
(2012) 05 RAJ CK 0026

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 1088 of 2011

Vimal Chaudhary

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 31-05-2012

Acts Referred:

Environment (Protection) Act, 1986 — Section 25
Rajasthan Municipalities Act, 2009 — Section 226, 227, 228, 229, 230

Citation : (2013) 1 CDR 233 : (2013) 3 RLW 2734

Hon'ble Judges : Arun Mishra, C.J; Mahesh Bhagwati, J

Bench : Division Bench

Advocate : Vimal Chaudhary, Party in Person and Mr. Pramod Srivastava, Commissioner Health, Municipal Corporation, Jaipur, for the Appellant; S.N. Kumawat, AAG for the State of Rajasthan, Mrs. Naina Sarraf, Counsel for the Municipal Corporation, Jaipur, Mr. L.N. Soni and Party-in-Person, for the Respondent

Judgement

Mahesh Bhagwati, J.—Challenge in this intra Court appeal is to the order dated 19.4.2011, whereby the learned Single Judge disposed of the writ petition issuing directions to the respondent-Municipal Corporation, Jaipur with regard to maintaining the cleanliness in the cities i.e. within the jurisdiction of the local authority so as to fulfill the statutory obligations. Shorn of unnecessary details, the facts of the case giving rise to this special appeal are that the petitioner Vimal Chaudhary, Advocate filed a writ petition beseeching to direct the respondents to ensure a complete and regular cleaning of the locality; to determine the strength of scavenging staff according to the need of present scenario of the city taking into consideration the increasing population etc.; to determine and notify the points in locality for collection and transfer of garbage; to prevent and abate the nuisance caused by straying of pigs on streets and various places in the locality namely Ganesh Nagar; for initiating action against throwing garbage including plastic and other waste material on the roads/streets and easing in open space adjacent the hillock Moti Doongri; and to enforce the

provisions contained under Sec. 247 to 249 of The Rajasthan Municipalities Act, 2009 against the persons committing offence thereunder.

2. During the pendency of writ petition, the learned Single Judge issued directions on 18th February, 2011 that the Chief Executive Officer of Jaipur Nagar Nigam shall appear before the Court along with the plan and file an affidavit. Pursuant to the directions issued by the learned Single Judge, the Chief Executive Officer of Municipal Corporation, Jaipur Mr. Mahaveer Prasad Swami, filed an additional affidavit, stating that in all for 77 wards of Jaipur, three tier system is adopted for cleanliness of the city. Areawise workers are deputed, who after cleaning the roads and Nalies of the area, collect all the filth, dirt and garbage manually and lift them in handcart (wheel barrows) to the local garbage depot and from where garbage is being collected by the Department through contractor and transported to the dumping yard at Sewapura/Mathuradaspora and also to Langariyawas for processing. At present the area of municipal limits is divided into 8 zones. In every zone One Commissioner, one Health Officer and one or two Chief Sanitary Inspectors are posted. Ward wise Sanitary Inspector and Jamadars are also posted to monitor the cleanliness. Presently 5644 permanent Safai Karamcharies are working. In addition to the permanent Safai Karamcharies, 960 contract Safai Karamcharies are also engaged for the cleanliness of the city. The cleaning work is monitored by Jamadars at first phase, then by Sanitary Inspector/Chief Sanitary Inspector/Health Officer and thereafter by the Zone Commissioner. One officer at Head Office is designated as Commissioner (Health) to monitor the cleaning system in the city. The inspection is also done by other officers posted at headquarter. Approximately 900 MT of garbage/solid waste is transported daily to the dumping/trenching ground from all areas of the city and then to the garbage processing plant which is installed at Langariyawas, which processes 350 tonnes per day municipal solid waste to produce 100 TPD fine shredded Refuse Derived Fuel (RDF). He is also found to have endeavoured to submit that the Jaipur Municipal Corporation prepared a proposal and sent it to the Government on 18.12.2010 and 24.2.2011 to provide necessary funds worth Rs. 1387 lakhs for the purpose of modern equipments, machineries and facilities for lifting and eventual disposal of garbage in the city. Certain specific steps taken by the Municipal Corporation for effective management of cleanliness were also enumerated viz. short listing the financially and technically sound entrepreneurs involved in the work of solid waste management on public private partnership/DBOOT basis for 40 wards of Jaipur City and other major towns of Rajasthan, which included components of Door to Door garbage collection, storage, transportation, processing and disposal in accordance to Municipal Solid Waste (Management and Handling) Rules, 2000.

