
(2022) 02 TEL CK 0066

In the Telangana High Court

Case No : Writ Petition (PIL) No. 22 Of 2020

Saimolla Mogulaiah

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 17-02-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 21, 47, 48A, 51A(g), 300A
Environment (Protection) Act, 1986 — Section 3
National Green Tribunal Act, 2010 — Section 14, 26, 27

Citation : (2022) 02 TEL CK 0066

Hon'ble Judges : Satish Chandra Sharma, CJ;Abhinand Kumar Shavili, J

Bench : Division Bench

Advocate : Prabhakar Chikkudu

Final Decision : Dismissed

Judgement

The present writ petition (public interest litigation) has been filed by Mr. Saimolla Mogulaiah stating that he is the District Vice President of Republican Party of India and he is a public spirited individual having concern for the public at large.

It has been stated that respondent Nos.9, 10, 11 and 12 are pharmaceutical industries, which are established in Gundlamachanoor Village, Hathnoora Mandal, Sangareddy District (erstwhile Medak District). They are creating noise pollution, they are destroying the properties of the villagers, they are creating water pollution, even the ground water is polluted, they are creating air pollution and the farmers are not able to cultivate their fields, and are suffering from Cancer besides other diseases. It has also been stated that certain deaths have also taken place in the matter on account of pollution. The petitioner has prayed for the following relief:-

"For the reasons stated in the accompanying affidavit, it is hereby prayed that this Hon'ble Court may be pleased to issue a Writ, Order or direction more particularly one in the nature of Writ of Mandamus in declaring the inaction of the respondents in cancellation of the permissions of the Pharma Industries i.e.,

1) M/s.Aurobindo Pharma Unit-IX (Vamsi), 2) M/s.Kovelent (Sreerama Laboratories), 3 M/s.Harch Pharma (Mervin Drags), 4) M/s.Ciracks Pharma Limited (Anar) etc., which are situated in the village of Gundlamachanoor, Hathnoora Mandal, Sangareddy District, Erstwhile Medak District by considering the representations of the Petitioner and the people at large made to the respondents on 31.12.2001, 31.01.2002, 12.12.2002, 19.05.2003, 22.04.2013, 29.04.2013, 14.07.2014, 19.02.2015, 05.07.2015, 19.10.2016, 24.10.2016, 14.07.2017, 23.03.2018, 30.08.2018 and 03.08.2019 as illegal, high arbitrary, discriminatory, unjust, unreasonable, unfair, irrational, unlawful, unconstitutional, perverse, mockery, abuse of power, misuse of power, and against to the Article 14, 21, 47, 48-A and 51-A(g) and 300-A of the Constitution of India and against to the provision of the Environment Act, 1986 and its Rules of the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989, The Bio-Medical Waste (Management and Handling) Rules 1998, The Noise Pollution (Regulation and Control) Rules, 2000 and the Wet Lands (Conservation and Management) Rules, 2010 and also the provisions of the Air Prevention and Control of Pollution Act, 1981 and its Rules and also against to the provisions of the HMDA Act, 2008 and against to the catena of Judgments of this Hon'ble Court and an Apex Court and consequently, direct the respondents to cancel the permissions of the Air, Water, Noise polluted industries, which are destroying the right to life of the public at large across the Mandal of Hathnoora, Sangareddy District by appointing Expert Committee to enquire into the matter and to submit the report forthwith to this Hon'ble Court and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

On the other hand, the learned Standing Counsel for the Telangana State Pollution Control Board has drawn the attention of this Court towards the judgment dated 24.10.2017 delivered by the National Green Tribunal, Southern Zone, Chennai, in Application No.69 of 2013 (Kasala Malla Reddy v. State of Andhra Pradesh) and other connected matters, and the respondent pharmaceutical industries were parties before the Tribunal. The contention of the learned counsel is that in respect of similar industries, large number of applications were filed before the Tribunal and similar allegations were made by the applicants before the National Green Tribunal and the Tribunal has decided the matter with certain directions. The relevant portion of the aforesaid judgment of the National Green Tribunal, as contained in paragraphs 244 and 245, reads as under:-

"244. Accordingly, all the applications are disposed as per the directions contained in the judgment which are given in nutshell as follows:

(1) By impleadment of various respondents during the pendency before the Tribunal after transfer from the High Court it does not affect either by the principle of res judicata or dominus litis, as the proceedings ever since initiated in the Hon'ble Supreme Court, has continued throughout while transferred to the Hon'ble High Court of Andhra Pradesh and thereafter to this Tribunal and

therefore there is no question of introduction of any fresh cause of action or any of the reliefs either barred by limitation or struck by delay or latches.

