IN RE : BHAVANI RIVER - SAKTHI SUGARS LTD.

JANUARY 29, 1998

[DR. A.S. ANAND, B.N. KIRPAL AND V.N. KHARE, JJ.]

Environmental Law :

Water (Prevention and Control of Pollution) Act. 1974 S. 33 A—River pollution—Industrial effluent polluting river water—Storage of effluent in lagoons for treatment, and disposal of treated effluent—Directions given to 'Industry' by Tamil Nadu Pollution Control Board—Non-compliance of—Held, pollution is continuing because of actions of Industry—No remedial steps taken to prevent pollution and contemination of river water—Factory failed to arrest unabated pollution which has become a health hazard and environmental enemy—Closure of operation of Industry ordered—After the directions are complied with, it would be open to the Industry to approach the Court for restarting its operations.

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C) No. 22597 of 1997

From the Judgment and Order dated 17.7.97 of the Madras High Court in W.P. No. 17333 of 1995.

H.N. Salve, R.Mohan, B.Divan, Raju Ramachandran, S. Muralidhar, M.A. Chinnasamy, V.A. Pragasam, P.H. Parekh, Ms. Sunita Sharma, Ms. V. Mohana, C. Paramasivam, Rakesh K. Sharma and A. Mariarputham, for the apperaing parties.

The following Order of the Court was delivered :

An additional affidavit of Undertaking has been filed in Court today by Mr. P Natarajan on behalf of the Industry, respondent No. 6.

We have heard learned counsel for respondent No. 6, the learned *Amicas Curiae* as also the learned counsel apperaing for Tamil Nadu Pollution Control Board.

From a perusal of the affidavit filed by the Member Secretary, Tamil Nadu Pollution Control Board on 12-1-1998, it transpires that certain directions

A were issued by the Borad in exercise of the powers conferred under Section 33A of the water (Prevention and Control of Pollution) Act, 1974, as amended in 1988 to respondent No. 6. These directions were *inter alia* aimed at ensuring proper storage of effluent in lagoons and for ensuring proper storage of effluent in lagoons and for proper treatment and disposal of the treated effluent. As many as 11 directions, as detailed in the affidavit, were given. B Para 5 of the said affidavit discloses that the Industry (respondent No. 6) has not complied with direction Nos. 6, 7, 8 and 9. It is also stated that during the inspection of the Industry on 23rd of November, 1997, it was noticed that the seepage of effluent from lagoon 'C' joined the drain and ultimately reached river Bhavani thereby contravening the conditions imposed in the C directions by the Board. The affidavit goes on to say that show cause notice was also issued by the Board to the Industry calling upon it to state why penal action for offences punishable under Section 44 read with Section 45 (a) of the Act should not be initiated for violating the conditions imposed by the Board.

D Respondent No. 6 in its affidavit filed on 27 th of January, 1998 has not denied that 11 directions had, been issued to it by the Board and that some of those directions have not been complied with. It is stated in para (d) as follows :

> "In respect of the direction of the Tamil Nadu Pollution Control Board E at Para (viii) that the Company shall give progress report on disposal of accumulated effluent in lagoons every fortnight and also fortnightly progress report on the actions taken to comply with the conditions stipulated in the Consent Order issued by the Tamil Nadu Pollution Control Board, it is submitted that the Company has furnished daily statements giving complete particulars of the effluent generated, effluent F utilised for compositing and for concentration, inflow into lagoons, outflow from the lagoons and other detailed particulars. The receipt of these daily statements by the Tamil Nadu Pollution Control Board is acknowledge in their Affidavit filed before this Honourable Court. Apart from the daily statements, the Company has also furnished G consolidated and fortnightly reports to the Joint Chief Environmental Engineer of the Tamil Nadu Pollution Control Board."

In the affidavit of Undertaking filed on behalf of respondent No. 6 today it is stated that since 16th of January, 1998, the production capacity of the Industry has been reduced and ferti-irrigation has been completely stopped. H It is also stated that the entire effluent is being untilised within the premises

for bio-compositing and that there is no discharge of water of effluent on land or water. A

With regard to the two unlined lagoons, it is stated if para 7 (a) of the affidavit of undertaking filed today that effluent has been stored in the two unlined lagoon and it is reiterated that no further discharge of effluent is being made into the unlined lagoons. B

As already noticed, according to the Board, the seepage from the unlined lagoons in which effluent had been stored joins the drain and ultimately reaches river Bhivani thereby polluting the river water. This is a serious matter and shows that pollution is continuing because of actions of respondent No. 6 and remedial steps have not been taken to prevent pollution and contamination of the river water. Respondent No. 6, had obviously failed to arrest the unabated pollution, which has become a health hazard and environmental enemy. Enough time has been given to the Industry (respondent No. 6) to take the remedial steps. It has failed to do so. We are, therefore, left with no other option but to direct the closure of the operation of the Industry (respondent No. 6) on or before 2nd February, 1998 and we direct accordingly. The Tamil Nadu Pollution Control Borad still submit a report regarding compliance of this direction to the Industry within ten days. C D

We clarify that the direction herein above given by us to close the Industry (respondent No. 6) will not come in the way of the Industry to empty the two unlined lagoons, otherwise than through ferti-irrigation or discharge on land or in river, or to do composit work. E

From the affidavit of Undertaking of respondent No. 6 filed today, we also find on admission that there are eleven small inter-mediary transit tanks used for transferring the effluent from the concentration plant to the lagoons, which are also unlined at the bottom. Respondent No. 6 shall not be put to use those transit tanks unless the lining is complete in all respects. F

After the effluent from the two unlined lagoons have been removed and those lagoons lined and the eleven small inter-mediary transit tanks are also lined it shall be open to the Industry (respondent No. 6) to approach the Court for appropriate orders regarding restarting the operations of the Industry. G

In the mean time we also consider it appropriate to direct inspection of the Industry and the site adjoining it. We request NEERI to conduct an inspection of the Industry and to submit a report to this Court disclosing H

A whether the pollution control devices have been fixed by the Industry and proper steps taken to control pollution in accordance with the provisions of the Act or not. NEERI shall also inspect the surrounding area with a view to assess damage, if any caused due to discharge of effluent by the Industry and to indicate the cost of restitution. NEERI shall submit its report to this Court within six weeks. The directions with regard to payment of NEERI shall be made on receipt of the bill from NEERI. The directions be conveyed to NEERI together with the necessary details forthwith.

List the special leave petition after seven weeks.

C R.P. SLP granted and Appeal disposed of.