

(2018) 11 J&K CK 0050

In the Jammu And Kashmir High Court

Case No : Public Interest Litigation No. 42 Of 2014, IA Nos. 01 Of 2015, 001, 03 Of 2018

Rajinder Singh @APPELLANT@Hash State Of Jammu & Kashmir And Ors

Date of Decision : 19-11-2018

Acts Referred:

Solid Waste Management Rules, 2016 — Rule 3(1)(30), 11(1), 11(1)(a), 15, 15(e), 15(f), 15(zf), 15(zg)
Environment (Protection) Act, 1986 — Section 3, 6, 25

Citation : (2018) 11 J&K CK 0050

Hon'ble Judges : Gita Mittal, CJ;Rajesh Bindal, J

Bench : Division Bench

Advocate : S.S. Nanda, H.A Siddiqui, Sachin Gupta, Dheeraj Sharma

Judgement

1. A status report dated 14th August, 2018 has been filed by the respondents under the signature of Mr. Kushal Chand, Commissioner (W) Municipal Corporation, Jammu placing before us the recommendation made by the Government with regard to the draft action plan for e-Waste Management for Jammu City. The Municipal Corporation shall place before us a consideration of the suggested action plan and the proposed norms on which the same would be managed.

Solid Waste Management Bye Laws

2. In paragraph No. 6 of the report, reference has been made to the chemical treatment with regard to the solid waste so that it does not become health hazard. It appears that use of chemicals itself may be hazardous.

3. Be that as it may, we find that despite the mandate of the Environment Protection Act, 2000, no bye-laws appear to have been framed in the State of Jammu & Kashmir. Concerned with the importance of protection and improvement of environment, The Government of India enacted "The Environment (Protection) Act, 1986, which is applicable to whole of India. Sections 3, 6 and 25 thereof enable the Government of India to frame Rules for protecting and improving the quality of environment and preventing, controlling

and abating environment pollution. This enactment was an outcome of the decision taken for protection and improvement of human environment and the prevention of hazards to human beings, other living creatures, plants and property and to implement the decision taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972.

4. Section 3 of the Act empowers the Central Government to take measures to protect and improve the environment.

5. Section 6 enables the Central Government to notify Rules in respect of the matters detailed in Section 3 while Section 25 conferred powers on the Central Government to make Rules for carrying out the purposes of the Act.

6. In exercise of the powers conferred by these statutory provisions, the Government of India notified 'The Municipal Solid Wastes (Management and Handling) Rules, 2000'. These Rules came to be superseded in the year 2015 by the Solid Waste Management Rules, 2016 after inviting objections from the public, which were notified on 8th April, 2016.

7. It would be useful to extract Rule 3(1)(30) of the Solid Waste Management rules, which defines the 'local body'. It reads thus:-

"3(1)(30). "local body" for the purpose of these rules means and includes the municipal corporation, nagar nigam, municipal council, nagarpalika, nagar Palikaparishad, municipal board, nagar panchayat and town panchayat, census towns, notified areas and notified industrial townships with whatever name they are called in different State and union territories in India."

8. Insofar as duties and responsibilities of the above 'local bodies' are concerned, Rule 15 of the Solid Waste Management Rules, 2016 provides these in some details. A mandate is cast upon the local authorities with regard to framing bye-laws and prescribing criteria under Rules 15(e) (f), (zf) and (zg) of the Solid Waste Management Rules, 2016, relevant for our purposes are extracted below:-

"15 xxxxxx

(e) frame bye-laws incorporating the provisions of these rules within one year from the date of notification of these rules and ensure timely implementation;

(f) prescribe from time to time user fee as deemed appropriate and collect the fee from the waste generators on its own or through authorised agency;

.....

