

Mathew Lukose and Others Vs The Kerala State Pollution Control Board and Others

Court: High Court Of Kerala

Date of Decision: Sept. 27, 1990

Acts Referred: Air (Prevention and Control of Pollution) Act, 1981 " Section 19, 2, 20, 21, 22

Clean Air Act, 1971 " Section 112

Constitution of India, 1950 " Article 21, 51

Water (Prevention and Control of Pollution) Act, 1974 " Section 2

Citation: (1990) 2 KLJ 717

Hon'ble Judges: Chettur Sankaran Nair, J

Bench: Single Bench

Advocate: M.I. Joseph and Legy Abraham, in O.P. No. 3473/88 and A.X. Varghese, in O.P. Nos. 3473/88L and 4622/88, for the Appellant; N.N. Sugunapalan, for Respondent 2, Pirappancode V. Sreedharan Nair, for Respondent 4 and Pathrose Mathai, for Respondent 5, for the Respondent

Final Decision: Allowed

Judgement

Chettur Sankaran Nair, J.

The reliefs sought in the two petitions are similar, and so are, the grievances. They are therefore disposed of by a common judgment.

2. Petitioners 1 to 5 in O.P. 3473/88 are residents of Chingavanam, while Petitioners 6 and 7 are Secretaries of two Associations, in the area, said

to be formed to fight pollution caused by the 5th Respondent-the Travancore Electro Chemicals Industries, called "the Company", hereinafter.

Petitioner in O.P. 4622/88 is Anr. Association in that locality, with a grievance akin to that ventilated in O.P. 3473/88. Reference to

documentation is with reference to O.P. 3473/88.

3. According to Petitioners, "the Company" runs a factory where Calcium Carbide and Acetylene black are produced in large quantities. The raw

materials include, Calcium Carbonate in the form of lime-shells and carbon in the form of coal, charcoal, carbonised lignite, coke etc. Raw

materials are processed under high temperature ranging to 2400 degree centigrade, and in the process 438 kgs. of carbon monoxide and 688 kgs.

of carbon dioxide are generated, per ton of calcium carbide produced. Acetylene black is produced by conversion of calcium carbide. Lime slurry

is one of the by-products. It is alleged that slurry is discharged into neighbouring streams-Mulakanchira and Puthenthodu. The discharge percolates

into neighbouring wells polluting potable water, besides causing silting in the navigable canal, a waterway linking Kuttanad, Vakathanam and other

places, submit Petitioners. It is alleged further that the effluents discharged, make an adverse impact on aquatic life. Gaseous emissions pollute the

air and, so do suspended particulate material in ambient air, submit Petitioners. Pulmonary diseases and other ailments are caused by atmospheric

pollution, it is said. Ext. P-1 series health survey reports, Ext. P-2 letter by an additional Director, and other material are relied on to support this

view. It is also alleged that the Kerala State Pollution Control Board, called "the Board" hereinafter granted consent (Annexure VI) to the

Company to discharge effluents into streams, unaware of their statutory responsibilities, and unmindful of the impact it would make on life and

environment. Referring to a report of the Board, dated 19th October 1987 (Annexure II in report filed on 29th June 1988), it is argued that the

effluents are discharged without consent, or in excess of the permitted limits. It is seen that dissolved solids (inorganic) and cyanides were

discharged at dangerous levels exceeding the permitted level. The tolerance limit of Bio-Chemical Oxygen Demand is 30 Mgl/l. But, it was 232

Mgl/l on 13th November 1987. The tolerance limit of Chemical Oxygen Demand is 250 Mg/L and on 13th November 1987 it was found to be

352 Mgl. On 18th November 1987 Cyanides level was 13.9, while tolerance limit is 0.2.

4. Air pollution in disastrous proportions is also alleged. It is said that seven chimnies/stacks spew out enormous out-put of carbon monoxide,

carbon dioxide and sulphur dioxide into ambient air, without adequate dispersion facilities, causing toxicity of air and fall out of lethal particulate

material. Five of the seven chimnies are said to be below 30 metres in height and this also makes a dent into ambient air quality, pushing it beyond

tolerance limits. Referring to the counter affidavit of the Board dated 10th November 1989, Petitioners aver that the pollution load is 8.096 tons

per day and that concentration of particulate material is 1872 Mg/NM3. On the basis of the same affidavit, it is pointed out that the pollutants

expelled/emanating from the stacks is in the range of 19862 kgs. of particulate material, and 7158 kgs. of carbon monoxide per day. A report

dated 29th June 1988 submitted by the Board is referred to by Petitioners and they contend that while tolerance limit of Cyanide is 0.2 Mgl/l, it

was actually 13.9 Mgl/l. Annexure I dated 27th October 1989 produced by the Board shows that emission of sulphur dioxide (SO2) was not

noticeable. The emission of Carbon Monoxide (CO) is 330/Mg/NM3, (Normal meter cube). Annexure IV dated 11th August 1989 produced by

the Board shows that particulate material is in the range of 8096 kgs. while safety limit is 250 kgs. This would indicate that clouds of death waft in

the air. Noise pollution also is alleged and it is argued that tolerance limit has been outrageously exceeded. The affidavit of the Board dated 10th

