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Case Comment: Indian Council for Enviro-Legal action vs Union of India

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INTRODUCTION

In Rajasthan,[1] Udaipur district in India, Bichhri is a small village. Hindustan Zinc Limited, a public sector company, is the largest industrial settlement in the north of this village. However, it didn't seem to affect Bichhri, but problems arose with the manufacture of other chemical products like oleum (the condensed form of sulphuric acid) or split superphosphate in 1987 by Hindustan Agro Chemicals Limited's (4th respondent). The real tragedy emerged when Silver Chemicals (respondent 5), another herd concern, started generating 'H' acid in a plant in the same compound. The acid 'H' was mainly generated for the purpose of export. The manufacturing processes produce enormous quantities of highly toxic ewes — particularly gypsum sludges — in case if these toxic ewes are not treated properly, they may pose a serious threat to the planet.[2] These ewes if not treated properly will destroy the soil, water, and all

[1] 'Bichhri Case on Strict Liability and Polluter Pay Principle' (*Google Books*) <http://books.google.com/books?id=ngz7WBZIlKYC&pg=PA250&lpg=PA250&dq=bichhri+case&source=bl&ots=N4xkFbjRyx&sig=98R4t1v3KgKDXhbJ7zJifHPvQug&hl=en&sa=X&ei=8dRpUpLPO4bq2AWC14DAAQ&sqi=2&ved=0CFwQ6AEwCA#v=onepage&q=bichhri%20case&f=false> accessed 13 September 2021

[2] *Ibid*

other natural resources with it. Jyoti Chemicals (Respondent 8) is an additional section developed to render the acid 'H', in addition to several other harmful compounds. In order to produce fertilizers and a few more products, Respondents 6 and 7 were called. In the same geographical area, all Respondents 4-8 units/factories work in the same individual group. These units are what are known as 'chemical industries.' Around 2500 tonnes, while 375 tonnes, of the H-acids, were made, according to the report. And the sediment was all dumped into the open field of the village area. Over time, toxic substances have been drained deep into the planet, polluting water and the groundwater source. Water from the wells and other rivers in the immediate vicinity became dark and badly polluted. It will not be used to drink, irrigation and cattle, or anything.

This contaminates the land, making it inappropriate for agriculture, thus decreasing or fully stopping the earnings of livelihood of the villagers living nearby. Furthermore, this toxicity has been the cause of disease, beheadings, and tragedy in the village and the nearby region. These sudden losses suffered by the villagers had also raised reverberance in the Parliament and the concerned minister ensured strict and timely action against it, but very little could be done on the spot. Virtually rebellious villagers then exploded, which lead the District Magistrate to impose Section 144 of the Code of Criminal Procedure,[3] in the district, and later the closure of Silver Chemical products took place in January 1989.

FACTS OF THE CASE

In August 1989, the Writ Petition was filed by the Indian Council for Environmental Legal Action to the Court for demands that decisions should be taken effectively. The Rajasthan Pollution Control Board stated in the affidavit (i) that the No Objection Certificate from Hindustan Agro Chemicals Ltd. was received by the Board to produce sulfuric acid and alumina sulfate but that this unit altered its products and began the production of chemicals such as oleum and single super phosphates without board's approval. According to the Air (Pollution Prevention and Control) Act (1981),[4] consent was denied and instructions were

[3] Code of Criminal Procedure, s 144
[4] Air (Pollution Prevention and Control) Act 1981

given for the closure of that unit; and (ii) the Silver Chemical has stated that acid H was produced without NOCs from the Board. The waste arising out of the processing of H-acids was potentially toxic and contained, along with a number of other contaminants, very large solutes. The detailed report for the board and authority's consideration of all issues was also sent to the Apex Court for approval. In addition, the government of the State (Rajasthan) filed a counter-affidavit on 20 January 1990. Paragraph 3 made a peculiar declaration, i.e., the State authority (Government) is now informed about the pollution of groundwater caused by the fluid effluent of companies identified as respondents 4 to 8 in the written appeal. Consequently, the government of the state undertook to regulate further pollutant dissemination through the Pollution Control Board.

