PETITIONER:
SUBHASH KUMAR

Vs.

RESPONDENT:
STATE OF BIHAR AND ORS.

DATE OF JUDGMENT09/01/1991

BENCH:
SINGH, K.N. (J)
BENCH:
SINGH, K.N. (J)
OJHA, N.D. (J)

CITATION:
1991 AIR 420 1991 SCR (1) 5
1991 SCC (1) 598 JT 1991 (1) 77
1991 SCALE (1)8

ACT:
Water (Prevention and Control of Pollution)Act, 1974: Sections 17, 24, 25 and 26.
Constitution of India, 1950: Article 21-Right to live includes right to enjoyment of pollution free water and air-A citizen has a right to invoke Article 32 for removing pollution.
Article 32- Writ petition in public interest-Allegation that West Bokaro Collieries and Tata Iron and Steel Company are polluting the river Bokaro by discharging slurry from their washeries into the river-No material to substantiate the allegations-Held petition is not in public interest but for personal interest.
Public Interest Litigation-Should be resorted to by a person genuinely interested in the protection of society-Personal interest cannot be enforced in the garb of public interest litigation-Entertainment of petitions satisfying personal grudge is abuse of process of the Court Duty of the court is to discourage such petitions.

HEADNOTE:
The petitioner filed a writ petition in this court by way of public interest litigation alleging that the respondents, West Bokaro Collieries and Tata Iron and Steel Company (TISCO) were polluting the river Bokaro by discharging surplus waste in the form of sludge/slurry as effluent from their washeries into river making the river water unfit for drinking and irrigation purposes thereby causing risk to the health of the people; the State of Bihar and the State Pollution Control Board have failed to take appropriate steps for prevention of the pollution and instead the State of Bihar has granted leases on payment of royalty to various persons for collection of slurry. Accordingly the petitioner prayed for directions to the respondents to take immediate steps prohibiting the pollution of the river and to take legal action against TISCO under the Water (Prevention and Control of Pollution) Act, 1974. The petitioner also claimed interim relief from this Court that he should be permitted to collect sludge/slurry flowing out of washeries of the respondents.

The respondents contested the petition denying the petitioner's allegations. Bihar State Pollution Board asserted that directions have been issued to the Bokaro Collieries to take effective steps for improving the quality of the effluent going into the river Bokaro and that the TISCO Company has been granted permission to discharge their effluents from their outlets in accordance with sections 25 and 26 of the 1974 Act. On behalf of TISCO and the Bokaro Collieries it was contended that all effective steps have been taken to prevent the pollution and they have complied with the instructions of the State Pollution Board.

By an order dated 13.12.1990, this Court dismissed the writ petition with costs.

Giving reasons for dismissal of the petition, this Court,

HELD: 1. Article 32 is designed for the enforcement of Fundamental Rights of a citizen by the Apex Court. It provides for an extra-ordinary remedy to safeguard the fundamental rights of a citizen. Right to life is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Article 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life. A petition under Article 32 for the prevention of pollution is maintainable at the instance of affected persons or even by a group of social workers or journalists. But recourse to proceeding under Article 32 of the Constitution should be taken by person genuinely interested in the protection of society on behalf of the community. Public interest litigation cannot be invoked by a person or body of persons to satisfy his or its personal grudge and enmity. If such petitions under Article 32 are entertained it would amount to abuse of process of the Court, preventing speedy remedy to other genuine petitioners from this Court. Personal interest cannot be enforced through the process of this Court under Article 32 of the Constitution in the garb of a public interest litigation. Public interest litigation contemplates legal proceeding for vindication or enforcement of fundamental rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law. A person invoking the jurisdiction of this Curt under Article 32 must approach this Court for the vindication of the fundamental rights of affected persons and not for the purpose of vindication of his personal grudge or enmity. It is duty of this Court to

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discourage such petitions and to ensure that the course of justice is not obstructed or polluted by unscrupulous litigants by invoking the extra-ordinary jurisdiction of this Court for personal matters under the garb of the public interest litigation. [13C-H; 14A]

Bandhua Mukti Morcha v. Union of India, [1984] 2 SCR 67; Sachindanand Pandey v. State of West Begal, [1987] 2 SCC 295; Ramsharan Autyanuprasi & Anr. v. Union of India & Ors., [1989] Suppl. 1 SCC 251; Chetriya Pardushan Mukti Sangharsh Samiti v. State of U.P. & Ors., [1990] 4 SCC 449, referred to.

