



International Environmental
Law Research Centre

BOMBAY CITY CIVIL COURT

Maheshwar Hydrel Power Corporation Ltd.

vs.

Chitroopa Palit and Ors., 2010

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Case Note: The case filed by the petitioner regarding the relief of perpetual injunction has been sought against the activists of Narmada Bachao Andolan restraining them making any defamatory statements or declaration instead of claiming damages. The Court dismissed the Suit with no cost.

IN THE BOMBAY CITY CIVIL COURT AT BOMBAY

Decided on 17.2.2010

S. C. SUIT NO. 5560 OF 2001

Shree Maheshwar Hydel Power Corporation Ltd. & Rajesh Dhnivraj Dewan
(Authorized Signatory) Ahree Maheshwar Hydel Power Corporation Ltd.

Vs

Chitroopa Palit, Suresh Varma, Activista of Narmada Bachao Andolan, for and behalf
of the Narmada Bachao Andolan

Coram:

Jus. Vasant R. Jadhav

Oral Judgment

1. This is a unique case wherein the relief of perpetual injunction has been sought against the defendants restraining them making any defamatory statements or declaration instead of claiming damages.
2. The case of the plaintiffs can be summarized as under:

The plaintiff No. 1 is a company incorporated under the Companies Act, 1956 as a Generating Company with the sole purpose to develop, build own and operate 400 M.W. Maheshwar Hydro Electric Projects located in Khargone District, Madhya Pradesh. The defendants are the activists of 'Narmada Bachao Andolan'. After the detailed evaluation and deliberation, the project was awarded to S. Kumars Group and accordingly, on 28.7.1993, Memorandum of Understanding was executed in between S. Kumar Ltd. and State Government of Madhya Pradesh. In order to take up the projects in the right earnest, S. Kumars Group incorporated Shree Maheshwar Hydel Power Corporation Ltd., for carrying out the challenging and important task of speedy implementation of the project in accordance with the prevailing laws and regulations of the land. The plaintiffs thus, signed the power project agreement with Madhya Pradesh Electricity Board on 11.11.1994 which was subsequently amended on 27.5.1996. The plaintiffs company issued public notice u/s. 29 of the Electricity Act, 1948 and invited objections, if any, for the development of the project but however, received no objection of whatsoever nature. As Madhya Pradesh is reeling under severe power crisis, after bifurcation of the State of Chattisgarh, the project shall have its own significance.

3. It is contended that the plaintiffs on acquiring the project have extended rehabilitation and resettlement budget from 30 crores to 130 crores demonstrating their full commitment and seriousness towards rehabilitation and resettlement program in a fair and just manner. Defendants who are the activists of Narmads Bachao Andolan are indulged in anti development activities and their sole aim and object is to hamper the projects of Narmada Valley including the projects undertaken by the plaintiffs company. They have also indulged in releasing defamatory statements against plaintiffs company in the fashion "Projects like Maheshwar can be continued only on the basis of loot". They are urging the financial institutions not to fund the plaintiffs company. They are making propagandas by issuing press note, releasing statements that the plaintiffs are oppressive to the local people, siphoning off public money and being dishonest.
4. It is alleged that on 2.10.2001, both the defendants issued a press note stating therein that "Officers of the Indian Public Financial Institutions and Industrialist such as S. Kumars have connived to siphon off and loot hundreds of Crores of rupees of public money and money that is the lifetime saving of common Indian Citizens." The statements made in the Press Note issued by the defendants are false, baseless and defamatory. The plaintiffs have already spent several hundred crores of rupees on the project and nearly one-third of the project has already been completed and the schedule year of commissioning of the project is 2004. Both the defendants are jointed and severally bound and liable to pay the damages to the plaintiffs for making the aforesaid defamatory statements but however, at this stage, the plaintiff company not been able to ascertain the special damages caused to them and seek the leave of court to sue the defendants as provided under order 2 Rule 2 of Code of Civil Procedure.
5. Both the defendants issued the Press Note dated 2.10.2001 out of malevolence towards the plaintiffs and with a view to expose the plaintiffs company to hatred, contempt, ridicule and obloquy and to injure the plaintiffs company's profession and trade. The plaintiffs company has its office in Mumbai and widely known in Mumbai City. The media has time and again carried the defamatory statements made by the defendants and other activists of Narmada Bachao Andolan in the form of various news reports which are widely circulated in Mumbai, therefore, this court has jurisdiction to entertain and try the suit in hand. Lastly, it is prayed that the suit of the plaintiffs be decreed.
6. In pursuance to the writ of summons, the defendants did appear and resists the contentions of the plaintiffs by filing Written Statement. My Learned Predecessor pleased to take the written statement on record but however, it is not given exhibit mark. The answering defendants have denied the adverse allegations made against them and activists of Narmada Bachao Andolan. According to them, they are justified in making the statements set out in Exh. A annexed to the plaint. They also came with the stand the plaintiffs did not come with clean hands and therefore, they are not entitled for discretionary relief of injunction and hence, the suit deserves to be dismissed.

