

(1991) 01 PAT CK 0012

In the Patna High Court

Case No : C.W.J.C. Nos. 6928 and 9601 of 1989

Rajiv Ranjan Singh alias Lallan Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 10-01-1991

Acts Referred:

Citation : (1991) 01 PAT CK 0012

Judgement

Aftab Alam, J.—C.W.J.C. No. 6928/1989 This application under Arts. 226 and 227 of the Constitution of India, based on a report published in a weekly Magazine named "Raviwar" of 18th to 24th June, 1989, has been filed by the petitioner, claiming to be a social worker, in public interest. It brought to the notice of the Court that M/s. Shiv Shankar Chemical Industries, Private Limited, situated within Jagdishpur block at a distance of about 15 Kilo Meters from Bhagalpur town and engaged in the manufacture and production of ethyl alcohol (rectified spirit) had been discharging, beyond its premises, untreated effluents, chemical wastes and sewage. This, in addition to the obnoxious fumes and odours emanating from the distillery was contaminating the water resources and polluting the environment and thereby seriously affecting not only crops and cattle but also the health and well being of the people inhabiting the villages in its vicinity, particularly that of village Raipura which was only at a short distance from this distillery. It was said that such toxic discharge from the Chemical factory was in complete contravention of the statutory provisions of Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981 and Environmental Protection Act, 1986 and the action of the different authorities under the State Government and the respondent Bihar State Pollution Control Board (hereinafter "the Board" for the sake of brevity) in turning a blind eye to such statutory violations by the respondent-company and their failure to protect the inhabitants of the locality from the poisonous and highly injurious effects of the distillery's effluents and fumes amounted to an infringement of the inhabitants' rights guaranteed under Articles 14 and 21 read with Articles 47 and 48A of the Constitution of India.

2. When this Court first took up this application on 13-9-1989, it directed the 5th respondent (the Chemical Company) to file its show cause in the matter. Notices were also accepted on behalf of the State and the Board by their respective counsels.

3. Pursuant to the order dated 13-9-1989 the respondent-Chemical Company and the Board filed their show cause petitions. The Chemical Company in its show cause strenuously denied that any discharge from the distillery contaminated the water reservoir of the piparia Bandh, the main source of water in the area or any other sources of water. It also denied the allegation that the distillery was a health hazard for the local villagers or was causing damages to their cattle or crops. From the two show cause petitions, it also came to light that the Board had asked respondent No. 5 to install a modern effluent treatment plant by September, 30, 1989 and till then it was allowed the old conventional method of having earthen lagoons to contain and hold its wastes and effluents. From these lagoons the effluent allegedly overflowed into a nullah that led up to the piparia Bandh. The Board in its petition made a complaint that respondent No. 5 had failed to keep the time schedule and there had been no material progress towards the installation of the modern effluent treatment plant. Respondent No. 5 in its petition, on the other hand, appeared aggrieved with the Board for allowing in a much shorter time for the change over to the modern treatment plant as compared to some other similarly situated industries in Bihar. On a consideration of their show cause petitions, this Court by order dated 9-11-1989 ordered for an enquiry "as to the nature of the discharge of sewage or trade effluent by the Chemical Industry". So that it could be ascertained as to whether any further discharge of trade effluent or sewage by the distillery beyond its premises may not be so hazardous as to deserve to be altogether stopped. This Court accordingly directed the State of Bihar to constitute a Committee of experts and to submit a report to this Court on points specified in that order. By this order, the Court also forbade respondent No. 5 from discharging any trade effluent or sewage beyond its premises into the piparia Bandh or any other area beyond its premises until further orders."

