

RAMJI PATEL & ORS.

VS

NAGRIK UPBHOKTA MARG DARSHAK MANCH & ORS.

dd. 17/02/2000

Y.K.Sabharwal, R.C.Lahoti, S.S.Ahmad JJ.

**JUDGMENT:**

1. The Madhya Pradesh High Court, in a Public Interest Litigation, instituted under Article 226 of the Constitution, has directed, by the impugned judgment dated 16.12.1996, that the dairies, located on the outskirts of the Jabalpur City, be shifted from their present location to the alternative sites. This judgment was passed in the Writ Petition in which the following reliefs were claimed:-

"(a) to direct the respondents to take appropriate, effective and immediate steps to remove the Cow/Buffalow dung and urine from the pipe line of water filtration plant at Lalpur, Gwarighat.

(b) direct the respondents to ensure that in future also no storage of Cow/Buffalow dung and urine of animals may be done on the water supply pipe line of Lalpur, Gwarighat as stated in the body of the petition;

(c) direct the respondents to take appropriate steps against the persons who have stored these hazardous materials on the water supply pipe lines;

(d) Any other order/orders, writ/writs or direction/directions that this Hon'ble Court may deem fit and proper, may also kindly be given."

2. The principal ground on which the petition was founded was that the main water pipelines, which supplied water, after its filtration at Lalpur Filtration Plant, to the Jabalpur City, passed through the place where a number of dairy-owners, had started

storing the cow/buffalow dung and waste of the dairy products, and that too, near the pipelines which was likely to contaminate the pure water supplied to the residents of the City for home consumption. On this aspect, the High Court recorded the following findings:-

"We called the Public Health Engineering persons and the Corporation Authorities. The Corporation Authorities informed us that proceedings under Sec. 133 of the Code of Criminal Procedure were taken against these persons and against Shri Manohar Singh Marwaha. Against Marwaha dairy, final order has been passed which is also the subject of revision before the Sessions Judge, Jabalpur in which interim order has been passed by the Sessions Judge restraining the M.P. Electricity Board from disconnection of their power supply.

3. We also sought reports from the Public Health Engineering Department, Revenue Authorities and Corporation Authorities and after considering the matter, we find that keeping all these dairies around these water supply lines is a great hazard to the lives of the people of Jabalpur, because most of them get water from these pipelines on which cow/buffalow dungs are being stored by the dairy owners as a result of which there is every likelihood of pollution in the town by the supply of polluted water."

4. The High Court, thereafter, considered the question of rehabilitating the dairy-owners at some other place and passed the following order on a consideration of the case of each dairy-owner individually "

5. We, therefore, explored the possibility of rehabilitating these dairy owners from the present location so that cow\buffalow dungs may not pollute the water supply lines. We have been informed that so far as dairy owner Ramji Patil is concerned, his present dairy is situated on Khasra No. 15/3 at Gwarighat. He has 107 cattle heads. He has other lands in village Lalpur, i.e. Settlement No. 641, bearing Kh. Nos. 134, 154/2, 135 and 136/3. It is, therefore, directed that since Ramji Patel has a site available on the lands bearing the aforesaid Khasra numbers, he should shift his dairy from the present site to any of the above mentioned sites of Kh. No. 15/3 at Gwarighat within two months from today.

6. Shiv Kumar Patel has got his dairy at Gwarighat on Khasra No. 15/2. He has 18 cattle heads. He has also a land in Khasra Nos. 4 and 5/2 at Gwarighat which site is sufficiently away from the present site. He is also directed to remove his dairy to any of the above mentioned places from the present one within two months from today.

