

Case Note: Petitioner seeking to ensure that adequate steps are taken to ensure that soft drinks that sold in the market are not contaminated. The Court on the basis of the presentations of the State Authorities and the soft drink companies came to the conclusion that the matter was being taken very seriously by them and that they were undertaking adequate steps to ensure the safety of the soft drinks. A subsidiary issue that was raised was with regard to the depletion and contamination of groundwater that was being caused to the excessive withdrawal by the bottling plants of these soft drinks. The court decided not to rule on the issue on the ground that the same would come within the purview of the authority being setup under the State Groundwater Bill. The Court also stressed on the importance of ensuring adequate rainwater harvesting measures.

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IN THE HIGH COURT OF CALCUTTA

W.P. Nos. 12118(W) and 14938(W) of 2003

Decided On: 06.05.2005

Appellants: **Howrah Ganatantrik Nagarik Samity and Ors.**

Vs.

Respondent: **State of West Bengal and Ors.**

Hon'ble Judges:

V.S. Sirpurkar, C.J. and Asok Kumar Ganguly, J.

Counsels:

For Appellant/Petitioner/Plaintiff: Subhas Dutta, Adv. and Party in Person

For Respondents/Defendant: Rabilal Maitra, Debasish Kar Gupta, Somenath De, Sudipto Sarkar, Ajoy Roy and Neelima Chatterjee, Advs.

For P.C.B. : Manick Ch. Das and Subrata Banerjee, Advs.

For Bengal Beverages (P) Ltd. & Diamond Beverages (P) Ltd. : Jayanta Mitra, Pradeep Sancheti and Sayantan Basu, Advs.

For Intervener : Jayjit Ganguli, Ashis Kumar Dutt and Deb Dulal Nayak, Advs.

For PepsiCo India Holdings (P) Ltd. : Bhaskar P. Gupta, Dipayan Chowdhury, Chandranath Dutta and Suvradal Choudhury, Advs.

Subject: **Constitution**

Catch Words

Acts/Rules/Orders:

Municipal Act

JUDGMENT

1. This public interest litigation which is filed by Howrah Ganatantrik Nagarik Samity and others pertains to various subjects.

2. To begin with it pertains to **water pollution** which was normally found in the drinking water. It was based on few facts and some citizens who were very vigilant about the quality of the drinking water used by mineral water companies as also by the companies selling soft drinks like Coca Cola, Pepsi etc.

3. To begin with the thrust of the petition was on the contamination found in the soft drinks which are sold in the State of West Bengal. The petition included number of prayers. They are as under :

"a) A writ of and/or in the nature of mandamus commanding the respondents, their officers, agents, men, subordinates, successors-in-office to take steps, action and/or measure immediately for the following;

i) To direct the concerned respondents to initiate all required steps/measures that are necessary for the wholesome soft drinks being consumed by the people at large;

ii) To direct the concerned respondents to take immediate steps to stop any distribution and sale of contaminated soft drinks in the State of West Bengal;

iii) To direct the concerned respondents to take appropriate immediate steps for the manufacturing and supply of soft drinks having standard quality in order to stop/prevent **health** hazard to the people;

iv) To direct the concerned respondents to immediately undertake the testing of the bottle/canned soft drinks now being marketed in the State of West Bengal and publish such test reports for the benefit of the people at large;

v) To direct the concerned respondents to ensure display of important and relevant information on the containers of the soft drinks such as date of manufacture, expiry date, batch No., maximum retail price etc. for the benefit of the consumers;

vi) To direct the concerned respondents to take immediate steps against selling of spurious soft drinks in the market of the State of West Bengal;

vii) To direct the concerned respondents to carry out the tests of soft drinks samples on a regular basis so that the manufacturers can become cautious and careful in their operations in future.

b) A writ of and/or in the nature of prohibition forbidding the respondents, their officers, agents, men, subordinates, superiors in the office to continue with the supply and distribution unwholesome soft drinks to the people at large;

c) Rule Nisi in terms of the aforesaid prayer and make the rule absolute;

d) Any other or further writ or writs, order or orders, direction or directions."