3. In the light of the additional affidavit filed by Chief Executive Officer, the learned Single Judge of this Court vide order dated 3rd March, 2011 asked the petitioner to implead Rajasthan State Pollution Control Board through its Secretary, Jhalana Doongri, Jaipur and file the amended cause title and the counsel appearing for Rajasthan State Pollution Control Board in other connected

matters was asked to file an additional affidavit stating as to what steps were being taken by the Board for implementing the Municipal Solid Waste (Management and Handling) Rules, 2000. The District Magistrate was also directed to file his affidavit stating as to what steps had been taken so far by him for implementation of the above mentioned Rules of 2000. The respondent Nagar Nigam was directed to produce the record relating to the action taken by it against the officials/its employees who were found guilty of dereliction of their duties for not taking proper steps for cleanliness of the areas under their jurisdiction and furnish details of prosecution, if launched any.

4. Having gone through the directions issued by the learned Single Judge on 3rd March, 2011 and the contents of additional affidavit filed by Mahaveer Prasad Swami, the learned Single Judge decided the writ petition vide order dated 19th April, 2011 with the following directions:

The petitioner and like minded persons can, therefore, contribute by constituting awareness groups in the various localities to spread the message of keeping the environment clean and pollution free by educating the people in their locality of placing the garbage from their house holds at the appropriate place and not throw it out on the street and in the open spaces. This would not only keep the surroundings in the localities clean, but also assist and make task easier for the short force of Safai Karamcharies in keeping the city clean so as to avoid any health hazards as a consequence of polluted and dirty environment and surroundings.

It would be the duty of the Municipal Commissioner and the Supervisory Staff under them to take round every morning to inspect and see whether or not the Safai Karamcharies and the agencies involved for the purposes of collection of the garbage have in fact carried out the tasks. If anybody is found violating the norms and the rules or creating any kind of nuisance, necessary action in accordance with the provisions of law should be initiated against such violators, which is the duty of the officials of the municipalities.

At the time of the inspection to be carried out by the Supervisory Staff and the Commissioners, it would also be the duty of the Ward Members to accompany such Commissioners and staffs to ensure that in their respective jurisdiction and areas the tasks of keeping the city clean has been performed to the satisfaction of all concerned.

5. Aggrieved with the said order dated 19th April, 2011 of the learned Single Judge, the petitioner-appellant has preferred this appeal.

6. During the pendency of appeal, the appellant has also submitted the suggestions, which are as under and a copy whereof has been supplied to the counsel for the respondents:--

4. That in earlier days in Jaipur, single tier system was in vogue for sweeping the city, this is the practice being followed all over the country. Even today, under

one tier system only one person is responsible for the total cleanliness of the concerned area i.e. the cleanliness of the roads, surface drains and collection of garbage. The cleanliness of the city has gone to dogs, since the introduction of three tier system. Under the three tier system three persons are employed, one each for sweeping the road, cleaning the drains and collecting the garbage. In the system even if one person goes absent, this is what generally happens, the whole system collapses and no particular employee can be held responsible for the same. It is, therefore, necessary that only one person should be made responsible for the total cleanliness for allotted area to him. Therefore, Single Tier System should be adopted.

5. That the Municipal Corporation, Jaipur has also adopted beat system which is totally impractical and it breeds corruption, because in this system there is no record maintained of the persons who are actually working in sweeping work, as what is maintained in the record and verified is the figurative number of persons.

6. That the work should be distributed between the sweeping staff on the work oriented basis in place of labour oriented.

Supervisor/Jamadar should frequently be transferred from ward to ward. All the 79 elected members of Valmiki Federation of Municipal corporation, Jaipur should also be assigned their jobs in different wards and they should also be transferred in other wards.

7. That littering of Municipal Solid Waste should also be prohibited in the city and door to door collections system should be started in the entire city and the Municipal Corporation, Jaipur can charge reasonable amount for the aforesaid purposes.

