

PETITIONER:
CHHETRIYA PARDUSHAN MUKTI SANGHARSH SAMITI

Vs.

RESPONDENT:
STATE OF U.P AND ORS.

DATE OF JUDGMENT 13/08/1990

BENCH:
MUKHARJI, SABYASACHI (CJ)
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MUKHARJI, SABYASACHI (CJ)
SAIKIA, K.N. (J)

CITATION:
1990 AIR 2060 1990 SCR (3) 739
1990 SCC (4) 449 JT 1990 (3) 685
1990 SCALE (2) 332
CITATOR INFO :
RF 1991 SC 983 (2)

ACT:

Constitution of India, 1950: Article 21--Environmental pollution-Allegations-Scrutiny of--Found to be frivolous--No complaint from any other person or authority--Held pollution laws not violated.

Article 32--Epistolary jurisdiction--Protection of Fundamental Rights--Public interest and public protection--Genuine interest-Misuse of--Not to be permitted--Court to act with great deal of circumspection and caution.

HEADNOTE:

The Petitioner, representing a Social Organisation, has written a letter alleging environment pollution in some villages and the adjoining Sarnath Temple. The letter was treated as Writ Petition under Article 32 of the Constitution of India. It was alleged that the smoke and dust emitted from the Chimneys of Respondent No. 3, viz., an oil Mill and a refinery plant in the area, and the effluents discharged by the plants has been causing serious environmental pollution in the thickly populated area, leading to epidemic diseases. It was further alleged that even the flora was badly affected by pollution. Petitioner prayed for directions to check the pollution.

On behalf of Respondent No. 3, it was contended that it had complied with the provisions of Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974 and there was no complaint whatsoever. It was further stated that the petitioner was an anti-social element and his only aim was to blackmail and extract money from people like Respondent No. 3, and that a criminal case has already been filed against him, for such activities.

Dismissing the writ petition,

HELD: 1. Article 32 is a great and salutary safeguard for preservation of fundamental rights of the citizens. Every citizen has a fundamental right to have the enjoyment of quality of life and living as contemplated by Article 21 of the Constitution of India. Anything which

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endangers or impairs by conduct of anybody either in violation or in derogation of laws, that quality of life and living by the people is entitled to be taken recourse of Article 32 of the Constitution. But this can only be done by any person interested genuinely in the protection of the society on behalf of the society or community. This weapon as a safeguard must be utilised and invoked by the Court with great deal of circumspection and caution. Where it appears that this is only a cloak to "feed fat ancient grudge" and enmity, this should not only be refused but strongly discouraged. While it is the duty of this Court to enforce fundamental rights, it is also the duty of this Court to ensure that this weapon under Article 32 should not be misused or permitted to be misused creating a bottleneck in the superior Court preventing other genuine violation of fundamental rights being considered by the Court. That would be an act or a conduct which will defeat the very purpose of preservation of fundamental rights. [743B-E]

Bandhu Mukti Morchay. Union of India & Ors., [1984] 2 SCR 67, referred to.

2.1. This petition is legally devoid of any merit or principles of public interest and public protection. There was no fundamental right violation or could be violative if the allegations of the so-called champions on behalf of the society are scrutinised. [743G]

2.2. Prima facie the provisions of the relevant Act, namely, the Air Pollution Control Act have been complied with and there is no conduct which is attributable to respondent No. 3 herein leading to pollution of air or ecological imbalances calling for interference by this Court. The orders passed by the Pollution Control Board also indicate that there were no instances of any violation. There was no complaint from anybody apart from the petitioner, or any authority as to the non-compliance of any statute by Respondent No. 3. [743A-B; 742G]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition (Civil) No. 577 of 1988.

(Under Article 32 of the Constitution of India).

S.R. Bhat and R. Venkataramani for the Petitioner

Dr. B.S. Chauhan for the Respondents and Shobha Dikshit for the State of U.P.

The Judgment of the Court was delivered by

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SABYASACHI MUKHARJI, CJ. A letter written to this Court was treated as a writ petition under Article 32 of the Constitution of India. The letter written by Chhetriya Pardushan Mukti Sangharsh Samiti, Sarnath, alleged environmental pollution in the area. It was also alleged therein that the Jhunjhunwala Oil Mills and a refinery plant are located in the green belt area, touching three villages and the Sarnath temple of international fame. The smoke and dust emitted from the chimneys of the Mills and the effluents discharged from these plants were alleged to be causing environmental pollution in the thickly populated area and were proving a great health hazard. It was further stated that the people were finding it difficult to eat and sleep due to smoke and foul smell and the highly polluted water. It was further alleged that the lands in the area had become waste, affecting crops and the orchards damages. Diseases like TB, jaundice and other ailments were stated to be

spreading in an epidemic form. The growth of children was affected. It was further alleged that the schools, nursing homes, leprosy homes and hospitals situated on the one kilometer long belt touching the oil Mills and the plant were adversely affected. It was stated that licences had been issued to one richman Dina Nath for these industrial units thereby risking the lives of thousands of people without enforcing any safety measure either to cure the effluents discharged from the plants or to check the smoke and the foul smell emitted from the chimneys. The whole area was expected to be ruined due to any explosion or gas leakage.

