

Case Note: Case concerning the unsanitary situation in Delhi and the Court emphasises the duty of the government to take all measures to make the city clean and hygiene. It has been re-emphasised that financial constraints cannot be claimed as an excuse by the government authorities for not taking such necessary actions.

This document is available at www.ielrc.org/content/e0020.pdf

Almitra H. Patel and Anr.,

Vs.

Union of India and Ors.

B.N. KIRPAL, M.B. SHAH & D.P. MOHAPATRA, JJ

Citations

2000 AIR SC 1256; 2000 (2) SCC 679

Decided on: 15 February 2000

Judgement

KIRPAL, J.

1. More in anguish, than out of anger, this Court nearly four years ago in Dr. B.L. Wadhwa v. Union of India and Ors. JT 1996 (3) SC 38 = ((1996) 2 SCC 594 at 595) observed: 'Historic city of Delhi - the capital of India - is one of the most polluted cities in the world. The authorities, responsible for pollution control and environment protection, have not been able to provide clean and healthy environment to the residents of Delhi. The ambient air is so much polluted that it is difficult to breathe. More and more Delhites are suffering from respiratory diseases and throat infections. River Yamuna - the main source of drinking water supply - is the free dumping place for untreated sewage and industrial waste. Apart from air and water pollution, the city is virtually an open dustbin. Garbage strewn all over Delhi is a common sight. The Municipal Corporation of Delhi (the MCD) constituted under the Delhi Municipal Corporation Act, 1957 (Delhi Act) and the New Delhi Municipal Council (the NDMC) constituted under the New Delhi Municipal Council Act, 1994 (New Delhi Act) are wholly remiss in the discharge of their duties under law. It is no doubt correct that rapid industrial development, urbanisation and regular flow of persons from rural to urban areas have made major contribution towards environmental degradation but at the same time the authorities - entrusted with the work of pollution control - cannot be permitted to sit back with folded hands on the pretext that they have no financial or other means to control pollution and protect the environment.' The Court then proceeded to issue 14 directions in an effort to see that the capital of the biggest democracy in the world is not branded as being one of the most polluted cities in the world.

2. It is indeed unfortunate that despite more than sufficient time having elapsed the condition of Delhi has not improved. The citizens of Delhi increasingly suffer from respiratory and other diseases, the river Yamuna is highly polluted and garbage and untreated domestic and industrial waste is being either freely dumped into the said river or is left on open land, large volume of which remains unattended.

3. The present writ petition is concerned with the question of solid waste disposal. By order dated 16th January, 1998 this Court constituted a Committee headed by Mr. Asim Burmon to look into all aspects of urban solid waste management and in particular to the following four areas:

'1. Examine the existing practices and to suggest hygienic pro-cessing and waste disposal practices and proven technologies on the basis of economic feasibility and safety which the Corporations/Government may directly or indirectly adopt or sponsor.

2. Examine and suggest ways to improve conditions in the formal and informal sector for promoting eco-friendly sorting, collection, transportation, disposal, recycling and reuse.

3. To review Municipal bye-laws and the powers of local bodies and regional planning authorities and suggest necessary modifications to ensure effective budgeting, financing, administration, monitoring and compliance.

4. Examine and formulate standards and regulations for management of urban solid waste, and set time frame within which the authorities shall be bound to implement the same.'

4. After a preliminary and then the final report of the said committee was received notices were issued to all the States who were required to file their responses to the report of the committee. None of the States really opposed the recommendations made by the committee and it is noticed that the responses of the States were in fact positive. Keeping the aforesaid report in mind, Management of Municipal Solid Waste (Management and Handling) Rules 1999 were notified by the Central Government which, as the heading itself suggests, deals with the question as to how the solid waste in the cities is to be managed and handled.

5. In this Court's order dated 15th October, 1999 it was indicated that we proposed to take up the question of cleaning of four metropolitan cities, namely, Mumbai, Chennai, Calcutta and Delhi as also the city of Bangalore.

6. We have first heard counsel appearing on behalf of the National Capital Territory of Delhi in connection with the management and handling of the solid waste. It was in this connection that our attention was drawn to the 14 directions issued by this Court in Dr. B.L. Wadhwa's case (supra). It is indeed unfortunate that till today the said directions have not been complied with. When this was put to the learned counsel appearing for Delhi as to why the said directions were not complied with, there was, in effect, no satisfactory answer. For example, sites for landfill have not been identified and handed over to the MCD nor have four additional compost plant been constructed though specific direction in this regard was issued in Dr. B.L. Wadhwa's case. The Court also approved of the experimental scheme placed before it by the MCD where-under certain localities had been selected for distribution of polythene

bags and collection of garbage from door to door but no effective progress appears to have been made in this regard. These are but a few examples which show non-compliance of the directions issued.

