

(2017) 02 SC CK 0042

In the Supreme Court Of India

Case No : Writ Petition(C) No. 375 of 2012

Paryavaran Suraksha Samiti

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 22-02-2017

Acts Referred:

Constitution of India, 1950 — Article 243W

Citation : (2017) 2 AllWC 1718 : (2017) 2 KLT 798 : (2017) 2 MLJ 745 : (2017) 2 RCRCivil 350 : (2017) 2 RecentApexJudgments(RAJ) 353 : (2017) 3 Scale 651 : (2017) 5 SCC 326

Hon'ble Judges : Jagdish Singh Khehar, CJ; Dr. D.Y. Chandrachud, J; Sanjay Kishan Kaul, J

Bench : Full Bench

Advocate : S.S. Shamshery, AAG, Amit Sharma, Ankit Raj, for Ms. Ruchi Kohli, Advocates, for the State of Rajasthan; Colin Gonsalves, Sr. Adv, Gunjan Singh, for Ms. Jyoti Mendiratta, Advocates, for the Petitioners; Krishnayan Sen, Himanshu Bhushan, Uddiyam Mukherjee, Advocates, for the State of Odisha; Saurabh Ajay Gupta, Nishant Bishnoi for Kuldeep Singh, C.K. Sasi, Varinder Kumar Sharma, Ms. Sunita Sharma, Advocates, for the State of Punjab; Ms. Pinky Anand, ASG, S.W.A. Qadri, Ajay Sharma, Balendu Shekhar, Ansh Singh Luthra, Hemant Arya, for Mr. G.S. Makker, Advocates, for the Respondents (UOI); Ms. Sakshi Kakkar for C.D. Singh, Mohit Kumar Shah, Gaurav Kanth, Pushkar Taimni, Advocates, for the State of Chhatisgarh; Anil Grover, AAG, Satish Kumar, Sanjay Kr. Visen, Advocates, for the State of Haryana; Joydeep Mazumdar, Debojyoti Bhattacharya for Parijat Sinha, Advocates, for the State of West Bengal; Ms. Varsha Poddar for Gopal Singh, Advocates, for the State of Bihar; Vijay Panjwani, Advocate, for the CPCB; Paramasivam, B. Balaji, Muthuvel Palani, S. Kumar, Advocates, for the State of Tamil Nadu; Guntur Prabhakar, Ms. Prerna Singh, Advocates, for the State of AP; V.N. Raghupathy, Lagnesh Mishra, Parikshit P. Angadi, Prakash Jadhav, Advocates, for the State of Karnataka; S. Udaya Kumar Sagar, Mrityunjai Singh, Advocates, for the State of Telangana; Tapes Kumar Singh, Mohd. Waquas, Sukant Vikram, Aditya Pratap Singh, Advocates, for the State of Jharkhand; Ms. Bhuvneshwari Pathak Kaushik, Ms. Shilpi Satya Priya Satyam, Rahul Kaushik, Ashutosh Kr. Sharma, Advocates, for the State of Uttarakhand; Ms. Hemantika Wahi, Ms. Jesal Wahi, Ms. Mamta Singh, Advocates, for the State of Gujarat; Purushaindra Kaurav, AAG, Mishra Saurabh, Ankit Kr. Lal, Ms. Vanshuja Shukla, Ms. Anuradha Mishra, Advocates, for the State of MP; M.R. Shamshad, Rajat Singh, Aditya Samaddar, Ms. Harshita

Judgement

Jagdish Singh Khehar, CJI. - The petitioners have approached this Court, seeking a writ in the nature of mandamus, for a direction to the respondents, (which includes the Union Government, all the State Governments and the Union Territories) to ensure, that no industry which requires "consent to operate" from the concerned Pollution Control Board, is permitted to function, unless it has a functional effluent treatment plant, which is capable to meet the prescribed norms for removing the pollutants from the effluent, before it is discharged.

2. The Union of India, and the State Governments (including the Union Territories) have filed counter affidavits, expressing their individual positions. During the course of hearing, learned counsel representing the respondents, also made some suggestions, which could be highly beneficial, in carrying forward the process of removing pollutants, from the discharged effluent, in a systematic and co-ordinated manner.

