

Andhra High Court

M/S. Ambuga Petrochemicals Ltd. vs A. P. Pollution Control Board And ... on 23 April, 1996

Equivalent citations: AIR 1997 AP 41

Bench: B S Reddy

ORDER

1. The petitioner is an Industry manufacturing certain chemicals is agreed by the order passed by the respondent-Pollution Control Board on 4-4-1996 whereunder the petitioner-industry is directed to stop all its industrial activities.

2. The petitioner, as at present is allegedly manufacturing two chemicals-- (1) Phthalic Anhydride (PA) and (2) Fumaric Act (FA). In the process of manufacturing of PA no effluents as such are generated and there would be no question of polluting the water. However, in the manufacturing of FA certain effluents are generated and the petitioner has a in house effluent treatment plant (ETP) where the effluents generated in the process of manufacture of FA are partially treated. The petitioner is also a member of Patancheru Envirotech Limited (PETL) and the partially treated effluents are to be transported by the petitioner to PETL where it is fully treated before being discharged.

3. The petitioner-industry is stated to have become sick and the proceedings are pending before the Board of Industrial and Financial Reconstruction. The production levels of FA have substantially dropped and consequently the generation of effluents is also very much reduced in quantity and considering the cost involved in the transportation of partially treated effluents to PETL at Patancheru; the petitioner considered it advisable to fully treat the effluents in the [effluent treatment plant installed by the petitioner in its own factory premises.

4. On 11-12-1995 and again 3-1-1996 the officials of the respondent-Pollution Control board inspected the factory premises of the petitioner and thereafter a show-cause notice D/ - 30-1-1996 was served upon the petitioner. The petitioner was asked to show-cause as to why action should not be taken against the petitioner under Sec. 33(A) of Water (Prevention and Control of Pollution) Amendment Act, 1988 directing closure of industry. In the show-cause notice, it is alleged that the effluents treatment plant is not in operation fully aerator is removed from the aeration tank. It is further alleged that partially treated effluents are being discharged outside the factory premises which are ultimately joining 'Dhosani' Tank thereby causing water pollution in the tank resulting in danger to public life. It is further alleged that effluent sample collected at the outlet of the factory premises and its analysis report of the effluent sample discloses that the values are in excess of the standards prescribed by the Board. It is also alleged that the petitioner was not lifting the effluents to M/s. PETL for final treatment and disposal. The petitioner submitted his reply on 15-2-1996 and the same was considered by the Board and thereafter issued the proceedings dated 4-4-1996 which is impugned in the writ petition. It is stated in the affidavit filed in support of the writ petition that the action of the respondent-Board is not tenable. In ordering closure of the petitioner's industry on the grounds stated in the impugned order. It is contended that an industry cannot be closed merely because it does not use the facility of a particular effluent treatment plant. So far as the first ground for closure is concerned, the petitioner submits that an application for renewal of consent is already filed and which is pending with the respondent-Board and in the absence of refusal, the same is deemed to have granted consent. So far as the second and third grounds are concerned, it is stated that even according to analysis report said to have been obtained by the 1st respondent, the levels of COD and BOD. are respectively 256-and 103 which are marginally over the prescribed standards and therefore, no serious view can be taken of such minor variation as even the slight analytical error can bring about such variation. It is also stated that the sample drawn on 3-1-1996 was not in accordance with the provisions of Sec. 22 of the said Act. It is also stated that the impugned order is passed nearly two months after the petitioner submitted the reply to the show-cause notice and therefore, it has to be presumed that the situation is not so grave calling for the action of the respondent-Board under Sec. 33(A) of the said Act. The direction to close, the industry according to the petitioner is a serious measure taken by the respondent-Board and' totally disproportionate to the gravity of

the situation and irregularity, if any, committed by the petitioner. The very fact, the respondent-Board kept quiet for a period of two months itself would show that the situation is not so serious and therefore, the respondent-Board could have issued appropriate direction to rectify the mistake if any instead of ordering closure of the industry.

