

02.7.2010 Present: Ms. Jyotsna Rewal Dua, Amicus Curiae, for the petitioner,
Mr. Vivek Thakur, Addl. A.G. for respondents No. 1 & 3 to 5.
Mr. Suneet Goel, Advocate, for respondent No. 2.
Mr. Y. P. S. Dhaulta, Central Government Standing Counsel
for respondent No. 6 to 8.

The proceedings of this writ petition makes very sad reading.

On 23.11.2006 this Court took cognizance of a news item appearing in The Indian Express titled as "Ecology goes bust as Baddi booms". The gist of the news item was that as industries were being set up in the area of Baddi on a large scale there was a wide spread pollution and the water in river Sirsa was getting polluted. Various orders were passed from time to time in this petition. Two of the issues which came up for consideration, were the setting up of a municipal solid waste management plant and common effluent treatment plant. Today we are not dealing with these two issues and we are confining our order to the control of pollution especially water based pollution due to non functioning of the effluent treatment plant(s) set up by the industries or the industries running without these effluent treatment plants at all.

2. A detailed order was passed by a Division Bench of this Court on 9.8.2007 and following portion of the order bears repetition:-

"We once again wish to impress upon the State Government the paramount importance of development of the aforesaid area for the sake of the growth of industries in our State and for providing amenities and facilities to the industrial entrepreneurs, the people working in the industries, and the residents of the area as well as to enhance the public image of

our State in larger public estimation with respect to activities going on in Baddi-Barotiwala-Nalagarh area.

We are told that thousands of workers are working in the aforesaid area in pursuit of their livelihood in the large number of industrial units which have been set up there. We are also told that hundreds of thousands of Crores of Rupees have already been invested by various industrial houses in the units set up by them in this area. This area, therefore, by all accounts showcases the reputation as well as image of the State of Himachal Pradesh to the rest of the world. There is no denying the fact that up till now the reputation and the image have suffered on account of abysmal conditions prevalent in this area whether it is the roads, the pollution, the sewage and disposal, the infrastructural facilities, parks, gardens, landscaping, hospitals and dispensaries and such like various other amenities and facilities. The State Government is well advised to bear all the aforesaid in mind, if for nothing else, for the sake of image and the reputation of the State of Himachal Pradesh and also in the process ensure that there is no flight of industry or capital from the State because of the lack of the aforesaid and that instead the State invites and encourages more and more enterprises by providing the aforesaid amenities and facilities. Whether the aforesaid area, in the eyes of the rest of the world, brings to our State, henceforth and hereafter a glorified sense of pride and satisfaction, or it would continue, as hereto before to disgrace us with shame, are the two options, one of which has to be selected and chosen. We leave the choice to the State Government.”

3. Thereafter affidavits were filed but no positive work on the ground was actually done. Repeatedly applications for extension of time were filed. On 10.9.2009 this Court again noted that other than filing applications and status report nothing concrete had been

done on the spot though almost three years had expired since the petition was filed.

4. On 24.2.2010 The Secretary of the Himachal Pradesh Pollution Control Board was directed to file an affidavit as to the action taken in the matter of control and prevention of pollution caused by the industries in discharging their effluents in the rivers. In the order it was specifically directed that the Secretary in his affidavit shall specifically state whether stop memos have been issues to any of the industries and whether any such industry despite issuance of the stop memos was still discharging the effluents. Consequent to this order an affidavit was filed by the Secretary of the Board on 8.3.2010. On 9.3.2010 when the matter came up for hearing before a Division Bench it was found that the affidavit is vague with regard to the action taken. Smt. Jyotsna Rewal Dua, learned Amicus Curiae then prayed that she may be permitted to serve interrogatories to the Board so that relevant information is placed before the Court. This was permitted to be done and on 23.3.2010 the following interrogatories were served upon the Pollution Control Board by the Court itself:-

“(a) Despite the fact that Board has admitted that there have been various industries (as per list given by the Board itself) which have been found violating the norms and norms have been violated almost every year, why the Board has not taken stringent and deterrent action of issuing stop memos against them. What action at all the Board has taken against them is not clear from the affidavits, though it is admitted in the affidavit that Stop Memos have not been issued at all.

- (b) In such like cases of large scale violations of Water Act and Air Act, why the Board has not resorted to penal provisions of both these Acts?
- (c) The affidavit does not mention as to where the effluents of those industries which admittedly do not have any treatment plant of their own, are being discharged.
- (d) The affidavit does not give any date of setting up of Common Effluent Treatment Plant and of Municipal Solid Waste Management Plant. Despite repeated orders passed by this Hon'ble Court in this regard, no action at ground level has been taken apart from swearing the affidavits seeking extension of time.
- (e) In terms of the affidavit, the Treatment Storage and Disposal Facility, which has supposedly been set up is used by only 673 industries out of a total of 2337 industries spread over there. This obviously means that heaps of garbage from remaining industries would either litter on road or would make their way into river 'Sarsa' which has admittedly become a 'D' class river inside the area though it enters the area as 'A' class river. What steps the Board is taking in this regard so as to ensure that all industries discharge their waste into this facility and does this facility have the capacity to handle such wastes and quantity of wastes."

5. Another affidavit has been filed in response to these interrogatories.

6. In response to Interrogatory-(a) the Board has reiterated the averments made in its affidavit dated 6.3.2010 which as already observed above was found to be vague by this Court. According to the Board Stop Memos have been issued and several such so called Stop Memos have been annexed with this affidavit. Relevant portion of the Stop Memo reads as follows:-

"The Executive Engineer, HPSEB, Electrical Division, Parwanoo, Distt. Solan H.P. is also directed to disconnect the power supply of the said unit on 26-05-2009 unless any direction in writing is otherwise issued by this Board."