2. The present petition is not filed in public interest instead the petition has been made by the petitioner in his own interest. Infact there is intrinsic evidence in the petition itself that the primary purpose of

filing this petition is not to serve any public interest instead it is in self-interest. The petitioner has been purchasing slurry from the respondents for the last several years. With the passage of time he wanted more and more slurry but the Company refused to accept his request. He removed the Company's slurry in an unauthorised manner for which criminal cases are pending against him and his brother. Since the respondent company refused to sell additional slurry he entertained a grudge against the company and in order to feed fat his personal grudge he resorted to several proceedings against the company including the present one. The prayer for the interim relief made by the petitioner i.e. permitting him to arrest/collect sludge/slurry flowing out of the washeries of the respondents with a direction to the State of Bihar, its officers and other authorities for not preventing him from collecting the sludge/slurry and transporting the same also collecting the sludge/slurry and transporting the same clearly indicates that he is interested in collecting the slurry and transporting the same for the purposes of his business. Therefore, there is no good reason to accept the petitioner's allegation that the water of the river Bokaro is being polluted by the discharge of sludge or slurry into it form the washeries of the respondent-company. On the other hand it is evident from records that the State Pollution Control Board has taken effective steps to check the pollution. [14B;12F-G]

Kundori Labours Cooperative Society Ltd. & etc. etc. v. State of Bihar & Ors., AIR 1986 Patna 242; Bharat Cokin Coal Ltd. v. State of Bihar & Ors. [1990] 3 SCR 744= Judgments Today, vol. 3, 1990 SCC 533, referred to.

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition (C) No. 381 of 1998.

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(Under Article 32 of the Constitution of India).

S.K. Sinha for the Petitioner.

D. Goburdhan, Ms. A. Subhashini, K.K. Lahiri, Ms. Lira Goswami and D.N. Misra for the Respondents.

The Judgement of the Court was delivered by

SINGH,J. We heard the arguments in detail on 13.12. 1990 and dismissed the petition with costs amounting to Rs. 5,000 with the direction that the reasons shall be delivered later on. We are, accordingly, delivering our reasons.

This petition is under Article 32 of the Constitution by Subhash Kumar for the issue of a writ or direction directing the director of Collieries, West Bokaro Collieries at Ghatotand, District Hazaribagh in the State of Bihar and the Tata from & Steel Co. Ltd. to stop forthwith discharge of slurry/sludge from its washeries at Ghatotand in the District of Hazaribagh into Bokaro river. This petition is by way of public interest litigation for preventing the pollution of the Bokaro river water from the sludge/slurry discharged form the washeries of the Tata Iron & Steel Co. Ltd. The petitioner has alleged that the Parliament has enacted the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as 'the Act') providing for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water, for the establishment of Board for the prevention and control of water pollution. Under the provisions of the Act the State Pollution Control Board constituted to carry out functions

prescribed under Section 17 of the Act which among other things provide that the Board shall inspect sewage or trade effluents and plants for the treatment of sewage and trade effluents and to review plans, specifications or other data set up for the treatment of water and to lay down standards to be complied with by the persons while causing discharge of sewage or sullage. Section 24 of the Act provides that no person shall knowingly cause or permit any poisonous, noxious or polluting matter to enter into any stream or well, which may lead to a substantial aggravation of pollution. The petitioner has asserted that Tata Iron and Steel Co-respondent No.5 carries on mining operation in coal mines/washeries in the town of Jamshedpur. These coal mines and collieries are known as West Bokaro Collieries and the Collieries have two coal washeries where the coal after its extraction from the mines is brought and broken into graded pieces and there-

