

**(2001) 07 AP CK 0001**

**Andhra Pradesh High Court**

**Case No:** Writ Petition No's. 29271 and 31202 of 1998

C. Shailaja

APPELLANT

Vs

The District Collector and Others

RESPONDENT

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**Date of Decision:** July 19, 2001

**Acts Referred:**

- Constitution of India, 1950 - Article 21, 48A, 51A

**Hon'ble Judges:** S.B. Sinha, C.J; V.V.S. Rao, J

**Bench:** Division Bench

**Advocate:** C. Praveen Kumar, for the Appellant; D.S. Murthy and E. Kalyan Ram, S.C. for APPCB, for the Respondent

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**Judgement**

S.B. Sinha, C.J.

A legal literacy camp was held by the District Legal Services Authority, Medak at Digwal Village on 19.9.1998 whereat 113 villagers of the said village submitted a representation that they had been facing acute industrial pollution in the area. The affected fields and wells were inspected and acute problems with regard to availability of potable water was found out.

2. The pollution was allegedly caused by the 1st respondent-Global Bulk Drugs and Fine Chemical Ltd. by way of release of industrial wastes as a result whereof the agricultural wells, village tanks, etc., got polluted. The agricultural lands became unfit for agricultural activities.

3. The said representation having been forwarded by the District Legal Services authority, Medak to this Court it was treated as a Public Interest Litigation.

4. Dr. Vijay Indravadan Dave, Vice-President (Operations) affirmed an affidavit on behalf of the 1st respondent stating that it produces bulk drugs such as Ibuprofen, Diltiazem and D(+) acid and the ingredients such as Sodium isopropoxide, Acetone, Sodium chloride, Para anisaldehyde, Toluene etc., are used in the process. It has been alleged that the inorganics which contain high amount of solids are

transferred to solar evaporation ponds whereupon after drying, the same is sent to secure land fill. The organics allegedly are treated in combination of anaerobic and two stage activated sludge process. At the instance of the A.P. Pollution Control Board allegedly an effluent treatment plant has been operating on the aerobic and anaerobic process. The said effluent treatment plant consists of:

- a) Oil and grease trap.
- b) Equalization cum neutralization tanks - 2 Nos.
- c) 1st stage clarifier.
- d) Anaerobic filters - 2 Nos.
- e) Collection sump
- f) Aeration tank
- g) 2nd clarifier
- h) Oxidation ditch
- i) Final clarifier.
- j) V-notch chamber
- k) Treated water sump
- l) Sludge drying beds - 5 nos
- m) Solar evaporation pond.

5. The deponent affirms that the discharge of effluents of the 1st respondent is around 150 kilo litres whereas the capacity of the effluent treatment plant is 225 kilo litres per day. According to it, the effluent discharge of its units would never exceed the storage capacity of 600 kilo litres for both equalisation and neutralisation. It was stated:

The untreated effluents being discharged from reactors during the successive stages of production are directly discharged into the drainage channels existing in each shop floor by hose pipes connected to the reactors, which drainage channels are covered by permanently affixed concrete gratings. I further submit that the said drainage channels are concrete based with around 20 mm thickness and are lined by HDPE sheets. The channels do not get damaged on account of being lined by concrete on a concrete bed.

The entire network of channels installed in the entire industrial unit of the 1<sup>st</sup> respondent herein are duly covered by permanently affixed cement grating.

The entire network of channels installed in the shop floors of the industrial unit of the 1<sup>st</sup> respondent herein are connected to the oil and grease trap of the effluent

treatment plant wherein all the untreated effluents from all the shop floors are discharged through channels and in the oil and grease trap the oil and organic layer floating on the top of the discharged effluent is removed by way of mechanical process by following the velocity method, and in the event of any mechanical breakdown manual operation process is utilised for removal of the top layer of the oil and organic layer.

In order to ensure that no seepage occurs from the oil and grease trap, the 1st respondent herein has provided acid/alkali resistant brick lining with impervious layer thereto.

The oil and grease trap is connected to the equalisation cum neutralisation tank by way of an industrial usage HDPE pipe line of around 10 mm thickness, and upon the effluent being transferred to the equalisation cum neutralisation tank the effluent is treated to neutral pH by addition of acid or alkali to the contents of the effluent, for converting the composition of the effluent from acidic or alkaline to neutral.

The process of neutralisation is under way, air will be blown into the effluent through air compressors for ensuring equalisation of effluent in order to ensure that the entire quantity of the effluent is neutralised uniformly i.e., for ensuring homogeneity.

The storage capacity of the equalisation cum neutralisation tank is around 300 kiloliteres each, and the 1st respondent herein is maintaining 2 E and N tanks of around 300 kiloliteres each. I further submit that in order to ensure that no seepage of the effluent occurs from the E&N tanks, this respondent has provided acid/alkali resistant brick lining with impervious layer to the E&N RCC tanks as well.

The equalisation and neutralisation tank is connected to the primary clarifier by way of a pump operated by a 5 hp motor which has the capacity of pumping around 14 kiloliteres per hour and the effluent is transferred from the E&N tank to the primary clarifier for the purpose of removing sludge which settles at the bottom of the primary clarifier tank by the action of the mechanical clarifier, and by the said process the suspended solids are completely removed from the effluent in the form of sludge.

