

# RAJASTHAN HIGH COURT

SuoMotu

Vs.

State of Rajasthan

C. W. P. Nos. 4783, 7307 of 2003 and 513 of 2004 and Civil Misc. Appln. No. 21 of 2004

(Anil Dev Singh, C.J. and K.S. Rathore, J.)

20.10.2004

## JUDGEMENT

**Anil Dev Singh, C.J.**

1. The city of *Jaipur* has an important place in the history of the State of Rajasthan. City of *Jaipur* is steeped in history. It has rich mosaic. It has ancient monuments, palaces, Havelies, unique architecture, art, culture and festivals. It being the capital of the State deserves to showcase the history, heritage and culture of the people of the city. But the city has since been suffering from slew of maladies. These have to some extent clouded its magnificence and splendor. This has also adversely affected the quality of life of the residents. Decay of the city must be prevented and it needs to be restored to its pristine glory, beauty, grace and charm. Keeping this in view, we issued suomotu notice to the concerned authorities on August 13, 2003. A nudge to them to perform their statutory duties and to remind them that the city of *Jaipur* deserves to be rid of filth and squalor, heaps of dirt, piles of garbage, unauthorized constructions, encroachments, stench and stink caused by open drains, pot-hole roads, etc. is necessary so that people can have a life which is worth living.

2. It is well settled that right to life enshrined in Article 21 of the Constitution takes within its sweepright to a life which is worth living. It includes the following rights as well :

- (1) right to food, clothing, and shelter,
- (2) right to reasonable accommodation to live in,
- (3) right to decent environment, and

(4) right to live in a clean city.

In *Municipal Council, Ratlam v. Vardhichand*, the Supreme Court considered the question whether the order of trial Court, which was upheld by the High Court of Madhya Pradesh, directing the Ratlam Municipality to draft a plan within six months for the removal of nuisance caused by the open drains, human excreta littering the roads etc., could be sustained. The Supreme Court held that by affirmative action the Court could compel a statutory body to carry out its duties to the community including creation of sanitary conditions in the city. Expressing anxiety over the condition of Ratlam town, the Supreme Court observed as follows :- -

".....Ward No. 12, New Road, Ratlam town is an area where prosperity and poverty live as strange bedfellows. The rich have bungalows and toilets; the poor live on pavements and litter the street, with human excreta because they use roadsides as latrines in the absence of public facilities. And the city fathers being too busy with other issues to bother about the human condition, cesspools and stinks dirtied the place beyond endurance which made the well-to-do citizens protest, but the crying demand for basic sanitation and public drains fell on deaf ears. Another contributory cause to the insufferable situation was the discharge from the Alcohol plant of malodorous fluids into the public street. In this lawless locale, mosquitoes found a stagnant stream of stench so hospitable to breeding and flourishing, with no municipal agent disturbing their stinging music at human expense.....

(Para 2)

In this view, the Magistrate's approach appears to be impeccable although in places he seems to have been influenced by the fact that "cultured and educated people" live in this area and "New Road, Ratlam is a very important road and so many prosperous and educated persons are living on this road". In India 'one man one value' is the democracy of remedies and rich or poor the law will call to order where peoples rights are violated. What should also have been emphasized was the neglect of the Malaria Department of the State of Madhya Pradesh to eliminate mosquitoes, especially with open drains, heaps of dirt, public excretion by humans for want of lavatories and slums nearby, had created an intolerable situation for habitation. An order to abate the nuisance by taking affirmative action on a time bound basis is justified in the circumstances. The nature of the judicial process is not purely adjudicatory nor is it functionally that

of an umpire only. Affirmative action to make the remedy effective is on the essence of the right which otherwise becomes sterile. Therefore, the Court, armed with the provisions of the two Codes and justified by the obligation under Section 123 of the Act, must adventure into positive directions as it has done in the present case. Section 133 Cr. P. C. authorizes the prescription of a time limit for carrying out the order. The same provision spells out the power to give specific directives. We see no reason to disagree with the order of the Magistrate."