7. We are not oblivious of the fact that in a large city like Delhi where the floating population which comes in every day is not very small, keeping the city clean is indeed a daunting task. Just because the work involved is difficult cannot be a reason for lack of initiative or inaction on the part of the authorities concerned.

8. We are informed that one of the local authorities, namely, MCD itself employ about forty thousand safai karamcharis. This is in addition to the staff employed by other local bodies, namely, the NDMC and the Cantonment Board. Like all government and municipal employees these karamcharis are expected to work for the stipulated period of time, namely, eight hours a day. It was submitted by Mr. Dushyant Dave, learned Amicus Curiae that the insanitary conditions of different areas of Delhi does not in any way show that requisite effort has been put in or the required time spent in the cleaning operations which are supposed to be carried out by this large workforce. These employees are more invisible than visible. There appears to be a complete lack of accountability, at all levels of the Corporation, in this behalf.

9. Keeping Delhi clean is not an easy task but then it is not an impossible one either. What is required is initiative, selfless zeal and dedication and professional pride, elements which are sadly lacking here.

10. Surat had for time immemorial been known to be one of the dirtiest cities in the country. The plague there in 1995 was the result of the filth which had accumulated therein. Nevertheless the effort of one man, namely, the Municipal Commissioner, who worked in the field and in the office with dedication resulted in not only eradicating the plague and cleaning up Surat but gave the city of Surat the distinction of being the second most clean city in the whole of India. The people of Surat who threw garbage all around were so affected by the tireless effort of one person that they themselves have now become zealous guardians of their new found clean city of Surat. This shows what one man as a head of the organisation, like Municipal Corporation, with selfless zeal, initiative and dedication and without allowing any outside interference can achieve by motivating his employees to clean up the city while acting fairly, justly and efficiently within the four corners of the law.

11. In Delhi which is the capital of the country and which should be its show piece no effective initiative of any kind has been taken by the numerous governmental agencies operating here in cleaning up the city. As a result thereof the Court had in Dr. B.L. Wadhwa's case, per force, to step in because of the non-performance or non-implementation of the law by the municipal authorities. The law, inter alia, makes it obligatory on them to discharge their municipal functions and at least prevent filth and garbage from lying strewn at different public places causing hazard to public health.

12. The local authorities are constituted for providing services to the citizens - not merely to provide employment to a few of its inhabitants. Tolerating filth, while not taking action against the lethargic and inefficient workforce for fear of annoying them, is un-understandable and impermissible. Non-accountability has possibly led to lack of effort on the part of the employees concerned. They are perhaps sanguine in

their belief that non-performance is not frowned upon by the Government or by the heads of the organisations and no harm will befall them.

13. Domestic garbage and sewage is a large contributor of solid waste. The drainage system in a city is intended to cope and deal with household effluent. This is so in a planned city. But when a large number of inhabitants live in unauthorised colonies, with no proper means of dealing with the domestic effluents, or in slums with no care for hygiene the problem becomes more complex.

14. Establishment or creating of slums, it seems, appears to be good business and is well organised. The number of slums has multiplied in the last few years by geometrical proportion. Large areas of public land, in this way, are usurped for private use free of cost. It is difficult to believe that this can happen in the capital of the country without passive or active connivance of the land owning agencies and/or the municipal authorities. The promise of free land, at the taxpayers' cost, in place of a jhuggi, is a proposal which attracts more land grabbers. Rewarding an encroacher on public land with free alternate site is like giving a reward to a pickpocket. The department of slum clearance does not seem to have cleared any slum despite it's being in existence for decades. In fact more and more slums are coming into existence. Instead of 'Slum Clearance' there is 'Slum Creation' in Delhi. This in turn gives rise to domestic waste being strewn on open land in and around the slums. This can best be controlled at least, in the first instance, by preventing the growth of slums. The authorities must realise that there is a limit to which the population of a city can be increased, without enlarging it's size. In other words the density of population per square kilometer cannot be allowed to increase beyond the sustainable limit. Creation of slums resulting in increase in density has to be prevented. What the slum clearance department has to show, however, does not seem to be visible. It is the garbage and solid waste generated by these slums which require to be dealt with most expeditiously and on the basis of priority.