7. Hariram Rajak has his dairy at Gwarighat. He does not have any land of his own. He has 30 cattle heads. He does not have any alternative land. Therefore, we asked the S.D.M. Jabalpur that he may be provided a site for his dairy. He has pointed out that there is a land available at village Tilhari, bearing Kh. No. 200/1 of Patwari Circle No. 23/27, measuring about 30.106 hectares. We asked the Public Health Engineering Department authorities also to go and find out whether there is water available in that area or not. Shri A.K. Tiwari, Chief Engineer, Public Health Engineering Department Jabalpur and his Executive Engineer both have inspected the area and also conducted

hydrological tests. According to their report, there is plenty of water in that area. Therefore, there will be no difficulty so far as supply of water to this dairy is concerned. It is directed that Hariram Rajak shall make a proper application before the Nazul Officer, Jabalpur and the Collector, Jabalpur shall forward the same to the State Government for allotting 0.50 hectares of land to him for running his dairy. The State Government is directed that 0.50 hectares of land shall be allotted to Hariram Rajak on usual charges within a month from today. The Public Health Engineering Department shall dig a tubewell for him at that place at the cost of the State Exchequer within another period of one month. Hariram Rajak shall be removed from the present place within a period of two months to the newly allotted site. All this exercise should be done by the State Government and the Public Health Engineering Department within a period of two months from today. It will be the responsibility of the Corporation to see that the dairy of Hariram Rajak is removed within two months from today and all formalities shall also be completed by the State Government within this period.

8. Another dairy owner is Shri Manohar Singh Marwaha. He shall also be allotted land at Tilhari. He has his dairy on 0.148 hectares of land at Gwarighat. He has 150 cattle heads. He shall be allotted land at Tilhari out of Kh. No. 200/1, Patwari Circle No. 23/27, measuring 30.10 hectares. Out of this Khasra, he will be given 0.50 hectares of land on usual charges. He shall make an application before the Nazul Officer, Jabalpur and the Collector shall forward his application to the State Government. The State Government is directed to allot this piece of land to Shri Manohar Singh Marwaha. The Public Health Engineering Department shall also dig a tubewell on this land at the cost of the State. All this exercise should be done within a period of two months from today. It will be responsibility of the State Government and the Public Health Engineering Authorities that all these facilities are made available to the aforesaid dairy owners. It will also be the responsibility of the Jabalpur Corporation to remove all the aforesaid dairies within two months from today to the locations mentioned above." On the Special Leave Petitions being filed in this Court, the following order was passed on 3.2.1997:

"I.A. is allowed. Permission to file S.L.P. is granted in both the matters. Issue notice on Special Leave Petitions as well as on stay application returnable on 3.3.1997. Dasti service in addition. Notice may also be issued to the Divisional Manager, Railway, Jabalpur. The learned counsel for the petitioners state that the petitioners would not allow cowdung or urine to accumulate within 20 feet of the pipe line in question on both sides. There shall be interim stay of the impugned direction regarding shifting of the dairies of the petitioners for 6 weeks."

9. On 5.9.1997, a Bench comprising Hon. S.C.Agrawal and G.T. Nanavati, JJ., passed the following order : "The learned counsel appearing for the Jabalpur Municipal Corporation and the State of Madhya Pradesh prays for eight weeks` time to file an additional affidavit indicating the response of the authorities to the proposal of the petitioners to construct a wall around their dairies so as to prevent the cow-dung spreading near the pipe line. They will also show the plan of the pipe-line as it passes from near the dairies of the petitioners. Time prayed for is allowed. Put up after

eight weeks." The following order was passed by the same Bench on 7.11.1997 "One of the questions that arises in these petitions is whether the cowdung and urine from the cattle maintained by the petitioners in their dairy farms can be dealt with so as to prevent contamination of the water being carried through the pipeline as well as the soil surrounding the pipeline.

10. Since there is no material on record on this aspect, we consider it appropriate to direct the Central Water Pollution Control Board to depute a specialist who may, after inspecting the site, suggest measures which can be taken for treatment of cowdung and the urine of the cattle to prevent it from flowing above the pipeline and exclude the possibility of contamination of the water passing through the pipeline. The Central Water Pollution Control Board shall submit the said report within a period of two months. The petitioners will jointly pay the charges for such inspection and the report. A copy of this order may be sent to the Secretary, Central Water Pollution Control Board." On 16.1.1998, a notice was directed to be issued to the State Pollution Control Board.

Thereafter, on 20.2.1998, the following order was passed:

"Notice on Central Pollution Control Board has been served but nobody enters appearance on behalf of Central Pollution Control Board and, therefore, we do not know as to what steps have been taken by the Central Pollution Control Board in pursuance of the directions contained in our order dated November 7, 1997. Put up on March 27, 1998. In the meanwhile a communication be sent to the Secretary, Central Pollution Control Board to be personally present before this Court on March 27, 1998."