7. It is contended that the defendants being the activists of Narmada Bachao Andolan working in Narmada Valley for the last 16 years with the people who are threatened with dispossession and inundation by several of the large dams in the Narmada Valley. It is contended that Press Note (Exh.A) was related to S. Kumars and not to the present plaintiffs in particular. The Maheshwar Project will submerge the lands and destroy and rupture the livelihoods of over several thousands of people in 61 villages in the areas. The plaintiffs are legally liable for the implementation of the policy and general rule for rehabilitation of the dam affected persons but however, the plaintiffs did nothing for the same.
8. As per the reports submitted by the competent authorities, there is no land or plan for the rehabilitation of the affected people. The Government of Madhya Pradesh has also not demonstrated that it has land to provide to the affected people. There is no cultivable land for the rehabilitation of the affected people available in sufficient quantity as per the statement made on behalf of Government of Madhya Pradesh. The affected people also complained of being force to sell their lands.
9. Even as per the report of the erstwhile Principal Secretary (Energy) of Government of Madhya Pradesh, there is no agricultural land available in the area for, whatever land there is, has been cultivated or encroached upon. The report submitted by National Commission for Women also supported to the aforesaid report. The only 'agricultural' land which the plaintiffs have identified till date has been plot of barren land near village Samraj on which the plaintiffs have poured soil. The most of the affected people who obtained cash compensation were not able to buy land in equal measure as they had, or even any land at all. All the reports and statements made are only of hope or of intent regarding rehabilitation of the affected people, not of actual performance or compliance. The local MLA of the Maheshwar area and the head of Rehabilitation Committee also made a statement in a newspaper dated 27.6.2000 stating that there is no land available for the rehabilitation of the affected people. In view of above set of circumstances, whatever statements made by the plaintiffs taking of reports and statements are false.
10. In the latest report of the Monitoring Committee, it has been quoted that none of the conditions of the environmental clearance were complied with by the plaintiffs including time bound conditions such as the preparation of detailed rehabilitation plan with details of the actual available of land. It is thus, there has been violation of MOEE clearance of 1994. The affected people were put to pressure to sell their lands for cheaper price. The Gram Panchayat of the village Lepa has passed the resolution alleging that mere resettlement of the village is meaningless. The plaintiffs have thus violated the conditions of the Ministry of Environment Clearance of 1994. There is no land, no plan, no rehabilitation and the only violations. Some farmers were forced to accept the cash against their desire in lieu of land. The villagers complained of being forced to sell their lands. The project authorities were putting 7 inches of silt on the red murrum of the land but however, in heavy monsoon rain, it may wash away. The cost of the power generated from the project is likely to be so high that after the construction of the project, it may be burden on Madhya

Pradesh economy rather than benefit. The present project cost is Rs. 2233 Crores exceeding Rs. 465 Crores as projected.

