

Case Note: Carbon, resin and turpentine industries set up by respondents release gaseous and solid waste creating air, water and noise pollution in the locality. Residents of locality have filed petition seeking the industrial units be directed to be closed down. The Respondents have not set up these units in accordance with the control measures necessary to be complied with before setting up such an industrial unit so that the hazardous substances are not emitted from these units beyond the prescribed standards. The court directs the Deputy Commissioner, Udhampur, to hold an enquiry into the matter, to see as to whether all the respondent industrial units are in functional, whether petitioners had proper permission to build houses in an industrial area, etc. It is the duty of said authorities to increase the public's awareness about the safety measures which should be adopted for protecting our environment and the lead must be taken by the different authorities in the Central and State departments.

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IN THE HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

Decided On: 16.11.2009

Mangu Ram and Ors.

Vs.

State of Jammu & Kashmir and Ors.

Hon'ble Judges:

Sunil Hali, J.

JUDGMENT

Sunil Hali, J.

1. Respondents 7 to 10 who are engaged in the business of manufacturing of carbon are said to have established the said industry at Thanda Paddar, tehsil and district Udhampur. Petitioners who are the residents of the area have filed the present petition seeking a direction to the respondents State authorities for closing the said industrial units of aforementioned respondents on the ground that the said Units have resulted in polluting the entire area.

2. The case as projected by the petitioners is that the said industrial units firstly manufacture charcoal from cheer timber which is collected from the nearby forest area. By putting the said timber to fire, the charcoal is prepared which process results in emitting huge smoke causing air pollution. Thereafter the said charcoal is used in manufacturing carbon powder by grinding the same which process also results in polluting the air. It is further stated that the respondent No. 7 has also established a Resin and Turpentine industry in the area under the name and style of M/s Rajindra Resin and Turpentine. It is stated that the resin collected from the forest area is given heat by using fire wood and the said process not only emits smoke but also results in foul smell in the area as a result of which it has become difficult for the persons

including the petitioners to live in the vicinity being the residents of that place where the industrial units have been installed.

3. The further case projected by the petitioners is that the private respondents have not only set up the industrial units in the area which can be termed as a residential area but have also installed Generator sets of the capacity of 26.5 KW which result in noise pollution in the area. It is stated that the houses of the petitioners as also other persons who reside in the said area are about 300 to 400 ft. away from the industrial units of these private respondents, and therefore, it has become difficult for them to live in the area. It is stated that the industrial units set up in the area are being run without the requisite permission from the authorities concerned which is necessary under the Environment Protection Act, 1986. It is further stated that number of representations have been made to the authorities concerned from time to time but no action has been taken in this regard by the said authorities. Respondents 7 to 10 in their objections have stated that so far as the units installed by respondent Nos. 7 and 8 are concerned, the same are nonfunctional due to no availability of the required raw material in the shape of Chir Charcoal either from the Forest department or from the open market. It is stated that the units otherwise have been established in the Industrial estate, Udhampur, which was totally isolated from human inhabitation but the petitioners without obtaining any permission from the concerned authorities have constructed their houses for residential purposes in the said vicinity over the agriculture land and the answering respondents who have obtained the requisite permission for establishing their units should not be made to suffer. It is stated that the respondent Units are registered with the District Industries Centre, Udhampur, for putting up their respective units with the approved trade of industrial productivity. It is further stated that the establishment of the industrial units of the answering respondents are in the interest of public at large also because it has generated employment avenues for the people of Udhampur.

4. So far as industrial unit of respondent No. 9 is concerned, it is stated that the said respondent has obtained no objection from the Principal Chief Conservator of Forest, J&K Government vide No. PCCI/Lease/NOC/U/25155 dt. 31st of Jan' 02, for carrying on the business of manufacturing activated Carbon. The said respondent is also said to have applied to the District Officer, Pollution Control Board, Udhampur, who has forwarded the case to the office of Regional Director, State Pollution Control Board, Jammu, for requisite no objection. It is thus submitted that the industrial units have been established taking due care and caution so far as installing pollution devices is concerned so that there is no air pollution in the area.

