

PARYAVARAN SURAKSHA SAMITI AND ANOTHER

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v.

UNION OF INDIA & OTHERS

(Writ Petition (C) No. 375 of 2012)

FEBRUARY 22, 2017

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[JAGDISH SINGH KHEHAR, CJI, DR. D. Y. CHANDRACHUD
AND SANJAY KISHAN KAUL, JJ.]

Environmental Law:

Writ petition u/Art. 32 of Constitution – Seeking direction to Union and State Governments – To ensure that no industry, which requires ‘consent to operate’ from Pollution Control Board, is permitted to function, unless it has functional effluent treatment plant, which is capable to meet the prescribed norms for removing the pollutants from the effluent – Held: An industry requiring “consent to operate” is permitted to run, only if its primary effluent treatment plant is functional – Therefore, question of concern is maintenance of the same after the industry becomes functional – Hence, State Pollution Control Boards are directed to issue notices to all industrial units to make their primary effluent treatment plant operational within three months – On default by the industrial units, such units shall be restrained from further industrial activity – Setting up of “common effluent treatment plants” to be taken up as an urgent mission – The onus to operate the existing common effluent treatment plants, rests on municipalities (and/or Local bodies) by resorting to remedy u/Arts. 243X and 243Y of the Constitution – The concerned Secretaries to the Government shall be responsible for monitoring the progress – To supervise complaints of non-implementation of the instant directions, the concerned Benches of the National Green Tribunal, will maintain running and numbered case files – Each concerned State is also required to make provisions for “online, real time, continuous monitoring system” to display omission levels, in the public domain, on the portal of the concerned State Pollution Control Board – Constitution of India – Arts. 32, 243W, 243X and 243Y & 12th Schedule Item 6.

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Disposing of the writ petition, the Court

HELD: 1.1 The industry requiring “consent to operate”,

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A can be permitted to run, only if its primary effluent treatment
plant, is functional. Therefore, the question that arises for our
consideration is, whether the same is maintained in good order,
after the industry itself has become functional. Therefore, it is
just and appropriate, to direct the concerned State Pollution
B Control Boards, to issue notices to all industrial units, which
require “consent to operate”, by way of a common advertisement,
requiring them to make their primary effluent treatment plants
fully operational, within three months from the date of the present
judgment. On the expiry of the notice period of three months,
C the concerned State Pollution Control Board(s) are mandated to
carry out inspections, to verify, whether or not, each industrial
unit requiring “consent to operate”, has a functional primary
effluent treatment plant. Such of the industrial units, which have
not been able to make their primary effluent treatment plant fully
operational, within the notice period, shall be restrained from
D any further industrial activity. This direction may be implemented
by requiring the concerned electricity supply and distribution
agency, to disconnect the electricity connection of the defaulting
industry. [Para 4] [22-B-E]

E 1.2 Such an industrial concern, which has been disabled from
carrying on its industrial activities, is granted liberty to make its
primary effluent treatment plant functional to the required
capacity, and thereupon, seek a fresh “consent to operate” from
the concerned Pollution Control Board. [Para 5] [22-F-G]

F 1.3 Liberty is hereby granted to private individual(s) and
organizations, to address complaints to the concerned Pollution
Control Board, if any industry is in default. On the receipt of any
such complaint, the concerned Pollution Control Board, shall be
obliged to verify the same, and take such action against the
defaulting industry, as may be permissible in law. [Para 6] [23-
A-B]

G 2.1 Setting up of “common effluent treatment plants”,
should be taken up as an urgent mission. With reference to
common effluent treatment plants, which are already under
implementation, the Court hopes and expects that they would be
completed within the time lines already postulated. With
H reference to common effluent treatment plants, which are yet to

be set up, it would be just and appropriate to direct, the concerned State Governments (including, the concerned Union Territories) to complete the same within a period of three years, from the date of this judgment. While acquiring land for the 'common effluent treatment plants', the concerned State Governments (including, the concerned Union Territories) will acquire such additional land, as may be required for setting up "zero liquid discharge plants", if and when required in the future. [Para 8] [23-E-G]

2.2 The running of 'common effluent treatment plants', which are in place, is also a matter of serious concern. Some of the common effluent treatment plants are dis-functional, because of lack of finances, whilst some others are dis-functional, because of the requirement of repairs, which have not been carried out, again because of lack of financial resources. Given the responsibility vested in Municipalities under Article 243W of the Constitution, as also, in item 6 of the 12th Schedule, wherein the aforesaid obligation, pointedly extends to "public health, sanitation conservancy and solid waste management", the onus to operate the existing common effluent treatment plants, rests on municipalities (and/or local bodies). [Paras 9, 10] [24-A-C]

