
(2012) 08 RAJ CK 0085
In the Rajasthan High Court
Case No : Civil Writ Petition No. 6355 of 2012

Suo Moto

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 13-08-2012

Acts Referred:

Jodhpur Development Authority Act, 2009 — Section 13

Citation : (2012) 4 WLN 32

Hon'ble Judges : Narendra Kumar Jain, J;Dinesh Maheshwari, J

Bench : Division Bench

Advocate : Ashok Chhangani, Mr. Pankaj Sharma, Mr. Vipul Singhvi, Amicus Curiae, Mr. Deepak Kanojia, Mr. C.P. Soni and Mr. Rakesh Arora, for the Appellant; G.R. Punia and AAG with Mr. Mahendra Choudhary, Assistant to AAG, Mr. R.S. Saluja, for the Municipal Corporation, Jodhpur, Mr. R.C. Lahoti, Commissioner, Jodhpur Development Authority, Ms. Shashi Sharma, Secretary, Jodhpur Development Authority, Mr. M.S. Rawal, Director Engineering, JDA Jodhpur, Mr. M.L. Nehra, Commissioner, Municipal Corporation, Jodhpur, Mr. Ram Jeevan Meena, CEO, Municipal Corporation, Jodhpur, Mr. Mahesh Chand Sharma, Ex. En. Municipal Corporation, Mr. K.L. Mathur, S.E. National Highway, PWD, Mr. M.M. Fulwaria, Addl. Chief Engineer, PWD, Zone Jodhpur, Mr. Narpat Singh, Additional Commissioner of Police, Jodhpur, Mr. Jeevan Khan, ACP (Traffic-West), Jodhpur and Mr. Naval Kishore Rathore, DTO, Jodhpur, for the Respondent

Judgement

1. Several officers of various departments were present before the Court on the previous occasions and made assurances that all necessary steps as required by law shall be taken in all earnestness so as to regulate the movement of traffic in the city of Jodhpur and to start with, at least on the 15 main roads in priority. On 25.07.2012, despite noticing failure on the part of the authorities in keeping their words and assurances stated as back as on 31.05.2012, we deferred the matter to this date while believing on the submissions that they had indeed started executing some work in right earnest and would require about 19- 20 days" time to carry out the requirements of their duties so as to ensure smooth flow of traffic in the city of Jodhpur, particularly at the referred 15 main roads.

2. When the matter is taken up today, neither the situation can be said to have improved nor the assurances fulfilled. The learned amicus curiae M/s. Ashok Chhangani, Pankaj Sharma and Vipul Singhvi submit in unison that the authorities have not carried out what was required of them; and even a reasonable part of the assurance to ensure smooth flow of traffic in the city of Jodhpur, particularly at the 15 main roads, has not been fulfilled. The learned counsel Mr. R.S. Saluja, on the other hand, submits on behalf of the Municipal Corporation, Jodhpur that the work is being carried on. The learned Additional Advocate General Mr. G.R. Punia submits on behalf of the other authorities and departments that this is an on-going process and some work has, in fact, been done.

3. The submissions as orally made on behalf of the authorities/departments are of uncertain nature and it is apparent that they are not in a position to assert having attended on all their duties and having carried out major tasks so as to ensure smooth flow of the traffic in the city of Jodhpur.

4. Apart from the above, a strange fact has come to the notice that after the last date of hearing, i.e., 25.07.2012, when we granted about 20 days" time to the authorities to carry out the requirements, even the first meeting of the Traffic Control Board, established u/s 13 of the Jodhpur Development Authority Act, 2009 ("the Act"), took place only on 8th inst.

5. On the last date of hearing, we found that useless paper work was being done by the Jodhpur Development Authority ("JDA") in the name of the meetings of the Traffic Control Board as was apparent from the copy of the minutes of the two meetings dated 23.05.2011 and 28.02.2012. After commenting on the shortcomings and drawbacks relating to traffic control and yet granting time to do the needful, we expected that the Traffic Control Board constituted u/s 13 of the Act would start functioning for the purpose it has been constituted and its proceedings shall not remain mere paper proceedings. What to say of carrying out the requirements, even the meeting of the Traffic Control Board was held only on 08.08.2012.

6. We cannot help deducing that JDA and the Traffic Control Board have particularly shown total disinterest towards the requirements of the traffic control and management.

7. Further, when this matter was taken up in the first session sitting of the Court, one of the learned amicus curiae Mr. Vipul Singhvi submitted his comprehensive report No. IV and, inter alia, asserted that there had not been any such guidelines of the Indian Road Congress, wherein the proposition of fiber speed breakers could fit in. This was essentially in relation to the submissions made on behalf of the authorities on the last occasion in response to the question as to why at all such hazardous speed breakers were put on the roads. Mr. Singhvi also submitted that he made an application under the Right to Information Act on 06.08.2012 to the Information Officer of JDA seeking all the relevant information

in relation to the installation of fiber speed breakers that was yet to be answered. When we posed the question in that regard to the learned Additional Advocate General appearing on behalf of the JDA, he sought instructions from the Officer present in the Court. The Officer, holding the charge of Secretary, JDA instructed that she had not received any such application. Thereupon, the amicus curiae Mr. Singhvi was called upon to show the receipt and he placed for perusal the specific receipt and the counter-foil of the postal order to establish that he had indeed moved the application on 06.08.2012. The learned Additional Advocate General Mr. G.R. Punia, thereupon, sought some time to complete his instructions.

