



CASE COMMENTARY OF INDIAN ENVIRO LEGAL COUNCIL VS UOI

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INTRODUCTION

Since independence, the Indian economy has grown to become one of the world's largest, ranking among the top five economies in the world. Even though industrialization has been identified as one of the key causes of such fast development, the negative implications of industrialization are sometimes disregarded. The Supreme Court of India made a landmark decision earlier this year in the case of the *Indian Council for Environmental Legal Action vs Union of India*¹, holding corporations liable for the harm they caused to the environment. As a consequence of this decision, a substantial impact on Indian environmental law has been achieved in the country. When the case was heard, the Supreme Court underlined the need and importance for the establishment of “environmental courts,” and the case was cited by the Law Commission of India in its report to urge that India should create environmental courts.² This case brings to light fundamental concerns about the implementation of environmental protection laws in India, as well as the need of safeguarding individuals from becoming victims of natural disasters such as floods and landslides.

BACKGROUND

In reaction to environmental degradation caused by private firms in the hamlet of Bichhri, near Udaipur, in the state of Rajasthan, it was decided to file a writ petition with the Indian Supreme Court. Some agrochemical companies, such as Hindustan Agrochemicals Limited, began producing certain chemicals, such as oleum and single super phosphate; Silver Chemicals began producing 'H' acid, which resulted in toxic effluents, particularly iron- and gypsum-based sludge; Jyoti Chemical was also producing this acid; and other industries began producing a variety of fertilisers, such as urea. The hazardous effluents were not treated before being discharged, and they were permitted to flow freely, resulting in considerable pollution of the surrounding

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¹ *Indian council for enviro legal action vs Union of India*, (1996) 3 SCC 212.

² Law Commission of India, 186th report on Proposal to Constitute Environment Courts (2003).

ecosystem. Furthermore, the corporations violated the law by failing to treat the sludge before discharging it, resulting in the devastation of the environment and water resources. “Residents in the area took to the streets in protest, which resulted in the District Magistrate in the region enforcing Section 144 of the Criminal Procedure Code in the area and the closure of the Silver Chemicals factory.” In this writ, the petitioner is requesting that appropriate remedial action be taken in response to the harm that has been caused to the environment, people, and animals.

PROCEDURAL HISTORY

- 1) In 1989, the Indian Council for Environmental Legal Action filed a writ suit seeking that remedial action be taken.
- 2) Responses to the counter-affidavits were submitted by the “Rajasthan Pollution Control Board [R.P.C.B.], the Government of India, the Government of Rajasthan, and the respondent’s Nos. 4 to 8. The Rajasthan government filed an affidavit stating that: When Silver Chemical was accused of producing H-acid without getting an environmental permit, they used to dump the very poisonous effluents straight into the water bodies of the surrounding area.”
- 3) In December 1989, “the honourable Court requested that the National Environmental Engineering Research Institute [NEERI] submit their report for suggestions regarding the scale and type of remedial measures”; following the submission of this report, the supreme court ordered that the contaminated sludge be removed from the site.
- 4) The Court also ordered the Ministry of Environment and Forests, Government of India, to designate its experts to investigate the region to assess the presence and amount of gypsum-based and iron-based sludge, as well as to provide recommendations on proper handling and disposal processes.
- 5) The court next discussed the application of the absolute culpability concept and the strict liability doctrine in this particular instance.

LEGAL PROVISIONS & APPLICATION IN THE PRESENT CASE

Article 12³- Whether the respondent industries should come under the ambit of the state as defined in Article ‘12’ because a writ can only be filed against the state.
Art 21⁴- Right to a clean environment is recognised in Right to life.

³ The Constitution of India 1949, art 12.

⁴ The Constitution of India 1949, art 21.

Article 48A- *“It is one of the Directive principles for state policy, this article states that the state shall protect and improve the environment and safeguard the wildlife. In this case, it was Rajasthan government’s duty to protect and improve the environment but it was not fulfilled by them.”*⁵

Article 51(a)- This article states the fundamental duties of the Indian citizens. Article 51(A)(g) states that the citizens must protect the environment and have compassion for living creatures. The respondents had a fundamental duty towards the environment which was not followed by them, they were supposed to protect but they damaged it. They were also supposed to show compassion to the villagers by protecting their environment.⁶

Section 3⁷ of Environment (Protection) Act 1986: *“This section confers power to the government to protecting and improving the quality of the environment and preventing and controlling environmental pollution.”*

Section 4⁸ of Environment Act: the government shall appoint officers to perform the functions under this act.

