

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,  
EASTERN ZONE BENCH, AT KOLKATA  
O.A No. 99 OF 2024**

**IN THE MATTER OF:**

NITYENDU SHEKHAR BHATTACHARJEE

... APPLICANT

-VERSUS-

THE STATE OF ASSAM & Ors.


.... RESPONDENTS

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THROUGH:

DATE: 29.03.2025.  
PLACE: New Delhi

  
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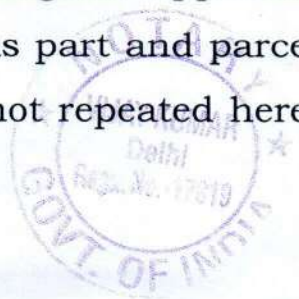
THE STATE OF ASSAM & Ors.

.... RESPONDENTS

**REJOINDER AFFIDAVIT ON BEHALF OF THE APPLICANT TO THE  
COUNTER AFFIDAVIT FILED BY THE RESPONDENT NO. 4.**

I, Nityendu Shekhar Bhattacharjee, resident of House No 13, Bilpar, Silchar, Assam do hereby solemnly affirm and state on oath as under:

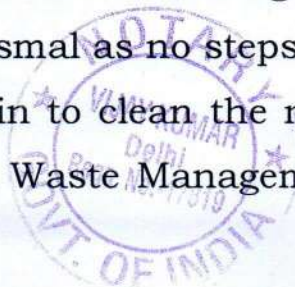
1. That I am the Applicant in the present Original Application and I am well conversant with facts of the present case and hence, competent to swear and affirm the present Rejoinder affidavit.
2. That the present Reply filed by the Respondent No. 4 has been traversed by the Applicant in its entirety and the Applicant states that all the averments made therein may be construed as denied and disputed unless specifically admitted.
3. That the contentions made by the Respondent No. 4 are mere bald allegations which are unsupported by evidence & the law, and the Applicant vehemently denies all the allegations unless specifically admitted.
4. That the contents of the Original Application are reiterated herein which may be read as part and parcel of this rejoinder affidavit and the same are not repeated herein for the sake of brevity and convenience.



**PRELIMINARY SUBMISSIONS:**

That before averting to para-wise reply, the Applicant begs to refer to the following preliminary submissions: -

- a. It is most respectfully submitted that the website of the Silchar Municipal Board, the Respondent No. 4 herein, stipulates the various functions which ought to be undertaken by the Respondent No. 4 pertaining to solid waste management. This comprises of waste segregation and storage at source, primary collection, secondary storage, transportation, secondary segregation, resource recovery, processing, treatment, and final disposal of solid waste., A true copy of the Home Page of the Silchar Municipal Board is already annexed hereto and marked as Annexure P1 in the original application.
- b. It is most humbly submitted that Section 15 of the Solid Waste Management Rules, 2016, clearly outlines the responsibilities of local authorities in census towns and urban conglomerates. The Respondent No. 4 falls within the definition of a 'local authority' and has failed to fulfil its statutory duties under the said Rules. The inaction on part of the Respondent No. 4 herein, has prima facie led to grave violation of Solid Waste Management Rules. Respondent No. 4 herein has not implemented the Solid Waste Management Rules, 2016 in letter and spirit.
- c. That it is most humbly submitted that even after giving repeated representations and issuance of notice in the present case, there has been no improvement in and around the surroundings of the residential house of the Applicant herein. Rather, Respondent No. 4 herein is raising high claims that action has been taken as per the Solid Waste Management Rules, 2016. However, on ground reality the state of affairs is quite abysmal as no steps have been taken by Respondent No. 4 herein to clean the neighbourhood in accordance with the Solid Waste Management Rules, 2016





as well as the Solid Waste Management Bye-Laws, 2019 introduced by Respondent No. 4.

- d. It is pertinent to highlight herein that the extent of application of the Solid Waste Management Bye-Laws of 2019 as per Clause 2.0 are as follows: *“This bye-law applies to the domestic, institutional, commercial and any other non-residential Solid Waste generators, situated in the Board area and the public who throw the solid waste in to storm water drain, underground sewerage system, water bodies within the limits of Silchar Municipal Board.”*

As per Clause 2.0 of the Silchar Town Solid Waste Management Bye-Laws, 2019, it is crystal clear that Respondent No. 4 herein is statutorily bound by its own bye-laws to maintain the health and hygiene of the domestic residents and on public who throw solid waste in storm water drains within the limits of Silchar Municipal Board. However, Respondent No. 4 herein has completely turned a blind-eye to its duties and responsibilities and rather shifted the onus of cleaning drains on the Applicant herein.

- e. It is most humbly submitted that while the Silchar Town Solid Waste Management Bye-Laws, 2019 has categorically enumerated the duties of waste generators in Clause 4.0, on the other hand the responsibilities and the obligatory responsibilities of the Silchar Municipal Board- the Respondent No. 4 herein have not been approved as per Clause 5.0 and 6.0 respectively of the said bye-laws which is highly violative of the framework of Solid Waste Management Rules, 2016.
- f. That it is most humbly submitted that Respondent No. 4 herein, has annexed various work orders in Annexure 2 which are tabulated herein below.

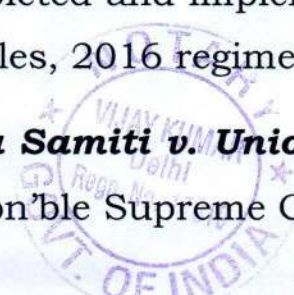




DATE	SCOPE OF WORK	AMOUNT SANCTIONED	TIMELINE
10-02-2021	NGOs and SHGs selected to provide the service on behalf of Respondent No. 4	-	2 years (2021-2023)
26-11-2021	Accorded to Radiant Engineering Company for bio mining and landfill restoration at damping ground.	₹1.92 Cr.	90-120 days
24-04-2022	NGOs/SHGs/Firms selected by Respondent No. 4 for the primary collection and disposal of Municipal Solid Waste	-	2 years (2022-2024)
August 2023	Selection of concessionaire for Design-Built-Operate-Transfer of 10 KLD FSTP MBBR Technology along with O%M for a period of 3 years.	₹2.00 Cr.	3 years (2023-2026)
06-03-2024	Establishment & Commissioning of Material Recovery Facility (MRF) & Waste to Compost Plant (W2C)	₹6.95 Cr.	2 Years
06-03-2024	Supply of 2 Nos. of Truck Mounted Hook Loader. Procurement & Instalment of 8 nos. of Portable Compactor	₹2.99 Cr.	1 year

However, there is no clarity on to the fact that which projects have been successfully completed and implemented as per the Solid Waste Management Rules, 2016 regime.

g. In ***Paryavaran Suraksha Samiti v. Union of India WP(C) NO. 375 OF 2012***, the Hon'ble Supreme Court of India held



that Under Article 243W of the Constitution and Item 6 of the 12th Schedule, municipalities and local bodies are responsible for public health, sanitation, conservancy, and solid waste management. Consequently, they must operate and maintain common effluent treatment plants (CETPs). If municipalities face financial constraints, they can use Articles 243X and 243Y to generate funds through commercial, industrial, and domestic beneficiaries. The State Government (or Union Territory) will supervise this process through the Secretaries of Urban Development and Local Bodies. Municipalities were required to finalize funding norms for operating Common Effluent Treatment Plants (CETPs) by **31 March 2017**, with implementation starting from **1 April 2017**. If the norms were not in place by the deadline, the **State Government or Union Territory** had to cover the financial costs to keep dis-functional CETPs running. Even after almost thirteen years, the guidelines of the Hon'ble Supreme Court were not adhered to.

A true copy of the judgement is annexed and marked herewith as **ANNEXURE P-7**

- h. Despite the Applicant and the citizens of Silchar paying ₹100 per month to Respondent No. 4 for garbage collection, the service is not provided consistently. A copy of the monthly challan is annexed and marked herewith as **ANNEXURE P-8**

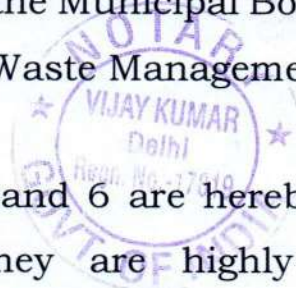
**PARAWISE REPLY TO THE PRELIMINARY OBJECTIONS:**

1. That the contents of Para 1 are a matter of record and do not necessitate a call for reply.
2. That the assertion made by Respondent No. 4 in Paragraph 2 is incorrect and misleading. In OA No. 99 of 2024, the Applicant never claimed that the area in question is a designated dumping site. Rather, the application merely highlighted that the large open drain adjacent to the Applicant's residence is being used



for indiscriminate garbage disposal and is filled with contaminated water, posing severe health risks to the residents. It is the Respondent No. 4's statutory duty to implement effective measures for the disposal and management of solid waste within its jurisdiction, rather than shifting blame onto the residents of the locality. The lack of a duly established waste disposal and maintenance mechanism, which the Respondent No. 4 was obligated to implement, is the primary cause of the present issue.