November 1989 shows that sound level inside the plant, was 105 d. ba; 80 d. ba. 20 metres away, and 57 d.ba. 105 metres away. According to

J.E. Park and K. Park textbook by Preventive and Social Medicine, 7th Edition, Page 201, tolerance limits are as follows:

Residential area .. 25 d. ba.

Living room .. 40 d. ba.

Office .. 35 to 45 d. ba.

Workshop .. 40 to 60 d. ba.

"Environmental impact analysis".-John Row and Wootan shows that tolerance limit of noise level is safe between 42 and 52 decibels.

5. It is further alleged that even the direction by the Board not to discharge decanted effluents into the streams, to construct masonry catch drains"

etc., were not adhered to. The Board also noticed dumping of solid wastes like charcoal ash to the extent of 1260 tons a year. These also would

lead to pollution on account of, seepage and run off drains. It did-, and that is what Annexure VIII dated 24th September 1987 produced by the

Board shows. Samples of water from the wells of Sarvashree Thambi, Scaria, Abraham, Sugathan and Ravi were analysed by the Board. The

samples revealed traces of acidity, ammonia and nitrogen etc.

6. After referring to these facts, which according to Petitioners spell out present and potent pollution, reference was made to the provisions of law

imposing duties on industries and the Board. The enactments that govern this area are:

(a) Water (Prevention and Control of Pollution) Act, 1974 and the Rules framed thereunder.

(b) Air (Prevention and Control of Pollution) Act, 1981

(c) and Environment (Protection) Act, 1986.

Water (Prevention and Control of Pollution) Act, contains a comprehensive definition of pollution [Section 2(e)]. Stream is defined in Section 2(j)

and Trade Effluent u/s 2(k). Boards are constituted and they are charged with functions of a wide nature. Chapter V contains provisions for

effective enforcement and Chapter VII prescribes penalties. Sections 24 and 25 impose prohibition and restrictions. Likewise, the Air (Prevention

and Control of Pollution) Act, 1981 contains elaborate provisions. Section 2(a) incorporates a comprehensive definition of air pollutants. Boards

are constituted to perform a variety of functions. Section 19 empowers the State Governments in consultation with the Boards to declare air

pollution control areas. Sections 20 - 22 and 24 - 26 contain enforcement provisions while Sections 37 - 43 contain penal provisions. The

Environment (Protection) Act, 1986 provides for protection and improvement of environment and allied matters. Two of these Acts are a sequel to

the Stockholm convention (June 1972) under the Aegis of the United Nations. Petitioners would submit that the directives in these, statutes have

not been obeyed by the Company, or enforced by the Board. These facts and this state, amount to an invasion of the right to life guaranteed under

Article 21, is the refrain of Petitioners case.

7. The Board admits that there were functional inadequacies and statutory violations on the part of the Company, and that infrastructural facilities in

the Company are insufficient to combat pollution. The different reports made by the Board reveal a state far from satisfactory, in environment

management. The Board would however say that there has been marginal betterment, and that the Board within their constraints, are taking steps

to control if not eradicate, pollution.

8. According to the Company, they are making attempts in earnest to contain pollution and they have made appreciable betterment. Referring to

M.C. Mehta and Another Vs. Union of India (UOI) and Others, (para 21), counsel for Company submitted that neither pollution nor chemical

industries, can be eliminated. Counsel did not refer in detail to improvements made, presumably because a picture is available in the periodical

reports made by the Board. But, he submitted that measures to better the portion were being adopted.

9. In its supplemental affidavit dated 27th, January 1990 the Company has indicated the steps taken to eliminate pollution. The construction of a

granite wall and drains to prevent seepage of lime slurry, the installation of a filter press to separate water from lime, processing of wash water and

scrubber water, safe storage of carbon dust and coke, raising the height of chimneys in Calcium Carbide and Acetylene black plants, steps to instal

a multi cyclone guided inlet dust collector, regulatory measures to contain noise level in desulphurisation plant, and providing a Green belt etc., are

measures envisaged to chepk pollution.

