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# Case Analysis of Subhash Kumar Versus State of Bihar and Others: AIR 1991 SC 42

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## ABSTRACT

*In the leading environmental law case of Subhash Kumar v State of Bihar, the courts and social activists have worked together to ensure that the right to clean water is included in the Fundamental Rights of the Indian Constitution. Public Interest Litigation (PIL) has made it easier to take legal action against violations of the Right to water. This puts pressure on the government to protect the environment using laws and policies.*

*In the Vellore People's Welfare Forum v. Union of India case in 1990, the Supreme Court stated that tanneries polluting water infringed citizens' rights. Similarly, in the Subhash Kumar v. State of Bihar case in 1991, the Supreme Court said that the right to life includes the right to clean water and air. The court decided that citizens could challenge threats to their quality of life under Article 32. The court also explained when PILs could be filed for violations of constitutional rights under Article 32.*

*The courts, especially the Supreme Court in India, played a crucial role in protecting the environment and ensuring fairness in society. They help strike a balance between environmental concerns, people's rights, and development issues. One important area they focus on is restoring groundwater, which is essential for life and recognized as a fundamental right. The Supreme Court has emphasized that access to clean water is part of the right to life and a clean environment guaranteed by the Constitution. They've made several rulings reinforcing this idea, stating that clean water is implicit in the right to a healthy environment under Article 21 of the Constitution. This article discusses the important case of Subhash Kumar v. State of Bihar (1991) by explaining its background and examining the problems and issues that came up in court.*

**Keywords:** *Public Interest Litigation, sludge or slurry, water pollution, washeries, environment.*

## I. INTRODUCTION

The right to life, as stipulated in Article 21 of the Constitution, encompasses the entitlement to enjoy clean water and air for a fulfilling life.<sup>3</sup> Subhash Kumar filed a Writ Petition under Article

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<sup>3</sup>(InforMEA)(<https://www.informe.org/en/court-decision/subhash-kumar-v-state-bihar> )(Jan 12, 2024)

32 in the Supreme Court against the State of Bihar, State Pollution Board, and Directors of Collieries and Tata Iron and Steel Co. Ltd (TISCO). The petition aimed to prevent pollution of the Bokaro river water caused by sludge discharged from TISCO's washeries. The Supreme Court decided this petition on January 9, 1991.

Advocating for the inclusion of the right to clean water in the Fundamental Rights section of the Indian Constitution involves the concept of Public Interest Litigation (PIL). PIL is the legal pursuit aimed at safeguarding the public's well-being, allowing anyone to file it in accordance with Article 226 and 32 of the Constitution, even if the affected individual cannot approach the court directly. This is a foundational case that established the essence of public interest litigation that strictly adheres to the benefit of the public at large and that Article 32 can be invoked only for the vindication of the fundamental rights of affected persons and not to extend any personal grudge or enmity.

## **II. FACTS OF THE CASE**

1. The Public Interest Litigation is filed by Subhash Kumar under Article 32 of the Indian Constitution for preventing the pollution of Bokaro river water from the discharge of sludge or slurry from the washeries of the Tata Iron and Steel Co. Ltd (TISCO). And the petitioner is seeking to issue writs in order to direct the Director of Collieries, West Bokaro Collieries at Ghatotand, District Hazaribagh in the State of Bihar and the Tata Iron & Steel Co. Ltd.(TISCO) to stop discharging the slurry or sludge from the washeries of the own company into the river.
2. The petitioner states that the Parliament has enacted the Water (Prevention and Control of Pollution) Act, 1974 for the prevention and control of water pollution and for maintaining or restoring of water and for the establishment of Board for the prevention and control of water pollution. The section 17 of the Act states 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 treatment of water and to lay down standards to be complied by the persons while discharging the sewage. The section 24 of the Act states 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 the substantial aggravation in the pollution.
3. The petitioner said that Tata Iron and Steel Co. (TISCO) carries their mining operation in coal mines or washeries in the town of Jamshedpur. These coal mines and collieries are known as West Bokaro Collieries. The collieries have two coal washeries where

the coal after its extraction from the mines is brought and broken into graded pieces and after that it is processed for the purpose of reducing the ash contents. After that a chemical process is carried out which is known as froth-flotation process.

4. In the froth-flotation process, the graded coal is mixed with diesel oil, pine oil and many other chemical ingredients and after that it is washed with gallons of water. The end water is washed coal with reduced quantity of ash content fit for a high graded metallurgical process for the purposes of manufacture of steel. The process of washing requires a large quantity of water which is being discharged through pipes to storage ponds constructed for the purpose of retaining slurry. Along with the discharged water small particles get 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 defines the quality of coal which is used as a fuel.