5. When this matter was taken up on 20th of Sept' 07, this Court directed District Magistrate, Udhampur, for filing status report in respect of the industrial units of the private respondents 7 to 10. In pursuance to the aforementioned order, the District Magistrate concerned has filed the status report dt. 19th of Oct' 07, stating therein that all the three factories mention of which has been made in the writ petition are being run by Sh RK Gupta respondent No. 10. So far as Rajinder Rosin & Turpentine Industry is concerned, the same is said to be located in the Industrial Estate, Udhampur, and has been granted the licence for manufacturing activated Carbon and Pinetar. The said factory is reported to be closed for the last nine years because of non availability of raw material. So far as No objection from the J&K Pollution Control Board is concerned, the same is said to have been issued by the concerned authority on 24th of Jan' 01, having validity for the period ending March' 01, and thereafter, the

same has not been got renewed due to the reason that the factory is closed. It is, however, stated in the report that No Objection from the Forest department has not been obtained for carrying out the operation in the area.

6. So far as industrial units namely M/s Chinar Fine Chemicals and M/s Unique Industrial Carbon, who have been arrayed as respondents 8 and 9 in the writ petition are concerned, the said units have been registered with the District Industries Centre, Udhampur, on 10th of Feb' 94 and 19th of March' 98, respectively. The unit of M/s Chinar Fine Chemicals is said to be closed because of non availability of raw material. The Unit is also said to have obtained No objection from the Pollution Control Board on 23rd of Sept' 96, valid upto December' 96 only but No Objection is said to have not obtained from the Forest department. The third Unit namely M/s Unique Industrial Carbon is said to be functional having permission from the Principal Chief Conservator of Forests vide its order dt. 31st of Jan' 02. But the Pollution certificate has not been obtained by the said Unit even though, an application in this regard is said to have been moved by the concerned proprietor of the Unit to the office of Regional Director, State Pollution Control Board, Jammu. It has further been mentioned in the Status report that all the three units are located well within the boundary of Industrial Estate Udhampur. It is, however, stated that number of residential houses have been constructed in the vicinity of these factories as a result, the inhabitants of the area are facing lot of difficulty due to health hazard pollutants being emitted on account of operation of M/s Unique Industrial Carbon Factory as no pollution device has been fitted to reduce or refine the content of carbon.

7. It be seen that there has been an overall development in every aspect of the human life for which all of us are fully aware and every step of ours is to see how best we can achieve in order to live a luxurious life but at the same time, even though, we notice that with the efforts put in by us for overall development, the quality of our environment is declining day by day. We are performing no activity to save our environment. Due to increase of air, water and noise pollution to a great extent every day, there is loss of vegetal cover and excessive concentration of harmful chemicals in the atmosphere and in food articles, resulting in environmental threat to human life. In the wake of modern scientific and technological developments, the relationship between man and the environment is undergoing profound changes which result in great danger to the human society. In the United Nations Conference on Human Environment which took place at Stockholm in June, 1972, following proclamation was made:

Man is both creature and moulder of his environment which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has been reached when through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment, the natural and the manmade, are essential to his well-being and to the enjoyment of basic human rights even the right to life itself.

2. The protection and improvement of the human environment is a major issue which affects the well being of peoples and economic development throughout the world; it

is the urgent desire of the people of the whole world and the duty of all Governments.

8. It was keeping in view the growing environmental hazards that the Parliament enacted the Water (Prevention and Control of Pollution) Act, 1974, and also The Environment (Protection) Act, 1986, which is applicable to the State of J&K also. In terms of Section 3 of the said Act, the Central Government has the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution whether it is water, air or noise pollution.

9. Section 3(2) deals with the measures which have to be adopted with respect to the matters enumerated in Clauses (i) to (xiv) of the said Section. In terms of Section 3(2)(iv), the Central Government may lay down standards for emission or discharge of environmental pollutants from various sources whatsoever. In terms of Section 5 of the said Act, power can be exercised by the Government with respect to the closure, prohibition or regulation of any industry, operation or process or stoppage or regulation of supply of electricity or water or any other service. In terms of the provisions of the Act of 1986, referred to above, the State Government has to see as to whether any activity is being carried out by any industrial unit which leads to polluting the atmosphere and if it is so, action in terms of Section 5 of the aforementioned Act has to be taken against the said unit and this has to be done in order to protect the right to environment under Article 21 of the Constitution otherwise the purpose of the Act would be defeated. What has been observed by the Apex Court in this regard in the case reported as AIR 2004 SC 867, N.D. Jayal and Anr. v. Union of India and Ors., may be noticed as under:

To ensure sustainable development is one of the goals of Environmental Protection Act, 1986 (for short 'the Act) and this is quiet necessary to guarantee 'right to life' under Article 21. If the Act is not armed with the powers to ensure sustainable development, it will become a barren shell. In other words, sustainable development is one of the means to achieve the object and purpose of the Act as well as the protection of 'life' under Article 21. Acknowledgment of this principle will breath new life into our environmental jurisprudence and constitutional resolve. Sustainable development could be achieved only by strict compliance of the directions under the Act. The object and purpose of the Act 'to provide for the protection and improvement of environment' could only be achieved by ensuring the strict compliance of its directions. The concerned authorities by exercising its powers under the Act will have to ensure the acquiescence of sustainable development. Therefore, the directions or conditions put forward by the Act need to be strictly complied with. Thus the power under the Act cannot be treated as a power simpliciter, but it is a power coupled with duty. It is the duty of the State to make sure the fulfilment of conditions or direction under the Act. Without strict compliance, right to environment under Article 21 could not be guaranteed and the purpose of the Act will also be defeated. The commitment to the conditions thereof is an obligation both under Article 21 and under the Act.

10. In terms of Article 48A of the Constitution of India, the State is bound to take every step for protecting and improving the environment and also to safeguard the forests and wild life of the country and under Article 51A, it is the fundamental duty

of every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures.

11. In AIR 2005 SC 3136, In Re: Noise Pollution Implementation of the Laws for Restricting Use of Loudspeakers and High Volume Producing Sound Systems with Forum, Prevention of Env. & Sound Pollution v. UOI and Anr., the Apex Court while dealing with the matter involving noise pollution, observed as under:

Article 21 of the Constitution guarantees life and personal liberty to all persons. It is well settled by repeated pronouncements of this Court as also the High Courts that right to life enshrined in Article 21 is not of mere survival or existence. It guarantees a right of persons to life with human dignity. Therein are included, all the aspects of life which go to make a person's life meaningful, complete and worth living. The human life has its charm and there is no reason why the life should not be enjoyed along with all permissible pleasures. Anyone who wishes to live in peace, comfort and quiet within his house has a right to prevent the noise as pollutant reaching him. No one can claim a right to create noise even in his own premises which would travel beyond his precincts and cause nuisance to neighbours or others. Any noise which has the effect of materially interfering with the ordinary comforts of life judged by the standard of a reasonable man is nuisance. How and when a nuisance created by noise becomes actionable has to be answered by reference to its degree and the surrounding circumstances, the place and the time.

12. There is no doubt that setting up of any industrial unit in any part of State is of great importance as it leads to generating the revenue as also creates employment avenues for the local people but at the same time it cannot be at the cost of degrading the environment, destroying the ecology and posing a health hazard to the public at large. The State authorities in this regard have to take every step to ensure that there is a complete environmental protection. An important role in this regard has to be played by the State Pollution Control Board, who is to improve the quality of the air and to prevent, control and abate air pollution in the State.

13. As indicated above setting up of an industrial unit is must for the development of a State but the authorities concerned in this regard have to keep in mind the principle that such a development is ecologically sustainable as has been held by the Apex Court in the case reported as AIR 2002 SC 1696, M.C. Mehta v. Union of India and ors. The observations made in this regard by the Apex Court may be noticed as under:

9. One of the principles underlying environmental law is that of sustainable development. This principle requires such development to take place which is ecologically sustainable. The two essential features of sustainable development are

(a) the precautionary principle and

(b) the polluter pays principle.

10. The "precautionary principle" was elucidated thus by this Court in Vellore Citizens Welfare Forum v. Union of India and Ors (1996) 5 SCC 647, inter alia, as follows:

(1) the State Government and the statutory authorities must anticipate, prevent and attack the causes of environmental degradation.

(2) 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.

(3) The "onus of proof" is on the actor or the developer to show that his action is environmentally benign.

(4) It cannot be gainsaid that permission to use automobiles has environmental implications, and thus any "auto policy" framed by the Government must, therefore, of necessity conform to the Constitutional principles as well as overriding statutory duties cast upon the Government under the EPA.

(5) The "auto policy" must, therefore,

(a) focus upon measures to "...Anticipate, prevent and attack.... the cause of environmental degradation in this field.

(b) in the absence of adequate information, lean in favour of environmental protection by refusing rather than permitting activities likely to be detrimental.

(c) Adopt the "precautionary principle" and thereby ensure that unless an activity is proved to be environmentally benign in real and practical terms, it is to be presumed to be environmentally harmful.

