

SUPREME COURT OF INDIA

Gujarat Pollution Control Board

Vs.

M/s Nicosulf Industries & Export Pvt. Ltd.

CrI.A.No.9 of 2002

(Dr. Arijit Pasayat, P. Sathasivam and Aftab Alam JJ.)

04.12.2008

JUDGMENT

Dr. Arijit Pasayat, J

1. Challenge in this appeal is to the judgment of a learned Single Judge of the Gujarat High Court allowing the Revision Petition filed by the respondents 1 and 2.

2. A complaint under Sections 24, 25, 43, 44 and 47 of the *Water (Prevention and Control of Pollution) Act, 1974* (in short the `Act') was filed by the Assistant Environmental Engineer on behalf of the Gujarat Pollution Control Board (in short the `Board') against a private limited company i.e. M/s Nicosulf Industries & Exports Private Limited-respondent no.1 and its co-directors Kishanbhai M. Narsinh, Mihirbhai G. Virji and Dushyant P. Lejawala alleging inter-alia that the accused nos. 2, 3 and 4 are producing Nicotine Sulphate in their factory and using Tobacco Stuff, Lime, Kerosene and Sulphuric Acid as raw-materials, and during the course of the process of production they are discharging 10,800 litres of polluted water every day. Under sections 24 and 25 of the Act, every industry is compulsorily required to obtain prior permission or approval of the Board for discharging its polluted water used by it either within or outside the industry as per section 25(i) of the Act. Permission was granted by imposing certain conditions to the accused persons. If the industry commits breach of conditions, complaint can be filed, which in the instant case was filed alleging that there was breach of condition no.4, as a result of which, under condition no.7, the consent order automatically lapsed. The accused nos.2, 3 and 4 were said to be responsible officers managing day-to-day affairs of the company. On 22-6-1989, a sample of polluted water was collected from the industry. It was analysed by the Laboratory of the Board, which reported that the effluent did not conform to the prescribed standards. The report of the analyst was given on 8-7-1989. Thereafter, show-cause notice was issued to the accused persons. A complaint was accordingly filed.

3. The learned Magistrate convicted all the four accused under sections 24, 25, 43 and 44 of the Act.

4. The judgment of the Lower Appellate Court was challenged on four grounds before the High Court.

5. The first ground of attack was that the complainant had no authority to file the complaint. Hence, the entire prosecution structure collapsed and order of conviction and sentence against the revisionists cannot be maintained. The second ground of attack was that the offence was alleged to have been committed by the Company and the directors of the company can be held liable only when it is established by the prosecution that the directors were managing day to day affairs of the company. The third attack was that even on merits breach of condition No.4 of the consent or permission order is not established. The last attack was that the sample of alleged polluted water was collected in breach of the provisions of Section 21 of the Act.

6. Main ground of challenge is that the complainant had no authority to file the complaint and this ground alone was sufficient to set aside the order of conviction and sentence maintained by the first Appellate Court.

7. Reference was made to the complaint which shows that it was filed by one AA Dalauti, Assistant Environmental Engineer on behalf of the appellant-Board. It was pointed out that Shri Dalauti had no delegated authority as required under Section 49 of the Act and as such the complaint was filed by an incompetent person. Reference was made to Section 49 of the Act in this regard. Specifically with reference to Section 49(i)(a) of the Act, the High Court held that the complaint had not been filed by the Board as defined under Section 2(h) of the Act. Though the High Court felt that on this ground alone the petition was bound to succeed, yet it considered the other aspects and set aside the order of conviction and sentence as imposed.

8. In support of the appeal, learned counsel for the appellant submitted that prior to amendment the expression used was "previous sanction of the Board" but after the amendment it was "authorized in this behalf by it". It is pointed out that in exercise of powers under Section 11-A of the Act, the Board delegated to the Chairman the power of sanctioning prosecution vide Resolution dated 27.3.1984. In exercise of this power the Chairman sanctioned as well as authorized complainant to file the complaint in the present case by his order dated 18.8.1989.

9. It is submitted that while considering the validity and/or effectiveness of the order, the High Court proceeded on erroneous presumption that Section 49 was applicable at the time when the present complaint was filed. According to the appellant, though the complaint was filed on 17.10.1989, prior to that Section 49 was amended by Act 53 of 1988 w.e.f. 29.9.1988. So far as the State of Gujarat is concerned, the amendment became effective only when the Gujarat Legislative Assembly passed a resolution adopting the amendment on 29.9.1999 which was notified on 28.10.1999. It is submitted that the Act is an enactment pursuant to Article 252 of the *Constitution of India, 1950* (in short the `Constitution'). The Act is relatable to inter-alia Entry 17 of List II, namely, the water that is to say "water supplies, irrigation and canals, drainage and embankments...". In any case, the Parliament

