

Chhetriya Pardushan Mukti Sangharsh Samiti

Vs

State of U. P. and Others

Writ Petition (Civil) No. 577 of 1988

(CJI Sabyasachi Mukharji, K. N. Saikia JJ)

13.08.1990

JUDGMENT

SABYASACHI MUKHARJI, C.J. -

1. A letter written to this Court was treated as a writ petition under Article 32 of the Constitution of India. The letter written by Chhetriya Pardushan Mukti Sangharsh Samiti, Sarnath, alleged environmental pollution in the area. It was also alleged therein that the Jhunjhunwala Oil Mills and a refinery plant are located in the green belt area, touching three villages and the Sarnath temple of international fame. The smoke and dust emitted from the chimneys of the Mills and the effluents discharged from these plants were alleged to be causing environmental pollution in the thickly populated area and were proving a great health hazard. It was further stated that the people were finding it difficult to eat and sleep due to smoke and foul smell and the highly polluted water. It was further alleged that the lands in the area had become waste, affecting crops and the orchards damaged. Diseases like TB, jaundice and other ailments were stated to be spreading in an epidemic form. The growth of children was affected. It was further alleged that the schools, nursing homes, leprosy homes and hospitals situated on the one kilometer long belt touching the oil mills and the plant were adversely affected. It was stated that licences had been issued to one rich man Dina Nath for these industrial units thereby risking the lives of thousands of people without enforcing any safety measure either to cure the effluents discharged from the plants or to check the smoke and the foul smell emitted from the chimneys. The whole area was expected to be ruined due to any explosion or gas leakage.

2. In that background, the petitioner prayed for necessary directions to check the pollution, and also enclosed a printed leaflet alleging malpractices and corruption on the part of the proprietor of these industrial units apart from polluting the atmosphere.

3. As mentioned hereinbefore, the complaint was made by the said Samiti stated to be a social organisation about environmental pollution and ecological imbalance being causes by the two plants and thereby exposing the population to health hazards and life risk which was, therefore, considered to be a matter of great public importance. It is necessary to recognise the danger in order to strike a balance between the quality of life to be preserved and the economic development to be encouraged. Dealing with this aspect in *M. C. Mehta v. Union of India* ((1988) 1 SCC 471 : 1988 SCC (Cri) 141 : (1988) 1 SCR 279), it has been stated that whenever applications for licences to establish new industries are made in future, should be refused unless adequate provisions has been made for the treatment of trade effluents flowing out of the factories. So, this letter was treated as a writ petition and notice was issued, counter-affidavit was filed on behalf of respondent 3 being the proprietor of Jhunjhunwala Oil Mills. Reference was made to the decision of this Court in *Bandhua Mukti*

Morcha v. Union of India ((1984) 3 SCC 161 : 1984 SCC (L&S) 389 : (1984) 2 SCR 67) wherein this Court underlined the importance of satisfactory verification of allegations. The court was asked to be ever vigilant against abuse of its process and there was need for appropriate verification. There is a statute for controlling pollution. It is well settled that if there is a statute prescribing a judicial procedure. It is not open to the court to bypass the statute and evolve a different procedure at variance with it. It is further asserted on behalf of the respondents that between the petitioner Sita Ram Pandey and respondent 3, there was a long rivalry. According to respondent 3, the petitioner is an anti-social element and his only aim was to extract money from the people like respondent 3 as in the present case.

4. It has further been stated that there has been criminal proceeding against the petitioner and several items have been marked in the affidavit in opposition. The particulars make out a rather disgraceful state of affairs. It has been alleged that Mr. Sita Ram Pandey for the last so many years was blackmailing the people, and a case under Section 500 of the IPC being Case No. 121/88 was filed. It has been further averred that respondent 3 has complied with the provisions of the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974 and there is no complaint of any kind from any person, body or authority. The correspondence, in this connection, has been set out.

5. It further appears that as early as 1980, the petitioner had made various complaints to the A.D.M. (Supply), Distt. Varanasi, alleging that respondent 3 was accused of smuggling of coal and diesel blackmailing. It was dismissed. It further appears that there was no complaint from anybody apart from the present petitioner by any authority as to the non-compliance of any statute by respondent 3. The orders passed by the Pollution Control Board which had been annexed, also indicate that there are no instances of violation of the said Acts.

6. Time was sought on behalf of respondents for filing a rejoinder which, unfortunately, has not been filed, and no satisfactory explanation has been given therefore. Certain letters alleged to have been written on behalf of the petitioners were sought to be placed before us in the court today.

7. Having considered the facts, circumstances, nature of the allegations and the long history of enmity and animosity, we are of the opinion that prima facie the provisions of the relevant Act, namely, the Air Pollution Control Act have been complied with and there is no conduct which is attributable to respondent 3 herein leading to pollution of air or ecological imbalances calling for interference by this Court.

8. Article 32 is a great and salutary safeguard for preservation of fundamental rights of the citizens. Every citizen has a fundamental right to have the enjoyment of quality of life and living as contemplated by Article 21 of the Constitution of India. Anything which endangers or impairs by conduct of anybody either in violation or in derogation of laws, that quality of life and living by the people is entitled to be taken recourse of Article 32 of the Constitution. But this can only be done by any person interested genuinely in the protection of the society on behalf of the society or community. This weapon as a safeguard must be utilised and invoked by the court with great deal of circumspection and caution. Where it appears that this is only a cloak to "feed fact (sic) ancient grudge" and enmity, this should not only be refused but strongly discouraged. While it is the duty of this Court to enforce fundamental rights, it is also the duty of this Court to ensure that this weapon under Article 32 should not be misused or permitted to be misused creating a bottleneck in the superior court preventing other genuine violation of fundamental rights being considered by the court. That would be an act or a conduct which will defeat the very purpose of preservation of

fundamental rights.

9. Having regard to the ugly rivalry here, we have no doubt that between the contestants, the court was misled and we must, therefore, proceed with caution. There was no fundamental right violation or could be violative if the allegations of the so-called champions on behalf of the society are scrutinised. We must protect the society from the so-called 'protectors'. This application is legally devoid of any merit or principles of public interest and public protection. This application certainly creates bottlenecks in court, which is an abuse of process of this Court. We have, therefore, no hesitation in dismissing this application with the observations made herein.

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