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## **CASE COMMENT: “MUNICIPAL COUNCIL, RATLAM VS. VARDICHAN AND ORS.”**

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**“IN THE SUPREME COURT OF INDIA**

**Special Leave Petition (Crl) No. 2856 of 1979**

**Decided On: 29/07/1980**

**Citation: AIR 1980 SC 1622”**

**IN THE MATTER OF:**

**“Municipal Council, Ratlam.....Appellants**

**Vs.**

**Vardichan and Ors.....Respondent**

**Hon’ble Judges/Coram: O. Chinnappa Reddy and V.R. Krishna Iyer, JJ.”**

### **BACKGROUND AND FACTS OF THE CASE**

This is a case which is concerned about a pedestrian quasi-criminal litigation invoked under Section 133 of the Code of Criminal Procedure (“CrPC”). The Appellant has appealed against the decision of the High Court’s order which directed the Appellant to manufacture and construct drainage systems and keep sanitation facilities in check.

Ratlam is a populous city located in Madhya Pradesh sheltering human and sub-human species. In

Ward No. 12, New Road in Ratlam, the rich and the poor are in existence. The poverty-stricken individuals used to engage in activities such as littering the street with fecal matter, due to no presence of public washrooms and latrines. This prompted the well-to-do citizens to protest about such occurrences, however the demand for setting up public drains fell on deaf ears. To worsen the situation, there was also an alcohol plant that started releasing its discharge on to the streets. Moreover, there was a stream which was flowing in the middle of the main road harboring fecal matter, effluents, and an obnoxious smell. Furthermore, because of this stagnant and continuous discharge of water, mosquitoes began to breed and found a comfortable abode without any intervention. Interestingly, the Municipality had constructed a drain but abandoned the construction midway which resulted in a septic tank overflowing on the land of the residents.

In light of these events, the residents approached the Sub Divisional Magistrate (“SDM”) who directed the Municipality to devise a programme to revamp the existing drainage structure and install latrines within a period of 6 months. However, this direction was not paid any heed to by the Municipality on the grounds that they lack adequate funds. Thus, the Appellant has appealed to the Supreme Court. Because the SDM made a mention of Section 188 of the Indian Penal Code (“IPC”), the fear of criminal punishment drove the Appellant to appeal in the High Court and currently the Supreme Court.

## ISSUES

1. Can the Supreme Court adopt affirmative action and compel a body incorporated under a statute, for the functioning of its duties in a time bound manner?
2. Does the court possess the power to compel such statutory bodies to respond to public grievances and enforce certain plans in furtherance of upholding and preserving sanitation facilities, that too at a great cost?
3. Can Ratlam Municipality’s monetary failure to give birth to specialized schemes and programs, absolve it from statutory liability?
4. Was the Municipality in Ratlam under an obligation to perform such a duty?

5. Does the commission of public nuisance invite criminal punishment?

## **CONTENTIONS FROM THE PARTIES**

### ***Contentions from the Appellant:***

- i. The Municipality of Ratlam contended that the residents in Ward No. 12 have voluntarily picked that area to reside in and were very well aware about the unsanitary conditions that exist in the area. This fact precludes residents in the area from complaining about the unsanitary state of affairs.
- ii. Additionally, a hindrance of shortage of funds was faced which prevented them from adhering to the directions issued by the SDM.
- iii. Shortage of economic assets prevented them from catering or fulfilling any demands.
- iv. The Appellant submits that the stream of water belongs to Shastri Colony and thereby, falls within the ambit of the Town Improvement Trust. Thus, the responsibility to treat such water lies with the Town Improvement Trust.

