
(2001) 01 SC CK 0009

In the Supreme Court Of India

Case No : Criminal Appeals No's. 151-58 of 1996

State of M.P.

APPELLANT

Vs

Kedia Leather and Liquor Ltd. and Others

RESPONDENT

Date of Decision : 02-01-2001

Acts Referred:

Code of Criminal Procedure, 1973 — Section 133

Citation : AIR 2002 SC 5 : (2001) AIRSCW 4498 : (2002) 1 ALD 31 : (2001) 6 ALT 1 : (2002) 1 AWC 248 Supp : (2001) 10 JT 31 : (2001) 8 SCALE 79 : (2002) 1 SCC 227 : (2001) 8 Supreme 158 : (2002) 1 UC 112

Hon'ble Judges : S. N. Variava, J;M. B. Shah, J

Bench : Division Bench

Advocate : Uma Nath Singh, for the Appellant; S. K. Gambhir Awanish Sinha and K.K. Mohan, Vijay Panjwani, for the CPCB, for the Respondent

Final Decision : Disposed Of

Judgement

M.B. Shah, J.—A complaint was filed before the Collector, Dhar that there is an apprehension of danger to the lives of chattels and of adverse effect on the health of villagers due to the polluted water being discharged in the nearby stream by the liquor factories situated near the village. On the basis of the complaint, the Sub-Divisional Magistrate, Dhar after inspecting the spot passed the preliminary order dated 26-10-1990 under Section 133 of the Criminal Procedure Code, 1970 (for short "CrPC"), for closing down the factory on the ground that industries were causing serious pollution and thereby public nuisance. That order was challenged before the High Court. The High Court by the impugned order dated 16-3-1994 set aside that order by holding that in view of the provisions of the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981, there was implied repeal of Section 133 CrPC so far as allegations of public nuisance or air and water pollution by industries or persons covered by the two Acts were concerned. The Court, therefore, held that the Magistrate had no jurisdiction to proceed under Section 133 CrPC and, therefore, set aside the impugned order. That order was

challenged by the State of Madhya Pradesh by filing the present special leave petitions. On 25-9-1995 this Court granted stay of the operation of the impugned order. Subsequently, by an order dated 2-2-1996, after hearing the parties, leave was granted and the operation of the stay order was ordered to be continued. Despite the order of expeditious hearing the matter was not heard because the State was not in a position to serve all the respondents for one or the other reason which we fail to understand.

2. However, when the matter came up for hearing on 11-9-2000, this Court, considering the serious consequences of the alleged air and water pollution because of the pollutant discharged by the respondent industries directed the Madhya Pradesh State Pollution Control Board (for short "M.P. SPCB") and the Central Pollution Control Board (for short "CPCB") to inspect the premises and site of the following units:

1. M/s. Kedia Leather & Liquor Pvt. Ltd., Ekalduna, District Dhar (M.P.)
2. M/s. Malwa Vanaspati & Chemical Co. Ltd. Factory, Village Sejwaya, District Dhar (M.P.)
3. M/s. Sanghi Organics & Phytochem Pvt. Ltd., Sejwaya, Chata Billod, District Dhar (M.P.)
4. M/s. Tirupati Starch & Chemicals Ltd., Sejwaya, Chata Billed, District Dhar (M.P.)
5. M/s. Shaba Chemicals Pvt. Ltd., Ekalduna, District Dhar (M.P.)

3. ON the basis of the joint inspection carried out by the State and the Central Pollution Control Boards, report was filed before this Court along with the affidavit dated 12-10-2000. The report, inter alia, mentions that the following industries were found closed:

1. M/s. Malwa Vanaspati & Chemical Co. Ltd., Dhar (M.P.)
2. M/s. Sanghi Organics & Phytochem Pvt. Ltd., Dhar (M.P.)
3. M/s. Shaba Chemicals, Mhow Road, Ratlam, M.P. (industry is located at Ratlam and not in Ekalduna, District Dhar)

4. With regard to inspection of M/s Kedia Leather and Liquor Pvt. Ltd. the report reveals as under:

(A) The unit has provided effluent treatment facilities to treat 300 m³/day of effluent which is equivalent to 20 KLD of alcohol production only.

(B) The unit has provided kuccha (unlined) tanks for cooling of spent wash.

(C) As the secondary aeration tank and holding lagoons are also kuccha (unlined), it will cause groundwater pollution.

(D) The Managing Director of the unit informed that they are applying treated

effluent on 85 acres of land which is not adequate and the unit has also not followed any scientific methodology for application of treated effluent on land.

(E) It was observed that final effluent was being stored in kuccha (unlined) lagoons having total storage capacity of 85,000 m³.

(F) A sample of final treated effluent was collected and analysed. The BOD concentration of final treated effluent was found 2438 mg/l which is very high compared to the prescribed limits of 100 mg/l for disposal on land. This industry is non-compliant.

5. Considering the aforesaid disturbing facts revealed by the joint inspection, it prima facie appears that the M.P. State Pollution Control Board has failed to discharge its statutory functions despite the order passed by the Sub-Divisional Magistrate since 1990. It is to be remembered that a statutory board is constituted under the Act for implementing the Act or Rules framed thereunder and not only for holding post or wielding power.

6. We fail to understand why the State Pollution Control Board has not taken any action nor inspected the various industries without directions being issued by this Court. It is to be made clear that this statutory authority is required to discharge its functions without there being any directions by this Court. If it fails to discharge its functions by overlooking apparent defaults, no purpose is served in maintaining such statutory board.

7. In the present case, it is apparent that the State Pollution Control Board has not taken any action till there was a specific direction by this Court in September 2000 in joint inspection. The learned counsel for CPCB pointed that it was the function and the duty of the State Pollution Control Board to inspect the said industry and take appropriate action. Prima facie, it appears that for one or the other reason the Board has failed to discharge its function.

8. However, learned counsel for the State submits that the appellant State be given time for obtaining appropriate instructions from the officers concerned. Further the learned counsel for M/s Kedia Leather and Liquor Pvt. Ltd. also submits that the industry has complied with all the requirements of the Act and the Environment (Protection) Rules, 1986.

9. In view of the aforesaid submissions made by the learned counsel for the parties, we direct the Chief Secretary of the State of Madhya Pradesh as well as the Chairman of the M.P. State Pollution Control Board to find out the officers concerned who have failed to discharge their duties in properly inspecting the various polluting industries and find out whether industries are complying with the provisions of the Act and Rules and to take appropriate action against defaulting officers.

10. Report be submitted to this Court within six weeks. Further, the State Pollution Control Board is directed to take immediate action against M/s. Kedia Leather and Liquor Pvt. Ltd. if it is not complying with the provisions of the Act or

the Rules including the Environment (Protection) Rules, 1986.

11. In the meanwhile, we direct that the above stated three industries which were found to be closed on the date of inspection shall remain closed till further orders. List these matters after six weeks.