

MAHARASHTRA POLLUTION CONTROL BOARD
POLICY AND LAW DIVISION

Note in respect of Judgment & Order passed by the Hon'ble High Court of Judicature at Mumbai, Bench at Nagpur in Writ Petition No.4452/2009 – Shri Ghansham Ganpat Dupare and 2 Ors v/s State of Maharashtra and Ors.

Shri Shankarrao Govind Johri had lodged complaint to the Secretary, Ministry of Environment and Forests, Govt. of India, dtd.2/10/2009, stating that M/s.Jejani Pulp and Paper Mills Pvt. Ltd., Wadsa, Dist: Gadchiroli was discharging chemical waste in his field as well as in the fields of other persons, thereby, causing not only the soil pollution but also causing water and air pollution in the surrounding area. He had also specifically stated that earlier also, a number of such complaints filed with the Ministry of Environment and Forests, Govt. of India, but no action was taken. He had further stated that the Maharashtra Pollution Control Board issued certain directions, but, not taken any care to ensure the compliance of those directions, thereby, M/s.Jejani Pulp and Paper Mills Pvt. Ltd. had continued its discharge of polluted effluent into his field and causing air and water pollution in the surrounding area.

Shri Shankarrao Govind Johri alongwith two others had filed the Writ Petition bearing No.4452/2009 before Hon'ble High Court of Judicature at Bombay, Bench at Nagpur for issuance of appropriate directions against the Respondents to take action against the Respondent NO.7 unit as well as for suspension of registration of the Respondent No.7 and directions to NEERI to submit a report about the compliance of the Environmental Norms to the Hon'ble Court, on account of the alleged discharge of polluted effluent into the lands of the Petitioners and thereby, causing pollution thereof. However, the Respondent No.7 i.e. M/s.Jejani Pulp and Paper Mills Pvt. Ltd., disputed the very location of the petitioners' land in the proximity of the Respondent No.7 unit, pointing out that entire land surrounding its unit is owned by the Respondent NO.7 and there is a canal on the border and after the said canal, the lands of the petitioners are located and there is no chance of pollutants seeping in the soil. It was further stated that the Respondent NO.7 has already taken steps to control effluent from the plant with due treatment and there has been no seepages whatsoever.

Maharashtra Pollution Control Board through its Regional Officer at Chandrapur had filed a detailed Affidavit in the month January,2010,giving the details of actions initiated by the Board including the show cause notice issued on 17/02/2009 for having inadequate treatment and disposal arrangements as well as use of coal, causing air pollution, followed by the personal hearing extended to the unit and thereafter, issuance of interim directions about not to use coal as a fuel until necessary permission from the Respondent-Board is taken. The unit was directed to upgrade existing pollution control system within 15 days time and to provide fixed water sprinklers at ash storage area within one month's period to fill up all the lagoons with boiler ash and to utilize maximum industrial effluent in the process by providing recycling system as well as not to discharge any effluent outside the factory premises. After issuance of interim directions, the unit had installed mechanical dust collector and placed order for bag filter and water sprinklers.

M/s. Jejani Pulp and Paper Mills Pvt. Ltd., though, named as Pulp and Paper Mills Ltd. was based on the waste paper processing and was not doing any pulping, specifically pointed out that Shri Devidatt Jejani was removed from the Board of Directors because of his mischievous activities and therefore, he and his son have been indulged in nasty politics to make the labours strike, making false complaints against the unit, which was brought to the notice of the Maharashtra Pollution Control Board vide letter dtd.18/8/2009. It is also stated that the unit was requested by the farmers to supply the treated effluent for irrigation purpose and therefore, the unit had applied for an amendment in the consent for allowing the utilization of the treated effluent by the farmers on their agriculture lands. The unit further stated that the chimney has been repaired.

The Joint Vigilance Samples collected from the Respondent No.7 unit on 6/10/2008, 5/11/2008, 16/2/2009 and 6/4/2009 from the effluents being utilized on their land for irrigation purpose and duly analyzed from the MPC Board's Laboratory, showed that the parameters of BOD, COD and Suspended Solid were not meeting alongwith the parameter of Particulate Matter. Therefore, directions of closure were issued by the Maharashtra Pollution Control Board on 8/12/2009 and after taking effluent steps in respect of erection of chimney and with the bank guarantee as well as corrective measures, the unit was allowed to restart on 18/12/2009 on account of short term measures taken by the unit with certain conditions. Since, the long term measures were not taken in the time bound manner, a bank guarantee of Rs.10,000/- was encashed. Later on, the unit has complied with the conditional directions, the Board has specifically made clear in its affidavit that the Petitioners are exaggerating the facts and circumstances in respect of discharge of effluent, when, the treated effluent from the waste paper mill can be easily utilized for irrigation purpose. The Board had also filed further Affidavit, giving the details of compliance of the conditional directions.