6. Other details as regards its operations have been stated in the counter-affidavit.

7. Before us it has been contended that the industry had been supplying potable water to the villagers. It was further submitted that all the directives of the Pollution Control Board have been complied with. It is alleged that two borewells have been sunk and the water received from them was tested and found to be free from any pollution. The 1st respondent also contended that it is ready to participate in a scheme, which may be evolved by this Court or the A.P. Pollution Control Board. The Pollution Control Board admittedly had been issuing from time to time various directives to the company. The present status of the compliance of the conditions

stipulated as per the said report:

1. The production details are enclosed. They have produced 49.5 T of ibuprofen and 2.4 T of diltiazem HCI during the month of May 2001. They have lifted 17 tankers of aluminum chloride during May 2001.
2. They have provided HDPE lining for four numbers of High TDS affluent collection tanks and lining work for balance two tanks is in progress.
3. The installation work of incinerator is completed and trial runs are taken.
4. They have provided two numbers of secured storage facilities with each collection system for on-site storage of hazardous waste and containers/ container liners.
5. They have constructed 4 X 25 kl capacity HDPE lined tanks for collection and separation of salts.
6. They have provided HDPE lining for four high TDS collection tanks and HDPE lining work for the balance two tanks is in progress to ensure that there is no seepage. They were asked to maintain sufficient free board to prevent over flow.
7. They are operating multiple effect evaporator continuously. During May 2001 they have evaporated 225 kl effluents generated from utilities (stream 1) and evaporated 525 kl high TDS process effluents (Stream-II)
8. They are maintaining records for energy produced, running hours, fuel consumed by the DG sets.
9. They have displayed the Board conditions at entrance.
10. As per the Hon'ble High Court order dt.8.5.2001 (on W.P.MP. No. I 1137 of 2000 in W.P. No. 29271/ 1998 filed against this industry), the Revenue Department is supplying drinking water to residents of Digwal(v) through tankers.
8. An order of closure of factory had been issued. That has been temporarily revoked for a period of two months. The Environmental Engineer of the A.P. Pollution Control Board had inspected the industry on 6.6.2001 and 22.6.2001 to verify the present status of the company.
9. In his letter dated 28.10.1998 addressed to the Member Secretary, A.P. State Legal Services Authority stated:

After returning from the camp they represented to me that the villagers of Digwal Village are facing acute industrial pollution in the area and the villagers had shown i.e. affected fields and wells and they found the problem is acute and something has got to be done to alleviate the sufferings of the villagers.

10. In the counter-affidavit the 1st respondent had merely placed facts after the effluents are being treated. But the allegations to the effect that by reason of discharge of the industrial effluents, the agricultural lands had been affected stands

established beyond reasonable doubt.

11. However, the very fact that the set up effluent treatment plant the efficacy whereof has been stated in the counter-affidavit and the report of the A.P. Pollution Control Board to the effect that even closure notice had to be served upon them, are pointers to prove that all is not well with this industry. We are also not satisfied with the report of the Board, which, in the facts and circumstances of this case, should have a more detailed report.

12. Three questions which arise for our consideration in this case are: (1) whether by reason of the installation of the effluent treatment plant or otherwise the potable water is available to the villagers; (2) how to deal with the problems faced by the villagers; and (3) having regard to the Polluter Pays Principle, what should be the quantum of damages payable to the villagers.

13. Having regard to the provisions contained in Article 48A and 51A(g) of the Constitution of India, there cannot be any doubt whatsoever that each person is entitled to pollution free air and water. Such a right is now adumbrated under Article 21 of the Constitution. No person can deprive others from such a right by reason of the industrial activities; by using chemicals, health hazard has been caused as a result whereof the villagers have been deprived of potable water. Their agricultural lands had also become unfit for cultivation. It may be that certain measures had been taken but the question as to whether the villagers are still being supplied with potable water and/or whether the two borewells sunk by the respondent-company can continue to supply potable water or not must receive serious attention of all concerned authorities including the A.P. Pollution Control Board. It may be true that the recent report suggests that the water drawn from such borewells is potable one. But the situation must be watched seriously so that no further health hazard is caused. However, in the said report itself it appears that pursuant to the order of this Court dated 8.5.2001 in W.P.MP. No. 11137 of 2000 in Writ Petition No. 29271 of 1998, the Revenue Department had been supplying drinking water to the residents of the Digwal Village through tankers. Had the villagers not been deprived of having potable water, there was no necessity for the Revenue Department in supplying drinking water to the residents through tankers. We are of the opinion that the matter requires a deeper probe by the A.P. Pollution Control Board. The A.P. Pollution Control Board, therefore, must be directed to test the quality of water from time to time. It must also regularly take sample from the 1<sup>st</sup> respondent-industry so as to find out as to whether the effluent discharge from it meets the standard/norm fixed by the Pollution Control Board and/or the provisions of the relevant Act and the rules framed thereunder.

14. So far as the question of payment of compensation is concerned, the villagers whose agricultural lands have been affected are entitled thereto. Monetary constraints on the part of the 1<sup>st</sup> respondent should not come in the way of the Court to award damages upon applying the Principle of Polluter Pays. We, therefore,

direct the District Magistrate, Medak to find out the amount of damage caused to the villagers and submit a report to this Court in this regard within a period of two months.

15. For the purpose of rehabilitation of some of the villagers, a scheme is required to be formulated. As noticed hereinbefore, the 1st respondent-company agrees to abide by such a scheme. The district authorities as also the A.P. Pollution Control Board thus must, formulate such a scheme and place the same before this Court so that its viability may be examined and appropriate directions may be issued.

Put up the writ petitions after two months.