### III. ISSUES OF THE CASE

1. Whether the Public Interest Litigation is maintainable or not and on what grounds?
2. Is the water of the river Bokaro contaminated by the release of sludge or slurry from the respondent's company washeries?

### IV. LAW PROVISIONS

1. **Article 21 of the Constitution of India**<sup>4</sup>- Right to pollution free water and air for full enjoyment of life covered by Article 21
2. **Article 32 of the Constitution of India**<sup>5</sup>- Public Interest Litigation is maintainable. But a petition filed for personal interest or to satisfy any grudge or enmity is not maintainable under Public Interest Litigation.
3. **Section 17 of the Water (Prevention and Control of Pollution) Act, 1974**<sup>6</sup>- 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 treatment of water and to lay down standards to be complied with by the persons while causing discharge of sewage.

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<sup>4</sup> INDIA CONST. art. 21, amended by The Constitution (Eightieth Amendment) Act, 2000.

<sup>5</sup> INDIA CONST. art. 32, amended by The Constitution (Eightieth Amendment) Act, 2000.

<sup>6</sup> Water (Prevention and Control of pollution) Act, 1974, No. 17, Acts of Parliament, 1974 (India)

4. **Section 24 of the Water (Prevention and Control of Pollution) Act, 1974**<sup>7</sup> – 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.

## **V. ARGUMENTS OF THE PETITIONER**

1. The petitioner states that the surplus waste in the form of sludge or 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.
2. The petitioner alleges that the sludge or slurry which gets deposited on the agricultural land, is being absorbed by the land and it leaves on top a carbonaceous product on the soil which adversely affects the fertility of the soil.
3. The Petitioner alleges that the effluent in the shape of slurry flows into the Bokaro river which is being carried to the distant places and in term polluting the other river water as well as a result the river water is neither fit for drinking purposes nor it is fit for irrigation purposes.
4. The Petitioner alleges that the continuous discharge of slurry in heavy quantity from the Tata Iron and Steel Co. (TISCO) from its washeries is posing risk to the health of people living in the surrounding areas as a result of which the problem of drinking water has become very common.
5. The Petitioner alleges that despite several representations, the state of Bihar and State Pollution Control Board have failed to take any action against the company and in turn they are permitting the pollution of Bokaro river water.
6. The petitioner alleges 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.

## **VI. ARGUMENTS BY THE RESPONDENTS**

The Respondents have contested the petitions and filed the counter-affidavit on behalf of the Respondents 2,4 & 5- State of Bihar, State Pollution Board, Directors of Collieries and Tata Iron and Steel Co. Ltd.

1. Tata Iron and Steel Co. operates open case and underground mining, obtaining approval from the Bihar State Pollution Board to discharge effluent into the Bokaro River.

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<sup>7</sup> Water (Prevention and Control of pollution) Act, 1974, No. 24, Acts of Parliament, 1974 (India)

2. The Board directed colliery directors to improve effluent quality entering the river, issuing specific conditions to TISCO, including the construction of settling tanks.

3. TISCO constructed four ponds, imposed conditions for settling tanks, and committed to regular testing to prevent adverse effects on Bokaro River water quality.

4. Following a writ petition, the Pollution Board inspected settling tanks, finding completion and ongoing embankment strengthening with negligible seepage.

5. Respondents deny pollution allegations, stating no current discharge into Bokaro River and no impact on water or land fertility.

6. Effective measures were taken to prevent slurry discharge, considering the dry Bokaro River for nine months yearly. The company follows Pollution Control Board directions.

7. Respondents 4 & 5 claim the petitioner, an influential businessman, sought more slurry but faced refusal. Accusations of harassment arose after the petitioner's failed attempts to pressure the company.

8. Criminal cases were registered against the petitioner and his brother for unauthorized removal of slurry. Writ petitions for slurry collection were dismissed by Patna High Court due to an existing dispute.

9. Respondents assert the petitioner's motive is personal grudge, not public interest, highlighting the ongoing legal disputes related to slurry collection.

## **VII. JUDGEMENT**

The Court held that Personal interest, grudge or enmity cannot be enforced through the process of the Court under Article 32 in the garb of public interest litigation and if such process of the court is being entertained then it would amount to abuse of the process of the court and it will amount to preventing speedy remedy to other genuine petitions filed before the Supreme Court. In this case the prayer for interim relief made by the petitioner clearly indicates that he was interested in collecting the slurry and transporting the same for the purpose of his business. The petition has not been filed in any public interest but for the petitioner's personal interest. Therefore, the petition is liable to be dismissed and the petitioner is directed to pay Rs. 5000 as costs.