4. The Experts Committee's report dated 1-1-1990 (hereinafter called "the First Report") was placed before this Court on 25-4-1990, on this date, the counsel for respondent No. 5 stated that he had not been able to go through the report and on his prayer accordingly the case was adjourned to another date. This Court, however, felt that Expert Committee's report gave sufficient indication that despite the order dated 9-11-1989 restraining respondent No. 5 from discharging any trade effluent or sewage beyond its premises, the discharge of effluent from the distillery had been continuing and affecting areas beyond the distillery premises. This Court, accordingly, came harshly upon respondent No. 5 and ordered that all manufacturing process in the distillery should remain suspended until further orders. On the next date, i.e. on 4-5-90 this application was admitted for hearing by this Court. The order stopping the manufacturing process in the distillery passed on 24-5-1990 was also directed to continue in the

following terms :--

"pending disposal, the order passed on 25-4-90 shall continue subject to the condition that an officer not below the rank of secretary of a Government department nominated by the Chief Secretary and his nomination approved by the Chief Minister, Bihar and Chairman of the Bihar State Pollution Control Board shall together may on verification that sufficient pollution control devices are available to contain the pollution as alleged, order for the operation of the manufacturing process of respondent No. 5 on such terms and conditions as they deem fit and proper. The Chief Secretary is directed to nominate such representative within one week from today. The Secretary of the Government department so nominated by the Chief Secretary shall act as the Convenor of the two men committee which shall accordingly issue notice to respondent No. 5 and the petitioner for each verification and condition which respondent No. 5 may be required to satisfy."

5. The Constitution of the Committee and the inspection of the distillery, as desired by this Court, having been somewhat delayed, respondent No. 5 approached this Court with petitions in attempt to get its manufacturing process restarted which had been stopped pursuant to the order as stated above. These attempts did not yield any result and consequently the manufacturing process was still stopped when this case was taken up for hearing by this Court.

6. C.W.J.C. No. 9601/1989 ; I may pause at this stage to take note of some collateral development which occasioned the filing of the second writ petition (C.W.J.C, No. 9601. 1989), this time by the Chemical Company in question viz. M/s. Shiv Shankar Chemical Industries Limited (respondent No. 5 in C.W.J.C. 6928; 1989). The two writ petitions have been heard together and are being disposed of this common order.

7. It appears that after this matter had come to the notice of this Court and the respondent including the Board were required to file their show cause (vide order dated 13-9-1989 in C.W.J.C. No. 6928. 1989), the Board vide its letter No. 4780 dated 21-10-1989 refused to extend its consent to the Company under the provisions of the Water (Prevention and Control of Pollution) Act, 1974 beyond September 30, 1989. The refusal to extend the consent was on the ground that the company had failed to comply with the conditions on which the earlier order of consent (expiring on 30-9-89) was granted. The company, obliged to shut down its distillery in absence of the statutory consent, sought to challenge the Board's action in refusing to extend its consent beyond September 30, 1989 by a writ petition registered as C.W.J.C. No. 9601 of 1989. The challenge to the impugned refusal was based on the pleas of arbitrariness and discrimination.

8. Before this petition could be taken up for admission, the first report was submitted by the Experts' Committee constituted by the Government following this Court's order dated 9-11-1989 passed in the earlier petition (C.W.J.C. No. 6928; 1989). Relying upon the findings of the first report the Government issued

an order u/s 5 of the Environment (Protection) Act, 1986, directing the company to close their operations forthwith. It further directed, that the company's activity should remain suspended till the Government was satisfied with the conduct and intention of the company to control pollution and to have due regards to the environmental values. This order was communicated to the Chemical Company by letter No. Van-pary 237/89. 1723 VP, dated 25-4-1990. It was co-incidentally the same date on which this Court by order passed in C.W.J.C. No.6928/1989, directed that all manufacturing process in the distillery should remain suspended till further orders.

9. The Chemical Company by an amendment petition, supplementary affidavit filed in C.W.J.C. No. 9601, 1989 brought on record this order dated 25-4-90 passed by the State Government u/s 5 of the Environment (Prevention and Protection) Act, 1986 and sought to challenge this order along with the order of the Board refusing to extend its consent beyond September 13, 1989.