7. The Stop Memo we have quoted above is dated 20.4.2009 and all that is directed is that the Executive Engineer, HPSEB shall disconnect the power supply to the offending unit on 26.5.2009 unless any direction in writing is otherwise issued by the Board. We are constrained to observe that this is not Stop Memo. Once it was found from the analysis reports that the effluents are not conforming to the norms laid down in the Environment (Protection) Rules, 1986 then stringent action should have been taken including closure of the unit itself. From the affidavit of the Board itself we find that some of the industries to whom such memos have been issued are repeat offenders. If despite being given chance the industries fail to control pollution we see no reason why the Board abdicated its function and did not take stringent action in accordance with law.

8. Vide interrogatory-(b) the Board was specifically asked whether it has resorted to penal provisions of the Water and Air Acts. The reply surprisingly is that there is no large scale breach of the Water and Air Acts in the area in question. Only a person who is blind, cannot smell and cannot hear could make such statement. Any person who has visited the area of Baddi will know that there is large scale pollution of all kinds there. The Board would have this Court believe that there is no pollution of the type which would require penal proceedings being initiated. As observed above from

the material placed on record by the Board itself there are some industries who have been repeatedly issued notices for violating the pollution norms. Why no penal action was not taken against them? This stand of the Secretary is falsified by the memos issued by the Board and annexed with the petition wherein the Board itself had clearly stated that there is violation of the provision of Sections 24 and 25 of the Water (Prevention and Control of Pollution) Act, 1974 which constitutes a cognizable offence punishable under Sections 43 and 44 of the said Act. On the one hand the Member Secretary is issuing notices to the industries informing them that they are committing cognizable offence and issuing direction to the electricity department to disconnect their electricity but when this Court asks why no penal action has been taken the answer is that no such penal action is called for. These two stands cannot co-exist together.

9. Vide interrogatory – (c) this Court had raised a query as to where the industries which do not have any effluent treatment plants are discharging their effluents. The reply to say the least is extremely vague. The reply is not only evasive but it appears that an attempt has been made to hoodwink the Court. In para -4 of the affidavit dated 6.3.2010 filed in the Court on 8.3.2010 the Board itself had mentioned that the Board had covered 1419 industries under the provisions of the Water Act, 1974 in Baddi-Barotiwala area. In addition thereto 918 industries in Nalagarh had also been covered under this Act. This means that a total of 2337 industries in the area in question were covered under the Water Act, 1974. According to the respondent itself 290 units in Baddi-Barotiwala and 228 units in

Nalagarh require effluent treatment plants. Admittedly as against 290 units in Baddi-Barotiwala only 249 units had provided the effluent treatment plants and in Nalagarh out of 228 units only 169 industries had provided the effluent treatment plants. The stand of the Board was that other units have still not come into production and they would come into production only after the effluent treatment plants are set up in accordance with law.

10. The Board should give list of all the industries alongwith the date(s) when the effluent treatment plant(s) were set up and the date(s) on which the unit came into production. A copy of the list shall be supplied to the Department of Industries who shall verify the date of production also.

11. As far as interrogatories – (d) and (e) are concerned we are not dealing with the same today and we shall deal with them on the next date.

12. The State Pollution Control Board has been created under the Water (Prevention & Control of Pollution) Act, 1974. Section 17 of the said Act lays down the functions of the Board. It is the duty of the Board to prepare comprehensive plans and programmes for the prevention of pollution and control of streams and wells in the State. The Secretary of the Board on or before the next date shall file his affidavit whether any such plan has been prepared by the Board or not. Similarly the Secretary in his affidavit shall also state whether the Board in the last three years ever sent any advice to the State Government as to how pollution in the State can be controlled. We would also like to know from the Board that from November,

2006 when this matter was initially taken up by the Court in how many cases throughout the State of H.P. criminal proceedings have been launched under any of the Acts meant for preventing and controlling pollution. The Board along with the affidavit shall place in a tabulated form the material to show how many inspections are carried out by the Junior Engineer and whether sampling have been done of the effluent on regular basis or not. Whether any action other than issuance of memos has ever been taken in the last three years after the writ petition was filed.

13. We are constrained to observe that the manner in which the affidavits have been filed in this Court and the action, rather inaction of the Board shows that the Board is least concerned with the prevention and control of pollution in the State. We hope and expect that the Board will change its attitude and will rise to the expectations of the Court as was fervent hope of this Court while passing order dated 9.8.2007. The Secretary of the Board shall also place information before us with regard to all the industries which according to it require separate effluent treatment plants and what is the consumption of electricity by the effluent treatment plants in these industries. Perusal of the memos annexed by the Board itself shows that it had issued directions to the units to provide separate energy meter for the pollution control devices/effluent treatment plants. This was done with the intention that the Board could monitor whether these effluent treatment plants/pollution control devices were actually being used or not. The Secretary in his affidavit on or before the next date shall also inform this Court

whether this direction has been complied with or not. In case the direction has not been complied with the Board shall explain why no further action was taken.

14. The aforesaid affidavit be filed within four weeks. List the matter on 30th July, 2010 on which date the Member Secretary of the Board shall personally appear in Court. On or before the next date the Chief Secretary to the Government of Himachal Pradesh and the Chief Executive Officer of the Baddi-Barotiwala-Nalagarh Development Authority shall also file their personal affidavits along with the latest status report qua the setting up of the common effluent treatment plant and solid waste management plant.

15. List on 30th July, 2010.

Dasti copy.

(Deepak Gupta),
Judge.

(Sanjay Karol),
Judge.

July 02, 2010
(PK)