10. The latest reports submitted by the Board, indicate that pollution is still a live problem. For instance, as on the following dates excess over

tolerance limit was noticed as below:

3-3-1990 P.H. in well Maximum 5-Existing 6-9

water 5

1-7-1990 Particulate Tolerance Existing 575

matter limit 250 Mg/Nm³

Mg/Nm³

3-3-1990 Noise inside Tolerance Existing upto

limit upto 75 106.d. ba.

d. ba.

3-3-1990 Suspended Tolerance Existing

Solids level 100 1820

3-3-1990 Total Tolerance Existing

dissolved limit 2100 3250

solids (Not stated) Existing 702

Cyanide (Excess)

Latest position in respect of many of the other chemical pollutants are not known. Yet, as noticed it has to be concluded that there is pollution,

beyond limits of tolerance. Such pollution according to Petitioners amounts to an invasion of the rights guaranteed by Article 21.

11. The decisions of the Supreme Court illustrate the multifaceted attributes of life recognized in Article 21. The decisions in Francis Coralie Mullin

v. Administrator, Union Territory of Delhi and Ors. AIR 1981 S.C. 746, Shri Sachidanand Pandey and Another Vs. The State of West Bengal

and Others, , Rural Litigation and Entitlement Kendra Vs. State of U. P., , Vincent Panikulangara v. Union of India and Ors. AIR 1987 S.C. 990,

Vikram Deo Singh Tomar Vs. State of Bihar, , State of Himachal Pradesh and Another Vs. Umed Ram Sharma and Others, give an insight into

Article 21, as also duties in the State. The Court held that the right to life comprehends "the quality of life", right to environment, the right to health

care and an adequate health delivery system. M.C. Mehta and another (II) Vs. Union of India and others, while recognising imperatives of human

safety, went further and placed the Chairman and Managing Director of the industrial unit, under the discipline of enforcement laws. M.C. Mehta

Vs. Union of India (UOI) and Others, (Ganga Pollution Case) was Anr. significant decision The right to water, in all its uses, was ingrained into the

complements of human rights, though the Court viewed the matter, not from Article 21 perspective. In Tennessee Valley Authority v. Hiram G. Hill

437 U.S. 153 the Supreme Court of the United States, acted on environmental considerations to prevent extinction of "snail darter", declared as

an "endangered species" Under the Endangerous Species Act. The Court enjoined the Tennessee Valley Authority from constructing a dam,

observing:

though it may seem curious to some that the survival of a relatively small number of three inch fish among all the countless millions of species extant,

would require the permanent halting of a dam for which the Congress has expended more than \$ 100 Million, we conclude that provisions of the

Endangerous Species Act require precisely that result.

12. "The Environmental Decade in Court", by Lettie Wenner notices several instances where courts acted with great concern in enforcing

environment policies. In *Halsey v. ESSO Petroleum Co. Ltd.* (1961) 1 W.L.R. 683, the Court granted damages for pollution from smuts and

smell, in addition to an order of injunction. In *Thames Water Authority v. Blue and White Launderettes Ltd.* (1980) 1 W.L.R. 700 C.A., the Court

of appeal held that water discharged from a washing machine attracted the Discipline of Public Health (Drainage of Trade premises) Act, 1937.

13. Deprivation of life comprehends deprivations, other than total deprivation. Right to life is more than immunity from extinction of life. It

guarantees life in its many splendoured facets, emotional, spiritual and aesthetic. Talent, thought process, human personality and expression of

these, are complements of life. If Beethoven or Mozart were denied expression of their gifts in music or Micheal Angelo or Rabindranath Tagore

were denied expression of their faculties, history would not have reckoned their lives. A human machine that ticks, or a creature that breaths is not

all, we reckon of human personality. Through, the imperceptible mist of time, new horizons are seen on the skyline. Right to environment, is part

of the right to life. Apart from the rights under Article 21, and the elegant articulations in Article 51(g), rights inhering human race have been

declared, in the United Nations "Declarations of Human Rights (1948)". In 1984 United Nations adopted a resolution, reading:

All human beings have the fundamental right to an environment adequate for their health and well being.

