

Case Note: Public Interest Litigation filed against the non-performance of obligatory functions by the Municipality of the City of Gwalior resulting in the spread of waterborne diseases in the city. The Court relying upon Article 21 of Indian Constitution and the obligatory provisions of the M.P. Municipal Corporations Act gave a set of directions to the Municipality to clean up the water supply of certain areas of the city and to ensure clean and healthy living conditions for its inhabitants.

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AIR1994MP48

IN THE HIGH COURT OF MADHYA PRADESH

Decided On: 07.05.1993

Dr. K.C. Malhotra

v.

State of M.P. and Ors.

Hon'ble Judges:

S.K. Dubey and S.K. Chawla, JJ.

JUDGMENT

Dubey, J.

1. Petitioner, who is a medical practitioner by profession, has preferred this petition by way of public interest litigation annexing with the petition newspaper cuttings of 1991 and 1992 to demonstrate that for want of performing the primary and obligatory duties by the Municipal Corporation, Gwalior and Public Health and Public Health Engineering Departments, in the locality of Pardi Mohalla, of State of Madhya Pradesh, due to open drain, filthy water, heaps of dirt and contaminated water and rubbish, there was spread of epidemic of cholera, resulting in deaths of 12 children in 1991 and also deaths in 1992. Therefore, the petitioner prays for issuance of directions to the State and the Municipal Corporation, Gwalior, to take all necessary measures to eradicate the menace.

2. Municipal Corporation in its return denied the averments and stated that the safai Karmacharies of the Municipal Corporation regularly clean and remove the heaps of rubbish under the supervision of the supervisory staff. Water is regularly bleached and the public lavatories are regularly cleaned. Chlorine tablets are mixed up with the water and they are distributed amongst the members of the public. There is timely spraying of D.D.T. and phenyle. Nalla was also cleaned in August, 1992. It being an old nalla, open from the rear side, there is continuous flow of water without any blockade. If because of rainy season, any blockade or obstruction is created in the nalla, Corporation takes immediate steps to remove the blockade. In the year 1992, no death was reported because of cholera or gastro enteritis.

3. The averments were denied on behalf of the State and it was submitted that all preventive steps were taken including vaccination against cholera, distribution of chlorine tablets, R. H. packets through the Civil Dispensaries Janakganj and Phalka Bazar and Mobile Units. Regular steps were taken for cleaning drinking water. It is stated that P.H.E. takes all steps to ensure that water in the pipe line is not in any manner contaminated or becomes infectious. Drinking water of the hand-pump installed by the Municipal Corporation was not found fit for human consumption, hence, the Municipal Corporation was directed to close the said pump. Public Health Engineering Department laid a pipe line of 150 mms which was joined to the water tank of Jayendraganj for distribution of drinking water to Pardi Mohalla through taps.

4. The petitioner filed a rejoinder in this Court making various counter-allegations. This Court, when the matter came up for hearing, on 9-9-1992, requested Shri A. M. Naik and Shri K. N. Gupta, Advocates of this Court to inspect the spot and to give the report. Both learned Advocate made an inspection in the presence of Health Officer of the Municipal Corporation and Executive Engineer and Assistant Engineer of the Public Health Engineering Department and submitted their report.

5. From the report, it is clear that the nalla is open about 50' in length and thereafter, it is underground till it opens into Swarnarekha nalla. Towards the west side, there are several houses situated in Adarsha Colony at Gwalior with their drains opening in the nalla. There are four public latrines, which were found to be clean. The public excreta was found at various points at the open nalla and the houses towards east. No obstruction was found in the flow of the water through the nalla. Towards south of the underground nalla six more public latrines were found clean. The pipe-line of drinking water of the P.H.E. Department, was not found open at any point. At the time of inspection, no leakage or mixing of the sewage water in the P.H.E. line was found. However, in case of heavy rains or flood, the Commissioners observed that there is a likelihood of accumulation of filthy water and the water of open taps was ultimately likely to be mixed up with the water supplied by the P.H.E. A sketch map was also annexed with the report.

