

A F.B. TARAPORAWALA AND ORS. ETC. ETC.

v.

BAYER INDIA LTD. AND ORS.

SEPTEMBER 9, 1996

B [KULDIP SINGH AND B.L. HANSARIA, JJ.]

*Environment Protection Act, 1986 : Section 3(3).*

C *Environmental law—Building plans submitted by builders—Intervention by Industrialists—Chemical Manufacturers—Directions given by High Court—Prohibition of construction within one kilometer of radius from chemical factories—Effect of—Risk to residents already residing within that radius—Safeguards for—Relocation of industries—Direction for Constitution of Central Authority for examining relocation.*

D *Environmental Law—Sustainable development.*

*Constitution of India, 1950 : Article 21.*

E *Right to life—Right to reside—Industrial area—residents of—Probability of accident in factories—Protective measures for residents.*

F With a view to obtaining orders in connection with their building plans, some builders filed writ petitions in the Bombay High Court. Some of the leading chemical manufacturers of the country including respondents filed intervention application in these proceedings on the ground that the area in question had been reserved for industrial use. The High Court issued various directions in this regard including the one that there shall be a prohibition in respect of any further construction within 1 km. radius from the chemical factories. The respondent-chemical manufacturers preferred appeals before this Court challenging the directions issued by the High Court. This Court being of the *prime facie* view that by giving immunity to the industrialist in the impugned directions, injustice has been caused to the respondents of the locality inasmuch as prohibition of construction within one km. radius in a crowded place like Thane did adversely affect the right to reside in the locality, leaving at the same time the large number of inhabitants already residing exposed to the risk. Thus, with a view to safeguarding the interests of the respondents in the event of

some accident happening in the factory, it was considered desirable that chemical manufacturers should either (i) obtain ownership of the area; or (ii) shift their factories to such place where residential area could be kept wide apart from the factory premises. However, respondent's response to both these options was negative on account of huge financial involvement as well as feasibility. Further in view of the fact that this Court has neither the expertise nor was it in possession of various information which shall be required, to decide one way or the other so far as relocation was concerned, it was considered desirable to leave this matter to be examined by an Authority.

Disposing the appeals, this Court

**HELD : 1.** The concept of "sustainable development" does call upon one and all to see to the maintenance of balance between development and its sustenance in future. [684-C]

**2.** In this case the problem touches the core of Article 21 of the Constitution inasmuch as the very lives of the inhabitants living around the factories in question are in great jeopardy so much so that any probable accident in the factories may see annihilation of large number of inhabitants. May be the accident does not take place. But no risk can be taken. However, relocation does need a deeper probe because of the various factors which would be required to be gone into. Such an exercise can usefully be taken by an Authority. Accordingly it is directed that the Central Government shall constitute an Authority, as visualised by section 3(3) of the Environment Protection Act, 1986 within one month from the receipt of this order. The said Authority shall examine and decide all the relevant issues after affording reasonable opportunity of hearing to the concerned parties. It shall submit its report within 3 months. [684-D-G]

*Vellore Citizens Welfare Forum v. Union of India*, [1996] 57 S.C.C. 647, referred to.

**CIVIL APPELLATE JURISDICTION :** Civil Appeal No. 7086 of 1994 Etc.

From the Judgment and Order dated 29.6.94 of the Bombay High Court in R.P. No. 1485/91 in W.P. No. 4497 of 1990.

H.N. Salve, Arun Jaitley, Dr. Rajeev Dhawan, P. Samdani, Vinod L.

A Desai, K.J. John, D.N. Mishra, S.V. Deshpande, A.M. Khanwilkar, D.M. Nargolkar, N.H. Seervai, P.H. Parekh, E.R. Kumar, M.C. Mehta, Ms. Seema Midha, K.R.R. Pillai, Ms. Suchitra and A. Chitale for the appearing parties.

B The Judgment of the Court was delivered by

C **HANSARIA, J.** Industrial growth, yes; but by exposing a large segment of society to the risk of losing lives, no. This apprehension is not imaginary. Bhopal disaster brought to the knowledge of all what a tragedy can be caused by chemical industries. In the wake of what happened there more than a decade ago, industrialists engaged in production of chemicals started thinking of taking precautionary and protective measures to see that if worst were to befall, how could their financial liability be taken care of.

D (2) The aforesaid mental make-up led some leading chemical manufacturers in the country, like Bayer India Limited, one of the respondents herein, to approach the Bombay High Court in a pending writ petition filed by some builders seeking certain orders of the High Court. In one of the writ petitions taken by the High Court for hearing, which was numbered as 4497/90, the Court required the Municipal Corporation to re-examine the building plans and to pass appropriate orders keeping in view, *inter alia*, the provisions of section 46 of the Maharashtra Regional and Town Planning Act. The matter was brought to this Court by the respondents contending, *inter alia*, that in the sanctioned plan the area had been shown reserved for industrial user. This Court permitted the respondents to file a review petition before the High Court. On being so approached, the High Court dismissed the intervention application of the respondents and directed the Municipal Corporation to permit construction. This order led the respondents to approach this Courts again by filing Interlocutory Application in the disposed of SLP. This Court, by an order passed on 24.2.1993, directed the High Court to dispose of the review application and further directed to maintain status quo, which prevented the appellants to carry on construction activity within one k.m. radius from the factory premises. This High Court disposed of the review application on 26.9.1994 by giving the following directions :

H "(i) No additions or modifications shall be permitted in respect of buildings that have been completed or those were under construction as on the date of stay order passed by this

Hon'ble Court on 8.1.1991.