The order passed by this Court on 27.3.1998 is as follows :

"An affidavit of Dr. S.P. Chakrabarti, Member- Secretary, Central Pollution Control Board, has been filed in response to the directions given by this Court in the Order dated November 7, 1997. In the said affidavit measures have been suggested for treatment of cowdung and the urine of the cattle and other waste water from the dairies so as to exclude the possibility of contamination of the water flowing through the pipeline. An affidavit has also been filed by Dr.S.N. Nema, Zonal Officer, M.P. Pollution Control Board agreeing with the said affidavit of Shri Chakrabarty. In these circumstances, the Central Pollution Control Board is directed to prepare a project report in respect of the measures which are required to be taken as per the affidavit of Shri Chakrabarty. The petitioners will bear the cost of the preparation of the said project report. The learned counsel for the Central Pollution Control Board prays for four weeks time to submit the project report. Put up in the 1st week of May, 1998."

11. On 31.8.1998, Shri Vijay Panjwani, learned counsel appearing on behalf of the Central Pollution Control Board stated that the Project Report would be submitted within two weeks. On the submission of the Project Report of the Central Pollution Control Board, it was stated by learned counsel appearing on behalf of the petitioners that the recommendations made by the Central Pollution Control Board and the measures

suggested by them would be implemented and carried out. The Court, therefore, passed the following order on 6.10.1998 :

"It has been stated by the learned counsel for the parties that the recommendations made by the Central Pollution Control Board and the measures suggested shall be implemented and carried out. The cost amounting to Rs.93,000/- incurred by the CPCB shall be paid to the CPCB by the Marwah Dairy, Ramji Dairy, Hariram Rajak and Shivprasad Patel in equal shares within 6 weeks. List after 3 months."

When the matter was taken up on 8.1.1999, the Court passed the following order :

"The cost of Rs.93,000/- (Rupees Ninety three thousand) has been deposited with the Central Pollution Control Board. In the affidavit dated 3rd January, 1999 of Sri Ramji Patel filed on behalf of the petitioners, it has been stated that they have entered into an agreement with the Sunraj Construction Company for the construction of the bio-gas plant of 45 cubic meter capacity and that the Executive Engineer of Madhya Pradesh Urja Vikas Nigam Ltd. has also been informed. The petitioner has also applied for the subsidy for the construction of the bio-gas plant. The Madhya Pradesh Urja Vikas Nigam Ltd. shall monitor the construction of the bio-gas plant on the spot and submit a report to this Court after 2 months. The other recommendations of the Central Pollution Control Board contained in its report dated 27th March, 1998 shall also be complied with by the petitioners. List after 2 months."

12. Thereafter, time for completing the work for the construction of Bio Gas Plant etc. was extended from time to time and the Union of India, through the Ministry of Agriculture, was also directed to release the subsidy amount of Rs.64,000/- for the Bio Gas Plant, to the petitioners. In the meantime, an affidavit of Dr. M.R. Tiwari, Health Officer, Municipal Corporation, Jabalpur, dated 25.3.1998, was filed in which it was, inter alia, stated as under "

4. That a meeting was held on 21/10/97 and following decision has been taken : "This is determined by full majority that to keep environment of the city neat and clean due to earthquake and from the point of view of pollution all dairies within the Municipal Corporation limits must be removed from the city limits upto end of Nov., 1997. Simultaneously dairies which are running in Lalpur nearby Public Health Engineering Pipe Line should also be removed because some complaints regarding the pollution in drinking water pipe line are received. This action is very necessary from the health point of view of the citizens.' A copy of Resolution dated 21/10/97 is marked as Annexure R-4-1."

5. That as per the resolution of Standing Committee, Municipal Corporation, Jabalpur some of the dairies has been removed and the proceeding of removal of dairies is still under process."

