

(2024) 12 RAJ CK 1219

In the Rajasthan High Court, Jodhpur Bench

Case No : Civil Writ Petition No.18518 Of 2024

Suo Motu

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 03-12-2024

Acts Referred:

Citation : (2024) 12 RAJ CK 1219

Hon'ble Judges : Arun Monga, J

Bench : Single Bench

Advocate : V.L.S. Rajpurohit, Tanuj Jain, Mukesh Dave

Final Decision : Allowed

Judgement

Anoop Kumar Dhand, J

1. Verse 3.56 of Manusmriti says:-

“yatra n?ryastu p?jyante ramante tatra devat?? yatrait?stu na p?jyante sarv? statr?phal?? kriy??”

(Means: Where women are given due respect, even Gods like to reside there.)

2. The Right to Dignity and Decency ensure that every women is treated with respect and honour. This right protects women from any kind of harassment, abuse or violence that undermine their dignity. It is vital to create an environment where women can live and work without fear of discrimination and degradation.

3. Every women should live a life of respect, equality and decency, free from any kind of fear, force, violence and discrimination. According to Article 21 of the Constitution of India, every citizen, including women is entitled to the right to life and dignity.

4. Women are the backbone for any progressive nation. Ancient literature like Vedas, Brahmana, Upanishad, Grihya Sutra, Dharmasastra and Epics, Smritis and

Puranas have placed women with utmost respect and integrity. Earlier civilization evidence emphasised the status of women were at par with the men. In long-standing history of India, women always catered key role in the history of mankind.

5. In the era of globalization, when the civilization has reached into the 21st century and the status of women is still being defined by patriarchy society, the women are still fighting and finding to have a place in the society. There are various road-blocks that women, still in modern times, do face on daily basis these includes poor health, lack of washrooms and unhygienic environment in public and working places.

6. In spite of having several schemes, the Central as well as the State Governments have failed to discharge their duties in providing better facilities of building public toilets and distribution of sanitary napkins to the women, walking on the streets and working at their workplaces.

7. Lack of facilities, i.e., toilets for women, which is a basic necessity, can lead to several health issues to women.

8. Due to lack of toilet facilities for women or where toilets exist, but they lack in cleanliness, sanitation and hygiene, women tend to 'hold on' and defer urination until they can find a clean public toilet or till they reach home. Infact, at times, women do not drink water, when required to step out, with the fear that she may not have access to a clean and safe toilet. Medical science has shown that urinary tract infections, problems of distended bladders, and a range of other uro-gynecological problems are a consequence of deferring urination. For example, the chances of toxic shock from internal sanitary protection is increased, if there are no toilets available to change sanitary napkins/tampons when women are away from home. The long term effects of controlling the bladder is a matter which is medically recognized all over the world.

9. It is pertinent to note, that various studies and research have been conducted all over the world with respect to the issue in hand and all have emphasized the need for public toilets for women. The problems faced by women walking on the streets vis-a-vis toilets are universal. Public toilets used by women have to be user-friendly, sustainable, safe, clean, hygienic and children/senior citizens/disabled friendly. Toilet issues affect all 'users', but more particularly women, who comprise approximately 50% of the population. Men in general, have twice as much provision compared to women, as they have urinals, closets and a greater number of gents toilet blocks overall. The necessity for women to visit toilets is more and for a greater range of reasons, essentially because of biological differences. Women when they are out on the streets during the day, in connection with work, for shopping, or for carrying out other essential tasks, may find themselves without the benefit of a convenient place to visit a washroom/rest room/toilet, when they need 'to go' while away from home. The facilities as are available to women walking on the street are almost negligible and in no way

proportionate to the existing facilities vis-a-vis the women population. Not only are the basic infrastructure/facilities lacking, but even those provided are far from satisfactory. Infact, they are sub-standard. The toilet problems are further aggravated because of inappropriate locations, bad design, poor maintenance and management of existing facilities, lack of toilet attendants, water, electricity, security, safety, cleanliness and hygiene, etc. Limited opening hours, unequal distribution and inappropriate location of facilities result in people declaring 'there's never a public toilet when you want one'. Further, for a range of cultural, practical and safety reasons, women are less likely than men to go to unknown places to use a toilet. Working women often combine childcare and homemaking with work outside the home. This may result in different travel patterns. For example, for many women the 'journey to work' is not a single-destination trip but may consist of 'several stopovers' as they travel from home, to the childcare centres or to the school to drop the children, then to the office and on return, to child care centre/school/shops before returning home. There may be women who go out for field work in connection with their job, for a walk to a park/promenade; there may be women who go out to the market for their daily chores, women who take children to playground/parks, women who travel by buses/trains, etc. Women in general require toilets, including a greater number at different locations, which are frequented.