15. It was suggested by the learned Amicus Curiae that we should issue various directions to the MCD and the NDMC including direction relating to the manner in which the solid waste generated in Delhi is to be handled. We believe it is not for this Court to direct as to how the municipal authorities should carry out their functions and resolve difficulties in regard to the management of solid waste. The Court, in fact, is ill equipped to do so. With-out doubt the Governmental agencies including the local authorities have all the powers of the State to take action and ensure that the city remains clean. They have only to wake up and act. The Court should, however, direct that the local authorities, Government and all statutory authorities must discharge their statutory duties and obligations in keeping the city at least reasonably clean. We propose to do so now by issuing appropriate directions.

16. Before we pass the necessary orders some difficulties are stated to have been encountered in implementing some of the directions in Dr. B.L. Wadhera's case (supra) which need to be dealt with.

17. One of the difficulties pointed out before us was that even though the MCD and the NDMC Acts permit action being taken, inter alia, against persons who litter the city sufficient number of judicial magistrates are not available for ensuring proper enforcement of the provisions of the said Acts. But the shortage of judicial magistrates can be easily overcome by the Government appointing suitable persons as

Executive Magistrates under Section 20 or Special Executive Magistrates under Section 21 of the Code of Criminal Procedure who can be empowered to deal with such minor offences under the provisions of the MCD and NDMC Acts. There are large number of retired government officials and ex-defence officers who have held responsible posts and are living in Delhi who, we are sure, will be willing to act as such Magistrates. Delhi is divided into a number of Municipal wards and for every ward one or more Executive Magistrate or Special Executive Magistrate can easily be appointed. This will also take some burden of the Courts.

18. The counsel for the MCD has submitted that despite orders having been passed in Dr. B.L. Wadhera's case (supra) sufficient number of sites for landfills have neither been identified nor handed over to it. One of the reasons for the sites not being made available, it was stated, was that land owning agencies like the DDA or the Government of National Capital Territory of Delhi are demanding market value of the land of more than rupees forty lacs per acre before the land can be transferred to MCD. Keeping Delhi clean is a governmental function. There are more than one agencies that administer Delhi, namely, Union of India through Ministry of Urban Development, Government of National Capital Territory of Delhi, Commissioner of MCD, Chairman, NDMC, Cantonment Board and the DDA. It is the duty of all concerned to see that landfill sites are provided in the interest of public health. Providing of landfill sites is not a commercial venture, which is being undertaken by the MCD. It is as much the duty of the MCD as that of other authorities enumerated above to see that sufficient sites for landfills to meet the requirement of Delhi for next twenty years are provided. Not providing the same because the MCD is unable to pay an exorbitant amount is un-understandable. Landfill site has to be provided and it is wholly immaterial which Governmental agency or the local authority has to pay the price for it. As for nearly four years since the direction was issued in Dr. B.L. Wadhera's case (supra) this problem has not been solved it has now become necessary for this Court to issue appropriate directions in this behalf, which we shall presently do.

19. One of the important directions issued in Dr. B.L. Wadhera's case was regarding the construction of compost plants. In addition to the compost plant at Okhla, which was expected to be in operation by 1st June, 1996, four additional compost plants were to be constructed, as recommended by Jagmohan Committee. This has not happened and even land for sufficient number of compost plants has not been identified or handed over. It has, therefore, become necessary to issue time-bound directions in this behalf.

20. Uptill now no action has been taken against people who spread litter. Discipline amongst people in this behalf has to be inculcated and the guilty punished. Appropriate orders in this behalf are proposed to be issued including the appointment of Magistrates under Section 20 and/or Section 21 of the Code of Criminal Procedure, inter alia, to deal with such cases.

CONCLUSIONS:

21. In addition to and not in derogation of the orders passed by this Court in Dr. B.L. Wadhera's case (supra), we order as follows:

1. We direct the Municipal Corporation of Delhi through the Commissioner, NDMC through its Chairman and the Cantonment Board through its Executive Officer and all other concerned officials including Sanitation Superintendents/Chief Sanitary Inspectors/Sanitary Inspectors/Assistant Sanitary Inspectors/Sanitary Guides/Medical Officers to ensure that the relevant provisions of the DMC Act, 1957, New Delhi Municipal Council Act, 1994 and the Cantonments Act, 1924 relating to sanitation and public health prohibiting accumulation of any rubbish, filth, garbage or other polluted obnoxious matters in any premises and/or prohibiting any person from depositing the same in any street or public place shall be scrupulously complied.
2. We direct that the streets, public premises such as parks etc. shall be surface cleaned on daily basis, including on Sundays and public holidays.
3. We direct and authorise the MCD, NDMC and other statutory authorities through competent officers, as may be designated by them, (but not lower than in the rank of Sanitary Superintendent or equivalent post) to levy and recover charges and costs from any person littering or violating provisions of the diverse Acts, bye-laws and Regulations relating to sanitation and health for violating the directions being issued herein. For this purpose the Commissioner, MCD, Chairman, NDMC and other concerned heads of sanitary authorities will prepare and publish for the information of public at large the scale of such charges/costs as may be levied and recovered in respect of the diverse acts of commission/omission. The charges/costs will be recoverable on the spot by such designated officers from any person found littering or throwing rubbish and causing nuisance so as to affect sanitation and public health. The Commissioner, MCD and Chairman, NDMC and other authorities may frame and publish such schemes as may be necessary to ensure compliance of these directions forthwith. Till the scheme is framed and published, the authorities named above would recover Rs.50/- as charges and costs from any person littering or violating provisions of the Municipal Corporation Act, Bye-laws and Regulations relating to sanitation and health. This part be published and implemented at the earliest through concerned Sanitary Inspectors.
4. We direct the MCD through the Commissioner, NDMC through its Chairman and other statutory authorities through their respective heads to ensure proper and scientific disposal of waste in a manner so as to subserve the common good. In this connection they shall endeavour to comply with the suggestions and directions contained in the report prepared by the Asim Burmon Committee.
5. We direct that sites for land fills will be identified bearing in mind the requirement of Delhi for the next twenty years within a period of four weeks from today by the exercise jointly conducted by Union of India through the Ministry of Urban Development, Government of National Capital Territory of Delhi, Commissioner, MCD and Chairman, NDMC and other heads of statutory authorities like the DDA etc. These sites will be identified keeping in mind the environmental considerations and in identifying the same Central Pollution Control Board's advice will be taken into consideration. The sites so identified shall be handed over to the MCD and/or NDMC within two weeks of the identification, free from all encumbrances and without MCD or the NDMC having to make any payment in respect thereof.

6. We direct Union of India through the Ministry of Urban Development, Government of National Capital Territory of Delhi, Commissioner of MCD, Chairman NDMC and other statutory authorities like DDA and Railways to take appropriate steps for preventing any fresh encroachment or unauthorised occupation of public land for the purpose of dwelling resulting in creation of a slum. Further appropriate steps be taken to improve the sanitation in the existing slums till they are removed and the land reclaimed.

7. We further direct Union of India through Ministry of Urban Development, Government of National Capital Territory of Delhi, Commissioner MCD, Chairman NDMC and other statutory authorities like DDA etc. to identify and make available to the MCD and NDMC within four weeks from today sites for setting up compost plants. Initially considering the extent of solid waste, which is required to be treated by compost plants, the number of sites which should be made available will be eight. Such sites shall be handed over to the MCD/NDMC free of cost and free from all encumbrances within two weeks of identification. MCD and NDMC shall thereupon take appropriate steps to have the compost plants/processing plants established or caused to be established and to be in operation by 30th September, 2000.

8. We direct the MCD, NDMC and other statutory authorities concerned with sanitation and public health to regularly publish the names of concerned Superintendents of Sanitation and such equivalent officers who are responsible for cleaning Delhi who can be approached for any complaint/grievance by the citizens of Delhi together with their latest office and residential telephone numbers and addresses.

9. We direct the Government of National Capital Territory of Delhi to appoint Magistrates under Section 20 and/or Section 21 of the Code of Criminal Procedure for each Board/Circle/Ward for ensuring compliance of the provisions of the MCD and NDMC Acts and to try the offences specified therefore in relation to littering and causing nuisance, sanitation and public health. These appointments shall be made within a period six weeks from today in conformity with the reasons contained in this order.

10. All the concerned authorities will file compliance reports of these directions within eight weeks from today. The Central Pollution Control Board will also file within the same time an affidavit indicating as to what extent the directions issued have been complied with.

22. It is needless to say that the violation of the directions issued by this Court shall be viewed seriously.

Note: This document has been provided online by IELRC for the convenience of researchers and other readers interested in water law. IELRC makes no claim as to the accuracy of the text reproduced which should under no circumstances be deemed to constitute the official version of the document.