

**BHAVANI RIVER V. SAKTHI SUGARS LTD. [1998] RD-
SC 370 (30 July 1998)**

A.S. ANAND, B.N. KIRPAL, V.N. KHARE

ACT:

HEADNOTE:

O R D E R Leave granted.

This appeal is directed against the judgment and order of a Division Bench of the High Court of Judicature at Madras in Wrist Petition No. 17333 of 1995 dated 17th July, 1997.

After hearing learned counsel for the parties and examining the record we are satisfied that the matter before the High Court was one of public interest and required an in-depth examination by the court. The Division Bench of the High Court, it appears to us, failed to appreciate the true significance of the matter regarding the need to arrest the unabated pollution, which had become a health hazard and environmental enemy because of discharge of objectionable effluents from the distillery into Bhavani River and adjoining areas. The High Court feel in error to dispose of the writ petition merely on the consent of the Tamil Nadu Pollution Control Board. Matters like this, which involve greater public interest should not normally be decided merely on consent of the Pollution Control Board. We are somewhat unhappy about the manner in which the Pollution Control Board gave its consent unmindful of the grave consequences, which have been amply demonstrated before us.

The order of the High Court, therefore, cannot be sustained.

We, accordingly, allow this appeal and set aside the order of the High Court and remand the writ petition to it for its fresh disposal in accordance with law.

During the pendency of the proceedings in this court, certain affidavits and undertakings were filed on behalf of the industry respondent No. 6, and on 29th January, 1998 we gave certain directions including the direction for the closure of the operation of the Industry (respondent No.6) on or before 2nd February, 1998 because of continuing pollution from its distillery and sugar division. We also directed inspection of the industry and the site adjacent to it by NEERI, who was also asked to submit a report to this Court whether the pollution control devices have been installed by the Industry and proper steps taken to control

pollution in accordance with the provisions of the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter Act) or not. NEERI was also directed to inspect the surrounding areas with a view to assess damage, caused due to discharge of effluent by the Industry and to indicate the cost of restitution.

Pursuant to the directions issued by us on 29th January, 1998, NEERI has submitted two reports. The first inspection report was submitted on 9th March, those reports and since we are remanding the writ perused those reports and since we are remanding the writ petition to the High Court for its disposal, it appears appropriate to us, to request the High Court to consider those reports and the suggestions made therein while passing orders in the Writ Petition from time to time.

Mr. Venugopal, learned Senior counsel appearing for the Industry, submits that remedial steps have already been taken as suggested by this Court as well as by NEERI and that Pollution to prevent pollution of water and the Industry may, therefore, be permitted to operate.

Mr. Harish Salve, learned amicus curiae on the other hand submits that all steps required to check pollution have not been taken and in support of his submission, relies upon the two reports submitted by NEERI to this Court.

The High Court may, therefore:

1. Consider in consultation with NEERI, whether the Industry may be permitted to have a test run or become operational and, if so, with what further safeguards and/or remedial measures to be taken. For this purpose NEERI shall appear before the High Court of Madras and inform the Court regarding the viability of the Industry starting either the test run or its operation. The High Court may, thereafter, pass appropriate orders regarding the lifting of the ban on operations which was imposed by this Court on operations which was imposed by this Court on 26.1.1998.

2. The High Court may also direct supervision by any of the agencies including NEERI or the Pollution Control Board, with a view to see that the Industry does not cause any type of pollution, in case it is permitted to become operational.

3. The High Court shall also examine the question of restitution of the areas damaged on account to the pollution already caused. The costs of the pollution already caused. The costs of the restitution shall be borne by M/s.

was requested to submit its report.

4. The High Court shall monitor the case till such time as is considered necessary by it .

The High Court may appoint amicus curiae to assist it for disposal of the case and burden the Industry with such costs as it may deem fit.

The parties, through their learned counsel are directed to appear before the High Court on 6th August, 1998. NEERI shall also be requested to appear before the High Court on the same date to give its opinion on technical matters regarding the operational viability of the Industry.

In so far as the costs in this Court are concerned, learned amicus curiae, Mr. Harish Salve assisted by Mr.S.Muralidhar Services Committee. We appreciate the gesture show by the learned counsel. We also wish to place on record our appreciation for the assistance rendered by Mr.Harish Salve, Senior Advocate and Mr.S.Muralidhar in this Court.

The Industry M/s.Sakthi Sugars Ltd., Tamil Nadu shall pay a sum of Rs. 20,000/- by way of costs, which shall be deposited in the account of the Supreme Court Legal Services Committee within one week.

The Registry shall transmit the complete record of the case to the High Court without any delay. The record may be sent by courier for which the expenses shall be borne by respondent No. 6.