

(1990) 04 AHC CK 0001

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 8150 of 1988

Wimco Company Ltd.

APPELLANT

Vs

U.P. Pollution Control Board and Others

RESPONDENT

Date of Decision : 19-04-1990

Acts Referred:

Constitution of India, 1950 — Article 226, 48A, 51A
Criminal Procedure Code, 1973 (CrPC) — Section 397
Uttar Pradesh Nagar Mahapalika Act, 1959 — Section 402
Water (Prevention and Control of Pollution) Act, 1974 — Section 25, 26, 27, 33, 33(1)

Citation : (1990) 14 ACR 434

Hon'ble Judges : B.L. Yadav, J

Bench : Single Bench

Advocate : N. Lal, for the Appellant;

Judgement

B.L. Yadav, J.—By means of aforesaid petitions under Article 226 of the Constitution and Criminal Revision u/s 397 Code of Criminal Procedure 1973, (for short the Code), impugned order dated 19th April, 1988 passed by Chief Judicial Magistrate Bareilly in proceedings u/s 33 of the Water (Prevention & Control of Pollution) Act, 1974, for short the Act, is sought to be quashed.

2. Factual matrix of the case is that State of U.P. in exercise of powers conferred u/s 4 of the Act constituted a Board called U.P. Board for the Prevention and Control of Water Pollution and to exercise the powers conferred and functions assigned to it under the Act. On 12-3-1984, an application for consent of the State Board, u/s 25 of the Act for the discharge of sewage or trade or trade effluent into a stream or well or sewer was made. The Board after making enquiry and following the procedure prescribed gave consent on 5-9-84 for a period of one year expiring-on 31-12-84 with certain conditions. Again on 25-12-84 another application u/s 25 of the Act was made but that application was rejected on 4-6-85 on the ground that the conditions imposed with the permission granted earlier were not complied with and the discharge of sewage

or trade or trade effluent was found beyond the standard prescribed for the water pollution. Another application for permission was made on which sample of discharge of sewage etc. was taken and it was found that the same was not within the permissible limits of water pollution.

3. Ultimately different applications were filed by the Board u/s 33(1) of the Act for restraining the applicants/Petitioners from causing the pollution, as indicated above. These applications have been allowed by the Chief Judicial Magistrate vide impugned order against which present petitions and criminal revision has been filed.

4. Learned Counsel for the Petitioners/applicant urged that the sewage was discharged on the land and not on the water hence the permission u/s 25 was incorrectly refused, and that the impugned order has been passed by the Chief Judicial Magistrate u/s 33(1) of the Act whereas the legislature requires Presidency Magistrate or the Magistrate 1st class to pass order u/s 33(1) of the Act. It was further urged that the expression 'stream or well or sewer or on land' added to Section 25 by Act 44 of 1978 would not apply to the Petitioners/applicant's case where the water has already been polluted, however, it may apply to a case where the water was not polluted.

5. Learned Counsel for the Respondents on the other hand urged that application of Petitioner was correctly rejected and Chief Judicial Magistrate has got power to entertain applications and pass orders u/s 33(1) of the Act and the provisions of Section 33 apply to the cases where the water has already been polluted and also where the water has not been already polluted.

6. Heard Learned Counsel for the parties. As regards the jurisdiction of Chief Judicial Magistrate to pass orders u/s 33 of the Act, under the Code of Criminal Procedure (for short the Code), it has been provided u/s 12 of the Code that in every district, the High Court shall appoint a Judicial Magistrate of the first class to be the Chief Judicial Magistrate, as such Chief Judicial Magistrate is a Judicial Magistrate of the first class. Just nomenclature being Chief Judicial Magistrate, it cannot be said that Chief Judicial Magistrate, who is also a Judicial Magistrate, first class, has got no jurisdiction to entertain the applications and pass orders u/s 33 of the Act.

7. So far as applicability of expression 'stream or well or sewer or on land' added by Section 25 is concerned, it is better to have the provisions first. Amended provisions of Section 25(i) reads as follows :

(1) Subject to the provisions of this Section no person shall, without the previous consent of the State Board, bring into use any new or altered outlet for the discharge of sewage or trade or trade effluent into a (stream or well or sewer or on land) or begin to make any new discharge of sewage or trade effluent into a (stream or well or sewer or on land).

