

Jammu High Court

Th. Majra Singh And Ors. vs Indian Oil Corporation And Ors. on 12 August, 1998

Equivalent citations: AIR 1999 J K 81

Author: T Doabia

Bench: T Doabia

ORDER T.S. Doabia, J.

1. The question as to where the plant for filling cylinders with "Liquified Petroleum Gas" should be located, is the subject-matter of adjudication in this petition.
2. There can be no dispute with the proposition that this is basically a question which is to be decided by the respondent-authorities. This Court can only examine as to whether the respondent-authorities have taken all precautions with a view to see that the laws dealing with environment and pollution are given due care and attention.
3. The petitioner submits that the plant in question is being located in the vicinity of the Village Kartholi, Tehsil Samba in the District of Jammu. This would be injurious to the health of the residents residing in the local area.
4. The respondents have put in appearance. It is stated that all steps have been taken with a view to see that there is no hazard caused to the residents of the local area. It is also stated that all safeguards which are required to be taken under the laws dealing with control of pollution have been taken and these would be implemented in letter and spirit. It is further stated that the respondent-J., and K. State Pollution Control Board has also given clearance. While giving the clearance, certain safeguards have been provided. These as per the respondent No. 1 would be observed.
5. The notion that the public has a right to except certain lands and natural areas to retain their natural characteristic is finding its way into the law of the land. The ancient Roman Empire developed a legal theory known as the "Doctrine of the Public Trust". The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government and its instrumentalities to protect the resources for the enjoyment of the general public. Though the public trust doctrine under the English Common Law extended only to certain traditional uses such as navigation, commerce and fishing, the American Courts have expanded the concept of the public trust doctrine in protecting all ecologically important lands, for example fresh water, wet land or riparian forests. These concepts have now become part of Indian legal thought process. See *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647 : (AIR 1996 SC 2715); *Indian Council of Enviro-Legal Action v. Union of India* (1998 AIR SCW 3861); *M. C. Mehta v. Kamal Nath*, (1997) 1 SCC 388; *M. C. Mehta (Calcutta, Tanneries' Matter) v. Union of India*, (1997) 2 SCC 411; *M. C. Mehta v. Union of India*, (1997) 11 SCC 327; *T. N. Godavarman Thirumulkpad v. Union of India* (1997 (10) JT 697); *M. C. Mehta (Badkhal and Surajkund Lakes Matter) v. Union of India*, (1997) 3

SCC 715 and S. Jagannath v. Union of India, (1997) 2 SCC 87 : AIR 1997 SC 811.

6. As a matter of fact, this is now considered as part and parcel of Article 21 of the Constitution of India. Therefore, there can also be no dispute with the proposition that the State is under an obligation to see that forests, lakes and wildlife and environment are duly protected. These "precautionary principles" were recognised by the Supreme Court of India in Vellore Citizens Welfare Forum v. Union of India, 1996 (5) SCC 647 : (AIR 1996 SC 2715). In this regard, it would, it would be apt to refer to the decision of the Supreme Court reported as M. C. Mehta v. Union of India, 1997 (2) SCC 353 : (AIR 1997 SC 734). This was a case where directions were given to protect "Taj Mahal", a monument of international repute. It was contended that on account of the setting up of Mathura Refinery, damage is being caused to the protected monument referred to above. The Supreme Court of India took note of this aspect of the matter and gave certain directions. What was said in paragraph 32 is being noticed again :-

"11.....We are, however, of the view that 'The Precautionary Principle' and 'The Polluter Pays Principle' are essential features of 'Sustain-able Development'. The 'Precautionary Principle' in the context of the municipal law-means ;

(i) Environmental measures-by the State Government and the statutory authorities must anticipate, prevent and attack the causes of environmental degradation.

(ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

(iii) The 'onus of proof is on the actor or the developer/industrialist to show that his action is environmentally benign.

12. 'The Polluter Pays Principle' has been held to be a sound principle by this Court in Indian Council for Enviro-Legal Action v. Union of India, (1996) 2 SCC 212 : (AIR 1996 SC 1446). This Court observed :

"..... We are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country."

This Court ruled that;

".... .once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the less caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on."

Consequently the polluting industries are 'absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected

areas'. The 'Polluter Pays Principle' as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of 'Sustainable Development' and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.

13. The Precautionary 'Principle and the Polluter Pays Principle have been accepted as part of the law of the land. Article 21 of the Constitution of India guarantees protection of life and personal liberty. Articles 47, 48A and 51A(g) of the Constitution are as under :-

'47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.- The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

'48-A. Protection and improvement of environment and safeguarding of forests and wildlife.- The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.' "51-A(g) to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.' Apart from the constitutional mandate to protect and improve the environment there are plenty of post-independence legislations on the subject but more relevant enactments for our purpose are: The Water (Prevention and Control of Pollution) Act, 1974 (the Water Act), the Air (Prevention and Control of Pollution) Act, 1981 (the Air Act) and the Environment (Protection) Act, 1986 (the Environment Act). The Water Act provides for the Constitution of the Central Pollution Control Board by the Central Government and the constitution of the State Pollution Control Boards by various State Governments in the country. The Boards function under the Control of the Governments concerned. The Water Act prohibits the use of streams and wells for disposal of polluting matters. It also provides for restrictions on outlets and discharge of effluents without obtaining consent from the Board. Prosecution and penalties have been provided which include sentence of imprisonment. The Air Act provides that the Central Pollution Control Board and the State Pollution Control Boards constituted under the Water Act shall also perform the powers and functions under the Air Act. The main function of the Boards, under the Air Act, is to improve the quality of the air and to prevent, control and abate air pollution in the country. We shall deal with the Environment Act in the latter part of this judgment.

14. In view of the abovementioned constitutional and statutory provisions, we have no hesitation in holding that Precautionary Principle and the Polluter Pays Principle are part of the environment law of the country."

7. The respondent-authorities would accordingly take notice of the precautionary principle as enunciated by the Supreme Court of India.

8. This petition is, accordingly, disposed of with the following directions;

(i) That the respondent No. 1 would be at liberty to go ahead with the project. It can continue with the installation of the plant and also put the same into operation.

(ii) That the respondent-authorities would take due precautions, so that pollution is not caused in the environment.

(iii) The respondent-Corporation would see to it that all along the boundary of the Plant and also approach roads, at least 4 rows of trees are planted. It would be apt to plant fast growing trees like poplar eucalyptus. These can be planted at the first stage. Thereafter, other quick growing trees of thick foliage be also planted.

(iv) That the respondent-authorities would see to it that the industrial affluent such as, solid waste or in liquid form is not permitted to mix with the natural resources such as, Air and Water.

(v) It would see to that temporary shelter such as Khokas etc., do not come into existence in the area.

(vi) Effort be made to give employment to the residents of locality. They be given preference.

9. This petition is disposed of accordingly. Order accordingly.