Section 24(1) of the Water (Prevention and Control of Pollution) Act: *“states the prohibition for disposal of polluting matter. This section was violated by the respondents as they directly discharged the highly toxic effluents (sludge) in the water body i.e. the streams and wells of Bicbri village.”*⁹

Section 25 (1)¹⁰ of Water Act: this section prohibits the respondents from act, limits the respondents to take any kind of steps to establish any operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land.

ISSUES

- What is the measure of the liability of companies engaged in a hazardous or inherently dangerous industry if it causes any damage?
- Does the rule of *Mc Mehta vs Union of India* (concerning the case of *Ryland vs Fletcher*¹¹) apply in this case?
- Whether industries are a part of ‘State’ as defined under article 12?

⁵ The Constitution of India 1949, art 48A.

⁶ The Constitution of India 1949, art 51A.

⁷ The Environment (Protection) Act 1986, s 3 (Act 29 of 1986).

⁸ The Environment (Protection) Act 1986, s 4 (Act 29 of 1986).

⁹ The Water (Prevention and Control of Pollution) Act 1974, s 24(1) (Act 6 of 1974).

¹⁰ The Water (Prevention and Control of Pollution) Act 1974, s 25(1) (Act 6 of 1974).

¹¹ *Rylands v Fletcher* [1868] UKHL 1.

- What is the number of damages to be paid by the respondents as the situation has worsened since the case was first filed?

RATIO

1) This petition is against the Government of India, Government of Rajasthan, and RPCB to compel them to perform their necessary functions to and protect article 21 which guarantees the right to life which includes the right to a clean environment.¹² The court shall make these parties perform their duties to ensure compliance with the law.

2) The courts need to ensure proper compliance of law such as statutory rules, therefore if 'consent' is required for an industry then it is the duty and responsibility of the courts to ensure that the necessary consent has been taken before the establishment of such industry.¹³

3) The reports presented by R.P.C.B have been confirmed by other experts and by NEERI which removes any doubt about the validity of the reports.

4) The oleum gas leak case¹⁴, was discussed, in which the doctrine of absolute liability was laid down. The definition of Absolute liability laid down, in that case, was explained in the context of this case. Where the industries are dealing with hazardous substances which are 'inherently dangerous' they have the responsibility to take proper care and caution and ensure that these substances do not harm the people who live in the vicinity of the plant. They are also supposed to compensate anybody on account of any loss because of the activity. The polluter pays principle was also used in this case.

RULING

The respondents are liable to compensate the victims i.e. the villagers. According to the NEERI report the estimated remedial cost is approximately Rs40 crores but the report was prepared two years back and the situation has now deteriorated so there should be a revised estimate for the same. The final judgement of this case was given in 2011, 15 years after the judges decided the case. The respondents were liable to pay 37,385,000 along with compound interest @ 12% per annum from April 11, 1997, till the amount is paid or recovered. The respondents kept the litigation alive even 15 years after the judgement on no merit, they were compelled to pay Rs 1,000,000 for all the interlocutory applications made by them in this period.

¹² *Maneka Gandhi vs Union of India*, (1978) 2 SCR 621.

¹³ The Water (Prevention and Control of Pollution) Act 1974, s 25(2) (Act 6 of 1974).

¹⁴ *M.C. Mehta v. Union of India*, (1986) 1 SCR 819.

DISCURSIVE ARGUMENT

India is a developing nation, and our emphasis on industrialization has caused us to turn a blind eye to the negative consequences of this development on the environment.¹⁵ Regardless of whether or not, it involves imposing societal expenses such as pollution, businessmen will do whatever it takes to maximise their profit. 'H' acid production is now prohibited in some foreign nations due to the poisonous and very dangerous effluents produced as a consequence of the process of manufacturing it. In this situation, they made money by exporting this acid, but they failed to see that the social cost of creating it was significantly more than the profits they made. So the notion of absolute accountability was utilised to safeguard both the environment and the residents of a certain community.

