

M.C. MEHTA
v.
KAMAL NATH AND ORS.

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MARCH 15, 2002

[M.B. SHAH AND DORAISWAMY RAJU, JJ.]

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Environmental Law :

Exemplary damages—Imposition of—Polluter Company—Held guilty of endangering environment—Undertaking by Company to bear a fair share of the project cost of ecological restoration—Held, Company liable to pay exemplary damages—Quantified at Rs. 10 lakhs.

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Exemplary damages—Imposition—Purpose of—Held, is not only to punish the individual concerned, but also to serve as a deterrent to others.

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This Court in *M.C. Mehta v. Kamal Nath*, [1997] 1 SCC 388 (main case) had enumerated various activities of Span Motels Private Limited (SMPL) to be illegal which constituted interference with the natural flow of river Beas resulting in degradation of environment, and ordered SMPL to pay compensation for restitution of the environment and ecology and issued notice as to why pollution fine be not levied on it, in addition.

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SMPL challenged the legality of proposed levy of fine on the ground that it could not be punished with fine without trial before competent Court and unless that court found it guilty. This Court accepting the plea of SMPL withdrew the notice for levy of fine but issued fresh notice for payment of exemplary damages in addition to damages.

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Thereafter SMPL contended that they could not be held guilty of having committed any illegality and of having interfered with or endangering the environment or ecology to warrant exemplary damages; and that it would be unjust and harsh to impose any further liability in the form of exemplary damages in view of the fact that the Company had undertaken to bear a fair share of the project cost of ecological restoration.

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Quantifying the exemplary damages and leaving the quantum of liability of damages to be determined separately, the Court

HELD : 1.1. The question as to the imposition of exemplary damages

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A and the liability of Span Motels Pvt. Ltd. (SMPL) has to necessarily depend upon the earlier findings of this Court that the Motel by constructing walls and bunds on the river banks and in the river bed had interfered with the flow of the river and their liability to pay the damages on the principle of “Polluter pays” and also as an inevitable consequence thereof. The basis for their liability to be saddled with the exemplary costs has been firmly and

B irreversibly laid down in the main judgment itself and there is no escape for SMPL, in this regard. The Court has to necessarily proceed further only on those facts and position of law, found and declared. It is impermissible to claim for a reversal of the findings or any reconsideration of the nature, character and legality or propriety of activities of SMPL. [484-F; 485-B; 484-A-B]

C 1.2. It would be both in public interest as well as in the interest of justice to fix the quantum of exemplary damages payable by SMPL at Rupees Ten Lakhs only. This amount is fixed keeping in view the undertaking given by them to bear a fair share of the project cost of ecological restoration which would be quite separate and apart from their liability for the exemplary

D damages. The amount of special damages of Ten Lakhs rupees, shall be remitted to the State Government in the Department of Irrigation and Public Health to the Commissioner/Secretary for being utilized only for the flood protection works in the area of Beas river affected by the action of SMPL. [485-D-E; 485-G]

E 2. The various laws in force to prevent, control pollution and protect environment and ecology provide for different categories of punishment in the nature of imposition of fine as well as or imprisonment or either of them, depending upon the nature and extent of violation. Keeping in view all these and the very object underlying the imposition of imprisonment and fine under

F the relevant laws to be not only to punish the individual concerned but also to serve as a deterrent to others to desist from indulging in such wrongs which are almost similar to the purpose and aim of awarding exemplary damages. [485-C-D]

G CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 182 of 1996.

(Under Article 32 of the Constitution of India)

H N.C. Kochhar, V.C. Mahajan, G.L. Sanghi and Rajeev Dutta, M.C. Mehta, Vijay Panjwani, Naresh K. Sharma, C.V. Subba Rao, B.V. Balaram Das, N.S. Vashisht, Ms. Geetanjali Mohan, Devinder Singh (NP) and

Chandra Prakash Pandey for the appearing parties.

The Judgment of the Court was delivered by

RAJU, J. The above matter has been set down for hearing before us pursuant to the orders passed by this Court (Justice S. Saghir Ahmad and Justice Doraiswamy Raju) on May 12, 2000 and the consequent Notice issued to the Executive Director, M/s Span Motels Pvt. Ltd. at Manali, and the Executive Director, Span Motels Pvt. Ltd., Operations Headquarters at New Delhi, calling upon them to show cause as to why in addition to damages, exemplary damages be not awarded for having committed the various acts set out and enumerated in detail in the main judgment reported in *M.C. Mehta v. Kamal Nath and Ors.*, [1997] 1 SCC 388 wherein it was held as hereunder:

“39. We, therefore, order and direct as under:

1. The public trust doctrine, as discussed by us in this judgment is a part of the law of the land.
2. The prior approval granted by the Government of India, Ministry of Environment and Forest by the letter dated 24.11.1993 and the lease deed dated 11.4.1994 in favour of the Motel are quashed. The lease granted to the Motel by the said lease deed in respect of 27 bighas and 12 biswas of area, is cancelled and set aside. The Himachal Pradesh Government shall take over the area and restore it to its original-natural conditions.
3. The Motel shall pay compensation by way of cost for the restitution of the environment and ecology of the area. The pollution caused by various constructions made by the Motel in the riverbed and the banks of River Beas has to be removed and reversed. We direct NEERI through its Director to inspect the area, if necessary, and give an assessment of the cost which is likely to be incurred for reversing the damage caused by the Motel to the environment and ecology of the area. NEERI may take into consideration the report by the Board in this respect.
4. The Motel through its management shall show cause why pollution fine in addition be not imposed on the Motel.
5. The Motel shall construct a boundary wall at a distance of not more than 4 metres from the cluster of rooms (main building of the Motel) towards the river basin. The boundary wall shall be on the

A area of the Motel, which is covered by the lease dated 29.9.1981. The Motel shall not encroach/cover/utilize any part of the river basin. The boundary wall shall separate the Motel building from the river basin. The river bank and the river basin shall be left open for the public use.

B 6. The Motel shall not discharge untreated effluents into the river. We direct the Himachal Pradesh Pollution Control Board to inspect the pollution control devices/treatment plants set up by the Motel. If the effluent/waste discharged by the Motel is not conforming to the prescribed standards, action in accordance with law be taken against the Motel.

C 7. The Himachal Pradesh Pollution Control Board shall not permit the discharge of untreated effluent into River Beas. The Board shall inspect all the hotels/institutions/factories in Kullu-Manali area and in case any of them are discharging untreated effluent/waste into the river, the Board shall take action in accordance with law.

D 8. The Motel shall show cause on 18.12.1996 why pollution fine and damages be not imposed as directed by us. NEERI shall send its report by 17.12.1996. To be listed on 18.12.1996.”

E On being served with a Notice dated 14.12.1996, the matter was heard on 19.12.1996, when this Court (Justice Kuldip Singh and Justice S. Saghir Ahmed) passed the following order:

F “Pursuant to the above quoted direction NEERI has filed its report. A copy of the report was given to the learned counsel for the Motel yesterday. Show cause notice to the Motel has been given on 2 counts(i) why the Motel be not asked to pay compensation to reverse the degraded environment and (ii) why pollution fine, in addition, be not imposed. Mr. H.N. Salve, learned counsel appearing for the Motel states that he intends to file counter to the report filed by the NEERI. He has asked for short adjournment. We are of the view that prayer for adjournment is justified.

G *We, however, make it clear that this Court in the judgment dated December 13, 1996 has found as a fact that the Motel by constructing walls and bunds on the river Banks and in the river Bed, as detailed in the judgment, has interfered with the flow of the river. The said finding is final and no argument can be permitted to be addressed in*

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that respect. The only question before this Court is the determination of quantum of compensation and further whether the fine in addition be imposed, if so, the quantum of fine.”

[Emphasis supplied]

When the matter came up for hearing on 4.8.98, the State of Himachal Pradesh was directed to examine the Report submitted by NEERI and also submit its own Plan of Action, too. Since, it was felt that the various owners of properties along the river banks would be benefited by the plan that is prepared, they should also be heard before any action is taken on the basis of such plan. The suggested plan and list of owners of properties were directed to be filed and thereupon Notices were also issued to them, in due course. On 16.3.99, Notice was issued to the Ministry of Environment, Government of India, to indicate their response to the Action Plan submitted by the Government of Himachal Pradesh on 21.12.98, wherein it was also stated that they are not possessed of sufficient financial means to implement their own action plan unless the Government of India provides them necessary finances. On 3.8.99, it was ordered that the larger issue regarding Action Plan will be considered later and the matter will be taken to decide the question relating to pollution fine, if any, to be imposed on the 1st respondent. On 28.9.99, the statement of Mr. Salve, learned counsel on behalf of the respondent, that M/s Span Motels (P) Ltd. was prepared to bear their fair share of the project cost of ecological restoration was recorded, and directed the same to be submitted in writing. On 19.01.2000, it was also ordered that the question of apportionment of cost of restoration of ecology as also the question of pollution fine will be considered by the Court on the next date of hearing. At the hearing on 29.2.2000, Shri G.L. Sanghi, Senior Advocate, appearing for M/s Span Motels (P) Ltd., challenged the legality of the proposed levy of fine, otherwise than through the manner envisaged under the relevant pollution laws by resorting to prosecution before criminal court and after a fair trial therefor. Mr. M.C. Mehta, apart from making submissions, was permitted to submit a note in response to the submissions of Shri G.L. Sanghi.