- (ii) In respect of schemes where permission may have been granted but no actual construction has been commenced as on the date of this Court's order dated 8.1.1991, prohibition in respect of a total ban on further construction within 1 km. radius from the chemical units shall apply.
- (iii) Save and except in the aforesaid cases, the stay order passed by this Court on 8.1.1991 shall continue to the extent that there shall be a prohibition in respect of any further permissions or for that matter construction within 1 k.m. radius from the chemical factories.
- (iv) The stay order shall stand vacated only in those of the cases as indicated where construction has been commenced and was required to be stopped by virtue of the stay of this Hon'ble Court."

These appeals question the aforesaid directions of the High Court.

3. The appeals were heard on a number of occasions and being of the *prima facie* view that by giving aforesaid immunity to the industrialists injustice has been caused to the residents of the locality inasmuch as prohibition of constructions within 1 k.m. radius in a crowded place like Thane did adversely affect the right to reside in the locality, leaving at the same time the large number of inhabitants already residing exposed to the risk mentioned above, it was thought by us that if the industrialists wanted to safeguard their interest in the event of some accident happening in their factories, it was for them either to obtain the ownership of the area in question or to shift their factories to such places where the residential area could be kept wide apart from the factory premises. But then, the response of the respondents to the first proposal being negative because of the huge financial involvement, we applied our mind as to whether we could examine at our level the question of relocation.

4. Respondents were heard on this aspect on many occasions and in the written submissions filed on 2.9.1996 by Bayer India, which can be taken as a representative stand of the respondents, it has been stated relocation is not possible logistically, financially or otherwise. The written

A submission mentions about various aspects relating to relocation at pages 16 to 20. It has been felt by us that we have neither the expertise nor are we in possession of various information, which shall be required, to decide one way or the other so far as the question of relocation is concerned. In such a situation what has appealed to us is to leave this matter to be examined by an Authority which we would require the Central Government to constitute, as visualised by section 3(3) of the Environment Protection Act, 1986 (the Act). It is not necessary to deal at length as to what is visualised by this Act and why? This has been explained in detail in a judgment delivered by one of us (Kuldip Singh, J.) on August 28, 1996 in Writ Petition (C) No. 914 of 1991, on behalf of a 3-Judge Bench. The concept of "sustainable development", whose salient points have been noted in the aforesaid judgment, does call upon one and all to see to the maintenance of balance between development and its sustenance in future.

5. In the appeals at hand, we were confronted with a problem which has more serious consequences and which touches the core of Article 21 of the Constitution inasmuch as the very lives of the inhabitants living around the factories in question are in great jeopardy so much so that any probable accident in the factories may see annihilation of large number of inhabitants. May be the accident does not take place, as has been submitted by Shri Jaitley appearing for the respondents. There is, however, no ruling out of the same altogether as Bhopal has shown. No risk can, therefore, be taken. But then relocation does need a deeper probe because of the various factors which would be required to be gone into. Such an exercise can usefully be taken by an Authority of which mention has been made above.

6. We, therefore, direct the constitution of an Authority under section 3(3) of the Act by the Central Government, who shall confer all the necessary powers under the Act on the Authority, which shall be constituted within one month from the receipt of this order. The Authority shall submit its report to the Central Government within three months after examining and deciding all the relevant issues including those mentioned by us. This would be done by affording reasonable opportunity of hearing to the concerned parties. Follow up actions shall be taken by all concerned as per the recommendations of the Authority within reasonable time.

7. As the constitution and deliberation of the authority would take

time, and its ultimate result cannot be foreseen at this stage, we have thought it fit to direct the Bombay Municipal Corporation to proceed further with the plans which had been submitted by the appellants, some of which also came to be sanctioned. But then, as sanctioning in some cases was about a decade back and as the scenario and thinking on the subject has since then changed a lot, so also the building bye-laws, we have thought it fit to direct the Corporation to re-examine the question of grant of sanction on the basis of the existing rules and bye-law. The Corporation may proceed with this exercise, but it would await the result of the report of the aforesaid Authority. We have desired the Corporation to undertake this work at this stage itself because the matter has been delayed already and Authority's deliberation would not be available for quite some time.

8. In the aforesaid view of the matter, the review petitions filed before the High Court by the respondents are not required to be kept alive and they would stand dismissed on withdrawal, to which effect prayer was made before us. The impugned directions of the High Court would automatically lapse.

9. The appeals are disposed of with these directions. No order as to costs.

T.N.A.

Appeals disposed of.