13. The proceedings of the meeting of the Municipal Corporation which adopted a Resolution on 21.10.1997, was also annexed which indicated that the Municipal Corporation had adopted a Resolution that all dairies within the Municipal limits must be removed from the city of Jabalpur by the end of November, 1997. It was also resolved that dairies at Lalpur near the Public Health Engineering Pipeline should also be removed because a number of complaints regarding pollution caused in the drinking water pipeline were received. It may be stated that Madhya Pradesh Cattle (Control) Act, 1978 was enforced within the Municipal limits of Jabalpur with effect from 27th January, 1978, and in the Notification issued by the Commissioner, Municipal Corporation, Jabalpur, on September 24, 1979, it was stated that the cattle could not be kept within the limits of Jabalpur Municipal Corporation, except in the villages which were specified in the list set out in the Notification.

14. This list included Gwarighat and Lalpur villages also but in pursuance of the Resolution adopted by the Municipal Corporation on 21.10.1997, both the villages, namely, Gwarighat and Lalpur, were taken out of the list of "excepted villages" vide Notification published in the Govt. Gazette on 19.3.1999. In view of the above Notification, by which the villages of Gwarighat and Lalpur were excluded from the "excepted villages", where cattle could be kept, it is contended by Mr. Anoop G. Choudhary, learned Senior Counsel appearing on behalf of the State of Madhya Pradesh, that the petitioners have to shift outside the Municipal limits of Jabalpur city, if they, at all, intend to keep their dairies, but the dairies, particularly at the spot at which they have established their business cannot be permitted to be run or maintained, not only for the reason that both the villages, namely, Gwarighat and Lalpur fall within the limits of Municipal Corporation and have, in the meantime, become densely populated, but also for the reason that keeping of cattle in the close proximity of the main pipeline which supplies drinking water from Lalpur Filtration Plant to the city of Jabalpur, would be hazardous to the health of the people on account of the possibility of the water carried through that pipeline being contaminated by the Gobar (cowdung) as also the urine of the hundreds of cattle kept there by the petitioners. This is also the stand of the Municipal Corporation, Jabalpur, on whose behalf Mr. Ranjan Mukherjee, learned counsel made submissions, that in the face of the exercise of statutory power by the Municipal Corporation, Jabalpur, by which the establishment of dairies or the keeping of cattle within the limits of Municipal Corporation, has been totally prohibited, the petitioners cannot contend that they are still entitled to retain their dairies at the disputed sites. Dr. Rajeev Dhawan, learned Senior Counsel appearing on behalf of the petitioners has, on the other hand, contended that the Resolution dated 31.10.1997, which was adopted by Municipal Corporation, Jabalpur, was a colourable exercise of power, inasmuch as the exclusion of Gwarighat and Lalpur from the "excepted villages" as detailed in the Notification issued in 1978, has been done only during the pendency of the present petitions in this Court in which an interim order was also granted that the judgment of the High Court would not be implemented. It is contended that the proceedings in this regard cannot be rendered nugatory by adopting the Resolution that the dairies could not be run in Gwarighat and Lalpur villages. It is contended that since the Resolution was adopted only to harm the interests of the petitioners whose rights were under adjudication by this Court in the present proceedings, the same is liable to be quashed and cannot be given

effect to. It is also contended that the list of "excepted villages" set out in the Notification of 1978 contained many villages, but the Resolution was adopted only in respect of Gwarighat and Lalpur villages where the present petitioners are running their dairies. No reason, it is contended, has been shown by the Municipal Corporation why dairies are still permitted to be run in other villages, although those other villages also fall within the Municipal limits of Jabalpur. It appears that there has been previous litigation between the parties with regard to the running of dairies which, at that time, were being run by the petitioners within the Municipal limits of Jabalpur. In 1971, a writ petition for the shifting of dairies was filed in the Madhya Pradesh High Court which by its judgment dated 6.2.1976 framed a scheme directing the Corporation to reserve three plots outside the Municipal limits of Jabalpur where the dairy-owners would shift their dairies. On account of the dispute having arisen between the Municipal Corporation, Jabalpur and the dairy-owners with regard to the developemnt charges which the dairy-owners were required to pay, another writ petition was filed in the Madhya Pradesh High Court by about 89 dairy-owners. Since a choice was given to the dairy-owners to make their own arrangement for establishing and running their dairies outside the Municipal limits of Jabalpur, the writ petition was dismissed by the High Court on 2.1.1976.