8. That cleaning of the streets should be carried out on a daily basis including Sundays and public holidays. The staff should be appointed on the basis of 7 days.

9. That garbage depot should be identified and the covered bins should be put up at the depot and bins should also be washed at-least once a week.

10. That Civil Engineers/Environmental Engineers should be appointed to look after the roads, street lights, parks, sewerage lines, illegal construction work and they should be responsible for the aforesaid work. The Health Officers (MBBS Doctors) should be replaced from the Engineers and their functions should be for taking preventive health measures and in case of non performance of the above noted act/action they should be punished in accordance with law.

11. That Mobile Sanitation Courts should be established to punish on the spot, the offenders violating the sanitation laws and civic instructions for keeping the city clean.

7. Heard learned counsel for the parties and carefully perused the relevant material on record including the impugned order.

8. Learned counsel Mr. Vimal Chaudhary canvassed that impugned judgment/order dated 19th April 2011 rendered by the learned Single Judge was perverse and ex-facie evident of non application of judicial mind to the law and the facts and circumstances of the writ petition. If they are unable to agree, they should refer it to a Larger Bench. The learned Single Judge sans observing any respect to the fundamental right to life and liberty to the people passed the order cursorily and did not command the respondents to perform their statutory duty as also functions entrusted to them under The R.M. Act, 2009 by way of issuing mandamus. Learned counsel Mr. Chaudhary while reiterating the averments made in the writ petition as also the suggestions put forth by him, further contended that in earlier days in Jaipur, single tier system was in vogue for sweeping the city. This is, in-fact, the practice being followed all over the country even today, but the Corporation has introduced three tier system, which is ineffective, insufficient and not feasible for the simple reason that if one person remains absent, which usually happens, the whole system collapses and no particular employee can be held responsible for not cleaning the roads, streets, surface drains and the collection of garbage etc. Hence, this three tier system of cleaning the city should be parted with and the old, one tier system should be revived so as to hold one particular employee responsible for not discharging his duties sincerely and efficiently.

9. Single Tier System is suggested in the Manual on Municipal Solid Waste Management prepared by the Expert Committee constituted by the Government of India, Ministry of Urban Development, New Delhi.

10. Learned Additional Advocate General Mr. S.N. Kumawat as also learned counsel appearing for the Corporation, albeit agreed to follow the rest of the suggestions made by Mr. Vimal Chaudhary Advocate, but gainsaid to follow the one tier system for cleaning the city. Learned counsel Mrs. Sarraf further contended that this three tier system is based on the provisions of law, as prescribed under the R.M. Act, 2009. Hence, except adopting one tier system, rest of the suggestions put forth by petitioner Mr. Vimal Chaudhary shall be Followed.

11. Needless to say that Municipal Corporation, Jaipur is under a statutory obligation to scavenge and clean the city of Jaipur. It is mandatory for the Corporation to collect and dispose of the garbage/waste generated from various sources in the city. We have no hesitation in observing that the Corporation has been wholly remiss in the performance of its statutory duties. Apart from the rights guaranteed under the Constitution, the residents of Jaipur have a statutory right to live in a clean city. This Court is justified in directing the Corporation to perform its duties under the law. It is revealed that there are in all 77 wards in Municipal Corporation, Jaipur, wherein 60,00,000 (sixty lacs) people have been residing presently in the area of municipal limits. The municipal limits have been divided into 8 zones. In each zone, one Commissioner, one Medical Officer and one or two Chief Inspectors are posted. Presently, only 5644 permanent workers