10. Clean public toilets contribute to the health and well being of the society. Need for clean toilets for women walking on the street cannot be ignored. The need for women toilets /washrooms / restrooms is felt even more acutely, during menstruation, when it is difficult to anticipate when it will be time to change a sanitary napkin (tampon or pad), resulting in frequent trips to the washroom. In addition, women often act as primary caregivers to the elderly, disabled, infirm and children, which may again require them to make supplementary trips to the restroom.

11. This Court may note here with anguish, that something which is the duty of the State Government and the local authorities to provide, is not provided, resulting in publication of following news item in news-paper 'Rajasthan Patrika' Jaipur Edition on 27.11.2024 with the title "Toilet Jane Ke Dar Se Kamkaji Mahilaye Kam Pe Rahi Pani".

The need to go to the toilet is completely natural, so that the body can eliminate and flush out all the excess and waste product that it does not need. An average bladder can hold more than two cups of urine/liquid and holding the bladder for a long period of time can stretch the bladder. Medically, the automatic feedback mechanism in the bladder sends a signal to the brain when it is full, which would then require the person to go to the nearest toilet. If for want of toilets, a woman is prevented from going to the toilet, the body loses its ability to know when it is time to go to the toilet. Apart from the same, the consequence of not going to the toilet and controlling the bladder results in urinary tract infection, kidney stone, interstitial cystitis and swelling of the bladder. Consuming liquids is an

important function for the human body, by which kidneys are cleaned and hence, regular expulsion of urine is essential to ensure that no residues, which the body does not require, are left in the body, leading to a host of other health problems.

12. The World Health Organization (WHO) of which India is a member, considers health of human beings, regardless of age, gender, socioeconomic/ethnic background as the most basic and essential asset. The preamble of the Constitution of the WHO, defines health as "a state of complete, physical, mental and social well being and not merely the absence of disease or infirmity". The preamble further states that "the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being, without distinction of race, religion, political belief, economic or social condition". The 1948 Universal Declaration of Human Rights also guarantees the right to a standard of living adequate for health and well being (Article 25). The right to health was again recognized as a human right in the 1966 International Covenant on Economic, Social and Cultural Rights (Article 12). 19th November is celebrated as a World Toilet Day and India is also a member of the World Toilet Organization, which was established with the aim of breaking the taboo around toilets and to address the sanitation crisis and for improving toilets worldwide. Since 2001, the Organization has lobbied Governments, public and private stakeholders, etc. to prioritize sanitation in the development agenda. The right to health is relevant to all States. India has ratified the International Human Rights treaty recognizing the right to health. Thus, the right to health is an inclusive right and the underlying determinants of health amongst other things includes adequate sanitation. The Apex Court has held in several cases that the right to life enshrined in Article 21 of the Constitution of India cannot be restricted to mere animal existence and it means something more than just physical survival. Right to live with human dignity is a fundamental right of every Indian citizen and includes the bare necessities. Article 47 of the Constitution of India casts a paramount duty on the State to take all the necessary steps to improve public health as among its primary duties. Similarly, as noted earlier, statutory duty/ obligations are also cast on the Municipal Corporations/ Councils/ Boards under the Rajasthan Municipalities Act, 2009 (for short 'Act of 2009'). Thus, what is evident is that the legislature has contemplated through these provisions, almost all that would be required to be performed by the State Governments and Municipal Corporations, in order to achieve the fulfillment of the fundamental right of a dignified human life. Simple and basic but of vital importance are public toilets, which are as critical as any large infrastructure project to make cities livable.

13. Women have the right to have safe and clean toilets at all convenient places, which in a way impacts their right to live with human dignity. One of the paramount duty of the State and the Corporations is to improve public health by providing toilets for women at all convenient places. The lack of toilets for women walking on the streets and public places is evident from the above news item.

14. Taking a serious note of the situation, this Court treat the newspaper report as a suo motu writ petition and direct the Registry to treat the newspaper report published in the Rajasthan Patrika Newspaper as a Public Interest Litigation titled as:-

Suo Motu: In the matter of Dignity, Respect & Honour Girls and Women.

Versus

1. Union of India through Secretary, Ministry of Housing and Urban Affairs, New Delhi.

2. Government of India through Secretary, Ministry of Women & Child Development, New Delhi.

3. State of Rajasthan through its Chief Secretary, Secretariat, Jaipur.

4. Department of Urban Development and Housing through its Principal Secretary, Secretariat, Jaipur.

5. Director, Local Bodies, Department of Local Self Government, Jaipur.

15. Issue show cause notices to the respondents as to why the following directions be not issued to them:-

(i) All Municipal Corporations/ Councils/ Boards shall formulate a comprehensive scheme for construction of toilets/urinals/restrooms/privies for women walking on the streets, working places, schools and public places. The respondents shall constitute a Committee (called hereafter as "the Committee") under the Chairmanship of the Commissioner/Additional Municipal Commissioner and the said committee shall include the concerned Municipal

Officers i.e. City Engineer, Officer in-charge of the Health Department, Officer in-charge of Women and Child Department, Chairman of the Standing Committee, women representatives belonging to NGO's working in the said field and few Women Municipal Councilors.