(Para 16)

3. Relying on the decision in *Municipal Council, Ratlam's case* ( AIR 1980 Supreme Court 1622) (supra), the Supreme Court in *Dr. B. L. Wadehra v. Union of India*,<sup>2</sup> directed the Municipal Corporation Delhi and the New Delhi Municipal Council to perform its statutory duties of scavenging and cleaning the city. The Supreme Court did not accept the grounds of inadequacy of funds or insufficiency of machinery for non-performance of their statutory obligations.

4. Due to failure of the civic authorities and other bodies to discharge their duties under Article 21 of the Constitution and statutory provisions the quality of life in the city has gone down tremendously. Civic bodies and other authorities have been taking refuge under the purile excuse that they do not have funds to perform their duties. The plea of lack of finances is a poor alibi for not performing their statutory duties. The law must be enforced and the fragile plea of lack of finances must be rejected. Inaction of the authorities cannot be tolerated, as that will make mockery of Article 21 of the Constitution and the statutory provisions under which they are obliged to carry out their duties, including duty to provide and maintain civic amenities which make life worth living.

5. By order dated April 20, 2004 we had pointed out that plastic and polyethylene bags are the bane of cities, towns and villages. There is no city, town or village, which is free from this menace. Polythene bags can be seen scattered over a large area of the city of *Jaipur*. They are degrading the soil, polluting the water -resources and preventing charging of the ground water and also blocking sewers and drains. The menace of polythene bags even affects the bovine animals as they consume these bags and suffer immensely. The damage due to bio-non-degradable polythene bags is immense. The accumulation of polythene bags over a large area of cities, towns and villages is having catastrophic effect on the environment. The Civic Authorities have

still not taken any action to remove the plastic and polythene bags lying on the streets, roads, fields etc. This situation cannot be allowed to continue.

By order dated June 4, 2004 we had directed the State to look into the question of feasibility of imposing ban on the use of plastic and polythene bags in the State. We had also asked the State to file a report. The report has not been filed. However, it appears that the *Jaipur* Municipal Corporation has sent a report to the State Government in that regard. It was pointed out by the learned Additional Advocate General, appearing for the State that vide Notification dated December 11, 2000, ban on manufacture, sale or consumption and use of polythene bags or containers having thickness less than 20 microns, has been imposed. We are surprised to find that hardly any action is being taken against the persons who are manufacturing, selling or using polythene bags having thickness less than 20 microns.

In the report of the *Jaipur* Municipal Corporation dated August 4, 2004, it is stated that 50 challans against the defaulters have been prepared. This is not enough. It shows that no substantial steps have been taken to check manufacture, sale and consumption of the polythene bags having thickness less than 20 microns.

6. One of the reasons for urban decay is increase in the population. The people from rural areas are migrating to urban areas in search of work. People are also moving to cities as they are attracted by the amenities and conveniences which the cities offer. As a result of this movement, large number of people live on the pavements without proper shelter. They live an animal like existence. The State should be able to secure occupation for the rural poor in the villages to which they belong. By shifting to the cities, they become rootless. They lose their cultural moorings and sense of belonging. The State should be able to provide opportunities to them to secure food, clothing and shelter in the villages to which they belong. The State should consider taking measures whereby the villagers can find work and occupation in their own villages. This will not only reduce pressure on the cities like *Jaipur* but will also prevent urban decay, which is taking place at a very fast rate. It will also preserve the traditional values of village society.

7. The State must protect ecology. Any activity, which degrades environment, should not be permitted except where such activity is accompanied by the use of measures that eliminate such disastrous results.

8. After the first order dated August 13, 2003, which was rendered more than a year back, several orders have been passed giving directions to the various authorities with

a view to improve the conditions in the city so that people can lead a dignified life as opposed to the animal existence. The city must offer hygienic environment. The authorities pursuant to our orders have done some work but much is still required to be accomplished by them. On one pretext or the other, the authorities have been able to stifle our orders. We are conscious of the fact that it takes time to improve the conditions in the city especially when they have degenerated to such an extent. In the circumstances, therefore, we have been giving time to the authorities to comply with the orders.

