

(2019) 04 MAN CK 0018

In the Manipur High Court

Case No : Public Interest Litigation No. 8 Of 2005

Laishramcha

APPELLANT

Vs

State Of Manipur And Others

RESPONDENT

Date of Decision : 04-04-2019

Acts Referred:

Constitution Of India, 1950 — Article 21, 47, 48A, 51A(g)
Bio Medical Waste Management Rules 2016 — Rule 2, 3(f), 5, 7, 8, 9

Citation : (2019) 04 MAN CK 0018

Hon'ble Judges : Ramalingam Sudhakar, CJ;Kh. Nobin Singh, J

Bench : Division Bench

Advocate : M.Rakesh, S.Rupachandra, N.Ibotombi, Ksh. Harichhaya,
B.R.Sharma, M.C. Linthoingambee, L.Kamminthang Khongsai

Final Decision : Disposed Of

Judgement

R.S., CJ

[1] The PIL focuses on an important aspect of management and disposal of bio-medical wastes in accordance with Bio-Medical Waste Management Rules, 2016.

[2] A series of order was passed by this Court on various dates on 31.5.2018, 12.9.2018 and 07.02.2019 and the relevant orders are as follows:-

"31.5.2018

[1] The PIL was initiated in the year 2005 to effectively implement Bio-Medical Waste (Management and Handling) Rules, 2000 in respect of health care establishment namely, Government and Private Hospitals. The importance of managing Bio-Medical Waste (Management and Handling) has been emphasised by this Court in order dated 23.08.2007 in para no.4, which reads as follows:

"4. It is well settled that enjoyment of quality life is the essence of the right guaranteed under Article 21 of the Constitution. Bio-medical Wastes are required to be managed and handled properly for a proper and healthy environment which

enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution. In *Virendra Gaur -vrs- State of Haryana*: 1995 (2) SCC 577, the Supreme Court held at para-7 - "Article 48-A in Part IV (Directive Principles) brought by the Constitution 42nd Amendment Act, 1976, enjoins that 'the State shall endeavour to protect and improve the environment and to safeguard the forest and wild life of the country'. Article 47 further imposes the duty on the State to improve public health as its primary duty. Article 51-A(g) imposes 'a fundamental duty' on every citizen of India to 'protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures'. The word 'environment' is broad spectrum which brings within its ambit 'hygienic atmosphere and ecological balance'. It is, therefore, not only the duty of the State but also the duty of every citizen to maintain hygienic environment. The State, in particular, has duty in that behalf and to shed its extra-vagant, unbridled sovereign power and to forge in its policy to maintain ecological balance and hygienic environment. Article 21 protects right to life as a fundamental right. Enjoyment of life and its attainment including their right to life with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution. Environmental, ecological, air, water pollution, etc. should be regarded as amounting to violation of Article 21. Therefore, hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a humane and healthy environment. Environmental protection, therefore, has now become a matter of grave concern for human existence. Promoting environmental protection implies maintenance of the environment as a whole comprising the man made and the natural environment. Therefore, there is constitutional imperative on the State government and the Municipalities, not only to insure and safeguard proper environment but also an imperative duty to take adequate measures to promote, protect and improve both the man made and natural environment."

[2] Thereafter, the State respondents as well as Pollution Control Board took time to file their response. Some of the respondents have filed their response stating that they have complied with the provisions of Rules as above. After, this case was kept on board and adjourned from time to time, on 10-03-2015, the Court observed and recorded that except Babina, Diagnostic Centre, RIMS Road, Catholic Medical Centre, Koirengi and Shija Hospitals & Research Institute, Langol Imphal, rest of the Clinics and Hospitals have not complied with the Rules despite notices served to them.

[3] On 23.02.2016, the Court recorded as follows:

"Additional affidavit has been filed by the respondent No.5 (Manipur Pollution Control Board) on 18.02.2016. It is stated in para no.2 of the affidavit that district hospitals in Bishnupur, Churachandpur, Chandel, Tamenglong, Ukhrul and Senapati are in the process of installing incinerator for disposal of the bio-medical wastes. There is nothing in the affidavit to show as to how these

hospitals are dealing with the bio-medical wastes now and in the past also. There is nothing in the affidavit to show what action has been taken by the respondent No.5 against these hospitals for non-compliance of provisions of the Act and rules of the Central Pollution Control Board.