In that background, the petitioner prayed for necessary directions to check the pollution, and also enclosed a printed leaflet alleging real-practices and corruption on the part of the proprietor of these industrial units apart from polluting the atmosphere.

As mentioned hereinbefore, the complaint was made by the said Samiti stated to be a social organisation about environmental pollution and ecological imbalance being caused by the two plants and thereby exposing the population to health hazards and life risk which was, therefore, considered to be a matter of great public importance. It is necessary to recognise the danger in order to strike a balance between the quality of life to be preserved and the economic development to be encouraged. Dealing with this aspect in *M.C. Mehta v. Union of India & Ors.*, [1988] 1 SCR 279, it has been stated that whenever applications for licences to establish new industries are made in future, such applications should be refused unless adequate provision has been made for the treatment of trade effluents flowing out of the factories. So, this letter was treated as a writ petition and notice was issued,

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counter affidavits was filed on behalf of respondent No. 3 being the proprietor of Jhunjhunwala Oil Mills. Reference was made to the decision of this Court in *Bandhua Mukti Morcha v. Union of India & Ors.*, [1984] 2 SCR 67 wherein this Court underlined the importance of satisfactory verification of allegations. The Court was asked to be ever vigilant against abuse of its process and there was need for appropriate verification. There is a statute for controlling pollution. It is wellsettled that if there is a statute prescribing a judicial procedure governing a particular case, the court must follow such procedure. It is not open to the court to by pass the statute and evolve a different procedure at variance with it. It is further asserted on behalf of the respondents that between the petitioner Sita Ram Pandey and respondent No. 3, there was a long rivalry. According to respondent No. 3, the petitioner is an anti-social-element and his only aim was to extract money from the people like respondent No. 3 as in the present case.

It has further been stated that there has been criminal proceeding against the petitioner and several items have been marked in the affidavit in opposition. The particulars make out a rather disgraceful state of affairs. It has been alleged that Mr. Sita Ram Pandey for the last so many years was blackmailing the people, and a case u/s 500 of the I.P.C being Case No. 121/88 was filed. It has been further averred that respondent No. 3 has complied with the provisions of the Air (Prevention and Control of Pollution) Act, 1981 and of the water (Prevention & Control of Pollution) Act, 1974 and there is no complaint of any kind from any person, body or authority. The correspondence, in this connection, has been set out.

It further appears that as early as 1980, the petitioner had made various complaints to the A.D.M. (Supply), Distt. Varanasi, alleging that respondent No. 3 was accused of smuggling of coal and diesel blackmailing. It was dismissed. It further appears that there was no complaint from anybody apart from the present petitioner by any authority as to the non-compliance of any statute by respondent No. 3. The orders passed by the Pollution Control Board which had been annexed, also indicate that there are no instance of violation of the said Acts.

Time was sought on behalf of respondents for filing a rejoinder which, unfortunately, has not been filed, and no satisfactory explanation has been given therefore. Certain letters alleged to have been written on behalf of the petitioners were sought to be placed before us in the Court today.

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Having considered the facts, circumstances, nature of the allegations and the long history of enmity and animosity, we are of the opinion that prima facie the provisions of the relevant Act, namely, the Air Pollution Control Act have been complied with and there is no conduct which is attributable to respondent No. 3 herein leading to pollution of air or ecological imbalances calling for interference by this Court.

Article 32 is a great and salutary safeguard for preservation of fundamental rights of the citizens. Every citizen has a fundamental right to have the enjoyment of quality of life and living as contemplated by Article 21 of the Constitution of India. Anything which endangers or impairs by conduct of anybody either in violation or in derogation of laws, that quality of life and living by the people is entitled to be taken recourse of Article 32 of the Constitution. But this can only be done by any person interested genuinely in the protection of the society on behalf of the society or community. This weapon as a safeguard must be utilised and invoked by the Court with great deal of circumspection and caution. Where it appears that this is only a cloak to "feed fact ancient grudge" and enmity, this should not only be refused but strongly discouraged. While it is the duty of this Court to enforce fundamental rights, it is also the duty of this Court to ensure that this weapon under Article 32 should not be misused or permitted to be misused creating a bottleneck in the superior Court preventing other genuine violation of fundamental rights being considered by the Court. That would be an act or a conduct which will defeat the very purpose of preservation of fundamental rights.

Having regard to the ugly rivalry here, we have no doubt that between the contestants, the Court was misled and we must, therefore, proceed with caution. There was no fundamental right violation or could be violative if the allegations of the so-called champions on behalf of the society are scrutinised. We must protect the society from the so-called 'protectors'. This application is legally devoid of any merit or principles of public interest and public protection. This application certainly creates bottlenecks in courts, which is an abuse of process of this Court. We have, therefore, no hesitation in dismissing this application with the observations made herein.

G.N.

Petition dis-

missed.

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JUDIS