

In the High Court of Judicature of Andhra Pradesh at Hyderabad

Smt. C.Uma Devi.

v.

Government of A.P.

Writ Petition No. 4598 of 2000

21.06.2001 dd.

Sri. Satyabrata Sinha C.J. & V.V.S. Rao J.

Judgement:

1. This writ petition portrays how Visakhapatnam Municipal Corporation (for short 'the Corporation') a local authority within the meaning of Article 12 of the Constitution of India, acts in the matter of maintenance of public hygiene and ecological balance.

A park, commonly known as Green Park, is situated adjacent to Ramakrishna Street, Old City, Visakhapatnam. It is alleged by the petitioner that respondent No. 3-Corporation has converted the said park into a Garbage Dumping Yard. It is not in dispute that the Ministry of Environment and Forests by Notification S.O. 783(E), dated 27-9-1999, prepared Draft Rules known as the Municipal Solid Wastes (Management and Handling) Rules, 1999 (for short 'the Rules'), applicable to every Municipal Authority responsible for collection, segregation, storage, transportation, processing and disposal of municipal solid waste. Rule 8 of the aforementioned Rules, which provides for Management of Municipal Solid Waste reads:

Management of Municipal Solid Waste -

(1) Any municipal solid waste generated in a city or a town, shall be managed in accordance with the compliance criteria and the procedure laid down in Schedule-II.

(2) The disposal of municipal solid wastes of the specified categories shall be through landfill as per specifications and standards laid down in Schedule-III.

(3) The standards for compost and disposal of treated leachate to be followed by the Municipal authorities shall be as laid down in Schedule-IV.

2. The A.P. Pollution Control Board (for short 'the Board') having received a complaint dated 27-4-1999 from the petitioner about the dumping of garbage in the park by respondent No.3-Corporation, brought the same to the notice of the Commissioner of respondent No.3-Corporation. The said letter reads:

This is to bring to your notice that this office has received a public complaint from Smt. C. Uma Devi, Advocate, against dumping of the garbage by corporation adjacent to Ramakrishna Street via reference 1st cited. The following are the objections in the complaint:

1. It was mentioned in the complaint that Corporation is dumping garbage adjacent to Ramakrishna Street which is affecting the residents of the locality.
2. It was mentioned in the complaint that present area i.e. where corporation is dumping the garbage was originally a park.
3. It was mentioned in the complaint that as the Corporation is dumping garbage in the residential locality, the residents of the locality are prone to infectious diseases like Cholera, Malaria etc.,
4. In view of the above objection, the complainant requested to shift the dumping yard from the present residential locality to a safer locality.

The same has been already brought to your notice vide reference 2nd cited and you are requested once again to examine the matter and furnish your report to this office within 10 days with a copy to Member Secretary, APPCB, HUDA Complex, Ameerpet, Hyderabad.

3. When criminal proceedings were initiated against respondent No.3-Corporation under Section 34 of the Human Rights Act, on the file of the Chief Metropolitan magistrate, Visakhapatnam, the Board in Crl. M.P. No. 324 of 1999 in DDR No. 586 of 1999, by letter dated 4-11-1999 addressed to the Chief Metropolitan Magistrate, reported as under: This office earlier received a complaint on the same subject and the same has been brought to the notice of the Corporation authority vide Lr. No. 202/PCB/ROV/Tech/97-491, dated 19-5-1999 (submitted as annexure-A). But no reply was received from the Corporation authorities.

(a) During the inspection on 4-11-1999, it was observed large quantity of garbage is existing in the garbage yard. The Corporation is collecting the garbage from the surrounding areas and dumping the above mentioned garbage yard, and again it is being lifted to Kapulappada dumping yard i.e. the above garbage yard is an intermediate storage yard. However, during the inspection it was observed large quantity of garbage lying as on now may be more than 200 truck loads. Heavy fly and mosquito prevailed in

this area are in bad condition. This garbage yard is located in a thickly populated area and hence, it will have negative environmental impact on the surrounding habitation.

(b) MOE & F GOI., issued draft Rules under E(P) Act, 1986 vide S.O. 783 (E), dt. 27-9-1999 known as 'Municipal Solid Waste (Management & Handling) Rules, 1999'. The same is submitted as annexure-B for kind perusal of Hon'ble Magistrate.

(i) As per the draft rules the landfill site (however in this case it is only an intermediate storage site) shall be atleast 0.5 KMs. Away from the habitation.

(ii) As per the draft rules the collection and transportation of vehicles shall be so designed that multiple handling of waste prior to final disposal is avoided.

(iii) As per the draft rules, vehicles used for transportation of waste shall be covered.

Waste should not be visible to public nor exposed to open environment preventing their scattering.

4. The grievance of the petitioner is that though respondent No. 3 in the aforementioned proceedings has given an assurance to the effect that they would desist from dumping the garbage in the park, respondent No.3 is continuing to flout their own assurance.

On behalf of respondent No. 3-Corporation, counter-affidavit, affirmed by Sanjay Jaju, Commissioner, Municipal Corporation, Visakhapatnam, has been filed. In paragraphs 3, 4 and 5 thereof, it is stated:

In reply to paragraph 4, I submit that the Visakhapatnam Municipal Corporation used a part of land transitory dumping yard providing compound wall erected on three sides and gates also provided on the southern side and northern side of the road to restrict vehicular movement. The garbage collected from streets is stored at the above place as a transitory collection centre. The same was lifted and transmitted to the Kapuluppada dumping yard. Further the Corporation is using Nuvan spray, Bleaching powder, Phyneyle etc., from spread of infectious diseases. The said dumping yard was closed and the entire garbage lifted and transported to Kapuluppada dumping yard and the same was informed to the Spl. Judge for Human Rights Court, Visakhapatnam in DDR No. 586/99. And the case was dismissed by the Hon'ble Court on 27-4-2000.