Respondent No.5 is directed to take immediate action against the authorities of above mentioned district hospitals for non-compliance of the mandatory provisions. This case be listed after four weeks. Further development be intimated to the Court. Copy of this order be furnished to the learned counsel appearing for the respondent No.5."

[4] In the meanwhile, it appears that the Central Government in order to provide better tips to the Bio-Medical Waste (Management and Handling) Rules, 1998, they issue Notification dated 28.03.2016 and new Rules called "Bio-Medical Waste (Management and Handling), Rules 2016" which came into force and was designated on 28.03.2016. The application of the Rules is as follows:

"(2) Application.

(1) These rules shall apply to all persons who generate, collect, receive, store, transport, treat, dispose, or handle bio-medical waste in any form including hospitals, nursing homes, clinics, dispensaries, veterinary institutions, animal houses, pathological laboratories, blood banks, ayush hospitals, clinical establishments, research or educational institutions, health camps, medical or surgical camps, vaccination camps, blood donation camps, first aid rooms of schools, forensic laboratories and research labs.

(2) These rules shall not apply to,

(a) Radioactive wastes as covered under the provisions of the Atomic Energy Act, 1962 (33 of 1962) and the rules made there under;

(b) Hazardous chemicals covered under the Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989 made under the Act;

(c) Solid wastes covered under the Municipal Solid Waste (Management and Handling) Rules, 2000 made under the Act;

(d) the lead acid batteries covered under the Batteries (Management and Handling) Rules, 2001 made under the Act;

(e) hazardous wastes covered under the Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008 made under the Act;

(f) waste covered under the e-waste (Management and Handling) Rules, 2011 made under the Act? ; and

(g) hazardous micro organisms, genetically engineered micro organisms and cells covered under the Manufacture, Use, Import, Export and Storage of Hazardous Microorganisms, Genetically Engineered Micro organisms or Cells Rules, 1989 made under the Act.

Bio-medical waste defined under Rule 3 (f) reads as follows:

(f) "bio-medical waste" means any waste which is generated during the diagnosis, treatment or immunisation of human beings or animals or research activities pertaining thereto or in the production or testing of biological or in health camps, including the categories mentioned in Schedule I appended to these rules; And 3 (g) is the matter of treatment and disposal of bio-medical waste which reads as follows:

(g)"bio-medical waste treatment and disposal facility" means any facility wherein treatment, disposal of bio-medical waste or processes incidental to such treatment and disposal is carried out, and includes common bio-medical waste treatment facilities;"

Rule-5 provides duties of the operator of a common bio-medical waste treatment and disposal facility. Rule -7 provides treatment and disposal of biomedical waste. Rule-8 provides Segregation, packaging, transportation and storage.

In terms of Rule 9, the prescribed authority is the State Pollution Control Board. The Schedule I Part-I provides that the categories of bio-medical waste and their segregation, collection, treatment, processing and disposal. Schedule II provides standards for treatment and disposal of biomedical wastes. The new Rules is very comprehensive and gives a specific manner in which bio-medical waste should be handled.

[5] In view of the new Rules of 2016, it becomes necessary to direct the State Pollution Control Board authority to strictly implement the 2016 Rules and in order to aid and assist this Court in ensuring that the new Rules of Bio-Medical Waste (Management and Handling), Rules 2016 is effectively implemented, the Assistant Director of Health Services has to identify the list of Hospitals, Clinics, Nursing Homes and Dispensaries under Rule 2 identify them so as to enable the Court to monitor the same through Advocate Commissioners.

[6] We find that despite various orders of this Court, no effective steps have been taken to implement the old Rules and the new Rules of 2016.

[7] Accordingly, we are inclined to appoint the following 5 (five) Advocate Commissioners, namely, i) Ms. Ksh. Harichayya Chanu, Advocate (81329490), ii) Mr. B.R. Sharma, Advocate (8413986555), iii) Mr. L. Kaminthang Khongsai, Advocate, iv) Konthoujam Umakanta Singh, Advocate, v) Ms. MC Linthoinganbee, Advocate (9077799924) to inspect the various institutions prescribed under Rule 2 falling under the limit of Imphal Municipal Corporation. The inspection will be done by the officers of State Pollution Control Board in presence of those Advocate Commissioners on different institutions within Imphal Municipal Corporation on various dates. The institutions to be inspected will be identified by the Assistant Director of Health Services or duly authorised officers so that the inspection can be done on regular basis.

[8] Each one of the Advocate Commissioner will be paid remuneration of Rs.

