(2008) 12 P&H CK 0063

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 16438 of 2006

Viresh Shandilya — APPELLANT

Vs

State of Haryana and Others — RESPONDENT

Date of Decision : 10-12-2008

Acts Referred:
Constitution of India, 1950 — Article 21, 243W, 243X, 243Y

Citation : (2009) 2 ILR (P&H) 400

Hon'ble Judges : T.S. Thakur, C.J;Surya Kant, J

Bench : Division Bench

Advocate : Atul Lakhanpal and N.P.S. Kohli, for the Appellant; Rameshwar Malik, H.S. Sidhu, A.A.G.s and Rajesh Garg, for Union Territory of Chandigarh, for the Respondent

Judgement

Surya Kant, J.—This order shall dispose of CWP Nos. 16438 and 16084 of 2006 as also CWP No. 14803 of 2007. The Petitioner in CWP Nos. 16438 of 2006 and 14803 of 2007, describes himself as President of the Anti-Terrorist Front of India which is stated to be a registered body dedicated to the cause of fighting and eradicating terrorism which, according to the Petitioner, has taken shape of a global menace. In these writ petitions filed in public interest, the Petitioner seeks directions to the Respondents to take instant remedial measures to prevent and treat the dreaded disease of dengue fever, Diarrhoea, gastroenteritis and cholera which are alleged to have spread like epidemics in Ambala City and the entire district of Ambala due to pitiable unhygienic conditions, specially due to accumulation of polluted/contaminated water.

2. The Petitioner''s grievance is that due to apathy and sheer negligence of the Local Administration, District Ambala has fallen a prey to the dreaded dengue fever which had initially broken-out in Delhi in October, 2006 and soon thereafter spread-over to the adjoining States. Relying upon several photographs and the new reports, the Petitioner accuses the authorities of turning a blind eye to the heaps of garbage and accumulation of contaminated water in every nook and

corner of Ambala City, which have become breeding centres for mosquitoes. Pointing an accusing finger at the public servants as to how they indulge in self-service only it is alleged that the ''malathion-fogging'' has been done only in the areas where the Deputy Commissioner and the Senior Superintendent of Police reside, leaving the rest of the city at the mercy of the mosquitors. The Petitioner has further alleged that no Municipal Representative has ever turned up to take stock of the garbage, open pot-holes filled with contaminated water or sewage spilling and other related problems and his own efforts to meet the Deputy Commissioner, Ambala to apprise him of the alarming situation created by the spread of dengue fever, have also met with no success. The Civil Hospital, Ambala City is stated to have no separate and proper Ward for admitting dengue patients and most of the patients were being referred to the PGIMS, Chandigarh.

3. Since the State of Punjab and the U.T. Chandigarh were no exception in the matter of reporting of dengue fever cases, the Motion Bench enlarged the scope of these proceedings and issued notices to these entities as well.

4. In CWP No. 14803 of 2007, the Petitioner has pointed out that there was an out-break of Diarrhoea, gastroenteritis and malaria in District Ambala on 14th September, 2007 owing to the reasons like supply of filthy and polluted/ contaminated water which was unfit for human consumption. According to the Petitioner, in most part of the City and the Contonment area water pipes are running parallel to the sewerage lines/pipes and since the water pipes have already outlived their lives and have not been replaced for the past many years, the sewerage-filth gets mixed up with water lines and is instrumental in the out-break of the deadly diseases. Various news-items placed on record have reported some unfortunate deaths due to gastroenteritis and over 210 patients having been hospitalized. The Petitioner has also placed on record the photographs (Annexures A-l to A-4) depicting the broken, rusted, leaking and pathetic condition of the water-supply pipes in Ambala City as also heaps of garbage containing largely non bio-degradable items like the polythene bags in many open areas, with contaminated water spread all over the place.

