

U.P. Pollution Control Board vs Modi Distillery & Ors on 6 August, 1987

Equivalent citations: 1988 AIR 1128, 1987 SCR (3) 798, AIR 1988 SUPREME COURT 1128, 1987 (2) UJ (SC) 595, 1987 (2) COM LJ 298 SC, 1987 (8) IJR (SC) 315, 1987 CRIAPPR(SC) 273, 1987 ALLAPPCAS (CRI) 253, 1987 (3) SCC 684, 1987 CURCRIJ 358, 1987 (4) JT 221, (1988) 72 FJR 13, (1988) 1 SIM LC 161, (1987) 2 SUPREME 351, (1988) SC CR R 54, (1988) 63 COMCAS 77, (1987) 3 CRIMES 223, (1987) 3 JT 221 (SC)

Author: A.P. Sen

Bench: A.P. Sen

PETITIONER:

U.P. POLLUTION CONTROL BOARD

Vs.

RESPONDENT:

MODI DISTILLERY & ORS.

DATE OF JUDGMENT 06/08/1987

BENCH:

SEN, A.P. (J)

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SEN, A.P. (J)

NATRAJAN, S. (J)

CITATION:

1988 AIR 1128

1987 SCR (3) 798

1987 SCC (3) 684

JT 1987 (3) 221

1987 SCALE (2) 208

ACT:

Water (Prevention and Control of Pollution) Act, 1974:
Ss. 25, 26, 44 & 47--Company--Discharge of trade effluents
without consent of the Board--Commission of offence under
the Act--Officials of the Company whether guilty of
offence----Vicarious responsibility.

Practice and Procedure: Prevention and Control of Pollution--
Launching of prosecution--Need for drafting complaints
with circumspection and without any technical flaw.

HEADNOTE:

The respondent-distillery, an industrial unit of M/s. Modi Industries Ltd., at Modi Nagar manufacturing industrial alcohol has been discharging its highly noxious and polluted trade effluents into the river through a local drain. It applied to the Pollution Control Board under ss. 25(1) and 26 of the Act on March 27, 1981 for consent of the Board to discharge its trade effluents into the stream. The Board found the application incomplete in many respects, and called upon the respondents to rectify the discrepancies. As there was no response from the respondents, the appellant Board refused to grant the consent prayed for in the public interest and thereafter issued notice under s. 20 of the Act directing the Company to furnish certain information regarding the particulars and names of the Managing Director, Directors and other persons responsible for the conduct of the Company. This was followed by various reminders.

Finding no response from the respondents, the Board on October 21, 1983 lodged a complaint against the respondents under s. 44 of the Act in the Court of the Chief Judicial Magistrate, Gaziabad. Instead of launching a prosecution against M/s. Modi Industries Ltd., the Board impleaded the industrial unit as respondent No. 1 and the Chairman, Vice-Chairman, Managing Director and members of the Board of Directors of the Company as respondent Nos. 2 to 11. The Judicial Magistrate directed the issue of process.

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The respondents preferred a revision under s. 397 of the Code of Criminal Procedure, 1973 before the High Court in which an application was filed under s. 482 of the Code for quashing the proceedings. The Single Judge of the High Court quashed the proceedings on the ground that there could be no vicarious liability saddled on the Chairman, Vice-Chairman, Managing Director and other members of the Board of Directors of the Company under s. 47 of the Act unless there was a prosecution of the Company.

Allowing the appeal,

HELD: A combined reading of the provisions contained in subss. (1) and (2) of s. 47 of the Water (Prevention and Control of Pollution) Act, 1974 makes it apparent that the officials of the Company owning the respondent industrial unit could be prosecuted as having been in charge of and responsible to the Company for the business of that unit and could be deemed to be guilty of the offence with which they were charged. [804DE]

