

Supreme Court of India

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Kalyaneshwari vs U.O.I. & Ors. on 21 January, 2011

Bench: S.H. Kapadia, K.S. Panicker Radhakrishnan, Swatanter Kumar

HELD: 1. There is no merit in the instant writ petition, as far as prayer of the petitioner for banning of mining and manufacturing activities in asbestos or its allied products is concerned. While rejecting the prayer, certain directions are issued. [Para 28] [928-C]

2.1 There is no law banning the use of asbestos in various manufacturing processes despite its adverse effects on human health. It is not for this Court to legislate and ban an activity under relevant laws. Every factory using or manufacturing asbestos, obtains a licence under the Factories Act as well as permission from the competent authorities including permission under the Environmental Laws. In the case of *Consumer Education and Research Centre certain directions were issued with regard to the said issue. Once all the laws in force have been complied with and directions of this Court as contained in the case of *Consumer Education and Research Centre are carried out in their true spirit, there is no reason as to why this Court, in exercise of its extra-ordinary jurisdiction under Article 32 of the Constitution, should ban such an activity when admittedly large number of families are dependent upon such processes. It has to be ensured that proper precautions are taken. The Court had already made ILO guidelines as one of the safety measures to be complied with by the industries and it is expected of each State Government and the Union Government to ensure safe and controlled use of asbestos. Better supervision and regulatory control is required than banning of the activity. The affidavits filed by the official respondents, including respondent No. 37, Asbestos Cement Product Manufacturers Association specifically point out 'safe and controlled' use of asbestos in manufacturing processes. The prayer with regard to constitution of a Committee comprising of specific persons is not a matter that falls within the realm of jurisdiction of this Court. It is for the expert bodies in the concerned Ministries which should regulate proper measures in this regard to ensure proper utilization of asbestos and raw materials in relation to various manufacturing activities, if they are being carried on in accordance with law and without endangering the life of the people. [Para 12] [914-H; 915-A-G]

2.2 The reply affidavits filed by different States as well as Union of India clearly bring out that such activity, wherever is being carried out, is in accordance with specified parameters and under due supervision. The writ petition filed does not provide any data or detailed facts in relation to such uncontrolled or unauthorized activity of manufacture of asbestos being carried out in any State. Merely stating that a few hundred workers were subjected to medical examination and were found to be affected by inhalation of asbestos particles may not be sufficient for this Court to accept it as a general proposition that there is hazardous use of asbestos all over the country, particularly, in view of the fact that such activity is being carried out at the mining or industrial level in different parts of the country. [Para 10] [912-G-H; 913-A-B]

2.3 The petitioner has not been able to clarify as to how the instant petition came to be filed in face of the judgment of this Court in the case of *Consumer Education and Research Centre and, in fact, what was the need to file it. The petitioner made no effort to collect any information/data from various States as to whether the directions issued by the Court in that matter are being strictly implemented or not at all. On the contrary, it is the stand of the States as well as Union of India that the directions issued by this Court are being strictly adhered to. The parameters and norms have been specified and the industries using such raw materials are being constantly watched, in relation to all the functions of the factory, specially keeping in view the environment and health status of the workers and nearby residents. Even subsequent to the filing of the instant petition, the petitioner has not put in any effort to seriously rebut the averments made in various affidavits filed by the States. [Paras 12 and 23] [925-A-B]

*Consumer Education and Research Centre vs. Union of India (1995) 3 SCC 42; Jayjit Ganguly vs. Union of India CWP No. 412 of 2002 decided on 15th December 2004 - referred to.