9. Since the compliance of the orders can be monitored by the Monitoring Committees (Citizens Committees) under the chairmanship of the Chief Secretary and in the event of the failure of the civic authorities and other bodies, Corporations and private persons to carry out the directions, appropriate applications can be filed for initiating proceedings for contempt of Court against them. Therefore, we consider it appropriate to dispose of the writ petition in terms of the orders passed from time to time in the instant petitions and with the following further and fresh directions and directions which are clarificatory in nature.

1. The Coordination Committee and the two Monitoring Committees will continue their work as specified in the various orders.
2. The *Jaipur* Development Authority, The *Jaipur* Municipal Corporation and the Rajasthan Housing Board shall prepare plans for improvement and development of the heritage city and its beautification.
3. No commercial activity in residential premises shall be allowed to be carried out by the *Jaipur* Development Authority, the *Jaipur* Municipal Corporation and the Rajasthan Housing Board under the areas of their jurisdiction.
4. Encroachments in the city shall be removed by the *Jaipur* Development Authority, the *Jaipur* Municipal Corporation and the Rajasthan Housing Board in accordance with law.
5. The *Jaipur* development Authority, the *Jaipur* Municipal Corporation and the Rajasthan Housing Board shall not permit unauthorized constructions to come up in the city. Where unauthorized constructions have already been raised, they shall be demolished in accordance with the law by the *Jaipur* Development Authority, the *Jaipur* Municipal Corporation and the Rajasthan Housing Board.
6. Strict vigil shall be kept by the *Jaipur* Development Authority, the *Jaipur*

Municipal Corporation and the Rajasthan Housing Board to prevent encroachments in the city.

7. The Public Works Department, the National Highways Authority of India, the *Jaipur* Development Authority, the *Jaipur* Municipal Corporation, the Rajasthan Housing Board shall keep the roads falling in their respective jurisdiction, in good repairs.

8. The *Jaipur* Development Authority, *Jaipur* Municipal Corporation and the Rajasthan Housing Board shall not permit a new housing colony or commercial area to come up or to be developed, in the areas falling within their respective jurisdiction, unless permission has been accorded by them in accordance with the law. Permission shall be refused by the authorities where the same are not being set up in accordance with the law and the Master plan.

9. In case an unauthorized construction or encroachment takes place and illegal housing colony or commercial enterprise is set up, in an area falling under the jurisdiction of the *Jaipur* Development Authority, the *Jaipur* Municipal Corporation or the Rajasthan Housing Board, the concerned Enforcement Officer / Inspector/ Deputy Commissioner /Zonal Officer shall be responsible. In the ACR of the defaulting Officer specific entry shall be made to the effect that during his posting in the area unauthorized construction or encroachment took place or an illegal colony was set up or an illegal commercial enterprise was established in a residential area or an area which was not meant for commercial activity. This entry shall be treated as an adverse entry and shall be kept in view at the time of considering the case of the officer for promotion or selection. That apart, the Appointing Authority shall initiate departmental action against him. Members of the Monitoring Committee and the Appointing Authority of the officer shall be duty-bound to move an application for initiation of proceedings for contempt of Court against the defaulting officer.

10. The *Jaipur* Municipal Corporation shall work out a plan for collection of garbage from house-to-house independently or with the assistance and involvement of the residents.

11. The Rajasthan Pollution Control Board shall regularly send its inspection teams in different areas of *Jaipur* city to ascertain whether or not the collection, transportation and disposal of garbage are being carried on satisfactorily. The Board shall file reports in this Court by way of affidavits every two months.

12. The Government and the *Jaipur* Municipal Corporation shall educate the residents regarding :

- (i) their civic duties,
- (ii) importance of a clean city,
- (iii) hygiene,
- (iv) cleanliness,
- (v) traffic rules etc.

through television, road-shows and other means.

13. The residents shall also be informed about the action which can be taken against them for throwing garbage, including plastics and other waste materials on the roads/streets. They should be informed that they will have to face the penalty, in case they defy the law. They should be made aware that the violation of law and orders of the Court can result in infliction of punishment, both corporeal as well as incorporeal on them.

14. The *Jaipur* Municipal Corporation shall work out a plan for waste- management. For this purpose, training shall be imparted to some of its employees. The lifting and disposal of garbage should be undertaken through mechanical devices. The garbage shall be disposed of at the designated place.