### ***Contentions from the Respondent:***

- i. The Respondents contended that there was negligence on the part of the Municipality who had failed to prioritise public health and treatment of hazardous waste as a matter of prime importance.
- ii. The existing drains are mismanaged, and the construction of the upcoming drains are on a standstill. They must be managed and monitored so as to avoid any obstruction in the drainage systems.
- iii. There are big pits and earthen drains which are located near the boundary of Ward No. 12, and in these pits accumulated filth and dirt which must be treated and disposed off.
- iv. The stream of water near the main road must have enclosures so as to avoid any overflowing

during the monsoon season.

- v. The Malaria Department must be compelled to sprinkle DDT to overcome the spread of malaria in the locality.

## **RULE**

### **□ Section 123 of M.P. Municipalities Act, 1961: “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) cleansing 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:*

*(c) disposing of night-soil and rubbish and preparation of compost manure from night-soil and rubbish.”*

### **□ Section 133 of CrPC: “Conditional Order for removal of nuisance”**

*“(1) Whenever a District Magistrate or a Sub- divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government, on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers-*

*(a) that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public;*

*such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation or owning or possessing such animal or tree, within a time to be fixed in the order-*

(i) to remove such obstruction or nuisance; or

(iii) to prevent or stop the construction of such building, or to alter the disposal of such substance; or if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the order, and show cause, in the manner hereinafter provided, why the order should not be made absolute.”

□ **Section 188 of the IPC: “Disobedience to order duly promulgated by public servant”**

“Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or trends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

## RATIO

The Supreme Court held that despite being aware of the duties enshrined under Section 123 of the M.P. Municipalities Act, the Municipality was guilty of “**breach of duty, public nuisance and active neglect.**”

The Supreme Court issued the following directions to the Municipality and the State of Madhya Pradesh:

- i. Ratlam Municipality and the State Government must work in tandem and take immediate action within the bounds of its statutory powers to prevent the overflowing and discharge of effluents from the alcohol plant and into the street. Moreover, the SDM must exercise his power under Section 133 of the IPC to penalize such individuals.

- ii. The Municipality is obligated to perform that within a duration of six months, there must be an adequate number of latrines- demarcated for men and women separately along with a sanitation service that must operate in the morning and evening respectively. After the duration of 6 months, a Health Officer will conduct an inquiry and accordingly furnish a report based on the work that has been completed. Local individuals in the community must be trained in keeping such washrooms clean and must be trained in using them. Ensuring *conscious cooperation* too is of paramount importance.
- iii. The State Government must provide special and additional instructions to eradicate malaria in Ward 12. A report about the progress made and steps undertaken to eradicate such a disease must be sent to the SDM.
- iv. The Municipality is not only tasked to construct drains, but must fulfil other obligations such as filling cesspools, clearing up pits of accumulated dirt, and treating such dirt.
- v. Lastly, the Supreme Court has instructed the SDM to penalize and prosecute officers who are responsible for such misconduct or willful breach.

## ANALYSIS

The Supreme Court rightly identified that the occurrence of public nuisance invokes Section 133 of the CrPC. The Magistrate has a duty towards the public i.e., victims of public nuisance. Whoever ignores an order under Section 133 of the CrPC, must abide to the implications of Section 188 of the IPC. The Municipality cannot shirk off its responsibility by using the defence that they lacked resources. There lies no judicial precedent to exonerate such liability. Regardless of any budgetary provision that a statutory body possesses, the provisions of the CrPC must be abided by at any cost. Moreover, Section 123 of M.P. Municipalities Act, 1961 does not have any *saving clause* which absolves the Municipality from its duties. Justice Krishna Iyer, distinguished the provisions enshrined in the IPC and the CrPC by deciphering public nuisance in both these codes.