15. It was, thereafter that the dairy-owners purchased plots of land outside the Municipal limits and established their dairies. The plots of land were purchased by the petitioners in villages Lalpur and Gwarighat in 1982 and they shifted their dairies to those villages which had already been excepted from the operation of the Madhya Pradesh Cattle (Control) Act, 1978. The petitioners have set out in the present petitions that one Shri K.K.

16. Nayakar, a Mimicry Artist of repute, purchased a plot of land and constructed a house at Gwarighat which was at a distance of about 500 meters from the dairy of one of the petitioners and as Shri Nayakar did not like the presence of dairies near his house, he filed a complaint under Section 133 of the Code of Criminal Procedure before the Sub-Divisional Magistrate, Jabalpur, for the removal of nuisance created by the petitioners. While the proceedings were pending before the Sub-Divisional Magistrate under Section 133 of the Code of Criminal Procedure, a writ petition was filed in the Madhya Pradesh High Court which ultimately resulted in the judgment which is being impugned before us. From the facts set out above, it will be seen that when the Special Leave Petitions were filed in this Court, the villages Lalpur and Gwarighat were in the list of "excepted villages" where dairies could be established and run and cattle could be kept. Since it was stated in the writ petition that the main water pipeline from the Filtration Plant at Lalpur passed nearby the dairies set up by the petitioners on account of which the drinking water was likely to be contaminated by the Gobar (cowdung) and urine of hundreds of cattle kept there, this Court, while entertaining the Special Leave Petitions, considered the possibility of a project being devised so as to prevent altogether the possibility of pollution/contamination of water carried through pipelines already embedded about four feet below the surface of the earth. It was for this reason that this Court by its order dated 7.11.1997 directed the Central Pollution Control Board to consider this matter and to report whether the likelihood of pollution to the drinking water carried by the pipeline in question could be ruled out by any device suggested by it. On the submission of the

Report of the Central Pollution Control Board, which was also supported by the State Pollution Control Board, the Court directed a project to be prepared for that purpose.

17. On the submission of the Project Report, since it was given out by the petitioners that they would implement the project and carry out all other recommendations made by the Central Pollution Control Board, the Court directed the petitioners to implement the project which included, inter alia, the setting up of a Gobar Gas (Bio Gas) Plant. The petitioners, apart from making a payment of Rs.93,000/- to the Central Pollution Control Board towards its Inspection Fee etc., also took up the construction of a Gobar Gas Plant and entered into an agreement for purchase of certain additional land as suggested by the Central Pollution Control Board.

18. Time to complete the construction of the Gobar Gas Plant was extended from time to time by this Court and ultimately an affidavit was filed on behalf of the petitioners that the Gobar Gas Plant has been constructed and established. The construction was carried out under the supervision of the Madhya Pradesh Urja Vikas Nigam as directed by this Court and Madhya Pradesh Urja Vikas Nigam also submitted its progress report. An affidavit to the effect that the Gobar Gas Plant had become functional was also filed before the Court. The cost of construction of the Gobar Gas Plant which was incurred by the petitioners is more than Rs. 5 lakhs. While these proceedings were pending in this Court, the Municipal Corporation adopted a Resolution to exclude from the list of "excepted villages" the two villages where the dairies in question are situated, namely, Lalpur and Gwarighat, so that the dairies may be shifted from these two villages and established elsewhere outside the limits of Municipal Corporation, Jabalpur. An affidavit to this effect was, for the first time, filed on behalf of the Municipal Corporation, Jabalpur, in March 1998. But the Notification issued on the basis of that Resolution was still not filed before the Court and this has been placed before the Court during the course of the arguments. While it is contended on behalf of the petitioners that the Resolution adopted by the Municipal Corporation, Jabalpur, and the consequent Gazette Notification issued on its basis were liable to be quashed on account of the abuse of power, or to put it differently, on account of colourable exercise of power, it is maintained on behalf of the State Govt. as also the Municipal Corporation, Jabalpur, that the Resolution was adopted in the interest of public health and could not be said to be a colourable exercise of power merely because the proceedings were pending in this Court.