2.3 In case there are further financial constraints, the remedy lies in Articles 243X and 243Y of the Constitution. It will be open to the concerned municipalities (and/or local bodies), to evolve norms to recover funds, for the purpose of generating finances to install and run, all the "common effluent treatment plants". [Para 10] [24-D]

2.4 In case, such norms are not in place, before the commencement of the next financial year, the concerned State Governments (or the Union Territories), shall cater to the financial requirements, of running the "common effluent treatment plants", which are presently dis-functional, from their own financial resources. [Para 10] [24-F-G]

2.5 For the purpose of setting up of "common effluent treatment plants", the concerned State Governments (including, the concerned Union Territories) will prioritize such cities, towns and villages, which discharge industrial pollutants and sewer, directly into rivers and water bodies. [Para 11] [24-G-H]

A **2.6 The Secretary of the Department of Environment, of**
the concerned State Government (and the concerned Union
Territory), shall be answerable in case of default. The concerned
Secretaries to the Government shall be responsible of monitoring
B the progress, and issuing necessary directions to the concerned
Pollution Control Board, as may be required, for the
implementation of the above directions. They shall be also
responsible for collecting and maintaining records of data, in
respect of the directions contained in this order. The said data
shall be furnished to the Central Ground Water Authority, which
shall evaluate the data, and shall furnish the same to the Bench
C of the jurisdictional National Green Tribunal. [Para 13] [25-C-E]

3.1 To supervise complaints of non-implementation of the
instant directions, the concerned Benches of the National Green
Tribunal, will maintain running and numbered case files, by
dividing the jurisdictional area into units. The above mentioned
D case files, will be listed periodically. The concerned Pollution
Control Board is also hereby directed, to initiate such civil or
criminal action, as may be permissible in law, against all or any of
the defaulters. Liberty is granted to private individuals, and
organizations, to approach the concerned Bench of the
jurisdictional National Green Tribunal, for appropriate orders,
E by pointing out deficiencies, in implementation of the above
directions. [Paras 14, 15] [25-E-G]

3.2 It would be in the interest of implementation of the
objective sought to be achieved, to also require each concerned
State (and each, concerned Union Territory) to make provision
F for “online, real time, continuous monitoring system” to display
emission levels, in the public domain, on the portal of the
concerned State Pollution Control Board. [Para 17] [26-B]

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No.
375 of 2012.

G Under Article 32 of the Constitution of India.

Ms. Pinky Anand, ASG., Anil Grover, S.S. Shamshery,
Purushendra Kaurav, AAGs., Colin Gonsalves, Sr. Advs., Gunjan Singh,
(for Ms. Jyoti Mendiratta), S.W.A. Qadri, Ajay Sharma, Balendu Shekhar,
H Ansh Singh Luthra, Hemant Arya, (for G.S. Makker), Satish Kumar,

Sanjay Kr. Visen, Amit Sharma, Ankit Raj, (for Ms. Ruchi Kohli), Mishra Saurabh, Ankit Kr. Lal, Ms. Vanshuja Shukla, Ms. Anuradha Mishra, Ms. Hemantika Wahi, Ms. Jesal Wahi, Ms. Mamta Singh, Ms. Bhuvneshwari Pathak Kaushik, Ms. Shilpi Satya Priya Satyam, Rahul Kaushik, Ashutosh Kr. Sharma, Tapesh Kumar Singh, Mohd. Waquas, Sukant Vikram, Aditya Pratap Singh, S.Udaya Kumar Sagar, Mrityunjai Singh, Guntur Prabhakar, Ms. Purna Singh, M.R. Shamshad, Rajat Singh, Aditya Samaddar, Ms. Harshita Deshwal, Paramasivam, B. Balaji, Muthuvel Palani, S. Kumar, Vijay Panjwani, Ms. Varsha Poddar, (for Gopal Singh), Joydeep Mazumdar, Debojyoti Bhattacharya, (for Parijat Sinha), Krishnayan Sen, Himanshu Bhushan, Uddyam Mukherjee, Ms. Sakshi Kakkar, (for C. D. Singh), Mohit Kumar Shah, Gaurav Kanth, Pushkar Taimni, V. N. Raghupathy, Lagnesh Mishra, Parikshit P. Angadi, Prakash Jadhav, Saurabh Ajay Gupta, Nishant Bishnoi, (for Kuldeep Singh), C. K. Sasi, Varinder Kumar Sharma, Ms. Sunita Sharma, Advs. for the appearing parties.