(ii) All Corporations shall constitute the aforesaid Committee. The Committee shall formulate a comprehensive scheme from the identification of the spot to construction of such toilets which shall include the management and maintenance of the toilets. The emphasis should not be on providing number of toilets on the basis of proportion of women population. The emphasis should be on providing proper facilities at the right places where they are needed the most. The Scheme may provide for private-public partnership for construction and maintenance of toilets. The Scheme may provide for payment of charges for the use of the facilities.

(iii) The Committee so constituted shall after conducting a survey, identify the locations for construction of such toilets for women walking on the streets, i.e. gardens, bus stops, rickshaw/taxi stands, crowded places, railway stations, Government/Municipal Offices, etc. after doing spot verification, so as to ensure

that the spot so chosen is practical, accessible, feasible and safe. Ideally, the facilities shall be made available by the side of the main roads, so identified. However, the same will depend on the facts and circumstances of each case, considering the availability and other relevant factors. E-toilets can be provided depending on the local situation.

(iv) The Committee shall take steps to have the toilet designed, keeping in mind the location of such toilets, which are sought to be constructed. The Committee must bear in mind that the place chosen has regular supply of electricity, adequate light during daytime, has adequate water and is safe. While designing the toilets, aesthetics and a clean and clear access should be ensured, as these toilets will be located at prime locations.

(v) The Corporations shall as far as possible try to install solar panels to cut down on the cost of electricity and shall endeavor to promote environmental friendly measures.

(vi) While designing the toilets, care shall be taken to ensure that there is proper ventilation and preferably natural light without compromising on the privacy, security and safety of women.

(vii) The new toilets shall be a separate unit with a separate entrance and be preferably at a distance from the men's toilets.

(viii) All such toilets apart from being provided with the basic facilities of continuous supply of water and electricity, shall also be provided with soap dispensers, mirrors, toilet papers, hand dryers, sanitary disposal dustbins, basins, normal dustbins and exhaust fans. As far as 'pay and use' facilities are concerned, sanitary napkins and tampons shall be made available on payment basis or alternatively, a dispenser for the same may be installed.

(ix) All cleanliness material for sweeping, swabbing, urinal disinfectants, phenyl, naphthalene balls, etc. which are required to keep the toilets clean shall be made available to the lady attendant in each of such toilets. Provision be made for storage of these materials.

(ix) Directions for proper use of toilets (signage) shall be displayed figuratively and in writing. The visual or figurative display shall guide the users to use the toilets in a proper manner, e.g., flush toilet after use; throw sanitary napkins/tampons in the sanitary hygienic bin; keep the toilet seat clean and dry; wash hands with soap after use; use hand dryer or paper towels; throw paper in dustbin, etc. The said visual/figurative display and writing shall be standardized in size, colour, logo, font, etc.

(x) A lady attendant should be deputed in each of such toilet, to ensure that the toilets are kept in a clean and hygienic condition. Toilets shall be protected by a trained woman security person in uniform who shall be available round the clock.

(xi) The timing and frequency of cleaning of the toilets will be determined by the

crowd flow. Similarly the frequency will depend upon the area and locality in which such toilets are situated. The toilets must and shall be cleaned at least every 1-2 hours depending upon the usage. The time at which the toilet shall be cleaned should be displayed. The lady attendant shall ensure that the floors of the toilets are kept clean and dry at all times.

(xii) The Corporations shall ensure that there is a Lady Caretaker/attendant in each of such toilets and that the said lady attendant/caretaker so appointed is adequately trained and certified to perform the task. The lady caretaker/attendant/security in-charge shall be preferably in uniform and shall be given a photo identity card with name and seal of the local authority, so that, she can be identified.

(xiii) The Corporations shall ensure that an inspection card is displayed daily which can be used for supervision and monitoring of daily maintenance of toilets.

(xiv) A register or billing system shall be maintained at each toilet to keep a record of the number of users as well as the payments made by the users.

(xv) The Corporations shall ensure cleanliness of toilets not only from within, but shall also ensure cleanliness in the peripheral areas i.e., around the toilet is maintained. Corporations must also ensure that the area outside the toilets is well lit, so as to ensure security and safety of the women using the toilets. If possible, Corporations may consider installing CCTV cameras outside the toilets so as to ensure that there is a check on miscreants, without compromising on the privacy of the users.