19. Supply of pure drinking water is the statutory duty of the Municipal Corporation and the supply of such water has to be ensured to every citizen. In a situation, where the interest of the community is involved, the individual interest must yield to the interest of the community or the general public. Since the Cattle (Control) Act, 1978 is already in force within the Municipal limits of Jabalpur city, the dairies cannot be established and cattle cannot be kept so as to cause public nuisance in contravention of the statutory provisions. But the Court cannot also overlook the fact that the petitioners, who had already been uprooted from one place, and that too, at the dictate of the judiciary, had established dairies at a place at which such activity was not prohibited. In the list of villages appended to the Notification issued under the Cattle (Control) Act, 1978, Lalpur and Gwarighat were the villages, besides other villages, where such activity could be

legally carried on. These villages were taken out of that list during the pendency of the present proceedings by virtue of a Resolution adopted by the Municipal Corporation on 21.10.1997. The petitioners have already invested huge sums in setting up a Gobar Gas Plant at an expense of more than Rupees Five lakhs and have also incurred an expense of Rs.93,000/- towards Inspection Fee of the Central Pollution Control Board in pursuance of the order passed by this Court. The validity of the Resolution dated 21.10.1997 as reflected in the Gazette Notification dated 19.3.1999 cannot be legally adjudicated upon in these proceedings on the oral submissions made by Dr. Rajeev Dhawan, learned Senior Counsel, who also pointed out that although the Resolution was adopted only in respect of Lalpur village, the Notification published in the Gazette mentions Gwarighat village also. If the Notification is intended to be challenged by the petitioners, they have to initiate appropriate proceedings in which they have to set out the foundation for such challenge so that the State Govt. or, for that matter, the Municipal Corporation may have adequate opportunity of submitting their reply, particularly as they have also to explain why only these two villages were taken out of the list of "excepted villages" set out in the Notification of 1978 and why the activity of establishing dairies in other villages was not prohibited, although those other villages were also within the Municipal limits of Jabalpur city. Having regard to the facts and circumstances of this case, we dispose of these Special Leave Petitions by providing as under.

(a) In view of the Notification published in the Govt. Gazette on 19.3.1999., milk dairies and the keeping of cattle at the place in question, or for that matter, in villages Lalpur and Gwarighat, cannot be permitted to continue nor can anyone be permitted to establish it in those villages specially in the proximity of the main pipeline through which drinking water is supplied to the city of Jabalpur.

(b) Whether the Notification published in the Govt. Gazette dated 19.3.1999 is valid or not cannot be decided in the present proceedings as there are no pleadings in that regard. It will be open to the petitioners to challenge the Notification by instituting appropriate proceedings questioning its validity on all the grounds which have been orally urged before us, including the ground that the Notification reflected a colourable exercise of power in the hands of the Municipal Corporation, or that it intended to interfere with the proceedings pending in this Court, but such proceedings shall have to be instituted by the petitioners within three months from the date of this judgment. The interim orders passed by this Court in these petitions shall continue for another period of three months and two weeks thereafter, to enable the petitioners to approach the High Court and make appropriate application for interim relief.

(c) Since the Notification dated 19.3.1999 was issued by the Municipal Corporation during the pendency of these proceedings at a stage when this Court had already allowed the petitioner to set up the Bio Gas Plant and the petitioner in SLP(C) No.2927/97 has incurred an expenditure of Rs.5,86,000/-, the Municipal Corporation, Jabalpur, shall, after deducting the amount of subsidy as may have already been paid by the Government, pay that amount to the petitioner in the Special Leave Petition (C) No. 2927 of 1997 at the time of their shifting to the new locations pursuant to the Notification dated 19.3.1999 and in the event of their challenge to the said Notification being turned down by the High

Court. He and petitioner No.1 in Special Leave Petition (C) No. 2926 of 1997 will also be entitled to all the benefits indicated by the High Court in the impugned judgment while dealing with the individual cases of the petitioners.

(d) The petitioners, namely, Mr. Shiv Kumar Patel and Hari Ram Rajak in S.L.P.(C) No. 2926/97 have indicated their willingness to shift to new locations in terms of the judgment passed by the High Court. Consequently, the Special Leave Petition on their behalf shall be treated to have been dismissed as not pressed.