5. I submit that based on the Court direction as well as APPCB instructions the transit dumping yard was permanently closed. The entire garbage was transported to Kapuluppada dumping yard. The same has been informed to the Human Rights Court.

6. I submit that the transitory dumping yard is completely closed in April, 2000. The entire garbage is transported to Kapuluppada dumping yard. Further it is submitted that the Spl. Judge for Human Rights Court has dismissed the case vide DDR No. 586/99, dated 27-4-2000.

7. Despite the aforementioned averments made in the counter-affidavit, the learned counsel appearing on behalf of the petitioner submits that the authorities of respondent No.3-Corporation, are still taking recourse to dumping of garbage in the park. It is the statutory duty and function of a local authority, including a Municipal Corporation, to see that the health and hygiene of the members of the general public is

maintained. The Municipal Corporation, which is responsible for providing good civic amenities, and maintain hygiene of the surroundings, cannot itself take recourse to such activities, which create pollution of the environment and unhygienic conditions for its citizens to live in. We therefore, strongly deprecate the action on the part of respondent No.3-Corporation for defiling the park by dumping garbage in it.

8. Parks, as is well known, act as lungs of the cities/localities, and therefore, under no circumstances, they should be allowed to be used for purposes other than recreation. In *M.I. BUILDERS PVT LTD. v. RADHEY SHYAM SAHU*¹, the apex Court in para 82 held:

High Court has directed dismantling of the whole project and for restoration of the park to its original condition. This Court in numerous decisions has held that no consideration should be shown to the builder or any other person where construction is unauthorized. This dicta is now almost bordering rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorised construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles. As will be seen in moulding the relief in the present case and allowing one of the blocks meant for parking to stand we have been guided by the obligatory duties of the Mahapalika to construct and maintain parking lots.

9. The above aspect of the matter was also considered by a Division Bench of Calcutta High Court in *HOWRAH GENATANTRIK SANGH v. THE CHIEF SECRETARY AND OTHERS*², and it was held:

It is surprising as to how the Bidhan Nagar Municipality sanctioned the Building Plan within a park. The said action, in our opinion, was not commensurate with the professed policy decision of the State and the Municipality.

10. Further, referring to Section 63 of the West Bengal Municipal Act, 1993, it was observed:

The obligatory functions leave no manner of doubt that the park being a property, having vested in the Municipality, it has the duty to maintain and develop the same. It, of course, has a discretionary duty, inter alia to construct and maintain a Community Hall, but the same cannot be done at the cost of ecological greenery. The State, as noticed herein before, has a duty to look of the environment safety and improvement.

11. Sustainable development is the order of the day. In CONSUMER EDUCATION AND RESEARCH SOCIETY v. UNION OF INDIA³, the apex Court in para 7 observed:

The forest in the notified and denotified areas is an edaphic thorn forest. It is desert forest but with a large number of trees. It has been identified as a potential site for designation as bio-sphere reserve by an Expert Committee constituted by the Ministry of Environment and Forest. It has been put in a "Rich area category", from bio-diversity point of view, by the Gujarat Ecology Commission. Even the Union of India in its affidavit has stated that the denotified area of the sanctuary includes many areas of high and very high and very high floral and faunal value and these areas form integral part of the Narayan Sarovar Sanctuary. The Rapid Impact Assessment Report by the Wildlife Institute of India has also pointed out that any reduction in the area of that sanctuary will reduce the number of species of trees. It is also at the same time true, as pointed out by the Government, that this part of the Kutch District is a backward area. There is no other possibility of industrial development in that area, though it contains rich mineral deposits. Therefore, if an attempt is made by the State Legislature and the State Government to balance the need of the environment and the need of economic development it would not be proper to apply the principles of prohibition in such a case. The reports of the three committees only point out of the ecological importance of the area and express an apprehension, that any major mining operation within the notified area and large scale industrialization near about the sanctuary as originally notified, may adversely affect the ecological balance and bio-diversity of that area. It would, therefore, be proper and safer to apply the 'Principle of Protection' and the 'Principle of Polluter pays' keeping in mind the principle of 'sustainable development' and the principle of inter-generation equity.

12. Further, we are of the opinion, that the activities of the respondent No.3-Corporation, are contrary to the provisions of Rule 8 read with Schedule II of the Municipal Solid Wastes (Management & Handling) Rules, 1999 issued by the Central Government in terms of the provisions of Sections 3, 6 and 25 of the Environment (Protection) Act, 1986.

13. We, therefore, dispose of the writ petition with the following directions:

1. Respondent No.3-Corporation shall not dump the garbage in the park in question or any other park.
2. Respondent No. 3-Corporation shall restore the lost glory of the Green Park, and maintain it properly.
3. The A.P. Pollution Control Board shall monitor the maintenance of the Green Park on regular basis, and in the event it comes to its notice that respondent No. 3-Corporation is not maintaining the park and violating provisions of the Municipal Wastes (Management & Handling) Rules, 1999, it may initiate criminal proceedings against No. 3-Corporation. The A.P. Pollution Control Board shall issue circular to all the Municipal

Bodies in the State directing compliance of the aforementioned Rules.

4. A copy of this order be communicated to the Secretary, Municipal Administration, so that the copies of this judgement may be circulated to all the Corporations/Municipalities, and all officers concerned, for ensuring compliance of the directions contained in the judgement. No costs.