(2) The transport of treated effluents from CETP for 18 KM to Amberpet STP for dilution and thereafter letting into Musi River need not be interfered at this stage and there is no violation of Hazardous Waste Rules or Basel Convention.

(3) Even after the passage of decades there is no significant improvement in the groundwater quality particularly in the Manjira River Basin with specific reference to Kazipally Lake, Isnapur Lake, Kistareddypet Lake and Gandigudem Lake which ultimately lead to Nakkavagu and therefore it is incumbent on the part of the State Government to completely restore all these water bodies to their original position and recover the entire cost from the industrial units proportionately. Until complete restoration of the said tanks/lakes is done, the drawal of water by the industries shall be restricted by the Government by framing appropriate guidelines in consultation with the Central Groundwater Authority and Expert from Osmania University, particularly Department of Hydrology. Framing of such guidelines regarding extraction of groundwater by the industrial units of Patancheru and Bollaram shall be completed within a period of three months and till then no unit shall be permitted to extract groundwater and the periodical report shall be filed by the State of Telangnaa to the Registry of NGT (SZ) once in six months, the first of such report shall be filed on or before 26th April, 2018 and the Registry shall place the said report before the Tribunal for passing appropriate direction. It is the duty of the Board not only to ensure primary treatment by every unit but also must satisfy that the standard of effluent discharged by each industrial unit, after primary treatment to PETL, is within the permissible limit and the PETL maintains its inlet and outlet standards and only after the Board is satisfied that the outlet standard of PETL is within the limits prescribed by the Board and also eligible to be transported for further dilution in the STP at Amberpet and only then transporting shall be permitted. During transport it should be ensured that no breakage or leakage takes place enroute and at the place of discharge in the STP at Amberpet the outlet standards must be checked by the Board and satisfy that it is allowed to enter into the STP for further dilution. After dilution from STP at the point of discharge into Musi river proper check must be made by the Board to ensure the standard.

(4) The arrangement of supply of drinking water of adequate quality and quantity to the Villages of (1) Baithole (2) Arutla (3) Chidruppa (4) Ismailkhanpet (5) Gandigudem (6) Sulthapur (7) Khazipalli (8) Kistareddypet (9) Inole (10) Peddakanjarla (11) Patancheru (12) Lakdaram (13) Muthanghi (14) Isnapur (15) Kandi (16) Rudraram (17) Ramchandrapuram (18) Kalabgoor (19) Chitkul (20) Pocharam shall be continued by the State Government which shall be entitled to recover the cost thereof from the industrial units proportionately. The said activity shall be done by the Government through the Hyderabad Metropolitan Water Supply and Sewerage Board until complete restoration of the lakes.

(5) The shortcoming pointed out by the report of CAG of March, 2014 shall be

rectified and periodical status report filed.

(6) For the period from 1986-1987 till 2001-2002 the villagers are entitled to compensation at the rate of Rs.1,000 per acre per annum in respect of dry land and Rs.1,700 per acre per annum in respect of wet agricultural land.

(7) In so far as it relates to the claim of applicants in Application Nos.69 to 72 of 2013, regarding Survey Nos.345 and 346 of Chidruppa Village, compensation shall be paid to the claimants/legal heirs till 2001-2002.

(8) There is no need to either reverse the quantum of compensation or to continue payment of compensation after 2001-2002 except in respect of specific cases of claim of compensation which will be decided on merits and in accordance with law.

(9) The State Government shall constitute an Expert Committee headed by the Director of Medical Education along with Experts drawn from various fields like Infectious Diseases, Dermatology etc., and Scientists well versed in Microbial Resistance and Epidemiology to make a thorough study in all the villagers forming part of Manjira River basin in and around Nakkavagu and other water bodies and also Musi River Basin to recommend:

(i) As to whether the health hazard of the people living in the area due to the industrial pollution continues and if so, what relief should be granted?

