

Aruna Mills Vs. State and ors.

Aruna Mills Vs. State and ors.

SooperKanoon Citation : sooperkanoon.com/766388

Court : Rajasthan

Decided On : Apr-11-2008

Reported in : RLW2008(3)Raj2477

Judge : Munishwar Nath Bhandari, J.

Appellant : Aruna Mills

Respondent : State and ors.

Judgement :

Munishwar Nath Bhandari, J.

1. This bunch of writ petitions involves common issues for decision, thus, at the request of all the learned Counsel appearing for the parties, the matter was heard finally and is being decided by this Judgment.
2. The writ petitions, not only involves a challenge to the orders passed by the Rajasthan State Pollution Control Board, but the further prayer is that the petitioner-industries should not be closed/shifted to the newly set up industrial areas, unless adequate infrastructure is provided by the RIICO.
3. For the purpose of considering the issues involved in the present matters, it is necessary to refer certain facts material to the case.

4. Looking to the discharge of trade effluent by the textile industries in Pali, a public interest litigation was filed by Manaveer Nagar Vikas Samiti. The said D.B. Civil Writ Petition No. 759/2002 was decided by the Division Bench of this Court with the following six directions, which are reproduced for ready reference:

(i) The Pollution Control Board shall immediately make fresh inspection of the Textile Processing Units at Pali and surrounding areas and in case any of the units are found to be creating pollution and not connected to the CETPs shall be closed.

(ii) The units which are creating pollution shall adopt measures to eliminate pollution.

(iii) RIICO shall set up an industrial area at suitable place exclusively for textile processing units. The industrial area must be located at an appropriate distance from residential areas. RIICO shall set up the industrial area within a period of six months and the industry shall be shifted to the industrial area from residential areas immediately thereafter.

(iv) The Trust shall make modification in the CETPs so that the emissions there from are compatible with the norms prescribed by the Pollution Control Board.

(v) The industrial units which are discharging the industrial pollutant on the land or/and river shall be closed forthwith.

(vi) The State shall employ experts to assess the damage caused to the environment and health of the public by the pollution created by the units. On assessment of the damage, the concerned authority shall file a report in this Court within period of eight weeks, whereupon the question of payment of compensation by the units on the principle of polluter pays shall be determined.

From perusal of the directions, in the aforesaid case, what necessarily comes out that if any industrial unit is found creating pollution and not connected with the Central Effluent Treatment Plant (CETP) shall be closed. The further direction is to adopt measures to eliminate pollution by the Industrial Units concerned, apart from a direction to RIICO to set up industrial area at suitable place, exclusively for textile processing units and direction aforesaid was to carry out by the RIICO

within a period of six months. So far as the Trust is concerned, a direction was given for modification of CETP, so that emissions there from are compatible with the norms prescribed by the Pollution Control Board and, importantly, all industrial units were directed to stop discharging industrial pollutant on the land and river. The last direction was regarding assessment of the damage caused to the environment and health. The aforesaid judgment was rendered by the Division Bench of this Court way back in the year, 2004.

5. The judgment aforesaid was rendered by the Division Bench of this Court, after taking note of the fact that due to unarrange setting up of the Industries and untreated discharge of trade effluent, not only ground water is polluted, but it is creating health hazard. The judgment, aforesaid, was, therefore, covering the larger public interest. However, to balance the equities, certain directions were given even to RIICO so that unarranged and unauthorizedly established industries may be established properly in an industrial area. A review petition in the aforesaid case was also filed. However, the same was also decided by this Court vide its judgment dated 14.05.2004, keeping in mind the urgent need to stop degradation of environment and the judgment having been passed in the larger public interest, it needs to be complied with.

6. It is stated by the learned Counsels for the petitioners that petitioner Industries are ready to shift to the newly set up industrial area, however, in absence of proper facilities, shifting of the industries is not possible. Large number of petitioners made applications for allotment of plots in newly set up industrial area and even part payment has also been given to the RHCO, but RHCO could not provide even basic facilities therein, thus there is no default on the part of the petitioner Industries. It was argued that the industry should not be made to suffer, more so, when the most of the industries involve in these writ petitions are otherwise connected with the CETP. The further prayer is that till the RIICO industrial area is properly established, petitioners' industries should not be closed. Same petitioners even made a prayer that industries set up by them should not be ordered to be shifted as land has been converted for industrial purpose. This Court passed two detailed orders in these cases on 28.02.2008 and 04.03.2008 in reference to the decision of the Division Bench in the case of Mahaveer Nagar

Vikas Samiti (Supra). In the order dated 04.03.2008, this Court shown its satisfaction so far as the effort of RHCO in complying with the directions of the Division Bench is concerned and, otherwise, learned Counsel appearing for RHCO submitted that whatever basic facilities are required for an industrial area, to a large extent, the same have already been provided and small shortfall in the required facilities as provided by the RIICO for an industrial area would otherwise be completed within a period of two months, provided petitioner - industries having given allotment, pays the remaining amount and otherwise occupy the plot of land having already demarcated, so that, by the time facilities as provided by RIICO for industrial area, are completed, petitioner - industries may start their work after seeking all necessary clearances, which includes even clearance from the State Pollution Board. It is submitted that despite of reminders given to the petitioners for payment of the remaining amount, the necessary compliance was not made.