(d) Make informed recommendations which balance the needs of transportation with the need to protect the environment and reserve the large scale degradation that has resulted over the years, priority being given to the environment over economic issues.

11. It is on the basis of above principle emphasized in the above judgments passed by the Apex Court, the case in hand has to be dealt with. In the present case, as noticed above, the grievance projected by the petitioners who are the inhabitants of the area where the respondent industrial units have been established, is that by the activity performed by the said units which are engaged in the business of manufacturing the Carbon, Resin and Turpentine, the surrounding environment has been polluted due to the smoke and foul smell emitted from the said units. The status report filed by the District Magistrate concerned reveals that the respondent Units are located within the area specified as Industrial estate. The two industrial units namely Rajinder Rosin & Turpentine and M/s Chinar Fine Chemical are said to be closed due to non availability of raw material. It is, however, stated that the No objection from Pollution Control Board has been obtained by these units for a limited period and there is no renewal of the same but so far as No objection from the Forest department is concerned, the same has not been obtained. The third unit namely M/s Unique Industrial Carbon is in operation but no effort has been made by the concerned to install pollution control device in the said unit. The petitioners, on the other hand, by way of objections to the status report have pleaded that all the three units are in operation to which effect there is no denial either on the part of respondent Units or official respondents. Therefore, how these units are being allowed to run when they have not fulfill the requisite conditions regarding installation of pollution control devices and have not obtained necessary permission from the Forest department, is not understandable. This would lead to nothing but a total remissness on the part of authorities concerned in the performance of their legal duty.

12. The other aspect of the matter which can also not be ignored is that the private respondents have taken a plea that the industrial units set up by them are in the industrial area but the petitioners have raised their residential houses over the agricultural land without any permission which land is adjacent to the industrial estate. In this regard, the concerned Deputy Commissioner has to look into the matter and enquire as to whether the residential houses have been constructed over the agricultural land without permission or not and whether these residential houses existed on spot prior to the installation of the industrial units thereafter. After enquiry, necessary action in accordance with the law has to be taken by him. But even otherwise, the private respondents who have installed their units, though, in the industrial area and have been registered with the concerned District Industries, they cannot escape their liability to set up these units in accordance with the requirement and other requisite conditions which are necessary to be complied with before setting up such an industrial unit so that the hazardous substances are not emitted from these units beyond the prescribed standards.

13. For the reasons mentioned above, this petition is admitted and disposed of with the following directions:

1/That the Deputy Commissioner, Udhampur, shall hold an enquiry into the matter, to see as to whether all the respondent industrial units are in functional;

2/What is the update regarding installation of pollution control devices by the said units and whether the requisite permission has been granted by the authorities concerned in the Forest Department and State Pollution Control Board and whether the norms prescribed for granting such permission have been fully complied with by the said authorities;

3/In order to see that the hazardous substances emitted from the said units are not beyond the prescribed standards, the Deputy Commissioner, Udhampur, with the assistance of the authorities concerned in the State Pollution Control Board shall collect the samples of air, water, soil and other substances for analysis or test and submit its report to this Court within a period of two months from the date of receipt of a copy of this order;

4/The Deputy Commissioner, Udhampur, shall also hold an enquiry regarding construction of residential houses over the agricultural land near the industrial units set up by the respondents to see as to whether any permission in this regard has been obtained by the concerned persons who have raised such construction and whether this is permitted under rules. The report in this regard shall also be submitted to this Court within the aforementioned period.

14. The report will indicate as to how many residential houses have been constructed in the area adjacent to the said industrial units after the same were established by the respondents; 5/The petitioners as also the private respondents shall be at liberty to approach the Deputy Commissioner, Udhampur, who shall afford them an opportunity of hearing in the matter before submitting his report to this Court. Before parting with this order, it would be apt to mention that it is the responsibility of every human being to save and improve the natural wealth and environment in order to make the earth worth living. Taking into consideration the present scenario and the unnatural resources created by the human being, it becomes all the more important to use these resources with utmost care and caution. As said by me, it is the duty of every human

being to take initiatives to protect the environment but more responsibility in this regard lies on the shoulders of those authorities who are directly linked with the State machinery to look into such aspects. It is the duty of the said authorities to make the general public aware about the safety measures which should be adopted for protecting our environment and the lead role in this regard as stated has to be played by the different authorities in the Central and State departments.

15. As indicated above, let the report be submitted by the Deputy Commissioner within the aforementioned period. The writ petition for that purpose shall be kept alive and listed in the 1st week of Feb' 10.

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