
CASE COMMENT: SUBHASH KUMAR V. STATE OF BIHAR AND OTHERS

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Citation: (1991) 1 SCC 598

Introduction:

The Constitution of India grants various rights to its citizens, including fundamental rights outlined in Part III. Fundamental rights (*herein after referred to as F.R.*) are the most significant rights, and no other law can override them. If a law conflicts with the F.R., it can be declared void by the Supreme Court (*herein after referred to as S.C.*). Individuals can approach the S.C. under Art. 32 if they believe their F.R. have been violated. The S.C. may issue directions under Art. 32 based on the specific facts and circumstances of the case.

In this particular case, the petitioner submitted a Public Interest Litigation (*herein after referred to as PIL*) to the Hon'ble S.C. through Art. 32 of the Indian Constitution. The petitioner argued that his fundamental rights had been violated by the actions of the Respondent. The court was tasked with determining whether there was indeed a violation of the F.R. as claimed by the petitioner. Additionally, the court discussed the concept of PIL in relation to the interests of individuals.

Facts of the case:

- I. This case was filed by Subhash Kumar, a resident of West Nokaro, Jharkhand, has filed a writ petition under Article 32 of the Constitution, seeking a directive to the Director of Collieries at West Bokaro Collieries in Ghatotand, District Hazaribagh, Bihar, as well as to the Tata Iron & Steel Company Limited (*herein after referred to as TISCO*), to immediately halt the discharge of slurry and sludge.
- II. The present case by way of PIL filed by the Petitioner to prevent the pollution of the Bokaro river water.

- III. According to the petitioner's argument, the 'Water (Prevention and Control of Pollution) Act, 1974' (*hereinafter referred to as the WPCP Act*) was enacted by Parliament to control and prevent water pollution and to restore the quality and wholesomeness of water for its maintenance.
- IV. S. 17 of the WPCP Act provides the various guidelines for the Board will implement a comprehensive program for prevention, encouraging, conducting, participating in investigations, to inspect sewage and trade effluents, as well as works and plants for sewage treatment, along with various other guidelines outlined in this section. Also, the petitioner cited S. 24 of the WPCP Act, and as per this section, various directive guidelines, such as no person shall knowingly cause or permit any noxious, poisonous or polluting matter disposal in the water and other guidelines, are mentioned in this section.
- V. TISCO is the respondent in the current case, operating a coal mining and washing facility in the town of Jamshedpur. After the extraction of coals, it was brought to the Collieries and there it was broken into small pieces and this process is known as '**Forth Floatation Process**'. In this process, coal is combined with various chemicals like pine oil, diesel oil, etc. and then washed with gallons of water.
- VI. For this process, there were special ponds constructed in which water was discharged, and it contained small particles of coal, which is known as slurry. Once the water is stored in ponds and all the coal particles have settled at the bottom, it becomes valuable because it is used as fuel.
- VII. As per the contention of the petitioner, the washeries discharged surplus waste into the Bokaro River, which was deposited on the banks of the river, including the petitioner's farm. The release of slurry into the river polluted it, and it also not fit for drinking.

Issue of the Case:

- I. Whether the water of the Bokaro River polluted due to the release of slurry by TISCO from its washeries? Whether the State Pollution Board had taken the necessary steps to stop water pollution?
- II. Whether the present petition filed by the petitioner under Art. 32 of the Indian

Constitution through PIL is in the interest of the public or whether it is filed to fulfil personal advantages.

Arguments:

Contention from the side of the Petitioner (Subhash Kumar):

- I. As the petitioner, TISCO is violating S. 17, 24, and Art. 21 of the Indian Constitution because the release of Slurry into the river pollutes the water of the river.
- II. According to the Petitioner, TISCO is involved in the coal mining business at the Washeries and coal mines in Jamshedpur. After coal is extracted from the mines, various chemicals are mixed with it to produce a purer form of coal. This process involves washing the coal with large amounts of water, for which special ponds have been constructed. Once the washing is complete, the remaining water, which contains small coal particles known as slurry, is stored in these ponds. The coal particles then settle at the bottom of the ponds, allowing the water to be removed and the settled slurry to be collected.
- III. As per the contention of the petitioner, extra slurry was discharged into the river, which polluted its water. Also, slurry settled on the banks of the river, including the farm of the petitioner, which made the farmland unfertile.
- IV. This also affects the life of those people who live near the river because the discharge of slurry makes the water polluted, which creates the problem of drinking water.
- V. As per the contention of the petitioner, the 'State of Bihar and the State Pollution Control Board' (*hereinafter referred to as the Board*) have failed to fulfil their obligations by not taking action against the company, which is causing pollution in the river. Instead of taking any action against the company, the government allowed the company to pollute the river water.
- VI. The petitioner prayed in his petition to give directives to the State of Bihar, the Board, along with the Union of India and TISCO, should take action against the company for violating the provisions of the WPCP Act. This action should aim to prevent the release of slurry into the river and include directive guidelines for both the state government

and the Board.

Contention from the side of the Respondents:

In this case, respondents were: TISCO, State Pollution Board, Directors of Colliers and State of Bihar.

