LAW OF PUBLIC NUISANCE : A TOOL FOR ENVIRONMENTAL PROTECTION

THE DECISION of the Madhya Pradesh High Court in *Krishna Gopal* v. *State of M.P.*,[1] is a landmark in the path of judicial activism. Section 133 of the Criminal Procedure Code 1973 is rarely being used for the purpose of pollution control. The court has made use of this section as a potent provision for control of noise pollution, an area to which the hands of the law have not so far been extended in India.

Krishna Gopal tells the story of a glucose saline factory, licensed to operate in a residential area. The boiler that boomed round the clock and emitted smoke and ash, disturbed the sleep of a heart patient living next door. His wife lodged a complaint. The sub-divisional magistrate on getting a police report and on taking evidence, invoked section 133 of the code issuing orders for removal of the factory as well as boiler from the area. On appeal the sessions judge held that only the boiler need be removed. On revision the High Court ordered removal of both the factory and boiler, endorsing the order of the sub-divisional magistrate.

The public authorities involved in the case, namely, the Joint-Director of Town and Country Planning, Municipal Corporation and Chief Inspector of Boilers, had given their approval for installation of the factory including boiler without considering objections from the local residents and the relevant factors that might help them make a sound environmental decision. One of the responsible officers had even colluded with the factory management.

It is often found that holders of public power who are obliged to make crucial and responsible decisions involving environmental consequences do not take proper care or caution but have merely passion for files, papers, ignoring the interest of the people. Obvious absence of adequate training on environmental matters, total lack of social awareness and the clear inability to comprehend the environmental criteria on which decisions are to be based, can be considered to be the causes for this unfortunate state of affairs. While meaningful and effective peoples' movements have grown immensely with their roots deep in Indian society, the message of environmental protection is still to enter in the closed minds of the bureaucracy whose neo-colonial attitudes help industrial entrepreneurship at the cost of environmental values.

The plea of the polluting company in the case was that the inconvenience caused was not injurious to the health of the complainant's husband;

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1. (1986) Cri. L.J. 396.

even if it were a nuisance it was only a private and not a public nuisance. Therefore, it was argued that the action would not be tenable under section 133 of the code. The court rejected these arguments on the basis that it was a public nuisance as evidenced by the police report on the complaint. In doing so the court was in fact recognising the position that a nuisance resulting in actual or potential pollution would attract the provision of section 133. Thus the scope of the remedial measure was extended as is evident from the following observation:

> Manufacturing of medicines in a residential locality with the aid of installation of a boiler resulting in emission of smoke therefrom is undoubtedly injurious to health as well as the physical comfort of the community....[2]

Human environment including space, air, water and forest is a common or public property. Any disturbance to that affecting health and physical existence of human beings or living things is to be viewed as public nuisance. Whether the hazardous activity in question has affected only one or more individuals is not material. Noise and other vibrations in the air beyond a certain level necessarily affect the public and hence is a public nuisance. Even if the police report in *Krishna Gopal* was otherwise the decision ought to have been in the same line.

The period after the Stockholm Conference in 1972 was momentuous. Many countries initiated effective legislation for protection of environment and evolved methods of monitoring, preventing and controlling environmental hazards. India has also brought out a few laws. But they are ineffective and without teeth. Also they do not make provision for suitable administrative machinery to solve environmental problems.

It is necessary that the permission-granting agencies should give due consideration to the views of the local public, apply their mind into the *pros* and *cons* of a proposed project, whether small or big, and decide the issue on objective environmental criteria. *Krishna Gopal* shows the total apathy and indifference of the authorities in this respect. This is obviously due to the defects in the legal provisions and the consequential bankruptcy of administrative efficiency. No law has been so far enacted for controlling noise pollution. The two pollution control laws—water and air—and even the recent Environmental Protection Act 1986 do not contain effective mechanism for environmental control. It is hoping against hope that in the absence of appropriate legal technology the holders of public power will voluntarily change their age old practices and policies.

In the absence of a specific statutory law it is left to the judiciary to evolve principles and norms to check and control environmental hazards.

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2. *Id.* at 399.

Judges cannot turn a blind eye to the changing social needs. This calls for judicial activism. The true role of a judge in the context of environmental protection is therefore that of an activist adding new dimensions to rarely used provisions of law. While the memorable decision of the Supreme Court in *Municipal Council, Ratlam* v. *Vardhichand*[3] has given flesh and blood to skeleton provisions in section 133 of the code, *Krishna Gopal* gives it a new vigour and life.

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3. A.I.R. 1980 S.C. 1622.

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