3. The contents of paragraph 3 are vehemently denied and disputed. On 25.01.2024, the Respondent No. 4 was given a written representation aggrieved by the inaction of Respondent No. 4 for taking necessary steps for cleaning storm water drain outside the house of the Applicant herein. That due to the negligent act of Respondent No. 4 herein, contaminated drain water had seeped into the Applicant's residential premises. Even after giving a representation, no action was taken by the Respondent No. 4 to address this pressing issue. This underscores the Respondent No. 4's grave dereliction of its statutory duties. A copy of the written representation along with the postal receipts dated 25.01.2024 is already annexed herewith and marked as ANNEXURE P-3.
4. The contents of paragraph 4 are denied and disputed. The Respondent No. 4 has developed the Solid Waste Management Bye-Laws in 2019 in compliance with the Solid Waste Management Rules, 2016. However, it is pertinent to mention herein that the provisions in the Bye-Laws pertaining to the responsibilities of Silchar Municipal Board have not been approved and thus are contrary to the high claims of the Respondent No. 4 herein. The mere enactment of Bye-laws does not equate to the fulfilment of the Municipal Board's obligations as mandated under the Solid Waste Management Rules, 2016.
5. The contents of Paragraph 5 and 6 are hereby unequivocally denied and disputed as they are highly incorrect and



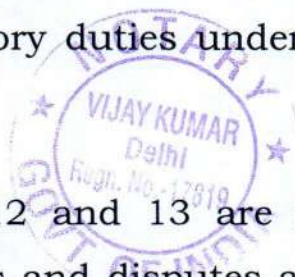


misconceived. The Respondent No. 4's actions constitute a gross dereliction of its statutory obligations. It is imperative that the Respondent No. 4 refrains from deflecting blame onto the Applicant when it has itself failed to discharge its mandatory duties towards the citizens of Silchar town. It is most humbly submitted that mere issuance of work order for door-to-door collection is not the only scope of work of Respondent No. 4 herein who is duty bound to rather implement the Solid Waste Management Rules in its letter and spirit. The current photographs of the locality dated 29.01.2025 of the Applicant's residence depicting the garbage dumped is annexed herewith and marked as **ANNEXURE P-9**.

6. The contents of Paragraph 7 and 9 are denied and condemned. The Respondent No. 4 instead of complying with the provisions of the Solid Waste Management Rules, 2016 and the directions issued by the Hon'ble Supreme Court of India in the case of ***B.L Wadhera v. Union of India (1996) 2 SCC 594*** which primarily included ensuring that the streets, public premises, parks, et cetera shall be cleaned on a daily basis including holidays. A true copy of the judgement *B.L Wadhera v. Union of India (1996) 2 SCC 594* is marked and annexed as **ANNEXURE P - 10**

7. The contents of Paragraph 10 and 11 are hereby categorically denied. The Respondent No. 4's attempt to deny the contamination of the open drains in Silchar shall in no way alter or negate the undeniable reality of the situation. It is imperative that the Respondent No. 4 acknowledges the veracity of the facts, as the contamination of water in front of the Applicant's house is evident and poses a significant public health risk, which the Respondent No. 4 is obligated to address in accordance with its statutory duties under the relevant laws and regulations.

8. That the contents of Para 12 and 13 are matters of record, however, the Applicant denies and disputes any averment made



herein contrary to the original application in the above-mentioned paragraphs and the present affidavit.

9. That the contents of Paragraph 14 are denied and disputed Respondent No. 4 is to provide strict proof of the same.
10. That the contents of Paragraph 15 are denied and disputed. It is most humbly submitted that merely holding meetings for addressing the issue in hand rather than actual implementation of the Solid Waste Management Rules, 2016 cannot be termed as solid waste management. The minutes of the meetings as well as the photos of the cleanliness drive which have been annexed by Respondent No. 4 herein as Annexure VI, VII and VIII respectively are from 09/07/2019 and 17/06/2019 and 2022, and therefore, the same does not reflect the present scenario.

In view of the submissions made herein above, the prayer made in the present application deserves to be allowed.

It is prayed accordingly.

*Nityendu shekhar Bhattacharjee*

**DEPONENT**

**VERIFICATION:**

Verified at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2025. The contents of the above rejoinder are true and correct to the best of my knowledge and belief which and nothing material has been concealed therefrom.

*Nityendu shekhar Bhattacharjee*


**DEPONENT**



25 MAR 2025

THROUGH

Place: DELHI

Dated: 29.03.2025  
(Madhumita Bhattacharjee)

Advocate for the Applicant

J-1921, C. R. PARK,

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO. 375 OF 2012

Paryavaran Suraksha Samiti and another ..Petitioners

versus

Union of India and others ..Respondents

J U D G M E N TJAGDISH SINGH KHEHAR, CJI

The petitioners have approached this Court, seeking a writ in the nature of mandamus, for a direction to the respondents, (which includes the Union Government, all the State Governments and the Union Territories) to ensure, that no industry which requires "consent to operate" from the concerned Pollution Control Board, is permitted to function, unless it has a functional effluent treatment plant, which is capable to meet the prescribed norms for removing the pollutants from the effluent, before it is discharged.

2. The Union of India, and the State Governments (including the Union Territories) have filed counter affidavits, expressing their individual positions. During the course of hearing, learned counsel representing the respondents, also made some suggestions, which could be highly beneficial, in carrying forward the process of removing pollutants, from the discharged effluent, in a systematic and co-ordinated manner.

3. During the course of hearing, it was not disputed between

the rival parties, that the initiation of the process has to be at the individual level of the industry itself. It was suggested that each industry which requires "consent to operate" from the concerned Pollution Control Board, should be mandated to set up a functional primary effluent treatment plant. We are informed, that only when such an effluent treatment plant has been set up, the concerned Pollution Control Board grants a "no objection" to the industry, and accordingly "consent to operate", so as to allow the industry to become functional. It is therefore apparent, that all running industrial units, which require "consent to operate" from the concerned Pollution Control Board, have a functional primary effluent treatment plant, in place.

4. The question that arises for our consideration is, whether the same is maintained in good order, after the industry itself has become functional. The industry requiring "consent to operate", can be permitted to run, only if its primary effluent treatment plant, is functional. We therefore consider it just and appropriate, to direct the concerned State Pollution Control Boards, to issue notices to all industrial units, which require "consent to operate", by way of a common advertisement, requiring them to make their primary effluent treatment plants fully operational, within three months from today. On the expiry of the notice period of three months, the concerned State Pollution Control Board(s) are mandated to carry out inspections, to verify, whether or not, each industrial unit requiring "consent to operate", has a functional primary effluent treatment plant. Such of the industrial units, which have not been able to make their

primary effluent treatment plant fully operational, within the notice period, shall be restrained from any further industrial activity. This direction may be implemented by requiring the concerned electricity supply and distribution agency, to disconnect the electricity connection of the defaulting industry. We therefore hereby further direct, that in case the concerned State Pollution Control Boards make a recommendation to the concerned electrical supply and distribution agency/company, to disconnect electricity supply to an industry, for the reason that its primary effluent treatment plant is not functional, it shall honour such recommendation, and shall disconnect the electricity supply to such defaulting industrial concern, forthwith.

5. Such an industrial concern, which has been disabled from carrying on its industrial activities, as has been indicated in the foregoing paragraph, is granted liberty to make its primary effluent treatment plant functional to the required capacity, and thereupon, seek a fresh "consent to operate" from the concerned Pollution Control Board. Only after the receipt of such fresh "consent to operate", the industrial activities of the disabled industry, can be permitted to be resumed. In carrying out the above exercise, we consider it just and appropriate to require, the Pollution Control Boards to carry out inspections, by prioritizing inspections of severely and critically polluted industries, so that visible results emerge at the earliest.

6. Liberty is hereby granted to private individual(s) and organizations, to address complaints to the concerned Pollution Control Board, if any industry is in default. On the receipt of any

such complaint, the concerned Pollution Control Board, shall be obliged to verify the same, and take such action against the defaulting industry, as may be permissible in law. Such action, would be in addition to the discontinuation of industrial activity forthwith, in the manner directed hereinabove (but only after verification).