(xvi) The Corporations may also outsource the maintenance and cleanliness of the toilets to any housekeeping companies. The committee which is formed shall fix responsibility/accountability for gross failures in the implementation of the comprehensive scheme/plan decided upon or in maintenance of the toilets and facilities which have been provided.

(xvii) Clear Signage shall be displayed on major arterial roads close to where the toilet facilities are made available. It shall be ensured that the said signage's are easily visible and must be standardized in size, color, logo and shall be fluorescent for it to be identifiable at any time of the night.

(xviii) All Municipal Corporations are free to fix the charges for the 'Pay and Use' toilets which will be constructed. However, the Corporations to ensure that the charges are reasonable and not exorbitant, so as to dissuade women from using the same.

(xix) The Corporations shall make such toilets available where possible 24 × 7 or if this is not possible then from morning to night.

(xx) The working hours of the toilet and the user charges shall be displayed at the entrance of such toilets.

(xxi) All Corporations shall create a mechanism for inspection of such toilets. Any

member of the Committee i.e. lady member of the NGO/Lady Corporators/Civic Official/Committee member, shall conduct regular inspections/surprise inspections of such toilets at regular intervals, so as to ensure that the toilets so constructed are clean and hygienic and that all the facilities are being made available. The Corporations can constitute Ward Level Sub-Committees consisting of Officers, Citizens and representatives of NGO by making the Sub-Committee responsible for supervising the condition of toilets.

(xxii) A grievance redressal mechanism shall be set up by each of the Corporations. A telephone number/website shall be displayed in every toilet where a complaint/grievance can be lodged/made/photographs uploaded by the users of the toilet, to redress their grievance e.g. if toilets are unclean, flush is not working, latch is broken, leakages, etc. The complaints shall be received by the following methods: (a) Complaints in writing received at designated centres; (b) Complaints received through dedicated toll free number/s;

(c) Complaints received through dedicated website; and (d) Complaints received by text message via cell phones.

The Committee shall, in its Scheme, set out the time frame within which the grievance will be addressed/fixed, considering the exigencies of the situation.

Further an emergency number shall also be displayed in case of any danger/emergency. An emergency bell can be provided which can be used by the users in case of an emergency.

(xxiv) System of tracking shall be made available for citizens to track the action taken by the Corporation on the basis of the complaints received.

(xxv) All Corporations shall ensure that there is no defacement of the exterior or within the interior of such toilets.

(xxvi) When new toilets are constructed, Corporations shall ensure that the toilets cater to the needs of the disabled and as far as possible, there is one such toilet in every unit.

(xxvii) The Corporations in formulating its scheme must set out its long term plan for construction of such toilets and shall submit the audit reports every year. The regular audit report must contain, the budget allocated for construction of such toilets, the expenditure incurred with breakup of costs of various materials, fixtures etc. After completion of construction of the new toilets, reports be submitted to the Committee, with regards to the expenditure funds incurred on the maintenance, repairs, payments to security personnel and housekeeping companies.

(xxviii) The Committee shall in its Scheme, device a mechanism for accountability for failure to keep the toilets in a clean and hygienic condition. The Committee can also introduce in its Scheme, incentives/awards for toilets which maintain the highest standards of cleanliness and hygiene.

(xxix) The Corporations to ensure that there is no lapsing of the budgetary provisions sanctioned for construction of such toilets. Corporations shall endeavor to involve companies in construction and maintenance of such toilets and may formulate a separate scheme with involvement of such companies under the Corporate Social Responsibility (CSR)/Public Private Partnership (PPP).

(xxx) The Corporations shall make an endeavor to put up the locations as well as facilities of toilets which are made so available on the internet services, making it helpful to all women as well as women tourists with regard to the exact location of toilets and directions to the same.

(xxxi) The Municipal Corporations shall give wide publicity, repeatedly, to the provision of public toilets for women in all leading newspaper as well as on electronic media.

16. Let a report be summoned from the Chief Secretary of the State of Rajasthan; the Secretary of the Ministry of Housing & Urban Affairs, New Delhi, about the effective steps taken by the State and the Union on the issue involved in this petition.

17. This Court requests Ms. Radhika Maharwal, Ms. Supriya Saxena, Ms. Sarah Sharma, Advocates; Ms. Mahi Yadav, Additional Advocate General; and Ms. Manjeet Kaur, Standing Counsel for UOI to assist the Court on the issue involved in this petition. Names of the respective counsel and their associates be reflected in the cause title.

18. Counsels, other than State and Union of India, would be paid remuneration by the Rajasthan State Legal Services Authority, Jaipur (RSLSA), as per Rules.

19. Let a copy of this order be sent to the respondents, RSLSA and all respective counsels for necessary compliance.

20. Appropriate directions would be issued to the respondents on the next date of hearing. List on 07.01.2025 before the appropriate Bench.