

(2009) 09 GUJ CK 0029

In the Gujarat High Court

Case No : Special Civil Application No. 9699 of 2008

Solanki Jaswantsinh Kalusinh

APPELLANT

Vs

District Collector and Others

RESPONDENT

Date of Decision : 17-09-2009

Acts Referred:

Water (Prevention and Control of Pollution) Act, 1974 — Section 23

Citation : (2009) 09 GUJ CK 0029

Hon'ble Judges : K.S. Radhakrishnan, C.J;Akil Kureshi, J

Bench : Division Bench

Advocate : J.V. Japee, for the Appellant; Amee Yajnik, for Respondent 2, H.L. Patel, for Respondent 4 and Devang Vyas, AGP for Respondent 5, for the Respondent

Judgement

K.S. Radhakrishnan, C.J.—Petitioner has raised grievances about the inefficiency and the incapacity of the officers of the Pollution Control Board to control the contamination of underground water in Boriya Khurad village, causing serious health hazards.

2. Considerable duties and responsibilities have been bestowed on the Officers of the Gujarat Pollution Control Board (for short "GPCB") under the Water (Prevention and Control of Pollution) Act, 1974, (for short "the Water Act") for prevention and control of water pollution and to ensure that the industrial and domestic effluents are not allowed to be discharged into the water courses without adequate treatment, as such discharges would render the water unsuitable for human consumption, irrigation and the marine life.

3. The 4th respondent had set up a dyeing and manufacturing unit in the above mentioned village for manufacturing dyes and intermediates which had discharged chemical and other toxic subject into the underground bore-wells of the 4th respondent factory, which in turn contaminated the water in nearby bore-wells causing serious water pollution and health hazards to the villagers and farmers. This fact was noticed by the Environmental Engineer of the GPCB in an

inspection conducted on 19.04.2004. Samples of water from the bore-wells were taken by the Officers of the GPCB and were tested. It was revealed that there was contamination of underground water in the nearby areas due to discharge of effluents into the underground bore-wells by the 4th respondent's Unit. Consequently, a closure order dated 13.04.2004 was issued to the 4th respondent by the GPCB in exercise of powers conferred under the Water Act, the Air (Prevention & Control of Pollution) Act, 1981, (for short "the Air Act") and the Hazardous Waste (Management & Handling) Rules, 1989, (for short "the Rules") framed under the Environment (Protection) Act, 1986, (for short "the Environment Act"). An application preferred by the 4th respondent unit for manufacture of certain products was also rejected stating as follows:

And Whereas during the inspection of your industrial plant on 19/5/2004 u/s 23 of the Water Act. Samples of bore well near by area were collected by the authorized officers of the Board. Copy of the AR No 1113-2004, 1114-2004, 1115-2004, 1116-2004, 1117-2004, 1118-2004, 1119-2004 dated 19.05.2004 of this Bore Wells sample was sent by the Board. This analysis report indicates that there is contamination of underground water in the near by area due to the discharge of waste water by the M/s Swastik Organic.

4. The GPCB had to take strong measures due to the objections raised by the villagers and ultimately the factory was closed down, but the problems of the complainant-petitioner and other villagers still subsists. The pollution caused by the 4th respondent factory is a perennial problem and the contaminated water still causes serious health hazards. The pollution already caused is still to be eradicated. Petitioner has, therefore, approached this Court seeking a direction to the authorities to take appropriate steps to check and curb the pollution of the underground water at village Boriya Khurad and to take appropriate action against the offending industrial units responsible for the pollution of the underground water and also take appropriate steps against the erring officers and also for the consequential reliefs.

5. 4th respondent has filed a detailed counter affidavit and stated that having noticed the pollution caused by the discharge of the effluents into the bore-wells of the factory, factory was closed down and claims made by few farmers were found tenable and were paid compensation. It is further stated that one Arjunsinh Mansinh Solanki did not come forward to receive the compensation, and in turn he has filed Special Civil Suit No. 17 of 2007 in the Court of Civil Judge (S.D.), Himmatnagar, praying for compensation of Rs. 10.00 lacs with 9% interest, and the said Suit is pending. Further, it is stated another person has filed Special Civil Application No. 6739 of 2005 before this Court and considering that the explanations given by officials of the GPCB were found satisfactory and since the petitioner had not claimed any compensation against the 4th respondent, this Court disposed of the petition giving no further direction.

