

High Court of Karnataka

Daily Orders of the Case Number: WP 24739/2012 for the date of order 04/03/2013

Honble Justice N.KUMAR AND

B.V.NAGARATHNA

04/03/2013

Order in WP 24739/2012

NKJ & BVNJ:

4.3.2013 W.P.Nos. 24739-40/2012

46523/2012, 30450/2012,

46601/2012

O R D E R

Today, the BBMP has filed an action taken report along with four annexures. They have also filed the report of the Chief Health Officer of the BBMP along with annexures. The Karnataka Compost Development Corporation has also submitted a status report as directed. The petitioner in W.P. No. 30450/2012 has filed a memo along with photographs. The petitioner in W.P. No. 46601/2012 has filed an application under Section 151 of CPC read with Article 226 of the Constitution of India for directions

bringing to the notice of this Court that Sri M.N. Sriramulu, the President of the Karnataka Safai Karmachari Commission a Minister of State Rank, has also obtained a contract from BBMP. A memo is also filed by the second petitioner-party in person in W.P. No. 46523/2012 placing on record the report of constitution of the committees and photographs as well as the village map.

(a) Regarding Ward Committees -

Subsequent to the order dated 4.2.2013 and the directions issued by this Court, it is submitted that in all the 198 Wards, including Ward No. 56, the committees are constituted, the Corporators are acting as the Chairmen of the committees and in Ward No.56, Secretary of the Ward Committee has been nominated as the Chairman of the Ward Committee. The list of Ward Committee members is already published in the website and on the notice board of the BBMP including their contact numbers. The draft rules for providing for detailed procedure in regard to functioning of the Ward Committees are pending before the Council of the BBMP for consideration. At this juncture it is necessary to point out

that, in the order passed by this Court on 22.11.2012 the affidavit filed by the Principal Secretary to the Government, Urban Development Department stated that requisite steps would be taken on emergent basis to carry out amendment vis-à-vis the levy of fine on failure of segregation of garbage by the householders or bulk generators by carrying amendments to Section 431 of the Karnataka Municipal Corporations Act, 1976 and placing it in the legislature session commencing on 5.12.2012. The draft proposals called Municipal Solid Waste (Prohibition of Littering and Regulation, Storage, Delivery and Collection), Rules 2012 would be re-submitted by BBMP with modifications within 10 days from the date of the order. Therefore, now that BBMP has framed the draft rules providing for detailed procedure in relation to functioning of Ward Committees they should ensure that there is no conflict between the said Rules and the draft proposals called Municipal Solid Waste (Prohibition of Littering and Regulation, Storage, Delivery and Collection), Rules 2012 and also fix the

responsibility on the public in general as well as the members of the Ward Committees including the Corporators in the matter of implementing these Rules and ensure that there is no inconsistency between these two Rules.

(b) Regarding Weighment of the solid waste:- In the report submitted the steps taken in pursuance of the earlier order has been clearly stated and they have sought for three months time for making final assessment of the waste generated which would be re-confirmed by them.

Accordingly, three months time as sought for is granted.

The Corporation is also directed to place on record the names of the contractors who have been employed in the last three years for transportation of the garbage and the amounts paid to each one of them and on what basis and also the total amount paid by the Corporation towards the transportation of the garbage.

(c) Regarding Subramanyapura Lake - Steps taken in connection with Subramanyapura Lake is also set out in the report. The second petitioner in W.P. No. 46523/2012 pointed out that, in spite of the directions issued by this Court and the assurances by the Commissioner of the Corporation, still the encroachment on Raja Kaluve is not completely removed. Even now the sewage is let in into the tank and there appears to be encroachment by persons who are owning lands adjoining the said lake. He also pointed out the existence of the lake could be make out from the village map of 1903 which is produced.

Though in the village map it is shown that there exists a tank, in the revenue records it is shown as Kereyu Sarakari Gomala. Now, after the directions by this Court the Deputy Commissioner of Bangalore District has passed an order declaring it as Subramanyapura Kere and therefore now it is beyond controversy that here afterwards it will not be treated as neither gomal nor a kharab land, it will be exclusively treated as a lake. The Commissioner of the

Corporation who is present before the Court, after looking into the photographs submitted that, the place where the land is flattened do not form part of the Lake. It belongs to the Housing Society; Raja Kaluve measures 53 in breadth; the entire Raja Kaluve is in tact. As is clear from the report, survey has been conducted, sketch indicating the factual position has been placed on record, which shows that the lake measures 18 acres 6 guntas; They have already removed certain encroachments in the nala area and the fencing work is in progress and BBMP has floated a tender for re-sectioning of the nala and the process is expected to be completed in two months. In fact, he also submitted the BBMP, BDA, Bangalore Sewerage Board have agreed to contribute to the cost of the sewage being diverted. Therefore, the BBMP is directed to place its report after taking all the aforesaid actions, on record.