3. During the course of hearing, it was not disputed between the rival parties, that the initiation of the process has to be at the individual level of the industry itself. It was suggested that each industry which requires "consent to operate" from the concerned Pollution Control Board, should be mandated to set up a functional primary effluent treatment plant. We are informed, that only when such an effluent treatment plant has been set up, the concerned Pollution Control Board grants a "no objection" to the industry, and accordingly "consent to operate", so as to allow the industry to become functional. It is therefore apparent, that all running industrial units, which require "consent to operate" from the concerned Pollution Control Board, have a functional primary effluent treatment plant, in place.

4. The question that arises for our consideration is, whether the same is maintained in good order, after the industry itself has become functional. The industry requiring "consent to operate", can be permitted to run, only if its primary effluent treatment plant, is functional. We therefore consider it just and appropriate, to direct the concerned State Pollution Control Boards, to issue notices to all industrial units, which require "consent to operate", by way of a common advertisement, requiring them to make their primary effluent treatment plants fully operational, within three months from today. On the expiry of the notice period of three months, the concerned State Pollution Control Board(s) are mandated to carry out inspections, to verify, whether or not, each industrial unit requiring "consent to operate", has a functional primary effluent treatment plant. Such of the industrial units, which have not been able to make their primary effluent treatment plant fully operational, within the notice period, shall be restrained from any further industrial activity. This direction may be implemented

by requiring the concerned electricity supply and distribution agency, to disconnect the electricity connection of the defaulting industry. We therefore hereby further direct, that in case the concerned State Pollution Control Boards make a recommendation to the concerned electrical supply and distribution agency/company, to disconnect electricity supply to an industry, for the reason that its primary effluent treatment plant is not functional, it shall honour such recommendation, and shall disconnect the electricity supply to such defaulting industrial concern, forthwith.

5. Such an industrial concern, which has been disabled from carrying on its industrial activities, as has been indicated in the foregoing paragraph, is granted liberty to make its primary effluent treatment plant functional to the required capacity, and thereupon, seek a fresh "consent to operate" from the concerned Pollution Control Board. Only after the receipt of such fresh "consent to operate", the industrial activities of the disabled industry, can be permitted to be resumed. In carrying out the above exercise, we consider it just and appropriate to require, the Pollution Control Boards to carry out inspections, by prioritizing inspections of severely and critically polluted industries, so that visible results emerge at the earliest.

6. Liberty is hereby granted to private individual(s) and organisations, to address complaints to the concerned Pollution Control Board, if any industry is in default. On the receipt of any such complaint, the concerned Pollution Control Board, shall be obliged to verify the same, and take such action against the defaulting industry, as may be permissible in law. Such action, would be in addition to the discontinuation of industrial activity forthwith, in the manner directed herein above (but only after verification).

7. Having effectuated the directions recorded in the foregoing paragraphs, the next step would be, to set up common effluent treatment plants. We are informed, that for the aforesaid purpose, the financial contribution of the Central Government is to the extent of 50 per cent, that of the concerned State Government (including the concerned Union Territory) is 25 per cent. The balance 25 per cent, is to be arranged by way of loans from banks. The above loans, are to be repaid, by the industrial areas, and/or industrial clusters. We are also informed, that the setting up of a common effluent treatment plant, would ordinarily take approximately two years (in cases where the process has yet to be commenced). The reason for the above prolonged period, for setting up "common effluent treatment plants", according to learned counsel, is not only financial, but also, the requirement of land acquisition, for the same.

8. In view of the fact, that the financial position has been taken care of, as has been expressed above, we are of the view, that the setting up of "common effluent treatment plants", should be taken up as an urgent mission. With reference to common effluent treatment plants, which are already under implementation, we hope and expect, that they would be completed within the time lines already postulated. With reference to common effluent treatment

plants, which are yet to be set up, we consider it just and appropriate to direct, the concerned State Governments (including, the concerned Union Territories) to complete the same within a period of three years, from today. We are also of the view, that while acquiring land for the "common effluent treatment plants", the concerned State Governments (including, the concerned Union Territories) will acquire such additional land, as may be required for setting up "zero liquid discharge plants", if and when required in the future.

9. During the course of hearing, we were informed by learned counsel, that the running of "common effluent treatment plants", which are in place, is also a matter of serious concern. In this behalf, it was submitted, that some of the common effluent treatment plants are dis-functional, because of lack of finances, whilst some others are dis-functional, because of the requirement of repairs, which have not been carried out, again because of lack of financial resources.