The industrial unit owned by the Company was discharging its trade effluents into the river prior to the commencement of the Act. It was, therefore, mandatory for the Company to make an application to the Board under s. 25(2) read with s. 26 of the Act for grant of consent for the discharge of its trade effluents into the stream. The application made by the industrial unit having been found incomplete in many respects was rejected by the Board in public interest. There-

after the Company which did not have proper arrangements for treatment of the highly polluted trade effluents discharged by it, had been in spite of repeated letters from the Board intentionally and deliberately avoiding compliance with the requirements of ss. 25(1) and 26 rendering themselves punishable under s. 44 of the Act. The Chairman, ViceChairman, Managing Director and members of the Board of Directors of the Company in such capacity were incharge of and responsible for the conduct of the business of the Company and were, therefore, deemed to be guilty of the said offence and liable to be proceeded against and punished under s. 47 of the Act. [805H-806F]

The vicarious liability of these officials of the Company is to be viewed not in isolation but in the conspectus of facts and events and not in vacuum. The technical flaw in the complaint lodged by the appellant Board had occurred due to the recalcitrant attitude of the industrial unit, which in spite of more than one notice being issued had deliberately failed to furnish information called for regarding the particulars and

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names of the Managing Director, Directors and other persons responsible for the conduct of the Company. Having wilfully failed to furnish the requisite information to the Board, it is not open to the respondents 2 to 11 to seek the Court's assistance to derive advantage from the lapse committed by their own industrial unit. Furthermore, the legal infirmity is of such a nature which could be easily cured by having the matter remitted to the trial court with a direction to call upon the appellant to make the formal amendments to the averments in the complaint so as to make the controlling company of the industrial unit figure as the concerned accused. [805BC, 804G, EF, H-805A]

The Board and its legal advisors should have drafted the complaint with greater circumspection not to leave any technical flaw which would invalidate the initiation of the prosecution allowing a large business house to escape the consequences of the breaches committed by it of the provisions of the Act with impunity. [805GH]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 415 of 1986.

From the Judgment and Order dated 16.5. 1984 of the Allahabad High Court in Crl. Rev. No. 2330 of 1983. R.N. Trivedi, Additional Advocate General (U.P.) Mrs. S. Dikshit and C.B. Singh for the Appellant.

Ram Jethmalani, Rajinder Sachhar, and D.N. Mishra for the Respondents.

The Judgment of the Court was delivered by SEN, J. This appeal by special leave is directed against the judgment and order of the High Court of Allahabad dated May 16, 1984 setting aside in its revisional jurisdiction an order of the Chief Judicial Magistrate, Gaziabad dated November 3, 1983 directing the issue of process against the respondents on a complaint filed by the appellant under section 44 of the Water (Prevention and Control of Pollution) Act, 1974. The issue involved is whether the Chairman, ViceChairman, Managing Director and members of the Board of Directors of Messrs Modi Industries Limited, the Company owning the industrial unit called Messrs Modi Distillery could be proceeded against on a complaint against the said industrial unit. A learned Single Judge (K.C. Agarwal, J.) following the decision of this Court in *State (Delhi Admn.) v. LK. Nangia & Anr.*, [1980] 1 SCC 258 interpreting a similar provision contained in sub-s. (4) of s. 17 of the Prevention of Food Adulteration Act, 1954 had held that there was no sufficient ground against the respondents inasmuch as the allegations made in the complaint do not constitute an offence punishable under section 44 for the admitted contravention of ss. 25(1) and 26 read with s. 47 of the Act. The question essentially turns upon the rule of construction to be adopted in s. 47.