(zf) frame bye-laws and prescribe criteria for levying of spot fine for persons who litters or fails to comply with the provisions of these rules and delegate powers to officers or local bodies to levy spot fines as per the bye laws framed; and

(zg) create public awareness through information, education and communication campaign and educate the waste generators on the following; namely:-

- (i) not to litter;
- (ii) minimise generation of waste;
- (iii) reuse the waste to the extent possible;
- (iv) practice segregation of waste into bio-degradable, non-biodegradable (recyclable and combustible), sanitary waste and domestic hazardous wastes at source;
- (v) practice home composting, vermi-composting, bio-gas generation or community level composting;
- (vi) wrap securely used sanitary waste as and when generated in the pouches provided by the brand owners or a suitable wrapping as prescribed by the local body and place the same in the bin meant for nonbiodegradable waste;
- (vii) storage of segregated waste at source in different bins;
- (viii) handover segregated waste to waste pickers, waste collectors, recyclers or waste collection agencies; and
- (ix) pay monthly user fee or charges to waste collectors or local bodies or any other person authorised by the local body for sustainability of solid waste management."

(Emphasis supplied)

9. Thus, as per the mandate of Rule 15(e), it is incumbent upon the local authorities to frame bye-laws within one year from the date of notification and to ensure timely implementation thereof.

10. Most pertinently, the power for levying fine on person(s) who litters or fails to comply with the provisions of the rules has also to be vested with the local authorities under the Bye-laws. The significance and importance of framing bye-laws cannot be sufficiently emphasized.

11. Unfortunately, despite the expiry of over two and half years from the 8th April, 2016 when the above Rules came to be notified, the local authorities, as defined in Rule 3(1)(30), in the State of Jammu and Kashmir have not framed the Bye-laws.

12. The Rules have postulated another critical aspect of solid waste management strategy. Rule 11(1) (a) which deserves to be adverted to is extracted hereunder:-

"11. Duties of the Secretary-in-charge, Urban Development in the State and Union Territories:- (1) The Secretary, Urban Development in the State or Union Territory through the Commissioner or Director of Municipal Administration or Director of Local bodies shall;-

(a) Prepare a state policy and solid waste management strategy for the state or

the union territory in consultation with stakeholders including representative of waste pickers, self help group and similar groups working in the field of waste management consistent with these rules, national policy on solid waste management and national urban sanitation policy of the ministry of urban development, in a period not later than one year from the date of notification of these rules;

....."

(Emphasis by us)

13. Rule 11(1) confers the responsibility upon the State Governments to prepare a state policy and solid waste management strategy for the State. This necessitated re-visiting and developing and implementing appropriate strategy, proper work carried by the local bodies for effectively handling the solid waste in order to ensure compliance with the Rules of 2016.

14. It appears that pursuant to the directives of Rule 11(1), the Government of Jammu and Kashmir has notified a policy which is called as "Jammu and Kashmir State Integrated Solid Waste Management Strategy 2017" ("Strategy of 2017" hereafter). The Government of Jammu and Kashmir has also notified "J&K Non-biodegradable Material (Management, handling and Disposal) Rules, 2009" by SRO 122 dated 11.05.2009, wherein all responsibilities of the of the municipal authorities stand prescribed in Clause 4.

15. The generation, composition and management of municipal Solid Waste Management in Jammu and Kashmir had been adverted to in Clause 4 of the strategy. In para 4.1, it is noted that there is no systematic and authentic data on Municipal Solid Waste generation at any level.

16. In para 4.3, it is noted that there are 42 urban local body institutions in Kashmir Division and 36 in Jammu Division.

17. Para 4.4 points out that total waste generation rate in the State as computed at a population of 1.39 Crores in the State comes to 3134 tons per day.

18. The Strategy of 2017 also points out problems being faced by municipalities in identifying new landfill sites and dumping grounds; unscientific maintenance of landfill sites and dumps which are threat for ground water pollution and there are likely to cause deterioration of the ambient air quality (para 4.6.7)

We may extract para 4.6.8 which reads as follows:-

"4.6.8. Local bodies do not have long term action plan for managing their city waste. Whatever scheme they implement for waste management, those are worked out on day-today requirement basis or for a short term."

19. The action plan which has been suggested in Clause 6 for cities and towns envisages preparation of action plan by municipal body in consultation with State Urban Department after assessing the status of waste generation and

composition. These consideration, however, are concerned with urban waste generation and do not refer to waste generation in the Rural areas.

