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SUPREME COURT CASES

(2017) 5 SCC

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(BEFORE JAGDISH SINGH KHEHAR, C.J. AND DR D.Y.  
CHANDRACHUD AND SANJAY KISHAN KAUL, JJ.)

PARYAVARAN SURAKSHA SAMITI  
AND ANOTHER

.. Appellants;

*Versus*

UNION OF INDIA AND OTHERS

.. Respondents.

Writ Petition (C) No. 375 of 2012<sup>†</sup>, decided on February 22, 2017

**Environment Law — Water/River/Coastal Pollution — Effluents, Sewage, River and Lake Pollution — Effluent treatment plants, common effluent treatment plants, and sewerage treatment plants — Establishment and functionality of — Directions to that effect issued — Industrial units without functional effluent treatment plant directed to not be permitted to be operational — Directions for time-bound construction of common effluent treatment plants and for making sewerage treatment plants functional issued — Mechanism for implementation of these directions also explained — Role of local bodies/Municipalities therein, emphasised**

— Regarding dysfunctional common effluent treatment plants due to lack of finances and maintenance, held, onus on functionality of such plants rests on municipality and/or local bodies under Art. 243-W of Constitution — These authorities cannot shy away from their responsibilities — According to Arts. 243-X and 243-Y, these authorities can evolve norms for revenue generation to install and run common effluent treatment plants — For generation of financial resources, norms may include all or any of commercial or industrial or domestic beneficiaries of facility — Supervising these norms assigned to Secretaries of Urban Development and Local Bodies — These norms to be finalised by 31-3-2017 so that they can be implemented from next financial year — If local authorities not ready with such norms, then concerned governments shall support financial requirement for running dysfunctional common effluent treatment plant — Constitution of India — Arts. 21, 32, 48-A, 243-W, 243-X, and 243-Y and Sch. XII Entry 6 — Water (Prevention and Control of Pollution) Act, 1974, Ss. 24, 25 and 26 (Paras 4 to 17)

G-D/58368/C

Advocates who appeared in this case :

Ms Pinky Anand, Additional Solicitor General, Anil Grover, S.S. Shamsbery, Purushaindra Kaurav, Additional Advocates General and Colin Gonsalves, Senior Advocate [Gunjan Singh (for Ms Jyoti Mendiratta), S.W.A. Qadri, Ajay Sharma, Balendu Shekhar, 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 Kr. Singh, Mohd. Waquas, Sukant Vikram, Aditya Pratap Singh, S. Udaya Kr. Sagar, Mrityunjai Singh, Guntur Prabhakar, Ms Prerna Singh, M.R. Shamshad, Rajat Singh, Aditya Samaddar,

<sup>†</sup> Under Article 32 of the Constitution of India

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a 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 Kr. 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 Kr. Sharma and Ms Sunita Sharma, Advocates] for the appearing parties.

The Judgment of the Court was delivered by

b **JAGDISH SINGH KHEHAR, C.J.**— 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 Pollution Control Board concerned, is permitted to function, unless it has a functional effluent treatment plant, which is capable to meet  
c the prescribed norms for removing the pollutants from the effluent, before it is discharged.

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, the learned counsel representing the respondents, also made some suggestions, which could be highly beneficial, in carrying  
d forward the process of removing pollutants, from the discharged effluent, in a systematic and coordinated manner.

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 Pollution Control Board concerned, should be mandated to set up a  
e functional primary effluent treatment plant. We are informed that only when such an effluent treatment plant has been set up, the Pollution Control Board concerned grants a “no 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 Pollution Control Board concerned, have a functional primary effluent  
f treatment plant, in place.

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  
g just and appropriate, to direct the State Pollution Control Boards concerned, 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 State Pollution Control Board(s) concerned are mandated to carry out inspections, to verify, whether  
h 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 electricity supply and distribution agency concerned, to disconnect the electricity connection of the defaulting industry. We, therefore, hereby further direct that in case the State Pollution Control Boards concerned make a recommendation to the electrical supply and distribution agency/company concerned, to disconnect electricity supply to an industry, for the reason that its primary effluent treatment plant is not functional, it shall honour such recommendation, and shall disconnect the electricity supply to such defaulting industrial concern, forthwith.

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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 functional to the required capacity, and thereupon, seek a fresh “consent to operate” from the Pollution Control Board concerned. 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 prioritising inspections of severely and critically polluted industries, so that visible results emerge at the earliest.

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6. Liberty is hereby granted to private individual(s) and organisations, to address complaints to the Pollution Control Board concerned, if any industry is in default. On the receipt of any such complaint, the Pollution Control Board concerned, 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).

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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%, that of the State Government concerned (including the Union Territory concerned) is 25%. The balance 25%, 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 the learned counsel, is not only financial, but also, the requirement of land acquisition, for the same.

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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 timelines 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 State Governments concerned (including the Union Territories concerned) to complete the same within a period of three years, from today. We are also of

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a the view that while acquiring land for the “common effluent treatment plants”, the State Governments concerned (including the Union Territories concerned) will acquire such additional land, as may be required for setting up “zero liquid discharge plants”, if and when required in the future.

b **9.** During the course of hearing, we were informed by the 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 dysfunctional, because of lack of finances, whilst some others are dysfunctional, because of the requirement of repairs, which have not been carried out, again because of lack of financial resources.

c **10.** Given the responsibility vested in municipalities under Article 243-W of the Constitution, as also, in Item 6 of Schedule XII, wherein the aforesaid obligation, pointedly extends to “public health, sanitation conservancy and solid waste management”, we are of the view that the onus to operate the existing common effluent treatment plants, rests on municipalities (and/or local bodies). Given the aforesaid responsibility, the municipalities (and/or local bodies) concerned, cannot be permitted to shy away from discharging this onerous duty. In case there are further financial constraints, the remedy lies in Articles 243-X and 243-Y of the Constitution. It will be open to the municipalities (and/or local bodies) concerned, to evolve norms to recover funds, for the purpose of generating finances to install and run all the d “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 domestic beneficiaries, of the facility. The process of evolving the above norms, shall be supervised by the State Government e (Union Territory) concerned, 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 and/or operating the “common effluent treatment plant” shall be finalised, on or before 31-3-2017, so as to be implemented with effect from the next financial year. In case, such norms are not in place, before the commencement f of the next financial year, the State Governments (or the Union Territories) concerned, shall cater to the financial requirements, of running the “common effluent treatment plants”, which are presently dysfunctional, from their own financial resources.

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

h **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 timelines and the format, expressed hereinabove.

**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 timelines, expressed above, shall be of the Member Secretaries of the Pollution Control Boards concerned. The Secretary of the Department of Environment, of the State Government concerned (and the Union Territory concerned), shall be answerable in case of default. The Secretaries to the Government concerned shall be responsible for monitoring the progress and issuing necessary directions to the Pollution Control Board concerned, 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.

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

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

**16.** It however needs to be clarified that the instant directions and timelines shall not in any way dilute any timelines and directions issued by courts or Benches of the National Green Tribunal, hitherto before, wherein the postulated timelines would expire before the ones expressed through the directions recorded above. It is clarified that the timelines expressed hereinabove will be relevant, only in situations where there are no prevalent timeline(s), and also, where a longer period has been provided for.

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

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

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