While explaining the idea of absolute responsibility, the court also looked at the “polluter pays” premise, which was previously discussed. This was the first instance in which this idea was used in India. This approach holds companies liable for the expenses of remedying or preventing pollution-related harm if they are responsible for the pollution that results in the damage. This concept explains why the undertakings are being held accountable for the expenses of remedying the situation in this instance. The most important part of this concept is that the government is not held accountable for compensation or remedial expenses since the money that would be paid by the government would be money that would otherwise be charged to innocent taxpayers, making taxing them unfairly. Sections 3 and 5 of the Constitution authorise the Central Government to issue directives and conduct actions to put this principle into practice. In this case, the fact that “anyone engages in such action” is accountable for payment is taken into consideration. The disadvantage of this theory is that it is ambiguous since pollution might be created through a chain of polluters, making it difficult to assign blame to a single particular business or corporation.

It was decided by the Supreme Court of India in *Vellore Citizens' Welfare Forum vs. Union of India* that the 'polluter pays' concept encompasses not only the compensation expenses but also the remedial costs, which are those associated with restoring the environment's deterioration. The process of 'Sustainable Development' includes the remediation of damaged environments, and as a result, the polluter is obliged to pay both the costs of compensating individual victims and the costs of reversing the harm to the environment. This idea is outlined in Section 3 of the National Environment Tribunal Act, which was passed in 1995. The most surprising aspect of this decision

¹⁵ Satish C. Shastri, 'The Polluter pays principle and the supreme court of India' (2000) 42 *JTIL* 108.

is that the court did not order the respondents to compensate the villagers for the damage or loss they had suffered; rather, the court suggested that the villagers "institute suits in the appropriate civil court" to pursue their claim against the respondents. This was a contradictory ruling by the court since the judges were sympathetic to the villagers' plight, they stressed the significance of the 'right to clean environment,' but when they handed down their decision, they simply ordered the respondents to pay the remedial expenditures. This court ruling was unjust and unfair to the villages, and they were entitled to appeal.

This kind of situation is particularly problematic because of the disrespect for environmental protection legislation. In this case, one of the problems was whether or not to provide the requisite statutory "permission" to carry out such operations. However, the industries, i.e. the respondents, did not do so, demonstrating their evident disrespect for the laws of the land. This neglect is due to the ineffective execution of such rules; if the authorities in charge of pollution control had implemented severe policies and eliminated corruption, this problem would not have occurred. Following the ruling, the state government was ordered to investigate the development of enterprises and to guarantee that the industries operate with proper "permission" following statutory standards. As a result of this decision, the unlawful function of industries and the issue of the appropriate execution of environmental protection legislation in India were brought to light. The court ordered the government to tighten waste disposal regulations, citing the fact that such chemical firms are among the most polluting in India.

This decision demonstrated the harsh reality of case disposition; the courts have become inundated with cases, and a case of such paramount significance, in which time is of the essence, took years to resolve. After the final decision in the case was rendered, the respondents needlessly continued the case for another fifteen years, demonstrating "how even the final judgement of the Supreme Court may be bypassed for more than a decade and a half through abuse of the process of law." M.C. Mehta had written to the court to express his displeasure with the respondents' flagrant contempt for the law and how they had created a mockery of the country's environmental justice delivery system. This further supported the court's position, which was to recommend that India should establish environmental courts.

This decision gave directives to the central government, which had an influence on future environmental law cases as well as environmental protection laws in the country. The court recommended that the federal government establish "environment courts" so that matters involving this statute might be resolved as rapidly as possible, therefore limiting the amount of harm. According to the 186th law commission study, environmental courts should be established.

The committee recommended that a panel comprised of members from the court as well as scientists be established since the scientific study is a significant factor in determining the outcome of these cases. Although there are no explicit provisions for environmental protection in the constitution, the 'right to a clean environment' has been recognised as a component of the right to life through the interpretation of the law and various court rulings, and even the directive principles of state policy include provisions for environmental protection.

CONCLUSION

Absolute responsibility is a legal notion that shields human beings from being held responsible for environmental harm. A basic right to a clean environment is infringed by these companies, and the people of Bichhri claim that these industries are responsible (respondents). Another point of contention, in this case, was the concept of 'polluter pays,' which was a novel development in Indian environmental law at the time.¹⁶ This public interest action brought attention to the notion that the right to live in a healthy, clean environment is critical for the survival of human beings, animals, and the natural world. The most startling aspect of this case is what happened in the aftermath. The true perpetrators of this case have excessively prolonged the litigation to avoid paying the necessary corrective fees. It seemed like the people's anguish would never stop since, while they were not awarded compensation for the injury they had experienced as a result of this decision, the court ordered them to file individual lawsuits for the same.

¹⁶ *Rural litigation and Entitlement Kendra vs. State of U.P.*, (1988) AIR 594.