2.4 The government had introduced the White Asbestos (Ban on Use and Import) Bill, 2009 which is pending in the Upper House. Thus, there could be no doubt that it is a matter which squarely falls in the domain of the legislature and the legislature in its wisdom has taken steps in the direction of enacting necessary law. Issuance of any direction or formulation of any further policy by this Court would obviously be a futile exercise. There could hardly be any justification for banning, completely or partially, of the activity of manufacturing of asbestos and allied products. The Bill is yet to be passed but it is clearly demonstrated that the Government is required to take effective steps to prevent hazardous impact of use of asbestos. [Paras 13 and 15] [915-G-H; 916-A-B; 917-D-E]

2.5 In the matter relating to secondary exposure of workers to asbestos, though the grounds have been taken in the writ petition without any factual basis, again in the rejoinder filed to the counter affidavit of respondent No. 37, the issue has been raised by the petitioner in detail. In the earlier judgment of this Court in the case of *Consumer Education and Research Centre, hazards arising out of primary use of asbestos were primarily dealt with. The Court had noticed that it would be clear that diseases occurred wherever the exposure to the toxic or carcinogenic agent occurs, regardless of the country, type of industry, job title, job assignment or location of exposure. The diseases would follow the trail of the exposure and extend the chain of the carcinogenic risk beyond the work place. The Court had also directed that a review by the Union and the States would be made after every ten years and also as and when the ILO gave directions in this behalf consistent with its recommendations or conventions. Admittedly, 15 years has expired since the issuance of the directions by this Court. The ILO also made certain specific directions by its resolution of 2006 adopted in the 95th session of the International Labour Conference. It introduced a ban on all mining, manufacture, recycling and use of all forms of asbestos. Serious doubts have been raised as to whether 'controlled use' can be effectively implemented even with regard to secondary exposure. [Para 14] [916-C-H; 917-A-B]

2.6 The petitioner NGO is not recognized by any Ministry and no financial assistance has been sanctioned to it. [Para 22] [924-G-H]

3. The Courts, while exercising jurisdiction and deciding a public interest litigation, has to take great care, primarily, for the reason that wide jurisdiction should not become a source of abuse of process of law by disgruntled litigant. Such careful exercise is also necessary to ensure that the litigation is genuine, not motivated by extraneous considerations and imposes an obligation upon the litigant to disclose true facts and approach the Court with clean hands. Thus, it is imperative that the petitions, which are bona fide and in public interest alone, be entertained in this category. Abuse of process of law is essentially opposed to any public interest. One, who abuses the process of law, cannot be said to serve any public interest, much less, a larger public interest. A petition which lacks bona fide and is intended to settle business rivalry or is aimed at taking over of a company or augmenting the business of another interested company at the cost of closing business of other units in the garb of PIL would be nothing but abuse of the process of law. [Paras 23 and 25] [925-C-E; 927-D-G]

Ashok Kumar Pandey Vs. State of West Bengal (2004) 3 SCC 349; Ranjan Singh Lalan Vs. Union of India (2006) 6 SCC 613 - relied on.

4.1 From the record, it is clear that 'BK' (claiming to be working as Secretary of the petitioner and who filed petition on the same issue before the Gujarat High Court in B.K. Sharma v Union of India AIR 2005 Guj 203) as well as 'SS' (one of the member of the Society and has worked with the Steel Company ESCL) had professional commitment in one form or the other either on permanent or temporary basis with the Steel Company ESCL. It has been stated in the affidavit filed by 'BK' that three writ petitions were withdrawn on the advice of the Gujarat High Court which is hardly true. The court had only granted liberty, while dismissing the writ petitions as withdrawn, to approach the Central Government. The Central Government had again declined to accept the representations made by the petitioners resulting in filing of writ petitions for the second time which culminated in the final judgment by the Gujarat High Court in the case of B.K. Sharma v Union of India. [Para 21] [923-F-H; 924-A]

4.2 In the instant case, there is hardly any improvement in the conduct of the petitioner before this Court. Even before this Court, a judgment which has attained finality on all factual matrix and even otherwise, is attempted to be brushed aside by making irresponsible statements, inter alia, that the Gujarat High Court had failed to apply its mind. The judgment of the Gujarat High Court for all intent and purposes attained finality and the legality or correctness of the judgment cannot now be questioned in these proceedings. It is of no use and help to the petitioners now to claim that no proof was produced before that Court to establish the allegations that the petition was filed at the behest of ESCL. They were writ petitioners and the Court, after hearing the parties at length and perusing the record, has recorded the said findings which in any case, do not suffer from any infirmity, much less, illegality so as to be disregarded by this Court. The findings recorded by the Gujarat High Court reflect the picture of the petitioner which certainly invites judicial chastisement and appropriate orders. [Para 21] [924-B-F]