8. Then, the learned counsel Mr. R.S. Saluja was posed the question about the basic task of the Municipal Corporation, of ensuring cleanliness of the city and removal of garbage that itself is one of the obstructions in smooth flow of the traffic apart from being a health hazard. The learned counsel Mr. Saluja prayed for some time to complete his instructions and so also to advise the authorities properly.

9. As regards DCP (Traffic) who was also one of officers present on the last occasions, the learned AAG submitted that the Officer Shri Rahul Prakash is on leave; and Additional Commissioner of Police holding charge in his place has attended the Court today.

10. We expressed dissatisfaction over the manner of the dealing with the matter by the authorities where DCP (Traffic), who was one of the officers who made assurances on 25.07.2012 was not present today before the Court; when one of the Officers of the JDA wrongly attempted to contradict the learned amicus curiae; when the meeting of the Jodhpur Traffic Control Board was held only on 8th inst.; and above all, when the officers were not in a position to say positively about their carrying out the responsibilities as per the assurances given to the Court.

11. While we were expressing our dissatisfaction over the nonfunctioning of the local authorities, a shocking revelation was made by the learned amicus curiae Mr. Ashok Chhagani that a few of the officers, who were present before the Court on the earlier occasions and who made assurances to the Court, have since been transferred to different posts. Mr. Chhagani submitted that such transfers smack of arbitrariness and otherwise intentions. When we posed the questions in that regard, the learned AAG prayed for some time to complete his instructions.

12. In the above scenario, we had to express our displeasure that the officers who were parties to the assurances made to the Court have been transferred even when this matter is pending and when the transfers have been carried out without even informing the Court, what to say of seeking permission. The learned AAG Mr. Punia, again, prayed for some time to properly advise the concerned authorities and to complete his instructions.

13. Having regard to the circumstances, we deferred this matter until 4:30 p.m.

today.

14. Now, in the second session sitting of the Court, the learned Additional Advocate General Mr. G. R. Punia has, at the outset, placed before us a copy of the order as issued by the District Collector, Jodhpur today itself whereby the transferred persons namely, Mr. Harji Lal Atal and Mr. Jugal Kishore Meena, who were earlier functioning respectively as the Secretary, JDA and the Commissioner (Development) & Commissioner (Soorsagar), Jodhpur Municipal Corporation, have been directed to assume the additional charge of the respective posts in JDA and Municipal Corporation today itself.

15 Though we have our serious reservations on the transfer orders as issued in relation to the officers who were parties to the assurances made to the Court but we appreciate that our anxiety has been properly understood by the Government and today itself, the said Officers have at least been given additional charge of the same posts they were holding as on 25.07.2012. The learned AAG Mr. Punia also points out that another person who was regularly present before the Court and was one of the parties to the assurances made namely, i.e., Mr. Karni Singh, ACP (Traffic-East), has earned incentive promotion and has been transferred at his own request but he has not been relieved. In the circumstances of the case, we deem it appropriate to observe that the said officer may not be relieved until further orders of this Court and if at all he seeks to be relieved, proper application may be filed in this matter for consideration.

16. We find that several things are yet to be done by the authorities concerned for ensuring proper flow of traffic in the city of Jodhpur; and several officers have attended the Court and have made the assurances, which are required to be kept and fulfilled. Therefore, we make it clear that hereafter and until pendency of this matter, none of the officers, who were present before the Court on 25.07.2012 and are present before the Court today representing different authorities/departments shall be transferred without seeking specific orders from the Court in this petition.

17. So far Ms. Shashi Sharma, Secretary, Jodhpur Development Authority, who wrongly contradicted the learned amicus curiae is concerned, she has submitted an unconditional apology before the Court with the submissions that the application so filed at the "Single Window" of JDA was not put up before her. This apology itself gives rise to three different questions : (i) that if the so-called "Single Window" of JDA is at all functional when an RTI application moved as back as on 06.08.2012, has not even been placed before the concerned officer yet; (ii) that the JDA is otherwise showing scant regard to the requirements of the Right to Information Act; and (iii) that the officers would not pause even for a moment and would straightway contradict the statement made by the learned amicus curiae, a responsible officer of the Court.

18. It has happened twice over in this matter where an officer has attempted to contradict the amicus curiae without regard to the correct facts; of course, by

different officers qua different amicus curiae. We cannot help deducing that the tendency on the part of the officers is to deny or contradict whatever is stated by the amicus curiae as if it were an adversary litigation. It is poor show of respect by the officers towards the very system of the functioning of the Court.