7. Having effectuated the directions recorded in the foregoing paragraphs, the next step would be, to set up common effluent treatment plants. We are informed, that for the aforesaid purpose, the financial contribution of the Central Government is to the extent of 50 per cent, that of the concerned State Government (including the concerned Union Territory) is 25 per cent. The balance 25 per cent, is to be arranged by way of loans from banks. The above loans, are to be repaid, by the industrial areas, and/or industrial clusters. We are also informed, that the setting up of a common effluent treatment plant, would ordinarily take approximately two years (in cases where the process has yet to be commenced). The reason for the above prolonged period, for setting up "common effluent treatment plants", according to learned counsel, is not only financial, but also, the requirement of land acquisition, for the same.

8. In view of the fact, that the financial position has been taken care of, as has been expressed above, we are of the view, that the setting up of "common effluent treatment plants", should be taken up as an urgent mission. With reference to common effluent treatment plants, which are already under implementation, we hope and expect, that they would be completed within the time

lines already postulated. With reference to common effluent treatment plants, which are yet to be set up, we consider it just and appropriate to direct, the concerned State Governments (including, the concerned Union Territories) to complete the same within a period of three years, from today. We are also of the view, that while acquiring land for the 'common effluent treatment plants', the concerned State Governments (including, the concerned Union Territories) will acquire such additional land, as may be required for setting up "zero liquid discharge plants", if and when required in the future.

9. During the course of hearing, we were informed by learned counsel, that the running of 'common effluent treatment plants', which are in place, is also a matter of serious concern. In this behalf, it was submitted, that some of the common effluent treatment plants are dis-functional, because of lack of finances, whilst some others are dis-functional, because of the requirement of repairs, which have not been carried out, again because of lack of financial resources.

10. Given the responsibility vested in Municipalities under Article 243W of the Constitution, as also, in item 6 of the 12<sup>th</sup> Schedule, wherein the aforesaid obligation, pointedly extends to "public health, sanitation conservancy and solid waste management", we are of the view, that the onus to operate the existing common effluent treatment plants, rests on municipalities (and/or local bodies). Given the aforesaid responsibility, the concerned municipalities (and/or local bodies), cannot be permitted to shy away, from discharging this onerous duty. In case there are further

financial constraints, the remedy lies in Articles 243X and 243Y of the Constitution. It will be open to the concerned municipalities (and/or local bodies), to evolve norms to recover funds, for the purpose of generating finances to install and run, all the "common effluent treatment plants", within the purview of the provisions referred to hereinabove. Needless to mention, that such norms as may be evolved for generating financial resources, may include all or any, of the commercial, industrial and domestic beneficiaries, of the facility. The process of evolving the above norms, shall be supervised by the concerned State Government (Union Territory), through the Secretaries, Urban Development and Local Bodies respectively, (depending on the location of the respective common effluent treatment plant). The norms for generating funds, for setting up and/or operating the 'common effluent treatment plant' shall be finalized, on or before 31.03.2017, so as to be implemented with effect from the next financial year. In case, such norms are not in place, before the commencement of the next financial year, the concerned State Governments (or the Union Territories), shall cater to the financial requirements, of running the "common effluent treatment plants", which are presently dis-functional, from their own financial resources.

11. Just in the manner suggested hereinabove, for the purpose of setting up of "common effluent treatment plants", the concerned State Governments (including, the concerned Union Territories) will prioritize such cities, towns and villages, which discharge industrial pollutants and sewer, directly into rivers and water bodies.

12. We are of the view, that in the manner suggested above, the malady of sewer treatment, should also be dealt with simultaneously. We therefore hereby direct, that 'sewage treatment plants' shall also be set up and made functional, within the time lines and the format, expressed hereinabove.

13. We are of the view, that mere directions are inconsequential, unless a rigid implementation mechanism is laid down. We therefore hereby provide, that the directions pertaining to continuation of industrial activity only when there is in place a functional "primary effluent treatment plants", and the setting up of functional "common effluent treatment plants" within the time lines, expressed above, shall be of the Member Secretaries of the concerned Pollution Control Boards. The Secretary of the Department of Environment, of the concerned State Government (and the concerned Union Territory), shall be answerable in case of default. The concerned Secretaries to the Government shall be responsible of monitoring the progress, and issuing necessary directions to the concerned Pollution Control Board, as may be required, for the implementation of the above directions. They shall be also responsible for collecting and maintaining records of data, in respect of the directions contained in this order. The said data shall be furnished to the Central Ground Water Authority, which shall evaluate the data, and shall furnish the same to the Bench of the jurisdictional National Green Tribunal.

14. To supervise complaints of non-implementation of the instant directions, the concerned Benches of the National Green Tribunal, will maintain running and numbered case files, by

dividing the jurisdictional area into units. The above mentioned case files, will be listed periodically. The concerned Pollution Control Board is also hereby directed, to initiate such civil or criminal action, as may be permissible in law, against all or any of the defaulters.

15. Liberty is granted to private individuals, and organizations, to approach the concerned Bench of the jurisdictional National Green Tribunal, for appropriate orders, by pointing out deficiencies, in implementation of the above directions.

16. It however needs to be clarified, that the instant directions and time lines, shall not in any way dilute any time lines and directions issued by Courts or Benches of the National Green Tribunal, hitherto before, wherein the postulated time lines would expire before the ones expressed through the directions recorded above. It is clarified, that the time lines, expressed hereinabove will be relevant, only in situations where there are no prevalent time line(s), and also, where a longer period, has been provided for.

17. It would be in the interest of implementation of the objective sought to be achieved, to also require each concerned State (and each, concerned Union Territory) to make provision for "online, real time, continuous monitoring system" to display emission levels, in the public domain, on the portal of the concerned State Pollution Control Board. We are informed, that at least three State Governments have already adopted the aforesaid

measures. Such measures shall be put in place by all the concerned State Governments( including, the concerned Union Territories), within six months from today.

18. The instant writ petition stands disposed of, in the aforesaid terms.

.....CJI  
[JAGDISH SINGH KHEHAR]

.....J.  
[Dr. D.Y. CHANDRACHUD]

.....J.  
[SANJAY KISHAN KAUL]

NEW DELHI;  
FEBRUARY 22, 2017.



JUDGMENT

ITEM NO.10

COURT NO.1

SECTION PIL(W)

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Writ Petition(s) (Civil) No(s). 375/2012

PARYAVARAN SURAKSHA SAMITI &amp; ANR

Petitioner(s)

VERSUS

UNION OF INDIA &amp; ORS.

Respondent(s)

(with appln(s) for directions and exemption from filing OT and permission to file synopsis and list of dates and office report)

Date : 22/02/2017 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE  
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD  
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

For Petitioner(s) Mr. Colin Gonsalves, Sr. Adv  
Mr. Gunjan Singh, Adv.  
for Ms. Jyoti Mendiratta, AOR

For Respondent(s) Ms. Pinky Anand, ASG  
(UOI) Mr. S.W.A. Qadri, Adv.  
Mr. Ajay Sharma, Adv.  
Mr. Balendu Shekhar, Adv.  
Mr. Ansh Singh Luthra, Adv.  
Mr. Hemant Arya, Adv.  
for Mr. G.S. Makker, AOR

State of Haryana Mr. Anil Grover, AAG  
Mr. Satish Kumar, Adv.  
Mr. Sanjay Kr. Visen, AOR

State of Rajasthan Mr. S.S. Shamsbery, AAG  
Mr. Amit Sharma, Adv.  
Mr. Ankit Raj, Adv.  
for Ms. Ruchi Kohli, AOR

State of MP Mr. Purushaindra Kaurav, AAG  
Mr. Mishra Saurabh, Adv.  
Mr. Ankit Kr. Lal, Adv.  
Ms. Vanshuja Shukla, Adv.  
Ms. Anuradha Mishra, Adv.

State of Gujarat Ms. Hemantika Wahi, Adv.  
Ms. Jesal Wahi, Adv.

State of Uttarakhand Ms. Mamta Singh, Adv.  
 Ms. Bhuvneshwari Pathak Kaushik, Adv.  
 Ms. Shilpi Satya Priya Satyam, Adv.  
 Mr. Rahul Kaushik, Adv.  
 Mr. Ashutosh Kr. Sharma, Adv.

State of Jharkhand Mr. Tapesh Kumar Singh, Adv.  
 Mr. Mohd. Waquas, Adv.  
 Mr. Sukant Vikram, Adv.  
 Mr. Aditya Pratap Singh, Adv.

State of Telangana Mr. S.Udaya Kumar Sagar, Adv.  
 Mr. Mrityunjai Singh, Adv.

State of AP Mr. Guntur Prabhakar, Adv.  
 Ms. Prerna Singh, Adv.

State of UP Mr. M.R. Shamshad, Adv.  
 Mr. Rajat Singh, Adv.  
 Mr. Aditya Samaddar, Adv.  
 Ms. Harshita Deshwal, Adv.