5. The third writ petition, i.e., CWP No. 16084 of 2006 alleges that notwithstanding the tall claims made by the U.T. Administration that Chandigarh is the most clean and beautiful city of the country, its adjoining villages, namely, Kansal and Kaimbwala suffer from all kinds of basic amenities. The photographs on record reveal the pathetic condition of the public sewer system in these villages as the open and stinking drains are clogged with garbage, polythene and plastic.

6. In response to the notice of motion in the first writ petition, a counter affidavit has been filed on behalf of Respondents No. 1 to 3 by Dr. O.P. Arya, Civil Surgeon, Ambala, who besides explaining the causes of dengue fever, ends up with the usual chorus that:(i) disease surveillance has been carried out by health workers during their domiciliary visits; (ii) blood samples of 5 suspected dengue cases have been collected at the General Hospital and found negative upon

serological tests; (iii) ''Malathion-fogging'' has been done in and around 50 houses; (iv) weekly anti-larval operations are being carried out in Ambala City and Cantt,; (v) sufficient stock of medicines, equipments and rapid test facilities are made available in the General Hospital, Ambala City/other hospitals and that Health Education and Case management is being regularly monitored.

7. Denying the Petitioner''s allegations, the Civil Surgeon in his counter affidavit has explained that besides the "Officers'' Colony", malathion-fogging has been done in Vivek Vihar, Judicial Complex, Kalpana Chawla Polytechnics, Bank Colony, Mathura Enclave, Mathura Nagri, Preet Nagar, Jawahar Nagar, Civil Line and Inder Nagar also. The District Administration and the Hospital authorities are stated to be ready to meet any eventuality in case more dengue cases are reported.

8. Dr. Veena Chugh, Director Health Services (Malaria), Haryana has also filed a short affidavit in which, besides adopting the reply filed by the Civil Surgeon, Ambala, she has disclosed that 208 confirmed dengue cases had already been reported in the State out of which 5 deaths have occurred. She has also enclosed copies of the guidelines/instructions issued by the Directorate to all the municipalities in the State of Haryana for integrated vector management for control of dengue, Chickungunya, etc.

9. Another reply affidavit has been filed by Dr. Manjit Singh Bains, Director Health Services, Chandigarh explaining the budget allocation to his Directorate under the National Vector Borne Diseases Control Programme to prevent and control Malaria, Fileria, Dengue, Chikungunya, Japanese Encephalitis and Kala Azar in the U.T. Chandigarh and the manner in which the same has been spent by the Directorate.

10. Similarly, Dr. Sukhdev Singh, Director Health and Family Welfare, Punjab too has filed a counter affidavit highlighting the preventive, curative, control and containment measures adopted by his Department to tackle the menance of dengue fever in the State of Punjab. The affidavit suggests that:

(i) the State Task Force under the Chairmanship of the Finance Minister has been constituted and the Deputy Commissioners and the Civil Surgeons have been directed to hold review meetings to monitor the effective containment of the disease in their districts;

(ii) the Municipal Corporations/Councils have been directed to do the fogging and to sprinkle burnt oil on the stagnated water and get the timely removal of garbage done;

(iii) the Local Bodies Depatment has been directed to ensure that there is no leakage of water and the pot-holes should also be filled to aviod any accumulation of water;

(iv) Control Rooms have been established;

(v) Rapid Response Teams have been constituted and Educative and Communicative activities have been launched. It is also being asserted that besides the regular surveillance, Blood Component Separators have also been installed at various Hospitals.

11. Suffice it to say that if the conuter affidavits are taken on their face value, both the States of Punjab and Haryana and the Union Territory of Chandigarh ought to have been free from the dreaded diseases, the prevention of which is the subject matter of these writ petitions. Similarly, the heaps of garbage, filthy stagnant water at a number of places, pot-holes, leaking water pipes and stinking streets ought to have been a history only. The photographs, Inspection Reports and the data brought on record by the Respondents themselves, however, completely belied their stand. This Court, therefore, on 9th October, 2007 asked the Respondents to file their fresh affidavits, indicating "as to how and in what manner the steps have been taken to control the spread of dengue as well as other diseases". A specific reply "as to whether the water bodies and other garbage dumps have been cleared or not, as indicated in the photographs attached with the petition", was also sought.