- I. As per the counter affidavit filed on behalf of the Respondents, all allegations made by the Petitioner were denied.
- II. In the counter affidavit filed by the Board, it stated that TISCO operates underground and open mining. The board argued that the company applied for the sanction under S. 25 and 26 of the WPCP Act prior to being granted the sanction. The board analysed the company's effluent to ensure that water quality was not compromised, and this was continuously monitored by the board.
- III. The Board also contended that they also issued directives to TISCO to improve the quality of effluent so that the quality of water is not compromised. Apart from this, the Board also has one condition: that they need to install two settling tanks for the settlement of solids. Apart from this, the Board issued various guidelines to the company to ensure that the quality of water is not compromised.
- IV. The Board contended that after receiving the notice from the court dated June 20, 1988, they conducted an inspection, No effluent was discharged into the river, except for negligible seepage. Four tanks had already been set up, and the strengthening of the embankment of the tanks was in progress.
- V. The Board also issued various directions to the company, like removing settled slurry from the bottom of the tank. To meet the standards of the Board, the company needs to perform de-sludging of solids so that the discharge of effluent can be achieved as per the standards of the Board.
- VI. According to the Respondent's claims, there was no discharge of slurry into the river, and therefore no pollution of the water occurred. The Respondent also stated that they had implemented measures to prevent water from the washeries from flowing into the river. Furthermore, the Respondent argued that the Bokaro River remains

dry for nine months of the year, making the issue of river pollution irrelevant.

- VII. The company stated that after the slurry settles at the bottom of the tanks, they collect it and sell it due to its high market value. Therefore, given the slurry's significant value, there is no justification for discharging it into the river.

Court Decision:

- I. The court determined that the Prima facie counter affidavit submitted by the Respondent indicated no discharge of slurry into the Bokaro River. It is also stated by the court that the Board had taken effective steps to control the water pollution. Further, the court stated that the present filed by the petitioner is not in the public interest but in self-interest.
- II. The court noted that the petitioner had purchased slurry from the respondents for several years. When the petitioner requested an increased quantity of slurry, this request was denied by the respondents. In an effort to harass the company, the petitioner, who is an influential businessman holding a license for coal trading, initiated multiple legal actions against the company. His intention behind filing this petition was to exert pressure on the respondents to supply a larger quantity of slurry.
- III. The court additionally observed that the petition serves not the public interest but rather the self-interest of the petitioner, a conclusion that can be drawn from the petition itself. The interim relief sought by the petitioner concerns the collection of slurry flowing from the washeries, along with a request for direction to the State government and relevant authorities to refrain from hindering the collection and transportation of this material.
- IV. By rejecting the petitioner's request for the collection of slurry, the court cited its own previous judgment, stating that slurry is considered part of coal. The company is authorized to collect the slurry located on its land, and no other authorities possess the right to collect it. The court overruled the Patna High Court's ruling, which indicated that slurry is not part of coal and, therefore, that the state government had the authority to collect the escaped slurry and manage its disposal. In response to the High Court's decision, the respondent company filed an appeal in this court, while the petitioner

simultaneously filed this petition. Consequently, the court denied the petitioner's contention.

- V. The court stated that access to pollution-free water and air is a fundamental right for every individual, as enshrined in Art. 21 of the Constitution. It further noted that any person, including groups and journalists, has the right to file an appeal under Art. 32 if there are issues that impair or endanger water quality, thereby affecting the quality of life. The court emphasized that Art. 32 can be invoked in matters related to the quality of life, but such appeals must serve the public interest rather than individual self-interest.
- VI. The court emphasised that if they entertain a PIL filed for individual interest rather than public interests, it would constitute an abuse of the legal process. This, in turn, would hinder the prompt resolution of cases needing the urgent attention of the court. A PIL is intended for the enforcement of fundamental rights for groups or communities who are unable to assert these rights due to factors such as poverty, incapacity, or a lack of legal knowledge.
- VII. The court also emphasizes that under Art. 32 of the Constitution, it is an extraordinary jurisdiction. Therefore, before invoking this, it must be in the interest of the public, not for personal enemies or grudges.

Key highlights from the case:

- I. Pollution-free water is a F.R. that is covered by Art. 21 of the Constitution.
- II. Any person, group or community can invoke Art. 32 for the enforcement of F.R. If there is no violation of F.R., this article cannot be invoked.
- III. A PIL can only be filed in the interest of the public, if any petition is filed for the individual interest, then it is an abuse of the process of court.
- IV. Slurry is part of coal, and the company has the right to collect the escaped slurry, which is on his land.
- V. The Board had taken effective steps to control the pollution of water.

Conclusion:

In the present case, the court recognised the right to water as a fundamental right. The court also provided certain guidelines regarding the use of PIL. According to the allegations made by the petitioner, the company, the Board, and the State of Bihar are in violation of the provisions of the WPCP Act, as well as the fundamental rights of the petitioner and others. The petitioner contended that the state government and the Board have failed to fulfil their duties.

On the other hand, the counter-affidavit submitted by the respondents clarifies that the Board has established guidelines and issued directions to the company over time, as well as taken necessary actions to control or halt water pollution. The respondents argued that slurry is a valuable product with significant market value. The petitioner, an influential businessman with a license for coal trading, has been purchasing slurry from the respondent company for many years. However, when the petitioner demanded a larger quantity of slurry, the respondents refused to sell it to him.

In a personal vendetta, the petitioner filed various cases against the respondent company to harass them. Upon the court's review of these facts, the petition was dismissed, and the petitioner was fined ₹5,000.

In my opinion, the court rightly dismissed the petition, as Art. 32 of the Constitution grants power individual to enforce their fundamental rights. When a person misuses this article for personal gain, it does not serve the interests of the community. Furthermore, PILs should be filed in the interest of the public, not for the benefit of any individual.