

Allahabad High Court

Mahendra Prasad Sonkar Son Of Sri ... vs State Of Uttar Pradesh Through ... on 6 August, 2004

Bench: M Katju, U Pandey

JUDGMENT

M. Katju, A.C.J. and Umeshwar Pandey, J.

1. Heard Sri R.K.S. Chauhan, learned Counsel for the petitioners, learned Standing Counsel for the respondent Nos. 1 and 2 and Sri C.K. Parikh for respondent Nos. 3 and 4.

2. Issue notice to respondent No. 5 returnable at an early date.

3. We have also requested Sri S.P. Singh, learned Counsel, to assist us as Amicus Curiae in this case.

4. The prayer in this petition is for issue of a writ in the nature of mandamus directing the respondents to stop the dumping of garbage and waste material into the river Gomti in District Jaunpur and to make the water of the river Gomti pure and hygienic and to remove all the obstructions in the flow of the river Gomti. It is also prayed that a direction in the nature of mandamus be issued commanding the respondent No. 5 to supply the water of river Gomti for drinking only after its treatment and purification.

5. Although, this petition was only in respect of District Jaunpur, we are of the opinion that the scope of the petition has to be expanded to include all areas through which the river Gomti flows. This is because even if we give directions that the Gomti river should be kept clean in Jaunpur that would be futile since such an order cannot be implemented because there may be dumping of garbage and filth or discharge of toxic effluents at places upstream before the Gomti river enters into District Jaunpur. Hence, any effective order to keep the river Gomti clean in Jaunpur can only be passed if we further direct that the entire river Gomti from the place of its origin to the place where it joins the Ganges, must be kept clean and pure. We are not expanding the scope of this petition to other rivers as for the time being we are of the opinion that we should have a limited objective of keeping the Gomti river pure, although we would have like to pass similar orders in respect of other rivers in U.P. also. However, for that purpose separate Writ Petitions can be filed and this petition shall be confined to the Gomti river alone.

6. This petition has been filed as a Public Interest Litigation. The petitioners claim to be public representatives, social workers and office bearers of public welfare societies. Petitioner No. 1 is a Member of Nagar Palika Parishad, Jaunpur and this petition has been filed on behalf of the citizens of the urban areas of District Jaunpur. However, as stated above, we are expanding the scope of the petition for the reason aforementioned.

7. It is stated in Para-4 of the petition that the petitioners are aggrieved by the arbitrary and illegal action of the respondents of dumping garbage and releasing polluted water of Nalas of the city on both sides of the Banks of river passing through the Jaunpur City causing pollution and obstructions in the flow of water.

8. It is alleged in para-5 that dumping of garbage and filth of the city into the river at Jaunpur has created pollution and unhygienic and hazardous conditions for the health of the public living there particularly of Durga Pooja Visargan Ghat, Gopighat Nakhsh, Goolar Ghat Dilagag, Hanuman Ghat and Bajrang Ghat Tar Kalan. Some of the relevant photographs are annexed as Annexure-1 to petition. We have seen those photographs and we find that garbage and filth are lying in large quantities on the bank of the river. We are sure that there must also be filth, garbage and toxic material inside the river also.

9. In para-6 of the petition it is stated that the Jalsansthan, Jaunpur used to supply water from River Gomti to the City for drinking purposes, but under the circumstances the storage / dumping of garbage and filth etc. is causing great harm and diseases to the public. The public in Jaunpur are getting sick due to such diseases and

are not getting drinkable water.

10. Aggrieved by the irresponsible and illegal acts of respondent, the public representatives have made various complaints to the Adhyaksh Nagar Palika Parishad, Jaunpur but he did not pay any heed to the grievances. True copies of the representations are Annexures 2 to 5. The petitioner also approached the District Magistrate, Jaunpur, and General Manager, Jalsansthana, Jaunpur but they did not pay any heed. Aggrieved, this petition has been filed.

