

## **L.K. Koolwal v. State Of Rajasthan and Ors.**

High Court of Rajasthan

19 September 1986

Civil Writ Petition. No. 121 of 1986

Citation: AIR 1988 Raj 2, 1987 (1) WLN 134

Judges: D.L Mehta,J

### JUDGMENT

#### **D.L. Mehta, J :-**

1. Right and duty co-exist. There cannot be any right without any duty and there cannot be any duty without any right. It is a happy sign that the citizens of Jaipur, through the present Petitioner Mr. L. K. Koolwal have moved this Court in the matter of sanitation of Jaipur City. A good number of affidavits have been filed by the citizens of Jaipur relating to each of the localities referred to in the writ petition to show that the sanitation problem is acute in Jaipur which is hazardous to the life of the citizens of Jaipur. Insanitation leads to slow poisoning and adversely affects the life of the citizen and invites death at an earlier date than the natural death.

2. Article 51A of the Constitution has been inserted in the Constitution of India vide the 42nd Amendment in 1976. We can call Article 51A ordinarily as the duty of the citizens, but in fact it is the right of the citizens as it creates the right in favour of the citizen to move the Court to see that the State performs its duties faithfully and the obligatory and primary duties are performed in accordance with the law of land. Omissions or commissions are brought to the notice of the Court by the citizen and thus, Article 51A gives a right to the citizen to move the Court for the enforcement of the duty cast on State, instrumentalities, agencies, departments, local bodies and statutory authorities created under the particular law of the State. It provides particularly under Clause (g) that the State and its instrumentalities and agencies should strive to protect and prove (sic) the natural environment. Under Clause (j) it has been further provided that the State should (strive towards) collective activity so that the nation constantly rises to higher levels of

endeavour and achievement. The Parliament in its wisdom has correctly used the word “citizen” instead of the word “subject” to create a feeling of citizenship amongst the masses and also to see that the persons living in the country do not feel that they are subjects. We used to be subjects prior to independence, but now we have ceased to be subjects and are the citizens of the Country. The requirement of the time is that we should be real citizens of the Country. That can only be achieved if we strive towards the achievement of the goal laid down in the Preamble of the Constitution. Chapter IV directs the principles of the Constitution and Article 51A of Chapter IVA. Prior to 1976 everyone used to talk of rights but no one cared to think that there is also a duty. The right cannot exist without a duty and it is the duty of the citizen to see that the rights which he has acquired under the Constitution as a citizen are fulfilled.

**3.** A Citizen has a right to know about the activities of the State, the instrumentalities, the departments and the agencies of the State. The privilege of secrecy which existed in the old times that the State is not bound to disclose facts to the citizens or the State cannot be compelled by the citizens to disclose facts, does not survive now to a great extent. Under Article 19(a) of the Constitution there exists the right of freedom of speech. Freedom of speech is based on the foundation of the freedom of right to know. The State can impose and should impose the reasonable restrictions in the matter like other fundamental rights where it affects national security and any other allied matter affecting the nation's integrity. But this right is limited and particularly in the matter of sanitation and other allied matters every citizen has a right to know how the State is functioning and why the State is withholding such information in such matters. Mr. Koolwal has approached this Court in exercise of rights vested in him under Article 51A, though it is said to be a duty, that the Court should issue directions against the Respondents to implement the law, the Municipal Law and to perform the obligatory duties cast on the State. Maintenance of health, preservation of sanitation and environment falls within the purview of Article 21 of the Constitution as it adversely affects the life of the citizen and it amounts to slow poisoning and reducing the life of the citizen because of the hazards created, if not checked.