4. From these prayers it will be clear that the petitioner wanted some steps to be taken for seeing that the soft drinks which are sold in the market are not polluted or contaminated. The petitioner also sought for regular testing of the bottle or can of soft drinks which are from time to time sold in the open market retail as well as otherwise. The petitioner also sought for a direction and thereby wanted a control on the quality of the soft drinks which were sold in the market. The petition was entertained and was heard on several occasion.

5. During the course of argument it so turned out that the quality of the water was also getting affected on account of the uncontrolled use of the ground water and it was expressed that the basic problem was on account of the water level going down every day on account of the uncontrolled use of the ground water and indiscriminate extraction by various concerns, companies selling soft drinks.

6. In so far as the contamination or inferior quality of soft drinks are concerned some soft drink concerns like Coca-Cola and Pepsi, etc. came up with the affidavit-in-opposition and tried to point out that nothing was wrong with Coca-Cola or other soft drinks which are being sold in the State of West Bengal. We must mention an affidavit by M/s. Hindustan Coca-Cola Beverage Pvt. Ltd. who sought to intervene in the matter. The affidavit on behalf of the Coca-Cola suggests that there is nothing wrong with the drink that it provides and that there is nothing which would affect the public health. A lot of technical data has been filed along with the affidavit and we find that the said concern has taken the matter very seriously, so as to explain in details that at least their drink, i.e., Coca-Cola would not be dubbed as a drink dangerous to the persons who drink it and that there was no public health element attached to that drink.

7. Taking queue, even another major player in the area like Pepsi, has also joined the fray and they have also come up before us suggesting that their drink also did not contain any element detrimental to the public health. We will not go into that subject because that will be a subject to be considered firstly by Public Health Engineering Department of the State Government as also the other authorities dealing with food and water. We do express the hope that timely inspection are taken by the concerned authorities of the State Government and a rigid control is kept on the quality of the soft drinks which are allowed to be sold in the market to the public.

8. Mr. Kar Gupta, appearing on behalf of the State of West Bengal, assures us and also Mr. Das, who appears for the Pollution Control Board, that quality control is being rigorously done. We express hope that in so far as the quality of the drinking water is concerned the State would take very firm steps to see that the general public gets clear and uncontaminated water. We are convinced about the bona fides of the State Government as well as the other authorities that they would in reality take some effective steps. It will not be our endeavour to find out through this litigation as to which portion of the State of West Bengal is suffering from the contaminated ground water and what is the percentage of contamination in the ground water in different areas. We are aware that there are laboratories working in the State of West Bengal to work on the quality of the ground water. We would leave this subject at them.

9. During the pendency of the petition it turned out that there are certain bottling plants run by M/s. Hindustan Coca-Cola Beverages Private Limited also by Pepsi. It has come that Pepsico India Holding Private Limited used the ground water extensively for their plant which is located in Sonarpur and seasonal plant at Panagarh. It is revealed that Coca-Cola bottling plants are three in number. They are (1) M/s. Hindustan Coca-Cola Beverages Private Limited, Raninagar Industrial Growth Centre, P.O., Mouza Palkata, P.S. & District - Jalpaiguri, (2) M/s. Bengal Beverages Limited, Durgapur Expressway, P.O. Dankuni Coal Complex, District-Hooghly and (3) M/s. Diamond Beverages Private Limited, P-41, Taratala Road, P.O. Brace Bridge, P.S. Taratala, Kolkata 700088.

10. The question came of the depleting water level on account of the user on the ground water by these concerns as also by the other concerns like mineral water industries or like any other industries using the ground water, i.e., the drinking water. We have been today informed by the learned Counsel appearing on behalf of the parties that the State of West Bengal has taken definite steps for management, control and regulation of ground water in the State of West Bengal and a Bill has already been introduced on 3rd March, 2005. We have seen the Statement of Objects and Reasons of the Bill which is as follows:

"Statement of Objects and Reasons

Water and air are the prime requirements for survival of any life on the earth. Although the ground water resources are freely available in the State, yet, availability of quality water has already become scarce in many areas of West Bengal.