7. Learned Counsel appearing for the Pollution Control Board submitted that the Division Bench, in the case referred to above, having directed to setup an industrial area, exclusively for textile industries, within a period of six months, the industries existing at any place, other than industrial area, cannot be allowed to run, more so when they have not even taken consent order from the Rajasthan State Pollution Board for running their industries, therefore, running of the industries, in the present matter, is otherwise in violation of the provision of the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as 'the Act of 1974') therefore, apart from the decision of the Division Bench, even as per the Act of 1974 no petitioner-industry can be allowed to run, merely for the reason that they are connected with CETP. In fact, petitioner-industries have to shift to industrial area with proper set up of treatment plant of pollution to be discharged, so that no industry may cause pollution and, otherwise, the compliance of the judgment of this Court in the case of Mahaveer Nagar Vikas Samiti is to be made.

8. Learned Counsel further contended that after the order dated 9.3.2004 a meeting was convened on 17.3.2004 by various state authorities to work out the modalities for implementation of the said order. In compliance of the decisions taken therein, a survey was conducted on 12.4.2004 by the DIC so as to report

regarding industries situated in non-conforming areas. A copy of the survey report along with the list of industries situated in non-conforming areas is exist as Annexure-7 to the reply. Thereafter, the respondents undertook the task of strengthening the existing CETPs and ultimately, it was realized that despite increasing the efficiency of the CETPs, it was not possible to treat trade effluent beyond the installed capacity and in fact in order to ensure 100% treatment of the trade effluent, the CETPs were required to run at 70% of their capacity or else untreated effluent would pass. Consequently, in the meeting held under Chairmanship of the then Minister dated 4.7.2007 it came to the realized that unless and until industries situated in non- conforming areas are closed and industries situated in conforming areas are made to run as per capacity existing upto 2004 when the mandamus was issued the CETPs will continue discharging untreated effluent. This meeting was attended by everyone including representatives of textile industries as well as representatives of agriculturists. Point No. 5 in the said minutes that have been annexed in all the writ petitions speaks about reviewing capacity of CETPs. It is lastly contended that in view of the judgment of the Hon'ble Apex Court in *Naresh v. State of Maharashtra* 0044/1966 : [1966]3SCR744 , this Court cannot issue any direction contrary to the judgment given in the case of *Mahaveer Nagar Vikas Samiti*, having attained finality and, therefore, it was urged that all these writ petitions are not otherwise maintainable. The relevant portion of the judgment of the Apex Court reads as under:

(C) Constitution of India, Articles 32(2), 136, 226, 215 and 19(1) - Scope of writ - Jurisdiction - Grievance of journalists that judicial order passed by High Court in proceedings inter parties indirectly affected their fundamental rights under Article 19(1)(a) and (g) - Judicial decision of a Court of competent jurisdiction cannot be said to affect fundamental rights - Remedy is by way of appeal against decision and not writ-petition (Per Majority, M. Hidayatullah, J. Contra.) - Judicial orders passed by High Court in or in relation to proceedings pending before it are not amenable to be corrected by certiorari under Article 32(2). (Per Majority, M. Hidayatulla, J. Contra).

9. In that regard, learned Counsel for the petitioners had also produced copies of judgments, wherein similar writ petitions were dismissed, reference of one of such judgment dated 30.1.2008 in similar writ petition No. 649/2008 would be relevant.

10. Learned Counsel appearing for the Trust submitted that the Trust has increased the capacity of CETP and has further issued tender for setting up of a new CETP plant, but, then, those plants should necessarily be used for the existing industries set up in the RIICO industrial area and so far as new industrial area is concerned, industries to be set up therein should come out with their own treatment plant as per the provisions of the Act of 1974 and only after complying with the required provisions of law, the industries should be permitted to work otherwise in compliance of the judgment of the Division Bench, those industries should be closed being in agriculture land, now falling almost in residential area.

11. Learned Counsel appearing for the petitioners stated that establishment of industries does not require more than two months' time, but due to lapse of the RIICO that petitioner could not shift to the newly set-up industrial area.

12. Learned Counsel for the parties made certain suggestions orally, as well as in writing for the purpose of achieving effective compliance of the judgment of this Court in the case of Mahaveer Nagar Vikas Samiti. Out of those suggestions, few suggestions pertain even to rotational closure. Considering all such suggestions and taking note of the judgment of the Division Bench in the case of Mahaveer Nagar Vikas Samiti, it is necessary to dispose of these writ petitions with the following directions:

(i) All the petitioner-industries should shift to the allocated industrial area, within a period of four months, if after depositing the balance amount of the allotment price to the RIICO, so that direction No. 3 of the Division Bench judgment is enforced effectively and without endless delay as all the petitioner-industries are presently working at a place other than an industrial area set up by RIICO, rather large number of industries exist on agricultural lands now falling in the residential areas.