have been working, whereas 8000 workers are required in proportion to the population of Jaipur. It is also revealed that only 51 Inspectors and 11 Chief Inspectors are available for 77 wards. In addition to the permanent employees, 960 contract workers have been engaged to clean the city. This statistics has been supplied by Shri Mahaveer Prasad Swami, the then Chief Executive Officer, Municipal Corporation, Jaipur in his affidavit. In the said affidavit, Mr. Swami also stated that in all these 77 wards of Jaipur, three tier system was adopted for cleaning the city. It is revealed that areawise workers were deputed, who after cleaning the roads and nallas of the area, collected all the filth, dirt and garbage and lifted them to the garbage depot, from where the entire garbage being collected by the Contractor and transported the same to the trenching ground. This work of cleaning is being monitored by Jamadars at the first instance and thereafter by the Inspectors/Chief Inspector/Medical Officer and then by the Zone Commissioners. Mr. Swami also submitted in the affidavit that Jaipur Municipal Corporation had been taking all the necessary steps under The R.M. Act, 2009 to keep public streets, places clean and also keeping out all the quadruped animals from the present resource available in the Corporation. Mr. Swami assured that as soon as the required necessary funds/modem equipments would be provided by the State Government, the Jaipur Municipal Corporation would improve the system of cleaning the city. At this stage, it is relevant to emphasize that non-availability of funds, inadequacy or insufficiency of staff, insufficiency of machinery etc. cannot be pleaded as grounds for non performance of their statutory obligations.

12. In Municipal Council, Ratlam Vs. Vardichan and Others, , the question before this Court was whether the order of the trial Court as upheld by the High Court directing the Ratlam Municipality to draft a plan within six months for the removal of nuisance caused by the open drains and public excretion by the nearby slums dwellers could be sustained. Hon''ble Mr. Justice Krishna Iyer, the then Judge of Hon''ble Apex Court dismissed the appeal of the municipality and held as under:

Why drive common people to public interest action? Where Directive Principles have found statutory expression in Do''s and Don''ts the Court will not sit idly by and allow municipal government to become a statutory mockery. The law will relentlessly be enforced and the plea of poor finance will be poor alibi when people in misery cry for justice. The dynamics of the judicial process has a new "enforcement" dimension not merely through some of the provisions of the Criminal Procedure Code (as here), but also through activated tort consciousness. The officers in charge and even the elected representatives will have to face the penalty of the law if what the Constitution and follow-up legislation direct them to do are defied or defied wrongfully. The wages of violation is punishment, corporate and personal.

13. Reminding the State Government of its duties under the constitution of India, Justice Krishna Iyer observed as under:

We are sure that the State Government will make available by way of loans or grants sufficient financial aid to the Ratlam Municipality to enable it to fulfill its obligations under this order. The State will realise that Art. 47 makes it a paramount principle of governance that steps are taken "for the improvement of public health as amongst its primary duties". The municipality also will slim its budget on low priority items and elitist projects to use the savings on sanitation and public health. It is not our intention that the ward which has woken up to its rights alone need be afforded these elementary facilities. We expect all the wards to be benefited without litigation.

14. As laid down by Hon"ble Apex Court in Ratlam Municipality (supra), when statutory laws have been enacted for keeping the city clean by the municipality, they cannot be permitted to be made mockery for want of fund. The State Government as well as Municipal Corporation are bound to canalize the funds for these purposes.

15. It is, no doubt, true that financial resources are needed for providing the facilities, but at the same time, it cannot be ignored that it is the constitutional obligation of the State to provide hygienic environment and healthy services to the people. Whatever is necessary for this purpose has to be done. The State cannot avoid its constitutional obligation in this regard on account of financial constraints. It is necessary that a time bound plan for providing the hygienic environment should be chalked out by the Corporation keeping in view the directions issued by the Court from time to time and suggestions made by the appellant Mr. Vimal Chaudhary.

16. It would be useful at this stage to examine the relevant provisions of Rajasthan Municipalities Act, 2009.

Section 45. Core Municipal functions.--(1) It shall be the duty of every Municipality to make reasonable provision and proper arrangement for the following matters within the municipal area, namely:--

a) public health, sanitation, conversation, solid waste management, drainage and sewerage, cleaning public streets, places and sewers, and all spaces, not being private property, which are open to the enjoyment of the public, whether such spaces are vested in the Municipality or not, removing noxious vegetation and abating all public nuisances.

b) removing filth, rubbish, night-soil, odour, or any other noxious or offensive matter from privies, latrines, urinals, cesspools or other common receptacles for such matter in or pertaining to a building or buildings;

c) lighting public streets, places and buildings;

d) extinguishing fires and protecting life and property when fire occurs;

Section 226 speaks of the duty of Municipality in respect of solid wastes, management and handling. Section 227 envisages the entrustment of

management and handling of solid wastes and billing and collection of charge. Section 227 suggests that solid waste is the property of Municipality. Section 229 is with regard to appointment of places for the disposal and final disposal of solid wastes.

