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Case Comment: A.P. Pollution Control Board vs Prof. M.V. Nayudu (Retd.)

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INTRODUCTION

All living things require access to clean, drinkable water. According to a United Nations resolution passed at the 1977 Water Conference, everyone has the right to the same amount of drinking water and necessities, regardless of their stage of development or social and economic status. Water pollution is a major issue in India. Only eight of India's 3,119 towns and cities have complete wastewater treatment facilities, and only 209 have partial sewage treatment facilities, according to a 1992 evaluation by the World Health Organization (WHO).

FACTS OF THE CASE

- In this case¹, the respondent industry should construct a new facility in the state of Andhra Pradesh for the manufacture of vegetable oils. The answering business acquired a plot of land in the Peddashapur village of Indore. Reservoirs that provide drinking water to the region's 5 million population are accessible from the settlement.

¹ *A.P. Pollution Control Board vs Prof. M.V. Nayudu (Retd.)* (1999) (2) SCC 718

- The Ministry of Forest and Environment put out a list of hazardous businesses in 1988. The name of the respondents' industry was also included on the red list.
- The Central Government issued this notification under the authority granted to it by the Water Prevention and Control of Pollution Act of 1974 and the Air Prevention and Control of Pollution Act of 1981.
- According to the Directive Principles of Central Government, the State Government declared in 1994 that any industrial installation within 10 kilometres of reservoirs is prohibited.
- In 1995, he tried to grow his business there but was unable to obtain a No Objection Certificate (NOC) from the Andhra Pradesh Pollution Control Board. The environmental agency of the state gave its blessing. In 1996, the Cabinet again approved the measure. The rule led to the State of Andhra Pradesh Pollution Control Board rejecting the application.
- The respondent was given instructions by the Commission of Industries on site and selection, but despite the commission's repeated civil works, the respondent erected machinery. The respondent sent the State of Andhra Pradesh Pollution Control Board a second NOC request.
- The application was then denied by the Board. He continued by saying that he had invested a sizeable sum of money in the establishment and management of the industry. The State Government then considered the respondent's request. The respondent was then given a prescription, a letter of approval, and instructions on how to handle contaminated water.
- Despite the Andhra Pradesh Pollution Control Board rejecting the respondent's request for a NOC, a list of precautions to be taken was published. According to Section 28 of the Water Act, the respondent then filed an appeal with the appellate board.
- Because the respondent had employed the most recent methods of pollution prevention, the appellate authority overturned the state of Andhra Pradesh Pollution Control Board's rulings.

ISSUES OF THE CASE

1. Is the respondent-industry dangerous given the kind, location, and effluents of the product? What kind of pollution risk does it pose?
2. Is it likely that the operation of the industry will have an impact on the sensitive catchment area, resulting in the pollution of the Himayat Sagar and Osman Sagar Lakes, which provide drinking water to Hyderabad and Secunderabad?

CONTENTIONS BY THE PETITIONER

In this case, the Andhra Pradesh Pollution Control Board filed an appeal, claiming that the respondent industry was not allowed to begin civil construction without receiving A.P. approval first. Pollution Control Board. The following pollution sources, according to the A.P. Pollution Control Board, will be brought on by the products of the industry in question:

The Hazardous Waste (Management and Handling) Rules of 1989² categorize nickel, a heavy metal, as hazardous waste.

- There is a potential that oil and other waste products will be discharged or runoff from the factory.
- Nitrogen oxide and sulfur dioxide emissions.

CONTENTIONS BY THE RESPONDENT

- Following the rejection of their letter requesting the NOC, the respondent industry filed an appeal with the appellate board by Section 28 of the Water Act³. A traffic officer for the Tamil Nadu Pollution Control Board named Shri Santapa provided an affidavit in favour of the respondent industry, which was also provided by the respondent. It was asserted in that statement that companies had adopted green technology, were using it, and were taking all necessary steps to protect the environment.

² Hazardous Waste (Management and Handling) Rules 1989

³ Water (Prevention and Control of Pollution) Act 1974, s 28

- The responding industries' director also supplied an affidavit outlining the technology used to build the plant.
- The respondent industry also provided a report claiming that it had provided a certificate stating that it would not release any acidic influences that would be hazardous to the environment and that the staff had been hired from the renowned Indian Institute of Chemical Technology in Hyderabad. It was suggested that it is not polluting based on the aforementioned information and reports.

RELATED PROVISION

Article 136 of the Constitution of India:⁴ By special permission of the Supreme Court, advance

- Despite the provisions of this Chapter, the Supreme Court may, in its exclusive discretion, grant extraordinary authorization to appeal any judgement, order, assurance, sentence, or request in any case or matter made by any court or council located within the country of India.
- A statement shall not impact any judgement, assurance, sentence, or request rendered or adopted by any court or council established by or under any law designating the Armed Forces (1).

