

Ameer Bano v. S.E.Highways

High Court of Lahore

11 June 1996

Writ Petition No. 1811 of 1996

Citation: PLD 1996 Lahore 592

Judges: Muhammad Aqil Mirza, J

ORDER

1. This Constitutional petition came up before me yesterday as an urgent matter. Since a question of enforcement of fundamental rights of a large number of citizens was involved, therefore, notices were issued to the concerned functionaries for hearing of the case for today. All the concerned public functionaries and the representatives of the public and the learned counsel for the parties have been heard.

2. This petition has been filed by an owner of a house at Multan Road, Bahawalpur. She has raised the grievance that the sewerage system in Bahawalpur has become totally unserviceable with the result that dirty water has collected in the form of ponds, in some cases it has entered the dwelling houses. The roads too, have become impassible due to overflowing of the gutters.

3. It is also lamented that the Highway Department is constructing the roads at very high level and if it is allowed to be done, the dirty water overflowing the gutters will enter the residential houses.

4. It appears that the sewerage system in most parts of Bahawalpur City has completely broken down in the past few days. Public protests have also been lodged. On account of the presence of dirty water coming out of the gutters in the residential and commercial areas of Bahawalpur City, it is apprehended that the residents will contract many diseases which in turn will mean that human life in the area will be endangered. Thus, protection to life guaranteed under Article 9 of the Constitution will stand denied to a large number of citizens. Therefore, I have treated the present petition as public interest litigation for enforcement of the fundamental rights, and it was on this account that I have decided to dispose of this petition immediately, dispensing with the normal procedure of admitting the cases in the first instance.

5. The root cause of the ugly situation prevailing in the city, detailed above, is on account of the failure of the sewerage system in the city. Therefore, with the assistance of the heads of various Departments and the representatives of the community and of course with the assistance of the learned Assistant Advocate-General and the counsel for the parties, I have tried to resolve the dispute through consensus.

6. The sewerage system was laid in 1963 by the Public Health Engineering Department. After its completion, the duty to maintain the sewerage is that of the Municipal Corporation, Babawalpur. The roads are being constructed by the Highway Department. The Administrator of the Municipal Corporation assisted by the Chief Corporation Officer has admitted that this is the duty of the Corporation to maintain the sewers. The Chief Corporation Officers have pointed out that sewer lines have become completely choked, presumably because they have not been properly maintained in the past. Unless these are desilted the sewer lines will not take in the water from residential houses and other premises. He has stated that efforts are being made for

desilting the sewer pipe lines. However, he has expressed some difficulties on account of which it may not be possible to properly and expeditiously desilt the system. In this behalf he has explained that in addition to the sewer men/sanitary workers he has, he requires services of fifty additional sewer men sanitary workers for the purpose. He cannot recruit on account of the ban imposed by the Government on fresh recruitment, even on an ad hoc basis. He has further stated that the salary emoluments which are paid to sewer men sanitary workers are so small that trained persons are not attracted to join the service, though they are paid Rs.200 by way of additional allowance. He has also pointed out that at some points the water may have to be lifted through tankers but no tanker is available with the Municipal Corporation. A large number of shopkeepers led by their Secretary have also narrated their miseries, the general cause whereof is also the sewerage system in the city. Their grievance is that dirty water from gutters has collected

in front of their shops, which have become totally inaccessible and has ruined their business on the one hand and their health on the other. All the shopkeepers and every other person present in Court agree that the roads which are being constructed near the Fawara Chowk are at level with the roads leading to the Railway Station and Sadiq Public School. Therefore, they agree that the roads may be constructed at the designed level but something

must be done about the sewerage system. It was emphasised during the course of arguments and agreed to by the shopkeepers and the Petitioner in the writ petition that the level of the roads had to be higher than the ground level. This is so that the water may flow down the roads otherwise the roads cannot remain intact due to rain and other water.

9. While exercising powers under Article 199 of the Constitution, in normal cases, the jurisdiction of this Court is restricted to making an order "directing a person performing, within the territorial jurisdiction of the Court, functions in connection with the affairs of the Federation, a Province or a local authority, to refrain from doing anything he is not permitted by law to do, or to do anything he is required by law to do; or declaring that any act done or proceeding taken within the territorial jurisdiction of the Court by a person performing functions in connection with the affairs of the Federation, a Province or a local authority has been done or taken without lawful authority and is of no legal effect".

7. The shopkeepers and some other persons from the public made a very serious complaint, that the person in-charge of sanitation in the city is a doctor by profession who is holding the post of Health Officer. He is posted in the city for the last ten years. On account of his long stay in the city he has become indifferent towards the maintenance of sanitation, though he does not attend to patients in the dispensary and only looks after sanitation. Their demand is that this officer should be transferred from the city and some other vigilant officer may be posted in his place. No order is required from this Court in this behalf. This matter should be attended to by the Secretary, Local Government and Rural Development Department who is competent to deal with each matter. A copy of this order shall, however, be sent to him.