11. Water is essential for life. Hence the public has a right to get pollution free water as this has been held to be part of Article 21 of the Constitution of India vide Subhash Kumar v. State of Bihar. The Supreme Court in Chameli Singh v. State of U.P. while dealing with Article 21 of the Constitution has held that the need for a decent and civilized life includes the right to food, water and a decent environment. The Supreme Court further observed:

In any organized society, right to live as a human being is not ensured by meeting only the animal needs of men. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this subject. Right to live guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilized society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights.

12. Similarly, in Delhi Water Supply and Sewage Disposal Undertaking and Anr. v. State of Haryana and Ors., the Supreme Court observed: "Water is a gift of nature. Human hand cannot be permitted to convert this bounty into a curse, an oppression. The primary use to which water is put being drinking, it would be mocking nature to force the people who live on the bank of a river to remain thirsty." The Supreme Court further observed that "drinking is the most beneficial use of water and this need is so paramount that it cannot be made subservient to any other use of water, like irrigation. So the right to use of water for domestic purpose would prevail over other needs."

13. In our opinion, it is the duty of the authorities concerned to keep the rivers in the country pure and clean so that the water there is drinkable and free of diseases. What is actually happening is that the rivers in the country are polluted by toxic effluents flowing from the factories, tanneries and other industrial units into the rivers (apart from garbage, filth and sewerage) and this caused several diseases. The time has now come to take strict action in this matter as the public has a right to lead a healthy life and for that purpose it is necessary to provide it pure water free of garbage, filth and toxic effluents.

14. As already stated above, we cannot confine the scope of this petition to Jaunpur District since if the river is made clean in Jaunpur city alone, it will again get polluted due to the pollution coming from places upstream. Hence river Gomti must be made pure and clean from its origin. For example, in Lucknow and its vicinity a lot of toxic materials are discharged by industrial units into the river Gomti, apart from garbage and filth. River Gomti in Lucknow nowadays appears to be like a filthy Nala rather than a river (somewhat like Jumna at Delhi). It is full of filth and garbage and its water is hardly drinkable. This is bound to cause diseases in the general public.

15. We therefore direct the State Government to set up a Committee whose Chairman shall be the Chief Secretary, U.P. and whose members will be the Secretaries and officials of the concerned departments (including the Finance, Health, Home and Urban Development Secretaries), which the Chief Secretary may nominate. This Committee must be set up by the State Government within three weeks from today and it must have regular sittings and formulate an action plan for keeping the Gomti river clean and unpolluted throughout its flow from its place of origin to the place where it meets the river Ganga. The Committee will ensure that no toxic effluents or filth are discharged by any unit into the Gomti river, and polluters are prosecuted under

the Water Pollution Act, Environment Protection Act and other Acts, steps will also be taken to ensure adequate supply of pure drinking water to the citizens of Jaunpur.

16. We also direct that this Committee shall appoint Chemical Analysts who will take samples from the water of the river Gomti at Jaunpur, Sultanpur, Raebareli, Barabanki and Lucknow etc. and these Chemical Analysts will submit regular reports as to whether the water contains bacteria or other toxic/harmful elements, and also suggest what action must be taken to keep the water pure.

17. Sri S.P. Singh, Amicus Curiae in this case is requested to render all assistance to the Committee to ensure compliance of the directions of the Court.

18. The Committee set up by us will submit monthly progress/action reports to this Court stating in detail what progress has been made to ensure compliance of these directives.

19. Respondents may file counter affidavit within three weeks.

20. List this petition on 6th of every month (and if on date the Court is closed it shall be listed on the next working day) so that we may monitor the working of the Committee set up by us.

21. Copy of this order will be given to the learned Counsel for the parties on payment of usual charges by tomorrow.

22. A copy of this order shall be given free of charge to Sri S.P. Singh, Amicus Curie appointed by us by tomorrow.

23. The officials of the State will comply with the directions of the Committee appointed by us.

24. Let the Registrar General of this Court send copy of this judgment to the Chief Secretary, U.P., who in turn will communicate it to the relevant authorities.