as well as all State Legislatures have all along acted on the basis that Act has been enacted pursuant to powers under Article 252 of the Constitution. Further in Preamble to the Act there is categorical assertion by the Parliament to the effect that "And whereas Parliament has no power to make laws for the States with respect to any of the matters aforesaid except as provided in Articles 249 and 250 of the Constitution". It is, therefore, submitted that it was never challenged by the respondents 1 and 2. They cannot be permitted to urge that the Act was not passed pursuant to Article 250 of the Constitution. The passing of the resolution by the State Legislature of two or more States is a condition precedent for investing the Parliament with the power to make a law on that topic or matter and then it shall be lawful for the Parliament to make a law for regulating that matter accordingly. The law so made or enacted by the Parliament under Article 252(1) of the Constitution will apply only to those States whose legislatures have passed resolutions under that provision and also to such States which have afterwards adopted the same by resolution passed by the legislatures of such States in that behalf. Therefore, at the relevant point of time the unamended Section 49 was applicable and delegation to the chairman of the power to sanction prosecution by the Board was valid and effective. Even otherwise resolution dated 27.3.1984 clearly establishes that the Board delegated to the Chairman the power of sanctioning prosecution. Therefore, this was valid and effective even for the purpose of amended Section 49(1)(a) of the Act. Section 49 is in two parts namely (i) a complaint made by the Board and (ii) by any officer authorized in this behalf by it. The delegation of the power of sanctioning prosecution in favour of the Chairman can always be read as the power of authorizing prosecution after Section 49 was amended.

10. The Inspection Report clearly establishes the name of accused No.3 as the person in charge of the unit. In the statement recorded under Section 313 of the *Code of Criminal Procedure, 1973* (in short the 'Code') A-3 has clearly admitted that the same is true. Reference is also made to Section 21 which deals with power to take samples of effluents and procedure to be followed in connection therewith.

11. In response, learned counsel for the respondents 1 and 2 submitted that the High Court had clearly recorded that the conditions required compliance with the water standards if water over-flowed from the solar evaporation pans and the sample taken was from the drain that ran from the factory to the evaporation pans. On the aforesaid basis, the High Court came to hold that there had been no violation of the terms of the Water Act. The submission of the prosecution that the water flows from the factory to the pans in a kachcha drain thereby there was violation of conditions is not based on materials in the sense that it was not the basis for the complaint and was also not the basis of judgments of courts below.

12. Learned counsel for the respondent submitted that the question is whether the amended provisions apply and the authorization has to be by the State Board. That question need not be gone into as the prosecution was required to prove that the solar evaporation pan maintained by the company had over flown and the over flown effluent did not conform to the tolerance limits prescribed. The documents on record clearly establish that the company was discharging its effluent into the drain leading to the solar evaporation pan i.e. into the solar evaporation pan. There was nothing to show that any sample of any over flown effluent

has been taken. It is pointed out that the sample taken on 22.6.1989 is not of over flown effluent, but of effluent which was on the way to the solar evaporation pan for further treatment. It is also submitted that Section 21(5) obliges the Board to forward the sample for the purpose of analysis. In the instant case the sample was taken on 22.6.1989 and was received on 28.6.1989. The delay has not been explained.

13. There is no substantial difference in the language of the amended Section 49. The High Court proceeded on the basis that the complaint was illegal since the complaint filed was not duly authorized. Though the High Court proceeded on the basis of amended Section 49, the amended as well as un-amended provisions require the State Board to file a complaint or to authorize any of its officers to file the complaint. The authorization has to be by the State Board. According to the Board under Section 11-A of the Act it had delegated to the Chairman the power to authorize an officer to file a complaint. Resolution dated 27.3.1984 refers to the delegation of power to sanctioning prosecution. The High Court has held that the power to sanction a complaint is distinct from the power to authorize the complaint. This view is clearly unsustainable for the reason that if the provisions are construed in the context that as a check over the complaint filed, then the grant of sanction to file a complaint would be in law an authorization to file the complaint. The stand of the appellant that the difference between sanction and authorization in the context of provisions of the Act and incontra-distinction to the provisions of IPC and the Code is more semantic than real. The stand is well founded. The appeal can be disposed of on the ground that factually there is nothing to show that the sample collected was from the over-flown effluent. The evidence on record clearly shows that the effluent was on the way to the solar evaporation pans for further treatment. The said effluent would never meet the parameters prescribed as it is yet to be treated. Thus, the alleged breach of condition No.4 has not been proved. On that ground alone the appeal deserves to be dismissed. In view of this conclusion it is not necessary to go into the other aspects as to what is the effect of the resolution of the State notified on 28.10.1999 i.e. after the date of amendment of the statute of Section 49 on 29.9.1999. The authorization by the Chairman was on 18.8.1989. In view of the factual aspects highlighted, the appeal deserves to be dismissed which we direct.