

U. P. Pollution Control Board

Vs

Messrs Modi Distillery and Others

Criminal Appeal No. 415 of 1986

(A. P. Sen, Ranganath Misra JJ)

06.08.1987

JUDGMENT

SEN, J. -

1. This appeal by the special leave is directed against the judgment and order of the High Court of Allahabad dated May 16, 1984 setting aside in its revisional jurisdiction an order of the Chief Judicial Magistrate, Gaziabad dated November 3, 1983 directing the issue of process against the respondents on a complaint filed by the appellant under Section 44 of the Water (Prevention and Control of Pollution) Act, 1974. The issue involved is whether the Chairman, Vice-Chairman, Managing Director and members of the Board of Directors of Messrs Modi Industries Limited, the company owning the industrial unit called Messrs Modi Distillery could be proceeded against on a complaint against the said industrial unit. A learned Single Judge (K. C. Agarwal, J.) following the decision of this Court in State (Delhi Admn.) v. I. K. Nangia ((1980) 1 SCC 258 : 1980 SCC (Cri) 220) interpreting a similar provision contained in sub-section (4) of Section 17 of the Prevention of Food Adulteration Act, 1954 has held that there was no sufficient ground against the respondent inasmuch as the allegations made in the complaint do not constitute an offence punishable under Section 44 for the admitted contravention of Sections 25(1) and 26 read with Section 47 of the Act. The question essentially turns upon the rule of construction to be adopted in Section 47.

2. The facts of the case are these : Messrs Modi Industries Limited is an existing company under the Companies Act, 1956. It is a large business organisation having diversified business activities. Prior to the commencement of the Act it had established an industrial unit called Messrs Modi Distillery at Modi Nagar, Gaziabad engaged in the business of manufacture and sale of industrial alcohol. During the process of manufacture of such industrial alcohol, the said industrial unit discharges its highly noxious and polluted trade effluents into the Kali River through the Kadrabad Drain which is a stream within the meaning of Section 2(j) of the Act and thereby causes continuous pollution of the said stream without the consent of the Board and therefore it falls within the purview of Section 26. Under the provisions of Section 26, as amended, it has been made mandatory for every existing industry to obtain the consent of the Board for discharging its trade effluents into a stream or well or sewer or on land. The last date for submission of such application seeking the consent of the Board by an existing industry had been extended up to December 31, 1981. In accordance with the procedure laid down under Sections 25(1) and 26 of the Act, the Company was required to submit an application for consent of the Board in the prescribed form ailing with the prescribed consent fee and the particulars. Instead of the Company its industrial unit, namely, Messrs Modi Distillery on March 27, 1981 applied to the Board for grant of consent to discharge its trade effluents into the stream. The aforesaid application was scrutinised by the Board and found incomplete in many respects. The Board accordingly by its letter dated April 29, 1981 informed the said industrial unit

with regard to there discrepancies and the particulars wanting. There was no response from the respondents nor did they rectify the discrepancies point out or further the particulars required. The board accordingly by its letter dated July 30, 1981 refused to grant the consent prayed for in the public interest since the application was found incomplete in many respects and also because the said industrial unit did not have proper arrangements for treatment of its highly polluted trade effluents. Thereafter, the Board by its letter dated June 30, 1982 issued a notice under Section 20 of the Act directing the company to furnish certain information regarding the particulars and names of the Managing Director, Director, Directors and other persons responsible for the conduct of the Company, but the respondents did not furnish the information called for. This was followed by two subsequent letters of the Board dated February 21, 1983 and June 9, 1983 drawing the attention of the respondents that they were deliberately violating the provisions of the Act and thereby rendering themselves liable to be punished under Section 44 for contravention of the provisions of Sections 25(1) and 26. On October 21, 1983 the Board lodged a complaint against the respondents under Section 44 of the Act in the Court of the Chief Judicial Magistrate, Gaziabad. Unfortunately, the compliant was inartistically drafted. It was averred in paragraph 2 that Messrs Modi Distillery i.e. the industrial unit was a company within the meaning of Section 47 of the Act, that it had been knowingly and wilfully discharging its highly noxious and polluted trade effluents into the Kali River which is a stream within the meaning of Section 2(j) of the Act through the Kadradab Drain and thereby causing continuous pollution of the said stream. There were eleven persons arrayed as accused. Instead of launching a prosecution against Messrs Modi Industries Limited, the Board impleaded its industrial unit Messrs Modi Distillery as respondent 1 while respondents 2-11 were the Chairman, Vice-Chairman, Managing Director and members of the Board of Directors of Messrs Modi Industries Limited i.e. the Company owning the industrial unit.

