

CONSTITUTION OF INDIA

Municipal Council, Ratlam

Vs.

Shri Vardhichand & Ors



1980 AIR 1622 1981 SCR (1) 97
1980 SCC (4) 162

By :

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BBA LLB (Hons)

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Lex Saturates

PARTIES INVOLVED

Petitioner : **Municipal Council, Ratlam**

Vs

Respondent : **Shri Vardhichand & Ors**

DATE OF JUDGEMENT

29 July, 1980

BENCH :

KRISHNAIYER, V.R.

BENCH:

KRISHNAIYER, V.R.

REDDY, O. CHINNAPPA (J)

INTRODUCTION

Till 1980, not much contribution was made by the courts in preserving the environment. One of the earliest cases which came to the Supreme Court of India was Municipal Council, Ratlam, vs Vardhichand AIR 1980 SC 1622. Ratlam is a city in the State of Madhya Pradesh in India. Some of the residents of the municipality filed a complaint before the Sub-Divisional Magistrate alleging that the municipality is not constructing proper drains and there is stench and stink caused by the exertion by nearby slum-dwellers and that there was nuisance to the petitioners. The Sub-Divisional Magistrate directed the municipality to prepare a plan with six months to remove the nuisance. The order passed by the SDM was approved by the High Court. The Municipality came in appeal before the Supreme Court of India and contended that it did not have sufficient funds to carry out the work directed by the SDM. The Supreme Court of India gave directions to the Municipality to comply with the directions and said that paucity of funds shall not be a defence to carry out the basic duties by the local authorities.

ISSUE :

1 The issue was whether a Court can compel a statutory body to carry out its duties to the community by constructing sanitation facilities?

LEGAL PROVISION :

Section 133 in The Code Of Criminal Procedure, 1973

The Code Of Criminal Procedure, 1973

The Indian Penal Code

Section 188 in The Indian Penal Code

Article 47 in The Constitution Of India 1949

LEGAL PRONOUNCEMENT :

Bangalore Medical Trust vs B.S. Muddappa And Ors on 19 July, 1991

D. Gopalan vs B. Shanthi Alias Vennira Adai ... on 23 January, 1989

Dr.B.L.Wadehra vs Union Of India & Ors on 1 March, 1996

State Of Uttaranchal vs Balwant Singh Chaufal & Ors on 18 January, 2010

Sobha Gopinath vs State Of Kerala Represented By The on 4 December, 2008

JUDGEMENT : 1

Wherever there is a public nuisance, the presence of s. 133 Criminal Procedure Code must be felt and any contrary opinion is contrary to the law. [112D]. The public power of the Magistrate

under the code is a public duty to the members of the public who are victims of the nuisance and so he shall exercise, it when the jurisdictional facts are present. [107G] 98. The Magistrate's responsibility under s. 133 Cr.P.C. is to order removal of such nuisance within a time to be fixed in the order. This is a public duty implicit in the public power to be exercised on behalf of the public and pursuant to a public proceeding. Failure to comply with the direction will be visited with a punishment contemplated by s. 188 I.P.C. [109C-D] The Municipal Commissioner or other executive authority bound by the order under s. 133 Criminal Procedure Code shall obey the direction because disobedience, if it causes obstruction or annoyance or injury to any persons lawfully pursuing their employment, shall be punished with simple imprisonment or fine as prescribed in the section. The offence is aggravated if the disobedience tends to cause danger to human health or safety. [109E] .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. [110C]. P The imperative tone of s. 133 Criminal Procedure Code read with the punitive temper of s. 188 I.P.C. make the prohibitory act a mandatory duty. [109E]. 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. [108H]. Section 123 M. P. Municipalities Act 1961 saving clause when the municipal council is penniless. P [108H]. Although the Cr.P.C. and I.P.C. are of ancient vintage the new social justice orientation imparted to them by the Constitution of India makes them a remedial weapon of versatile use. Social Justice is due to the people and, therefore, the people must be able to trigger off the jurisdiction vested for their benefit in any public functionary like a Magistrate under s. 133 Criminal Procedure Code. In the exercise of such power, the judiciary

must be informed by the broader principle of access to justice necessitated by the conditions of developing countries and obligated by Art. 38 of the Constitution.

[109F-G]. 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.

[110E]. L The Court, armed with the provisions of the two Codes and justified by the obligation under s. 123 of the Act, must adventure into positive directions as it has done in the present case. Section 133 Criminal Procedure Code authorises the prescription of a time-limit for carrying out the order. The same provision spells out the power to give

specific directives. [111A-B]

Govind Singh v. Shanti Sarup, [1979] 2 SCC 267, 279 referred to. 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 99 priority items and elitist projects to use the savings on sanitation and public health. [114C]. Where Directive Principles have found statutory expression in Do's and Don'ts 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 have 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. [114G-115A] [The Court approved a scheme of construction work to be undertaken by the Municipality for the elimination of the insanitary conditions and directed that the work be commenced within two months and that the Magistrate inspect the progress of the work every three months and see that it is implemented. [113 D-114 B]



Lex Saturates