- In order to analyse the situation within and outside the village of Bichhri and submit its "option and scale of correctional alternatives available," it was also demanded by the Hon'ble Court to recommend to the National Institute of Environmental Research Engineering (NEERI), both the short-term and long-term measures appropriate to attenuate the danger which has so far arisen. The Apex Court ruled on the basis of the NEERI report and other evidence that the sludge lying in the ground should be removed immediately in order to prevent rainy-season penetration into the ground by radioactive substances. The Court further decreed on 4 April 1990 that the Indian Ministry of Environment and Forestry should immediately engage its specialists of inspecting this area to recognize the presence and depth of iron and gypsy sludge, recommend the procedures of treating and disposing of the wastes and also recommend the kit for transport and safe storage.
- But the Apex Court passed its final order on 13 February 1996 as follows: "*They are of the opinion that, where an operation engaged in a hazardous or inherent industry poses a possible danger to the health and safety of people working in the factory and living in the surrounding areas, it is an absolute and non-delegable obligation of the Corporation to ensure that it does not harm others because of the dangerous or inherently dangerous nature of the activity it has carried out. It is therefore held that when a company is involved in a dangerous or potentially hazardous operation and damages someone as a result of an accident, the company is*

specifically and entirely liable to reimburse all those impacted by the accident and that such responsibility is not subject to any of the exceptions provided for in the tortuous principles of strict liability laid down in the case of ***Ryland's vs Fletcher***[5]*, the legal validity down by the court in the case* ***Oleum Gas Leak (M.C.Mehta vs UOI & OR's)***[6] *also applies in this case and the factories are completely liable to compensate the villagers in the affected area, the soil and the groundwater for the harm they cause and are also obliged to take all appropriate steps to eliminate the sludge and other contaminants in the affected area about 350 hectares.*[7] *The polluter pays principle demands that the monetary cost of attempting to prevent or rectifying damage due to pollution should lie only with industries which precipitated the harmful emissions".*

- However, this is an extremely unusual and exceptional case in which even after fifteen years of the final decision given by the Court (dated 13 February 1996), the case has been measuredly held alive through the appeal against one or other intercessional appeal for the purpose of not complying with the decision of the Honourable Court. The judgment of the Court was not permitted until that time to become final. It shows primarily how even the final decision of the Supreme Court can by abuse of the law process, be circumvented for more than a decade. This is definitely a very delicate topic with respect to the sanity and integrity of the judicial as a whole and also of the Supreme Court of the country.
- On behalf of the Indian Council, Mr. Mehta, Advocate, communicated for Enviro Legal Action.[8] It was stressed in the communication that such plans are a total failure to comply with the orders of this court. The Environmental Justice Mechanism was abused by the submission of those proposals. They have shown a little contrition to do irreparable damage to people's lives, health, and assets. The applicants are seeking to deny the reimbursement for corrective action by Rs. 373, 850,000 INR. In the case of

[5] *Ryland v Fletcher* [1868] LR 3 HL 330
[6] *M C Mehta v Union of India & Ors* [1987] 1 SCC 395
[7] *Ibid*
[8] Environment (Protection) Act 1986

M.C, Mr. Mehta depended upon the judgment of the court too.[9] where the Court found: "**Pollution is a civil wrong.**"

ISSUES

- What is the measurement of a commitment of enterprises that are effectively associated with a particularly perilous or innately risky industry, if by reason of a mishap or occurrence in such industry, people kick the bucket or are hurt?
- Does the Ryland's v. Fletcher rule apply in these cases, or is there some other idea by which to evaluate the obligation?
- If the respondents will pay the sum needed to complete successful medicinal activity yet will they pay simply that sum or with interest? On the off chance that the time was a couple of days or months, it might have been unique, yet for this situation, it is very nearly 14 years deferral and there is no pay-out for the aggregate.

JUDGMENT

While addressing the difficult inquiry the court vigorously depended on the perceptions of the Constitution Bench Judgment in **M.C. Mehta and Another vs Union of India and Others**[10] and other famously called Oleum Gas Leak Case. Following this case, India fostered the standard of outright risk. The instance of M.C. Mehta depends on the standard of severe obligation, yet there is no exemption, and the individual is considered totally liable for his activities. The rule of an absolute liability says that on the off chance that an individual is engaged with an innately perilous or unsafe action and any injury is caused to someone else because of a mishap that happened while completing an intrinsically risky and dangerous movement, the individual who is engaged with such direct is totally obligated.

- The court for the first time applied the **Polluter Pays principle**. *Under this guideline, the polluter should repay the survivors of the contamination as well as address the costs and costs of re-establishing the ecological debasement. All in all, the obligation to fix the damage caused to the climate and pay the tidy up costs is that of the polluter, and not that of things to*

[9] *M C Mehta v Kamal Nath & Ors* [2000] 6 SCC 213
[10] *M C Mehta* (n 6)

come ages or maybe of the Government. This is regularly so since, supposing that the Government was to bear such expenses, the monetary weight would, at last, be moved to the citizen, i.e., the non-polluter. The Supreme Court noticed in this way when the action continued is risky or innately hazardous, the individual continuing such movement should make great the misfortune which is caused to someone else, regardless of whether sensible consideration was taken while continuing such an action. The Polluter Pays Principle hence forces outright obligation in such cases.

