

**BEFORE THE NATIONAL GREEN TRIBUNAL  
EASTERN ZONE BENCH, KOLKATA**

**O.A. No. 79/2015/EZ**

**Subhas Datta**

**Vs**

**State of West Bengal and Ors.**

**CORAM: Hon'ble Mr. Justice Pratap Kumar Ray, Judicial Member  
Hon'ble Prof. (Dr.) P. C. Mishra, Expert Member**

**PRESENT: Applicant : Mr. Subhas Datta in person.  
Respondent Nos. 1 to 5 : None.**

<b>Date &amp; Remarks</b>	<b>Orders of the Tribunal</b>
<p><b>Item No. 11 7<sup>th</sup> September, 2015.</b></p>	<p style="text-align: center;">Heard Mr. Subhas Datta, applicant appearing in person.</p> <p>A serious environmental issue has been raised in this application touching the constitutional arena under Art 21 of Constitution of India which mandates as an emanated right by decoding the word 'life' appearing in said article about availability of pollution free drinking water by the citizens.</p> <p>In the pleadings a substantial question relating to environment has been raised on foundational fact alleging inter-alia that the people in different parts of the State of West Bengal are affected due to consumption of arsenic contaminated ground water resulting in suffering from various diseases. Different newspaper reports have been annexed including a recent one where it is reported that the villagers of Ghaighata of</p>

North 24 Parganas District and the people of Teghoria of Dum Dum Municipality are leaving their dwelling places due to such arsenic contamination of drinking water. Having regard to the pleadings made and due to problems arising out of contamination of arsenic in drinking water, the O.A. is admitted for hearing. Leave is granted to add the Chief Secretary, State of West Bengal, Principal Secretary, Public Health Engineering Department & Urban Development Department both of Govt. of W.B., Executive Officer of Dum Dum Municipality and Zilla Parishad, North 24 Parganas as party respondents in this matter for effective adjudication of issue. Let notices be served on the respective respondents by dasti/speed post and registered post on usual terms along with the copy of the original application returnable within four weeks. Status report to be filed by the added respondents and the respondent Nos. 2,3,4 & 5. The respective respondents are also at liberty to file reply, if any, of the application by three weeks and rejoinder, if any, to the reply by one week thereafter.

In the meantime, we are inclined to pass an interim order in view of the reason that the residents of the locality of Gaighata village of North 24 Parganas district and of Tegharia area falling within Dum Dum municipality are suffering a lot as per

Newspaper report as annexed, reported in the Times of India, and this Tribunal is statutorily and constitutionally bound to protect the interest of the citizens. On analyzing the issue in the angle of Art 21 of the Constitution of India, the Hon'ble Supreme Court of India in the case of **Virender Gaur –vs- State of Haryana** reported in JT, 1997 (10) SC 600 : (1995) 2 SCC 577 and in the case of **N.D. Dayal & Anr –vs-UIO & Ors**, JT (2003) (Supp-2) SC 1, held that right to enjoy pollution free environment itself is a fundamental right of the citizen in terms of Art 21 of Constitution of India. Availability of pollution free ground water is a fundamental right which has been declared in said cases. The Hon'ble Apex Court in the case of **M.C.Mehta-vs-UIO & Ors**, reported in AIR 1998 SC 1037 and also in **M C Mehta –vs- UIO & Ors**, AIR 1987SC 1115 held the same view. In the case **Subhash Kumar–vs- State of Bihar**, reported in 1991 SCC (SC) 598, the Apex Court held that pollution free water and air are within the right under Art 21 of the Constitution of India and is fundamental right of a citizen. It is the mandate of the Apex court that State is duty bound to provide pollution free air and water to the citizen.

Art 48A also is a constitutional provision which cast responsibility to State to take all endeavours for protection of

environment and for providing clean water & air to citizen. This view was expressed by the Apex court long back in the case of **Rural Litigation and Entitlement Kendra –vs- State of UP**, commonly known as **Derhadun Quarries** case reported in AIR 1988 SC2187

In the case of **State of West Bengal –vs- Kesoram Industries Ltd.** 2004(10 SCC 201, a judgement of the Constitution Bench, wherein Hon'ble Mr. Justice S.B. Sinha, as his lordship then was, being a member of the Bench, opined in paragraphs 386 to 389 as under :-

“ 386. Some rights are capable of being granted by holders of the same or higher rights and some only by the State. Even the State, having regard to the doctrine of ‘public trust’, may not have any power to grant any right in relation to certain matters e.g. deep underground water.

387. Deep underground water belongs to the State in the sense that the doctrine of public trust extends thereto. Holder of a land may have only a right of user and cannot take any action or do any deeds as a result whereof the right of others is affected. Even the right of user is confined to the purpose for which the land is held by him and not for any other purpose. Even in relation to such matters, no perspective right under Section 25 of the Limitation Act would be attracted. Further, even by reason of Section 25 of the Limitation Act, a person must exercise an easementary right without interruption for a period of 30 years in relation to air way or watercourse or the use of any water of any other easement by enjoying it peaceably and openly as an easement and as of right. Then only such exercise of right to airway, watercourse, use of water or other easement becomes absolute and indefeasible.