3. It appears that the respondents did not appear before the learned Chief Judicial Magistrate in response to the notice issued to them. The learned Magistrate after recording the statement of S. N. Pandey, Legal Assistant of the Board directed the issue of process to the respondents. Aggrieved, respondents 2, 3 and 4, namely, K. N. Modi, K. K. Modi and M. L. Modi, the Chairman, Vice-Chairman and Managing Director respectively of Messrs Modi Industries Limited preferred a revision before the High Court under Section 397 of the Code of Criminal Procedure, 1973. Two of the other accused, namely, S. C. Trikha and Raghunath Rai, the nominated members of the Board of Directors of the Company also filed an application before the High Court under Section 482 of the Code for quashing the proceedings. As already stated, a learned Single Judge invoking the revisional jurisdiction of the High Court has quashed the proceedings on the ground that there could be no vicarious liability saddled on the Chairman, Vice-Chairmen, Managing Director and other members of the Board of Directors of the Company under Section 47 of the Act unless there was a prosecution of the Company i.e. Messrs Modi Industries Limited. He held that the complaint suffers from the serious legal infirmity and in the circumstances, to allow the proceedings to continue would amount to an abuse of the process of the court.

4. The question that arises in the appeal is whether the Chairman, Vice-Chairman, Managing Director and members of the Board of Directors are liable to be proceeded against under Section 47 of the Act in the absence of prosecution of the Company owning the said industrial unit. Section 47 insofar as material reads as follows :

47. Offences by companies. - (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of, the business of the company, as well as the company, shall be deemed to be guilty of the offence

and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

5. On a plain reading of sub-section (1) of Section 47 of the Act, where an offence has been committed by a company, every person who at the time of the commission of the offence was 'in charge of and responsible to' the company for the conduct, of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Proviso to sub-section (1) however engrafts an exception in the case of any such person if he were to prove that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. It would be noticed that sub-section (1) of Section 47 is much wider than sub-section (4) of Section 17 of the Prevention of Food Adulteration Act, 1954 which fell for consideration in I. K. Nangia case ((1980) 1 SCC 258 : 1980 SCC (Cri) 220). Furthermore, proviso to sub-section (1) shifts the burden on the delinquent officer or servant of the company responsible for the commission of the offence. The burden is on him to prove that he did not know of the offence or connived in it or that he had exercised all due diligence to prevent the commission of such offence. The non-obstante clause in sub-section (2) expressly provides that notwithstanding anything contained in sub-section (1), where an offence under the Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or, is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence, and shall be liable to be proceeded against and punished accordingly.

6. On a combined reading of the provisions contained in sub-sections (1) and (2), we have no doubt whatever that the Chairman, Vice-Chairman, Managing Director and members of the Board of Directors of Messrs Modi Industries Limited, the company owning the industrial unit Messrs Modi Distillery could be prosecuted as having been in charge of and responsible to the company, for the business of the industrial unit Messrs Modi Distillery owned by it and could be deemed to be guilty of the offence with which they are charged. The learned Single Judge has failed to bear in mind that this situation has been brought about by the industrial unit viz. Messrs Modi Distillery of Messrs Modi Industries Limited because in spite of more than one notice being issued by the Board, the unit of Messrs Modi Distillery deliberately failed to furnish the information called for regarding the particulars and names of the Managing Director, Directors and other persons responsible for the conduct of the Company. Having wilfully failed to furnish the requisite information to the Board, it is now not open to the Chairman, Vice-Chairman, Managing Director and other members of the Board of Directors to seek the court's assistance to derive advantage from the lapse committed by their own industrial unit. The learned Single Judge has focused his attention only on the technical flow in the complaint and has failed to comprehend that the flaw had occurred due to the recalcitrant attitude of Messrs Modi Distillery and furthermore the infirmity is one which could be

easily removed by having the matter remitted to the Chief Judicial Magistrate with a direction to call upon the appellant to make the formal amendments to the averments contained in paragraph 2 of the complaint so as to make the controlling company of the industrial unit figure as the concerned accused in the complaint. All that has to be done is the making of a formal application for amendment by the appellant for leave to amend by substituting the name of Messrs Modi Industries Limited, the company owning the industrial unit, in place of Messrs Modi Distillery. Although as a pure proposition of law in the abstract the learned Single Judge's view that there can be no vicarious liability of the Chairman, Vice-Chairman, Managing Director and members of the Board of Directors under sub-section (1) or (2) of Section 47 of the Act unless there was a prosecution against Messrs Modi Industries Limited, the company owning the industrial unit, can be termed as correct, the objection raised by the petitioners before the High Court ought to have been viewed not in isolation but in the conspectus of facts and events and not in vacuum. We have already pointed out that the technical flaw in the complaint is attributable to the failure of the industrial unit to furnish the requisite information called for by the Board. Furthermore, the legal infirmity is of such a nature which could be easily cured. Another circumstance which brings out the narrow perspective of the learned Single Judge is his failure to appreciate the fact that the averment in paragraph 2 has to be construed in the light of the averments contained in paragraphs 17, 18 and 19 which are to the effect that the Chairman, Vice-Chairman, Managing Director and members of the Board of Directors were also liable for the alleged offence committed by the Company.