5. In the counter-affidavit filed by the respondent-Board, it is inter alia stated that the petitioner's industry belong to one of the 17 categories of high pollution potential industries and according to its information, the petitioner is generating waste water to the tune of 70 M/day (i.e. 70,000 litres) by producing 614 T/M of Pthalic Anhydride and 16 T/ M of Fumaric Acid The untreated/ partially treated effluents from Aeration Tank is flowing into unlined (Kacha) earthen pits in the plant premises and the overflow from those ponds is flowing outside the premises of industry and joining "Dhosani Tank" and thereby causing water pollution. It is in categorical terms stated that the point of disposal as per the earlier consent is on land for irrigation within Us own premises, within the standards stipulated therein. The respondent-Board is stated to have considered the production of the petitioner for the past six months before arriving at the conclusion that the quantity of effluent generated at present stage by the petitioner-industry is far more than prescribed by the respondent-Board. It is also stated in the counter-affidavit that admittedly the petitioner is not sending effluents to M/ s. PETL for treatment and not releasing the effluents outside, the premises; but it is a fact that the petitioner is not using this effluent for irrigation purpose. It is also stated that the petitioner-industry is being operated without valid consent after 20th February, 1992 and it is due to the petitioner's inaction the consent was not renewed. The petitioner, according to the respondent-Board is discharging the effluents without confirming the standards of treated effluents to be discharged into in land surface water. It is also alleged that the petitioner-industry is operating the industry without full-fledged ETP and even then it failed to discharge partially treated effluents into PETL being a member of this CETP. It is specifically stated that the discharge of untreated effluents into unlined lagoons (Earthen Pits) in their premises and then to outside premises passing into Dhosani Tank is causing damage to the surface water as well as ground water and Environment in the surrounding areas and/ the impugned order is passed to prevent further deterioration of the environment.

6. Heard the learned Counsel for the petitioner and the learned Counsel for the respondent-Board.

7. The learned Counsel for the petitioner submits that the impugned order suffers from various infirmities including the non-application of mind by the respondent-Board. It is stated that the respondent-Board itself had earlier given the consent in the year 1992 and the application for 1993-94 and 95 is stated to be pending with the respondent-Board and since there is no refusal as such by the Board it should be presumed that the respondent-Board renewed its consent. At this stage, it may not be necessary to express any opinion on this aspect of the matter as the impugned order is not solely used upon this ground of petitioner not obtaining consent for the years subsequent to 1992, therefore, whether there is a deemed consent in accordance with Section 25(7) of the Act need not be decided. The learned Counsel for the petitioner submits that report dt. 17-8-1995, 19-12-1995 and 10-1-1996 by the Universal Enviro Associates were made available to the respondent-Board which would show that the effluents discharged do not exceed the standards, but the same is not taken into consideration. It is however, admitted in the reply to the show-cause notice that the samples collected on 8-8-1995 were not conforming to the Board's standard, because of some process problem in the plant and it is also admitted that the effluents treatment plant situated in the factory premises is not a full-fledged one.

8. The only point that arises for consideration in this writ petition is as to whether the order passed by the respondent-Pollution Board suffers from any illegality as such.

9. The respondent-Board is under the statutory and legal obligation to take all such effective measures to prevent water pollution and for this purpose the Board is empowered to give appropriate directions to any person, officer or authority including the power to direct closure of offending industry. The Statement of Objects and Reasons of the Water (Prevention and Control of Pollution) Act, 1974 reads as follows :-

"The problem of pollution of rivers and streams has assumed considerable importance and urgency in recent years as a result of the growth of industries and the increasing tendency to urbanization. It is, therefore, essential to ensure that the domestic and industrial effluents are not allowed to be discharged into the water courses without adequate treatment as such discharges would render the water unsuitable as source of drinking water as well as for supporting fish life and for use in irrigation. Pollution of rivers and streams also causes increasing damage to the country's economy.

A committee was set up in 1962 to draw a draft enactment for the prevention of water pollution. The report of the Committee was circulated to the State Governments and was also considered by the Central Council of Self-Government in September, 1963. This Council resolved that a single law regarding measures to deal with water pollution control, both at the Centre and at the State levels, may be enacted by the Union Parliament, A draft Bill was accordingly prepared and put up for consideration at a joint session of the Central ^Council of Local Self-Government and the Fifth Conference of the State Ministers of Town and Country Planning held in 1965. In pursuance of the decision of the joint session, the draft Bill was considered subsequently in detail by a Committee of Ministers of Local Self-Government from the States of Bihar, Madras, Maharashtra, Rajasthan, Haryana , and West Bengal.

Having considered the relevant local provisions' existing in the country and recommendations of the aforesaid Committees, the Government came to the conclusion that the existing local provisions are neither adequate nor satisfactory. There is, therefore, an urgent need for introducing a comprehensive legislation which would establish unitary agencies in the Centre and States to provide for the prevention, abatement and control of pollution of rivers and streams, for maintaining or restoring wholesomeness of such waters sources and for controlling the existing and new discharges of domestic and industrial wastes.

