
(1999) 09 OHC CK 0028
In the Orissa High Court
Case No : O.J.C. No. 985 of 1985

Smt. Chandana Das	Vs	APPELLANT
State of Orissa and Others		RESPONDENT

Date of Decision : 06-09-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 47

Citation : (1999) 2 OLR 589

Hon'ble Judges : P.C. Naik, J;A. Pasayat, J

Bench : Division Bench

Advocate : A.K. Choudhury, for the Appellant; Additional Standing Counsel and M.R. Panda, for the Respondent

Judgement

A. Pasayat, J.—Alleging casual approach by the authorities of Cuttack Municipality, presently a Corporation, in dealing with mosquito menace, this application has been filed by a young lady"espousing the grievance of the people of Cuttack city. It is alleged that this thousand year old city has become a virtual breeding ground of mosquitoes, a playground of stray cattle and virtually open drains keep up dirt pits and public excretion.

2. Prayer in essence is to save the residence from health hazards.

3. State and three of its functionaries (Secretary, Health Department, Director, Public Health and District Magistrate-cwm-Collector, Cuttack) in addition to the Municipality are opp. parties.

4. The stand of the Municipality is that heavy expenditure is made annually for mosquito eradication and effective drainage system. Several measures taken for eradication of mosquitoes have been highlighted in the counter affidavits. Reference has also been made to the report of a Committee consisting of staff members of Malaria Research Centre, Delhi and IDVC project in report of a survey carried out during 26th November to 6th December, 1988. Stand of the State is essentially in similar lines as that of the Municipality.

5. The matter was heard at length and apart from the learned counsel appearing for the parties several members of the Bar have offered suggestions as to how this menace which is reaching alarming proportions can be countered.

6. It has to be borne in mind that a responsible Municipal Council is constituted for the precised purpose of observing public health and Article 47 of the Constitution of India, 1950 makes it a paramount principle of governance that steps are taken for the employment of public health as amongst its primary duties. It is not in dispute and a fact fairly accepted that mosquitoes have found a stagnant stream of stench, so hospitable to breeding and flourishing and there is practically very little obstacle to their stinging music at human expense not only during night but also during day time. What is visible in the city is open drains, heaps of dirt, public excretion by humans for want of latrines and slums nearby and this is virtually creating an intolerable situation for habitation. It cannot be disputed that essentially efforts have been made by the Municipality to combat the menace. But that cannot give a sense of complacency, a lot more has to be done. Some of the reasons for mosquito menace advanced with reference to the proceedings of the meeting held on 20.12.1988 were; (a) due to improper maintenance of open drains, (b) due to weeded ponds and jhils, (c) due to adequate cattle population in the city, (d) due to improper maintenance of septic tanks, and (e) due to want of fitting of nylon nipple to the vent pipes of the septic tanks. The survey conducted during 26th November and 6th December, 1988 reveals some important aspects and the suggestions of the body conducting the said survey are worth mentioning which reads :

1. Underground and sewerage should be constructed in phases, if necessary;
2. The storm water drains should be cleaned and repaired so that a good flow is obtained;
3. Cleaning, oiling and proper drainage of household drains are likely to reduce the mosquito menace considerably; and
4. The city has inherent drainage problem because of the lower level of city as compared to the river. For correcting this, considerable engineering manoeuvre will be required.

7. It is submitted on behalf of the Municipality that its budget approved by the State Government makes pro-vision for meeting the mosquito menace. Financial requirement is much more than that of the amount what has been approved. Additionally, it is submitted that medicines supplied are inadequate and are much less than the actual requirement. As observed by the apex Court in Municipal Council, Ratlam Vs. Vardichan and Others, responsible Municipal Council cannot run away from its principal duty by pleading financial inability. Decency and dignity are non-negotiable facets of human rights and are first charge on local self-Governing bodies. Providing drainage systems not pompous and attractive, but in working condition and sufficient to meet the needs of the people, cannot be evaded if the Municipality is to justify its existence. Financial inability cannot

exonerate the Municipality from its statutory liability. The Municipality is not merely to construct the drains but also to fill up cess-pools and other pits of filth and use its sanitary staff to keep the place free from accumulations of filth. Mr. S.C.Lai, learned counsel, has indicated that one of the major sources for mosquito breeding in the city is the large number of cowsheds visible almost in all localities of the city. Due to indiscriminatory dumping of cow dung and accumulation of excreta provides a breeding ground for mosquitoes.

8. Keeping in view the alarming situation and helplessness pleaded by the Municipality, we feel some remedial measures are to be immediately taken. We, therefore, direct that a Committee consisting of the Secretaries to the State in the Departments of Urban and Housing Development, Health and Family Welfare, Irrigation and Fisheries, Executive Engineer, Public Health, Exefcutive Officer, Cuttack Municipal Corporation and the Principal and Superintendent of S.C.B. Medical College and Hospital, Cuttack be constituted. The Committee shall meet periodically and shall suggest measures to be taken to combat the menace. Till such time, immediate steps be taken to repair the open drains so as to prevent stagnation of water which facilitates breeding of mosquitoes. Necessary steps also be taken for filling up cess-pools, ponds and places where dirty water usually accumulates. The Committee would do well to invite suggestions from general public with power to cope such experts and persons acquainted with the problem to the Committee to make it more effective and functional. Let necessary steps be taken in this regard as early as possible. The report of the Committee be submitted to the State Government periodically.

The writ application is disposed of accordingly.

P.C. Naik, J.

9. I agree.