
(2004) 06 JH CK 0039

In the Jharkhand High Court

Case No : Writ Petition (PIL) No. 3921 of 2002

Smt. Bimla Varta

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 30-06-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Water (Prevention and Control of Pollution) Act, 1974 — Section 25

Citation : (2004) 4 JCR 362

Hon'ble Judges : P.K. Balasubramanyan, C.J.;Narendra Nath Tiwari, J

Bench : Division Bench

Advocate : Delip Jerath, Prashant Kumar Singh, for the Appellant; B.S. Lal, A.A.G. for the Respondents No. 1 and 2 and Sumeet Gadodia, for the respondent No. 3, for the Respondent

Judgement

1. Heard counsel for the petitioner, counsel for the Dhanbad Municipality, the learned Additional Advocate General for the State of Jharkhand and Mr.Jerath, counsel for the Pollution Control Board.

2. The petitioner raised objections to the construction of a sulabh shauchalaya within the Dhanbad Municipality. The petitioner is seen to be the owner of a residential house lying adjacent to the site wherein the sulabh shauchalaya was proposed to be constructed. The petitioner approached this Court on a plea that public interest will suffer and pollution will increase if the shauchalaya is established in the site in question. Various contentions were sought to be raised by counsel for the petitioner with particular reference to Section 215 of the Bihar Municipal Manual and Section 25 of the Water (Prevention and Control of Pollution) Act. The Dhanbad Municipality appeared and contended that the construction of the shauchalaya had progressed to a great extent and that there was no ground to interfere by this Court. It was contended that the people of the locality have been using the site for releasing themselves and the waste materials were being dumped at the site leading to pollution and it was in the interests of the inhabitants of the locality and the Municipality to have the

shauchalaya constructed and duly maintained. The allegation that public nuisance will be caused and that there will be pollution was denied.

3. After hearing counsel, on an earlier occasion, we felt that it had to be ensured that there would be no pollution resulting from the establishment of the shauchalaya. So on 10.2.2004 the Division Bench passed the following order;

"The matter was heard for some time. One point sought to be made on behalf of the petitioner was that a latrine was sought to be constructed adjacent to a pipe carrying drinking water as part of the water supply scheme in Dhanbad Municipality, The observations relating to a representation made by an individual in An-nexure-4 are referred to in support. It is not clear what the stand of the Deputy Commissioner and the special Officer, Dhanbad Municipality is regarding this aspect and the argument on behalf of the petitioner that the permission of the State Pollution Control Board is needed in the light of the relevant provisions of the Water Act. Counsel for Dhanbad Municipality seeks time to get specific information on the existence of the drinking water underground pipe and the distance between it and the present shauchalaya sought to be established and the impact of the system sought to be established on the pipeline allegedly already existing for carrying drinking water."

4. Pursuant to this order, the State Pollution Control Board visited the site with notice to the concerned parties and has filed a report before us. In that report, the Pollution Control Board has suggested that there was not much threat of pollution if the shauchalaya is constructed. But it noted that the work for decentralized effluent treatment plant is yet to be started. It also noticed that the land is at present used for garbage disposal. After making some suggestions, it was stated that there will be no environmental pollution; but it was emphasised that after the commissioning of the sulabh complex with full fledged decentralized effluent treatment facilities with concept of zero discharge, there will be improvement in the environment of the locality considerably. But the Pollution Control Board indicated that the maintenance part of the sulabh shauchalaya was also a matter of consideration from the environmental point of view. The report given by the Honorary Chairman of the sulabh International Social Service Organization giving certain details was also annexed as Annexure 2 to the report.

5. Considering the report, and our order dated 10.2.2004 quoted above, we find that the threat of pollution is not so grave so as to warrant the stopping of the construction altogether. But learned counsel for the petitioner submitted that the position regarding the existence of the underground pipeline carrying drinking water for the town has not been properly met in the context of Section 215 of the Bihar Municipal Manual. We are not sure that Section 215 of the Manual will apply as it speaks of public tank, water course, river or nala. Whether a pipeline carrying drinking water would come within the scope of section of the manual is a different question, but whatever it may be. we find that if the present sulabh shauchalaya is constructed according to its plan and as envisaged and proper

steps are taken to maintain it, the extent of pollution will be minimum and there will be no serious threat to the environment. After all the prevention of pollution has to be balanced with the Integrated development of the Municipality obviously the Municipality does not have a proper set up for Municipal solid waste management for Dhanbad town and this is one attempt to provide human waste management with full fledged decentralized effluent treatment facilities with the concept of zero discharge so that, the town can be kept neat to the extent possible,

6. In the circumstances, we do not think it proper or necessary to prevent the construction of the sulabh shauchalaya. But at the same time we feel that in public interest, this construction work must be completed strictly as envisaged. According to counsel for the petitioner, in the report it is stated that the sulabh International is a social Service Organization and at the time of the visit of the officials of the Pollution Control Board, pursuant to our direction, its representatives were also present. There is possibility of nuisance even after the construction is completed and the question of making proper arrangements for the maintenance and making available the required quantity of water are of considerable importance. In that view, we direct that the Municipality, after the completion of the construction in its entirety and after providing water facility to the shauchalaya, will move the State Pollution Control Board (even if the Municipality has a case that Section 25 of the Water Act does not apply) and obtain permission so that it will be ensured that all possible steps are taken to minimize pollution in the light of the present report of the State Pollution Control Board. Thus we find it proper to interfere only to this limited extent.

7. Hence, we dispose of this writ petition by permitting the Municipality to complete the construction of the sulabh shauchalaya and its pits and provide for supply of the required quantity of water. After doing that, the Municipality will apply for permission to the Pollution Control Board for clearance in terms of Section 25 of the Water Act and the Pollution Control Board after inspection and due verification of the relevant factors, would grant permission. only if its suggestions in the present report have been fully carried out. Only after obtaining such permission, the sulabh, shauchalaya will be commissioned. The Municipality has undertaken before us that the sulabh shauchalaya will be properly maintained so that it will not cause nuisance to the people of the locality and (those who pass along the road adjacent to the shauchalaya. That undertaking is recorded.