



MAHARASHTRA STATE HUMAN RIGHTS COMMISSION

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SHRC/VGM/11/2010/ 2813

Date: 30 Nov, 2010

Case No. – 234/23/2005-06 with 1487/2007-08

Name of the complainant : Neeta Manohar Sarode
Grampanchayat Fursungi & Ors
Tal Haveli, Dist Pune

Adv Asim Sarode
Human Rights and Law Defenders (HRLD)
302, Anil Hsg. Soc. Opp Kamla Nehru Park
Pune.

Vs.

- 1 The Chief Officer,
Zilla Parishad, Pune
- 2 The Collector, Pune
- 3 S Y Aivale – St Regional Officer
Maharashtra Pollution Control Board, Pune
- 4 The Commissioner
Pune Municipal Corporation
Shivaji Nagar, Pune – 411 005

Date : 24 November 2010

Coram : Justice V G Munshi, Member

ORDER

Read the averments made in the complaint and the report received from Respondent. Read the case papers.



2. Before proceeding further with the merits of the case, points to be decided etc it is necessary to acquaint ourselves with the facts and circumstances of the case with which we are concerned. The case No. 234/23/2005-06 is filed by Sarpanch Gram Panchayat Fursungi and other residents of Villages Fursungi and Urali Devachi. The another case No. 1487/2007-08 is filed by Advocate Asim Sarode, Human Rights & Law Defenders. Both these cases were filed on same subject "Garbage Depot situated within the limits of these village and about its nuisance. The present complaints were filed against Respondents, Pune Municipal Corporation, Pune Collector, Maharashtra Pollution Control Board and against other Authorities. As both these complaints are similar in all respect they were heard and decided by common order.

3. The garbage depot is situated on hilly area within the limits of these villages. The hill site slope is towards villages Manterwadi and Uruli-Devachi. All these villages are situated at a distance of about 1 to 2 kilometers on easter side. The residents of villages Fursungi and Urali Devachi are mostly affected persons. It was alleged by them because of opening of this garbage depot, they are required to face number of problems and they are further required to lead miserable life. The solid waste daily generated in entire Pune City is collected, transported and deposited in this depot. Thus, garbage is accumulated on this site, now taken shape of huge mountain. It was alleged by the complainants that the Respondents, Pune Corporation, Pollution Control Board and other Authorities did not do their job properly and efficiently. The solid waste is not properly collected transported, and stored on the given site and it created number of problems for these villages. The complainants made following grievances and cited number of problems, which they are required to face in every day life.

- (i) The garbage or solid waste generated in Pune City, is transported in open trucks, which through out the day and night emit bad odour and create unhygienic atmosphere within the limits of these villages.
- (ii) Garbage carcasses are thrown on open garbage, causing continuous nuisance to the villagers.
- (iii) Hundreds of dogs and pigs move on the open garbage and bones etc are scattered everywhere.



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- (iv) The solid waste is not properly segregated and the mixed waste like bones, glasses etc are lying here and there.
- (v) No scientific composition, verming composting aerobic digestion for stabilization of waste is observed on the site.
- (vi) Landfill sites chosen in the present site are in total contravention of the Rules framed under Municipal Solid Wastes (Management and Handling) Rules, 2000.
- (vii) Number of wells of drinking water are situated within the limits of these villages at short distance of Garabage Depot and the result is that water is contaminated and is not fit to drinking purpose.
- (viii) The site in question is very close to Katraj by pass road. No buffer zone has been kept around landfill site. No appropriate internal roads, fencing of gates etc are not provided to the dumping site.
- (ix) The total dumping is unscientific in nature without segregation. It results into auto combustion and thereby forms smoke in the surrounding area.
- (x) Water, insecticides, pesticides etc are not regularly sprinkled on the open garbage and the result is spreading of mosquitoes and flies.
- (xi) The result of inaction on the part of Pune Corporation is that, the villagers are continuously residing in a most unhygienic atmosphere, and suffer from many diseases and illnesses.

In short according to the complainants, they are leading miserable life and there is always violation of human rights.

4. The complainants in Case No. 234/23/2005-06 made following prayers.



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(i) Pune Municipal Corporation be directed to stop dumping garbage at given sites situated within the limits of village Fursungi and Urali Devachi, Taluka Haveli, Dist. Pune.

(ii) Pune Municipal Corporation be further directed to shift the present garbage depot from this site immediately to another identified site.

5. The complainant in case No. 1487/2007-08 made following prayers.

(i) That the respondents be directed to take appropriate measures to remove the garbage dump in village Urali Devachi, Village Fursungi and to clean the air and water of the village.

(ii) To take appropriate measures to cure the illness caused in the villages Fursungi and Urali Devachi Village as a consequence of the garbage and impure drinking water.