The facts of the case are these. Messrs Modi Industries Limited is an existing company under the Companies Act, 1956. It is a large business organisation having diversified business activities. Prior to the commencement of the Act it had established an industrial unit called Messrs Modi Distillery at Modi Nagar, Gaziabad engaged in the business of manufacture and sale of industrial alcohol. During the process of manufacture of such industrial alcohol, the said industrial unit discharges its highly noxious and polluted trade effluents into the Kali River through the Kadrabad Drain which is a stream within the meaning of s. 2(j) of the Act and thereby causes continuous pollution of the said stream without the consent of the Board and therefore it falls within the purview of s. 26. Under the provisions of s. 26, as amended, it has been made mandatory for every existing industry to obtain the consent of the Board for discharging its trade effluent into a stream or well or sewer or on land. The last date for submission of such application seeking the consent of the Board by an existing industry had been extended upto December 31, 1981. In accordance with the procedure laid down under ss. 25(1) and 26 of the Act, the Company was required to submit an application for consent of the Board in the prescribed form along with the prescribed consent fee and the particulars. Instead of the Company its industrial unit, namely, Messrs Modi Distillery on March 27, 1981 applied to the Board for grant of consent to discharge its trade effluents into the stream. The aforesaid application was scrutinised by the Board and found incomplete in many respects. The Board accordingly by its letter dated April 29, 1981 informed the said industrial unit with regard to the discrepancies and the particulars wanting. There was no response from the respondents nor did they rectify the discrepancies pointed out or furnish the particulars required. The Board accordingly by its letter dated July 30, 1981 refused to grant the consent prayed for in the public interest since the application was found incomplete in many respects and also because the said industrial unit did not have proper arrangements for treatment of its highly polluted trade effluents. Thereafter, the Board by its letter dated June 30, 1982 issued a notice under s. 20 of the Act directing the Company to furnish certain information regarding the particulars and names of the Managing Director, Directors and other persons responsible for the conduct of the Company, but the respondents did not furnish the information called for. This was followed by two subsequent letters of the Board dated February 21, 1983 and June 9, 1983 drawing the attention of the respondents that they were deliberately violating the provisions of the Act and thereby rendering themselves liable to be

punished under s. 44 for contravention of the provisions of ss. 25(1) and 26. On October 21, 1983 the Board lodged a complaint against the respondents under s. 44 of the Act in the Court of the Chief Judicial Magistrate, Gaziabad. Unfortunately, the complaint was inartistically drafted. It was averred in paragraph 2 that Messrs Modi Distillery i.e. the industrial unit was a company within the meaning of s. 47 of the Act, that it had been knowingly and wilfully discharging its highly noxious and polluted trade effluents into the Kali River which is a stream within the meaning of s. 2(j) of the Act through the Kadrabad Drain and thereby causing continuous pollution of the said stream. There were eleven persons arrayed as accused. Instead of launching a prosecution against Messrs Modi Industries Limited, the Board impleaded its industrial unit Messrs Modi Distillery as respondent no. 1 while respondents nos. 2-11 were the Chairman, Vice-Chairman, Managing Director and members of the Board of Directors of Messrs Modi Industries Limited i.e. the Company owning the industrial unit.

It appears that the respondents did not appear before the learned Chief Judicial Magistrate in response to the notice issued to them. The learned Magistrate after recording the statement of S.M. Pandey, Legal Assistant of the Board directed the issue of process to the respondents. Aggrieved, respondents nos. 2, 3 and 4, namely, K.M. Modi, K.K. Modi and M.L. Modi, the Chairman, Vice-Chairman and Managing Director respectively of Messrs Modi Industries Limited preferred a revision before the High Court under s. 397 of the Code of Criminal Procedure, 1973. Two of the other accused, namely, S.C. Trikha and Raghunath Rai, the nominated members of the Board of Directors of the Company also filed an application before the High Court under s. 482 of the Code for quashing the proceedings. As already stated, a learned Single Judge invoking the revisional jurisdiction of the High Court has quashed the proceedings on the ground that there could be no vicarious liability saddled on the Chairman, Vice Chairman, Managing Director and other members of the Board of Directors of the Company under s. 47 of the Act unless there was a prosecution of the Company i.e. Messrs Modi Industries Limited. He held that the complaint suffers from the serious legal infirmity and in the circumstances, to allow the proceedings to continue would amount to an abuse of the process of the Court.

The question that arises in the appeal is whether the Chairman, Vice-Chairman, Managing Director and members of the Board of Directors are liable to be proceeded against under s. 47 of the Act in the absence of a prosecution of the Company owning the said industrial unit. S. 47 insofar as material reads as follows:

"47. Offences by companies--(1) Where an offence under this Act has been committed by a company every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct, of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything con-

tained in subsection (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or, is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly."