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after it is processed for the purpose of reducing its ash contents. A chemical process is carried out which is known as 'froth floatation process'. Under this process the graded coal is mixed with diesel oil, pine oil and many other chemical ingredients and thereafter it is washed with the lacs of gallons of water. The end water is washed coal with reduced quantity of ash content fit for high graded metallurgical process for the purposes of manufacture of steel. In the process of washing large quantity of water is discharged through pipes which carry the discharged water to storage ponds constructed for the purpose of retaining the slurry. Along with the discharged water, small particles of coal are carried away to the pond where the coal particles settle down on the surface of the pond, and the same is collected after the pond is de-watered. The coal particles which are carried away by the water is called the slurry which is ash free, it contains fine quality of coal which is used as fuel.

The petitioner has alleged that the surplus waste in the form of sludge/slurry is discharged as an effluent from the washeries into the Bokaro river which gets deposited in the bed of the river and it also gets settled on land including the petitioner's land bearing Plot No.170. He was further alleged that the sludge or slurry which gets deposited on the agricultural land, is absorbed by the land leaving on the top a fine carbonaceous product or film on the soil, which adversely affects the fertility of the land. The petitioner has further alleged that the effluent in the shape of slurry is flown into the Bokaro river which is carried out by the river water to the distant places polluting the river water as a result of which the river water is not fit for drinking purposes nor it is fit for irrigation purposes. The continuous discharge of slurry in heavy quantity by the Tata Iron & Steel Co. from its washeries posing risks to the health of people living in the surrounding areas and as a result of such discharge the problem of pure drinking water has became acute. The petitioner has asserted that inspite of several representations, the State of Bihar and State Pollution Control Board have failed to take any action against the Company instead they have permitted the pollution of the river water. He has further averred that the State of Bihar instead of taking any action against the Company has been granting leases on payment of royalty to various persons for the collection of slurry. He has, accordingly, claimed relief for issue of direction directing the respondents which include the State of Bihar, the Bihar Pollution

Control Board, Union of India and Tata Iron & Steel Co. to take immediate steps prohibiting the pollution of Bokaro river water from the discharge of slurry into the Bokaro river and to take further action under provisions of the Act against the Tata Iron & Steel Co.

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The respondents have contested the petition and counter-affidavits have been filed on behalf of the respondent Nos. 2, 4 and 5-State of Bihar, State Pollution Board, Directors of Collieries and Tata Iron & Steel Co. Ltd. In the counter-affidavits filed on behalf of the respondents, the petitioner's main allegation that the sludge/slurry is being discharged into the river Bokaro causing pollution to the water and the land and that the Bihar State Pollution Board has not taken steps to prevent the same is denied. In the counter-affidavit filed on behalf of the Bihar State Pollution Board it is asserted that the Tata Iron & Steel Co. operates open case and underground mining. The Company in accordance to Sections 25 and 26 of the Water (Prevention Control of Pollution) Act, 1974 applied for sanction from the Board of discharge their effluent from their outlets. The Board before granting sanction analysed their effluent which was being watched constantly and monitored to see that the discharges does not affect the water quality of the Bokaro river adversely. In order to prevent the pollution the Board issued direction to the Director of the Collieries to take effective steps for improving the quality of the effluent going into the Bokaro river. The State Pollution Board imposed conditions requiring the Company to construct two settling tanks for settlement of solids and rewashing the same. The Board directed for the regular samples being taken and tested for suspended solids and for the communication of the results of the tests to the Board each month. The State Board has asserted that the Company has constructed four ponds ensuring more storing capacity of effluent. The Pollution Board has been monitoring the effluent. It is further stated that on the receipt of the notice of the instant writ petition the Board carried out an inspection of the settling tanks regarding the treatment of the effluent from the washeries on 20th June, 1988. On inspection it was found that all the four settling tanks had already been completed and work for further strengthening of the embankment of the tanks was in progress, and there was no discharge of effluent from the washeries into river Bokaro except that there was negligible seepage from the embankment. It is further stated that the Board considered all the aspects and for further improvement it directed the management of the collieries for removal of the settle slurry from the tanks. The Board has directed that the washeries shall perform desludging of the settling tanks at regular intervals to achieve the proper required retention time for the separation of solids and to achieve discharge of effluents within the standards prescribed by the Board. It is further asserted that at present there is no discharge from any of the tanks of the Bokaro river and there is no question of pollution of the river water of affecting the fertility of land. In their affidavits files on behalf of the respondent-