The complainants in both the cases therefore, moved the Commission for necessary action.

6. The main Respondents in these cases are Pune Municipal Corporation and Pollution Control Board. They denied and disputed all the allegations of inaction etc made against them in the complaints. According to them, they have taken all the steps for the welfare of the villagers, about their health etc. According to them they are committed to take all the steps for the safety and welfare and for the benefits of the villagers.

7. The complainants made prayer for shifting of the garbage depot from this place to another place and secondly direction to stop dumping of garbage on the given site. It is beyond the scope of powers and jurisdiction of the Commission to grant such reliefs.

The question arises in this matter is whether Commission has jurisdiction to entertain, deal and decide such issue. Section 12 of the Protection of Human Rights



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Act, 1993 deals with functions and powers of the Commission. The relevant portion of Sec. 12 (a) (i) of the Act of 1993 is reproduced as under.

Sec. 12 (a) (i) **“The Commission shall perform all or any of the following functions namely (a) inquire suo motu or on a petition presented to it by a victim or any person on his behalf into complaint of (i) violation of human rights or abatement thereof....”**

Therefore, the complainant has to make out a case of violation of human rights, in view of the meaning assigned to the definition of “human rights” given under Sec. 2 (1) (d) with Sec.12 (a) (i) of the Act of 1993.

The Division Bench of High Court Bombay in

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(State of Maharashtra Vs Sou Shobha Vitthal Kolte)

held that,

“Once a petitioner comes before Commission complaining of violation of human rights based on the right created under a statute and the statute itself provides a mechanism for redressal by way of appeal, revision or otherwise, the Commission ordinarily should not entertain a complaint and direct the parties to pursue their remedy under the statute.”

In view of the principle laid down in the decision referred to above, the complainant has to pursue proper remedy. The Commission cannot entertain such matter.

8. It is necessary to mention that in the similar matter, earlier writ petition was filed in High Court and Court passed order and given directions. The complainants submitted that writ petition No. 2746/2000 was filed in High Court and the Hon'ble Court in this PIL No. 2746/2000 given directions, which are reproduced as under.



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1. No dumping be made of any waste except Non-Biodegradable Inert Waste and other waste which is not suitable either for recycling or biological process.
2. No use of Urali Devachi Dumping Ground is to be made unless Respondent obtains authorization of Pollution Control Board.
3. The Municipal Corporation shall not operate any Waste Processing and Disposal Facility without getting authorization of Pollution Control Board as per Rule 6.
4. The Respondents shall comply with all the requirements mentioned in Schedule III of the aforesaid Rules relating to specification for the land filling, strictly as per the said Rules.
5. The Secretary, Urban Development Department, Government of Maharashtra or any official nominated / deputed by him will supervise strict implementation of these directions issued by us and faithfully comply with earlier orders as expeditiously as possible.
6. The Pollution Control Board will also monitor the compliance standard as laid down the Rule 6 of the Rules.
7. Let the authorities consider and decide with regard to selection of new land site as laid down in Schedule III read with Rule 6 of the Rules."

Thus, the Hon'ble High Court has given certain directions to the Corporation and also to the Pollution Control Board. It was the grievance made by the complainants that the Respondents did not properly comply such directions nor steps were taken to shift garbage depot from Village Urali Devachi to other site. All these aspects, that directions given by the Court, were not complied with, etc cannot heard and decided by the Commission in view of clauses 8 (h) and 8 (i) of the Maharashtra State Human Rights Commission (Procedure) Regulations, 2001 r/w Sec. 10 of the Protection of Human Rights Act, 1993. Thus, there is decision on all these issues by



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competent Court. Therefore, it will not be proper on the parts of the Commission to go so deep into its merits when the similar matter is already decided by the Court.

9. Dr Pardeshi Health Department Pune Municipal Corporation appeared in this matter and given the list of works done at Urali Devachi and Fursungi sites.

- (i) Compound wall of 15 to 20 feet height is constructed around the garbage yard. Out of 6 km, we have completed 2 km of wall. More budget is allocated in the year 2010-11 to the tune of Rs. 4.25 crore to construct compound wall for 2 km length.
- (ii) Tree plantation is done around the garbage depot as a buffer zone. In summer season, water tanks are deployed to water the plants.
- (iii) When capping is done as per IL & FS report, for the previous dumped garbage, the leachate issue will be resolved once and for all. Till such time, collection is done in four RCC tanks of 2 lakh litre capacity. The collected leachate is transported in sullage vans to the Sewage Treatment plants of PMC. The generation of leachate in summer season is very less as compared to monsoon season.
- (iv) Everyday, pesticides are sprayed in the garbage depot to stop the fly and odour nuisance.
- (v) There was an existing abandoned quarry in the vicinity of garbage depot. This 50 ft deep quarry is filled up by rabbit material (Construction debris) of approx 50,000 to 60,000 cu m material
- (vi) In case of fire incidences at the depot, new water tank of capacity 2 lakh litres is constructed at site to douse the fire. Two fire engines are stationed permanently at the depot.

