

(1989) 09 P&H CK 0100
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 851 of 1986

The Punjab State Board for The Revention and Control of Water Pollution APPELLANT

Vs

Raja Ram Corn Products (Punjab) Pvt. Ltd. and Others RESPONDENT

Date of Decision : 04-09-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 401
Water (Prevention and Control of Pollution) Act, 1974 — Section 2, 22, 25, 26

Citation : (1991) 1 ILR (P&H) 25 : (1990) 97 PLR 58 : (1989) 2 RCR(Criminal) 672

Hon'ble Judges : Harbans Singh Rai, J

Bench : Single Bench

Advocate : H.L. Sibal and S.C. Sibal, for the Appellant; J.N. Kaushal A.L. Bahl and Ashok Jindal, for the Respondent

Final Decision : Allowed

Judgement

Harbans Singh Rai, J.—The Punjab State Board for the Prevention and Control of Water Pollution (hereinafter called the Board) filed complaint in the Court of Judicial Magistrate 1st Class, Kharar against Messrs Raja Ram Corn Products (Punjab) Pvt. Ltd. and others u/s 44 read with Section 47 of the Water (Prevention & Control of Pollution) Act, 1974, (hereinafter called the Act) on the allegation that accused No. 1 Messrs Raja Ram Com Products (Punjab) Pvt. Limited was required to apply for consent of the Board u/s 25 read with Section 26 of the Act for regulating the discharge of the trade effluent in the sewer. Accused No. 1 through its Managing Director applied to obtain the required consent and the same was granted on May 25, 1976, subject to the following conditions :-

"1. The consent will be valid for a period of one year commencing from the date of issue of consent.

2. As BOD (Bio-Chemical Oxygen Demand) has not been performed by the

industry the same should be got done at an early date. In case, it is found at any stage that treatment is required to be done for the effluent, the industry will instal necessary treatment plan and bring the effluent, within the tolerance limits approved by the Board for discharge of industrial effluent into Public Sewer."

2. On May 8, 1985, Shri Surinder Mohan Singh Puri, Assistant Environmental Engineer, Regional Office, Patiala, duly empowered to take samples u/s 21 of the Act, along with Shri Harpal Singh, Assistant Environmental Engineer, visited the premises of accused No. 1 and took samples of trade effluent u/s 21 of the Act in the presence of Shri Harpal Singh, Assistant Environmental Engineer and Shri Jaswant Singh, Foreman of accused No. 1. Jaswant Singh Foreman refused to receive the notice in Form XII and sign the documents.

3. The Analyst report showed that the pollution was much higher than the permissible limit. The Board complained that as the accused have not brought down the said pollution within the tolerance limit prescribed by the Board, they have committed an offence.

4. The accused were summoned by Judicial Magistrate 1st Class, Kharar, Accused No. 1 through Raja Ram Gupta, Chairman, accused No. 2 Raja Ram Gupta, accused No. 3 Subodh Kumar Gupta, and accused No. 4 Smt. Neelam Devi Gupta appeared. Accused No. 5 Varinder Bahadur Singh was declared a proclaimed offender on November 11, 1985.

5. On appearance the accused filed an application for dismissal of the complaint on the ground that the effluent, the sample of which was taken, falls into a sewer and under the Act, the sample is to be taken u/s 21 of the Act and the provisions of this section have not been complied with in this case. Section 21 of the Act provides that sample of an effluent can be taken which falls in a stream or well. Another ground for seeking the dismissal of the complaint was that Section 22 of the Act provides that a copy of the report made by the Analyst had to be sent by the Board to the accused- But as the same has not been sent, so the complaint is not competent.

6. Shri T. R. Bansal, Judicial Magistrate 1st Class, Kharar, vide his order dated March 5, 1986, dismissed the complaint and discharged the accused. Feeling aggrieved, the Board has filed this revision praying that the Magistrate has acted against law and facts and his order dismissing the complaint and thereby discharging the accused be set aside and the accused be directed to face the trial in accordance with law.

7. I have heard the learned counsel for the parties and gone through the relevant record and provisions of law with their help.

8. The learned Magistrate, while discharging the accused, has been influenced by the arguments of the learned counsel for the accused mainly on the two counts. Firstly, the learned Magistrate says that the provisions of Section 21 of the Act have not been complied with as the complainant could have taken the sample if

the trade effluent of the accused company was passing from the accused company into the stream or well and as this is not the case of the complainant, so the complainant has not complied with the provisions of Section 21. Secondly, the complainant had not sent a copy of the report made by the Analyst to the accused before filing the complaint in the Court and hence the provisions of Section 22(2) of the Act have not been complied with and this is not an irregularity but an illegality, so the complaint is bad. In the last part of the order, the learned Magistrate has mentioned that the complainant has not brought evidence to show that the trade effluent of the accused-company was enhancing the pollution, so the complaint is bad.

9. I have considered the reasoning given by the learned Magistrate for discharging the accused. To my mind, the reasoning has no basis and the order passed by the learned Magistrate cannot be sustained.

10. Section 21(1) of the Act reads as under :-

"21. Power to take samples of effluents and procedure to be followed in connection therewith.

(1) A State Board or any officer empowered by it in this behalf shall have power to take for the purpose of analysis samples of water from any stream or well or samples of any sewage or trade effluent which is passing from any plant or vessels or from or over any place into any such stream or well."

11. Stream has been defined in Section 2(j) has under :-

" "stream" includes-

(i) river;

(ii) water course (whether flowing or for the time being dry);

(iii) inland water (whether natural or artificial);

(iv) sub-terranean water;

(v) sea or tidal waters to such extent or, as the case may be, to such point as the State Government may, by notification in the Official Gazette, specify in this behalf."