State of Tamil Nadu Mr. Paramasivam, Adv.  
 Mr. B. Balaji, Adv.  
 Mr. Muthuvel palani, Adv.  
 Mr. S. Kumar, Adv.

For CPCB Mr. Vijay Panjwani, Adv.

State of Bihar Ms. Varsha Poddar, Adv.  
 for Mr. Gopal Singh, AOR

State of West Bengal Mr. Joydeep Mazumdar, adv.  
 Mr. Debojyoti Bhattacharya, Adv.  
 for Mr. Parijat Sinha, AOR

State of Odisha Mr. Krishnayan Sen, Adv.  
 Mr. Himanshu Bhushan, Adv.  
 Mr. Uddyam Mukherjee, Adv.

State of Chhatisgarh Ms. Sakshi Kakkar, Adv.  
 for Mr. C. D. Singh, AOR

Mr. Mohit Kumar Shah, Adv.  
 Mr. Gaurav Kanth, Adv.  
 Mr. Pushkar Taimni, Adv.

State of Karnataka Mr. V. N. Raghupathy, Adv.  
 Mr. Lagnesh Mishra, Adv.  
 Mr. Parikshit P. Angadi, Adv.  
 Mr. Prakash Jadhav, Adv.

State of Punjab      Mr. Saurabh Ajay Gupta, Adv.  
                                 Mr. Nishant Bishnoi, Adv.  
                                 for Mr. Kuldeep Singh, AOR

Mr. C. K. Sasi, AOR

Mr. Varinder Kumar Sharma, AOR

Ms. Sunita Sharma, AOR

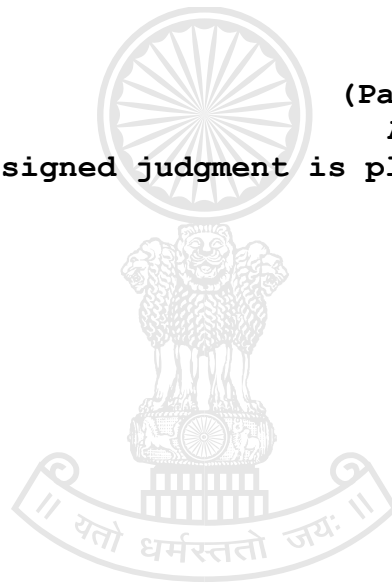
UPON hearing the counsel the Court made the following  
O R D E R

The writ petition stands disposed of, in terms of the reportable judgment.

(Renuka Sadana)  
Assistant Registrar

(Parveen Kumar)  
AR-cum-PS

[Reportable signed judgment is placed on the file]



JUDGMENT

## ANNEXURE P-8

# SILCHAR MUNICIPAL BOARD



"Swachh Sundar Silchar"



## FEE CARD

Sl. No.

Date 21/11/24

Name N.S. Bhatt charjee

Address .....

House/Shop No. 13

Ward No. 9

Phone No. : 993491140913

MONTH	PAID	UNPAID	RESIDENT'S. SHOP KEEPER SIGN	RECEIVER'S SIGN
OCTOBER	100/-	Paid		<u>[Signature]</u>
NOVEMBER	100/-	Paid		<u>[Signature]</u>
DECEMBER	100/-	Paid		<u>[Signature]</u>
JANUARY				
FEBRUARY				
MARCH				
APRIL				
MAY				
JUNE				
JULY				
AUGUST				
SEPTEMBER				

"Losing this card will invite a fine of Rs. 500/-

C.P.O

Mobile No. 8473962068

Rumi Laskar

President/Secretary  
Signature





## ANNEXURE P-10

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8. Faced with this situation, learned counsel for the appellant submitted that in the absence of any clear opinion of the ballistic expert in his report Ext. P-17, regarding the “working status” of the two live cartridges, the conviction of the appellant could not be sustained. This argument also needs a notice only to be rejected. In *Sanjay Dutt case*<sup>1</sup> it has been clearly laid down that with a view to hold an accused guilty of an offence under Section 5 of TADA, the prosecution is required to prove satisfactorily that the accused was in conscious possession, unauthorisedly, in a notified area, of any arm and ammunition of the specified description. The use of the word ‘and’ was explained by the Constitution Bench to be disjunctive and that to sustain the conviction for an offence under Section 5 TADA it is not necessary to establish that the accused possessed *both* the arm and ammunition. The unauthorised possession of either, in a notified area, attracts the provisions of Section 5 TADA. The absence of any expert opinion about the status of the recovered cartridges, therefore, cannot militate against the conviction of the appellant for the offence under Section 5 of TADA for being found unauthorisedly in possession of the specified firearm, (Article 1), in the notified area.

9. In our opinion the prosecution has satisfactorily established the case against the appellant. The trial court rightly convicted and sentenced him. This appeal has no merits. It fails and is accordingly dismissed.

### (1996) 2 Supreme Court Cases 594

(BEFORE KULDIP SINGH AND S. SAGHIR AHMAD, JJ.)

DR B.L. WADEHRA .. Petitioner; e

*Versus*

UNION OF INDIA AND OTHERS .. Respondents.

Writ Petition (C) No. 286 of 1994, decided on March 1, 1996

**Constitution of India — Arts. 32 & 21 and 48-A, 51-A — PIL — Ecology — Non-performance of mandatory duties by Municipal Corporation — Garbage clearance, scavenging and cleaning Delhi city — Residents have constitutional as well as statutory right to live in a clean city — Authorities concerned have a mandatory duty to collect and dispose of the garbage/waste generated from various sources in the city — Non-availability of funds, inadequacy or inefficiency of staff, insufficiency of machinery etc. cannot be pleaded as grounds for non-performance of their statutory obligations — MCD and NDMC remained wholly remiss in performance of their duties — Hence directions issued inter alia to MCD and NDMC to have the city scavenged and cleaned everyday; to the Govt. and the authorities concerned to construct and install incinerators in all hospitals/nursing homes with 50 beds and above under their administrative control; to AIIMS, New Delhi to install sufficient number of incinerators or equally effective alternate; to MCD and NDMC to issue notices to all private hospitals/nursing homes to make their own arrangements for disposal of garbage and hospital wastes; to Central Pollution Control Board and Delhi Pollution Committee to regularly make inspections; to the Govt. to appoint Municipal Magistrates for trial of offences under the Corporation Acts;**

DR B.L. WADEHRA v. UNION OF INDIA (*Kuldip Singh, J.*)

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**a** to Doordarshan to undertake programmes of educating the residents regarding their civil duties etc. — Municipalities — Delhi Municipal Corporation Act, 1957, Ss. 42, 43, 59, 107-A, 108, 353, 354, 356, 465, 469, 486, 487 and 488 — New Delhi Municipal Council Act, 1994, Ss. 11, 12, 53, 261, 263, 264, 265, 266, 267 and 375 — Criminal Procedure Code, 1973, S. 133

*Municipal Council, Ratlam v. Vardichan*, (1980) 4 SCC 162 : 1980 SCC (Cr) 933 . AIR 1980 SC 1622, *relied on*

R-M/15890/C

**b** *Chronological list of cases cited**in para(s)*

1. (1980) 4 SCC 162 . 1980 SCC (Cr) 933 : AIR 1980 SC 1622, *Municipal Council, Ratlam v. Vardichan*

23

The Judgment of the Court was delivered by

**c** KULDIP SINGH, J.— Historic city of Delhi — the capital of India — is one of the most polluted cities in the world. The authorities, responsible for pollution control and environment protection, have not been able to provide clean and healthy environment to the residents of Delhi. The ambient air is so much polluted that it is difficult to breathe. More and more Delhites are suffering from respiratory diseases and throat infections. River Yamuna — the main source of drinking water supply — is the free dumping place for untreated sewage and industrial waste. Apart from air and water pollution, **d** the city is virtually an open dustbin. Garbage strewn all over Delhi is a common sight. The Municipal Corporation of Delhi (the MCD) constituted under the Delhi Municipal Corporation Act, 1957 (Delhi Act) and the New Delhi Municipal Council (the NDMC) constituted under the New Delhi Municipal Council Act, 1994 (New Delhi Act) are wholly remiss in the discharge of their duties under law. It is no doubt correct that rapid industrial **e** development, urbanisation and regular flow of persons from rural to urban areas have made major contribution towards environmental degradation but at the same time the authorities — entrusted with the work of pollution control — cannot be permitted to sit back with folded hands on the pretext that they have no financial or other means to control pollution and protect the environment. Apart from Article 21 of the Constitution of India, which **f** guarantees “right to life”, Articles 48-A and 51-A(g) of the Constitution are as under:

“48-A. *Protection and improvement of environment and safeguarding of forests and wild life.*— The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

**g** 51-A. (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.”

**h** 2. In this petition under Article 32 of the Constitution of India, the petitioner — an advocate of this Court — has sought directions to the MCD and the NDMC to perform their statutory duties in particular the collection, removal and disposal of garbage and other waste.



