

M. C. Mehta

Vs

Union India and Others

Writ Petition (Civil) No. 13029 of 1985

(CJI Ranganath Misra, Kuldeep Singh, M. H. Kania JJ)

14.03.1991

JUDGMENT

RANGANATH MISRA, C.J. –

1. This is an application under Article 32 of the Constitution in the public interest litigation sector. A practising advocate who is the Chairman of the Environment Protection Cell operating at Delhi is the petitioner. This Court has been asked to issue directions for closing down of hazardous industries located in the densely populated areas of Delhi and for regulation of air pollution caused by automobiles operating in the area as also the thermal units generating power for the Delhi Electric Supply Undertaking (hereafter referred to as 'DESU').

2. The Union Territory of Delhi has a total population of about 96 lakhs, out of which the urban area consisting of old Delhi, New Delhi and the Cantonment has a population of around 90 lakhs. By 1947 when the country became independent, Delhi had a population of a little over 5 lakhs. In these little more than two scores of years the population has, thus, multiplied by 19 times. Though it is a spread out city, in some pockets, the density of population is very high and these have become congested.

3. The problem of environmental pollution is global in an increasingly small world and concerns all countries irrespective of their size, level of development or ideology. Notwithstanding political division of the world into national units, the oceanic world is an interconnected whole; and winds that blow over the countries are also one. Pollution is capable of moving from continent to continent. If USSR carries out a nuclear test, the fall-out may be carried by the winds to any part of the world and such fall-out of irresponsible disposal of radioactive waste from a remote energy plant in one country may turn out to have greater adverse effect on the neighbouring countries than the danger of a full-fledged war. Informed public mind is already agitated over the polluting effect of the Gulf War and the common concern of the entire homosapien race is obsessed by the apprehension of acid rain, toxic effect on the seas and even on the atmosphere.

4. The awareness of interaction of man with his environment is of recent origin. The Declaration of the United Nations Conference on the Human Environment held in Stockholm in June 1972 stated :

"Man is both creature and moulder of his environment, which gives him physical substance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has been reached when, through rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an

unprecedented scale. Both aspects of man's environment, the natural and the manmade, are essential to his well-being and to the enjoyment of the basic human rights - even the right of life itself."

Principle No. 1 of the same Declaration went on to say :

"Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations"

5. The closeness of the undeveloped and underdeveloped communities to nature is not found in the developed ones. Our ancestors had realised the importance of the tie between man and his environment. The Samaveda notes the Flute of Divine Love by saying :

"Listen to the melodious music of the divine poet.

He plays upon the flute of love, the notes soar to high heaven and reach the distant stars and dance on the raging waves of the sea.

The earth, the sea, the sky, the stars are all woven together by the soft strains of the divine music. Its vibrants echo through the corridors of time in the endless canopy of the sky."

6. Norman Myers quoted in Sir Edmond Hillary's Ecology 2000 has rightly observed :

"The fate of African environments is thus determined not only by local circumstances. It is influenced, in part at least, by the life styles of the developed world. These economic-ecological linkages between different members of the international community are little recognized to date, but they represent a significant factor for land use patterns in Africa's savannas."

7. Our Constitution by the Forty-Second Amendment introduced Article 48-A as also Article 51-A into the Constitution. These articles provide :

"48-A. Protection and improvement of environment and safeguarding of forests and wild life. - The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country."

"51-A. Fundamental duties. - It shall be the duty of every citizen of India -

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(g) to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures;"

The incorporation of protection of environment as an obligation of the State in the Directive Principles and the mandate in Article 51-A to the citizens of India as part of fundamental duty are indications of the constitutional recognition of importance of environment on life - both the flora and the fauna.

8. Ours is a great country - Territorywise, from the standpoint of population as also legacywise. Though politically divided into many States throughout the ages it has been bound by a common culture and heritage. Now and then as the prints on the sands of time indicate, short-lived empires have grown up and Delhi became the capital of such empires of the north. Delhi was the capital of the Mughals too but the Britishers had in the initial period Calcutta as their capital and it was only in 1911 that the India capital of the British empire was shifted from Calcutta to Delhi.

9. With the growth of importance of Delhi, on the outskirts of the then city gradually industries developed. Lack of vision and inadequate salesmanship allowed many of these industries to grow perilously close to human habitation and in the process of expansion of the city with the growth of population and activity, the industrial belt became a part of the city. Hindustan Insecticides Limited, which is respondent 6 before us, is one of such industries. DESU has three generating units - one known as the Indraprastha Power Station, the other as the GT Power Station and the third as the RPH Power Station. These too are located within the densely populated area. The Delhi Transport Corporation (hereafter DTC) which provides the public transport facility to the residents of Delhi operates thousands of buses and has been impleaded as respondent 5 on the allegation that it is one of the notorious polluting agencies.

10. A Monitoring Committee on ambient and automotive emission levels was set up for examining the impact of surface transport on air environment of Delhi at the instance of the Director of Transport, Delhi Administration. The facts and figures available from the report may briefly be indicated. As on March 31, 1982, Delhi had a total number of 5,92,584 vehicles of which 65 per cent were two-wheelers, 3.5 per cent were three-wheelers, 25 per cent cars, jeeps and other medium size vehicle and 1.5 per cent were buses and the remaining 7 per cent were goods carriers. The affidavit of the Deputy Director of Transport of the Delhi Administration indicates that the vehicular population of 1990 is 13.5 lakhs. This means that within about 8 years there has been an increase of about 8 lakhs of vehicles in Delhi which would work out to an addition of about 1 lakh every year. The proportion of the two-wheelers has perhaps not been seriously disturbed. Though the Deputy Director of Transport has indicated that the automobiles contribute about 50 per cent of the polluting factor there is material to suggest that the proportion is still higher. Two-wheelers and three-wheelers contribute over 60 per cent of the total emission of carbon monoxide and about 80 per cent the total hydrocarbons. To meet the challenging task of controlling pollution, Air (Prevention and Control of Pollution) Act, 1981 has been enacted.

