

(2012) 09 J&K CK 0005
In the Jammu And Kashmir High Court
Case No : WPPIL No. 20 of 2011

Yash Bhashin

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 10-09-2012

Acts Referred:

Citation : (2012) 09 J&K CK 0005

Hon'ble Judges : Virender Singh, J; Muzaffar Hussain Attar, J

Bench : Division Bench

Advocate : S.K. Anand, for the Appellant; Gagan Basotra, Sr. AAG and Mr. S.S. Nanda, for the Respondent

Judgement

Muzaffar Hussain Attar

1. We the people of India have given to ourselves the Constitution, from the bosom of which are born three principal organs of the State viz.,

Legislature, Executive and Judiciary. In view of the mandate contained in the Constitution, all the three organs of the State have to function within

the frontiers delineated by the Constitution itself. The legislature has to legislate the laws and the executive, which is answerable to the legislature,

has to implement the said laws. Amongst others, the principal and fundamental functions of the Courts are to interpret the laws and resolve the

disputes between the litigating parties, which disputes are brought before them. Because of the disability from which certain sections of the society

are suffering from viz., down-trodden class of the society, the children and women folk, and further in order to protect the environment, a national

asset, the Constitutional Courts have been entertaining the petitions which are in public interest or even at times, have been taking suo-moto

cognizance of the issues which have impact on large sections of the society. The Constitutional Courts have opened the doors for such proceedings

for the benefit of under-privileged class of the society.

2. The failure on the part of the Statutory and administrative authorities in effectively implementing the statutes and carrying out the mandate of the

political bosses in public interest and in accordance with the law, results in subjecting the common masses to incalculable sufferings and untold

miseries. The inaction and non-performance/poor performance on the part of the statutory and administrative authorities results in depriving the

basic facilities/amenities to the man on street. The amenities and the facilities which are to be provided to the people at large, have many shades.

The people are approaching the courts now by filing the Public Interest Litigation complaining therein that even the basic civic facilities are not

being made available to them. The products/commodities which are hazardous to human life and which endanger the environment, even though,

their manufacture and circulation is banned by laws, are still available in abundance.

3. Such type of litigations are eating into public time of the courts which is, otherwise, to be devoted for resolving the disputes between the parties

which are brought before the Constitutional Courts and other courts. In the above stated backdrop and for above reasons, the issues raised in this

Public Interest Litigation have surfaced.

4. Legislatures are painting rainbow of rights, which due to cruel defiance of some persons, who are duty bound to translate them into reality, get

eclipsed under dark clouds of insensitivity. Petitioner in this Public Interest Litigation has prayed for issuance of directions to the respondents which

besides State of J&K, include J&K State Pollution Control Board, Commissioner, Municipal Corporation, Jammu and the Deputy Commissioner,

Jammu, for implementing the provisions of the Environment (protection) Act of 1986, Plastic Waste (Management and Handling) Rules, 2011,

Municipal Solid Waste (Management & Handling) Rule, 2000, the Jammu and Kashmir Non- Biodegradable Material (Management, Handling

and Disposal) Act, 2007 and the Rules made thereunder.

5. If the authorities, who are charged with the duties to implement such laws, would discharge their duty honestly and diligently, such type of

petitions would not be filed. One of the functions' of the Courts is to direct implementation of laws, if it is complained that the same are not being

implemented by the authorities concerned. Such a situation can arise once in a blue moon. Unfortunately, this court is being flooded with Public

Interest Litigations.

6. The Commissioner, Municipal Corporation, Jammu and the Chairman, J&K State Pollution Control Board, Jammu, who are present in the

court, have assured that those of the laws which are to be implemented by these authorities will be implemented faithfully by them.

7. The grievances projected in this Public Interest Litigation are of significant importance and the respondent-State and its authorities would be

duty bound to take measures and remedial steps to redress the grievances of people at large.

8. The issues raised in this petition are manifold and significant. Among others, it has surfaced that Municipal Corporation, Jammu is not making all

out efforts to keep the city clean and create hygienic conditions. The State Pollution Control Board, in view of the averments made in the petition is

found lacking in taking effective and stringent action in accordance with the law against violators of the law.

9. Keeping this petition on the files of this Court any further is not required and is disposed of in the following manner:-

1. Respondents who are present in person in the court, are directed to take all effective steps and gear up the statutory and administrative

machinery for implementing the provisions of the Environment (protection) Act of 1986, Plastic Waste (Management and Handling) Rules, 2011,

Municipal Solid Waste (Management & Handling) Rule, 2000, the Jammu and Kashmir Non- Biodegradable Material (Management, Handling

and Disposal) Act, 2007 and the Rules made thereunder.

2. The Commissioner/Secretary, Urban and Local Bodies, J&K State, is directed to monitor the functioning of the Municipal Corporation, Jammu

for implementing these laws and maintenance of the cleanliness and hygienic conditions of Jammu city.

3. The Commissioner/Secretary Urban and Local Bodies is further directed to supervise the functioning of Municipal Corporation, Srinagar, and all

other Municipal Committees of the Jammu and Kashmir State;

4. The Competent/disciplinary authorities are directed to seek periodical reports from all the concerned authorities;

5. The Commissioner/Secretary, Urban and Local Bodies, shall initiate or order initiation of disciplinary proceedings against all such

officers/officials who would be lacking in their performance of duty and would show utter dis-regard to the provisions of statute and instructions of

superiors;

6. The J&K State Pollution Control Board, Jammu, shall take all effective steps in implementing the provisions of the Environment (Protection)

Act, 1986 and the The Air (Prevention and Control of Pollution) Act, 1981, The Water (Prevention and Control of Pollution) Act, 1974, and The

Chairman of the Board shall be personally responsible to effectively implement the provisions of the aforementioned Act;

7. It is further provided that if any of the members of the society would have any grievance against the functioning of the officers/officials of the

departments concerned, then, the same shall be brought to the notice of the Competent/Disciplinary authority, who shall be under an obligation to

consider and take a decision on such complaints preferably within four weeks from the date, such complaints are received and convey the results

thereof to the aggrieved person(s).

The orders passed in this Petition, from time to time, shall become part of this order and the directions issued, shall be carried out in letter and

spirit.