On a plain reading of sub-s. (1) of s. 47 of the Act, where an offence has been committed by a company, every person who at the time of the commission of the offence was in charge of and responsible to' the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Proviso to sub-s. (1) however engrafts an exception in the case of any such person if he were to prove that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. It would be noticed that sub-s. (1) of s. 47 is much wider than sub-s.(4) of s. 17 of the Prevention of Food Adulteration Act, 1954 which fell for consideration in I.K. Nangia's case. Furthermore, proviso to sub-s. (1) shifts the burden on the delinquent officer or servant of the company responsible for the commission of the offence. The burden is on him to prove that he did not know of the offence or connived in it or that he had exercised all due diligence to prevent the commission of such offence. The non-obstante clause in sub-s. (2) expressly provides that notwithstanding anything contained in sub-s. (1), where an offence under the Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or, is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence, and shall be liable to be proceeded against and punished accordingly.

On a combined reading of the provisions contained in sub-ss. (1) and (2), we have no doubt whatever that the Chairman, Vice Chairman, Managing Director and members of the Board of Directors of Messrs Modi Industries Limited, the Company owning the industrial unit Messrs Modi Distillery could be prosecuted as having been in charge of and responsible to the company, for the business of the industrial unit Messrs Modi Distillery owned by it and could be deemed to be guilty of the offence with which they are charged. The learned Single Judge has failed to bear in mind that this situation has been brought about by the industrial unit viz. Messrs Modi Distillery of Messrs Modi Industries Limited because in spite of more than one notice being issued by the Board, the unit of Messrs Modi Distillery deliberately failed to furnish the information called for regarding the particulars and names of the Managing Director, Directors and other persons responsible for the conduct of the Company. Having wilfully failed to furnish the requisite information to the Board, it is now not open to the Chairman, Vice-Chairman, Managing Director and other members of the Board of Directors to seek the Court's assistance to derive advantage from the lapse committed by their own industrial unit. The learned Single Judge has focussed his attention only on the technical flaw in the complaint and has failed to comprehend that the flaw had occurred due to the recalcitrant attitude of Messrs Modi Distillery and furthermore the infirmity is one which could be easily removed by having the matter remitted to the Chief Judicial Magistrate with a direction to call

upon the appellant to make the formal amendments to the averments contained in paragraph 2 of the complaint-

laint so as to make the controlling company of the industrial unit figure as the concerned accused in the complaint. All that has to be done is the making of a formal application for amendment by the appellant for leave to amend by substituting the name of Messrs Modi Industries Limited, the Company owning the industrial unit, in place of Messrs Modi Distillery. Although as a pure proposition of law in the abstract the learned Single Judge's view that there can be no vicarious liability of the Chairman, Vice-Chairman, Managing Director and members of the Board of Directors under sub-s. (1) or (2) of s. 47 of the Act unless there was a prosecution against Messrs Modi Industries Limited, the Company owning the industrial unit, can be termed as correct, the objection raised by the petitioners before the High Court ought to have been viewed not in isolation but in the conspectus of facts and events and not in vacuum. We have already pointed out that the technical flaw in the complaint is attributable to the failure of the industrial unit to furnish the requisite information called for by the Board. Furthermore, the legal infirmity is of such a nature which could be easily cured. Another circumstance which brings out the narrow perspective of the learned Single Judge is his failure to appreciate the fact that the averment in paragraph 2 has to be construed in the light of the averments contained in paragraphs 17, 18 and 19 which are to the effect that the Chairman, Vice-Chairman, Managing Director and members of the Board of Directors were also liable for the alleged offence committed by the Company. It is regrettable that although Parliament enacted the Water (Prevention and Control of Pollution) Act, 1974 to meet the urgent need for introducing a comprehensive legislation with its established unitary agencies in the Centre and the States to provide for the prevention, abatement and control of pollution of rivers and streams, for maintaining or restoring wholesomeness of water courses and for controlling the existing and new discharges of domestic and industrial wastes, which is a matter of grave national concern, the manner in which some of the Boards are functioning leaves much to be desired. This is an instance where due to the sheer negligence on the part of the legal advisors in drafting the complaint a large business house is allowed to escape the consequences of the breaches committed by it of the provisions of the Act with impunity. It was expected that the Board and its legal advisors should have drafted the complaint with greater circumspection not to leave any technical flaw which would invalidate the initiation of the prosecution allowing the respondents to escape the consequences of the breaches committed by them of the provisions of the Act with impunity. As already stated, prior to the commencement of the Act the Company owned an industrial unit styled as Messrs Modi Distillery which was discharging its trade effluents into the Kali River through the Kadrabad Drain and therefore the matter fell within the ambit of s. 26 of the Act. S. 26 provides that where immediately before the commencement of the Act any person was discharging any sewage or trade effluent into a stream, the provisions of s. 25 shall, so far as may be, apply to such person as they apply in relation to a person referred to in that section. S. 25(1) creates an absolute prohibition against bringing into use any new or altered outlet for the discharge of sewage or trade effluent into a stream without the consent of the Board. On a combined reading of ss. 25(1) and 26 it was mandatory for the Company viz. Messrs Modi Industries Limited to make an application to the Board under sub-s. (2) of s. 25 read with s. 26 in the prescribed form containing the prescribed particulars for grant of consent for the discharge of its trade effluents into the said stream, subject to such conditions as it may impose. Along with the complaint the appellant has placed on record