2. There are thousands of deep tube-wells, medium tube-wells and light-duty shallow tube-wells installed by the State Government. Presently, more than 80 per cent irrigation is done through minor irrigation, of which more than 95 per cent irrigation is done from ground water resources. The sinking of shallow tube-wells with submersible pumps are going on unabated in private sector and if extraction of ground water is not controlled immediately and positive steps are not taken to increase the ground water levels, the public at large will face a critical situation in future. Since in the few Blocks of the State of West Bengal, water has been highly contaminated with arsenic fluoride, and its level of iron is high, which is creating several chronic problems and therefore, the control of ground water is considered very essential.

3. In this context, it may be pertinent to mention that in the year of 1996, the Hon'ble Supreme Court of India, being concerned with the rapid deterioration of ground water levels in an alarming manner, had requested the matter to be examined by experts and invited suggestions and recommendations for checking further decline of ground water levels. The Ministry of Water Resources and the National Environment and Engineering Research Institute, Nagpur (NEERI) had recommended for a holistic approach for water management including creation of a Central Water Resources Management Authority for the purpose of regulating and controlling indiscriminate extraction of ground water and preserving and protecting the ground water resources.

4. To cope with the situation, some measures at the Administrative Department have already been undertaken for restricting and controlling the installation of tube-well with submersible pumping devices, but those measures have been found to be inadequate and are attracting too much of legal complications jeopardizing the very objectives."

11. The parties and more particularly the State Government appears to be extremely serious in the matter of ground water preservation which is clear from the above Statement of Objects and Reasons. The Bill seems to have been made on the basis of model Bill for protection of ground water drafted by the Central Government and circulated to the States with a request to enact suitable legislation for the States to regulate and preserve the ground water level in the States. We have gone through the Bill cursorily and found that an authority is going to be created to control the use and preservation of the purity of the ground water. The Bill, when enacted, would definitely change the whole scenario at least in so far as this writ petition is concerned. Therefore, we do not propose to go ahead with other issues like toxicity or depletion of ground water or contamination of ground water etc. We are convinced that a proper authority is being created for the management of the ground water.

However, we cannot ignore one other factor which is brought to our notice by Mr. Dutta and that would be about the measures taken in respect of the rain water harvesting which undoubtedly would contribute to the maintenance of the ground water. An affidavit was sworn before us wherein paragraph 13 suggests that in the matter of legislation in the field, keeping in mind the example of Tamil Nadu the department of Municipal Affairs, Government of West Bengal is contemplating to amend the Municipal Act making it compulsory to provide for rain water harvesting in structures/selected buildings in the municipal areas.

12. We have no reason to dispute the bona fides of the State of West Bengal which has come before us and declared in no uncertain terms that definite steps would be taken in respect of rain water harvesting. We are also informed by way of an affidavit that the major players like Coca-Cola and Pepsico have already taken definite steps or are taking steps for introducing the rain water harvesting system in their plants. We do expect and hope that lie the major players, Coca-Cola and Pepsico, other concerns in the State of West Bengal do take such steps for rain water harvesting at least considering that they are the major users of the ground water on the commercial basis or for commercial purposes. We do trust and hope that the State of West Bengal via the aforementioned Bill would

take definite steps to preserve the ground water by rain water harvesting and making that system compulsory for all these concerns who are the major users of the ground water for commercial purposes. We are convinced from the affidavit which has been filed before us today that the two named major users like Coca-Cola and Pepsico have already taken those steps. Of course, those steps would be subject to the supervision of the State Government through its officials. Once this is obtained, we do not think we should keep the petition pending for any other purposes. The petition is thus disposed of in the light of the observations made above. The other writ petition is also disposed of.

13. We appreciate the efforts by Mr. Dutta taken in this behalf. We also appreciate the stand taken by Coca-Cola and Pepsico. We also appreciate the seriousness shown by the State Government and Pollution Control Board to this very major problem.

14. Let xerox plain copy of this order duly countersigned by the Assistant Registrar (Court) be given to the learned Counsel for the parties on the usual undertaking.

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