

Dhrangadhra Chemical Works Ltd.

Vs

The Dhrangadhra Municipality (and connected petition)

Civil Appeal No. 173 of 1959

(B. P. Sinha, Syed Fafar Imam, J. L. Kapur)

19.05.1959

JUDGMENT

IMAM J. –

The case of the respondent Municipality was that the appellant's chemical works discharged effluent in very large quantities containing calcium, sodium and other salts through Katcha Channels thereby corrupting potable water of the wells in the surrounding area so as to render it unfit for use and also prejudicially affecting the fertility of the soil in the surrounding area by percolation. The respondent Municipality accordingly, after having obtained the approval of the Government, issued a notice dated the 14th June, 1956, to the appellant under s. 153A(1) of the Bombay District Municipal Act, 1901, as adapted and applied to the State of Saurashtra and as amended by Act XI of 1955 (hereinafter referred to as the Act), to show cause in writing within a period of one month from the date of the receipt of the notice why it should not be directed to arrange within a period of nine months from the date of such direction for the discharge of the effluent through a covered pucca drainage and for pumping it over a distance of about 8 miles in the 'Ran' area of Cutch near Kuda, as shown in the plan annexed to the notice.

The appellant replied to this notice by a letter dated the 10th of July, 1956. According to the appellant, the effluent was being discharged until 1943 through a Katcha Channel running parallel to the railway line in the direction of Halvad. In 1944 it was felt that as the water of some of the wells in the areas known as Harijanvas and Kolivas close to the vicinity of the channel might be affected another channel was constructed for discharging the effluent, which was at a considerable distance away from Kolivas and Harijanvas and still further away from the city which lies on the western side of the railway lines whereas the factory is at a considerable distance away on the eastern side of the railway lines. It was pointed out that during the last 3 or 4 years, periodical surveys of the water of various wells in the city had been taken by the appellant and these tests had shown that the water was not in any way polluted by reason of the effluent being discharged through the existing channels, that all the papers and reports relating to the tests carried out periodically by the appellant were available for inspection by the respondent Municipality and that they could be inspected by appointment. The appellant further enquired whether before issuing the notice the respondent Municipality had carried out similar tests for analysing the water of the various wells and that if such analysis had been made it might be allowed to inspect and survey the reports and other relevant papers connected therewith. Regarding the fertility of the soil the appellant emphatically denied that the same had been in any way adversely affected by the discharge of the effluent through the existing channels. The appellant further pointed out that the respondent Municipality's direction that the appellant should arrange the discharge of the effluent through a covered pucca drain for pumping it over a distance of about 8 miles as shown in the plan would involve an expenditure of

nearly 8 to 9 lakhs of rupees which, having regard to the prevailing conditions, would involve a capital outlay of such an enormous amount as to cripple the appellant's activities. The appellant further pointed out that the scheme suggested by the respondent Municipality was impracticable and difficult to implement for technical reasons and that the appellant's engineer had been consulted in that respect. Finally, the appellant informed the respondent Municipality that in these circumstances it objected to the requisitions and expressed its inability to carry out the same.

The respondent then requested the Government to appoint a Special Officer under the provisions of s. 153A(3) of the Act. The Government by its order dated the 17th of May, 1958, appointed Mr. T. U. Mehta, District and Sessions Judge, Jhalawad District, as a Special Officer to hold an enquiry into the matter and to complete it within three months from the date of the Notification.

When the matter came before the Special Officer he recorded the order which is the subject matter of the present appeal by special leave. The Special Officer had framed 7 Issues of which Issues Nos. 1 to 4 were treated by him as preliminary Issues of law. Of the 7 Issues framed Issue No. 4 was one of the most important ones for consideration and it was to the following effect :-

"Is it shown that the question whether the discharge of the effluent from the factory of the respondent company is polluting water and adversely affects the fertility of the soil, is a question of the subjective satisfaction of the Municipality and that this question is beyond the scope of the present enquiry ?"

Along with this Issue, Issue No. 6 had to be considered which was as follows :-

"If the Point No. 4 is decided in the negative, is it proved that the effluents discharged by the factory of the respondent corrupt potable waters of the wells in the surrounding area so as to render them unfit for any use, and also affect prejudicially the fertility of the soil in the surrounding area by percolation ?"