On a consideration of the respective stand on behalf of the parties on either side, by a judgment dated 12.5.2000, reported in 2000 (6) SCC 213, after adverting to the various laws relating to the prevention and control of pollution and for protection of environment, it was held as follows:

“Thus, in addition to the damages which have to be paid by M/s Span Motel, as directed in the main judgment, it cannot be punished with fine unless the entire procedure prescribed under the Act is

A followed and M/s Span Motel are tried for any of the offences contemplated by the Act and is found guilty.

The notice issued to M/s. Span Motel why pollution fine be not imposed upon them is, therefore, withdrawn. But the matter does not end here.

B Pollution is a civil wrong. By its very nature, it is a Tort committed against the community as a whole. A person, therefore, who is guilty of causing pollution has to pay damages (compensation) for restoration of the environment and ecology. He has also to pay damages to those who have suffered loss on account of the act of the offender. The powers of this Court under Article 32 are not restricted and it can award damages in a PIL or a Writ Petition as has been held in a series of decisions. In addition to damages aforesaid, the person guilty of causing pollution can also be held liable to pay exemplary damages so that it may act as a deterrent for others not to cause pollution in any manner. Unfortunately, notice for exemplary damages was not issued to M/s Span Motel although it ought to have been issued. The considerations for which "fine" can be imposed upon a person guilty of committing an offence are different from those on the basis of which exemplary damages can be awarded. While withdrawing the notice for payment of pollution fine, we direct a fresh notice be issued to M/s Span Motel to show cause why in addition to damages, exemplary damages be not awarded for having committed the acts set out and detailed in the main judgment. This notice shall be returnable within six weeks. This question shall be heard at the time of quantification of damages under the main judgment."

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F Shri G.L. Sanghi, learned Senior counsel and Shri Rajiv Dutta, Senior counsel, were heard for M/s Span Motels Pvt. Ltd. Mr. M.C. Mehta, Shri Vijay Panjwani for Central Pollution Control Board, Shri N.C. Kochhar for State of Himachal Pradesh, and others were heard. Both Shri G.L. Sanghi and Shri N.C. Kochhar, took us in great detail to the relevant portions of the pleadings, the various orders passed on different occasions and the reports

G submitted by the Central Pollution Control Board as well as by NEERI and the action plan submitted by the State of Himachal Pradesh. The counsel for Central Pollution Control Board also explained the tenor of the report submitted by it apart from inviting attention to Section 24 of the Water (Prevention & Control of Pollution) Act, 1974.

H We have carefully considered the submissions made by them in the

light of the materials on record. The sum and substance of the stand taken for M/s Span Motels (P) Ltd., is that the action taken and construction works executed by them at heavy cost was meant to protect not only their own property but the property of the State and the same was also in the interests of those on the basin and banks of both sides of the river Beas and a perusal of the remedial measures suggested in the technical reports noticed above would go to show that they have only executed such nature and type of works which now are suggested for execution in those reports as protective measures and, therefore, they cannot be held guilty of having committed any illegalities and interfered with or endangering the environment or ecology in the place to warrant the levy of exemplary damages against them. In pursuing such a stand the repeated endeavour was to reiterate that M/s Span Motels (P) Ltd. could not be said to have committed any illegal acts, when they really approached all the authorities concerned for effective action and even obtained necessary permissions for executing those necessary protective measures and works, at a stage when the authorities who are obliged themselves to undertake such works were feeling helpless for want of funds to undertake them. Finally, it was contended that they have already spent considerable sum of their own money for the protective and relief measures undertaken by them and it will be unjust and harsh to impose upon them any further liability in the shape of exemplary damages, when they have already undertaken responsibility to bear a fair share of the project cost of ecological restoration. Shri G.L. Sanghi also reiterated and reinforced the said undertaking by stating that his clients still stand by the same and there is no justification whatsoever to levy any exemplary damages against them.