11. The fuel for hydro plants is water and therefore, availability of water is the essential factor. The availability of water depends on the nature and it is unlike thermal plants where one can put as much coal or gas as required. The defendants are thus, justified in contending that the Power Purchase Agreement will be for a period of 35 years, during which time the Board will be under a regime of guarantees and concessions to the company and that the Board will have to pay the company for the power whether it can be sold or not. The State Government and the Board cannot refuse to buy power from the plaintiffs, therefore, ultimately the public at large will be sufferers. As per the conditions captioned, for the first seven years, even if there is very little water in the well, river and energy production fails, the Board will still have to pay at design energy levels and the entire hydrological risk will be transferred to the Board, all to be paid out of public money. In that eventualities the public at large will have to bear the burden. On the basis of detailed proof, the defendants made statements about the 'loot of public money' and of 'diversion' and the 'siphoning' of public funds indulged in by S. Kumars group, grave statements that it made with full responsibility and that they are willing to defend and substantiate their statements.
12. The plaintiffs are the willful defaulters of the loans taken from the public financial institutions and the same is evident from the reports submitted by the competent authorities. In view of above, the statements made by the defendants cannot be termed as 'defamatory' as it is merely a 'honest observations'. There is sufficient evidence that the plaintiffs borrowed funds from the public financial institutions and used the said funds for non-project purposes and thereby violated the rules and regulations. The project funds which includes public money can be used only for project purposes and not for purposes other than projects. The plaintiffs have diverted and siphoned the public borrowings and therefore, the defendants are justified in making the statements. There is ample evidence to show that three companies of S. Kumars Group are involved in the economic offences and therefore, statements made by the defendants cannot be said defamatory statements. The defendants thus, cannot be held responsible for consequences of the bad illegal financial practices of the plaintiffs company. Lastly, it is contended that the averment of the plaintiffs that Narmada Bachao Andolan is a violent organization is baseless.
13. After considering the above rival pleadings, my Learned Predecessor (H.H.J. Shri R.R. Gandhi) has framed the issue on 26.3.2004.(However, exhibit mark is not given to the issues framed). The issues so framed are as under:-

ISSUES:-

- (i) Whether this Honourable Court has the jurisdiction to decide the suit?
- (ii) Whether the statement imputed to the Defendants and annexed as Exhibit-A in the plaint amounts to making defamatory statements?

- (iii) Whether the Defendants are justified in making the statements set out in Exhibit-A of the plaint?
- (iv) Whether the plaintiffs have come to this Honourable Court with clean hands are entitled to reliefs?
- (v) Whether the plaintiffs are entitled to a permanent injunction as prayed for?

14. My findings to the above issues are as under for the following reasons:-

FINDINGS:-

- (i) No
- (ii) Redundant
- (iii) Redundant
- (iv) Redundant
- (v) Redundant
- (vi) No.

REASONS

15. Initially the plaintiffs tendered the affidavit of their witness Mr.S.R.Ganguly in lieu of examination-in-Chief dated 25.1.2007 but however, by tendering withdrawal application (Exh.3), they have informed the court that they have withdrawn the affidavit of evidence dated 25.1.2007 of Mr. S. R. Ganguly and it be held that the plaintiffs do not desire to lead any oral or any other evidence. The defendants have examined four witnesses on their behalf. The matter was dragged up to the Hon'ble Supreme Court of India through Civil Appeal No. 1388 of 2006, however, the Hon'ble Supreme Court of India in I.A.No. 4 of 2008 in Civil Appeal No. 1388 of 2006 dated 17.7.2009 (Exh. 100) gave directions that the "The trial court is at liberty to proceed with the trial of the case and decide the matter on merits uninfluenced by the order passed by the High Court". The only order of the Hon'ble High Court placed in the proceedings is the copy of the order of the Hon'ble High Court in Appeal from Order No. 400 of 2003 in Notice of Motion No. 4541 of 2001 in Bombay City Civil Court Suit No. 5560 of 2001. It is thus, in view of the order of the Hon'ble Law of the Land in I.A.No. 4 of 2008 in Civil Appeal No. 1388 of 2006 dated 17.7.2009 with the consent of the parties and their Advocates, I have proceeded to dispose of the suit in hand.