The Judgment of the Court was delivered by D

JAGDISH SINGH KHEHAR, CJI 1. The petitioners have approached this Court, seeking a writ in the nature of mandamus, for a direction to the respondents, (which includes the Union Government, all the State Governments and the Union Territories) to ensure, that no industry which requires “consent to operate” from the concerned Pollution Control Board, is permitted to function, unless it has a functional effluent treatment plant, which is capable to meet the prescribed norms for removing the pollutants from the effluent, before it is discharged. E

2. The Union of India, and the State Governments (including the Union Territories) have filed counter affidavits, expressing their individual positions. During the course of hearing, learned counsel representing the respondents, also made some suggestions, which could be highly beneficial, in carrying forward the process of removing pollutants, from the discharged effluent, in a systematic and co-ordinated manner. F

3. During the course of hearing, it was not disputed between the rival parties, that the initiation of the process has to be at the individual level of the industry itself. It was suggested that each industry which requires “consent to operate” from the concerned Pollution Control Board, should be mandated to set up a functional primary effluent treatment plant. We are informed, that only when such an effluent treatment plant has been set up, the concerned Pollution Control Board grants a “no H

A objection” to the industry, and accordingly “consent to operate”, so as to
allow the industry to become functional. It is therefore apparent, that all
running industrial units, which require “consent to operate” from the
concerned Pollution Control Board, have a functional primary effluent
treatment plant, in place.

B 4. The question that arises for our consideration is, whether the
same is maintained in good order, after the industry itself has become
functional. The industry requiring “consent to operate”, can be permitted
to run, only if its primary effluent treatment plant, is functional. We
therefore consider it just and appropriate, to direct the concerned State
C Pollution Control Boards, to issue notices to all industrial units, which
require “consent to operate”, by way of a common advertisement,
requiring them to make their primary effluent treatment plants fully
operational, within three months from today. On the expiry of the notice
period of three months, the concerned State Pollution Control Board(s)
D are mandated to carry out inspections, to verify, whether or not, each
industrial unit requiring “consent to operate”, has a functional primary
effluent treatment plant. Such of the industrial units, which have not
been able to make their primary effluent treatment plant fully operational,
within the notice period, shall be restrained from any further industrial
activity. This direction may be implemented by requiring the concerned
E electricity supply and distribution agency, to disconnect the electricity
connection of the defaulting industry. We therefore hereby further direct,
that in case the concerned State Pollution Control Boards make a
recommendation to the concerned electrical supply and distribution
agency/company, to disconnect electricity supply to an industry, for the
reason that its primary effluent treatment plant is not functional, it shall
F honour such recommendation, and shall disconnect the electricity supply
to such defaulting industrial concern, forthwith.

5. Such an industrial concern, which has been disabled from
carrying on its industrial activities, as has been indicated in the foregoing
paragraph, is granted liberty to make its primary effluent treatment plant
G functional to the required capacity, and thereupon, seek a fresh “consent
to operate” from the concerned Pollution Control Board. Only after the
receipt of such fresh “consent to operate”, the industrial activities of the
disabled industry, can be permitted to be resumed. In carrying out the
above exercise, we consider it just and appropriate to require, the Pollution
Control Boards to carry out inspections, by prioritizing inspections of
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severely and critically polluted industries, so that visible results emerge at the earliest. A

6. Liberty is hereby granted to private individual(s) and organizations, to address complaints to the concerned Pollution Control Board, if any industry is in default. On the receipt of any such complaint, the concerned Pollution Control Board, shall be obliged to verify the same, and take such action against the defaulting industry, as may be permissible in law. Such action, would be in addition to the discontinuation of industrial activity forthwith, in the manner directed hereinabove (but only after verification). B

7. Having effectuated the directions recorded in the foregoing paragraphs, the next step would be, to set up common effluent treatment plants. We are informed, that for the aforesaid purpose, the financial contribution of the Central Government is to the extent of 50 per cent, that of the concerned State Government (including the concerned Union Territory) is 25 per cent. The balance 25 per cent, is to be arranged by way of loans from banks. The above loans, are to be repaid, by the industrial areas, and/or industrial clusters. We are also informed, that the setting up of a common effluent treatment plant, would ordinarily take approximately two years (in cases where the process has yet to be commenced). The reason for the above prolonged period, for setting up "common effluent treatment plants", according to learned counsel, is not only financial, but also, the requirement of land acquisition, for the same. C D E

8. In view of the fact, that the financial position has been taken care of, as has been expressed above, we are of the view, that the setting up of "common effluent treatment plants", should be taken up as an urgent mission. With reference to common effluent treatment plants, which are already under implementation, we hope and expect, that they would be completed within the time lines already postulated. With reference to common effluent treatment plants, which are yet to be set up, we consider it just and appropriate to direct, the concerned State Governments (including, the concerned Union Territories) to complete the same within a period of three years, from today. We are also of the view, that while acquiring land for the 'common effluent treatment plants', the concerned State Governments (including, the concerned Union Territories) will acquire such additional land, as may be required for setting up "zero liquid discharge plants", if and when required in the future. F G H

A 9. During the course of hearing, we were informed by learned
counsel, that the running of 'common effluent treatment plants', which
are in place, is also a matter of serious concern. In this behalf, it was
submitted, that some of the common effluent treatment plants are dis-
functional, because of lack of finances, whilst some others are dis-
B functional, because of the requirement of repairs, which have not been
carried out, again because of lack of financial resources.