The obligation imposed by the CrPC are enshrined from Section 133 to Section 143 of the CrPC depicted by substantive and procedural law. Popularly known as “summary remedies”, Section 133 lists the authorities – Magistrate or SDM that can grant a conditional order. If a public

authority's direction is defied or ignored, then it can be punishable under Section 188 of the IPC. The following four ingredients must be satisfied to amount to punishment under the IPC:

- i. Lawful order by an authority/servant
- ii. Knowledge of the order
- iii. Disobedience of the order
- iv. Result of the action is due to disobeying the order

The disobedience here must be depicted by annoyance, obstruction, and must have a consequence attached to the disobedience. In the case at hand, there was certainly disobedience- refusal to comply with the order of the SDM to address the issue of public nuisance. This non-compliance worsened the health of residents and the surrounding environment. The Supreme Court articulately encapsulated the importance of one's dignity and health and even crisply explained the role of the Municipality by stating, *"Decency and dignity are non-negotiable facets of human rights and are the 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 point which is indeed ironic and largely disgraceful, is that the Municipality possessed the funds to fight the case at the High Court and the Supreme Court, but not to carry out its duties.

Section 133 of the CrPC is mandatory in nature. It must be taken more seriously because it is this very section that promoted social justice and rule of law in consonance with international occurrences and happenings. Moreover, decency and dignity are non-negotiable aspects of human life. Having sanitized public locations must be a given and the Municipality must not have a "self-created bankruptcy" or a "perverted expenditure budget". However, in the case at hand the Court directed the State authorities in Madhya Pradesh to lend requisite funds to the Municipality.

A precedent which was used is ***Gobind Singh vs. Shanti Sarup***<sup>1</sup>, where the Magistrate ordered the

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<sup>1</sup> Gobind Singh vs. Shanti Sarup, AIR 1979 SC 143.

owner of a bakery to destroy his chimney and oven as it was contributing to public nuisance. The Supreme Court respectfully considered the interests of the baker and did not order him to fully shut down his bakery, as that would infringe Article 19 (1) (g) of the Constitution (freedom to carry on trade and business). The Supreme Court directed the SDM to organise for a local inspection of the site. This was a stark contrast from a preceding judgement such as *Shaukat Hussain and Anr. vs. Sheodayal Saksaina*<sup>2</sup>, which relied on scientific evidence or the findings of the Magistrate. Thus, the Supreme Court places reliance on the findings of the Magistrate after conducting a local inspection. Adopting the stance of *affirmative action*, can be undertaken in exceptional cases, especially for a situation like this due to the rising cases of malaria. During such action, the Court adopts an approach that is greater than an umpire or an adjudicator.

Considering how vital the environment is, Justice Krishna Iyer adopted a visionary approach by upholding the High Court's decision. This case has been used as a precedent in the case of *Krishna Gopal vs. State of Madhya Pradesh*<sup>3</sup>, where the cause of noise pollution had rendered fatal health threats to a man where vibrations due to the pollution posed a great risk to his heart. The Magistrate ordered for the closure of the factory which was upheld by the High Court. Section 133 of the CrPC was subsequently given reference to and an order was accordingly passed.

In the year of 1993, the 73rd and 74th amendment was introduced in our Constitution. This gave recognition to environmental issues, and the case at hand set a benchmark of weighing such matters on a high pedestal. HLA Hart rightly said, "*Every right has a core and penumbra*". The core is specific and vital, however; the penumbra is elastic, flexible and relative in nature. In a similar manner, the environment we live in is categorised at the core due to its universal application and limited resources.

## CONCLUSION

This case is pivotal as it reflects the power of the Supreme Court to ensure that government duties are fulfilled. In most occurrences, courts are usually reactive once the harm/damage is done, however, the Supreme Court has adopted the stance of affirmative action against the Municipality.

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<sup>2</sup> Shaukat Hussain and Anr. vs. Sheodayal Saksaina AIR 1958 MP 350.

<sup>3</sup> Krishna Gopal vs. State of Madhya Pradesh, (1986) Cr LJ 396.



The case reiterates the role of judicial activism in prioritising the liberty and dignity of individuals. Careful weight has been given to consider the importance of human rights and environmental protection. Additionally, this case also came up at a time during the emergence of public interest litigation, thereby promoting social justice.