**4.** In the instant case, Mr. Vimal Choudhary was appointed as Commissioner by the Court and he has submitted the report earlier and pointed out the dirtiness that existed at that time in some parts of the City. Yesterday, the Court requested Mr. G. S. Bafna, Mr. Vimal Choudhary, Mr. R. K. Kala, Administrator, Municipal Board and others to visit the same site and to make a

submission about the existing condition prevalent. The present Petitioner has given a long list of the areas and all the details supported by the affidavits of the residents of that locality to show that there is insanitation, which is injurious to the health of the citizen and that mandamus must be issued against the Municipality to perform the obligatory duties cast on it. He has also submitted a sketch map and also suggested some measures for the improvement of the sanitation of Jaipur City. A person who acts like a citizen, a real citizen, who highlights the problem of the city and who brings to the notice the conditions which are hazardous to the life of the citizens, needs appreciation by the Court as such persons are very few in the country at this moment.

5. Under Chap. 6 of the Rajasthan Municipalities Act, 1959, Section 98 provides that it is the duty of every Board to make reasonable provisions referred therein within the Municipality under its authority. Clauses (c) and (d) of Section 98 reads as under : --

(c) "cleaning public streets, places and sewers, and all spaces, not being private property, which are open to the enjoyment of the public, whether such spaces are vested in the Board or not, removing noxious vegetation and obtaining all public nuisances."

(d) "removing filth, rubbish, night-soil, odour, or any other noxious or offensive matter from privies, latrines, urinals, cesspools or other common receptacles for such matter in or pertaining to a building or buildings."

6. It will not be out of place here to mention that Chapter VI deals with three duties of the Municipality namely, primary duty, secondary functions and special duty. Cleaning public streets, places and sewers, and all spaces, not being private property, which are open to the enjoyment of the public, whether such spaces are vested in the Board or not, removing noxious vegetation and all public nuisances are the primary duties of the Municipality. Furthermore, it provides that it is the primary duty of the Municipal Council to remove filth, rubbish, night-soil, odour or any other noxious or offensive matter. The primary duties will have to be performed by the Municipal Board and there cannot be any plea whether the funds are available or not; whether the staff is available or not. It is for the Municipality to see how to perform the primary duties and how to raise resources for the performance of that duty. In the performance of primary

duty no excuse can be taken and can be directed also as it is a primary, mandatory and obligatory duty to perform the same.

7. The Commissioner, Mr. Vimal Choudhary, eminent lawyers Mr. R. K. Kala and Mr. G. S. Bafna visited Chokri Modi Kana area yesterday and submitted the written report today. It was submitted that the Municipality has effectively taken some steps in that area and though the problem exists the quantum has been reduced. It was further pointed out that in Radha Damodar Ji Ka'Gali the sanitation problem is because of the encroachment made by the fabricators. It was also pointed out by Mr. Kala particularly that because of 'SARIS' there is also insanitation in Lalji Sand Ka Rasta and it was supported also by the Commissioner Mr. Vimal Choudhary and Mr. G. S. Bafna equally with the same vigilance. It was also submitted that in Tomar Ji Ka Nohra there is a problem of insanitation because of the buffaloes which are tied on the road and the problem is created by the persons of that very locality. It was also submitted that because of the old insanitary latrines which exist nearby Acharya Ka Gali, there is a problem of insanitation and it is very difficult for the people to move through that area and the odour is so bad that one cannot move.

8. Mr. Koolwal who is the real person to plead the case was not satisfied to a great extent and submits that it is true that in some parts of Chokri Modi Khana the Municipal Board has taken step to remove the dirt, filth etc. and to provide some hygenic condition. A pertinent question was placed by Mr. Koolwal that what about the other parts of the city which he had referred to in the writ petition and why the Municipal Council has not taken steps to clean that area so far. It was also submitted by Mr. Koolwal that the sanitation problem is throughout the city and the special efforts will have to be made. A special effort has been made by the Municipality to some extent. He has also submitted that some steps have been taken by the Municipality, but the taking of some steps will not suffice and the directions should be issued to the Municipality to see that the provisions of Clauses (c) and (d) of Section 98 of the Municipal Act are implemented in its true spirit. On behalf of Municipality Mr. Mehta submitted that Municipality has taken keen interest in the sanitation problem of the city and he has submitted that the very report of the Commissioner is an indication that the Municipality has taken steps though there may be laches somewhere and there may be a necessity for the removal of dirt, night-soil, filth etc. Mr. Mehta submits that the Municipality is trying its best to implement the provisions of Clauses (c) and (d)