6. Counter-affidavit has been filed by the 2nd respondent-GPCB. It has been stated therein that since GPCB came to know about the environmental pollution,

they took immediate action and ordered closure of the Unit and the Collector also passed an order whereby electricity connection was also disconnected on 31.08.2004, and the unit is not functioning. Another affidavit was also filed by 2nd respondent-GPCB since this Court directed it to conduct another inspection about the pollution caused by the 4th respondent unit due to discharge of effluents into the bore-wells without taking precautionary measures. Inspection was carried on 20.01.2009 and samples were tested. Inspection report suggested that water of 3 bore-wells were not potable out of 6 bore-wells. District Collector was also requested to inform the Irrigation Department and also Gujarat Water Supply and Sewerage Board to take appropriate steps. Further, it is also stated that water from bore-wells were generally used for irrigation purposes and the domestic water for drinking purposes is supplied by a separate pipeline coming from village Piplodi. It is stated that GPCB is also alive to the issue of damage already caused by the unit while it was in operation.

7. We have come across several such cases where industrial and chemical factories after polluting the bore-wells and water courses on a massive scale simply get away causing serious health hazards and environment pollution. There is no system or mechanism to meet with such situations and to determine the extent of pollution caused and to determine the damage caused. In few cases, High Courts and Apex Court have ordered compensation to the victims. But, there is no clear-cut mechanism to assess the compensation amount legitimately due to the affected persons and the damage caused to the environment. The authorities of the GPCB can take appropriate action to close down the unit, but there is no provision in Water Act or Environment Act to assess the compensation.

8. Supreme Court in Vellore Citizens Welfare Forum Vs. Union of India and others, issued various directions to the Central Government and the authorities functioning under various pollution control laws to take various remedial measures. In the above mentioned case, Supreme Court has also gave directions to the Central Government to constitute an authority to implement the "precautionary Principle" and the "polluter pays" principle. It is further directed that the authorities shall with the help of expert opinion and after giving opportunity to the concerned polluters assess the loss to the ecology/ environment in the affected areas and shall also identify the individuals/families who have suffered because of the pollution and shall also assess the compensation to be paid to the said individuals/families. It is ordered that the authority shall further determine the compensation to be recovered from the polluters as cost of reversing the damaged environment and it shall lay down just and fair procedure for completing the exercise. Further, the authority shall compute the compensation under two heads namely, for reversing the ecology and for payment to individuals. Further directions were also given by the Apex Court in the above mentioned case.

9. Earlier, in Indian Council For Enviro Legal Action and Ors. v. Union of India and Ors. JT 1995(9) SC 427 had an occasion to deal with a similar situation. One of

the grievance raised was that due to discharge of effluents from factories, the farmers have suffered loss due to the damage of crops and also due to contamination of water. In that case, a Committee was constituted and loss was ascertained by the Committee, which included officials of the Agriculture, Revenue and Animal Husbandry Departments as also the District Collector. Loss was estimated at Rs. 28.34 lacs. Apex Court directed the State Government to deposit the amount in the High Court of Andhra Pradesh and ordered as follows:

Needless to say that since there has been sufficient delay in the matter of compensating the farmers this Court will not brook further delay. After the amount is deposited, the High Court will direct the concerned District Judge to obtain the Report by which this assessment was made, ascertain the farmers entitled to compensation, determine the amount of loss to be compensated and submit a Report to this Court at an early date. The District Judge will also ascertain if the treatment plant has since been set up and if there has been any progress in that behalf. He will submit a Report to this Court in that connection also.

10. This Court had also an occasion to consider a complaint regarding the effluents discharged by various industries causing serious environmental pollution. After calling for the report, this Court appointed a Committee and called for a report. Based on the report, High Court passed an order directing the industries to pay towards compensation and betterment charges within a stipulated time. The judgment of the High Court is reported in 1997 (1) GLR 1062. The above judgment was taken in appeal before the Apex Court in the case of Deepak Nitrite Ltd. v. State of Gujarat and Ors. AIR 2004 SC 3407. The Apex Court further opined as follows:

7. The fact that the industrial units in question have not conformed with the standards prescribed by GPCB cannot be seriously disputed in these cases. But the question is whether that circumstance by itself can lead to the conclusion that such lapse has caused damage to environment. No finding is given on that aspect which is necessary to be ascertained because compensation to be awarded must have some broad co-relation not only with the magnitude and capacity of the enterprise but also with the harm caused by it. May be, in a given case the percentage of the turnover itself may be a proper measure because the method to be adopted in awarding damages on the basis of "polluter to pay" principle has got to be practical, simple and easy in application. The appellants also do not contest legal position that if there is a finding that there has been degradation of environment or any damage caused to any of the victims by the activities of the industrial units certainly damages have to be paid. However, to say that mere violation of the law in not observing the norms would result in degradation of environment would not be correct.