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Nos. 4 and 5, they have also denied the allegations made in the petition. They have asserted that the effective steps have been taken to prevent the flow of the water discharge from the washeries into the river Bokaro. it is stated that infact river Bokaro remains dry during 9 months in a year

and the question of pollution of water by discharge of slurry into the river does not arise. However, the management of the washeries have constructed from different ponds to store the slurry. The slurry which settles in the pounds is collected for sale. The slurry contains highly carbonaceous materials and it is considered very valuable for the purpose of fuel as the ash contents are almost nil in the coal particles found in the slurry. Since, it has high market value, the Company would not like it to go in the river water. The Company has taken effective steps to ascertain that no slurry escapes from its ponds at the slurry is highly valuable. The Company has been following the directions issued by the State Pollution Control Board constituted under the 1974 Act.

On the facts as appearing from the pleadings and the specific averments contained in the counter-affidavit filed on behalf of the State Pollution Control Board of Bihar, prima facie we do not find any good reason to accept the petitioner's allegation that the water of the river Bokaro is being polluted by the discharged of sludge or slurry into it from the washeries of the respondent-company. On the other hand we find that the State Pollution Control Board has taken effective steps to check the pollution. We do not consider it necessary to delve into greater detail as the present petition does not appear to have been filed in public interest instead the petition has been made by the petitioner in his own interest.

On a perusal of the counter-affidavit filed on behalf of the respondent Nos. 4 and 5 it appears that the petitioner has been purchasing slurry from the respondent Nos. 4 and 5 for the last several years. With the passage of time he wanted more and more slurry, but the respondent-company refused to accept his request. The petitioner is an influential businessman, he had obtained a licence for coal trading, he tried to put pressure through various sources on the respondent-company for supplying him more quantity of slurry but when the Company refused to succumb to the pressure, he started harassing the Company. He removed the Company's slurry in an unauthorised manner for which a Criminal Case No., 173 of 1987 under Sections 379 and 411 of the Indian Penal Code read with Section 7 of the Essential Commodities Act was registered against the petitioner and Pradip Kumar his brother at Police Station Mandu, which is pending before-

the Sub-Judge, Hazaribagh. One Shri Jugal Kishore Jayaswal also filed a criminal complaint under Section 379 and 411 of the IPC against the petitioner and his brother Pradip Kumar in the Court of Judicial Magistrate, First Class, Hazaribagh, which is also pending before the Court of Judicial Magistrate, 2nd Class Hazaribagh. The petitioner initiated several proceedings before the High Court of Patna under Article 226 of the constitution for permitting him to collect slurry from the Raiyati land. These petitions were dismissed on the ground of existence of dispute relating to the title of the land. The petitioner filed a writ petition C.W.J.C. No. 887 of 199o in the High Court of Patna for taking action against the Deputy Commissioner, Hazaribagh for implementing the Full Bench judgment of the Patna High Court in Kundori Labours Cooperative Society Ltd. & etc. etc. v. State of Bihar & Ors., AIR 1986 Patna 242 wherein it was held that the slurry was neither coal nor mineral instead it was an industrial waste of coal mine, not subject to the provisions of the Mines and Mineral (Regulation and Development) Act, 1957. Consequently the collection of