10. Given the responsibility vested in Municipalities under Article 243W of the Constitution, as also, in item 6 of the 12th Schedule, wherein the aforesaid obligation, pointedly extends to "public health, sanitation conservancy and solid waste management", we are of the view, that the onus to operate the existing common effluent treatment plants, rests on municipalities (and/or local bodies). Given the aforesaid responsibility, the concerned municipalities (and/or local bodies), cannot be permitted to shy away, from discharging this onerous duty. In case there are further financial constraints, the remedy lies in Articles 243X and 243Y of the Constitution. It will be open to the concerned municipalities (and/or local bodies), to evolve norms to recover funds, for the purpose of generating finances to install and run, all the "common effluent treatment plants", within the purview of the provisions referred to herein above. Needless to mention, that such norms as may be evolved for generating financial resources, may include all or any, of the commercial, industrial and domestic beneficiaries, of the facility. The process of evolving the above norms, shall be supervised by the concerned State Government (Union Territory), through the Secretaries, Urban Development and Local Bodies respectively, (depending on the location of the respective common effluent treatment plant). The norms for generating funds, for setting up and/or operating the "common effluent treatment plant" shall be finalized, on or before 31.03.2017, so as to be implemented with effect from the next financial year. In case, such norms are not in place, before the commencement of the next financial year, the concerned State Governments (or the Union Territories), shall cater to the financial requirements, of running the "common effluent treatment plants", which are presently dis-functional, from their own financial resources.

11. Just in the manner suggested herein above, for the purpose of setting up of "common effluent treatment plants", the concerned State Governments (including, the concerned Union Territories) will prioritize such cities, towns and villages, which discharge industrial pollutants and sewer, directly into rivers and water bodies.

12. We are of the view, that in the manner suggested above, the malady of sewer treatment, should also be dealt with simultaneously. We therefore hereby direct, that "sewage treatment plants" shall also be set up and made functional, within the time lines and the format, expressed herein above.

13. We are of the view, that mere directions are inconsequential, unless a rigid implementation mechanism is laid down. We therefore hereby provide, that the directions pertaining to continuation of industrial activity only when there is in place a functional "primary effluent treatment plants", and the setting up of functional "common effluent treatment plants" within the time lines, expressed above, shall be of the Member Secretaries of the concerned Pollution Control Boards. The Secretary of the Department of Environment, of the concerned State Government (and the concerned Union Territory), shall be answerable in case of default. The concerned Secretaries to the Government shall be responsible of monitoring the progress, and issuing necessary directions to the concerned Pollution Control Board, as may be required, for the implementation of the above directions. They shall be also responsible for collecting and maintaining records of data, in respect of the directions contained in this order. The said data shall be furnished to the Central Ground Water Authority, which shall evaluate the data, and shall furnish the same to the Bench of the jurisdictional National Green Tribunal.

14. To supervise complaints of non-implementation of the instant directions, the concerned Benches of the National Green Tribunal, will maintain running and numbered case files, by dividing the jurisdictional area into units. The above mentioned case files, will be listed periodically. The concerned Pollution Control Board is also hereby directed, to initiate such civil or criminal action, as may be permissible in law, against all or any of the defaulters.

15. Liberty is granted to private individuals, and organisations, to approach the concerned Bench of the jurisdictional National Green Tribunal, for appropriate orders, by pointing out deficiencies, in implementation of the above directions.

16. It however needs to be clarified, that the instant directions and time lines, shall not in any way dilute any time lines and directions issued by Courts or Benches of the National Green Tribunal, hitherto before, wherein the postulated time lines would expire before the ones expressed through the directions recorded above. It is clarified, that the time lines, expressed herein above will be relevant, only in situations where there are no prevalent time line(s), and also, where a longer period, has been provided for.

17. It would be in the interest of implementation of the objective sought to be achieved, to also require each concerned State (and each, concerned Union Territory) to make provision for "online, real time, continuous monitoring system" to display emission levels, in the public domain, on the portal of the concerned State Pollution Control Board. We are informed, that at least three State Governments have already adopted the aforesaid measures. Such measures shall

be put in place by all the concerned State Governments(including, the concerned Union Territories), within six months from today.

18. The instant writ petition stands disposed of, in the aforesaid terms.