5,000/- (Rupee five thousand) at the first instant by the Director of Health Services, Government of Manipur for the purpose of enabling them to inspect the institutions along with officers of State Pollution Control Board. The State Pollution Control Board shall submit a report in consultation with the Advocate Commissioners as to the implementation of Bio-Medical Waste Rules, 2016.

[9] Time and date for submission of the preliminary report will be on 16th July, 20018.

Copy of this order be issued to i) Mr. S. Rupachandra, Addl. Advocate General, Manipur ii) Mr. N. Ibotombi, learned senior Advocate appearing for Pollution Control Board, iii) Advocate Commissioners iv) Mr. M. Rakesh, learned counsel for petitioner and v) Office of the Advocate General, Manipur for information and necessary action.

Copy of this order to be uploaded on the net."

"12.9.2018

This case involves a very serious public issue of Bio-Medical Waste generated by the Hospitals and Diagnostic Centres and implementation of Bio-Medical Waste (Management and Handling) Rules, 2016.

On 31-05-2018, we passed an order in the presence of Shri S. Rupachandra, learned Addl. Advocate General. However, the name of Shri P. Tamphamani, learned counsel, who also represents the Government is reflected in the cause list today. We find this error occurred because no Memo of Appearance is filed by the Addl. Advocate General or by the Government Advocate or the PP and therefore, the names are not properly reflected.

Henceforth, we direct the Office of the AG to ensure that except AG all other pleaders - Government Advocate, Sr. Govt. Advocate, Addl. Advocate General, P.P., Department Counsels have to file the Memo of Appearance in every case they want to appear.

The order is passed in the presence of Advocate General so as to enable him to strictly instruct all the State Government Counsels, Department Counsels to file Memo of appearance in the cases they appear. This will avoid one or other counsel disowning the case of the Government or Department after he has undertaken to appear on their behalf. Similarly, if they choose to withdraw appearance they will have to file a memo withdrawing their appearance.

The same will apply to Central Government and Central Government Departments. This order is passed in the presence of Shri S. Suresh, learned ASG and Shri S. Samarjit, Central Government Counsel for enabling them to follow the above direction.

This order shall come into effect from 17.09.2018. Registrar (Judicial) to circulate

and display to Court Sections and on the Notice Board. Copy of this order be issued to the Advocate General, Assistant Solicitor General on proper acknowledgment so as to enable them to inform all concerned. The Law Department to be also informed of this order.

In so far as this case is concerned, we have seen the impressive report given by the Manipur State Pollution Control Board giving the complete text of inspection, the remedial measures/recommendation along with photographs of the individual Health Care Units and Health care facilities that they insisted and inspected. The compilation is commendable and should be emulated by other departments.

Prima facie we are very much impressed with the report of the Manipur Pollution Control Board. It has seriously taken note of the direction given by this Court in the order dated 31-05-2018.

We appreciate the Manipur Pollution Control Board for the steps taken along with the Advocate Commissioners to ensure that the provisions of Bio-Medical Waste (Management and Handling) Rules, 2016 is being implemented in letter and spirit.

We further, request the Pollution Control Board to take up follow action based on the report against all the Health Care Units and Health Care facilities listed in the report submitted by the Member Secretary by letter dated 23-08-2018 addressed to the Registrar General, High Court of Manipur.

Mr. N. Ibotombi, learned senior counsel for the Pollution Control Board is directed to get the report photocopied and it shall be handed over to the Advocate Commissioners and one copy to the Advocate General and one copy to Shri S. Suresh, learned ASG immediately.

While recording our appreciation we hope that the Member Secretary and the other staff of the Pollution Control Board who have done a commendable job in assessing the Health Care Unit and Health Care facilities as per the report dated 23-08-2018 will take steps to ensure the implementation of the direction given by this Court as also the recommendation made by them.

Further, the Manipur Pollution Control Board will take steps to inspect all other health care units, health care facilities and hospitals which have not been inspected so far and a report shall be filed.

Time for submitting next report is 26-11-2018.

Copy of this order be issued to Shri N. Ibotombi, learned Sr. Advocate and the 5 (five) Advocate Commissioners shall be entitled to Rs. 5,000/- (Rupees five thousand) each as remuneration to be paid by the State of Manipur.

It is stated that the remuneration granted by virtue of the earlier order dated 31-05-2018 has not been paid. Learned Advocate General is directed and he undertakes to ensure that the remuneration as per earlier order as well as remuneration as ordered by this Court today be settled without fail on or before

15-10-2018.