10. C.W.J.C. No. 9601, 1989 was finally taken up for admission on 17-8-1990 and in view of the fact that a similar matter was pending hearing before this Court in C.W.J.C. No. 6928/89 it was directed to be heard along with the earlier writ petition.

11. When these two applications were taken up for hearing, another report dated 21-8-1990 (hereinafter to be referred as "the second report") had also been received in this Court. The second report is by the committee constituted by the Department of Forest and Environment, Government of Bihar, in pursuance of order dated 4-5-90 passed by this Court in C.W.J.C. No. 6928/1989. This committee consisted of i). The Chairman, Bihar State Pollution Control Board as the Convenor of the Committee, ii) The Director of Industries, Bihar as a member of the committee and Hi) The Commissioner and Secretary, P.W.D. (Board Construction). Bihar as the Chairman of the Committee.

12. The Committee seems to have carried out a detailed inspection of the distillery in question when it visited the distillery and the neighbouring villages on 1-8-1990. It interviewed a large number of local people and heard their complaints. It also held consultation with the Civil Surgeon, Bhagalpur. The petitioner in C.W.J.C. No. 6928/1989 did not, however, attend the enquiry conducted by the Committee although notices were given to him. Its report dated 21-8-1990 (the second report) is fairly exhaustive and touches upon the various aspects of the problem.

13. Discussing the Chemical composition of the distillery's effluent, the second report notes that it was highly water pollutant in nature and the effluent had a large B.O.D. (Biochemical Oxygen Demand) of the order of 40,000-50,000 MG/L) which meant that in case this untreated effluent got into a water course, the dissolved oxygen in the water would be immediately absorbed by this effluent and the oxygen in the water would be highly depleted causing grave danger to the marine life including fish which breathe through their gills and obtain their

requirement of oxygen from the dissolved oxygen in the water.

14. Discussing the treatment of distillery effluent, the second report notes that it was generally carried out in two stages. The first stage of treatment which reduced the pollution load in the effluent by approximately 90% could also be carried out by the old method of laboring wherein the effluents are retained in properly designed lagoons which are carefully lined by polythene sheets to avoid ground water from being polluted by seepage. After the first stage of treatment, the effluent was further to be treated in the second stage when the pollutants are more or less brought to the level prescribed by the different pollution control Boards.

15. Coming to the specifics, the second report opines that adequate pollution control measures were not available in "the factory. The Construction of Anaerobic Digester had been taken up and an amount of approximately Rs. 32.76 lacs had been spent over the construction of the digester and in procurement of some machines. But at present all this was making no contribution towards control of pollution from this distillery. The second report also notes that the distillery had laid out a number of lagoons, but these were quite inadequate inasmuch as these did not have the required storage capacity of one hundred days" effluent, and hence the overflowing of effluent from the lagoons. They had also not been fully scientifically laid out and had not been properly lined with the result that the risk of ground water getting polluted could not be ruled out. The lagoons as laid out at present could at best only partially treat the effluent.

16. Examining the question of pollution already generated by the distillery, the second report fortunately notes that on August 1, 1990, the water in the wells of village Raipura were clean and without any odour. Samples of water collected on 17-12-1989 and on 24-5-1990 from wells in villages Raipura and Raijan and from hand-pump of village Raipura on a chemical analysis, did not show any evidence of pollution. The second report also records that no resident of village Raipura could show any rashes on his body caused by the effluent. The civil Surgeon, Bhagalpur, Dr. S. B. P. Sinha who was examined by the committee maintained that irritating chemicals could cause rashes but the allegation of pregnant women aborting due to foul smell was not acceptable. The report, however, takes note of the nuisance that might be caused by the colour going into ground water and odour both in the atmosphere and in ground water and has suggested measures to protect the neighbouring villages from this phenomena. According to the committee, this would be more in the nature of an irritating nuisance than a health hazard, That aspect of the matter shall be dealt with in due course.

17. The second report has rightly concluded that the distillery in question cannot be absolved of the responsibility of setting up a regular effluent treatment plant (E.T.P. for short) which was already under construction and subsequently to set up the second stage of E.T.P. also in due course as per time schedule laid down by the Government of India and the Board.