3. This Court on 16-12-1994 passed the following order in the writ petition:

“We direct the Municipal Corporation of Delhi, Delhi Administration and Delhi Development Authority to place on record the list of all garbage dumping places and city garbage collection centres within six weeks from today. It shall also be stated as to what steps are being taken by these Authorities to keep these places clean and tidy. These Authorities shall also consider the possibility of making it mandatory that the garbage etc. should be dumped at these places in plastic/jute bags to be supplied by the Corporation at subsidised rates.”

4. Mr H.K. Handa, Executive Engineer, MCD, filed a short affidavit dated 30-1-1995 indicating that three statutory bodies function within their respective territories in the Union Territory of Delhi, covering following areas:

(1)	Municipal Corporation of Delhi	1399.26 sq. km.	c
(2)	New Delhi Municipal Committee	42.40 sq. km.	
(3)	Delhi Cantonment Board	42.80 sq. km.	
		<u>1484.46 sq. km.”</u>	

5. At present about 4000 metric tons (MT) of garbage is collected daily by the MCD. The disposal of the garbage is done mainly by “Land Fill Method”. It is stated in the affidavit that at present the total number of garbage collection centres are 1804 (337 dhalaos, 1284 dustbins, 176 open sites and 7 steelbins). The garbage collection trucks collect the garbage from the collection centres and take it to the nearest Sanitary Land Fill (SFL). 19 hospitals, 156 dispensaries, 160 maternity and child welfare centres, 5 primary health centres and 14 clinics are functioning under the control of MCD. Except RBTB Hospital, no other hospital etc. has installed incinerator to burn the hospital waste. It is highlighted in the affidavit that about 45% of the total population of Delhi is living in slums, unauthorised colonies and clusters. There are about 4,80,000 jhuggies in Delhi. According to a rough estimate about 6 persons stay in each jhuggi. They throw their garbage on the road or nearby dustbins.

6. Mr S.C. Kumar, Executive Engineer has filed further affidavit dated 13-7-1995 on behalf of the MCD. The collection and disposal of the garbage is done by the “Solid Waste Department” of the MCD. The sanitation staff employed for this purpose has been indicated in the affidavit as under:

“Municipal Corporation of Delhi has divided the entire area under its jurisdiction into 12 zones. The Solid Waste Department is headed by Sanitary Suptd. (SS) in every zone, who inter alia, is responsible for over all sanitation within his zone. On the supervisory level the SS is assisted by Chief Sanitary Inspector (CSI), Sanitary Inspector (SI), Asstt. Sanitary Inspector (ASI) and Sanitary Guide (SG).

For containing the solid waste in dhalaos and cleanliness, Safai Karamcharis (SK) are deployed on each dhalaos and dustbin. The list of

existing dustbins and dhalaos is already on the records of this Hon'ble Court filed with additional affidavit.

a The total number of sanitation staff of solid waste management is as follows:

1.	Sanitary Superintendent	21 Nos.
2.	Chief Sanitary Inspector	30 Nos.
3.	Sanitary Inspector	212 Nos.
b	4. Assistant Sanitary Inspector	556 Nos.
	5. Sanitary Guide	603 Nos.
	6. Safai Karamcharis	38,311 Nos."

7. Regarding construction of additional dhalaos it is stated as under:

c "The zonewise list of 1252 Nos. (approx.) new dhalaos to be constructed and 708 Nos. existing dustbins/dhalaos to be repaired/renovated is attached at Annexure 'A'.

d The completion of work will, however, depend upon the availability of funds by Central Government and Delhi Government In anticipation of receipt of additional funds short notice tenders in most of the zones have been floated. A request for releasing funds to the tune of Rs 75.76 crores has already been sent to Principal Secretary (UD) by Commissioner, MCD vide letter No. 486 dated 5-6-1995. This estimate will also require revision in view of the drawing prepared by the Chief Architect, MCD for proposed construction of dhalaos."

e 8. Mr Kumar has further stated in his affidavit that composting is one of the solutions for disposal of garbage and getting soil conditioner through the process. According to him the MCD compost plant at Okhla had to be closed few years back since its running was not financially viable. There is a proposal to revive the same. The Jagmohan Committee has recommended for installation of 4 additional compost plants in Delhi. Regarding privatisation, it is stated as under:

f "As an effort to explore the alternative method, privatisation of sanitation work is also being considered to be adopted on trial basis. However final decision in this regard is yet to be taken."

g 9. It is stated in the affidavit that orders for purchase of 200 trucks have been placed with M/s Ordnance Factory, Jabalpur. Tenders for purchase of 35 suction machines, 50 front-end-loaders have been received and are under process. It is stated that 11 more bulldozers are required. It is further stated that 4 compactors of different capacities, 4 Nos. of poclain on chain/tyre and some more tipper trucks are required.

10. Medical Officer of Health has filed affidavit dated 12-5-1995 on behalf of NDMC. Regarding "door to door garbage collection" the affidavit indicates as under:

h "NDMC has introduced a scheme of door to door collection of garbage on experimental basis in few colonies. Under this scheme, introduced on 1-5-1994, NDMC is supplying 25 polythene garbage bags

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of 19" x 25" capable of holding about 10-12 kgs. per month at the subsidised price of Rs 15 per house per month in the following areas:

1. North Avenue a
2. South Avenue
3. D-I and D-II flats, Vinay Marg
4. C-I and C-II flats, Tilak Marg
5. Delhi Administration flats, Bhagwan Das Road
6. Pandara Road and Pandara Park b
7. Ravinder Nagar and Bharti Nagar

The said garbage bags are collected on daily basis by our staff deployed and then deposited in the nearby dustbins for the purpose for further transporting them by our staff to the dumping ground maintained by Municipal Corporation of Delhi. It is stated that not more than 40% of the residents under the scheme avail the benefit of the scheme. It is specifically stated that NDMC does not have any dumping ground within its jurisdiction." c

11. It is stated in the affidavit that average of 300-350 tons of garbage is generated everyday in the NDMC area. For the purpose of collection and disposal of garbage the area is divided into 13 parts (circles). There are 49 jhuggi-jhompri clusters having 12,500 jhuggies in the NDMC area. There are 944 garbage collecting places (550 trollies and 394 dustbins). The task is undertaken by a fleet of 1423 permanent Safai Karamcharis, 600 Muster-Roll workers and 149 part-time Safai Karamcharis. d

12. This Court on 15-9-1995 passed the following order:

"We have heard the petitioner and the learned counsel assisting us. Mr Tusharia, Deputy Director, Municipal Corporation of Delhi, is personally present in Court. He has also assisted us. Mr H.K. Handa and Mr S.C. Kumar, Executive Engineers, Municipal Corporation of Delhi, have filed an affidavit in these proceedings. According to the affidavit, Municipal Corporation of Delhi has divided the area under its charge into 12 zones for the purposes of collection of garbage. It is further stated that there are 1804 garbage collection points in the said area. The garbage collection points consist of dhalaos, open sites and steelbins. Similarly, the area under the control of NDMC has been divided into 13 zones where there are 944 collection points. 394 are masonry dustbins and 500 are trollies. It cannot be disputed that the collection and disposal of garbage in the city of Delhi is causing serious problem. Statutory authorities like MCD and NDMC have been created to control this problem. It is not for this Court to keep on monitoring these problems. The officers who are manning these institutions must realize their responsibilities and show the end result. Keeping that in view, we issue the following directions: e

- (1) We adjourn the hearing of this petition to 12-10-1995. On that day, the petitioner and other learned counsel shall assist this f

g

h

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Court regarding the statutory duties and functions of various authorities in regard to the sanitation in the city of Delhi.

*a* (2) During this period, the officers who are concerned with this problem shall consider the various issues arising in this petition at their own level and shall give the following information to this Court on the next date of hearing:

*b* (a) final date by which these officers/authorities shall sort out the problem of collection and disposal of the garbage in the city of Delhi. In that respect, we make it clear that from the date which may be given by these authorities, not a drop of garbage is to be seen anywhere in the city of Delhi on early morning each day. The whole of the work of garbage collection must be completed overnight and the city is to be left absolutely clean for the residents for their use;

*c* (b) the authorities may, if they so wish, place before this Court the difficulties which are likely to come up in their way. This Court with the assistance of authorities concerned shall try to solve the same.

