

(1998) 04 J&K CK 0015

In the Jammu And Kashmir High Court

Case No : Letters Patent Appeal No. 360 Of 1997

Chief Engineer, J&K Urban Environmental Engineering
Department, Srinagar

APPELLANT

Vs

Residents of Chanpora, Housing Colony near Ahlahadis Masjid
through Mr Bashir Ahmad Bashir Advocate & Ors.

RESPONDENT

Date of Decision : 28-04-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) KashLJ 156

Hon'ble Judges : Nisar Ahmad Kakru, J and M.Y.Kawoosa, J

Bench : Division Bench

Advocate : G.N.Mir, B.A.Bashir, Advocates appearing for the Parties

Judgement

1. The brief facts which have given rise to the instant LPA are that a writ petition bearing No. 199/96 came to be filed and the petitioner who is

respondent No. 1 in this LPA has sought a writ of mandamus against the respondents inter alia for construction of sewerage and drainage facility.

During the pendency of the writ petition, the court deemed it proper to identify the authorities who are concerned with construction and a

committee was constituted by the court for the said purpose. The committee submitted its report, which reveals that the drains are to be

constructed by the J&K U.E.P.D whereas; internal roads and surface drains are to be constructed and maintained by the R&B Department.

2. Having received the report, court passed an order on 16/10/1997 directing the Chief Engineer, U.E.E.D. appellant here in to undertake the

construction of sewerage and drainage system at Chanpora, Srinagar and complete the same within two months. This order is impugned through

this LPA.

3. The appellant challenges the order on the following grounds:

(a) That the estimated cost of the work is fortysix lacs and is not within his competence to make the allotment of the work without prior approval

from the government.

(b) That no funds are allocated for the scheme.

(c) The appellant is an executing agency and has to execute the works in accordance with the plans approved by the government, but said work

does not fall within the plan, hence unable to execute it.

(d) That neither his administrative department which is Housing and Urban Development Department, nor the appellant is party to the writ petition

4. Here arises a question whether the appellant is bound to provide the facility of sewerage and drainage to the respondent No. 1, if so to what

extent.

5. While deliberating upon this issue it is to be borne in mind that it is a basic amenity of public conveniences and in order to preserve the public

health the facility has to be extended to the respondent No. 1 by the functionaries of the State and when we say so it needs to be clarified that the

basic amenity is limited to such an arrangement which is sufficient to meet the needs of the people, thus concerned authorities are required to

manage the drains without obstruction, dirty water should not accumulate and filth should be removed.

6. Well if these were the amenities/facilities allowed by the court to the respondent possibly we would have refused our indulgence because

justness of such grievances cannot be questioned so much so, the financial constraints projected by respondent No.1 could also be ignored in the

peculiar circumstances of the case, notwithstanding the challenge thrown to the impugned order, but here is a case where the respondent No.1 has

sought the indulgence of the court for construction of a drain which involves an amount of more than forty six lacs and hugeness of the amount

suggests that the respondent No. 1 aims at coercing the functionaries of the State to construct a magnificent drainage system.

7. We have indicated the basic amenities in the preceding Para to which citizens are entitled as a matter of right but it does not mean that we deny

the right of splendid drainage system to a citizen, but before allowing such claim/relief, state and its functionaries should be heard so that court can

examine the averments of a petition in the light of policies indicating priorities, schemes and plans, the state has evolved and for pretentious

drainage system, as claimed by the respondent No. 1 opportunity of hearing to the functionaries of the State is warranted which has not been

accorded to them, more so, an order has been passed against the appellant despite the fact that he is not a party to the writ petition and we are

convinced that appellant has been denied the right of hearing, therefore the impugned order is not sustainable.

8. Now coming to the challenge thrown to the maintainability of the writ petition by the appellant on the ground of non joinder of appellant and his

administrative department as respondents, this contention of the appellant needs to be appreciated in the light of an important fact that this petition

has been treated by the court as public interest litigation writ petition, therefore, strict rules applicable to litigation deserve to be relaxed because in

such petitions generally people approach the court for redressed of public wrong and public injury, it being so we are loath to say that writ

petitioner should seek impalement of left out functionaries of the state and instead of the doing so. we take it upon us to implied Commissioner

Secretary Housing Department and Chief Engineer, DEED appellant herein as respondents 6&7 respectively to the writ petition and such addition

shall be made by the registry.

9. It needs a mention that the Chief Secretary is already a party to the writ petition and non joinder to the Commissioner/Secretary Housing,

Department has no relevance but with a view to adjudicate upon the matter effectively and expeditiously he has been imp leaded as one of the

respondents.

10. Viewed thus we accept this LPA set aside the order of single Bench without any order as to costs and provide further that the

Commissioner/Secretary Housing Department and Chief Engineer U.E.E.D. shall file a counter within four weeks with an advance copy to the

learned counsel for the petitioner who shall have one week thereafter to file the rejoinder and the writ petition shall be listed for final hearing after

five weeks before any available Single Bench.

11. It requires to be clarified that we have accepted the LPA on a sole ground reflected in para7 supra, we don't deem it proper to go to other

grounds of challenge, for, same can safely be gone into by the learned Single Bench.

12. We provide further that pending disposal of the writ petition, the respondents in the writ petition shall manage flow of water through the drains

without any obstruction and shall keep the drains in working condition to meet the requirements of the inhabitants. LPA is disposed of accordingly.