Dr Pardeshi made a statement in writing that,

" As per the commitment made by PMC, from 1st June 2010, PMC has completely stopped open dumping of solid waste. 100% waste is processed at the processing plant. PMC is the first Municipal Corporation in India to stop



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plants of 5 cu.m capacity and 1 biogas plant of 3 cu.m. capacity at different locations in the city. This is done as a part of decentralization of waste processing plants in the city. In addition to this 1 mechanical composting plant of capacity 2 Metric Ton is installed and is already in operation.

Also the manure produced by the biogas plant is used in Gardens in the city. Thus, scientific disposal of waste is done through these biogas plants. By setting up decentralized plants all over the city, the transportation needs of garbage are reduced. The water supply and sanitation department of Government of Maharashtra has given directives to other Municipal Corporations to set up such biogas plants and follow the example of Pune city.

Dr Pardeshi submitted that the Corporation is seriously considering to do capping of previously dumped garbage and he made following statement.

"The local people at Uruli Devachi and Fursungi are demanding to do CAPPING of previously dumped garbage. M/s. IL & S consultants are appointed by PMC and they have prepared a DPR – Detail Project Report. As per the suggestion of consultants, the capping work will be done through tender process. PMC has allocated a budget of Rs. 21.25 Crores for this work in the financial year 2010-11. The work is expected to be completed within 1 1/2 to 2 years time".

After considering all these aspects, there is reason to believe that Pune Corporation has taken sincere steps to overcome all these problems. Therefore, it cannot be said that the Respondent Corporation neglected all these works. There cannot be any difference of opinion on the point that, the Corporation requires some time to complete all the projects and incomplete works and to overcome all these problems. I see no reason to disagree with the submissions made by Dr Pardeshi on behalf of Corporation. The Commission appreciates the efforts made by the Corporation and its officers, and more particularly Dr Pardeshi in this field. The Commission hopes and trusts that the Respondent Corporation would complete all the projects and incomplete works as early as possible and to reduce the inconvenience of the villagers.



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10. It was the grievances made by the complainants that the Respondent State Pollution Control Board did not properly monitor the working of garbage depot and referred the Rules made under Municipal Solid Wastes Rules 2000 and they are reproduced as under,

“As per Rule 6(1), it is the responsibility of interalia the State Pollution Control Board to monitor the compliance of the standards regarding ground water, ambient air, leachets quality and composed quality including incineration standards as specified under Schedules II, III and IV.

As per Rule 7, any Municipal Solid Waste generated in a City or Town, shall be managed and handled in accordance with the compliance criteria and procedure laid down in Schedule II and further it states that the waster processing and disposal facilities shall meet the specifications and standards as specified in Schedule and Standards specified in Schedules III and IV.”

There cannot be any difference of opinion on the point that it is incumbent upon State Pollution Control Board to monitor all these things properly, and to take ^{action} accordingly. Record shows that sometimes show cause notices were given to Respondent Corporation when they failed to act according to the Rules and Regulation. In my opinion it is the prime duty of the Board to monitor all these things properly and to see that all the things take place according to Rules and Regulation. Even Hon'ble High Court in writ petition has given such direction to the Pollution Control Board. Therefore, now it is incumbent upon the Pollution Control Board to do all these things which are necessary under law.

11. It is necessary to repeat that Hon'ble High Court in PIL No. 2746/2000 given directions to Respondents Pune Municipal Corporation, State Pollution Control Board, The Secretary, Urban Development Department, Government of Maharashtra, and they were directed to implement the said order properly, in its true spirit. It was alleged by the complainants that, these Respondents did not properly implement this



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order and there was not any compliance of Rules and Regulations made there under. It is incumbent upon the Respondent to act strictly in obedience to the directions given by Hon'ble High Court. Therefore, the Commission again is not required to issue such directions in this matter. The Commission therefore, recommends the Respondents to act strictly as per the directions given in this writ petition.

Copy of this order be sent to

- (1) Commissioner, Pune Municipal Corporation
- (2) State Pollution Control Board.
- (3) Secretary Urban Development Department, Mantralaya, Mumbai

Through Secretary, State Human Rights Commission Mumbai for information and necessary action.

With these observations and recommendations the Cases No. 234/23/2005-06 and 1487/2007-08 are disposed of accordingly.

The Secretary to communicate this order to the parties concerned.



Sd/-
(Justice V G Munshi)
Member, SHRC