## **VIII. ANALYSIS**

One critical aspect of the judgment was the court's recognition of the fundamental right to a healthy environment as an integral part of the right to life under Article 21 of the Indian

Constitution.<sup>8</sup> The court asserted that environmental protection is not merely a governmental responsibility but a shared duty of citizens. This broadened the scope of environmental law, emphasizing the collective responsibility of society in preserving ecological balance. We concur with the judgement pronounced by the Hon'ble Supreme Court in this matter.

Furthermore, the court emphasized the importance of the Public Trust Doctrine, asserting that natural resources are held by the state as a trustee on behalf of the people. This doctrine acted as a tool for the judiciary to intervene in cases where government actions threatened public resources. By incorporating this doctrine, the court reinforced the idea that sustainable development must be balanced with the protection of public resources for the benefit of future generations. The Supreme Court, in the case of *Sachindanand Pandey v State of West Bengal*<sup>9</sup> unequivocally held that when ecological issues are presented, the court should not dismiss them as solely within the domain of policy makers. Simultaneously, the court acknowledged the Taj Group of hotels for their commitment to safeguarding the Zoo and its inhabitants. In the celebrated case of *Bandhua Mukti Morcha v Union of India*,<sup>10</sup> The Supreme Court revitalized the essence of a Public Interest Litigation (PIL) by affirming that any public-spirited person can initiate a PIL to uphold their own or others' fundamental rights. These cases set an example that personal interests cannot be enforced under the garb of Public Interest Litigation.

In the case of *Indian Council for Enviro-Legal Action v. Union of India*<sup>11</sup>, in this case factories were discharging toxic effluent that is gypsum and iron based sludge. The SDM court asked the factories to report on precautionary measures. And in the present case the precautionary measure report was already presented by the respondent and with the report it was deduced that the Bokaro was not being polluted by the discharge of the slurry from the washeries of TISCO. In the celebrated case of *Vellore Citizens Welfare Forum v. Union Of India*, 2016<sup>12</sup> The SC emphasised on the concept of sustainable development, Polluters pay principle as well as precautionary principle. The SC went on to emphasize that Industrial growth is essential for economic growth of the country but not at the expense of people's life and health. But in the present case, self- interest was put forth over public interest and all the precautionary measures were taken by the TISCO.

These are some of the recommendations that we recommend for the smooth functioning of Regulation and implementation of Pollution Control. Legal measures were introduced to

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<sup>8</sup>(Yash Aggarwal)(Dynamism of Judiciary in Protecting the Environment)(Manupatra)(2022

<sup>9</sup> (1987) 2SCC 295

<sup>10</sup> (1984) 3 SCC 161

<sup>11</sup> AIR 1996 SC 1446

<sup>12</sup> AIR 1996 SC 2715

involve local communities in monitoring and reporting water pollution incidents, promoting a shared responsibility for environmental protection. Legal incentives were implemented to motivate industries to invest in research and innovation for cleaner production methods, reducing the environmental impact of their operations. Through legal channels, authorities conducted public awareness campaigns to educate citizens about the significance of water conservation and pollution prevention, encouraging a culture of environmental responsibility. Legal frameworks for cross-border cooperation were set up to facilitate collaborative efforts among neighbouring regions or countries, ensuring effective action against trans boundary water pollution.

In conclusion, *Subhash Kumar v. State of Bihar* (1991) remains a cornerstone in Indian environmental law, providing a framework that intertwines fundamental rights, the precautionary principle, the Public Trust Doctrine, and corporate liability. While recognizing the constitutional right to a healthy environment, the case underscores the importance of a collective responsibility to protect and preserve the environment for current and future generations. The judgment's enduring impact lies not only in its legal precedents but also in its role as a catalyst for subsequent legislative and judicial developments in environmental jurisprudence.

## **IX. CONCLUSION**

The court must refrain from entertaining frivolous petitions to safeguard justice, ensuring that Public Interest Litigation is not misused for personal grievances. The present petition is unconstitutional as it lacks a public interest aspect and seems driven by a personal interest. This case study clearly indicates that the petitioner initiated the case based on personal grievances and pretending it as a matter of public interest. Despite this, the Supreme Court's long-standing interpretations have laid the foundation for environmental jurisprudence, benefiting the masses by upholding the right to a pollution-free environment under Article 21 of the Constitution. The Constitution allows individuals to assert their essential rights but doesn't permit the misuse that harms these rights or the public. In this instance, the Court refrained from extensive examination as the petition primarily served the petitioner's self-interest rather than the public good.

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