12. It is not disputed that the trade effluent of the accused-company goes to the sewer of S. A. S. Nagar Mohali and that sewer goes to a Nadi. The complainant was not given any chance to prove its case and Mr, Sibal has stated that if evidence is allowed to be led, the Board will prove this fact. The learned Magistrate has said in his order:-

"He further argued that according to Section 22(2) of the aforesaid Act, the complainant should have sent the copy of the report of analyst to the accused before filing the complaint in the Court but they did not do so and that amounts to non-compliance of the mandatory provision. This contention has force because

in the reply the learned counsel for the complainant Board had alleged that it is an irregularity and not illegality. Section 22(2) of the aforesaid Act lays down as under :-

"On receipt of the report under sub-section (I) one copy of the report shall be sent by the Central Board or the, State Board, as the case may be, to the occupier or his agent referred to in Section 21, another copy shall be preserved for production before the Court in case any legal proceedings are taken against him and the other copy shall be kept by the concerned Board "- -"

13. When looked from another angle, the definition of "stream" includes river, water course, inland water and sub-terranean water. So the discharge of the trade effluent will either mix with the sub-terranean water or inland water or shall go to some stream or river. Even if it is allowed to remain stagnant, it will mix with sub terranean water and that will be included in the definition of "stream".

14. No evidence has been led in this regard and any finding given by the learned Magistrate will not be legally sustainable. The trial Court an decide this point only after the parties have led their evidence.

15. The second reason given by the learned Magistrate for discharging the accused is that the provisions of Section 22 of the Act have not been complied with. The relevant part of Section 22 of the Act is as under :-

"22. Reports of the result of analysis on samples taken u/s 21(1) Where a sample of any sewage or trade effluent has been sent for analysis to the Laboratory established ox recognised by the Central Board or, as the case maybe, the State Board, the concerned Board Analyst appointed under sub-section (3) of section 23 shall analyse the simple and submit a report in the prescribed form of the result of such analysis in triplicate to the Central Board or the State Board, as the case may be

(2) On receipt of the report under sub-section (1), one copy of the report shall be sent by the Central Board or the State Board, as the case may be, to the occupier or his agent referred to in Section 21, another copy shall be preserved for production before the Court in case any legal proceedings are taken against him and the other copy shall be kept by the concerned Board."

16. The, learned Magistrate has declared the provisions to be mandatory and non-compliance to be illegality. It is not the case of the accused that non-compliance of the provisions of Section 22 of the Act has resulted in any prejudice to them. Trade effluent discharge is a continuous process. If the accused had not received the report or it was not sent to them, they could always get their trade effluent analysed and challenge the report The apex Court in Rameshwar Prasad and Others Vs. State of Uttar Pradesh and Others, , held :-

"There are no ready tests or invariable formulae to determine whether a particular provision in a statute is mandatory or directory. The broad purpose of

the statute is important. The-object of the particular provision must be considered. The link between the two is most important. The weighing of the consequence of holding a provision to be mandatory or directory is vital and, more often than not, determinative of the very question whether the provision is mandatory or directory. Where the design of the statute is the avoidance or prevention of public mischief, but the enforcement of a particular provision literally to its letter will tend to defeat the design, the provision must be held to be directory, so that proof of prejudice in addition to non-compliance of the provision is necessary to invalidate the act complained of..... ..

Rule 9(j) of Prevention of Food Adulteration Rules (1955) which required the Food Inspector to supply a copy of the report" of Public Analyst to the person from whom the sample was taken within a period of ten days of the receipt of the report, was directory and not mandatory. (Para 1)"

17. Similarly in Lachmi Narain and Others Vs. Union of India (UOI) and Others, . the Supreme Court held :-

"The primary key to the problem whether a statutory provision is mandatory or directory, is the intention of the law-maker as expressed in the law itself. The reason behind the provision may be a further aid to the ascertainment of that intention. If the legislative intent is expressed clearly and strongly in imperative words such as the use of "must" instead of "shall" that will itself be sufficient to hold the provision to be mandatory and it will not be necessary to pursue the enquiry further. If the provision is couched in prohibitive or negative language, it can rarely be directory; the use of pre-emptory language in a negative form is per se indicative of the intent that the provision is to be mandatory. (Para 66)"

18. In view of the law laid down by the Supreme Court, it was too early for the Magistrate to give a finding that the provisions of Section 22 of the Act are mandatory. He should have taken into consideration whether the accused have been prejudiced or not and after giving careful consideration to this matter, come to any finding. This is all the more necessary as it is not asserted by the accused that at the time of seizure of the sample of the trade effluent, they had installed any plant to reduce the pollution content of the effluent.

19. The accused were granted consent on May 25,1976, and that consent was valid for a period of one year. They have not installed any plant to reduce the pollution content of the discharge within one year of the grant of consent and they have been discharging their trade effluent even after the lapse of one year. The contention of Mr, Sibal is that leaving everything aside, their non-installation of the plant to reduce the trade effluent even after the lapse of one year itself attracts the provisions of Sections 25 and 26 of the Act. The discharge of trade effluent without consent after the enforcement of the Ad, according to Mr. Sibal, is an offence. I find force in the same.

20. The learned trial Magistrate, after having summoned the accused, was not justified in discharging them without giving the complainant an opportunity to

prove its case. The order of the learned Magistrate, being not according to law, is liable to be set aside.

21. The revision filed by the Board is accepted and the order of the learned Magistrate dated March 5, 1986, dismissing the complaint and discharging the accused is set aside and the trial Magistrate is directed to proceed against the accused according to law.

22. As .the case relates to matter of public importance and the health and well being of a large number of persons is involved, the trial Court is directed to proceed with the trial expeditiously, preferably on day today basis. The parties through their counsel are directed to appear before the trial Magistrate on September 18, 1989.