15. The State shall construct night-shelters for the shelterless people of the city.

16. The *Jaipur* Municipal Corporation, the National Highways Authority of India Ltd. and the Railways shall not permit hoardings on the roads and buildings, except at the following places:

- (a) tree-guards and railings which are raised on the dividers provided they are small, circular or rectangular, in nature and
- (b) BOT type toilets
- (c) Bus Shelters /stops.

17. The Railway Authority shall create adequate sitting arrangements at the platforms of the following railway stations.

- (1) *Jaipur* main,
- (2) Gandhi Nagar,
- (3) Durgapura,
- (4) Jagatpura, and
- (5) Dehr-ke-Balaji.

The Railways shall provide clean kitchens, potable water, sparkling toilets etc. at the Railway Stations.

18. Subjects such as importance of ecology, cleanliness, hygiene, moral values, respect for the law shall be taught in the schools.

19. The State shall maintain the historical places, which are in its control, namely, Amber Palace, HawaMahal, Nahargarh Fort, Jaigarh Fort, City Palace, JagatSiromani Temple, Ramachanderji-ka-Mandir, Museum, Sisodiya Rani-ka-Bagh, Vidyadhar-ka-Bagh and CharanMandir. The income generated through the sale of tickets to the public and tourists visiting the historical places shall be spent on their upkeep and maintenance. The details of income and expenditure and upkeep of the historical monuments/buildings shall be filed every four months by way of affidavits of the concerned authorities.

20. The *Jaipur* Municipal Corporation shall clean up Tal Katoralake, located near GovindDeoji's temple. The *Jaipur* Municipal Corporation, Public Health Engineering Department and Department of Irrigation shall provide pipes from Nahargarh hills to Tal Katora Lake so that the lake which was originally existing is restored to its pristine glory.

21. Immediate steps shall be taken by the authorities for construction of 100 public toilets in the city, as already directed.

22. The State shall appoint Sanitation Officers in the Government Hospitals.

23. The Dairies shall be removed from the city, within four months from August 23, 2004. or within the period allowed by the Court in Civil Misc. Applications Nos. 1532/2004 and 619/2004, in DB Civil Writ Petition No. 4783/2003 and other applications, if any.

24. The State shall make a survey regarding the homeless population living on the pavements and shacks in the city. Depending upon their numbers, the State shall construct night shelters along with toilet facilities, so that the people do not defecate on the roads.

25. No vendor or shopkeeper shall deliver goods, including vegetables and any retail items to the buyer or any other person in polythene bags after the expiry of the period of three months from today.

26. That the Public Works Department, the Public Health Engineering Department, the *Jaipur* Development Authority, the *Jaipur* Municipal Corporation, the *Jaipur* VidyutVitaran Nigam Limited, the Rajasthan Housing Board, the Rajasthan State Road Transport Corporation, the Railways and the Reliance Infocom shall file compliance reports once in two months with advance copies to the Coordination Committee and the Monitoring Committees No. 1 and 2.

27. In the earlier Orders relating to hospitals, parking of vehicles, electricity poles and boxes, bio-medical waste, unauthorized plying of jeeps and buses, providing of services by the RSRTC and private operators, raising of height of the poles, underground laying of electricity wires, telephone lines and cables etc., digging of roads, removal of electric poles for widening of the roads, raising transformers to a specified height, as suggested by the Monitoring Committee, construction of toilets, shops, Halwais, disposal of wastes, etc. passed from time to time in the petitions and the directions given in the instant order shall be strictly complied with by the concerned.

The *Jaipur* VidyutVitaran Nigam Ltd. shall ensure that all the LT/11 KV lines are earthed in accordance with the Indian Electricity Rules.

28. The Monitoring Committees under the Chairmanship of the Chief Secretary, Government of Rajasthan shall over see the implementation of the directions which have been recorded by us in the instant order and the orders which have been passed in the petitions from time to time.

List this matter after four weeks for reporting compliance.

Order accordingly.

Cases Referred.

1. AIR 1980 SC 1622
2. AIR 1996 SC 2969