4.3 It cannot be ignored that valuable time of this Court is consumed in dealing with such public interest litigations which are filed without proper study and data and merely on some reference to very few workmen working in an industry and without projecting any requirement at the national level demanding the attention of this Court in treating it as a national problem. The Kerala State Human Rights Commission by order dated 31.01.2009 dealt with the same problem which does not even find a mention in the instant petition and which the petitioner is expected to know as it claims to be working for the common man in this behalf. In the name of the poor let the rich litigant not achieve their end of becoming richer by instituting such set of petitions to ban such activities. Besides the fact that the instant petition lacks bona fides, it is also obvious that the petitioner though had prayed for complete ban on all mining and manufacturing activities but had hardly made any study or prepared statistical data in that regard. It only made reference to certain studies in foreign countries. The petitioner, claiming to be an organization involved in the good of the common man, ought to have taken greater pains to state essential facts supported by documents in relation to Indian environment. [Paras 23 and 25] [925-B-D; 926-G-H; 927-A-B]

4.4 Presumably the direct impact of banning of activities of mining/manufacturing relating to asbestos shall result in increase in demand of cast iron/ductile iron production as they are some of the suitable substitutes for asbestos. The Steel Company-ESCL is one of the largest manufacturer of iron and allied products in India and there was a professional and/or other connections between ESCL and `BK' on the one hand and `BK' and `SS' on the other who, admittedly at present, is involved with the activities of NGO for a considerable time. Thus, it would be a reasonable conclusion to draw that the writ petition has been hardly filed in public interest but is a private interest litigation to give rise to business opportunities in a particular field. [Para 24] [925-E-H]

4.5 The document referred to as Ex. P9 in the writ petition is probably the only document which allegedly records the conditions of a few workmen in India and contains the names of a few doctors and workers. This document is neither signed by anybody nor does it give address of any workman or the industry/factory where such workman is working. It is expected of the petitioner to have made proper efforts in collection of such material before it moved this Court to treat this problem at the national level and had spent its judicial time. All the States in the country have been issued notices of this petition and they have denied the allegations. It was incumbent upon the petitioner thus, to at least substantiate the averments in the petition by some cogent and documentary evidence actually related to the working conditions of the workmen in various factories in different States. The petitioner has miserably failed to discharge this onus. [Para 26] [927-B-E]

4.6 The conduct of the petitioner before the Gujarat High Court appears to be contemptuous and certainly is an abuse of the process of the court in terms of the finding recorded by that Court which has attained finality. The petition was instituted at the behest of ESCL, while the instant petition also does not demonstrate that intention of the petitioner is to achieve public interest. The instant petition appears to have been moved again at the behest of the same company and, in any case, to ultimately cause material and business gains to that or such other companies. Thus, the instant petition lacks bona fide, is an abuse of the process of the Court and has been filed as a proxy litigation for the purpose of achieving private interest. This Court cannot permit such practice to prevail and it needs to be deterred at the very threshold. [Para 27] [927-F-H; 928-A-B]

Raunaq International Ltd. vs. I.V.R. Constructions LTD. (1999) 1 SCC 492 - relied on.

5.1. The following directions are issued while disposing of the writ petition:

a. The Ministry of Labour in the Union of India and Department of Industries and Labour in all the State Government would ensure that the directions contained in the judgment of this Court in the case of Consumer Education and Research Centre are strictly adhered to;

b. In terms of *Consumer Education and Research Centre case as well as reasons stated therein, the Union of India and the States is directed to review safeguards in relation to primary as well as secondary exposure to asbestos keeping in mind the information supplied by the respective States in furtherance to the earlier judgment as well as the fresh resolution passed by the ILO. Upon such review, further directions, consistent with law, be issued within a period of six months from the date of passing of this order;

c. It is directed that if Union of India considers it proper and in public interest, after consulting the States where there are large number of asbestos industries in existence, it should constitute a regulatory body to exercise proper control and supervision over manufacturing of asbestos activities while ensuring due regard to the aspect of health care of the workmen involved in such activity. It may even constitute a Committee of such experts as it may deem appropriate to effectively prevent and control its hazardous effects on the health of the workmen;

d. The concerned authorities under the provisions of Environment (Protection) Act, 1986 should ensure that all the appropriate and protective steps to meet the specified standards are taken by the industry before or at the time of issuance of environmental clearance. [Para 16] [917-E-H; 918-A-F]