As to issue No. (i):

16. My Learned Predecessor pleased to frame the issue of jurisdiction and both the Learned Advocates submitted arguments at a length. Undisputedly, the Head Office of the plaintiffs company is in Madhya Pradesh and postal address of

both the defendants are also within the jurisdiction of Madhya Pradesh. From the pleadings of the plaintiffs, it appears that one unit of the plaintiffs company is at Mumbai. In para 10 of the plaint, there is reference of Press Note dated 2.10.2001 and in para 20 of the plaint, it has been averted that the office of the plaintiffs company is at Mumbai and the media has time and again carried the defamatory statements which were widely circulated in Mumbai, therefore, this court has jurisdiction to entertain and decide the suit. It is also an admitted fact that Press Note dated 2.10.2001 annexed to the Plaint at page 20 was Prepared in District Khargone, Mdhya Pradesh. Now, the only point which requires to be considered is whether Press Note dated 2.10.2001 prepared in Madhya Pradesh was circulated in Mumbai City.

17. Shri M.A. Desai, the Learned Advocate appearing on behalf of the defendants has invited my attention towards Para 10 and 20 of the plaint (Exh. 1) and submitted that although in para 20, there is reference that the Press Note was widely circulated in Mumbai, there is no evidence to substantiate the same. He is justified in submitting that no evidence is coming forth from the plaintiffs side in order to substantiate their case. Needless to say that whatever evidence by way of affidavit and documents led by the plaintiffs company, were withdrawn by themselves by tendering withdrawal application (Exh. 3). If once, the plaintiffs withdraw the evidence of whatever nature by tendering withdrawal application (Exh. 3), then nothing is left in favour of the plaintiffs which can be said the evidence led on their behalf. As against this, the defendants have examined four witnesses on their behalf and D.W.1 Chittaropa Palit in para 4 of examinatin-in-chief (Exh.4) has categorically denied the averments made by the plaintiffs in so far as the jurisdiction of this court is concerned.
18. Shri M.A. Desai, has rightly invited my attention towards para 3 from the affidavit of evidence of D.W.1 Chittaropa Palit (Exh.4) and submitted that averments made in the said affidavit of D.W.1 Chittaropa Palit have gone virtually unchallenged, therefore, need to be considered. D.W.1 has stated in para 3 of affidavit that Press Note dated 2.10.2001 was never published in any where else. D.W.1 Madhya Pradesh or in Maharashtra or any where else. D.W.1 has been cross-examined at a length, more precisely, para Nos. 93 to 97 of his cross-examination are material but nothing has been elicited from his mouth which can be said fatal to the defence taken by the defendants. True, it is that this gentleman has admitted that Narmada Bachao Andolan has their own Website but however, that itself is not enough to jump to the conclusion that Press Note was flashed through that Website and anybody opened the Internet, came across the said Press Note in the Mumbai City. The Learned Advocate for the defendants is further justified in submitting that there is no evidence at all to substantiate that the Press Note dated 2.10.2001 was ever published and circulated either in any newspaper or on the Internet in Mumbai City. What were the reasons behind withdrawing the evidence of the witness of the plaintiffs by tendering withdrawal application (Exh.3) are best known to them but the fact remains that after withdrawal of the evidence nothing is remained in favour of the plaintiffs to substantiate their case.

