows that the complainant is Board; of course, through its Assistant Environmental Engineer. In the very first paragraph of the complaint it is specifically stated that the complainant is the State Board. Therefore, as discussed above, the provisions of S. 49 of the Act as they stood on the date of complaint, do not require any sanction, if the complainant is the Board. It is the Board, who has filed the complaint through its Assistant Environmental Engineer. It is not that Sri Pramod Misra, Assistant Environmental Engineer of the Board has filed the complaint. Further, it is not that Sri Misra has signed the complaint in his personal capacity, rather Sri Misra has signed the complaint, in the capacity of a representative of the Board, duly authorised by the Board to do so. Undisputedly, the Board is not a natural person. Certainly, the Board is a legal person being a corporate personality. Therefore, naturally its resolutions are to be acted upon by some officers of the Board representing it. In the instant case the Board resolved to file the complaint, therefore, naturally the act of filing complaint was to be performed by some officer of the Board well conversant with the facts of the case. Thus, for performing aforesaid act of filing complaint. Board authorised one of its officers to be nominated by Assistant Secretary. Accordingly, Assistant Secretary nominated Sri Pramod Misra, Assistant Environmental Engineer. Therefore, mere nomination by Assistant Secretary, does not amount to further delegation of a delegated power or further sub-delegation of sub-delegated power.

20. In the instant case it is the Board and not the Assistant Secretary, who authorised Sri Pramod Misra. It is not, that the Board authorised Assistant Secretary to file complaint and in turn the Assistant Secretary authorised Sri Pramod Misra to file the complaint. Therefore, there is no question at all of further delegation or sub-delegation of delegated powers.

21. In our opinion the argument as developed by Sri Sudhir Chandra, learned counsel for the petitioners is no doubt interesting one and as a proposition of law there cannot be; two opinion about the same that there cannot be sub-delegation or further delegation of the delegated powers. But in the instant case, in our opinion, since there is no sub-delegation or further delegation as discussed above, hence the argument as developed is of no avail, on the facts and in the circumstances of the case. However, when a statute conferring powers imposes certain duties and functions incidental to the exercise of the power in such a way that they are integrally connected with them, a permissible delegation of the

power is effective to delegate duties and functions along with the power.

21A. In similar circumstances, in *Dr. Z. Kotasek and Another Vs. The State of Bihar and Another*, Patna High Court ruled that when the complainant was the Board itself and not any of its officers and the Board had passed a resolution for filing a complaint against the accused Company, there was complete compliance of the provisions of sanction as laid down in Section 49 of the Act. In the instant case before us, complainant is the Board and the Board has passed a resolution for filing a complaint. Thus, there is sufficient compliance of Section 49 of the Act.

22. In this context it is necessary to clarify the legal position that the Board can sue and be sued in its own corporate name, as Board by prescription a Board of such antiquity that the consent of the sovereign may be presumed. The Board can sue and be sued, but only through its authorised officers, this position is undisputed. Thus, to satisfy the requirements of Section 49 of the Act, it is sufficient that the Board passed the resolution to file complaint and authorised its officer, to be nominated by the Assistant Secretary, to file the complaint.

23. As regards the case relied upon by learned counsel A.K. Roy and Another Vs. *State of Punjab and Others*, , we have already observed that there cannot be two opinion about the proposition of law laid down, In the instant case, there is not at all any further delegation or sub-delegation of a delegated power, therefore, this case is of no avail to the petitioners.

24. Before parting with the case it is relevant to mention that the complaint in question was filed on 26-5-1988 against 9 accused persons including petitioners and by order dated 27-5-1988 respondent No. 3 issued process against all the accused persons and all the accused persons preferred revision against issuance of process which was dismissed on 21-5-1992. But surprisingly enough, out of 9 accused persons only two namely present petitioners have come before this Court under Article 226 of the Constitution challenging the order dated 27-5-88 and 21-5-1992. Thus the revisional order dated 21-5-1992 has become final as far as the remaining 7 accused persons are concerned. Therefore, the Chief judicial Magistrate should have proceeded against those accused persons against whom the revisional order has become final. But it appears that present petitioners by means of this petition obtained a time bound order dated 3-8-1992 and got the same extended from time to time on one pretext or the other. It appears that full facts have not been brought to the notice of respondent No. 3, the Chief Judicial Magistrate with the result proceedings remain stayed against even those accused persons against whom the revisional order has become final.

25. In this context it may also be mentioned that in England after conducting intensive survey and chemical analysis of different pollutions, the result showed alarming health hazard, as such the British Parliament has passed numerous legislations to prevent pollutions making it a criminal offence, for which Control of Pollution Act, Special legislation relating to London and river Thames was passed besides other important legislations containing numerous enactments

prohibiting pollution relating to throwing rubbish, escape from pipelines, sewage, cementite, animal carcasses, manufacturing of gas, radioactive substance, alkalies, oil pollutions and dumping at sea etc.

26. In our country the effect of water pollution was not distinct middle of 20th century due to slow industrial growth on account of slavery, but now after independence our country is also passing through an era of industrial revolution which has given rise to the problems of water pollution, air pollution and vibrations arising out of noise which also creates ecological imbalance.

27. But it is really unfortunate that despite effective legislation and imperative orders and directions issued by the Courts from time to time, no heed is being paid and pollutions are continuing. The present case is a burning example that seven years have passed from the date of filing the complaint and taking cognizance by the Judicial Magistrate, but till date position is the same and trial could not commence.

28. In view of then discussion made above, in our considered opinion, no interference by this Court is called for as the sanction does not suffer from legal infirmities as discussed above. Thus, the petition fails and is accordingly dismissed. Interim order, if any, stands discharged.

29. However, respondent No. 3 Chief Judicial Magistrate, Ghaziabad is directed to decide the complaint in accordance with law expeditiously. Keeping in view that the complaint is of the year 1988, if, need be, proceedings may be taken up day to day.

30. Registry of this Court is directed to send a copy of this order to respondent No. 3 Chief Judicial Magistrate, Ghaziabad within a week positively. The accused persons are directed to appear before the Court of Chief Judicial Magistrate, Ghaziabad on 5-7-1995.

31. Petition dismissed.