12. Pursuant thereto, additional affidavits were filed by the Respondents, however, the stand taken therein, especially by the Executive Officer of the Municipal Council, Ambala that garbage heaps had been removed, stood falsified by the latest photographs of the stinking garbage heaps taken by the Petitioner on 1st November, 2007. The Deputy Commissioner, Ambala and the Executive Officer of the Municipal Council, Ambala were thereafter directed to explain as to why this garbage, a potential source of diseases like dengue etc., have not been removed. In the event of their failure to remove the said garbage, both the Officers were directed to remain present in the Court.

13. Unfortunately, instead of complying with the directions, quoted above in their right perspective, the Deputy Commissioner, Ambala appears to have got offended as in his affidavit dated 9th May, 2008, more time and space has been devoted to highlight the conduct of the Petitioner suggesting that the writ petition has not been filed in ''public interest''. The Petitioner also did not lag behind and has filed a reply -- affidavit with counter allegations against the Deputy Commissioner. Suffice it to observe that such like abortive attempts to convert public ''interest petitions'' into adversial litigation cannot be appreciated.

14. We may now refer to the counter affidavit filed in the second writ petition on behalf of Respondents No. 1 to 5 by Dr. G. Kumar, Senior Medical Officer, Civil Hospital, Ambala Cantt. He has candidly admitted that more than 261 patient were hospitalized in Civil Hospital, Ambala Cantt. on account of Diarrhoea, Gastroenteritis and Cholera etc. in the month of September, 2007. Immediate treatment through emergency measures like provision of Injections, IV fluids, purchase of the drugs from open maket which were not available in the Hospital, were taken without referring any patient to higher Medical Institutes. The affidavit suggests that water samples were taken from the affected areas and

over 500 patients suspected with symptoms of Diarrhoea were treated in their houses only as out-door patients. One mobile and one immobile post in the Diarrhoea affected areas for tackling the cases at the door-steps were also set-up; two two-wheelers and one van with public-audience systems installed thereon were also presssed into aid to make people aware of the fatality of the disease and its prevention through measures like safe drinking water, safe food and cleanliness. Chlorine tablets and ORS pouches were statedly distributed amongst people in the affected areas free of cost.

15. The counter affidavit filed by the President, Municipal Council, Ambala City points out that the Municipal Council and the District Administration are setting up a joint Sewage Treatment Plant at village Patwi for disposal of waste material/ garbage under the solid-waste management scheme and that presently the waste material and garbage is being dumped in the low-lying areas within municipal limits and aways from the Abadi which is levelled with the help of dozers and methyl powder is sprayed regularly.

16. A separate affidavit by the Executive Officer, Municipal Council, Ambala Cantt. claims that on receipt of the complaints regarding spread of Diarrhoea due to polluted water, the Water Supply Department (Public Health) has replaced "certain old pipes" by the new pipes and "repair of leakage in the pipe was also undertaken". Similarly, the affidavit of Dr. S. K. Mahipal, Senior Medical Officer, General Hospital, Ambala Cantt. highlights the immediate medical assistance provided to more than 700 indoor and out-door Diarrhoea patients in Ambala Cantt.

17. We have heard learned Counsel for the parties at some length and perused the counter affidavits, additional affidavits and other documents/photographs on record.

