The Indian Journal for Research in Law and Management

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Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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AN ANALYSIS OF A.P. POLLUTION CONTROL BOARD VS. PROF. M.V NAYUDU (RETD.) & ORS.

-Tamanna Huda Dania Inam

ABSTRACT:

In the abundance of water that is available on this planet one would think that protecting the right to water and thusly right to life would not be a raging issue, alas we are proven wrong when time and time again we call upon the Supreme Court, the apex judicial body, to protect the very source of life. This case comment aims to analyse the importance of the natural resources- specifically water- in times where more importance is given to AI data centres than to daily necessary utilisation. The commentary analysis the environmental governance of the State and the participation of big, private corporations who tend to create a wave of change in the environmental governance through bypassing provisions utilising loopholes and disregarding the concept of equitable distribution of resources.

INTRODUCTION:

This case analysis is conducted to examine the ruling of *A.P. Pollution Control II vs. M.V. Nayudu & Ors.*,[1] which in today's day and age of growing AI data centres proves to be increasingly vital, protecting a human's right to have access to clean and safe water. Environmental governance in the 21st Century is a multifaceted area where the balance between preventive action to prevent environmental damage and the growing need for development is toeing the line every now and then. Environmental change and development challenges are caused by the different sets of drivers. They include population change,

[1] *A.P. Pollution Control Board II Vs. M.V. Nayudu and Ors.* MANU/SC/2953/2000. Justice M. Jagannadha Rao authored the judgment.

economic processes, scientific and technological innovations, distribution patterns, and cultural, social, political and institutional processes.[2]

However, this does not give big, private corporations the leeway to exploit the fundamental resources required to fulfil human needs, such as water. Equitable access to safe and clean drinking water is an integral component of the realization of all human rights.[3] Through this landmark judgment, the Apex judicial body in India reinforced the right to clean water under Article 21[4] of the Indian Constitution, and the constitutional responsibility of safeguarding water sources prioritising environmental protection.

FACTS:

Professor M.V. Nayudu, a retired professor from Sri Venkateshwara University, Tirupati, Andhra Pradesh, proposed the installment of a vegetable oil factory (specifically B.S.S. Castor Oil) at Peddashpur, Andhra Pradesh, which M/s. Surana Oils & Derivatives (India) Ltd.[5] bought. Within 10 km of radius from the proposed site sat the historical twin reservoirs of Himayat Sagar and Osman Sagar that provided drinking water to approximately five million city residents in and around the area. The Ministry of Environment, Forest and Climate Change (MoEFCC) vide its notification No. J.20011/15/88-iA dated 27.09.1988 the Government of India (GoI) listed as Item 37, 'vegetable oils including solved extracted oils' as 'RED' hazardous category out of 3 categories: Green Category, Orange Category, and Red Category. Prior to this classification, the Municipal Administration and Urban Development, Government of Andhra Pradesh issued an order (G.O. 192) on 31.03.1994 based on initial recommendations of an expert committee appointed by the *Hyderabad Metropolitan Water Supply and Sewerage Board (HMWS&SB)* prohibiting certain industries, residential complexes and commercial setups within 10 km radius from the full tank level of the two aforementioned lakes.[6]

The No Objection Certificate (NOC) application for the setup of the impugned industry was promptly rejected by the A.P. Pollution Control Board (*as empowered in Sec. 5 of the*

[2] Ritu Raj Kaur, Sakshi Sahni, Gursharan Kaur, Ravi Inder Singh, Environmental Governance and Key Challenges at Local Level in Indian Context, Indian Institute of Public Administration, Vol. LIII, 3rd Issue, July-September 2021, Available: https://www.iipa.org.in/cms/public/uploads/419391652164492.pdf
[3] UNGA, Resolution 64/292, The Human Right to Water and Sanitation, Available: https://docs.un.org/en/a/res/64/292
[4] Article 21, Constitution of India, 1950
[5] M/s. Surana Oils & Derivatives (India) Ltd. were the seventh (7th) respondent in this case.
[6] Supra note 1, para 39; G.O 192 was further revised after a second interim report was issued by the HMWS&SB, following which G.O. 111 was issued in 1996.

Environment (Protection) Act, 1986 read with S.O. 152-E) since the proximity of the industry was within 10 km of radius from the water bodies.[7] This rejection was further appealed before the appellant Board through the Industries Department which was rejected two times consecutively. Following this, the industry approached the State Government seeking exemption from the 10 km rule on the ground that it had invested huge amounts to establish the industry and that it had completed the civil works, and had purchased machinery and installed the same.[8] The exemption was granted by the State Government despite the rejection from the appellant Board stating, *"The Government had considered the matter in its entirety and feel that if proper control over treatment of aqueous and solid wastes is exercised, then there can be no objection to setting up of the industry under reference at the proposed site."*[9]

Aggrieved by the order of rejection dated 30.7.97 of the appellant Board, the seventh-respondent industry filed an appeal under *Section 28* of the *Water Act, 1974* before the appellate authority. The said opinion was in favour of the industry.[10] Three Writ Petitions (W.Ps. 16969/97, 2215/98, 11803/98) were filed before the High Court which were disposed of by upholding the orders of the appellate authority and directing grant of the NOC by the appellant. The current case study was a result of the said judgment.

