

CASE NO.:
Appeal (civil) 1521 of 2001

PETITIONER:
Deepak Nitrite Ltd.

RESPONDENT:
State of Gujarat & Ors.

DATE OF JUDGMENT: 05/05/2004

BENCH:
CJI & G.P. MATHUR.

JUDGMENT:
JUDGMENT

(WITH C.A. No. 1522/2001, 1523/2001, 1524/2001, 1525-1526/2001, 1527/2001 1528/2001)

RAJENDRA BABU, CJI. :

These appeals arise out of a series of orders made by the High Court of Gujarat. A petition was filed before the High Court in public interest alleging large scale pollution caused by industries located in the Gujarat Industrial Development Corporation (GIDC) Industrial Estate at Nandesari. It is alleged that effluents discharged by the said industries into the effluent treatment project had exceeded certain parameters fixed by the Gujarat Pollution Control Board (GPCB) thereby causing damage to the environment. Some of the industries have set up their own effluent treatment plants in their factory premises, while some of them have not. The High Court, by an order made on 17.4.1995, directed that the chemical industries in Nandesari should be made parties to the proceedings thereby 252 industrial units located in the Nandesari Industrial Estate, Baroda were made parties to the proceedings, apart from the State of Gujarat, Central Pollution Control Board, Gujarat Industrial Development Corporation and Nandesari Industries Association. The High Court also issued notices to the financial institutions or banks in respect of these proceedings.

On May 5, 1995 the High Court appointed a Committee under the Chairmanship of Dr. V.V. Modi to ascertain the position with regard to the extent of pollution in Nandesari Industrial Estate. A Common Effluent Treatment Plant (CETP) was erected by the GIDC in Nandesari Industrial Estate on the contribution made by the industrial units in the Nandesari Industrial Estate to the extent of about Rs. 300 lakhs. Inasmuch as CETP was not achieving the required parameters laid down by the GPCB, the High Court, by an order made on 7.8.1996, appointed NEERI as a consultant to assess the treatment facilities and to provide suitable rectification measures for upgrading the CETP and effluent treatment plant facilities. Dr. Committee made a report on 7.9.1996. The High Court restrained several industries from removing their products from their plant without prior permission of the High Court and thereafter, by an order made on 13.9.1996, the High Court permitted them to dispatch materials by depositing a certain sum of money which was the value of the materials. NEERI submitted its report on 31.10.1996. The High Court, while granting permission to some of the industries to carry on their

activities, called for turnover figures and profitability data. On 9.5.1997 the High Court passed an order directing the industries to pay 1% of the maximum annual turnover of any of the preceding three years towards compensation and betterment of environment within a stipulated time. It is against this order that the appellants are before us.

The High Court in its impugned order followed a decision of the High Court of Gujarat in Pravinbhai Jashbhai Patel & Anr. Vs. State of Gujarat & Ors., 36 Guj. Law Reports 1210, wherein it was noticed that the industrial units though aware of the requirements of law had not complied with the same nor did they meet the GPCB parameters and they were irresponsible in not wanting or caring to set up effluent treatment plants but continued to manufacture and pollute the environment and the concern shown now in meeting with the pollution control norms is only because of the threatened court order; that pollution caused by these industrial units was adversely affecting large number of citizens residing in the adjacent cities or villages; that in particular water and air pollution is not only continued to the immediate area in which the pollution is generated, but the same affects other areas as well wherever water or air went; that this Court in M.C. Mehta vs. Union of India, AIR 1988 SC 1037, Virender Gaur & Ors. Vs. State of Haryana & Ors., 1995 (2) SCC 577 and CERC vs. Union of India, AIR 1995 SC 922, invoked the provisions of Article 21 of the Constitution of India to declare that the citizens have a fundamental right to live decently unaffected by pollution. After noticing various contentions, the High Court took the view that 1% of the turnover would be a good measure of assessing damages for the pollution caused by the industrial units and that amount should be kept apart by the Ministry of Environment and should be utilized for the works of socio-economic uplift of the population of the aforesaid affected areas and for the betterment of educational, medical and veterinary facilities and the betterment of the agriculture and livestock in the said villages with certain additional directions in this regard.

It is now submitted before us by the appellants that a court has no power to either impose penalty or fine or make any levy for general betterment unless the statute authorized the same; that, however, in awarding damages it is permissible to make the same exemplary or penal; that award of damages is way of restitution for the damage caused to victims and for restoration or restitution and for restoration of ecology by way of punishment; that, unless a finding is given by the High Court that there had been degradation of environment, question of restitution or awarding damages could not arise; that there is no finding of degradation of environment and, therefore, it is not open to the High Court to impose 1% of the turnover by way of damages. The appellants relied upon a decision of this Court in Vellore Citizens' Welfare Forum vs. Union of India & Ors., 1996 (5) SCC 647, in support of this contention. Their argument is that principle of 'polluter to pay' cannot be applied unless a finding has been given that the industrial unit concerned is the polluter. In what manner pollution has been caused should have been ascertained, particularly when a separate common effluent treatment plant had been erected and a channel was provided through which water would flow into river which would reach the sea thereby not causing any damage anywhere. They seek to bring about difference between Pravinbhai Jashbhai Patel's case (supra) and the present proceedings to contend that in those cases there was direct evidence of damage having taken place and by way of rule of thumb the High Court adopted the standard of 1% of

turnover to be paid by way of damages and that this principle cannot always uniformly be applied. They commend us to apply the principle set out by this Court in Vellore Citizens' Welfare Forum's case (supra) wherein principle of 'polluter to pay' has been applied and wherein it is noticed that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country; once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity; consequently, the polluting industries are absolutely liable to compensate for the harm caused by them to villagers in the affected areas, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas; that the 'polluter pays principle' as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation; that remediation of the damaged environment is part of the process of sustainable development and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.