18. Article 21 of our Constitution guarantees every person personal liberty and life with human dignity which must include protection of health and strength of all sections of society. Bandhua Mukti Morcha Vs. Union of India (UOI) and Others, and Bandhua Mukti Morcha v. Union of India 1991 (4) SCC 177. Right to food, drinking water, decent environment and medical care have been held to be the integral components of Article 21 of the Constitution. Chameli Singh and others etc. Vs. State of U.P. and another, . The Respondents ought to be conscious and aware of the Directive Principles of State Policy contained in Part IV of the Constitution which though may not be enforceable by a Court, nevertheless are fundamental in the governance of the State and cast a duty upon the Authorities to follow and apply these principles. Suffice it to say that the Directive Principles attach significant importance to the protection and improvement of environment, better living conditions, health, level of nutrition and the standard of living by improving public health. Similarly, under Article 243W, read with the Twelfth Schedule of the Constitution, the municipalities are obliged to function as institutions of self-governance in matters like:

(i) water supply for domestic, industrial and commercial purposes;

(ii) public health, sanitation, conservancy and solid-waste management;

(iii) urban forestry, protection of environment and promotion of ecological aspects;

(iv) provision of urban amenities and conveniences, etc.

19. Equally true is the fact that performance of their constitutional duties by the Municipalities or the State''s endeavour to protect and promote life with ''human dignity'' as guaranteed under Article 21 of the Constitution, is always subject to the financial constraints of the Exchequer. However, no such economic impediment has been pleaded or shown by the Respondents in the present case. None of the Respondents has cried foul that his march forward in providing ''just human conditions'' has been halted for want of sufficient budgetary allocations. The Respondents, thus, owe a duty to explain as to why does it so happen that ''emergent'' and ''urgent'' remedial measures are taken only after the epidemics break-out and catch the authorities in slumber ? While there appears to be no reason to doubt the genuineness of the post-epidemics steps claimed to have been taken by the Respondents, we also cannot commend as to why the well-identified causes of these epidemics are not effectively dealt with, controlled or monitored in advance and on a regular basis. The tragedies beyond human control like the natural clamities or the disasters which may lead to one or the other epidemic can be exceptions even for a developed nation but a few fatal diseases like the dengue, malaria, diarrhoea, gastroenteritis or cholera which can very well be kept in check have become ugly annual features of our ''not so free-from-pollution'' environment. Several ambitious National/State policies have been seemingly launched and crores of rupees are being spent to curb and prevent this menace. Yet, these fatal diseases are allowed to assume monstrous sizes and lacs of people have borne the brunt, may be due to the contributory negligence also.

20. The case in hand is no exception. The Respondents have candidly admitted the occurrence of hundreds of cases of Diarrhoea or Cholera etc. in one town only. Should it not then be inferred that the stand regarding the curative measures is only an exercise on papers and a mere lip service to the society ? We, however, do not wish to enlarge the scope of these proceedings to trace out as to whether the allocated funds have been drained out in the sewerage or gutters, percolating not even a few drops of relief to those in its dire need.

21. What appears to us is that factors like: lack of coordination between different governmental agencies, lack of missionary zeal, directionless leadership, ad-hoc vision, absence of a long-term plan to tackle health related issues and least priority to clean and healthy environment as also the non-co-coperational attitude of the general public, etc., have cumulatively contributed towards bringing this despairing situation. A Self-Devised Mechanism which must respond and act upon within a reasonable time-framework, therefore, appears to be the

only effective answers to the issues under discussion.

22. For the reasons afore-stated, we dispose of these writ petitions with the following directions:

(i) the States of Punjab, Haryana and the Union Territory of Chandigarh are directed to constitute State-Legel Monitoring Committees to be headed by their respective Chief Secretaries and/or Advisor, as the case may be. The Principal Secretary/Secretary of the Finance Department, the Director General, Health Services, Engineer-in-Chief Public Health, Director/ Deputy Director (Malaria), the Director, Local Bodies and the Director, Rural Development and Panchayats of the concerned State/U.T. shall also be the ex-officio members of the said Committees. Similarly, there shall be District-Level Monitoring Committees headed by the Deputy Commissioner concerned, in which the Chairman, Zila Parishads, the Civil Surgeon, Superintending Engineer (Public Health), Commissioner, Municipal Corporation the Executive Officer of the Municipal Council and the Senior Medical Officer (Malaria) shall be taken as the ex-officio members.