Section 28⁵ of The 1974 Water Act

- Within thirty days of the date on which the request is communicated to him, any person who disagrees with a State Board request made under Sections 25⁶, 26⁷, or 27⁸ may Favor an appeal to the authority (referred to as the reappraising position herein). As long as it is demonstrated that the appellant was forbidden by a valid reason from filing the appeal on time, the redrafting authority may engage the appeal after the stipulated thirty days have gone.

⁴ Constitution of India 1950, art. 136

⁵ Water (Prevention and Control of Pollution) Act 1974, s 28

⁶ Water (Prevention and Control of Pollution) Act 1974, s 25

⁷ Water (Prevention and Control of Pollution) Act 1974, s 26

⁸ Water (Prevention and Control of Pollution) Act 1974, s 27

- A reappraising authority will be made up of one, two, or three individuals who will be chosen by the State Government.
- Examples of recommendations include the format and procedure for filing an appeal under subsection (1), the costs connected with doing so, and the course of action the reappraising authority should conduct.
- The appellant authority shall reject the appeal as quickly as practicable after receiving an appeal that is liked under subsection (1), following an opportunity for hearing from the plaintiff and the State Board.

If the examining authority finds that a condition or the set of requirements was, overall, irrational, then at that point:

- If the appeal relates to the insanity of any mandatory condition, the relevant authority may arrange for the condition to be treated as cancelled or for another condition to be substituted in its place that, in its judgement, makes sense;
- If the appeal concerns the lunacy of any variety of a condition, such authority may coordinate that the condition is treated as continuing in power unvaried or that it be changed in such a way that it will be treated as a new condition.

Section 3(3) of Environment (Protection) Act 1986⁹

By Section 3(3), if the Central Government deems that it is necessary or convenient to do so for this Act, it may appoint a position or specialists with the name or names that may be determined in the request to exercise and perform such powers and capacities. Such position or specialists may exercise the forces, play out the capacities, or take the actions so referenced in the request as though such position, counting the ability to give bearings under Section 5¹⁰ of the Central Government under this Act and for taking measures regarding such of the issue referred to in Subsection (2) as, subject to the management and control of the Central Government and the arrangements of such request.

⁹ Environment (Protection) Act 1986, s 3(3)

¹⁰ Environment (Protection) Act 1986, s 5

Section 25 (1) of The Water Act 1974¹¹

Subject to the limitations of section 25(1)¹², nobody shall without the State Board's previous approval:

- build any industry, activity, or measure, or any framework for treatment and removal, or any expansion or modification thereto, that is likely to release sewage or exchange effluent into a stream, well, sewer, or ashore (this release is referred to as the release of sewage hereunder); or
- create any industry, activity, or measure; or discover any way to create any framework for treatment and elimination,
- start any new sewage release: Provided that a person during the period spent learning how to develop any industry, activity, or cycle before the implementation of the Water (Prevention and Control of Pollution) Amendment Act, 1988, for which no consent was required before such inception, may continue doing as such for a period of 90 days from such initiation or on the off chance that he has applied for such consent, inside the Water (Prevention and Control of Pollution) Amendment (Prevention and Control of Pollution).

Article 21 of The Constitution of India¹³

No one will be deprived of their life or their freedom other than by the legal plan.

JUDGEMENT OF THE CASE

- The court considers the respondent's motion for reconsideration and overturns the appellate authority's judgement. First, the court considers whether the Central government has the authority to forbid any hazardous sector from functioning within a 10-kilometer radius of the reservoir, even if that sector complies with all environmental protection protocols and rules.

¹¹ Water (Prevention and Control of Pollution) Act 1974, s 25(1)

¹² *Ibid*

¹³ Constitution of India 1950, art. 21

- The court rules that the exemption should not be valid in this specific case due to the 10 km restriction and environmental protection issues, and the respondent cannot receive a NOC. To respond to the second question, the Secondary Court took into account the respondent's eligibility for a court exemption request based on the report provided to the court.
- In response to this question, the court determined that even though the respondent industry is located about 10 kilometres from a reservoir, it won't pollute the water because it has vowed to take all reasonable steps and safeguards to protect the environment. The Court, however, rejected the plaintiff's claim of promissory estoppel since the plaintiff had not taken the required measures and activities.
- The respondent should be safeguarded, the court ruled, because reservoirs provide drinking water for millions of people. The court found that these reasonable safety precautions could be broken accidentally or by error.
- Because the court is hesitant to take a chance in this case, according to the precautionary principle, you lied. To prevent the court from overturning the government's policy choice, it was determined that the respondent could not receive a NOC.

CONCLUSION

To sum up, I think the decision taken by the honourable justices is reasonable and justifiable because the court cannot use its power to favour a certain person or company. Since millions of people rely on the two in question reservoirs for fresh drinking water, abusing the court's power in this way will lead it to act arbitrarily, which is against the public interest. If the court rules arbitrarily, the general people will undoubtedly be affected. Furthermore, it will violate Article 21¹⁴ of the Indian Constitution, which safeguards the right to clean water. As a result, when the Precautionary Principle is used, the court acts righteously and respects social morals.

¹⁴ *Ibid*