The expressions 'stream or well or sewer or on land' has been added by Act 44

of 1978. The amendment was well within the legislative competence of the Legislature. The object of amendment was to remove difficulty experienced in practical working. In fact earlier 'stream or well or sewer or on land' was not inserted u/s 25. It appears some difficulty was felt in practical working as the discharge of sewage or trade or trade effluent was made not only into a stream or channel rather in some cases it was made on land which also created water pollution, therefore unless in respect of that some restrictions were imposed, it was not possible to achieve the object of the Act, consequently it became necessary to make the amendment and that amendment is with a view to do complete justice with the object of the Act. Unless that amendment could have been made the pollution which was on land could not have been prevented. As the amendment was substantially amendment in the procedure, consequently it must be deemed to be operative retrospectively. There appears no substance in the submission of the Learned Counsel for the Petitioner in this regard.

8. The amended provisions of Section 25 would apply to the present case.

9. Air pollution and water pollution has assumed great significance these days. Apart from provisions of Sections 26, 27 or 33 and 47 to 47(?) of the Act, there were somewhat similar provisions under Article 48-A, and Article 51-A(g) of the Constitution and u/s 402 etc. of U.P. Nagar Mahapalika Adhiniyam 1959 and the corresponding provisions of U.P. Municipalities Act.

10. These Statutory and constitutional provisions can be enforced. There are statutory duties imposed on the Board and the Municipalities and Corporations.

11. In M.C. Mehta Vs. Union of India (UOI) and Others, it was observed that inspite of these duties on the Central and State Board and on the Municipalities and Corporations, these provisions have just remained on papers without any adequate action being taken against pursuant thereto. On account of failure to obey the statutory duties for several years the water (in different rivers) in river Ganga has become so much polluted that it can no longer be used by the people either for drinking or for bathing. Apart from the Act, and other provisions under U.P. Nagar Mahapalika Adhiniyam and U.P. Municipalities Act, there are provisions under Article 48-A, under Part IV, Directive Principles of State Policy and under Article 51-A (under Chapter IVA, Fundamental duties). Article 48-A provides that State shall endeavour to protect and improve the environment and to safeguard the forest and wild life of the country. Article 51-A(g) provides that it is the duty of every citizen of India to protect and improve the natural environment including the forest, river and wild life and to have compassion for living creature.

12. After the inclusion of Article 48-A in the chapter dealing with the Directive Principles of State Policy, now the State has to see that the Statutes are framed and Laws are made in connection with the protection and improvement in the environment. Such provisions either contained under the Act or under the Municipalities Act or Corporation Act have to be interpreted with due caution so as to carry out the objects of the Legislature or the aspirations of people as

envisaged by the provisions of the Constitution. Those who are called upon to interpret the Constitution must realise that they are not interpreting a simple piece of legislation but a Constitution which is a living document and is vehicle of aspirations of the people of the country.

13. In *M.C. Mehta Vs. Union of India (UOI) and Others*, their Lordships of Supreme Court made observations that since the problem of pollution of the water in the river Ganga has become very acute the High Courts should not ordinarily grant orders of stay of criminal proceedings in such cases and even if such an order of stay is made in any extraordinary case the High Courts should dispose of the case within a short period, say about two months from the date of the institution of such case.

14. In the instant case after perusal of impugned order and in view of the fact that inspite of the orders passed on the applications u/s 25 of the Act, rejecting the same, and inspite of the fact that Petitioners were directed to see that the discharge of sewage or trade or trade effluent was not beyond the standard prescribed for the water pollution but nevertheless no attention was paid to the same nor the Petitioners complied with the conditions imposed, there was no option left but to make application u/s 33 of the Act. In view of the amended provisions of Section 25 adding the expressions 'Stream or well or sewer or on land', now even if some discharge of sewage or water pollution is made on land that also would be governed under the Act under Sections 25 and 33. A bare reading of Section 33 would indicate that it applies to both the events where the pollution is being created since prior to the enforcement of the Act or subsequent to that. In other words the provisions of Section 33 are prospective and retrospective both in its operation in respect of discharge of sewage or trade or trade effluent beyond the standard prescribed for the water pollution.

15. Having considered all the aspects of the matter, I do not find any merit in the submissions of the Learned Counsel for the Petitioners/applicants in all the cases. The impugned order is perfectly correct and does not suffer from any mistake much less an error apparent on the face of record.

16. In view of the premises aforesaid, present petitions and criminal revision are hereby dismissed without any order as to costs. Interim stay order dated 29-4-1988 and similar other interim stay is hereby discharged.