Therefore, we direct the High Court to further investigate in each of these cases and find out broadly whether there has been any damage caused by any of the industrial units by their activities in not observing the norms prescribed by the

GPCB as reported by the Modi Committee appointed by the High Court or by an expert body like NEERI and that exercise need not be undertaken by the High Court as if the present proceeding is an action in tort but an action in public law. A broad conclusion in this regard by the High Court would be sufficient. We, therefore, direct the High Court to re-examine this aspect of the matter as to whether there is degradation of environment and as a result thereof any damage is caused to any victim, and what norms should be adopted in the matter of awarding compensation in that regard. In this process it is open to the High Court to consider whether 1% of the turnover itself would be an appropriate formula or not as applicable to the present cases.

11. The High Court again took up the above case as ordered by the Supreme Court and a 3 member Committee was constituted to ascertain the degradation of environment and damage caused by these industrial units. A report was submitted before this Court on 23.01.2006. While determining the compensation, the Committee has opined as follows:

6.4 Compensation for Damage:

All the six units, have caused significant environmental pollution degradation, and therefore these units must compensate for such damage on the accepted principle "Polluter Pays". In the absence of the feasibility of quantification of the damage to the environment by each unit, during the period under reference separately, the Committee considers that the damage and degradation to the environment by each industrial unit can be based on the quantity of the industrial waste water discharged by the unit and characteristics of the effluent violating the norms prescribed by the GPCB and other factors discussed earlier. In the absence of any other method, the degradation of the environment by each unit can quite reasonably be linked to the production capacity turnover of the unit during the period under reference and the percentage of the said turnover which could be levied from the industrial unit towards fine for damaging the environment.

The Committee therefore recommends that all the units under reference should pay the compensation based on the yearly production capacity turnover during the period under reference causing environmental pollution degradation.

12. This Court perused the opinion of the Committee. This Court noticed that Supreme Court had ordered that compensation must have some broad correlation not only with the magnitude and capacity of the enterprise, but also with the harm caused by it. This Court noticed that the extent of harm caused by each industrial unit was not specifically dealt with by the Committee. This Court also found it difficult to direct a further inquiry since the damage caused by those units was in the year 1994. Due to lapse of time, it was not possible for this Court to assess the damage caused. However, some industrialists volunteered to pay a reasonable amount and those amounts were paid and the case was disposed of accordingly.

13. We are now in a situation where the damage caused has to be assessed and legitimate compensation is to be paid to the persons affected. We have indicated that in few cases the affected parties have approached Civil Courts which in our view is not a speedy remedy. There must be some mechanism so that damage caused can be assessed as early as possible and the victims be compensated. We cannot endorse the view that agriculturists/farmers/villagers should spend money from their pockets towards litigation expenses and wait for the verdict of a civil court, subject to further appeals to the higher forums. In our view, it is the primary responsibility of the GPCB. If it discharges its official duties effectively and properly, such situation would not occur. Why should farmers be penalized for the inaction of the officers of the GPCB and due to the wrongful discharge of effluents into water courses. In such a situation, the only course open to us is to give a direction to the GPCB to see that as soon as on inspection it finds an industrial unit is causing serious environmental pollution, the matter may immediately be reported to the Principal District Judge and the District Collector of the concerned District. District Judge in consultation with the District Collector will take immediate steps to depute a team consisting of members of GPCB, District Collector, Secretaries of Forest and Environment Department, Irrigation and Water Resources Department, Animal Husbandry Department, President of Gram Panchayat/Municipality or their representatives for inspection so as to assess the extent of pollution and harm caused to the environment. Committee would issue notice to the polluter, assess the compensation and submit its report to the District Judge. District Judge would examine and decide about the damage caused to the environment and direct payment of a reasonable amount to the "Environment Fund" to be maintained by the State Government. Compensation payable to the affected parties will also be determined by the District Judge after hearing the polluter and taking note of objections, if any. The District Judge can also determine the costs incurred by the Committee. The order of the District Judge would be treated as a decree and the same can be executed.

14. We have seen in several instances courts find it extremely difficult to assess the extent of environmental pollution caused by various units and as a result of which the courts also face difficulties to determine the compensation legitimately due to the affected parties. It is, therefore, highly imperative that in such cases of environmental pollution, it is the responsibility of the respondent GPCB to bring it to the knowledge of the District Judge and District Collector of the District for assessing compensation due to environmental degradation caused by the respective industries.

15. These directions shall be followed by all the authorities concerned. Since no compensation, as such, has been claimed in this writ petition, we are not giving a further direction in that regard.

16. Special Civil Application is disposed of accordingly.

17. The order shall be communicated to all the Principal District Judges, District Collectors, Secretary, Gujarat Pollution Control Board and the Chief Secretary of

the State Government for circulation among the officers of the concerned Departments.