*d* We make it clear that any direction finally given by this Court after hearing the parties shall be binding and violation of any part of it shall attract the provisions of the Contempt of Courts Act.

Issue notice to the Secretary (Health), Delhi Administration, specially for the purposes of seeking assistance regarding nursing homes and hospitals under the control of Delhi Administration.

To be listed on 12-10-1995.”

*e* 13. Pursuant to the above-quoted order, Commander Mukesh Paul, Medical Officer of Health, NDMC has filed an affidavit dated 10-10-1995. It is stated in the affidavit that lack of civic sense, lack of dustbins, absenteeism among the staff, logistics problems, multiplicity of authorities, disposal of household garbage by the servants, problems of jhuggi-jhompri clusters, floating population and for various other reasons, it is not possible to give the time schedule regarding the cleaning of Delhi as directed by this Court. Various steps taken by the NDMC to improve sanitation/garbage disposal have also been indicated. An additional affidavit filed by Shri Anshu Prakash on behalf of NDMC indicates that the following measures for speedy removal of garbage and for maintenance of effective sanitation have been undertaken:

- g*
- a.* Strengthening of Safai Karamchari workforce.
  - b.* Lifting and removal of garbage.
  - c.* Regular inspection by Nodal Officers.
  - d.* Manning of Dhalaos.
  - e.* Door to door collection and NGO participation.

*h* 14. Mr C.P. Gupta filed affidavit dated 17-10-1995 on behalf of MCD wherein he stated as under:



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“It is, therefore, submitted that no specific date for making Delhi ‘absolutely garbage free’ every morning can be given at this stage. Nevertheless, the endeavours of MCD would be to achieve the spirit of the orders passed by this Hon’ble Court.” a

15. Under Secretary, Ministry of Health, Government of India in his affidavit has stated that Safdarjung Hospital, Ram Manohar Lohia Hospital and Lady Hardinge Medical College comprising Kalavati Hospital and Sucheta Kripalani Hospital are under the control and supervision of the Ministry of Health, Government of India. Safdarjung Hospital has installed incinerator with waste disposal capacity of 230 kgs per hour. The said hospital generates about 2000-2500 kgs of waste everyday. It is stated that the incinerator functions in two shifts for 10 hours for 7 days a week. It is not clear from the affidavit whether the incinerator is in working condition or out of order. The affidavit states that three vertical type incinerators have also been installed by the Safdarjung Hospital. Incinerators have not been installed in the other hospitals. It is stated that proposal to install incinerators in RML Hospital and Lady Hardinge Medical College is under consideration. b c

16. According to the affidavit filed by Mrs Satbir Silas, Joint Secretary (Medical and Public Health), Government of National Capital Territory of Delhi, there are 13 hospitals which are functioning under the control of the said Government. Lok Nayak Jayaprakash Narayan Hospital has no incinerator of its own. It is using the incinerator located in G.B. Pant Hospital. There is an incinerator in Guru Tegh Bahadur Hospital with capacity of 125 kgs per hour. The incinerator is not enough to burn the entire hospital waste. It is stated that a second incinerator at the cost of Rs 44 lakhs is likely to be installed. Deen Dayal Upadhyay Hospital has installed an incinerator with capacity of burning 85 kgs of waste per hour. It is stated that the incinerator is meeting the need of the hospital. G.B. Pant Hospital has two incinerators with capacity of 60 kgs each. There are no incinerators in Civil Hospital, Nehru Memorial Medical College, Guru Nanak Eye Centre, Lal Bahadur Shastri Hospital, Rao Tulla Ram Memorial Hospital and Dr N.C. Joshi Memorial Hospital. The three remaining hospitals, namely, Babu Jagjivan Ram Memorial Hospital, Sanjay Gandhi Memorial Hospital and Maulana Azad Medical College have installed incinerators. d e f

17. Mr C.P. Gupta has filed further affidavit (second) dated 6-11-1995 on behalf of MCD wherein it is stated that on experimental basis, initially MCD proposes to introduce the scheme of supplying plastic bags to the residents of Janakpuri, Shalimar Bagh, Jangpura Extension, Preet Vihar, Sarita Vihar, Derawal Nagar and Jain Colony. It is stated by the learned counsel appearing for the MCD that the administration is more than willing to take up the challenge of cleaning the city in the right earnest. g

18. The NDMC has also filed a proposed scheme which is in the following terms: h

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a "That the NDMC as per the directions of this Hon'ble Court intends to improve sanitation in a stepwise manner. Step I shall comprise of sweeping the roads/streets, collection of garbage and its storage at designated and identified places. Step II shall comprise of lifting of the garbage and its transportation to the MCD dumping site at Gazipur. NDMC is also utilising part of its garbage and horticulture waste for conversion into manure at the compost plant at Okhla.

b Regarding Step I, as directed by the Hon'ble Court, the NDMC has selected for intensive sanitation the following compact area consisting of the area around Parliament/Supreme Court, Central Vista Lawns and Circle No. 6 starting from the entire Rajpath up to National Stadium, C-Hexagon Road, Sher Shah Road cutting the Mathura Road up to Subramaniam Bharati Marg up to South End Road, Aurangzeb Road, Motilal Nehru Marg including Maulana Azad Road, Sunehri Masjid. On the other hand, site from National Stadium to part of C-Hexagon, Central Vista Lawn and also two important markets, i.e., Connaught Place and Sarojini Nagar located in NDMC area. Besides the important buildings as mentioned above, there are 1076 houses in Pandara Road and Pandara Park including MS flats. Ravinder Nagar has got 124 flats. Bapa Nagar has got 102 flats. Rest big bungalows are there. Circle No. 6 also includes the JJ clusters at Humayun Road and Darbhanga House and also the Khan Market, Lok Nayak Bhawan, Pandara Road Market, Prithvi Raj Market. The following number of major restaurants/hotels are existing in this circle:

	(i) Five Star Hotel	1
e	(ii) Three Star Hotel	1
	(iii) Restaurants	20

f It is proposed to deploy the workforce in night shift also for effective garbage removal in the area. Each and every household will be given polythene bag for garbage collection and each household will be expected to place the bags filled with garbage at designated collection points. In JJ clusters, the garbage will be collected at collection points designated for this purpose. It may not be feasible to give polythene bags for each jhuggi. Additional collection points will be made wherever necessary to suit the convenience of the public. All the collection points in the aforesaid areas will be effectively supervised by NDMC staff to ensure that garbage is not littered around the collection points.

g Initially the polythene bags will be given free of cost to the residents of aforesaid areas for one month by NDMC on experimental basis. Thereafter the supply of bags at subsidised cost may also be considered by the NDMC. NDMC has started door to door collection of garbage in polythene bags supplied by NDMC in certain colonies in the aforesaid areas. It will be gradually extended to other colonies also in consultation with the resident associations. The NDMC will also make efforts to find out if any better alternative to the polythene bags could be provided for

h



this purpose. Other State Governments, Ministry of Environment, etc. will be contacted in this regard.”

19. It would be useful to mention that the MCD has a very large force of Karamcharis working for it. There are 38,311 Safai Karamcharis. The MCD has more than 1400 Sanitary Inspectors and other officials in that category. The total area which the MCD is supposed to keep clean and tidy is 1399.26 sq. km. The simple arithmetic shows that there are 27 Safai Karamcharis and one Sanitary Inspector for one sq. km. of area. We are of the view that with such a large manpower at its disposal there can be no excuse with the MCD for not controlling the disposal of garbage and keeping the city clean. The NDMC is still in a better position. It has 2172 Safai Karamcharis and the area under its control is 42.40 sq. km. which means that it has 50 Karamcharis to man one sq. km. There is no reason whatsoever why with such a huge manpower at their command the MCD and NDMC cannot present a neat and clean Delhi to its residents.

20. The MCD and NDMC have already started door to door collection of garbage on experimental basis. It is stated that polythene bags are also being distributed in the selected areas. We make it clear that the modalities in our interim orders from time to time have been in the nature of suggestions. We, however, reiterate that the MCD and the NDMC must keep the city clean by deploying all the means at their disposal. We are issuing binding directions in this respect in the operative part of the judgment.

21. It would be useful at this stage to examine the relevant provisions of the Delhi Act.

“42. *Obligatory functions of the Corporation.*— Subject to the provisions of this Act and any other law for the time being in force, it shall be incumbent on the Corporation to make adequate provision by any means or measures which it may lawfully use or take, for each of the following matters, namely:

(a) the construction, maintenance and cleansing of drains and drainage works and of public latrines, urinals and similar conveniences;

\* \* \*

(c) the scavenging, removal and disposal of filth, rubbish and other obnoxious or polluted matters;

\* \* \*

(e) the reclamation of unhealthy localities, the removal of noxious vegetation and generally the abatement of all nuisances;

\* \* \*

(o) the lighting, watering and cleansing of public streets and other public places;

\* \* \*

(t) the laying out or the maintenance of public parks, gardens or recreation grounds;

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\* \* \*

a (wa) the preparation of plans for economic development and social justice.