The Bill follows the recommendations of the aforesaid committees and seeks to-

- (i) establish at the Centre as well as in the States, Water Pollution Prevention Boards with the necessary complement of technical and administrative staff and to confer on them such powers as are necessary to deal effectively with the problem of water pollution in the country;
- (ii) provide penalties for contravention of the provisions of the Act; and
- (iii) establish Central and State water testing laboratories to enable the Boards to assess the extent of pollution, lay down standards and establish guilt or default.

Legislation in respect of the aforesaid subject-matter is relatable to Entry 17 read with Entry 6 of List II in the Seventh Schedule to the Constitution and Parliament has no power to make a law in the States (apart from the provisions of Arts. 249 and 250 of the Constitution) unless the Legislatures of two or more States pass a resolution in pursuance of Art. 252 of the Constitution empowering Parliament to pass the necessary legislation on the subject. The Legislatures of the States of Gujarat, Jammu and Kashmir, Kerala, Haryana and Mysore have passed such resolutions. The Bill is intended to give effect to the resolutions passed by the Legislatures of the aforesaid States.

The Act was comprehensively 'amended by Amending Act 53 of 1988 to get over some administrative, and practical defects in effectively implementing the provisions of the Act and one such amendments by was of insertion of new Sec. 33(A) which reads as follows :

"In Chapter V of the principal Act, after Sec. 33, the following section shall be inserted, namely :

"33-A. Power to give directions,-- Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a, Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in

writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.

Explanation :-- For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct-

- (a) the closure, prohibition or regulation of any industry, operation or process; or
- (b) the stoppage or regulation of supply of electricity, water or any other service."

A reading of the provisions and the whole scheme of the Act would suggest that the respondent-Board is under obligation to take all such necessary steps and issue directions from time to time in case of erring industry causing pollution.

10. It is true that in every case, it is not as if the Board can issue direction ordering closure of the industry. It depends upon the gravity of irregularities and the seriousness of Contravention and other allied matters.

11. The directions that may be issued by the Board depends upon the facts and circumstances of each case and it would not be possible for this Court to lay down any guidelines as such, but in appropriate cases, the Court can certainly intervene, if the order passed by the Board is totally disproportionate to the irregularity and the contraventions complained of. It is true that this Court would intervene in case if it is satisfied that the directions were wholly unreasonable or violative of any provisions of the Act. At the same time the Court does not sit in appeal over the orders passed by the Board. In a judicial review proceedings it may not be appropriate for this Court to determine the matter on merits, in view of the magnitude, complexity and technical nature of the enquiry involved. The Court does not possess the required expertise and therefore, cannot pass judgment on the appropriateness or the adequacy of a particular direction. It would be appropriate to recall what Justice Frankfurter observed in the leading case of *Railroad Commission of Texas v. Rowan and Nicholas Oil Company* (311 US 570 : 85 L Ed 358) (sic) as follows :

"Nothing in the Constitution warrants 4 rejection of these expert conclusions. Nor on the basis of intrinsic skills and equipment, are the federal Courts qualified to set their independent judgment on such matters against that of the chosen State authorities When we consider the limiting conditions of litigation the adaptability of the judicial process only to issues definitely circumscribed and susceptible of being judged by the techniques and criteria within the special competence of lawyers it is clear that the Due Process Clause does not require the feel of the expert to be supplanted by an independent view of Judges on the conflicting testimony and prophecies and impressions of expert witnesses."

It is well settled that the judicial review proceeding is totally different from ordinary appeal and the Court in exercise of judicial review power does not substitute its own decision and is concerned not with the merits of a decision but with the manner in which the decision was made. In *Chief Constable of the North Wales Police v. Evans*, (1982) 3 All ER 141 at 154 Lord Brightman said :

"Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made.

Judicial Review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of-the Court is observed, the Court will, in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power."

In the instant case, there is no complaint of any procedural unfairness, no mala fides as such are attributed to any of the officers of the Board. The only complaint is of non-application of mind. I have perused the records produced by the Board pursuant to the Rule Nisi and satisfied that every aspect of the matter required to be

considered by the Board is taken into consideration and the decision is not based upon any extraneous or irrelevant grounds. It is not possible to hold that the decision is "so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at. (Council of Civil Services Unions v. Minister for the Civil Service, 1985 AC 374).

12. In the instant case, it is not possible to hold that the order passed by the respondent-Board directing the closure of industry is shockingly disproportionate and excessively Severe.

13. However, it is always open to the petitioner-industry to comply with the directions issued by the respondent-Board and fulfil the requirements of standards and approach the respondent-Board for restarting its industrial activities and the same shall have to be considered' by the Board on its own merits.

14. For the aforesaid reasons, the writ petition fails and the same is accordingly dismissed. No costs.

15. Petition dismissed.