18. Discussing the financial aspect of the installation of E.T.P. the second report notes as follows:

A. Cost of E.T.P. Rs. 119 lacs. (First stage).

B. Amount payable by the Unit/promoters Rs. 44 lacs.

C. Loan sanctioned :--

I. By I.R.B.I. (Industrial Reconstruction Bank of India) Rs. 50 lacs.

II. By I.R.E.D. A. (Indian Renewal Energy Development Agency). Rs. 25 lacs.

(Most of the above details were furnished by the Director of M/ s. Shiv Shankar Chemicals Industries, Jagdishpur, Bhagalpur).

The financial position in this regard, on the date of the inspection (1-8-1990) was not quite certain as the final sanctions to the loans by the financial agencies were yet to come and were then awaiting the rescheduling of payments and the consent of the different other financial agencies (BICICO, BSFC and SBI) which had advanced loans to the company, for setting up the primary manufacturing unit. The Director of the company gave the committee to understand that E.T.P. would be installed within 9 months from the date when the loan amounts laid down released. The second report accordingly recommends that the Company could be allowed to operate the distillery only after the amount of loans sanctioned to them by IREDA and IRBI for the setting up of the E.T.P. had been released and the company had placed definite orders with M/s. Utility Equipment and Management (P) Limited for supply of the instruments of completion of the effluent plant within a time frame.

19. For the period of nine months between the dates when the distillery was granted permission to restart the manufacturing process and when the E.T.P. was finally installed and became operational, the second report has suggested certain interim arrangements to contain the pollution at the minimum if not to completely check the same. These are as follows :--

I. The distillery must set up properly designed lagoons, double lined by polythene sheets to avoid any risk of ground water pollution and having their retaining and holding capacity equivalent to 100 days effluent discharge. This must be to the complete satisfaction of the Board.

II. The entire area where lagoons exist or will be further dug up to the used as storage for the effluent should be effectively fenced to a height of five feet by a pucca wall or 7 strand barbed wire fence to check the entry of cattle or human beings into the lagoon area.

III. The Unit should provide for centrifugal separation for the fermented sludge so that the sludge can be separated in the initial stage itself and used either for cattle fed or manure.

IV. The factory of M/s. Shiv Shankar Chemical Industries at Jagdishpur,

Bhagalpur and village Raipura should be separated by a five meter high and one hundred fifty meter long earthen dyke with close plantation on the top along the slopes. This should be able to limit the odour reaching Raipura to some extent. The construction of the dyke and plantation should be done by M/s. Shiv Shankar Chemical Industries Jagdishpur as part of pollution control.

V. Two deep Tube wells may be provided for the villagers of Raipura at the cost of M/s. Shiv Shankar Chemical Industries.

20. In course of hearing, the Chemical Company has filed an affidavit stating that it accepts all the recommendations made in the second report in a completely unqualified manner. It further stated that "The company undertakes that they will complete the modern treatment plant within a period of nine months from the date of reopening of the factory of respondent No. 5" (and not from the date the loan amount was released as stated before the committee). The change in the company's stand has been brought about as it is stated that "respondent No. 5 is likely to get loan very soon from I.R.B.I, and I.R.E.D.A." It is also stated that the company, respondent No. 5 had already taken up the work of interim arrangements as stipulated in the second report.

21. Having heard the parties at great length, I am satisfied that it is necessary in this case to strike a balance between the necessity to preserve the environment on the one hand and the pressing need for the industrialisation of this backward state. The distillery may be permitted to restart its manufacturing process with adequate safeguards in terms of the following scheme. It may also be stated that the learned counsel appearing for the Board has accorded its consent to the scheme. The learned counsel for the petitioner in C. W.J.C. No. 6928/1989 would not consent to the scheme but could not raise any serious objection to it.