(ii) Whether the activities of the pharmaceutical industries have led to Antimicrobial Resistance to drugs and if so, what are the consequences on the health of the people and the remedial measures to be taken?

(iii) A broad Epidemiological and Genetic Study and survey to be made including remedial measures to be taken.

The said committee shall be constituted by the State Government within a period of two weeks from the date of receipt of a copy of this judgment and the committee shall be directed to submit its report within three months thereafter and recommendations of the committee shall be implemented by the Government and status report regarding implementation to be filed periodically before this Tribunal once in six months. The report of the committee and the status of implementation shall also be placed in the public domain by uploading on the website of the Director of Medical Education and Health and Family Welfare Department of Government of Telangana.

(10) In the light of our findings that no adequate health facilities are available in the area, we direct the Government of Telangana to establish a Government Super Speciality Hospital with adequate medical facilities to treat all sorts of occupational diseases for which the industrial establishments situated in the industrial hub shall contribute 75% of the total cost and the remaining amount to be contributed by the State Government. Such hospital shall be run under the supervision of the committee of Medical Experts and also involving Senior

Government Officers connected with the Health Department.

(11) There is no necessity to direct closure of the existing industrial units in Patancheru and Bollaram. However, unless and until restoration activities are completed the Regulatory Authority shall not consider any of the applications of the existing units for expansion. However, in the event of the Regulatory Authority deciding that expansion in respect of a particular unit is required in public interest, such proposal may be considered not only strictly in accordance with the provisions of the Act and only after satisfying that the unit is showing ZLD but subject to further condition that the said unit shall be directed to deposit an amount equivalent to 1% of the annual turn over in the previous year and such amount shall be kept in a separate account in the name of "Patancheru-Bollaram Environment Relief Fund" and only after the deposit of the said amount, the claim for expansion may be considered.

(12) All the existing units shall have their primary effluent treatment system inside the unit, whether they are members of CETP or not and the same has to be scrupulously enforced by the Regulatory Authority.

(13) We direct creation of a Corpus Fund in the name of "Patancheru and Bollaram Environment Relief Fund" which shall consist of deposit of minimum 1% of the annual turn over in respect of the claim for expansion if it is considered by the Regulatory authority and contribution of all the industrial units situated in Patancheru and Bollaram an amount of 0.5% of the annual turn over of the previous year and the contribution shall be continued till complete restoration of the entire affected area and after the Tribunal passes appropriate orders. The said Corpus Fund shall be operated jointly by the Chief Secretary of the Government of Telangana and the Chairman of the Telangana State Pollution Control Board and the amount shall be utilised for restoration of environment in the entire affected area and as per the decision taken by the committee comprising of

- (1) The Chief Secretary to Government of Telangana
- (2) The Secretary to Government Environment and Forest Department
- (3) The Secretary to Government, Irrigation and Water Resources Department
- (4) The Secretary to Government, Industries Department
- (5) The Secretary to Government, Panchayat Department
- (6) One Environmental Scientist from Osmania University, to be nominated by the Vice-Chancellor
- (7) One representative of a prominent NGO in
- (8) One representative of BDMAI, preferably its President
- (9) The Chairman of the Telangana State Pollution Control Board who shall act as the Convener.

The contribution as stated above as 'Patancheru-Bollaram Environment Relief Fund' is independent of the payment directed against the units under 'polluter pays' principle or contribution of amount by the units for the establishment of Super Speciality Hospital.

(14) At present there is no necessity for any direction against any of the units to pay any amount under 'polluter pays' principle except leaving it to the authority to invoke the same in appropriate cases.

(15) On the factual matrix of the case, there is no necessity for appointment of any permanent authority by the Central Government by invoking powers under Section 3 of the Environment (Protection) Act, 1986. However, it is open to the Central Government to appoint any such authority for supervising and implementing various directions given in the judgment since the directions are already existing directions from various authorities and are continuing process.

(16) CSR of the units as governed under the Companies Act, 2013 are independent of various directions contained in this judgment including setting up of a Super Speciality Hospital, amounts to be contributed for restoration etc.