17. There is also prohibition for littering or depositing at any public place any solid waste. Section 232 of R.M. Act, 2009 postulates as under:

232. Prohibition.--No person and no owner or occupier of any land or building shall--

(a) litter or deposit at any public place any solid waste,

(b) deposit building rubbish in or along any public street, public place or open land

(c) allow any filthy matter to flow on public places, or

(d) deposit or otherwise dispose of the carcass or any part of any dead animal at a place not provided or appointed for such purpose.

18. Under Sec. 233 of R.M. Act, punishment for littering on streets and depositing or throwing any solid waste has been provided. Thus, Secs. 226 to 233 of R.M. Act are related with the solid waste management and handling. The Ministry of Environment and Forest also issued Notification dated 25th September, 2000 for regulating the management and handling of the municipal solid waste under Sec. 25 and 36 of Environment Protection Act, 1986 and the Rules made thereunder. Detailed directions are found to have been given to all the State Government and the Municipal Corporations for handling the solid waste management as per Schedule-I and Schedule-II. Pursuant to the aforesaid Rules, a Manual on Municipal Solid Waste Management has also been issued by the Ministry of Urban Development, Government of India, which was prepared by the expert committee constituted by the Government of India, Ministry of Urban Development. The above noted Committee observed that solid waste management was one of the essential obligatory functions of the urban local bodies in India. A complete guideline has been incorporated in the Manual. Chapter-XI of the Manual is related to the street cleansing.

19. It is also seen that blockage of the drainage system is also contributing for the uncleanness of the city. It is necessary that drains are cleaned every day and wherever they are not, a scheme be prepared for the proper drainage system.

20. Bio Medical waste's propensity to encourage growth of various pathogen and vectors and its ability to contaminate other non-hazardous/non - toxic municipal waste jeopardizes the efforts undertaken for overall municipal waste management. The Bio-medical Waste (Management and Handling) Rules, 1998 notified on 20th July, 1998 provides uniform guidelines and code of practice for the whole nation. It is clearly mentioned in this rule that the "occupier" of an

institution generating biomedical waste shall be responsible for taking necessary steps to ensure that such waste is handled without any adverse effect to human health and the environment.

21. We also consider that there should be sanitation Courts in order to ensure compliance of the various provisions of the Municipality Act and taking appropriate action against the offenders. We are sure that if these mobile sanitation Courts work effectively, they can be of great help of having a clean city and Jaipur can emerge as a unique hygienic city in the country, touching the parameters of international standard. The State should consider for setting up four Mobile Sanitation Courts each in the North, South, East and West circle of Jaipur City.

22. Learned counsel Mr. Vimal Chaudhary took us through the Manual on Municipal Solid Waste Management issued by the Ministry of Urban Development, Government of India and canvassed that it was appalling that despite there being detailed guidelines issued by the Government of India, the Municipal Corporation, Jaipur has yet not commenced the work of cleansing the city.

23. In the light of the afore-stated facts and circumstances and also keeping in view the suggestions made by learned counsel assisting us in the instant special appeal, we issue the following directions:

- i) We direct the respondent No. 2 to ensure complete and regular cleaning of the locality namely Ganesh Nagar situated at eastern side of Moti Doongri Hillock of Tilak Nagar, Jaipur.
- ii) We direct the Municipal Corporation, Jaipur to adopt single tier system to sweep the streets and roads, clean the drains and collect the garbage and transport the same to the trenching ground, as suggested in Manual on Municipal Solid Waste Management, so as to hold them responsible for the non performance of the task.
- iii) Keeping in view the increasing population and rapid industrial growth of the city, we direct the respondent No. 2 to increase the strength of scavenging staff to the tune of minimum 8000 as per the need of the hour.
- iv) We direct the Municipal Corporation, Jaipur to deploy 100 sanitary workers in each ward to clean the streets and the roads under the supervision of two Inspectors and one Chief Inspector.
- v) We direct the respondent No. 2 to prevent abadi nuisance caused by straying of pigs on streets and places in any ward of municipal limits.
- vi) We are given to understand that the area of municipal limits has been divided into 8 zones.