- In the wake of hearing the learned counsels for the gatherings finally, the Court gave the resulting headings: "*The Central Government will decide the sum needed for completing the medicinal measures. Simply in the event of disappointment of the said respondents to pay the said sum the equivalent will be recuperated by the Central Government by the law*." Further, the Court coordinated that the production lines, plants, hardware, and the wide range of various unfaltering resources of Re-4 to Re-8 will be appended.
- The Court requested the end of the multitude of plants and production lines of Re-4 to Re-8 situated in the Bichhri Village and straightforwardly RSPCB to seal every one of the industrial facilities, plants, apparatus of the said respondents.

FINAL JUDGMENT

In 2011, right around 15 years in the wake of passing a definitive judgment in the **Indian Council for Enviro – Legal Action vs Union of India (1996)**, the judgment wasn't implemented. In this way, a Writ Petition was documented in the Supreme Court in a similar name "**Indian Council for Enviro-Legal Action vs Union of India"**[11] contending that respondents continued recording different interlocutory applications to stay away from the obligation to pay the sum for remediation and expenses forced by the court on the settled legal teaching that Polluter Pays Principle. The Supreme Court thus observed:

[11] *Indian Council for Enviro–Legal Action v Union of India* [2011] 8 SCC 161

"We have looked at the facts and circumstances of this case carefully. In a majority of incidents, we have also looked at the legislation enacted by this Court and other countries. We are obviously of the opinion that the applicant-industry concerned shall deposit with compound interest the amount as specified by this vide order of the Court dated 11 April 1997. Since 11 April 1997, the applicant industry has intentionally refused to comply with this court's orders. Hundreds of villagers have been significantly impacted because so far yet there are no successful remedial measures. The applicant industry has persisted in its approach in refusing to comply with the court's order by holding the case alive for more than 15 years by filing interlocutory applications that were absolute without any merit and therefore dismissed with costs. The applicant industry is then directed to pay Rs.37, 385,000 INR (USD 608,628) along with compound interest @ 12 percent per annum from April 11, 1997, until the sum is paid or recovered.[12] The applicant industry is also geared toward paying legal costs. Even after this Court's final judgment, the case was held going for nearly 15 years. For all of these years, the respondents felt obligated to fight this case. The time of Enormous Court has been lost all those years. In both the interlocutory proceedings, taking into account the entirety of the facts and circumstances of this case, we direct the applicant industry to pay the costs of Rs.1, 000,000 INR (USD 16,280). The sum of costs will also be used under the guidance of the authorities concerned to carry out remedial measures in Bichhri village and surrounding areas in Udaipur district of Rajasthan, India".

SIGNIFICANCE AND CRITICAL ANALYSIS OF THE JUDGEMENT

This is a particularly remarkable and exceptional case, in which the respondents purposely sustained this case through the presentation of numerous interlocutory petitions after 15 years of court declaration of final judgment (Date of judgment – 13 February 1996) to avoid the judgment.

It will be determined if the compensation out aggregate is made, the law of obligation and the rule of Polluter Pays applied, the interest will be surveyed on the measure of the settlement to guarantee the remuneration for hurt done is proportionate to the harm caused thus that the

[12] *Ibid*

blamed doesn't help himself from his own bad behaviors. Concerning resistance with the court request and disregard of commitments by the respondents, a stricter and considerably more genuine treatment ought to have been taken before 15 years had passed in light of the fact that the damage caused for the townspeople was too incredible and the need to make a quick move not to be paid for a sum of 15 years. The townspeople lost their vocations, their food and water supplies,[13] and some lost their friends and family on account of death and sickness brought about by their openness to poisonous synthetic compounds. They required pressing remedial activity. As I get this, the choice in its own particular manner was entirely striking and normal. The decent adjudicators apply the "Polluter Pays Principle" which is extremely useful in lightening the mother Earth's peril and mischief. However, the tremendous remuneration guideline which was taken as a fine to make up for the damage they never really mother earth is reasonable in accordance with the polluter pays standard. The choice was legitimate and suitable, as per my perspective.

[13] Water (Prevention and Control of Pollution) Act 1974