List on 26.11.2018.

Copy of this to issued to all parties, Advocate General, Assistant Solicitor General, Advocate Commissioners, Secretary to Government Department of Finance, State of Manipur and to the State Pollution Control Board."

"07.02.2019

The five Advocate Commissioners seek a direction from the Court to make an inspection of the Regional Institute of Medical Sciences (RIMS) and Jawaharlal Nehru Institute of Medical Sciences (JNIMS) which have been omitted in the list provided by the Director of Health Services, Govt. of Manipur. Therefore, we direct the Advocate Commissioners to cause an inspection of the RIMS and JNIMS on the same lines as has been done in respect of other hospitals and file a report.

List the matters on 13.03.2019.

The officials of the Manipur Pollution Control Board shall cooperate on the same lines as has been done as per the earlier order dated 12.09.2018.

A copy of this order be furnished to Mr.Rakesh, learned counsel for the petitioner, Mr.S.Rupachandra, Addl. AG for the State respondents, Mr.N.Ibotombi, Sr. Advocate for the Manipur Pollution Control Board and to all the Advocate Commissioners."

[2] On the basis of the order passed on 12.9.2018 and 7.2.2019, the Court appointed Advocate Commissioners submitted a detailed report in respect of the Regional Institute of Medical Sciences (RIMS) and Jawaharlal Nehru Institute of Medical Sciences (JNIMS). In their detailed report, they have given some suggestions while stating that both the hospitals have complied with the requirements of the Bio-Medical Waste Management Rules, 2016 in pit and substance. They have made certain suggestion at page Nos.30 and 81 which read as follows:-

"Recommendation(s):

In the light of findings(s) from inspection dated 1st March 2019 at the Jawaharlal Nehru Institute of Medical Sciences, JNIMS Imphal, there is no any adverse result in the management of Bio Medical waste in this Medical Institution. The hospital has a well defined structure from generation to disposal of BMW. It is recommended to continue the on-going practice and install an ETP at the earliest until then it is recommended to dispose the liquid waste only after disinfection. Further, training of staffs on BMWM is required specially the intern doctors and intern nurses before induction into internship. Also, make awareness about BMWM to patient party as well as general masses."

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"RECOMMENDATIONS:

Bio-Medical Waste Management (BMWM) was practiced evenly throughout the hospital in compliance to Bio- Medical Waste Management Rules, 2016. However, certain practices are required to be taken up on priority basis. So, it is recommended.

- To install Effluent Treatment Plant as soon as possible and disposal of liquid waste only after disinfection and filtration.
- Maintain appropriate size white translucent containers for collection of mutilated needles. It is recommended to use a white puncture proof container for collection of mutilated needles.
- Training of staffs on BMWM is required specially the intern doctors and intern nurses before induction into internship.
- Staffs and employees need training and awareness programme from time to time regarding BMWM.
- To make awareness about BMWM to patient party as well as general masses."

[3] We therefore direct the RIMS and JNIMS authorities to strictly comply with the suggestions made in addition to following the provisions of Bio-Medical Waste Management Rules, 2016.

[4] We record our appreciation for the valuable services rendered by the Advocate Commissioners and further direct the State Government to pay the 5(five) Advocate Commissioners a sum of Rs.5000/- (rupees five thousand) each as per the order of this Court.

[5] Balance amount payable as per the previous order dated 12.9.2018 of this Court shall be complied with by the respondents and Mr.S.Rupachandra, learned Addl.AG undertakes to ensure that the amount payable to the Advocate Commissioners be paid within a period of six weeks from today without fail. In all, each of the Advocate Commissioner will be entitled to remuneration of Rs.15,000/- each.

[6] Since the Manipur Pollution Control Board is directed to ensure periodical inspection of all the hospitals, clinics, etc. as has been done on the direction of this Court so that the provisions of Bio-Medical Waste Management Rules, 2016 is clearly implemented without any breach. We have already recorded our appreciation to the steps taken by the Manipur Pollution Control Board, we expect them to continue the said exercise in the best interest of the society and public at large. As there has been substantial compliance of the provisions of Bio-Medical Waste Management Rules, 2016 as amended, we find no reason to keep this PIL pending before this Court unnecessarily and accordingly, the PIL stands closed.

[7] A copy of this order be furnished to Mr. S.Rupachandra, learned Addl. AG, Mr. N.Ibotombi, Sr. Advocate, Mr. M.Rakesh and to all the Advocate Commissioners.