slurry which escaped from the washeries could be settled by the State Government with any person without obtaining the sanction of the Central Government. The petitioner has been contending before the High Court that the slurry which was discharged from washeries did not belong to the Company and he was entitled to collect the same. Since the respondent-company prevented the petitioner from collecting slurry from its land and as it further refused to sell any additional quantity of slurry to him, he entertained grudge against the respondent-company. In order to feed fat his personal grudge he has taken several proceedings against the respondent-company including the present proceedings. These facts are quite apparent from the pleadings of the parties and the documents placed before the Court. Infact,there is intrinsic evidence in the petition itself that the primary purpose of filling this petition is not to serve any public interest instead it is in self-interest as would be clear from the prayer made by the petitioner in the interim stay application. The petitioner claim interim relief from this Court permitting him to arrest/collect sludge/slurry flowing out of the washeries of the respondent Nos. 4 and 5 and with a direction to the State of Bihar, its officers and other authorities for not preventing him from collecting the sludge/slurry and transporting the same. The prayer for the interim relief made by the petitioner clearly indicates that he is interested in collecting the slurry and transporting the same for the purposes of his business. As already state a Full Bench of the Patna High Court held that the slurry was not coal and the provisions of the Mines and Mineral (Regulation and Development) Act, 1957 were not applicable, the State Government was tree to settle the same-

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and the Tata Steel & Iron Co. had no right to collect the slurry which escaped from its washeries. The respondent-company filed an appeal before this Court. During the pendency of the aforesaid appeal, the petitioner filed the present petition. The appeal preferred by the Tata Iron & Steel Co. Ltd. and Bharat Coking Coal Ltd. was allowed by this Court and judgment of Patna High Court was set aside. The judgment of this Court is reported in Judgments today Vol. 3 1990 SC 533 wherein it has been held that the slurry/coal deposited on any and continues to be coal and the State Government has no authority in law to deal with the same and the slurry deposited on the Company's land belongs to the Company and no other person had authority to collect the same.

Article 32 is designed for the enforcement of Fundamental Rights of a citizen by the Apex Court. It provides for an extraordinary procedure to safeguard the Fundamental Rights of a citizen. Right to live is a fundamental right under Art 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Art, 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life. A petition under Art. 32 for the prevention of pollution is maintainable at the instance of affected persons or even by a group of social workers or journalists. But recourse to preceeding under Art. 32 of the Constitution should be taken by a person genuinely interested in the protection of society on behalf of the community. Public interest litigation cannot be invoked by a person or body or person

to satisfy his or its personal grudge and enmity. if such petitions under Article 32, are entertained it would amount to abuse of process of the Court, preventing speedy remedy to other genuine petitioner from this Court. Personal interest cannot be enforced through the process of this Court under Art. 32 of the Constitution in the garb of a public interest litigation. Public interest litigation contemplates legal proceeding for vindication or enforcement of fundamental rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law. A person invoking the jurisdiction of this Court under Art. 32 must approach this Court for the vindication of the fundamental rights of affected persons and not for the purpose of vindication of his personal grudge or enmity. It is duty of this Court to discourage such petitions and to ensure that the course of justice is not obstructed or polluted by unscrupulous litigants by invoking the extraordinary jurisdiction of this Court for personal matters under the garb-

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of the public interest litigation see Bandhua Mukti Morcha v. Union of India, [1984] 2 SCR 67; Pandey v. State of West Bengal, [1987] 2 SCC 295 at 331; Ramsharan Autyanuprasi & Anr. v. Union of India & Ors., [1989] Suppl. 1 SCC 251 and Chhetriya Pardushan Mukti Sangharsh Samiti v. State of U.P. & Ors., [1990] 4 SCC 449.

In view of the above discussion we are of the opinion that this petition has been filed not in any public interest but for the petitioner's personal interest and for these reasons we dismissed the same and directed that the petitioner shall pay Rs. 5,000 as costs. These costs are to be paid to the respondent Nos. 3,4 & 5.

T.N.A. Petitions dismissed

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