of Section 98. But he is not in a position to say whether it has been implemented in full. He has given an affidavit that the Administrator has taken steps and has divided the area into zones and regular inspections are done now and the problem which exists in the city of Jaipur particularly relating to sanitation shall be dealt with in some time and as a result of which the people of Jaipur may not have any complaint about the sanitation and they may appreciate the Municipal Council for the work done by them. I am of the view that the Municipality has taken steps but the provisions of Clauses (c) and (d) of Section 98 have not been implemented in full and the sanitation problem exists even today. This is evident from the submissions made by the Commissioner Mr. Vimal Choudhary, Mr. G. S. Bafna and Mr. R. K. Kala Advocates who have visited the same sites yesterday. This is also evident from the affidavits filed by the various citizens. Mr. U. N. Bhandari, an eminent lawyer of this Court voluntarily submitted that the manhole nearby the house of Mr. S. R. Surana, Advocate is lying open for quite some time and the condition of the sanitation is not good.

**9.** Taking into consideration the serious allegations made in the affidavits and spontaneous submissions made by some of the eminent members of the Bar in the Court during the course of argument as well as taking into consideration the report of the Commissioner, which is the foundation for arriving at the conclusion, I am of the view that the problem of sanitation is very acute in Jaipur City and it is creating hazard to the life of the citizens. It is true that now after a lapse of time, the Municipality has awakened and is trying to do something and let us hope that they will do something within a short period.

**10.** In the result, I accept the writ petition and hereby direct the Municipality to remove the dirt, filth etc. within a period of six months and clean the entire Jaipur City and particularly in relation to the areas mentioned in the list submitted by the Petitioner with this writ petition. Some applications have also been filed by some persons during the course of hearing about different areas and the Municipality will see that the sanitation is maintained in accordance with the provisions of Clauses (c) and (d) of Section 98, in those areas also. A team of five eminent Advocates of this Court are appointed as Commissioners in this case to inspect the city with the Petitioner and Administrator, Municipality and to submit the report about the implementation of provisions of Clauses (c) and (d) of Section 98. The team shall consist of Mr. U. N. Bhandari, Mr. D. L. Bardhar, Mr. R. K. Kala, Mr. G. S. Bafna and Mr. Vimal Choudhary. Mr. U. N.

Bhandari shall fix up the date in consultation with other Advocates, the Petitioner and Administrator, Municipal Council. It is a healthy sign that the Advocates of this Court have voluntarily offered their services and they have decided not to charge any fees in the performance of the duty, particularly as it relates to the city in which they are residing. The Petitioner and Administrator, Municipal Council shall also accompany them and prepare the report of the areas referred to in the writ petition as well as in the applications. In the first month the report shall be given about the area of Ch. Topkhana Desh, Cho. Visheshwarji and Cho. Topkhana Hujuri. In the second month the report shall be given about the area of Ramganj Chopar, Purani Basti and Badi Chopar. In the coming months the report shall be given about the remaining parts of the cities which are not mentioned in the writ petition. After the dictation of this part of the judgment it was submitted by the Administrator, Municipal Council that it is very difficult to clean the entire city within the stipulated period of six months. It has been made very clear that it is not the duty of the Court to see whether the funds are available or not and it is the duty of the Administrator, Municipal Council to see that the primary duties of the Municipality are fulfilled. Municipality cannot say that because of the paucity of fund or because of paucity of staff they are not in a position to perform the primary duties. If the Legislature or the State Govt. feels that the law enacted by them cannot be implemented then the Legislature has liberty to scrap it, but the law which remains on the statutory books will have to be implemented, particularly when it relates to primary duty.