The Special Officer decided Issue No. 4 in the affirmative and held that the question whether the discharges of the effluent polluted the water and adversely affected the fertility of the soil was one for the subjective satisfaction of the respondent Municipality and was beyond the scope of the enquiry before him. Having found this he held that Issue No. 6 did not arise for consideration. In dealing with Issue No. 5 whether the notice issued by the respondent Municipality was mala fide, arbitrary, capricious and that the same had been issued without the respondent Municipality sufficiently applying its mind, the Special Officer was of the opinion that it was, "out of the purview of the present enquiry." Issues 2 and 3 were decided by the Special Officer in favour of the appellant and need not be referred to for the purpose of the present appeal. Issue No. 1 dealt with the question whether ss. 153A to 153G of the Act violated the fundamental rights of the appellant guaranteed under Articles 14, 19 and 31 of the Constitution. It was pointed out by the Special Officer that during the course of the argument on behalf of the appellant it was not pressed that the fundamental rights covered by Articles 14 and 31 were infringed. The submission was confined to the infringement of Art. 19 of the Constitution. This contention was rejected by the Special Officer. The Special Officer in his order stated that "The result of the above findings is that this Tribunal shall now proceed to decide the only remaining Issue which is Issue No. 7. I therefore order that the case should proceed with the determination of this Issue."

This Issue was in these words :-

"If it is found that the effluents of the factory of the respondents corrupt the potable waters and fertility of the soil, what final recommendation should be made about the method and manner of the discharge of these effluents ?"

It was urged on behalf of the appellant that the Special Officer had unduly restricted the scope of the enquiry by taking an erroneous view as to the scope of the enquiry before him and thus had refused to exercise jurisdiction which was vested in him under the Act. It was further submitted that s. 153A of the Act offends Art. 19 of the Constitution.

On behalf of the respondent it was contended that the Special Officer has not erred in holding that the existence of a nuisance of the kind mentioned in s. 153A(1) of the Act was a matter for the subjective satisfaction of the respondent Municipality and beyond the scope of his enquiry. S. 153A of the Act did not offend Art. 19 of the Constitution because it would be a reasonable restriction to the exercise of the fundamental right under Art. 19(1)(C) to prevent a nuisance which would affect the public health and fertility of the soil. Having regard to the submissions made on behalf of the appellant and the respondent it is necessary to quote the provisions of ss. 153A and 153B of the Act.

Section 153A states :

"Regulation of discharge of effluent containing salt or other chemicals by factories.

(1) If it be shown to be satisfaction of the Municipality that the owner or manager of a factory, situated or located within the limits of the Municipal District, is discharging from such factory effluent containing salt or other chemicals in such manner as renders, or is likely to render, saline the potable waters of wells, tanks, ponds or other water receptacles, or corrupts, or is likely to corrupt, such water in such a way as to render it unfit for any use by the public or is prejudicially affecting, or is likely to so affect, the fertility of the soil, in the surrounding area either by percolation or otherwise, the Municipality may, with the previous approval of the Government, issue a written notice to the manager or the owner of such factory, requiring him to show cause in writing within a fixed period why he should not be directed to arrange within such period as may be fixed in such notice, or as may be extended from time to time, for the discharge of such effluents in such manner as may have been previously approved by the Government and as may be specified in the notice, so that the discharge of such effluents may not have the effect of rendering saline or corrupting the waters of wells, tanks, ponds or other water receptacles, or of prejudicially affecting the fertility of the soil, in surrounding area.

(2) If no reply to the notice given under sub-section (1) is received from the manager or the owner of the factory within the fixed period, or if a reply is received to the effect that the manager or the owner consents to comply with the requisition in such notice, the Municipality may forthwith pass such order as may be necessary for the purpose of regulating the discharge of effluents in the manner specified in such notice.

(3) If a reply to the notice given under sub-section (1) is received from the manager or the owner of the factory, objecting or consenting subject to modification to the requisition specified in such notice, the Government shall, on a request made to it by the Municipality in this behalf appoint a special judicial officer, who shall not be

below the rank of a District Judge (hereinafter referred to as the Special Officer), to hold an inquiry into the matter. The Special Officer shall make the inquiry in such manner and perform such functions and within such time as may be specified in the order of appointment."

Section 153B states :

"Report by Special Officer and order to be passed by Municipality with sanction of Government.

The Special Officer shall on completion of the inquiry entrusted to him under sub-section (3) of Section 153A, send his report to the Municipality & the Municipality shall, with the previous approval of the Government, pass an order in terms of the recommendations of such officer."