10. Given the responsibility vested in Municipalities under Article
243W of the Constitution, as also, in item 6 of the 12th Schedule, wherein
the aforesaid obligation, pointedly extends to "public health, sanitation
conservancy and solid waste management", we are of the view, that the
C onus to operate the existing common effluent treatment plants, rests on
municipalities (and/or local bodies). Given the aforesaid responsibility,
the concerned municipalities (and/or local bodies), cannot be permitted
to shy away, from discharging this onerous duty. In case there are further
financial constraints, the remedy lies in Articles 243X and 243Y of the
D Constitution. It will be open to the concerned municipalities (and/or local
bodies), to evolve norms to recover funds, for the purpose of generating
finances to install and run, all the "common effluent treatment plants",
within the purview of the provisions referred to hereinabove. Needless
to mention, that such norms as may be evolved for generating financial
resources, may include all or any, of the commercial, industrial and
E domestic beneficiaries, of the facility. The process of evolving the above
norms, shall be supervised by the concerned State Government (Union
Territory), through the Secretaries, Urban Development and Local Bodies
respectively, (depending on the location of the respective common
effluent treatment plant). The norms for generating funds, for setting up
F and/or operating the 'common effluent treatment plant' shall be finalized,
on or before 31.03.2017, so as to be implemented with effect from the
next financial year. In case, such norms are not in place, before the
commencement of the next financial year, the concerned State
Governments (or the Union Territories), shall cater to the financial
requirements, of running the "common effluent treatment plants", which
G are presently dis-functional, from their own financial resources.

11. Just in the manner suggested hereinabove, for the purpose of
setting up of "common effluent treatment plants", the concerned State
Governments (including, the concerned Union Territories) will prioritize
such cities, towns and villages, which discharge industrial pollutants and
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sewer, directly into rivers and water bodies. A

12. We are of the view, that in the manner suggested above, the malady of sewer treatment, should also be dealt with simultaneously. We therefore hereby direct, that 'sewage treatment plants' shall also be set up and made functional, within the time lines and the format, expressed hereinabove. B

13. We are of the view, that mere directions are inconsequential, unless a rigid implementation mechanism is laid down. We therefore hereby provide, that the directions pertaining to continuation of industrial activity only when there is in place a functional "primary effluent treatment plants", and the setting up of functional "common effluent treatment plants" within the time lines, expressed above, shall be of the Member Secretaries of the concerned Pollution Control Boards. The Secretary of the Department of Environment, of the concerned State Government (and the concerned Union Territory), shall be answerable in case of default. The concerned Secretaries to the Government shall be responsible of monitoring the progress, and issuing necessary directions to the concerned Pollution Control Board, as may be required, for the implementation of the above directions. They shall be also responsible for collecting and maintaining records of data, in respect of the directions contained in this order. The said data shall be furnished to the Central Ground Water Authority, which shall evaluate the data, and shall furnish the same to the Bench of the jurisdictional National Green Tribunal. C D E

14. To supervise complaints of non-implementation of the instant directions, the concerned Benches of the National Green Tribunal, will maintain running and numbered case files, by dividing the jurisdictional area into units. The above mentioned case files, will be listed periodically. The concerned Pollution Control Board is also hereby directed, to initiate such civil or criminal action, as may be permissible in law, against all or any of the defaulters. F

15. Liberty is granted to private individuals, and organizations, to approach the concerned Bench of the jurisdictional National Green Tribunal, for appropriate orders, by pointing out deficiencies, in implementation of the above directions. G

16. It however needs to be clarified, that the instant directions and time lines, shall not in any way dilute any time lines and directions issued by Courts or Benches of the National Green Tribunal, hitherto H

A before, wherein the postulated time lines would expire before the ones expressed through the directions recorded above. It is clarified, that the time lines, expressed hereinabove will be relevant, only in situations where there are no prevalent time line(s), and also, where a longer period, has been provided for.

B 17. It would be in the interest of implementation of the objective sought to be achieved, to also require each concerned State (and each, concerned Union Territory) to make provision for “online, real time, continuous monitoring system” to display emission levels, in the public domain, on the portal of the concerned State Pollution Control Board.

C We are informed, that at least three State Governments have already adopted the aforesaid measures. Such measures shall be put in place by all the concerned State Governments (including, the concerned Union Territories), within six months from today.

D 18. The instant writ petition stands disposed of, in the aforesaid terms.

Kalpana K. Tripathy

Writ Petition disposed of.