22. The scheme envisages that the Chemical Company may be allowed to restart the manufacturing process in its distillery on completion of the interim arrangement as enumerated in serial Nos. I to V in paragraph 19 hereinabove. It may be clarified that the start of the manufacturing process may not await the completion of item No. 4 requiring the setting up of dyke and planting of trees but steps for material progress in that direction would suffice for the present. All the other conditions must, however, be faithfully completed before the manufacturing process is restarted. The provision of two deep tube wells for the villagers and the setting up of the lagoons with adequate retaining capacity is of special importance and the lagoons with their designs, linings and retention capacity must be approved in writing by the Board before the manufacturing process is restarted. The company must further install and make operational a modern effluent treatment plant within 9 months from the date of the start of the manufacturing process in its distillery. It is made clear that this scheme having been evolved on the understanding given by the company itself, there is no question of any further extension of time in this regard and in case the E.T.P. is not made operational within the stipulated time, the manufacturing process in the factory will have to be shut down.

23. I may state at this stage that the decision to allow the distillery to start its manufacturing process with adequate safeguard and on the fulfillment and completion of the above conditions is based on the undertaking given by the Chemical company which I find to be in line with the Supreme Court decision in the case of M.C. Mehta Vs. Union of India (UOI) and Others, . In this case, the Supreme Court had allowed six months' time to a number of tanneries to establish primary treatment plants with the stipulation that in case the tanneries failed to install the primary treatment plant and bring them into operation within the period of six months, the said tanneries would stop carrying on their business.

24. In the case of McDowell and Company (P) Limited v. Union of India (1988 CWJC 5820) this Court had also granted some time to the company to install the E.T.P. and had, in the meanwhile, stayed the orders of the State authorities directing the company to shut down its production by locking up of the factory.

25. The learned counsel for the petitioner seeks to distinguish those cases on the plea that in those cases the industries had been in existence before the pollution control Acts were enacted, whereas the Chemical Company in this case has been set up after the enactment of the three Pollution Control Acts and, therefore, does not deserve any similar indulgence. The argument appears to be vindictive and emanating from anger rather than rationality. The argument would have had some substance had the company not yet been established. But the company has already been set up and has already gone in production. The following details speak for themselves :--

- 1). Year and Month when production started, April, 1988.
 - 2). Total capital investment; (minus cost of effluent treatment plant). 245.17 lacs
 3. a. Amount paid by promoters; 73.00 lacs.
 - b. Loans ?
 - (i) State Bank of India .. 36.00 lacs.
 - (ii) Bihar State Financial Corporation .. 45.15 lacs.
 - (iii) Bihar Credit and Investment Corporation .. 60.00 lacs.
 - (iv) Subsidy.. 15.00 lacs.
 - (v) Private Loan .. 18.00 lacs.
- Total Rs. 247.15 lacs.
4. Production of Alcohol;
 - (a) Rated capacity .. 30,000 Litres per day
 - (b) Production during 1988-89 15,10,000 litres.

(c) Production during 1989-90 23,59,000 litres.

5. Excise revenue payable to the State, During 1989-90, on amount of Rs. 980 lacs accrued to the State Exchequer.

6. Employment : -

(a) Workers 54

(b) Middle rank staff officers 30

Total 84

26. In view of the above, I am satisfied that the distillery may be permitted to restart its production subject to what has been stated in paragraph 22 hereinabove.

27. The Board is accordingly directed to extend its consent to the Company under the provisions of Water (Prevention and Control of Pollution) Act subject to this scheme. The order dated 25-4-1990 issued by the State Government u/s 5 of the Environment (Protection) Act, 1986 directing the company to close their operation is also set aside subject to the aforesaid scheme.

28. In case it comes to light that any person has contracted any ailment the cause of which can be directly related to the effluent discharged by the distillery, the company shall have to bear all expenses of his treatment and the question of awarding suitable compensation to the victim may also be considered.

29. With these observations and directions, these two writ petitions are disposed of but without any order as to cost.

Satya Brata Sanya, J.

30. I agree.