19. Shri Solee Cooper, the Learned Advocate appearing on behalf of the plaintiffs emphasized on the observations of the Hon'ble Bombay High Court in the Appeal From Order No. 400/2003 dated 25.7.2003 but however, the Learned Advocate appearing on behalf of the defendants has submitted that as the Hon'ble Supreme Court has directed to decide the matter finally on its own merits without being influenced by the order of the Hon'ble High Court, the submission made on behalf of the plaintiffs are totally misplaced. Shri Solee Cooper, has submitted that Press Note was released and it was widely circulated including in Mumbai and therefore this court has jurisdiction to decide the suit in hand. Shri Solee Cooper, has submitted that in the case of defamation the place where the statement was made or released is important but however, the place of circulation is also equally important therefore, although the Press Note was prepared in Madhya Pradesh, as it was circulated in Mumbai, this court has jurisdiction to try the suit. Needless to say that there is no evidence at all in order to substantiate that whatever statements were released on behalf of the defendants on 2.10.2001 in Madhya Pradesh were circulated in Mumbai either in newspapers or on the Internet. Not a single newspaper is coming forth to show that Press Note released by the defendants was circulated therein. Similarly, nobody is coming forward including any official from the plaintiffs company to show that anybody in Mumbai came across the statements through the Internet. In view of above, it is very difficult to digest the submissions advanced on behalf of the plaintiffs. I am in concurrence with the submissions advanced on behalf of the defendant that in absence of cogent and reliable evidence, the court cannot jump to the conclusion that the statements so made on 2.10.2001 in Madhya Pradesh were circulated in Mumbai either in newspapers or through the Internet.
20. Shri M.A. Desai, has placed reliance on the rulings reported in **AIR 1960 Orissa 126, 1983(2) BOM CR 129, AIR 1994 Cri. L.J. 3510, AIR Cri L.J. 1954, judgment in Criminal Original Petition No. 2205 of 2006 dated 4.4.2006 by the Hon'ble High Court of Madras and in the judgment published by United States Court of Appeals for the Fourth Circuit.** So far as the First Five Judgments are concerned, ratios laid therein are identical. I have already held that there is no evidence that Press Note dated 2.10.2001 prepared at Madhya Pradesh was circulated in Mumbai and therefore, Court cannot jump to the conclusion that this court has jurisdiction to entertain and decide the suit. In the aforesaid all the citations, it has been held that the court in whose jurisdiction the defamatory statements are circulated has jurisdiction to entertain the case. In the case in hand, the plaintiffs failed to establish that the statement was circulated in Mumbai and therefore, the rules laid in the aforesaid citations perfectly apply to the case in hand. However, Shri Solee Cooper, also placed reliance on those judgments and submitted that considering the principles laid in those citations, it can be held that this court has jurisdiction to entertain and try the suit. If the plaintiffs would have established the fact that Press Note was circulated in Mumbai in any manner, then certainly, the submissions made on behalf of the plaintiffs could have been accepted but as there is no evidence to that effect, I am unable to accept the submission made on behalf of the plaintiffs. However, I am in agreement with the submission made by Shri Solee Cooper that Laws of our county are different than the prevailing Laws in America therefore, the judgment of

United States of America relied on by the defendants, in my opinion, is of no help to them. In view of above, I hold that this court has no jurisdiction to entertain and decide the suit and accordingly, I give my finding to the above issue in the negative.

As to issue Nos. (ii) to (v):

21. As this court has no jurisdiction to entertain and decide the suit, issue Nos. (ii) to (v) which need to be decided on merits, in my opinion, become redundant and as such, I give my findings to the same accordingly.

As to Issue No. (vi) :-

22. In view of my finding to issue no. (i) in the negative, the plaintiffs are not entitled for any relief at the hands of this court therefore I give my finding to the above issue in the negative.
23. Having regard to the facts and circumstances on record, specially the finding of this court to issue No. (i) in the negative, the suit deserves to be dismissed but however, with no order as to costs. With this, I processed to pass the following order:-

ORDER

Suit stands dismissed without costs.

Decree be drawn up accordingly.

Sd/-

17.2.2010

(Vasant R. Jadhav)
Judge,
Gr. Bombay