This Court, on the earlier occasions, after adverting to the pleadings, relevant documents and the technical report of the Central Pollution Control Board, enumerated the various activities of the Span Motels considered to be illegal and constituted "callous interference with the natural flow of river Beas" resulting in the degradation of the environment and for that purpose indicted them with having "interfered with the natural flow of the river by trying to block the natural relief/spill channel of the river". We do not want to burden this judgment once again by repeating them *in extenso*. Equally, the Himachal Pradesh Government also was held to have committed patent breach of public trust by leasing the ecologically fragile land to the Motel. It is only on such findings, the "polluter pays" principle as interpreted by this Court with liability for harm to compensate not only the victims but also the cost of restoring the environmental degradation and reversing the damaged ecology was held applicable to this case. Those findings rendered earlier

A were held to be “final and no argument can be permitted to be addressed in that respect” and the only question that remained left is the “determination of quantum of compensation and further whether the fine in addition be imposed, if so, the quantum of fine”. Therefore, not only it is impermissible for the counsel for the Motel or anyone else to claim for a reversal of those findings or any reconsideration of the nature, character and legality or propriety of those activities of SMPL but we feel bound by them and not persuaded to proceed on a clean slate, by-passing the exercise earlier undertaken and the conclusions firmly recorded in this regard. After the submission of the technical report by NEERI also, it was held that the “question of apportionment of cost of restoration of ecology as also the question of pollution fine will be considered by the Court” on the next and further hearings. The NEERI report also does not appear to either give a clean chit or completely exonerate the Span Motel Pvt. Ltd for their activities, which were earlier considered to constitute an onslaught on the fragile environment and ecology of the area.

D Even in the judgment of this Court, since reported in [2000] 6 SCC 213 (supra) while accepting the claim of the Motels that the *sine qua non* for punishment of imprisonment and fine is a fair trial in a competent Court and that such punishment of imprisonment or fine can be imposed only after the person is found guilty by the competent court, a general and passing reference has also been made to the earlier findings and as a consequence of which only it has been again held that though no fine as such can be imposed and the notice issued by this Court earlier be withdrawn, a fresh notice was directed to be issued to Span Motels Pvt. Ltd. as to why in addition to damages, as directed in the main judgment, exemplary damages cannot be awarded against them “for having committed the acts set out and detailed in the main judgment”. Equally, the object and purpose of such levy of exemplary damages was also indicated as to serve “a deterrent for others not to cause pollution in any manner”. Having regard to what has been stated supra, the question as to the imposition of exemplary damages and the liability of Span Motels Pvt. Ltd. in this regard has to necessarily depend upon the earlier findings of this Court that the Motel by constructing walls and bunds on the river banks and in the river bed as detailed in the judgment has interfered with the flow of the river and their liability to pay the damages on the principle of “Polluter pays” and also as an inevitable consequence thereof. The specification in the NEERI report regarding details of the activities of Span Motels Pvt. Ltd. and the nature of constructions made in 1993 in figure No.2 that (a) “in 1993, to protect the newly acquired land as also the main resort land, the SMPL constructed concrete studs, stepped wall and concrete

bars as depicted in Fig.2"; (b) "blocked the mouth of the natural relief/spill channel by dumping of boulders" resulting in the levelling of the leased area and (c) "at the downstream of M/s SMPL, a private property owner has blocked the relief/spill channel by constructing a stonewall across the channel (E & F)" also confirms and only reinforce the need and justification for the indictment already made. The basis for their liability to be saddled with the exemplary costs has been firmly and irreversibly already laid down in the main judgment itself and there is no escape for the Span Motels Pvt. Ltd. in this regard. We have to necessarily proceed further only on those basis of facts and position of law, found and declared.

The question remaining for further consideration relating to the award of exemplary damages is only as to the quantum. The various laws in force to prevent, control pollution and protect environment and ecology provide for different categories of punishment in the nature of imposition of fine as well as or imprisonment or either of them, depending upon the nature and extent of violation. The fine that may be imposed alone may extend even to one lakh of rupees. Keeping in view all these and the very object underlying the imposition of imprisonment and fine under the relevant laws to be not only punish the individual concerned but also to serve as a deterrent to others to desist from indulging in such wrongs which we consider to be almost similar to the purpose and aim of awarding exemplary damages, it would be both in public interest as well as in the interests of justice to fix the quantum of exemplary damages payable by Span Motels Pvt. Ltd. at Rupees Ten lakhs only. This amount we are fixing keeping in view the undertaking given by them to bear a fair share of the project cost of ecological restoration which would be quite separate and apart from their liability for the exemplary damages. The question relating to the said quantum of liability for damages on the principle of "polluter pays", as held by this Court against the Span Motels Pvt. Ltd. and undertaken by them, will be determined separately and left open for the time being. The amount, of special damages of Ten lakhs of rupees, shall be remitted to the State Government in the Department of Irrigation and Public Health to the Commissioner/Secretary for being utilized only for the flood protection works in the area of Beas river affected by the action of Span Motels Pvt. Ltd.

K.K.T.

Petition disposed of.