It was contended on behalf of the appellant that prior to the issuing of notice under s. 153A(1) the existence of a nuisance in the terms of the sub-section may be within the subjective satisfaction of the Municipality but after issuing the notice different considerations would arise when the provisions of sub-s. (3) are given effect to. The scheme of s. 153A of the Act is to permit the Municipality, if it is satisfied that a nuisance in the terms of sub-s. (1) exists, to issue a notice requiring the person to whom the notice is issued to show cause why he should not be directed to arrange for the discharge of the effluent in such manner as may have been previously approved by the Government and as mentioned in the notice so that rendering saline or corrupting the water of the wells, tanks, ponds or other water receptacles, or prejudicially affecting the fertility of the soil in the surrounding areas may be stopped. In showing cause the person to whom the notice has been issued may under sub-s. (2) consent to comply with the requisition in such notice upon which the Municipality may forthwith pass such orders as may be necessary for the purpose of regulating the discharge of the effluent in the manner specified in such notice. Upto this stage there is no contest between the Municipality and the person to whom the notice has been issued. The question whether a nuisance in the terms of sub-s. (1) exists or not did not arise as the person to whom the notice has been issued by his consent and willingness to comply with the requisition admits the existence of such a nuisance. Different considerations, however, arise where the circumstances attract the provisions of sub-s. (3) and a Special Officer has to be appointed. Under this sub-section if the reply to the notice given under sub-s. (1) objects to the requisition specified in the notice or consents to it subject to modification, the Government shall on the request of the Municipality appoint a special judicial officer "to hold an inquiry into the matter." It is urged on behalf of the appellant that if the requisition in the notice is objected to, the objection includes not only to the allegation of the existence of the nuisance in terms of sub-s. (1) but also to the direction as to the manner in which the discharge of the effluent shall be made. The objection being in regard to both the matters, it was the bounden duty of the Special Officer to hold an enquiry with respect to the entire matter in dispute. At this stage, the satisfaction of the Municipality as to the existence of the nuisance alleged inevitably becomes justiciable. The Special Officer was bound to enquire into the dispute and make its report both as to the existence of the nuisance and the direction as to the manner in which the effluent shall be discharged.

On behalf of the respondent Municipality it was submitted that under sub-s. (1) the satisfaction is the subjective satisfaction of the Municipality and of no other authority. The requisition under this sub-section is to the person on whom the notice is issued to show cause why he should not be directed to arrange for the discharge of the effluent in the manner specified in the notice and not to show cause against the existence of the nuisance. Sub-s. (3) deals with this requisition which is the

subject of the enquiry before the Special Officer and not the existence of a nuisance which was purely a matter for the subjective satisfaction of the Municipality. It is contended that where the Legislature has conferred on the Municipality jurisdiction to determine whether a particular state of fact exists and on finding that it does exist to proceed further and to do something more, then the fact in question is not collateral but is a part of the very issue which the Municipality has to enquire into and that ceases to be justiciable.

Having regard to the submissions made on behalf of the appellant and the respondent it is necessary to construe the provisions of s. 153A of the Act and to understand the scheme set out in its provisions for dealing with a nuisance of the kind mentioned in sub-s. (1). In our opinion, to justify the issuing of a notice by the Municipality, with the previous approval of the Government, there must be in existence such a nuisance to the satisfaction of the Municipality. The satisfaction here is the subjective satisfaction of the Municipality and no other authority could question the action of the Municipality in issuing the notice on the ground that it should not have been so satisfied. Once the notice has issued ordering the person to whom the notice is issued to show cause why he should not be directed to arrange for the discharge of the effluent in the manner specified in the notice, it is open to the person to whom the notice is issued to accept the assertion of the Municipality that the nuisance in question exists and to agree to comply with the direction to arrange the discharge of the effluent in the manner specified by the notice. In such a case, the Municipality may forthwith pass such orders as may be necessary for the purpose of regulating the discharge of the effluent in the manner specified in the notice. In our opinion, this authority is given to the Municipality because the person to whom the notice has been issued does not deny the existence of the nuisance in question and is prepared to comply with requisition in the notice without any objection. If the person to whom the notice has been issued does not reply to the notice the Municipality may forthwith pass a similar order. In both these cases there is no dispute about the existence of the nuisance in question and what was the subjective satisfaction of the Municipality is admitted to be in accordance with the existing facts. Sub-s. (2) of s. 153A covers such a situation.