5.2 It is imperative for the Court to issue the said directions in order to strike a balance between the health hazards caused by this activity on the one hand and ground reality that a large number of families, all over the country, are dependent for their livelihood on this activity, on the other. The Court is not entering into the arena of legislature and are passing the said directions in furtherance to the law laid down by this Court which, in terms of Article 141 of the Constitution, is binding on all concerned and to ensure effective and timely implementation of the provisions of the Environment (Protection) Act. These directions must be read and construed in comity with the proposed legislation and are in no way detrimental to the same. [Para 17] [918-F-H; 919-A]

Case Law Reference:

(1995) 3 SCC 42 Referred to Para 2

CWP No. 412 of 2002 Referred to Para 11

(2004) 3 SCC 349 Relied on Para 25

(2006) 6 SCC 613 Relied on Para 25

(1999) 1 SCC 492 Relied on Para 27

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 260 of 2004.

Under Article 32 of the Constitution of India.

H.P. Raval ASG, A. Mariarputham, AG, Dr. Manish Singhvi, A.A.G. Manjit Singh, AAG, Harish Chandra, Rajeev K. Virmani, I. Venkatanarayana, Ashish Mohan, K.K. Mohan, Aruna Mathur, Yusuf Khan, Avneesh

Arputham, Megha Gour (for Arputham, Aruna & Co.) Gopal Prasad, V.G. Pragasan, S.J. Aristotle, Prabu Ramasubramanian, Edward Belho, K. Enatoli Sema, Rituraj Biswas, Anirudh Sharma, Arvind Kumar Sharma Mukesh K. Giri, R. Ayyam Perumal, Hemantika Wahi, Nupur Kanungo, A. Subhashini, Avijit Bhattacharjee, Sarbani Kar, Debjani Das Purkayastha, Bidyabrata Acharya, Rekha Pandey, S.W.A. Qadri, C. S. Khan, Ch. Shamsuddin, D.S. Mahara, Anil Kaityar, Radha, Shyam Jena, Vibha Datta Makhija, B.S. Banthia, Khwairakpan Nobin Singh, Sapam Biswajit Meitei, Corporate Law Group, John Mathew, Sanjay R. Hedge, Pradeep Misra, Anil Shrivastav, Sanjay V. Kharde, Asha G. Nair, Ranjan Mukherjee, S. Bhowmick, S.C. Ghosh, Gopal Singh, Manish Kumar, Naresh Bakshi, D. Bharathi Reddy, Aruneshwar Gupta, Rashmi Virmani, Sandeep Bharathi Reddy, Aruneshwar Gupta, Rashmi Virmani, Sandeep Narain, Mukta Dutta, Ashish Kothari (for S. Narain and Co.), Pragyan P. Sharma, Rupesh Gupta, Siddharth Lodha, P.V. Yogeswaran, T.V. George, Atul Jha, Dharmendra Kumar Sinha, Shrish Kumar, Misra, Ajay Kumar Singh, Dipak Kumar Jena, Minakshi Ghosh Jena, Manmohan, Naresh K. Sharma, Anuvrat Sharma, T. Harish Kumar, P. Prasantha, V. Vasudevan, Devanshu Kumar Devesh, Milind Kumar, Lawyers' Knit and Co., Kuldip Singh, Ashok K. Srivastava, Sunil Fernandes, G.N. Reddy, Haripesh Singh, Kamal Mohan Gupta, R. Sathish, Pragyan P. Sharma, P.V.

Yogeswaran, D. Mahesh Babu for the appearing parties.