(ii) The State Level Mointoring Committees shall, within a period of six months and in all circumstances before the onset of next monsoon season, get a survey of each Municipal Area conducted and decided to set up a solid waste management/Sewerage Treatment Plant for disposal/treatment of the waste material/garbage/ sewerage water. The State Government/U.T. Administration are directed to generate and provide sufficient funds in conformity with Articles 243X and 243Y of the Constitution for esablishing these Plants for each Municipal Area, whether separately or jointly;

(iii) till the Solid-Waste Management/Sewerage Treatment Plants are set up, the waste material/garbage shall be dumped at some suitably identified and preferably low lying area which should at least be two kilometers away from the residential areas. The District-Level Mointoring Committees and the concerned Municipality shall make permanent arrangement of required JCB machines/ Rollers to ensure that, as far as possible, the solid waste or garbage is dumped on day-to-day basis and fresh earth is laid thereupon followed by spray of methyl powder or other disinfectants;

(iv) the State-Level Mointoring Committee shall also formulate a scheme and devise mechanism for its implementation for sanitation, cleanliness and supply of potable water to the rural areas. The Scheme shall be vigorously implemented in a time-bound though phased manner, in association with the Gram Panchayats;

(v) the District-Level Mointoring Committees are directed to identify the spots/ places where water keeps on accumulating during the rainy season or otherwise and have become a breeding ground for mosquitos. Immediate steps shall be taken to fill-up such low-lying areas with earth or to dry-up the same by channelizing the stagnated water into drains etc., away from the residential areas, followed by spray or methyl powder or other disinfectants. The entire

exercise shall be completed within four months and a compliance report be sent to the State Level Monitoring Committee;

(vi) the District-level Monitoring Committees shall get the survey of water supply pipes conducted and wherever these pipes have outlived their utility, broken, damaged or in rusted condition, the same shall be got replaced without any further loss of time. The newly installed pipes shall be kept at a suitable distance from the sewerage pipelines. The District-Level Monitoring Committees shall ensure the supply of potable water and submit the compliance report to the State Level Monitoring Committees within six months;

(vii)the Director General, Health Services and the Director/ Deputy Director (Malaria), in consultation with the Civil Surgeon of the concerned District are directed to prepare a comprehensive Anti- Epidemices Scheme for taking preventive measures well before the start of the rainy season or the period which is prone to the out-break of the diseases like diarrohea, malaria, cholera, etc. and ensure that adequate medicines, indoor and outdoor facilities in the civil/ general hospitals are made available. The State Level Monitoring Committee shall ensure that sufficient funds are allocated to their Health Departments for the said purpose. We make it clear that financial constraints shall be no excuse for not providing adequate medical facilities as may be recommended by the experts in the Health Department;

(viii) the Deputy Commissioner and the Executive Officers of the Municipal Council, Ambala City and Ambala Cantt., in particular, are directed to personally visit the places depicted in the photographs, Annexures A-1 to A-4, and take emergent measures to flush out the stagnated water, replace the damaged pipes and remove the garbage including the non- biodegradable wastes like the polythene/plastic material. The needful shall be done within a period of six months and compliance be reported to the State Level Mointoring Committee, Haryana;

(ix) compliance and status reports by way of affidavits of the Chairmen of the State Level Monitoring Committees shall be filed before this Court firstly on or before 30th April, 2009 and thereafter on 30th September, 2009, 31st December, 2009 and 31st March, 2010 along with Action Taken Reports of the District Level Mointoring Committees. We make it clear that the last affidavits must ensure that all the directions issued herein-above have been fully complied with;

(x) besides su moto exercise of powers by this Court, any public spirited person in the States of Punjab, Haryana and U.T., Chandigarh shall be competent to initiate Contempt of Court proceedings against the State-level Monitoring Committee, District-level Monitoring Committees or any particular member thereof in case it is found that they have willfully and deliberately failed to comply with the directions issued herein-above;

23. There shall be no order as to costs.