43. *Discretionary functions of the Corporation* \* \* \*

(b) the establishment and maintenance of, and aid to, libraries, museums, art galleries, botanical or zoological collections;

b (c) the establishment and maintenance of, and aid to, stadia, gymnasia, *akharas* and places for sports and games;

(d) the planting and care of trees on roadsides and elsewhere;

\* \* \*

c (i) the providing of music or other entertainments in public places or places of public resort and the establishment of theatres and cinemas;

\* \* \*

(l) the construction and maintenance of—

(i) rest-houses;

(ii) poor-houses;

d (iii) infirmaries;

(iv) children's homes;

(v) houses for the deaf and dumb and for disabled and handicapped children;

(vi) shelters for destitute and disabled persons;

(vii) asylums for persons of unsound mind;

e \* \* \*

(q) the provision for relief to destitute and disabled persons;

\* \* \*

f (s) the organisation, construction, maintenance and management of swimming pools, public wash-houses, bathing places and other institutions designed for the improvement of public health;

\* \* \*

(z) the provision of housing accommodation for the inhabitants of any area or for any class of inhabitants; and

(za) any measure not hereinbefore specifically mentioned, likely to promote public safety, health, convenience or general welfare.

g \* \* \*

59. *Functions of the Commissioner.*— Save as otherwise provided in this Act, the entire executive power for the purpose of carrying out the provisions of this Act and of any other Act for the time being in force which confers, any power or imposes any duty on the Corporation, shall vest in the Commissioner who shall also—

h \* \* \*

107-A. *Constitution of Finance Commission.*— (1) The Administrator shall, as soon as may be, within one year from the commencement of the Constitution (Seventy-third Amendment) Act, 1992 and thereafter at the expiration of every fifth year constitute a Finance Commission to review the financial position of the Corporation and to make the recommendations to the Administrator as to,—

(a) the principles which should govern,—

(i) the distribution between the National Capital Territory of Delhi and the Corporation of the net proceeds of the taxes, duties, tolls and fees leviable by the National Capital Territory of Delhi which may be divided between them;

(ii) the determination of the taxes, duties, tolls and fees which may be assigned to or appropriated by the Corporation;

(iii) the grants-in-aid to the Corporation from the consolidated fund of the National Capital Territory of Delhi;

\* \* \*

108. *Constitution of special funds.*— (1) The Corporation shall constitute such special fund or funds as may be prescribed by regulations and such other funds necessary for the purposes of this Act as may be so prescribed.

(2) The constitution and disposal of such funds shall be effected in the manner laid down by regulations.

\* \* \*

353. *Duty of owners and occupiers to collect and deposit rubbish, etc.*— It shall be the duty of the owners and occupiers of all premises—

(a) to have the premises swept and cleaned;

(b) to cause all filth, rubbish and other polluted and obnoxious matter to be collected from their respective premises and to be deposited at such times as the Commissioner, by public notice prescribes, in public receptacles, depots or places provided or appointed under Section 352 for the temporary deposit or final disposal thereof;

(c) to provide receptacles of the type and in the manner prescribed by the Commissioner for the collection therein of all filth, rubbish and other polluted and obnoxious matter from such premises and to keep such receptacles in good condition and repair.

354. *Collection and removal of filth and polluted matter.*— It shall be the duty of the owner and occupier of every premises situate in any portion of Delhi in which there is not a latrine, or urinal connected by a drain with a municipal drain, to cause all filth and polluted and obnoxious matter accumulating upon such premises to be collected and removed to the nearest receptacle or depot provided for this purpose under Section 352 at such times, in such vehicle or vessel by such route

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and with such precautions as the Commissioner may by public notice prescribe.

a \* \* \*

356. *Removal of rubbish, etc., accumulated on premises used as factories, workshops etc.*— The Commissioner may, if he thinks fit,—

(a) by written notice require the owner or occupier of any premises used for carrying on any manufacture, trade or business or used as a factory, workshop, trade premises or market or in any way so that rubbish, filth and other polluted and obnoxious matter are accumulated in large quantities, to collect all such rubbish, filth and other polluted and obnoxious matter accumulating thereon and to remove the same at such times and in such carts or receptacles and by such routes as may be specified in the notice to a depot or place provided or appointed under Section 352, or

(b) after giving such owner or occupier notice of his intention, cause all rubbish, filth and other polluted and obnoxious matter accumulated in such premises to be removed, and charge the said owner or occupier for such removal such fee as may, with the sanction of the Standing Committee, be specified in the notice issued under clause (a).

357. *Prohibition against accumulation of rubbish, etc.*— No owner or occupier of any premises shall keep or allow to be kept for more than twenty-four hours or otherwise than in a receptacle approved by the Commissioner, any rubbish, filth and other polluted and obnoxious matter on such premises or any place belonging thereto or neglect to employ proper means to remove such rubbish, filth and other polluted and obnoxious matter from, or to cleanse, such receptacle and to dispose of such rubbish, filth and other polluted and obnoxious matter in the manner directed by the Commissioner, or fail to comply with any requisition of the Commissioner as to construction, repair, pavement or cleansing of any latrine, or urinal on or belonging to the premises.

f \* \* \*

465. *General penalty.*— Whoever, in any case in which a penalty is not expressly provided by this Act, fails to comply with any notice, order or requisition issued under any provision thereof, or otherwise contravenes any of the provisions of this Act, shall be punishable with fine which may extend to one hundred rupees, and in case of a continuing failure or contravention, with an additional fine which may extend to twenty rupees for every day after the first during which he has persisted in the failure or contravention.

469. *Municipal Magistrates.*— (1) The Government may appoint one or more Metropolitan Magistrates for the trial of offences against this Act and against any rule, regulation or bye-law made thereunder and may prescribe the time and place at which such Magistrate or Magistrates shall sit for the despatch of business.

h

486. *Inspection.*— The Central Government or the Government may depute any person in the service of Government to inspect or examine any municipal department or office or any service or work undertaken by the Corporation or any of the municipal authorities or any property belonging to the Corporation and to report thereon and the Corporation and every municipal authority and all municipal officers and other municipal employees shall be bound to afford the person so deputed access at all reasonable times to the premises and properties of the Corporation and to all records, accounts and other documents the inspection of which he may consider necessary to enable him to discharge his duties. a

487. *Directions by Central Government.*— (1) If whether on receipt of a report or on receipt of any information or report obtained under Section 485 or Section 486 or otherwise, the Central Government is of opinion— b

(a) that any duty imposed on the Corporation or any municipal authority by or under this Act has not been performed or has been performed in an imperfect, insufficient or unsuitable manner, or c

(b) that adequate financial provision has not been made for the performance of any such duty, it may direct the Corporation or the municipal authority concerned, within such period as it thinks fit, to make arrangements to its satisfaction for the proper performance of the duty, or as the case may be, to make financial provision, to its satisfaction for the performance of the duty and the Corporation or the municipal authority concerned shall comply with such direction: d

Provided that, unless in the opinion of the Central Government the immediate execution of such order is necessary, it shall before making any direction under this section give the Corporation or the municipal authority concerned an opportunity of showing cause why such direction should not be made. e

488. *Power to provide for enforcement of direction under Section 487.*— If, within the period fixed by a direction made under sub-section (1) of Section 487, any action the taking of which has been directed under that sub-section has not been duly taken, the Central Government may make arrangements for the taking of such action and may direct that all expenses connected therewith shall be defrayed out of the Municipal Fund.” f

22. Similarly, NDMC is governed by the New Delhi Act. Sections 11, 12, 53, 261, 263, 264, 265, 266, 267 and 375 are some of the provisions of the New Delhi Act which are *pari materia* to the relevant provisions of the Delhi Act. It is clear from various provisions of the Delhi Act and the New Delhi Act that the MCD and the NDMC are under a statutory obligation to scavenge and clean the city of Delhi. It is mandatory for these authorities to collect and dispose of the garbage/waste generated from various sources in the city. We have no hesitation in observing that the MCD and the NDMC g

a have been wholly remiss in the performance of their statutory duties. Apart from the rights guaranteed under the Constitution the residents of Delhi have a statutory right to live in a clean city. The courts are justified in directing the MCD and NDMC to perform their duties under the law. Non-availability of funds, inadequacy or inefficiency of the staff, insufficiency of machinery etc. cannot be pleaded as grounds for non-performance of their statutory obligations.