19. Apart from the above, even while expressing our dissatisfaction that a meeting of the Traffic Control Board was convened only on 08.08.2012, when we requested the learned AAG to show us the copy of the minutes of the said meeting, Mr. Punia could only submit that he has with him a copy of the agenda items. When we asked for the responsible officer who had chaired the meeting, it was pointed out that the meeting was chaired by the Commissioner, JDA, who was not present before the Court.

20. It appears that some call was later on given to the said officer and he has now come before the Court. When we again posed the question about the minutes of the meeting, what could be gathered in response is that the same are still in the process of preparation. It gives a very sorry state of affairs; and so far the JDA is concerned, it does not appear to be at all serious to attend on its statutory duties. Even a little bit of sense of purpose would have ensured at least convening of the meeting of the Traffic Control Board immediately after the last date of hearing, i.e. 25.07.2012. When we inquired from the Commissioner, JDA, who lately appeared before the Court, of the reason of such delayed convening of the meeting of the Traffic Control Board, the statement was that 7 days' notice was required to be given to the members but on further questioning, it was stated that the notices were sent on 01.08.2012. On the question as to what was done for good 6 days after the date of hearing, i.e., 25.07.2012 before the notices of meeting were sent on 01.08.2012, we could only draw a blank in the answer.

21. We express thorough dissatisfaction over the manner of functioning of JDA.

22. It appears that though the Jodhpur Development Authority was created under the Jodhpur Development Authority Act, 2009 with the pious object that it would be the authority for the purpose of planning, co-ordinating, and supervising the proper, orderly and rapid development of the Jodhpur region; and it would also work for traffic management (vide Section 13 of the Act) but it has chosen to work in a totally improper and disorderly manner at a snail's pace; rather it has shown to be non-functional altogether.

23. It is noticed that the Traffic Control Board under JDA has been invested with several of the powers and so also has several of the duties to perform; and if such duties are properly attended at, several of the tasks could effectively be carried out. However, it appears that the Traffic Control Board is doing only the paper proceedings and nothing of substance. We deprecate the approach.

24. Apart from the above, so far the Municipal Corporation, Jodhpur is concerned, from the submissions regularly made by the amicus curiae and from uncertain responses coming up, we can only gather that a very little work has

been carried out and it, too, has failed to carry out its essential duties including those of maintaining civic amenities, which have direct co-relation with the settlement of the city and movement of traffic.

25. Though it appears that the Traffic Branch of the Police has, of course, taken up some of the work and has made the deployment so as to effectively man the relevant traffic points yet, as per the submissions made, much more is required to be done.

26. In the overall analysis, we could only say that substantial part of the requirements has not been carried out and the assurances as regularly made to this Court from 31.05.2012 onwards and particularly, the assurances as made on 25.07.2012 have not been fulfilled.

27. Having regard to the circumstances of the case, the apology furnished by Ms. Shashi Sharma, Secretary, Jodhpur Development Authority, Jodhpur is kept pending and shall be considered at the appropriate stage.

28. When we proposed to impose substantial costs to be personally recovered from the defaulting officers concerned, particularly those relating to the Jodhpur Development Authority, the Municipal Corporation and so also the Traffic Branch of the Police, the learned AAG Mr. Punia submitted that the authorities shall carry out all the requirements; and the assurances as made to the Court, particularly in regard to the 15 main roads, shall positively be carried out at the earliest; and that a last chance in that regard may be given.

29. The learned AAG Mr. Punia and so also the learned counsel Mr. R.S. Saluja submit that hitherto they had been making submissions so as to state the viewpoints and the position of concerned officers; and seeking time so that the officers may carry out the work while dealing with all the impediments in proper execution; and that some work has, of course, been done, may be not reaching the optimum level. However, the learned counsel submit that now onwards, the works would be carried out in all sincerity, more seriousness and right earnest; and on the next date, they would be able to make a positive statement before the Court on instructions from their respective authorities about the requisite tasks having been carried out; and else, they would not make any submission so as to seek any further adjournment. The learned counsel pray for some extra time looking to the current onset of the rains.

30. We appreciate that apart from the learned amicus curiae, the learned AAG Mr. G.R. Punia and the learned counsel Mr. R.S. Saluja appearing for the respective authorities have effectively applied themselves to the subject matter of this PIL and have, in a very responsible manner, properly advised their clients and so also have effectively assisted this Court. However, and at the same time, we express thorough dissatisfaction where the nonfunctional authorities have landed even the responsible counsel to make such nature statement before the Court so as to seek a last opportunity.

31. We hope that the anxiety of the Court, inclusive the learned amicus curiae and the learned AAG and the learned counsel for the Municipal Corporation, would be properly understood by all the concerned authorities.

32. Though we have tentatively reached to the conclusion that the system of Municipal Governance and so also the Urban Governance is heading towards failure in the city of Jodhpur and stern orders are required to be passed against the non-functional authorities yet, in view of what has been noticed and observed above, we extend a last opportunity to them to carry out their duties.

33. There is yet another application for impleadment moved today. In continuity of what has been observed on the previous occasions regarding prayers for impleadment, this application is also kept pending for the time being. This matter is deferred to 08.10.2012.