

## **SUPREME COURT OF INDIA**

In Re: Jajmau Tanners Association

G. B. Pattanaik and M. B. Shah, JJ.

18.11.1999

### **JUDGMENT**

**G.B. PATTANAİK, J.**

1. These two applications have been filed by Jajmau Tanners Association essentially praying for exempting the tanneries' owners from payment of maintenance and operational charges to the extent of 60% as was held by this Court in its order dated 7.8.96. For improving the environment and controlling the pollution in the metropolis of Kanpur. Government of India and Dutch Government on their bilateral co-operative programme had agreed to execute the project called 'Environmental and Sanitary Engineering Project' in Kanpur. The project concentrated its activities in Jajmau area towards east of the city. In this area, there exist about 175 tanneries in the form of a cluster. For treating the fluid discharged by these tanneries, a common effluent treatment plant was constructed and 65% of the cost of construction was met by the Government of India whereas the remaining 35% was to be contributed by the State of Utter Pradesh and by the tanneries concerned on 50 : 50 basis. When the Court passed the order on 7.8.96 it was indicated by the Utter Pradesh Jal Nigam that 90% of tanneries share has been contributed by the State Government itself and tanneries are required only to pay 10% which roughly worked out at Rs. 9.70 lakhs. Mr. M.C. Bhandare, learned senior counsel appearing for the tanneries had submitted that the said amount would be paid within three months from the date of the order. The Court also considered the question of meeting the maintenance and operational charges. After going through several affidavits and taking into account the discussion of the Committee, formed by the Government, Urban Development Department (Ganga Cell), had with the tanneries representatives on 7th and 17th of May 1993, the final decision reached thereunder to the effect that the tanneries will bear to the extent of 60 per cent of the cost of maintenance and operational charges and Kanpur Nagar Nigam will bear to the extent of 40% of the same, the Court found the said decision to be just and fair. The present interlocutory applications have been filed by the tanneries' association indicating therein their incapacity to pay the aforesaid cost of maintenance and operational charges. In the written notes submitted by the tanneries' association, several instances have been indicated as to how the Court has taken a sympathetic view because of the financial conditions of these tanneries and how even the State Government itself came forward to bear the cost of construction so far as 90% of the tanneries'

share is concerned. It has further been stated that the tanneries never knew what would be the operational and maintenance cost and now they find that their share would exceed the capital cost towards installation of the secondary treatment plant. This can hardly be a ground for modifying the earlier order as the earlier order was passed on the basis of a conscious decision arrived at by the High Power Committee constituted by the Government which had a thorough discussion with the representatives of the tanneries' association. But one factor has been indicated by the tanneries' association which may be a ground for reconsideration of the earlier order, namely, whereas the secondary treatment plant is capable of treating an effluent of 36 MLD, the effluent of the tanneries would be at the highest 8 to 9 MLD. It has also been stated that apart from the 175 tanneries which have agreed to abide by the orders of this Court, there are some other tanneries which have not been taken into account and various other industries which also discharge their effluent to the secondary treatment plant. Neither this Court was aware of the aforesaid fact nor the tanneries' association was aware of the said fact and, therefore, such fact would necessitate a re-consideration of the earlier order. According to the learned Counsel, unless the earlier order is re- considered, it would be practically impossible for the tanneries to bear the cost of maintenance and operational charges as per the order of this Court dated 7.8.96 and the result would be total closing down of all the tanneries. On behalf of the U.P. Pollution Control Board, a written submission has also been filed and it has been stated therein that the other industries are discharging the effluent after treating the same in their effluent treatment plant as per the norms for such discharge and, therefore, they cannot be required to pay the maintenance charges for the C.E.T.P. and it is their further submission that Kanpur Nagar Nigam is paying 40% of the operational and maintenance charges taking this factor into consideration. So far as the pollution load of the tanneries are concerned, a figure has been indicated in the said written submission which on the face of it establishes that the pollution load of tanneries is just the double the pollution of municipal sewer and this was the reason that the ratio of 70:30 was fixed but on the representation of the tanneries' association it was fixed as 60:40. According to the written submission of the U.P. Pollution Control Board, the fact that the State Government has contributed the share of the tanneries for setting of C.E.T.P. does not mean that the recurring liability of maintenance and operational charges can also be fastened on the State Government. Ordinarily, we would not have been persuaded to modify our earlier order which was passed on the basis of a thorough discussion the association of the tanneries had with the High Power Committee constituted by the Government and the Court came to the conclusion that the ratio of 60:40 is fair. But having regard to the plight of the tanneries and having regard to all other surrounding circumstances, we think it would be just and proper to direct that the ratio for the maintenance and operational charges should be borne in 50:50 ratio, namely, the tanneries' association will pay 50% amount and the balance 50% would be paid by the Kanpur NagarNigam. It would be open to the Kanpur Nagar Nigam to recover proportionate maintenance and operational charges from other tanneries which have not been taken into account and various other industries which also discharge effluent to the Secondary Treatment Plant.

2. Interlocutory applications are disposed of accordingly.