11. Respondent 3 is the Central Board set up under the Act. The statute authorises government in consultation with the Board to instruct the transport authorities for developing expertise by taking vehicular pollution survey covering all ramifications. The Union Territory of Delhi was chosen on selective basis because it maintains the highest traffic volume.

12. Under the Motor Vehicles Act of 1988 certain provisions have been made for regulating emission resulting the pollution. Transport authorities of the Delhi Administration had placed facts and figures relating to steps taken under the Act for regulating pollution. Emission checking, prosecution as also steps for cancelling of registration are said to be the normal steps taken by the Administration in this behalf. We were, however, not satisfied that the action taken in this behalf was adequate and the challenging task of pollution control could not be successfully dealt with that way.

13. Law alone also cannot help in restoring a balance in the biospheric disturbance. Nor can funds help effectively. The situation requires a clear perception and imaginative planning. It also requires

sustained effort and result oriented strategic action. Campaign for general awakening of the people using automobiles of different classifications and among the people inhabiting the capital is indispensable preliminary. All persons using automobiles should have a fair knowledge of the baneful effect on the community including those who use such vehicles on account of the emission from such vehicles. Until that is done in an effective way the appropriate attitude would not develop and cooperation for reducing pollution would not emerge.

14. A brief extract from the journal entitled Environmental Policy and Law (Vol. 18, Nos. 1-2 Spring 1988) published from North Holland describes the problem thus :

"It became clear that all these measures are not themselves sufficient to come to grips with the problem of air pollution caused by road traffic. In every one of the towns and cities, the problem of air pollution from motor vehicle traffic is a considerable one, and it was more or less generally apparent that present norms for motor vehicle exhausts are not adequate so as to achieve the necessary reductions in a rapid space of time. In fact, the problem is, in part, on the increase. This is not only true of private cars, especially diesel powered vehicles, but also of commercial vehicles"

"Despite the legal and other restrictions mentioned above, which hamper the towns and cities involved in pursuing effective policies aimed at limiting motor vehicle exhausts, some interesting strategies have been thought up which have either led to improvements in themselves or at least stimulated attitudes towards environmental policies. For example, in formulating their regulations in the event of smog, both Munich and Berlin offered positive stimulus for the purchase of vehicles fitted with catalytic converters. As far as city-owned motor vehicles are concerned, some authorities have pursued a deliberate policy of purchasing those automobiles with improved exhaust systems."

15. In course of the hearing of this matter we had called upon counsel to look at the problem not as an adversarial litigation but to come forward with useful deliberations so that something concrete could finally emerge for easing the situation. We were shown some literature and even gadgets which might help reduction of pollution. The question of eliminating use of motor spirit and replacement of battery operated two wheelers was also mooted. The Association of Indian Automobile Manufacturers had made an application for intervention and was present in court. Some of the aspects which came up for discussion were indeed sufficiently technical. Some other aspects require laboratory testing and probe into efficacy. Therefore, the question of setting up of a high-powered committee was also mooted. We are happy to find that the deliberations in course of the hearing have taken a concrete shape and the Ministry of Environment and Forests has ultimately instructed the learned Attorney General in writing (copy placed on the record) that a Committee could be set by the court to look into the problem of vehicular pollution in Delhi and for devising methods of solution of the problem. The Ministry has agreed that a retired Judge of this Court could act as Chairman and has suggested that Shri M. C. Mehta, the petitioner herein and Shri N. S. Tiwana, Chairman of the Central Pollution Control Board may be made the Members of the Committee. We find this suggestion of the Ministry acceptable subject to certain modifications. We are inclined to take the view that Shri Sudhakar Girdharlal Shah representing the Association of Indian Automobile Manufacturers could be taken as a member of the Committee and the Committee would also have the power to co-opt experts not exceeding three for its efficient working from time to time. Shri justice K. N. Saikia who has recently retired as a Judge of this Court is appointed as the Chairman of the Committee with Shri N. S. Tiwana, Shri M. C. Mehta and Shri S. G. Shah as

Members. The Joint Secretary in the Ministry of Environment and Forests shall be the convenor Secretary of the Committee. Shri Justice Saikia shall be entitled to all the benefits to which a retired Judge of this Court while called back to duty is entitled.

16. The Committee may be constituted with effect from March 18, 1991, under an appropriate notification of the Union Government in the relevant Ministry. The terms of reference for the time being as recommended by the Ministry are the following :

- "(i) To make an assessment of the technologies available for vehicular pollution control in the world;
- (ii) To make an assessment of the current status of technology available in India for controlling vehicular pollution;
- (iii) To look at the low cost alternatives for operating vehicles at reduced pollution levels in the metropolitan cities of India.
- (iv) To examine the feasibility of measures to reduce/eliminate pollution from motor vehicles both on short term and long term basis and make appropriate recommendations in this regard;
- (v) To make specific recommendations on the administrative/legal regulations required for implementing the recommendations in (iii) above."

For the time being the Committee may proceed to consider these. Other relevant aspects may be taken into consideration by the Committee.

17. This writ petition shall be deemed to be pending for the purposes of monitoring. The Committee shall furnish a report to this Court once in two months as to the steps taken in the matter. The Union Government and the Delhi Administration are directed to effectively cooperate with the Committee for its successful operation.

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