Sub-s. (3) of s. 153A deals with a situation entirely different from that which arises under sub-s. (2). Under sub-s. (3) two situations arise (1) where the person to whom the notice has been issued objects to it and the requisition contained therein and (2) where the consents to it subject to modification. In both cases the Government shall on the request made by the Municipality, appoint a judicial officer not below the rank of a District Judge to hold an enquiry into the matter. It will be noticed that while under sub-s. (2) the consent and willingness to comply with the requisition in the notice is absolute under sub-s. (3) even if the person to whom the notice has been issued consents to the requisition subject to modification the consent is not absolute. That is to say, some dispute between the person concerned and the Municipality remains outstanding as to the manner of carrying it out and that dispute would be the subject of an enquiry by the Special Officer. In this situation also, the existence of the nuisance is implicitly admitted and need not be enquired into. When, however, the person concerned objects to the notice and the requisition contained therein absolutely the objection is in substance to the issue of the notice itself, which means he objects to the declaration of the Municipality that a nuisance exists as well as to the direction of the Municipality as to the manner in which the effluent shall be discharged. If sub-s. (3) was intended to mean that the person to whom the notice has been issued could not object to the assertion of the Municipality that a nuisance existed then the words "objecting or consenting subject to modification to the requisition" would not find a place in the sub-section because in that case it would have been quite sufficient to have used in the sub-section the words "consenting subject to the modification to the requisition." The words "to hold an enquiry into the matter" clearly suggest that the Special Officer must enquire into the entire matter where a party objects absolutely to the notice and the

requisition contained therein. There would have been no need for the appointment of a special judicial officer not below the rank of a District Judge as a Special Officer if such Officer was not required to enquire into the existence of the nuisance. If the existence of a nuisance was assumed because that was a matter for the subjective satisfaction of the Municipality, then it would not require a judicial officer of the rank of a District Judge to enquire and report only as to the manner in which the effluent should be discharged. That task could be performed by engineers and experts in such matters.

In our opinion, the scheme under s. 153A is to leave it to the subjective satisfaction of the Municipality as to the existence of a nuisance before a notice is issued to the party concerned. Sub-s. (1) does not deal with any enquiry into the matter. It merely provides a machinery by which the scheme of s. 153A is set in motion. No difficulty arises once a notice has been issued and the party concerned consents to it absolutely or does not choose to reply to it. Under sub-s. (3), however, the appointment of a Special Officer was considered necessary because the dispute between the Municipality and the party concerned required investigation and a report from the Officer. Under s. 153E the Special Officer shall have the same powers as a Civil Court has while trying a suit under the Code of Civil Procedure in the following matters :-

- "(a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any documents;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof from any court or office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) any other matters which may be prescribed."

Under s. 153F there is a provision for the appointment of assessors to advise the Special Officer on any technical matter. Under s. 153G the proceedings before the Special Officer shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code. These provisions make it clear that the Legislature intended, where there was an absolute objection to the notice and the requisition contained therein as in the present case, that the dispute between the Municipality and the party concerned would be enquired into by a judicial officer of the rank of a District Judge. Sub-s. (3) was a protection to the party objecting to the requisition. In these circumstances, the enquiry must necessarily relate to the entire dispute and the words "to hold an enquiry into the matter" are wide enough to suggest this. The Legislature intended that the party to whom the notice had been issued should not be the victim of exercise of any power vested in the Municipality in a capricious manner.

The Special Officer apparently made no attempt to constitute the provisions of sub-s. (3) of s. 153A of the Act. In our opinion, he erred in holding that it was beyond the scope of his enquiry to enquire into the question whether, in fact, the nuisance alleged by the Municipality existed. He had thus denied himself the jurisdiction which he did possess and which he ought to have exercised. It is plain that before the appellant could be called upon to comply with the requisition of the respondent Municipality involving several lakhs of rupees as expenditure the Special Officer ought to decide and report whether a nuisance of the kind alleged by the respondent Municipality existed. The

appellant rightly contends that the order of the Special Officer declining to go into the question whether the nuisance in question existed was one which ought to be set aside.

As, in our opinion, the Special Officer had wrongly decided that he could not go into the question whether the nuisance existed his order must be set aside. Having regard to the view which we take, the contention on behalf of the appellant that the provisions of s. 153A of the Act offend Art. 19 of the Constitution does not require to be decided; this position is conceded by the appellant.

We must point out, however, that the enquiry should be completed without undue delay. The notice was issued in June, 1956, nearly 3 years ago. Proceedings of this kind ought to be handled with the utmost expedition because if a nuisance exists it should be removed without delay in order to preserve the health of the community and the fertility of the soil.

The appeal is accordingly allowed with costs.

A petition (No. 174 of 1958) under Art. 32 of the Constitution was also filed by the appellant. It is unnecessary to pass any formal order on this petition as, the appellant has succeeded in the Civil Appeal No. 173 of 1959, and it is disposed of accordingly except that there will be no order for costs in this petition.

Appeal allowed.

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