

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No.946 of 2017**

Pankaj Sahu S/o Shri Phoolchand Sahu, Aged About 35 Years
Occupation Business, R/o Subhash Nagar, Ward No. 25,
Mahasamund, P.S. Mahasamund, Civil & Revenue District
Mahasamund (Chhattisgarh).

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary Nagriya Prashashan & Vikas Vibhag, Mantralaya Mahanadi Bhawan, Capital Complex, New Raipur, Civil & Revenue District Raipur (Chhattisgarh).
2. Collector Mahasamund, District Mahasamund (Chhattisgarh).
3. Sub Divisional Officer (Revenue), Mahasamund, District Mahasamund (Chhattisgarh).
4. Tahsildar Mahasamund, District Mahasamund (Chhattisgarh).
5. Municipal Council Mahasamund, Through Its Chief Executive Officer, Municipal Council Mahasamund, District Mahasamund (Chhattisgarh).

---- Respondents

For Petitioner	:	Mr.Sumit Shrivastava, Advocate
For Res.No.1 to 4	:	Mr.Ashish Surana, Panel Lawyer
For Respondent No.5	:	Mr.Dheeraj Wankhede, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

25/10/2017

1. V.R. Krishna Iyer, J, in the matter of **Municipal Council,**

Ratlam Vs. Shri Vardichan and others¹ speaking for the

Supreme Court said as under:-

“Why drive common people to public interest action ? Where directive principles have found statutory expression in Do's and Dont's 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 denied wrongfully. The wages of violation is punishment, corporate and personal.”

2. The above-stated statement of law aptly and squarely applies to the facts of the present case, which are as under:

2.1 The petitioner is Councillor of Municipal Council, Mahasamund. He has come to this Court complaining that the Municipal Council, Mahasamund has failed to perform its statutory duty envisaged under the Chhattisgarh Municipalities Act, 1961 (hereinafter called as “the Act of 1961”) despite the attention of Municipal Council has been drawn to the fact that drainage covered has been opened in National Highway No.353 within the municipal limits on both sides of the road. In the name of removal of encroachment, citizens of the area are not able to approach to concerned shops for their daily needs and roads of the locality are neither usable nor workable, which is contrary to the provisions of the Act of 1961 and violative of their right to life provided in Article 21 of the Constitution of India.

3. Upon being noticed, the State Government and Municipal Council, Mahasamund have filed separate, but common return stating inter-alia that it is regular work of the Municipal Council to clean drainage and also to remove the



encroachment from government land, so that traffic of the city should be smooth and for that purpose initially notices were issued and circulated and thereafter the Municipal Council has initiated action for removal of encroachment and on the direction of the Collector, encroachment beside the National Highway No.353 and State Highway has been removed by constituting a team and it is the Government scheme to clean the city as well as village under Swach Bharat Abhiyan and action was taken by the respondent authorities to clean the drainage system and remove the encroachment of the city. It has further been pleaded that action has been proposed and removal of encroachment has been completed and drain(s), if any, are not covered, it will be covered by respondent No.5/Municipal Council, Mahasamund. While replying to the relief of completion of restoration work and to cover up the drain by concrete slab, it has been pleaded that same will be restored and drain(s) will be covered very soon and they have already initiated proceedings for allocation of fund from the State Government. Municipal Council, Mahasamund has reiterated the stand taken by the State Government and both returns are supported by affidavit of Mr.Tamson Ratre, Chief Municipal Officer, Municipal Council, Mahasamund.