8. A complaint has also been voiced against the Municipal Corporation that there are about 150 manholes in various parts of the city and life of the citizens is in constant danger on account thereof. This position is admitted by the Chief Officer. He has made a complaint about the general public that they throw rubbish and garbage in the uncovered manholes which directly results in blockage of the gutters. This situation is caused because people are not properly aware of their civic duties. It is the duty of press and the electronic media to educate people, especially in the urban areas, that they should not throw garbage in the gutters and plastic shopping bags should not be used as far as possible. Such bags indeed are extremely dangerous to human and vegetative life. In a large number of advanced countries their use has been banned. It is also the duty of

shopkeepers to supply goods to their customers in paper bags instead of plastic/polythene bags. It is now a well established fact that after use of the shopping bags, they find their way into the gutters which results in a complete break down of the sewerage system.

9. However, when dealing with Constitutional petitions for the enforcement of fundamental rights, as is the case in hand, the jurisdiction of this Court is not controlled by any limitation. The jurisdiction regarding the enforcement of fundamental right finds mention in clause (c) of sub-Article (1) of Article 199 of the Constitution, which is reproduced below -

"(c) on the application of any aggrieved person, make an order giving such direction to any person or authority, including any Government exercising any power or performing any function in, or in relation to any territory within the jurisdiction of that Court as may be appropriate for the enforcement of any of the Fundamental Rights conferred by Chapter I of Part II."

Therefore, it is clear that for the purpose of enforcement of any of the fundamental rights guaranteed under the Constitution this Court can give a direction to any person or authority, including any Government within its territorial jurisdiction, which may be deemed proper for securing the fundamental rights or to avoid their violation. The act which is required to be done by the public functionaries under the above clause may not normally be allowed to be taken by them under law/rules or in normal circumstances they may even be not permitted specifically to perform such act under the existing law or rules. But in pursuance of a direction given by the Court under sub-clause (c) (supra), the person/authority/Government so commanded by the High Court shall be bound to perform the act so that the fundamental rights of citizens are enforced. The reason why unlimited powers have been granted to the High Court for issuing appropriate directions is that every other law/rule/instruction, have to yield to the fundamental rights enshrined in the Constitution. Any law or any custom or usage having the force of law which is inconsistent with the fundamental rights to the extent of inconsistency is void, as per the dictates of Article 8 of the Constitution which reads as follows: -

"8. Laws inconsistent with or in derogation of Fundamental Rights to be void.-(I) Any law or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter, shall to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights so conferred and any law made in contravention of this clause shall, to the extent of such contravention, be void.

(3) The provisions of this Article shall not apply to

(a)

(5) The rights conferred by this Chapter shall not be suspended except as expressly provided by the Constitution."

10. The position that emerges, therefore, is to alleviate the miseries of the large number of citizens of Bahawalpur and to secure to them their fundamental right guaranteed under Article 9 of the Constitution with regard to protection of their life from diseases and inconvenience. It will be just and proper to issue suitable directions which will ensure the restoration of sewerage system in the city of Bahawalpur. Accordingly the following directions are made:

(i) The Municipal Corporation will recruit on ad hoc basis or otherwise fifty sewer men/sanitary workers with normal salary and other suitable allowance/honoraria, for the purpose of desilting and cleaning the sewerage in the area of Multan Road, near Fawara Chowk and other affected areas in the city, on emergency basis. These persons shall be recruited irrespective of and by passing the general ban imposed by the Government on fresh recruitment in the Province. No one including the audit people will raise objections to the appointments made for the above purpose;

(ii) In addition to the above, the Municipal Corporation may also hire water tanks for the purpose of removing dirty water from the sore points in the city so that expeditious relief is available to the citizens; and

(iii) The uncovered manholes in the city will be properly covered without any delay. The Chief Corporation Officer, with the consent of the Administrator of the Municipal Corporation has given an undertaking that all the manholes shall be covered within the next fortnight. The Administrator of the Municipal Corporation shall pay a personal visit in the affected area after every fortnight with a view to check the work of desilting of the sewer lines. The Chief Corporation Officer shall pay such a visit every three days. These visits shall be minimal and on their own they must visit more often.

11. Similarly the Executive Engineer Highway in the presence and with the consent of his Superintending Engineer who is present in Court has given an undertaking that the roads particularly near the house of the Petitioner shall not be more than 21 inches higher than the ground level. This undertaking shall be faithfully complied with.

12. In addition to the restoration of the existing sewerage system in the city, the Government is stated to have already accorded a long term plan providing for supplementing the sewerage system in the city. The case has already gone to the Planning and Development Department for approval. The Highway Department is also constructing drains along the roads for the outlet of extra water. It is hoped that by way of short term measures detailed above and long term measures that will be taken in future, the people of Bahawalpur will be able to utilize a more efficient sewerage system in the city.

Before parting with the case, it may be stated that the ban imposed by the Government on fresh recruitment is not absolute. The Court can take judicial notice of the appointments which are being made in relaxation of the rules and the ban. It has, therefore, been thought appropriate by me to direct the appointments by ignoring the ban imposed by the Court. Similarly the requirement of public notice through press before making appointments is also to be dispensed with, to meet the emergency. It must be stated that financial constraints were not pleaded before me on behalf of the Municipal Corporation regarding the fresh appointments of the sewer men /sanitary workers.

For what has been stated above, the writ petition stands accepted in the above terms. No order as to costs.

A.A./A-43/L

Petition accepted.