ISSUES:

The Supreme Court bench consisting of *Justice S.B. Majmudar* and *Justice M. Jagannath* delved into the following points of concern:

1. Whether it was permissible for the State Government to issue an exemption for an individual hazardous industry within the area, even if it be by the way of asking the industry to provide safeguards?
2. Whether the exemption could be claimed by the seventh respondent in light of the reports submitted by the NEAA, University Department of Chemical Technology, National Geophysical Research Institute?
3. Whether in spite of the prohibition contained in Section 25 of the *Water (Prevention & Control of Pollution) Act, 1974* that industries should not be established without consent of

[7] Ibid para 11.
[8] Ibid para 25.
[9] Ibid
[10] Ibid para 29

the appellant-Board, the seventh respondent could have proceeded with establishing the industry and could plead equities or rely on the principle of promissory estoppel?
4. On the question of establishment of 'Environmental Courts', to what extent, the States and Union Territories have taken steps to have environmental scientists/experts in the various environmental tribunal or appellate bodies, as directed in the earlier judgment?

ARGUMENTS ADVANCED:

The Appellants, represented by the Additional Solicitor General of India, Sri. R.N. Trivedi, contended that the State and the Pollution Control Board were well within their domain to reject the NOC of the impugned industry as per Section 5 of the Environment (Protection) Act, 1986 read along with of the G.O. 111 & S.O 152(E). Furthermore, the State was duty bound to protect its water bodies from being polluted and the public's right to clean drinking water under Article 21 must be protected. "*It is clear that in view of Sections 2(e), 2(k) read with Sections 17 and 18 of the Water Act, the fundamental objective of the statute is to provide clean drinking water to the citizens*."[11]

It was the Respondent's obligation to provide evidence that it would not pollute the water per Section 25(1) of the Water Act, 1974. The same sentiment has been repeatedly underlined by the Supreme Court that the "Onus of proof" is on the actor or the developer/industrial to show that his action is environmentally benign.[12] In the same line, it is clear that in view of Sections 2(e), 2(k) read with Sections 17 and 18 of the Water Act, the fundamental objective of the statute is to provide clean drinking water to the citizens.[13] Since the industry falls under the hazardous 'red' category and raises a concern of risking the environment, rejection of the exemption was well-thought out by the Board. The Appellants also relied on *Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989* as the industry was predicted to exacerbate hazardous waste heavy metal such as Nickel, Ammonia, Methanol, and Hydrochloric Acid.[14]

The Respondents had acquired the consent from the Gram Sabha, obtained the permission of the District Collector for diversion of land and proceeded with the construction of civil works.

[11] Ibid para 53
[12] *Vellore Citizen Welfare Forum & Consumer Education and Research Society v. Union of India & Ors,* AIR 1996 SCC 647
[13] Ibid para 43
[14] Ibid para 52

An affidavit filed on behalf of the respondent industry by Shri Santapa contended that the industry was based on an environment friendly technology and precautionary measures to mitigate any environmental harm caused by the industry.[15] Additionally, the respondents provided a disparate report attempting to disprove the three expert reports from NEAA, University Department of Chemical Technology, the National Geophysical Research Institute.

JUDGMENT AND ITS ANALYSIS:

In light of the arguments advanced by both the sides, the Supreme Court upheld the Board's decision to reject the NOC furthering the importance of environmental safeguards. "*This is certainly not a fit case for directing grant of NOC by the Pollution Control Board. It is not also possible to hold the safeguards suggested by the appellant Board in the light of the Reports. The Board could not be directed to suggest safeguards and there is every likelihood that safeguards could fail either due to accident, as stated in the report, or due to human error.*"[16]

Even the mere steps to obtain the approval by the Gram Sabha or conversion of land calls for a promissory estoppel when there has been a consequent violation of the policy decision of the Government. The judgment focuses on *precautionary principle* and preventive action of the State in order to protect the environment. With the growing expansion of AI data centres around the world this judgment proves to be a glimmer of hope. It is a common assumption that data centres are set up in wetter, water rich areas but that couldn't be farther from the truth. Roughly two-thirds of data centres built since 2022 have been located in water-stressed regions.[17] Even a mid-sized data center consumes as much water as a small town, while larger ones require up to 5 million gallons of water every day—as much as a city of 50,000 people.[18] Curbing industrial development in water-scarce regions is a way to protect the local communities whose lives depend on the only source of water while also ensuring there is no imbalance between development and sustainable development.

CONCLUSION:

[15] Case Analysis of M.V Nayudu & its Significance in Environmental Law, B&B Associates LLP Advocates & Legal Consultants, Available: https://bnblegal.com/article/case-analysis-of-mv-nayudu-its-significance-in-environmental-law/
[16] Supra note 1, para 64
[17] Jon Gorey, Data Drain: The Land and Water Impacts of the AI Boom, Lincoln Institute of Land Policy, Available: https://www.lincolninst.edu/publications/land-lines-magazine/articles/land-water-impacts-data-centers/
[18] Supra note 17.

The relevancy of *A.P Pollution Control Board II v. M.V. Nayudu & Ors.*,[19] is not lost in time, rather it has a growing impact in the modern day. This judgement prioritising the environment and ecology sends a strong message that industrial development does not take precedence either over preservation of the environment or the fundamental rights of the people. Said rulings are imperative in making certain that development does not come at the cost of depriving humans from their human rights- even if it is as simple as water.

[19] MANU/SC/2953/2000.