(17) There are no further directions required for functioning of Jeedimetla Effluent Treatment Plant (JETL) and the same is discharged, except directing the Board to make continuous monitoring of the function of JETL and ensure that the directions given by the Hon'ble Supreme Court dated 10.11.1999 to JETL are scrupulously followed.

245. In view of the disposal of the Original Applications, in the pending M.A.No.274 to 278 of 2015 & M.A.Nos.7, 9 and 16 of 2016 which are filed in Application No.90 of 2013 for modification of our order dated 30.10.2015 appointing High Level Committee, there is no necessity to pass any further orders since the said order dated 30.10.2015 has not been given effect to for the reasons explained in the body of the judgment and accordingly they are closed. Likewise, M.A.Nos.85 to 88 of 2013 filed in Application Nos.69 of 72 of 2013 seeking for direction for award of compensation also stand closed, since sufficient safeguards have been made in this judgment. We place on record the valuable assistance rendered by Mr. M.C. Mehta, Mr. Niroop, Mr. Srinivasa Moorthy, Mr. Ramachandra Rao, Addl. A.G of State of Telangana, Mr. Sai Krishnan and all other counsel but for whose assistance the task would not have been possible."

Learned counsel for the petitioner has argued before this Court that the industries are still polluting environment and therefore, he has got every right to file a petition before this Court, as Articles 14 and 21 of the Constitution of India are being violated. Heavy reliance has been placed upon the judgments delivered by the Hon'ble Apex Court in the cases of Olga Tellis v. Bombay Municipal Corporation (1985) 3 SCC 545 and Janata Dal v. H.S.Chowdhary (1992) 4 SCC 305.

This Court has carefully gone through the aforesaid judgments. In the aforesaid

judgments, the issue of parallel proceedings before the National Green Tribunal and before the High Court has not been touched at all by any Court. In the present case, we are facing a peculiar situation. The National Green Tribunal, after taking into account all the grounds, all the problems and all the issues raised by the villagers, has passed a detailed and exhaustive judgment. Environmental fund has been created and directions have been issued to ensure that further pollution does not take place. Therefore, in the light of the directions given by the National Green Tribunal in identical matters, this Court does not find any reason to entertain the present public interest litigation.

Otherwise also, Section 14 of the National Green Tribunal Act, 2010 (for short "the Act") provides for settlement of disputes. The petitioner does have a remedy of approaching the National Green Tribunal under Section 14 of the Act.

So far as the judgment delivered by the National green Tribunal, which has been referred to by this Court is concerned, in case the judgment is not being complied with, Sections 26 and 27 of the Act provides for penalty. Sections 26 and 27 of the Act read as under:-

26 Penalty for failure to comply with orders of Tribunal.-

(1) Whoever, fails to comply with any order or award or decision of the Tribunal under this Act, he shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to ten crore rupees, or with both and in case the failure or contravention continues, with additional fine which may extend to twenty-five thousand rupees for every day during which such failure or contravention continues after conviction for the first such failure or contravention:

Provided that in case a company fails to comply with any order or award or a decision of the Tribunal under this Act, such company shall be punishable with fine which may extend to twenty-five crore rupees, and in case the failure or contravention continues, with additional fine which may extend to one lakh rupees for every day during which such failure or contravention continues after conviction for the first such failure or contravention.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence under this Act shall be deemed to be non-cognizable within the meaning of the said Code.

27. Offences by companies:- (1) Where any offence under this Act has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was

committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by the company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation – For the purposes of this section, -

(a) “company” means any body corporate and includes a firm or other association or individuals; and

(b) “director” in relation to a firm means a partner in the firm.”

In the light of the aforesaid statutory provisions of law, if the allegation of the petitioner is that the order passed by the National Green Tribunal is not being complied with, the remedy lies elsewhere and not before this Court. In case the petitioner is claiming violation of environmental laws, the remedy lies under Section 14 of the Act. Otherwise also, the National Green Tribunal has looked into each and every aspect of the case and has passed a detailed and exhaustive order and therefore, the parallel proceedings before this Court, in respect of the same issues, are not at all maintainable.

Resultantly, the writ petition (public interest litigation) is dismissed.

Pending miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.