(ii) RIICO will provide all basic facilities in the newly set up industrial area within a period of two months. The facilities aforesaid would be those which are otherwise

provided by the RIICO in general for setting up of an industrial area.

(iii) All the petitioner -industries will pay the remaining amount of allotment price to the RIICO within a period of fifteen days.

(iv) All the petitioner-industries will start their work in the new industrial area only, after conforming the requirement of the Act of 1974 and, thereby, without compliance of the provisions of the aforesaid Act, no industry would be allowed to discharge its trade effluent.

(v) The respondents - Pollution Board, RIICO, Trust coordinating with each other under the Chairmanship of the Collector of Pali will ensure that the compliance of the directions aforesaid is made within the time-schedule and if any industrial unit makes violation of the direction, then immediate action be taken for closure of those industries, effectively and without discrimination. Any lapse in that regard would be viewed seriously by this Court.

(vi) No petitioner - industry will discharge polluted water in the river Bandi.

(vii) The parties would otherwise make strict compliance of the directions of this Court in the case of Mahaveer Nagar Vikas Samiti and, if for that purposes, any industry is to be closed, they may pass the necessary orders if not already passed, so that without further delay, at least now the judgment of the Division Bench is complied with, otherwise it will remain an endless process effecting environmental because even after passing of more than a period of four years, the compliance of the judgment has not been made and if serious action is not taken in the matter, process of compliance of the Division Bench judgment will remain unended, more so when the directions of the Division Bench are in the larger interest of the public and basically to avoid health hazard due to water pollution.

(viii) No industry should allow to operate in violation of the Judgment of the Division Bench and also the provision of Water Pollution Control Act.

13. Learned Counsel appearing for the petitioners, however, submitted that the petitioner - industries should be allowed to continue till some time at least as those industries which are presently connected with CETP plant. However, the prayer

made above is seriously opposed by the learned Counsel appearing for the Pollution Board, as well as for the Trust, stating that such prayer goes contrary to the direction No. 3 of the Division Bench, wherein the direction was to shift the industries from residential area to the industrial area within a period of six months and as the period of more than four has already passed, further continuance of these industries would be in violation of the judgment of the Division Bench. It is otherwise urged by the learned Counsel for the petitioners that the petitioner - industries exist in the agricultural land, for which even conversion is being sought in few cases. However, such a plea cannot be accepted, inasmuch as the Division Bench, while giving the judgment clearly came out with intention to establish proper textile industrial area by RIICO and in view of that, no industry can be permitted to remain, otherwise then in the industrial area, more so when none of the petitioner - industries are having consent to operate industry from the Pollution Board thus it goes even in violation of the Act of 1974. It is further stated Dy learned Counsel for Pollution Board that many of the petitioner industries along with other similarly situated industries have already been disconnected with electricity supply for seeking compliance of the judgment of the Division Bench and, thereby, around 48 industries have already been disconnected with power supply. The said action was taken by the Board as even after making all efforts, petitioner -industries had not made any effort to shift in the industrial area. The learned Counsel appearing for the Trust further stated that due to excess flow of water, the CETP plant existing is unable to treat the entire trade effluent, therefore, mere connectivity of the petitioner - industries with CETP should not mean that even in disregard of the judgment by the Division Bench, petitioner - industries should be allowed to continue. Considering all the aspects, referred to above, what comes out that so far as the compliance of the judgment of the Division Bench is concerned, same is required to be secured effectively and without further delay. Thus, no industry can further be allowed to operate if they are existing and are working in violation of the direction of the Division Bench, as well as the provisions of the Act of 1974, more so, when many of the industries have already been disconnected by the Jodhpur Vidyut Vitran Nigam Ltd. (JWNL) and the judgment of the Division Bench, having attained finality. Shifting of the petitioner - industries in the industrial area needs to be made at the earliest.

14. If the matter is viewed even from another angle to consider the request of the learned Counsel for the petitioners to allow petitioners' industries to work in an area other than industrial area, following serious consequences exists:

(i) Continuance of the industries would then be in violation of direction No. 3 of the Division Bench in the case of Mahaveer Nagar Vikas Samiti.

(ii) None of the petitioners - industry is having consent from the Rajasthan Pollution Board, therefore, continuance of those industries would then be in violation of the provisions of the Act of 1974 and, in those circumstances, this Court is not competent to permit any industry to run in violation of the provisions of law.

15. In view of the above, no petitioner - industry can be allowed to operate during the intervening period if it is operating not only contrary to the judgment of the Division Bench, but also contrary to the provisions of the Act of 1974. The writ petitions are disposed of accordingly with the directions to the parties to abide by the directions otherwise specifically given above.