b 23. In *Municipal Council, Ratlam v. Vardichan*<sup>1</sup> the question before this Court was whether the order of the trial court as upheld by the High Court directing the Ratlam Municipality to draft a plan within six months for the removal of nuisance caused by the open drains and public excretion by the nearby slum-dwellers could be sustained. This Court speaking through Krishna Iyer, J. dismissed the appeal of the municipality and held as under: (SCC p. 174, para 24)

c “Why drive common people to public interest action? Where Directive Principles have found statutory expression in Do’s and Dont’s 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 has 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.”

e Reminding the State Government of its duties under the Constitution of India, Krishna Iyer, J. observed as under: (SCC p. 174, para 24)

f “We are sure that the State Government will make available by way of loans or grants sufficient financial aid to the Ratlam Municipality to enable it to fulfil its obligations under this Order. The State will realise that Article 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 low priority items and elitist projects to use the savings on sanitation and public health. It is not our intention that the ward which has woken up to its rights alone need be afforded these elementary facilities. We expect all the wards to be benefited without litigation.”

g 24. In the light of the facts and circumstances noticed above and also keeping in view the suggestions made by the learned counsel assisting us in this petition, we issue the following directions:

h 1. We approve the experimental schemes placed before this Court by MCD and NDMC whereunder certain localities have been selected for

<sup>1</sup> (1980) 4 SCC 162 . 1980 SCC (Cr) 933 : AIR 1980 SC 1622

distribution of polythene bags, door to door collection of garbage and its disposal.

We direct the MCD through Commissioner appointed under Section 54 of the Delhi Act and all other officers of the MCD (particularly Mr Narang and Mr Tirath Raj, Joint Directors) to have the city of Delhi scavenged and cleaned everyday. The garbage/waste shall be lifted from collection centres every day and transported to the designated place for disposal. a

All receptacles/collection centres shall be kept clean and tidy everyday. The garbage/rubbish shall not be found spread around the collection centres and on the roads. b

We issue similar directions to the NDMC through S/Shri Baleshwar Raj, Administrator, Lal Chand, Chief Sanitary Inspector, Dr G.S. Thind, Deputy Medical Officer of Health and Dr V.N. Ren, Chief Medical Officer. c

2. We direct Government of India, through Secretary, Ministry of Health, Government of National Capital Territory of Delhi through Secretary, Medical and Public Health, MCD through its Commissioner and NDMC through its Administrator to construct and install incinerators in all the hospitals/nursing homes, with 50 beds and above, under their administrative control. This may be done preferably within nine months. A responsible officer of each of these authorities shall file an affidavit in this Court within two months indicating the progress made in this respect. d

3. We direct the All India Institute of Medical Sciences, New Delhi through its Director to install sufficient number of incinerators, or an equally effective alternate, to dispose of the hospital waste. The Director shall file an affidavit within two months to indicate the progress made in this respect. e

4. We direct the MCD and NDMC to issue notices to all the private hospitals/nursing homes in Delhi to make their own arrangements for the disposal of their garbage and hospital waste. They be asked to construct their own incinerators. In case these hospitals are permitted to use facilities (for collection, transportation and disposal of garbage) provided by the MCD and NDMC then they may be asked to pay suitable charges for the service rendered in accordance with law. f

5. We direct the Central Pollution Control Board and the Delhi Pollution Committee to regularly send its inspection teams in different areas of Delhi/New Delhi to ascertain that the collection, transportation and disposal of garbage/waste is carried out satisfactorily. The Board and the Committee shall file the reports in this Court by way of an affidavit after every two months for a period of two years. g

6. We direct the Government of the National Capital Territory of Delhi to appoint Municipal Magistrates (Metropolitan Magistrates) under Section 469 of the Delhi Act and Section 375 of the New Delhi Act for the trial of offence under these Acts. Residents of Delhi be h

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a educated through Doordarshan and by way of announcements in the localities that they shall be liable for penalty in case they violate any provisions of the Act in the matter of collecting and disposal of garbage and other wastes.

b 7. We direct Doordarshan through its Director General to undertake a programme of educating the residents of Delhi regarding their civic duties under the Delhi Act and the New Delhi Act. This shall be done by making appropriate announcements, displays on the television. The residents of Delhi shall be educated regarding their duties under Sections 354, 356 and 357 of the Delhi Act and similar duties under the New Delhi Act. They shall also be informed about the penalties which can be imposed under Section 465 of the Delhi Act and similar provisions under the New Delhi Act. The MCD and the NDMC shall also have announcements made by way of public address system in various areas in Delhi informing the residents of their duties and obligations under the Delhi Act and the New Delhi Act.

c 8. The MCD has placed order for the supply of about 200 tippers with the Ordnance Vehicle Factory, Jabalpur (Government of India) in May 1995. The tippers have not as yet been supplied. We direct Secretary, Ministry of Defence Production, Government of India to have the tippers supplied to the MCD as expeditiously as possible and preferably within three months. The Secretary shall file an affidavit in this Court within six weeks indicating the progress made in this respect.

d 9. The MCD has indicated that three SLF sites have already been approved by the Technical Committee of the DDA but the same have not been handed over to the MCD by the Development Commissioner, Government of NCT of Delhi. Since Bhatti mines are situated within the ridge area, we do not permit the same to be utilised for the disposal of the solid waste as at present. We, however, direct the Development Commissioner, Government of NCT, Delhi to hand over the two sites, near Badarpur on Jaitpur/Tejpur quarry pits and Mandi village near Jaunpur quarry pits. The sites shall be handed over to the MCD within three months. The Development Commissioner shall file an affidavit in this Court before 31-3-1996 indicating the progress made in this respect.

e 10. The compost plant at Okhla be revived and put into operation. The MCD shall start operating the plant, if not already operating, with effect from 1-6-1996. The MCD shall also examine the construction of four additional compost plants as recommended by Jagmohan Committee. The MCD shall file an affidavit in this Court within six weeks indicating the progress made in restarting the Okhla compost plant and in the construction of four new plants.

f 11. The MCD shall not use the filled-up SLF's for any other purpose except forestry. There are twelve such sites including Rajiv Gandhi Smriti Van. We direct the MCD to develop forests and gardens on these 12 sites. The work of afforestation shall be undertaken by the MCD with effect from 1-4-1996. An affidavit shall be filed by the end of April indicating the progress made in this respect.

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12. The MCD and NDMC shall construct/install additional garbage collection centres in the form of dhalaos/trolley/steelbins within four months. An affidavit in this respect shall be filed by a responsible officer of each of these authorities within two months indicating the progress. a

13. We direct the Union of India and NCT, Delhi Administration through their respective appropriate Secretaries to consider the requests from MCD and NDMC for financial assistance in a just and fair manner. These Governments shall consider the grant of financial assistance to the MCD and NDMC by way of subvention or any other manner to enable these authorities to fulfil their obligations under law as directed by us. b

14. After some time it may not be possible to dispose of garbage and solid waste by 'SLF' method due to non-availability of sites. We direct the NCT, Delhi Administration through its Chief Secretary and also the MCD and NDMC to join hands and engage an expert body like NEERI to find out alternate method/methods of garbage and solid waste disposal. The NCT, Delhi Administration shall file affidavit in this Court within two months indicating progress made in this respect. c

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(BEFORE J.S. VERMA AND K. VENKATASWAMI, JJ.) d

Writ Petition (Crl.) No. 19 of 1995<sup>†</sup>

R.M. TEWARI, ADVOCATE .. Petitioner;

*Versus*

STATE (NCT OF DELHI) AND OTHERS .. Respondents. e

*With*

Criminal Appeal No. 250 of 1996

GOVT. OF NCT, DELHI .. Appellant;

*Versus*

JUDGE, DESIGNATED COURT II (TADA) .. Respondent. f

*And*

Criminal Appeal No. 251 of 1996

MOHD. MEHFOOZ .. Appellant;

*Versus*

CHIEF SECRETARY AND ANOTHER .. Respondents. g

Writ Petition (Crl.) No. 19 of 1995 with Criminal Appeals Nos. 250 and 251 of 1996<sup>‡</sup>, decided on February 20, 1996

**Criminal Procedure Code, 1973 — S. 321 — Withdrawal of charges under TADA — Public Prosecutor seeking consent of court on the sole basis of**

<sup>†</sup> Under Article 32 of the Constitution of India h

<sup>‡</sup> From the Judgment and Order dated 12-12-1994 of the Designated Court-II (TADA), Delhi, in Misc Application No. Nil of 1994



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**Advance service Rejoinder in matter of Nityendu Shekhar Bhattacharjee Vs. State of Assam & Ors. (Original Application No.99/2024/EZ)**

1 message

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With Regards

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