The relevant extract of Clause 7 of strategy of 2017 reads thus:-

"7. FORMULATION AND IMPLEMENTATION OF PLAN: Each Local Body is required to strictly implement SRO No.45 dated 03.02.2017 issued by the Government of J&K whereunder ban has been imposed on the manufacture, stocking, distribution, sale and use of polythene carry bags, plastic sheets or like, cover made of plastic sheet, plastic packing and multilayered packing less than fifty microns in thickness within the territorial limits of the State of Jammu and Kashmir.

Each local body is required to frame byelaws considering the provisions of the Solid Waste Management Rules, 2016. Notify user fee, tipping fee, spot fine etc for management of solid waste.

....."

(Emphasis supplied)

20. The recommendations contained in Clause 7 of the Strategy of 2017 appear to be in purported compliance with the mandate of Rule 15(e) read with Rule 15(zf) of the Solid Waste Management Rules, 2016.

21. Keeping in view the topography of the State and the difficulties with regard to management of solid waste in the high altitude areas and upper reaches of the State, it is essential that the problem of solid waste management is addressed on war footing. The need of the day is not only to manage the solid waste but to understand and acknowledge the problem and to take every possible step for minimizing the generation solid waste and its effective utilization.

22. Furthermore, the habit of littering at public places and desecrating the mountain sites, rivers, streams etc has to be discouraged, which is possible only by imposing proper fine and penalties and also increasing public awareness on issues leading to indiscriminate generation and disposal of garbage, its segregation and management.

23. The above narration would show that so far as urban areas are concerned, there are total 78 local urban bodies (42 in Kashmir Division and 36 in Jammu Division).

The number of local bodies in the rural areas would be perhaps more.

24. Given the size of the State and disparity in the availability of the resources, there may not be uniformity in the consideration or the prescriptions by the different local bodies in the State.

25. It cannot be denied that the State Government would have the necessary expertise to frame model solid waste management Bye-laws which could be circulated and considered by local bodies and notified in accordance with the

provisions of the Solid Waste Management Rules, 2016.

26. We, therefore, direct the Government of Jammu & Kashmir to frame Model Solid Waste Management Bye-Laws which shall be circulated to all local bodies (urban and rural) for adoption (subject to such local adaptations as may be necessary) within six weeks from today.

A status report setting out compliance shall be filed immediately thereafter.

27. The Registry shall send copy of this order to the Chief Secretary for compliance.

28. The local bodies shall consider the Model Bye-Laws and take a view thereon within a period of four weeks thereafter. Reports in this regard shall be sent to the office of the Chief Secretary who would cause compliance reports to be filed in a tabulation in the present matter.

Medical Waste

29. Additionally, special attention needs to be paid to the very serious aspect with regard to collection and treatment of medical waste.

Let a notice in this regard be issued to the Secretary to Govt., Health and Medical Education Department, Civil Sectt., Jammu in this regard.

30. Mr. Siddiqui, learned Senior Additional Advocate General happens to be present in Court in some other matter and on our request, accepts notice on behalf of the Secretary to Govt., Health and Medical Education Department.

31. The respondents shall place before this Court the steps taken with regards to the management of medical waste including the prosecutions which have been initiated against the persons for violation of the prescribed norms within four weeks positively. The status report shall also indicate the measures which are available for the management of medical waste in the government hospitals.

Air Quality

32. The status report dated 14th August, 2018 filed by the J&K State Pollution Control Board indicates the steps taken in respect of monitoring of the ambient air quality in the State. In this regard the report indicates the details of ambient air quality monitoring stations which have been set up in Jammu and Kashmir provinces. The report states that the stations in the Ladakh division are yet to be established, even though the financial requirement thereof stands released.

33. Let the State Pollution Control Board file the latest status placing before this Court with regard to setting up of Ambient Air Quality Monitoring Stations at Jammu, Kashmir as well as Ladakh Division. Such status report shall positively be filed within four weeks.

34. The State Government shall also place before this Court the latest status regarding award of tendering for the processing and disposal facility of solid

waste management.

35. List on 8th February, 2019.

36. Copies of this order be supplied to learned counsel for the respondents under the seal and signatures of the Bench Secretary.