6. During the course of hearing, it was submitted by the respondents that except the members of the Pardi community, there are other inhabitants of various castes and communities in the locality. There was no complaint of any sort of any death was reported either in the year 1991 or 1992 because of cholera or gastro enteritis but, the deaths were reported of the children of Pardi community because of their eating habits as they eat meat or flesh of birds without properly cleaning the same.

7. India is a welfare State governed by the Constitution which holds a place of pride in the hearts of its citizens. It lays a special emphasis on the protection and well-being of the weaker sections of the society and seeks to improve their economic and social status on the basis of Constitutional guarantees spelled out in its provisions. We live in an age which recognises that every person is entitled to a quality of life consistent with his human personality. The right to live with human dignity is the fundamental right of every Indian citizen. And, so in the discharge of its responsibilities to the people, the State has to provide at least the minimum conditions ensuring human dignity. See Vikram Deo

Singh Tomar v. State of Bihar, AIR 1988 SC 1782. The right to life enshrined in Article 21, cannot be restricted to mere animal existence. It means something much more than just physical survival. The right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities of reading, writing and- expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. See, Francis Coralie v. Administrator, Union Territory of Delhi, AIR 1981 SC 746 : (1981 Cri LJ 306).

8. The Supreme Court, while dealing with the case of Workers of C.E.S.C. Limited v. Subhash Chandra Bose, (1992) 1 SCC 441 : (AIR 1992 SC 573), discussing Articles 22 to 25 of the Universal Declaration of Human Rights, 1948 and Articles 21 and 39(e) of the Constitution of India, in para 32 observed, "The term health implies more than absence of sickness. Medical care and health facilities not only protect against sickness but also ensures stable manpower for economic development. Facilities of health and medical care generate devotion and dedication to give the workers' best, physically as well as mentally, in productivity. It enables the worker to enjoy the fruit of his labour, to keep him physically fit and mentally alert for leading a successful, economic, social and cultural life. The medical facilities are, therefore, part of social security and like gilt-edged security, it would yield immediate return in the increased production or at any rate reduce absenteeism on grounds of sickness, etc. Health is thus a state of complete physical, mental and social well being and not merely the absence of disease or infirmity. In the light of Articles 22 to 25 of the Universal Declaration of Human Rights, International Convention on Economic, Social and Cultural Rights, and in the light of socio-economic justice assured in our Constitution, right to health is a fundamental human right to workmen. The maintenance of health is a most imperative constitutional goal whose realisation requires interaction of many social and economic factors".

9. In respect of civil amenities and discharge of its primary/obligatory duties, the Supreme Court had an occasion to examine the case in Ratlam Municipal Council v. Vardhichand, AIR 1980 SC 1622 : (1980 Cri LJ 1075) arising out of the proceedings under Section 133, Cr.P.C. and in paras 12 and 16 of the judgment, their Lordships observed that where there existed a public nuisance in a locality due to open drains, heaps of dirt, pits and public excretion by humans for want of lavatories and consequential breeding of mosquitoes, the Court could require the Municipality under Section 133 of the Cr.P.C. and in view of Section 123 of the Municipalities Act to abate the nuisance by taking affirmative action on a time-bound basis. When such order was given, the Municipality could not take the plea that notwithstanding the public nuisance, financial inability validly exonerated it from statutory liability.

10. In another public interest litigation in case of State of H.P. v. Umed Ram, AIR 1986 SC 847, where the residents of hilly area wanted existence of roads in reasonable condition, the right was embraced to their right to life in the context of the constitutional provisions. Their Lordships interpreted Article 21 as embracing not only physical existence of life, but the quality of life. Their Lordships observed that for the residents of hilly areas, access to road is access to life itself. Accordingly, there should be road for

communication in reasonable conditions in view of our Constitutional imperatives and denial of that right would be denial of the life.

11. The defence of illiteracy and not living in healthy conditions of the inhabitants who belong to the weaker sections of the society will not come in the way for that and also the State has to take steps to educate them to live in a proper healthy conditions and for that the State and its instrumentalities and the members of the society have to take all steps to ensure that the members of the down-trodden strata are given full education in that behalf.