388. A person who holds land for agricultural purpose may, therefore, subject to any reasonable restriction that may be made by the State, have the right to use water for irrigational purposes and for the said purpose he may also excavate a tank. But under no circumstances, can he be permitted to restrict flow of water to the neighboring lands or discharge effluents in such a manner so as to affect the right of his neighbor to use water for his own purposes. On the same analogy he does not have any right to contaminate the water to cause damage to the holders of neighboring agricultural fields. Large-scale defoulment in the quality of water so as to make it unusable by others or as a result whereof the water is contaminated and becomes unpotable would be violative of Article 21 of the Constitution. In **M.C.Mehta –v- Kamal Nath** (1997) 1 SCC 388, this Court has quoted with approval an article entitled “*Public Trust Doctrine in Natural Resource Law “ Effective Judicial Intervention”*” of Joseph L. Sax, Professor of Law, University of Michigan.

389. The High Court of Kerala recently by a judgement dated 16-12-2003 in **Perumatty Gram Panchayat Perumatty Vandithavalam PO Chettur Taluk –v- State of Kerala**, WP © No.34292 of 2003 (G) dt. 16.12.2003(Ker) restrained Hindusthan Coca Cola Beverages Limited from using ground water for running its plant at Plachimada in Palakkad district stating that groundwater was a part of the natural wealth and it belongs to the entire society. It was observed that water was nectar sustaining life on earth and, thus, the State has a duty to protect groundwater against excessive exploitation and inaction on its part tantamounts to infringement of the fundamental rights guaranteed under Articles 21 of the Constitution.”

Having regard to the aforesaid constitutional provision and the right of citizen to get uncontaminated and also unpolluted water which is a fundamental right as protected under Art. 21 of

the constitution and having regard to the statutory provision of Water (Prevention & Control of Pollution) Act, 1974, and considering the constitutional liability of the State under art 48A of Constitution of India, and in order to save the hapless citizen residing in those areas as referred to above where Arsenic contaminated underground water is being pumped out through tube wells by the citizens of the locality for drinking water purpose, we pass an interim order directing the Chief Secretary, Govt. of West Bengal to take the following steps and measures urgently, viz. :

- i) To identify areas in West Bengal where ground water is contaminated by arsenic in excess of the statutory limit and prepare the ground water map on Arsenic contamination with the help of the Central Ground Water Board and NEERI.
- ii) To seal all arsenic contaminated underground drinking water sources being drawn by hand pumps and other such process;
- iii) To supply potable drinking water to the citizen living in the areas regularly on day to day basis at least twice daily.
- iv) To formulate a scheme for supply of clean and unpolluted drinking water in those ground water contaminated areas and implement the same on urgent basis.
- v) To provide free medical treatment to the affected persons due to consumption of Arsenic contaminated ground water.
- vi) To submit list of affected persons & areas thereof;
- vii) To meet such exigencies in providing Arsenic free clean drinking water to a large section of

population in west Bengal, the Govt. shall formulate a scheme on urgent basis for rain water harvesting in the existing and proposed Govt. buildings and frame rules to incorporate the provision of rain water harvesting in all buildings projects as mandatory requirement.

Action in terms of the directions given above is to be taken by the State of West Bengal and accordingly, Chief Secretary, Govt. of West Bengal is directed to take all steps and measures by instructing all departments and local bodies under the State to implement the order forthwith and a compliance report be filed to the Registry by the Chief Secretary by the next date which will be considered by us for passing further interim order. However, if the situation is serious in village Ghaighata and Teghoria and people are leaving their dwelling places in the fear of Arsenic contaminated drinking water as reported, we direct the Chief Secretary, Govt. of West Bengal to seal all such tube wells pumps drawing Arsenic contaminated water in those two villages forthwith and supply potable water twice daily and file compliance report within three weeks. The matter be posted on 29th September for filing such compliance report by the Chief Secretary.

Registry is directed to communicate this order to the Chief Secretary, Govt. of West Bengal, Principal Secretary,

Environment, Principal Secretary, P.H.E. Department and Central Ground Water Commission for necessary action and for filing status report within four weeks.

For effective adjudication of the matter we direct that (National Environmental Engineering Research Institute (NEERI) Residency Road, Vasant Nagar, Nagpur, Maharashtra, 440020, be added as party respondent. Registry to amend the cause title accordingly. The said added party is directed to file a report on the issue in question as raised in this application. Let a copy of the application along with a copy of this order be served on the added respondent forthwith by the Registry

The main matter be posted to **7.10.2015** for consideration of status reports/ reply/rejoinder by respective parties and for passing further interim order.

Justice Pratap Kumar Ray, JM

Prof. (Dr.) P. C. Mishra, EM