Pure air and sweet water are essential for sustenance of life. Statutory recognition of this, is found in Water (Prevention and Control of Pollution)

Act, 1974, Air Prevention and Control of Pollution) Act, 1981 and Environment (Protection) Act, 1986. There are wide ranging enactments in

other countries too, like Water Act, 1945, The River (Prevention of Pollution) Act, Clean Rivers (Estuaries and Tidal Waters) Act, The Dumping

at Sea Act, The Deposit of Poisonous Wastes Act, Planning Controls and Litter Acts, in England. Violation of the rights statutorily recognised, is

an actionable wrong, for which legal redress is available. True, there are cross cultural conflicts, thrown up by a post-industrial society. Industry

and life must co-exist. There cannot be a total ban on industries, or on exploitation of nature. But, a line has to be drawn where competing claims,

balance and harmonise. Where, the line is to be drawn will depend on the facts of each case.

14. The importance of environment and a proper environment management policy cannot be under rated. Awareness of this when necessary, must

be enforced by sanctions. Environmental deficit and degradation cause disastrous consequences like global warming, green house effect and

depletion of ozone layer. Damage to bio-physical environment is a direct result of pollution. The problem of waste management and) trade effluents

have added new dimensions to pollution problems. The United States alone belches out into the atmosphere 300 Million tons of air pollutants in a

year and these include carbon monoxide, sulpherdioxide, Nitrogen, Chlorine, and Cyanides. In the year 1987 alone 100 Million tons of C.F.Cs.

(Chloro Fluro Carbons) were discharged into the atmosphere. The United States Environment Protection agency noticed in a survey that Methyl

Chloroform and Carbon Tetrachloride discharged into air by industries deplete the ozone layer. Computer models estimate that mean global

temperature will rise between 1.8° to 10° Farenheit in the next 50 to 100 years due to, pollution. Carbondioxide (CO₂) increase monitored

by NASA's Goddard Institute for Space Studies, shows that addition of burnt fuels to atmosphere over the century, has raised heating power by

1 Watt per square metre of earth's surface. Cloud formation due to air pollution can also trap sunlight and heat the earth. Photo chemical smogs

with lethal consequences due to air pollution are well known. Ozone depletion has caused deleterious effects. In stratosphere, a region between 16

kms. and 48 kms. above the plains of earth ozone forms a layer, which is man's only protection from ultra violet radiation. Such radiation can

cause cancer and depress the human immune system. The 1985 Antartic expedition reported loss of spring time zone layer, by 40 per cent over

Antartica region. It was recorded that gaps larger than the United States, were noticed in the ozone layer. Chlorines, Bromines and Carbons are

responsible for this. The Vienna Convention 1985 and, the Montreal Protocol 1987, have cognised these high risk factors and have called for a

Halon Freeze with effect from 1st January 1992 and an export ban on C.F.Cs. Likewise, the International Meet-London March 1989-attended by

124 delegate countries and the Montreal Meet during May 1989 resolved on phasing out C.F.Cs. by A.D. 2000. The Hague Declaration (March

1989) has suggested creation of a new constitutional authority with enforcement powers within the framework of the United Nations, to combat air

pollution problems. The United Nations Environment Programme (U.N.E.P.) has recommended an Inter government Panel on Climate Change

(I.P.C.C.). The International Court of Justice in Corfu Channel Case held that every state is obliged to prevent its territories being used against the

interest of other states.

15. Apart from air pollution, pollution in high seas leading to degradation of marine environment has been observed in recent years. The seas of the

world have becoming global dumping grounds. Industrial wastes pose a threat to Biota of the Sea. A conference on dumping held in London in

1972, resolved against dumping of mercury, cadmium compounds, organohalogen compounds, plastics and crude oil and certain other synthetic

materials and petroleum products into oceans. Convention on the Law of Sea 1982, engrafts regulatory measures, in the background of experience

of Torrey Canyon and Santa Barbara leading to spillage of 1.5 Million tonnes of oil in sea.

16. Inland water pollution is largely due to discharge of chemicals like sulphides, fluorides, chlorine and mercury into streams and rivers, and use of

pesticides on lands close to water sources. The Hooghly Estuary into which 150 industries discharge effluents, is an example of this. Waterborne

diseases are caused by water pollution.

17. Sound pollution also has reached high risk levels. Report of the "Noise Level Pollution Committee" constituted by the Chairman, Pollution

Control Board highlight the Indian Scenario, vividly. Industry, Automobiles, Construction works, Aircrafts, Trains, Crackers and Fire works are

particularly guilty of sound pollution. The Committee noticed that domestic machines, like air conditioners, kitchen machines, portable generators

etc., produce sound pollution beyond safe levels. Loud speakers, which have become an integral part of social, political and religious life in this

country also lead to intolerable noise output. High noise is proved to cause biochemical changes in man, elevating levels of blood Catecholamine,

cholesterol, white cell counts and lymphocytes. Fatigue, shift of threshold limit of hearing leading to loss of hearing, changes in metabolism, and blood

circulation are other known consequences caused by high levels of sound. There is no statutory prescriptions of sound level in India. But safe levels

have been indicated in Indian Standards-I.S. 4954. W.H.O. "Criteria-12" also indicates safe levels.