Hence, we direct to appoint one Commissioner and one Medical Officer in each zone and the said Commissioner and the Medical Officer shall be accountable for the work done by the 100 sanitary workers under the supervision of two

Inspectors and one Chief Inspector.

vii) We further direct that the Sanitary workers shall go from door to door in their respective wards and collect all the filth, dirt and garbage from there and after collecting the same lift to the specified garbage depot and, transport the same on the very same day to the trenching ground. If sanitary employees, the Inspector, the Chief Inspector of the respective ward fail to discharge their duties with regard to cleaning the roads and streets each day, they shall be subjected to disciplinary action and the Inspectors and Chief Inspector monitoring their job shall be immediately taken to task for their failure in discharging their supervisory duties.

viii) We direct the Municipal Corporation, Jaipur to get the roads and streets clean every day including Sundays and public holidays.

ix) We direct the State Government to implement the Bio-medical Waste (Management and Handling) Rules, 1998. We further direct the Municipal Corporation, Jaipur to issue notices to all the private hospitals, nursing homes, hotels to make their own arrangement for the disposal of their garbage and hospital and hotel wastes. They be asked to construct their own incinerators. In case, these hospitals and hotels are permitted to use facilities (for collection, transportation and disposal of garbage) provided by the Corporation, then they may be asked to pay suitable charges for the services rendered in accordance with law.

x) The Municipal Corporation, Jaipur is also directed to construct or install additional garbage collection centres in the form of dhalao, trolley or steel bins within three months.

xi) We direct the Municipal Corporation, Jaipur to educate the residents of Jaipur through media i.e. Doordarshan, ETV Rajasthan, various Radio Stations and local newspapers by way of announcements and advertisements in the localities that they shall be liable for penalty in case they violate any provision of the Act in the matter of collecting and disposal of garbage and other wastes.

xii) We also direct the Doordarshan through its Director General to undertake a programme of educating the residents of Jaipur regarding their civic duties. That can be possibly done by making appropriate announcements displayed on the television. They can be informed about the penalties, which can be imposed under Sec. 298, 299, 300 and 303 of R.M. Act, 2009.

xiii) We direct the Chief Executive Officer of Municipal Corporation, Jaipur to take severe action against the Incharge Commissioner, Incharge Medical Officer of the respective zone and Incharge Chief Inspector and Inspector of the respective ward, where they are found to have been engaged in not discharging their duties and if the complaints with regard to not cleaning the roads and the streets and not collecting the dirt, refuse, rubbish and garbage are received from the residents of respective wards.

xiv) We also direct the State Government through their respective appropriate Principal Secretaries to consider the request from the Municipal Corporation, Jaipur for financial assistance in just and fair manner to enable the Municipal Corporation, Jaipur to fulfill their obligations under the law as directed by us.

xv) We direct that a scheme be prepared for the cleanliness of the drains, wherever they are and where drainage are not provided, let apprehensive scheme be prepared by the Corporation, within a period of three months. We, therefore, direct the respondent No. 2 to clean all the drains before the monsoon in the city arrives.

xvi) We direct the State Government to consider for setting up of Mobile Sanitation Courts to punish offenders on the spot, who violate the sanitation laws and civil instructions for keeping the city clean.

24. We are sanguine that these directions shall be carried out by both the Municipal corporation, Jaipur as also the State Government in letter and spirit as the cleaning of Jaipur city is an every day phenomena. Hence, the act of cleaning the city being continuing one, the disobedience of the aforesaid directions by the Municipal Corporation, Jaipur shall give rise to each fresh cause of action and the appellant is granted liberty to file the contempt petition against the responsible officers in this Court for flagrant disobedience of the directions of this Court issued in the instant appeal. Let State Government to take steps for implementation of the Rules.

25. Compliance of the directions be reported to this Court within a period of three months. In every three months, the case be listed before the Court for the purpose of monitoring the progress and compliance of directions. The instant appeal stands disposed of with the afore-stated directions.