After hearing, the Petitioners and the Respondents at length, the Hon'ble High Court of Judicature at Nagpur Bench observed that as per the Affidavit of the Regional Officer, MPCB, Chandrapur, there were no seepages observed during the visit and inspection carried out by the Board. It was further observed that though the problem faced by the petitioners is serious and requires thorough investigation into the fact, the nature of the dispute raised in the petition right from the location of the land, the measures taken by the Respondent No.7 and the flow of the effluents seeping into the ground water streams, involves several disputed questions of facts, which the Hon'ble Court does not want to go into the details. Therefore, the petition was dismissed on 2/3/2010 with liberty to the petitioners to approach the Civil Court as may be advised in accordance with the law. A copy of the said order is enclosed for ready reference.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:

NAGPUR BENCH: NAGPUR

WRIT PETITION NO.4452 OF 2009

PETITIONERS:

- 1] Ghansham Ganpat Dupare, aged – major, occupation : agriculture
- 2] Murari Mukunda Raut, aged – major, occupation : agriculture
- 3] Shankarrao Govind Johri, aged – major, occupation : agriculture,
All r/o Old Wadsa, Taluka Wadsa, District :Gadchiroli

VERSUS

RESPONDENTS:

- 1] State of Maharashtra, Department of Environment, Mantralaya,
Mumbai
- 2] Maharashtra Pollution Control Board, Kalpataru Point, Opposite
Cine Planet, Sion, Mumbai through its Secretary
- 3] Sub Regional Officer, Maharashtra Pollution Control Board,
Chandrapur
- 4] Collector Gadchiroli
- 5] Tahsildar, Wadas, District : Gadchiroli
- 6] Union of India, Department of Environment and Forest, New
Delhi
- 7] Jejani Pulp and Paper Mills, Old Wadsa Taluka Wadsa, district :
Gadchiroli
- 8] National Environmental Engineering Research Institute [NEERI]
Wardha Road, Nagpur, through its Director.

=====

Shri A.Y. Kapgate, advocate for petitioners

Smt. Sharda Wandile, AGP for respondent no.1,4 & 5.

Shri S.S. Sanyal, advocate for respondent no.2 & 3

Shri M.G. Bhangde, Sr. advocate for respondent no.7

Shri S.K. Mishra, advocate for respondent no.6

=====

CORAM: S.A. BOBDE & SMT. VASANTIA. NAIK, JJ.

DATE: 2ND MARCH, 2010

ORAL JUDGMENT :[PER: S.A. BOBDE, J.]

Rule returnable forthwith. Heard by consent.

2] The petitioners have approached this court interalia for a direction to take action against respondent no.7 - Jejani Pulp & Paper Mills Old Wadsa Taluka Wadsa, District Gadchiroli. Here the petitioners have also sought a direction for suspension of registration of respondent no.7 and a direction to respondent no. 8 – NEERI to submit a report to this court.

3] The petitioners are holding agricultural lands in the vicinity of the respondent - Pulp & Paper Mills. According to the petitioners, effluent from the Mill is seeping from the ground water into the lands of the petitioners which have rendered their lands infertile because of pollution. Respondent no.7 however, disputes the very location of the petitioners' land in the proximity of the respondent no.7's Pulp & Paper Mills. According to respondent entire land surrounding Pulp & Paper Mill is owned by respondent no.7 and there is a canal on the border. According to the respondents after the canal, lands of the petitioners are located and there is no chance of the pollutants seeping in the soil.

4] According to Shri Bhangde, learned senior counsel for respondent no.7, the respondent no.7 has taken steps to curtail effluents from the plant and there is no seepage whatsoever. Learned counsel for the petitioners has however, disputed this position. The learned counsel for the petitioners was asked to show if the seepage continues though the respondent claims that he has stopped the outflow of effluents. However, according to learned counsel for the petitioner, though the Tahsildar initially gave a report stating that the pollutants are entering in the field of the petitioners, the Tahsildar is not inclined to give a fresh panchnama pointing out whether the pollution has stopped. Learned counsel for the Tahsildar denies this.

6] Shri Kapgate, learned counsel for the petitioners however, relied on the decision of the Supreme Court reported in (1998)2 SCC 601 [Bhavani River ..vs.. Sakthi Sugars Ltd], wherein the Apex Court directed closure of the operation of the industry. Learned counsel urged this court to do the same. However, we find from the decision that the Pollution Control Board had accepted and stated that seepage from the unlined lagoons in which effluent has been stored joins the drain and

ultimately reaches River Bhavani thereby polluting the river water. We do not find any such report in the present case. Having considered the matter and having noticed the dispute on facts, we are not inclined to go into the matter in exercise of our writ jurisdiction. We consider it appropriate that the matter be decided by the Civil Court.

7] Shri Kapgate, learned counsel for the petitioner submitted that in the meanwhile the petitioners fields are likely to be wasted. If that is so, it is open for the petitioners to move an application for temporary injunction which will be decided by the Civil Court.

8] We may notice that in the present case there is an affidavit of the Regional Officer of the Maharashtra Pollution Control Board. In the affidavit dated 23.1.2010, vide paragraph 1, (v), (c) & (f) it is stated that there were no seepages observed during the visit. There was no by-pass of any effluent outside the factory premises during the visit. This is also disputed on behalf of the petitioners, on the basis of photographs presented by the Board today. However, same being disputed question, needs to be settled by the Civil Court. The claim for compensation will

also require clear and cogent evidence for the court after facts are established.

9] All in all we find that though the problem faced by the petitioners is serious and requires through investigation into the facts, the nature of the dispute raised in this petition right from the location of the land , the measures that are allegedly already taken by respondent no.7 and the flow of the effluents seeping into ground water streams, involves several disputed questions of facts, which we are not inclined to go into in this petition.

10] We accordingly dismiss the writ petition with liberty to the petitioners to approach the Civil Court as may be advised in accordance with law.

JUDGE

JUDGE

smp.