Shri T.R. Andhyarujina, learned Senior Advocate, who assisted this Court as Amicus Curiae with great ability, explained to us the background in which the High Court had passed the impugned order. He submitted that the High Court had followed the earlier decision in Pravinbhai Jashbhai Patel's case (supra) wherein standard of 1% of turnover was adopted for closure of polluting units and payment of compensation by such units for polluting river and land; that the basis of this decision in that case was that the polluting industrial units were not meeting GPCB norms and the continued violation of the law by industrial units had become a habit; that after elaborate discussion, the High Court had concluded that these industries had caused pollution and, therefore, gave certain directions, including for closure of the industrial units until they observe GPCB norms; that the directions given by the High Court regarding closure and payment of compensation were complied with by the industrial units and this Court did not interfere with the order made by the High Court, therefore, the methodology adopted by the High Court in Pravinbhai Jashbhai Patel's case (supra) can be applied to other industrial units which are causing pollution; that, after investigation made by the Committee or by an expert body there were reports that the industrial units were causing pollution by not complying with the norms prescribed by GPCB and High Court, in fact, noticed that a number of units have voluntarily agreed to pay 1% of the turnover of a year out of the last three years and there was consensus between all the industries and for betterment of environment, they voluntarily stated before the Court that 1% shall be paid; that one may say that even some of the units having no treatment plant or having inadequate facilities appeared before the High Court stating that they would voluntarily stop manufacturing till installation of proper treatment plant and were in a position to discharge trade effluent meeting with GPCB norms. Thus, in these cases, the High Court restrained firstly several industries from removing their products from their plant without prior permission of the High Court and thereafter, such units themselves suspended operation of the polluting activities. The High Court, after having considered further reports of the Committee; NEERI and GPCB permitted to restart activities on a trial basis and at the

same time, directed that "with regard to 1% payment an order will be passed after the details furnished by the learned counsel." The High Court thereafter adopted payment of 1% of the turnover method as indicated in Pravinbhai Jashbhai Patel's case (supra). He submitted that in these cases the High Court has through its investigation either by Committee appointed by itself or expert agency like NEERI found that the industrial units in question were polluting units and had not conformed with the norms prescribed by GPCB and each of the units were discharging effluents into the effluent channel project constructed by GIDC which in turn discharged the effluents into the Mahi river which ultimately reached sea. Thus the High Court had found that there was extensive environmental degradation as a result of the pollution because of the violation of the pollution laws and on account of such damage, the High Court ordered the payment of 1% compensation as a one time payment for pollution and damage for a number of years from 1993 to 1996. He further submitted that in no case the High Court ordered compensation without giving a finding that there was environmental degradation and damage as a result of violation of prescribed norms. He also adverted to various decisions of this Court in M.C. Mehta vs. Union of India, 1987 (1) SCC 395, to support the proposition that the measure of compensation must be co-related to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect and such damage not only extends to restitution for the harm to the environment to compensate the victims of the pollution but also cost of restoring the environment by degradation. This Court reiterated the principle of "polluter to pay" to the effect that one of the principles is to levy damages of a certain percentage of total turnover and the right to a clean and hazardless environment has been recognised as a fundamental right under Article 21 of the Constitution. The Court has innovated new methods and strategies for the purpose of securing enforcement of fundamental rights.

The fact that the industrial units in question have not conformed with the standards prescribed by GPCB cannot be seriously disputed in these cases. But the question is whether that circumstance by itself can lead to the conclusion that such lapse has caused damage to environment. No finding is given on that aspect which is necessary to be ascertained because compensation to be awarded must have some broad co-relation not only with the magnitude and capacity of the enterprise but also with the harm caused by it. May be, in a given case the percentage of the turnover itself may be a proper measure because the method to be adopted in awarding damages on the basis of 'polluter to pay' principle has got to be practical, simple and easy in application. The appellants also do not contest legal position that if there is a finding that there has been degradation of environment or any damage caused to any of the victims by the activities of the industrial units certainly damages have to be paid. However, to say that mere violation of the law in not observing the norms would result in degradation of environment would not be correct.

Therefore, we direct the High Court to further investigate in each of these cases and find out broadly whether there has been any damage caused by any of the industrial units by their activities in not observing the norms prescribed by the GPCB as reported by the Modi Committee appointed by the High Court or by an expert body like NEERI and that exercise need not be undertaken by the High Court as if the present proceeding is an action in tort but an action in public law. A

broad conclusion in this regard by the High Court would be sufficient. We, therefore, direct the High Court to re-examine this aspect of the matter as to whether there is degradation of environment and as a result thereof any damage is caused to any victim, and what norms should be adopted in the matter of awarding compensation in that regard. In this process it is open to the High Court to consider whether 1% of the turnover itself would be an appropriate formula or not as applicable to the present cases.

We record our appreciation and gratitude to Shri T.R. Andhyarujina in assisting this Court as Amicus Curiae.

With these observations, these appeals stand disposed of.