7. It is regrettable that although Parliament enacted the Water (Prevention and Control of Pollution) Act, 1974 to meet the urgent need for introducing a comprehensive legislation with its established unitary agencies in the Centre and the States to provide for the prevention, abatement and control of pollution of rivers and streams, for maintaining or restoring wholesomeness of water courses and for controlling the existing and new discharges of domestic and industrial wastes, which is a matter of grave national concern, the manner in which some of the Boards are functioning leaves much to be desired. This is an instance where due to the sheer negligence on the part of the legal advisors in drafting the complaint a large business house is allowed to escape the consequences of the breaches committed by it of the provisions of the Act with impunity. It was expected that the Board and its legal advisors should have drafted the complaint with greater circumspection not to leave any technical flaw which would invalidate the initiation of the prosecution allowing the respondent to escape the consequences of the breaches committed by of the provision of the Act with impunity. As already stated, prior to the commencement of the Act the Company owned an industrial unit style as Messrs Modi Distillery which was discharging trade effluents into the Kali River through the Kadrabad Drain and therefore the matter fell within the ambit of Section 26 of the Act. Section 26 provides that where immediately before the commencement of the Act any person was discharging any sewage or trade effluent into a stream, the provisions of Section 25 shall, so far as may be, apply to such person as they apply in relation to a person referred to in that section. Section 25(1) creates an absolute prohibition against bringing into use any new or altered outlet for the discharge of sewage or trade effluent into a stream without the consent of the Board. On a combined reading of Section 25(1) and 26 it was mandatory for the Company viz. Messrs Modi Industrial Limited to make an application to the Board under sub-section (2) of Section 25 read with Section 26 in the prescribed form containing the prescribed particulars for grant of consent for the discharge of its trade effluents into the said stream, subject to such conditions as its may impose. Along with the complaint the appellant has placed on record several documents showing that the rejection of the application was in the public interest as it was incomplete in many respects. These documents also reveal that the Company did not have proper arrangements for treatment of the highly polluted trade effluents discharged by it and although the appellant repeatedly by its letter required the Company

to obtain the consent of the Board, the Company was intentionally and deliberately avoiding compliance of the requirements of Sections 25(1) and 26 of the Act. The contravention of these provisions is an offense punishable under Section 44. The other ten persons arrayed by name as accused in the complaint are respondents 2-11, the Chairman, Vice-Chairman, Managing Director and members of the Board of Directors of Messrs Modi Industries Limited. It cannot be doubted that in such capacity they were in charge of and responsible for the conduct of the business of the Company and were therefore deemed to be guilty of the said offense and liable to be proceeded against and punished under Section 47 of the Act. It would be a travesty of justice if the big business house of Messrs Modi Industries Limited is allowed to defect the prosecution launched and avoid facing the trial on a technical flow which is not incurable for their alleged deliberate and willful breach of the provisions contained in Sections 25(1) and 26 made punishable under Section 44 read with Section 47 of the Act.

8. Faced with the difficulty of refuting the government of the offence set out in the complaint, Shri Ram Jethmalani, learned counsel appearing for the respondents draw our attention to the counter-affidavit of Virendra Prasad, Manager (Personnel and Administration), Modi Distillery dated January 13, 1986 and the two supplementary affidavits dated August 25, 1986 and November 17, 1986 tending to show that Messrs Modi Industries Limited, the company owning the industrial unit, have taken effective steps to set up an effluents treatment plant by entering into an agreement dated December 23, 1985 with Messrs Chemical Consultants and Engineers, Ahmednagar who would set it up in collaboration with Sulzer Bros. Limited, Switzerland by employment of the technical knowhow which would be able to recover methane gas up to 70 per cent and also bring down BOD reduction up to 90 per cent. Further, it is averred that the company sought and obtained the approval of the Board subject to a time schedule for erection and installation of the plant by the end of June 1987. It is also averred that since the Government of India has turned down the application of the respondents for subsidy for installation of the said plant insofar as the year 1985-86 was concerned, they are trying other sources of finance and that in the meanwhile pending the installation and commissioning of the plant based on the Sulzer's process and treating the effluents by alternative methods in order to reduce the extent of BOD discharge. They are diluting the effluents by mixing fresh water to extent of 13 to 15 times the amount of effluent discharged in order to reduce the extent of pollution. In view of the subsequent events the learned counsel submits that this was a fit was for dropping the proceedings. The averments made by the affidavit-in-rejoinder sworn by Chandra Bhal Singh, Law Officer of the appellant-Board showing that there is little or no progress in the matter of establishment of the effluents treatment plant. We need not enter into this controversy. These are all matters to be dealt with by the learned Chief Judicial Magistrate.

9. The result therefore is that the appeal succeeds and is allowed. The Judgment and order passed by the High Court are set aside and that of the learned Chief Judicial Magistrate directing issue of process to the respondents are restored. The learned Magistrate shall proceed with the trial as expeditiously as possible in accordance with law.

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