12. Recently, in another public interest litigation in the case of *M.C. Mehta v. Union of India*, AIR 1992 SC 382 : (1991 AIR SCW 2989) in para 3 of the report their Lordships held that in order that human conduct may be in accordance with the prescription of law it is necessary that there should be appropriate awareness about what the law requires and there is an element of acceptance that the requirement of law is grounded upon a philosophy which should be followed. In para 5 of their judgment, their Lordships observed that we are in a democratic polity where dissemination of information is the foundation of the system. Keeping the citizens informed is an obligation of the Government. It is equally the responsibility of society to adequately educate every component of it so that the social level is kept up. 13. A Division Bench of this Court in a public interest litigation on behalf of Citizens and Inhabitants of Ward No. 17, Municipal Corporation, Gwalior v. Municipal Corporation, Gwalior, 1992 (1) MPJR 93, while examining the complaint of not providing basic and civic amenities had an occasion to examine the provisions of Part V of the M.P. Municipal Corporation Act, 1956, which deal with public health, safety and conveniences and the obligatory and discretionary duty of the Municipal Corporation, observed that several provisions included in that part deal with public conveniences such as municipal drains, conservancy, sanitary provisions, water supply, drainage water and water mains, public health and safety, also on restraint of infections and infectious diseases. In a nutshell, the Legislature has contemplated through these provisions almost all that would be needed to be performed by the Municipal Corporations to achieve the fulfilment of the fundamental right of dignified human living by the residents of Municipal Corporation limits. The Corporation has been vested with powers, wide in scope and ambit, enabling the definite fulfilment of its statutory obligations. Section 66 of Municipal Corporations Act provides for the obligatory duties of Council as distinguished with discretionary duties listed in Section 67. The resume of these provisions leaves no manner of doubt that what has been complained of by the petitioners and what they expected to be performed by the Municipal Corporation are ordinarily the statutory obligations of the Municipal Corporation.

14. In the background of the law laid down by the Supreme Court, looking to the facts which have come in this case, we are of the opinion that inhabitants of the locality may be of backward class or weaker sections of the society or community at large have got a fundamental right under Article 21 of the Constitution entitling them to live as human beings in the area which is in the limits of the Municipal Corporation. There must be a separate sewage line from which the filthy water may flow out. The nalla must be

covered and there should be proper lavatories for public conservancy which should be regularly cleaned. Public health and safety cannot suffer on any count and all steps are to be taken as Article 47 makes it a paramount principle of Government that steps are taken "for the improvement of public health as among its primary duties".

15. We have no doubt that if the directions given by us hereinbelow and other steps are honestly and sincerely carried out, it will be possible to improve the life conditions of the members of the weaker sections of the society which would ensure social justice to them so that they be able to have fresh and non-contaminated water which is not polluted and may be able to breath fresh air of social and economic freedom.

16. Therefore, in our opinion, to keep up the health and security of the inhabitants of the locality, it would be appropriate to issue following directions :

(a) The open nalla shall be covered before the advent of the rainy season and if for the circumstances beyond the control, the nalla could not be covered within the said time, the Corporation and the P.H.E. shall take all steps to ensure that potable water is not contaminated and polluted. Flow of water remains continuous from the nalla till it is covered. All necessary measures shall be taken to keep up the nalla clean. In any case, the open portion of the nalla shall be covered by the next rainy season.

(b) The respondents, Public Health Engineering Department and the Corporation shall see that the pipe line of drinking water is not contaminated at the places where they are joined in the pipe lines. More latrines shall be constructed, to cope up with the need of the inhabitants. In any manner, all arrangement shall be done before the rainy season starts. There shall be vaccination against cholera and other epidemic diseases, distribution of chlorine tablets and other medicines to keep up the health and safety of the inhabitants above board and free from cholera and other similar types of diseases.

(c) It shall be the duty of the State and its instrumentalities to educate not only the inhabitants of the locality, but the members of the society to live with appropriate awareness and to take all measures so that water and environment may not be polluted.

17. In the light of the above directions, the petition is disposed of. Respondents to pay the costs of this petition to petitioner, which we quantify Rs. 1,000/-.

18. Before parting with records of the case, we place on record our appreciation to Shri K. N. Gupta and Shri A. M. Naik, Advocates who have rendered their valuable assistance by inspecting the spot and placing their report on record.

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