- 4.** Mr.Sumit Shrivastava, learned counsel appearing for the petitioner, would submit that Municipal Council, Mahasamund has failed to perform its statutory obligations and

responsibility contained in Sections 123 and 124 of the Act of 1961 and in the name of encroachment, drainage covered has been opened in National Highway No.353 within the municipal limits on both sides of the road and thereafter neither drains are being covered nor the restoration work of removal of garbage has been done till this date by Municipal Council and despite attention drawn of the said fact to Municipal Council and also to the Collector by Nagrik Samiti, Mahasamund, yet, no action has been taken neither by Municipal Council, Mahasamund nor by Collector, Mahasamund and as such, necessary direction be issued to Municipal Council, Mahasamund and the State Government to provide necessary workable and usable roads and also to cover the drains within the locality of Municipal limits. The lack of financial resources cannot be the ground not to perform the statutory obligations contained in the Act of 1961.

- 5.** Mr.Ashish Surana, learned Panel Lawyer appearing for respondents No.1 to 4/State and Mr.Dheeraj Wankhede, learned counsel appearing for respondent No.5, would oppose the writ petition and submit that necessary work will be done expeditiously.
- 6.** I have heard learned counsel appearing for the parties, considered their rival submissions made herein-above and also gone through the records with utmost circumspection.
- 7.** At this stage, it would be appropriate to notice Section 123(1) (b) and (j) of the Act of 1961 which provides duties of Council

which reads as under:-

“123. Duties of Council.-(1) In addition to the duties imposed upon it by or under this Act or any other enactment for the time being in force, it shall be the duty of a Council to undertake and make reasonable and adequate provision for the following matters within the limits of the Municipality, namely:-

(b) cleaning public streets, places and sewers, and all places, not being private property, which are open to the enjoyment of the public whether such places are vested in the Council or not; removing noxious vegetation, and abating all public nuisances;

(j) constructing, altering and maintaining public streets, culverts, Municipal boundary marks, markets, hats, slaughter-houses, latrines, privies, urinals, drains, sewers, drainage works, sewerage works, baths, washing places, drinking fountains, tanks, wells, dams and the like;”

8. While considering the provisions contained in Section 123 (1)

(b) & (c) of the Act of 1961 the Supreme Court in the matter

of **Municipal Council, Ratlam** (supra) has held that lack of

financial resources is not a ground for non-performance of statutory duty and further held that the Municipal Council is

under obligation to provide drainage system in a working

condition sufficient to meet the needs of the people. It was

observed as under:-

“12. The statutory setting being thus plain, the municipality cannot extricate itself from its responsibility. Its plea is not that the facts are wrong but that the law is not right because the municipal funds being insufficient it cannot carry out the duties under Section 123 of the Act. This 'alibi' made us issue notice to the State which is now represented by counsel, Shri Gambhir, before us. The plea of the municipality that notwithstanding the public nuisance financial inability validly exonerates it from statutory liability has no juridical basis. The criminal procedure code operates against statutory bodies and others regardless of the cash in their coffers, even as human rights under Part III

of the Constitution have to be respected by the State regardless of budgetary provision. Likewise, Section 123 of the Act has no saving clause when the municipal council is penniless. Otherwise, a profligate statutory body or pachydermic governmental agency may legally defy duties under the law by urging in self-defence a self-created bankruptcy or perverted expenditure budget. That cannot be.

15. Public nuisance, because of pollutants being discharged by big factories to the detriment of the poorer sections, is a challenge to the social justice component of the rule of law. Likewise, the grievous failure of local authorities to provide the basic amenity of public conveniences drives the miserable slum-dwellers to ease in the streets, on the sly for a time, and openly thereafter, because under Nature's pressure, bashfulness becomes a luxury and dignity a difficult art. A responsible municipal council constituted for the precise purpose of preserving public health and providing better finances cannot run away from its principal duty by pleading financial inability. Decency and dignity are non-negotiable facets of human rights and are a first charge on local self-governing bodies. Similarly, providing drainage systems - not pompous and attractive, but in working condition and sufficient to meet the needs of the people - cannot be evaded if the municipality is to justify its existence. A bare study of the statutory provisions makes this position clear."

Their Lordships further directed the State Government to grant sufficient financial aid to the municipality by directing as under:-

"24. 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 fulfil 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....."