18. There has been a socio-ecological bankruptcy and ecosystem disruption. This fact is cognised by the United National Meet on Biosphere

(1968), I.C.S.O. (International Council of Scientific Organisation) and I.U.C.N. (International Union for Conservation of nature and Natural

Resources). The need for an integrated ecosystem and a new relation of human society with Biosphere and redefinition of issues as an imperative

have been realized. It is time to think of a National Environment Audit Agency, with effective powers in areas of planning regulation and

enforcement. Man and his technology have at an ever increasing rate disrupted the natural ecosystem. The biological problem of extinction, is not

unreal. Sheer self interest requires institutionalisation of safeguards. To recall the Words of Winston Churchill:

The dark ages may return... on the gleaming wings of Science; what might now shower immeasurable material, blessings, upon mankind, that bring

about its destruction. Beware, I say, time is short.

19. I have referred to these aspects at a length-perhaps not essential-but necessary to highlight the magnitude of the matter, which must serve as a

backdrop while considering the competing claims and drawing line"s between human concerns and industrial concern on a cost benefit analysis

principle.

20. I have noticed the wide sweep of the rights guaranteed by Article 21, which comprehends the right to healthy environment, and the duty in the

State to protect these rights. The magnitude of the problems caused by pollution also have been noticed. To eliminate pollution, industries cannot

be eliminated. The competing claims, must balance at the point, where, the outerlimit of pollution touches the. tolerance levels or safety limits. If it

crosses that point, it crosses the rubicon and the activity generating pollution is liable to be interdicted. When the degree of pollution crosses the

tolerance limits, it invades the rights, under Article 21 and it cannot pass the mustering might of the Constitution. Tolerance limits have not been

.fixed statutorily in many instances. Hence, reasonable standards, accepted by informed agencies and authorities must serve as the yardstick. The

limits indicated by the Pollution Control Board, should serve as the standard in this case. As already noticed pollution in many areas, exceeds

tolerance limits and judicial intervention is called for.

21. Respondent company submits that its investment is by the neighbourhood of rupees fourteen crores and that it faas expanded about rupees

three crores to check pollution. It is said that rupees thirty lakhs have been spent to acquire a "filter press" and Anr. rupees thirty five lakhs to

acquire a multiple cyclone glided inlet dust collector. To close down the factory would mean loss of economic wealth and loss of employment to

many, submits Respondent company. That would be no justification for allowing a harmful activity to continue, invading the fundamental rights oft

Petitioners, though that would be a relevant consideration in moulding the reliefs.

22. On an anxious consideration of the rival claims and competing concerns, I grant Respondent company time till 31st December 1990, to take

regulatory measures to bring down pollution to tolerance limits indicated by the Pollution Control Board. Company had more than two years time

to rectify the defects, since the filing of the writ petitions. If the Respondent Company does not adhere to this, the Board and the State of Kerala

shall ensure that the Respondent Company is closed down, after 31st December 1990 and that it is not allowed to operate the plants or expand its

activities until it is certified pollution free by standards of safety determined by the Board. Till that date the Company is permitted to operate the

plants in operation today.

23. The Union of India should consider prescription of standards for effluents, ambient air quality and for sound levels. Section 112 of the Clean

Air Act, 1971 (U.S.) provides for prescription of standards after public hearing. In the United States, the National Environment Protection Act

contemplates "Environmental Impact Statements" to be made. Even more elaborate provisions are made in the United States Clean Air Act, 1990

passed by the Senate in April, 1990 and by the House of Representatives in May, 1990. Similar measures could be thought of. It is worthwhile

considering, whether licencing of an industry should not be preceded, by an environmental audit. The creation of a National Environment Agency

with powers in areas of planning, enforcement and sanctions deserve consideration. The existing provisions regarding sanctions and enforcement

require strengthening. Counsel for Board submits that instances are not rare, where prosecutions have been Withdrawn, without good reasons. An

institutional perspective must prevail in these areas and related questions must be upgraded to concerns of national priority. The world belongs to

us in usufruct, but we owe a duty, to the posterity, to the unborn to leave this, world at least as beautiful as we found it.

The Writ Petitions are allowed as indicated herein before. I express appreciation of the assistance rendered to Court by Shri Romy Chacko who

argued the case with thoroughness, as Amicus Curiae. No costs.