several documents showing that the rejection of the application was in the public interest as it was incomplete in many respects. These documents also reveal that the Company did not have proper arrangements for treatment of the highly polluted trade effluents discharged by it and although the appellant repeatedly by its letter required the Company to obtain the consent of the Board, the Company was intentionally and deliberately avoiding compliance of the requirements of ss. 25(1) and 26 of the Act. The contravention of these provisions is an offence punishable under s. 44. The other ten persons arrayed by name as accused in the complaint are respondents nos. 2-11, the Chairman, Vice-Chairman, Managing Director and members of the Board of Directors of Messrs Modi Industries Limited. It cannot be doubted that in such capacity they were in charge of and responsible for the conduct of the business of the Company and were therefore deemed to be guilty of the said offence and liable to be proceeded against and punished under s. 47 of the Act. It would be a travesty of justice if the big business house of Messrs Modi Industries Limited is allowed to defeat the prosecution launched and avoid facing the trial on a technical flaw which is not incurable for their alleged deliberate and wilful breach of the provisions contained in ss. 25(1) and 26 made punishable under s. 44 read with s. 47 of the Act.

Faced with the difficulty of refuting the gravamen of the offence set out in the complaint, Shri Ram Jethmalani, learned counsel appearing for the respondents drew our attention to the counteraffidavit of Virendra Prasad, Manager (Personnel & Administration), Modi Distillery dated January 13, 1986 and the two supplementary affidavits dated August 25, 1986 and November 17, 1986 tending to show that Messrs Modi Industries Limited, the company owning the industrial unit, have taken effective steps to set up an effluents treatment plant by entering into an agreement dated December 23, 1985 with Messrs Chemical Consultants & Engineers, Ahmadnagar who would set it up in collaboration with Sulzer Bros. Limited, Switzerland by employment of the technical knowhow which would be able to recover methane gas upto 70% and also bring down BOD reduction upto 90%. Further, it is averred that the company sought and obtained the approval of the Board subject to a time schedule for erection and installation of the plant by the end of June 1987. It is also averred that since the Government of India has turned down the application of the respondents for subsidy for installation of the said plant insofar as the year 1985-86 was concerned, they are trying other sources of finance and that in the meanwhile pending the installation and commissioning of the plant based on the Sulzer's process are treating the effluents by alternative methods in order to reduce the extent of BOD discharge. They are diluting the effluents by mixing fresh water to the extent of 13 to 15 times the amount of effluent discharged in order to reduce the extent of pollution. In view of the subsequent events the learned counsel submits that this was a fit case for dropping the proceedings. The averments made by the respondents in the various affidavits have been controverted by the affidavit-in-rejoinder sworn by Chandra Bhal Singh, Law Officer of the appellant-Board showing that there is little or no progress in the matter of establishment of the effluents treatment plant. We need not enter into this controversy. These are all matters to be dealt with by the learned Chief Judicial Magistrate. The result therefore is that the appeal succeeds and is allowed. The judgment and order passed by the High Court are set aside and that of the learned Chief Judicial Magistrate directing issue of process to the respondents are restored. The learned Magistrate shall proceed with the trial as expeditiously as possible in accordance with law.

P. S. S.
allowed.

Appeal