9. State of H.P. and another Vs. Umed Ram Sharma and

others² was a case where the residents of hilly area wanted existence of roads in reasonable conditions, right was embraced into their right to life in context of the constitutional provisions. Their Lordships of the Supreme Court interpreted Art. 21 as embracing not only physical existence of life but the quality of life. Their Lordships accepted it as a proposition well settled for residents of hilly area that access to road is access to life itself. Their Lordships further observed as under:-

“Accordingly, there should be road for communication in reasonable conditions in view of our Constitutional imperatives and denial of that right would be denial of the life as understood in its richness and fullness by the ambit of the Constitution.”

10. In Vikram Deo Singh Tomar Vs. State of Bihar³,

Their Lordships said:-

“We live in an age which recognizes that every person is entitled to a quality of life consistent with his human personality. Their right to life with human dignity is the fundamental right of every Indian citizen.”

11. The Supreme Court in the matter of Francis Coralie Mullin Vs. The Administrator, Union Territory of Delhi

and others⁴ observed as under:-

“The right to life enshrined in Art. 21 of the

² AIR 1986 SC 847 : (1986) 2 SCC 68

³ AIR 1988 SC 1782

⁴ AIR 1981 SC 746

Constitution of India cannot be restricted to mere physical existence. It means something much more than just physical survival. The right to life includes the right to live with human divinity.”

12. The Division Bench of the Madhya Pradesh High Court in the matter of **Citizen and Inhabitants of Municipal Ward No.17 Municipal Corporation Gwalior Vs. The Municipal Corporation, Gwalior and Ors**⁵ has held that non-performance of statutory obligation by Municipal Corporation violates citizens and inhabitants right enshrined in Article 21 of the Constitution of India, as they are entitled to live as human being within the corporation limit.

13. Thus, it is obligation of Municipal authorities and other agencies of the State to provide complete means of communication (road) in good and proper condition and citizens are entitled to excellent civic amenities including roads in workable condition. In the context of the constitutional provisions, the existence of roads in reasonable condition is embraced in the citizens' right to life. Every person is entitled to right to life as enjoined under Article 21 of the Constitution of India, which includes right to live with human dignity.

14. In the present case, Municipal Council, Mahasamund has failed to perform its statutory obligation by providing usable and workable roads and also to fill up uncovered drains after the alleged removal of encroachment. Alleged non-grant of requisite fund cannot be ground for non-performance of

⁵ 1992(1) MPJR 93

Municipal function.

15. In view of above, it is directed that the State Government will constitute a committee consisting of officers not below the rank of Additional Secretary/Special Secretary, State of Chhattisgarh, Director, Urban Administration, Collector, Mahasamund and Chief Municipal Officer, Municipal Council Mahasamund to visit the Municipal limits of Municipal Council, Mahasamund and to take effective and proper steps to provide basic civic amenities including usable roads covered drainage etc. to the residents of Municipal Council, Mahasamund. Same will be done within 10 days from the date of receipt of a copy of this order and consequent work will be carried out within further two weeks as per direction by the Committee. The State Government will provide necessary funds for performance of said work.

16. With the aforesaid observation, the writ petition finally stands disposed of. No cost(s).

17. A copy of this order be sent to the Principal Secretary, Department of Urban Administration for compliance and to do the needful.

Sd/-

(Sanjay K. Agrawal)

Judge

B/-

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No.946 of 2017

Petitioner

Pankaj Sahu

Versus

Respondents

State of Chhattisgarh and others

HEAD NOTE

(English)

Lack of financial resources cannot be ground to Municipal Council for not performing the statutory obligation as provided in Municipalities Act, 1961

(हिन्दी)

वित्तीय संसाधनों की कमी नगर पालिका के द्वारा नगर पालिका अधिनियम 1961 में प्रदत्त वैधानिक कर्तव्यों का पालन न कर पाने हेतु कारण नहीं हो सकता।