(d) Regarding Karnataka Compost Development Corporation:- They have submitted a report stating that BBMP has handed over 14 acres of land adjacent to

KCDC on 15.2.2013 in pursuance of the directions issued by this Court. They are preparing an estimate of expenditure to set up new plant for processing garbage and also upgradation of the existing plant. They have placed on record that BBMP has released Rs.1 crore as grant-in-aid for installation of processing machine and for purchase of front and loader. As directed by this Court they have started to work in two shifts from 7.00 AM to 3.00 PM and 11.00 AM to 7.00 PM and they have expressed their difficulties to have a third shift at the moment. By increasing one more shift their processing has increased by 75 Metric Tonnes per day. They have also stated that the BBMP has handed over possession of 31.21 acres of land in Sy. No. 31 of Chikkanagamangala, Anekal Taluk, on 28.2.2013 and they have sought for time to complete the project. They have also stated that roughly 150-200 MTs of Vermi Compost is produced by them per day. In view of the procedure prescribed in the Karnataka Transparency in Public Procurements Act, 1999, neither the BBMP nor the Government departments can place

orders on KCDC without following the procedure prescribed under law. If the State Government were to grant exemption from the application of the said Act, the Governmental agencies like Agriculture Department, Horticulture Department and BBMP can procure their entire needs from the Corporation in which event the efficiency level and output level will be certainly increased.

The Commissioner of the Corporation submitted that they are already having an agreement with Terra Pharma who are supplying them 500 MTs of manure free of cost which satisfy their entire needs and they are not purchasing any manure from outside agency. The learned Government Advocate submits that, she would bring this to the notice of the Government and find out whether the Government can issue appropriate exemption to enable the Governmental organizations to purchase vermi compost directly from the Corporation which shall be for the benefit of the Corporation, the Government and the public at large.

(e) Regarding gases emanating from landfills:- It is stated that the fire at Mandur landfill is completely under control. The Pollution Control Board has no technology to exploit the gases emanating from the gas field. Similarly, BBMP has also no knowledge about it and therefore they have taken steps in inviting tenders expression of interest from qualified persons to attend to the said requirement and they will place on record after receiving the necessary bids and steps taken on the next date of hearing.

On the last occasion, the BDA placed on record that an extent of 39,086 sq. mts., has been allotted to BBMP vide allotment dated 15.1.2009 which could used by the BBMP for the purpose of setting up treatment plant or garbarga facilities. Today, the Commissioner of the Corporation who is also a member of the BDA brought to the notice of the Court the said allotment is only in paper. In majority of the cases, the matters are pending litigation before this Court and therefore those lands cannot be utilized for the said purpose. The remaining

lands have been granted to others and therefore the same is also not available.

In this regard the BDA to file an affidavit setting out true and correct information showing the extent of land available with them which, either they have already handed over to BDA or ready to hand over to BDA even now, for the aforesaid purpose and making it also clear what are the litigations pending in respect of that lands, where it is pending and the stage at which is pending.

(f) Smt. Pramila Nesargi, learned Senior Counsel has filed an application to implead herself in the public interest litigation and she has also made available to the Court as well as to all the interested persons of this litigation a video CD showing the solid waste management adopted by an organization named Arrow-Bio. Today, she submits that, one of the associate of the Company had submitted its bid to the Bangalore City Corporation long back. The technical bid was cleared. At the stage of considering final bid about 3 days back it came to be rejected

on the ground that the tipping charges claimed by the bidder is on the higher side and though the said fact is not brought to their notice, that is what is said in the report filed before the Court today. In the report it is made clear the said bid was technically feasible. However, in view of the higher financial burden involved they could not proceed further in the matter. Therefore, the BDA has again issued a short term re-tendered the bid and the procedure is expected to complete within 15 days and the said company can participate in the bid and quote its rate so that now that the technical bid is cleared, if their financial bid is also acceptable, the BBMP would consider the same and do the needful.

(g) One of the petitioner has produced photographs to show that in spite of the orders of this Court, garbage is thrown in the streets, it is not cleaned promptly and therefore action should be taken against the officials of the Corporation.

The way the garbage is thrown in the streets show the persons who have thrown the

garbage have not obeyed the directions issued by the Government. It is for that purpose this Court directed Ward Committees to be constituted. Here afterwards in each ward if the garbage is thrown in the corner of streets and it is not cleared, instead of the citizens approaching the Commissioner of the Bangalore City Corporation or its officials, they should approach the elected representatives of the Corporations, 10 committee members, (the Corporator and the Ward Committees) who are all the residents of the very same wards and bring the same to their notice. If there is no improvement then it is open to such citizens to file an application before this Court giving all particulars and also explaining the inaction on the part of the Corporators and the Ward Committee members so that this Court after hearing all of them would be in a better position to take appropriate action, so that garbage is cleared in terms of the directions issued.

(h) Regarding Sri M.N. Sriramulu, the President of the Karnataka Safai Karmachari Commission - A copy of the

letter of intent in pursuance of the contract dated 1.1.2013 executed by Sri M.N. Sriramulu in favour of H.Kumar, Narasimha M, K.Jeevaraja, is placed on file. The recitals therein make it very clear that he was the successful bidder in respect of S4 package, Ward Nos. 157 and 158, Vijayanagar South Division as well as Package W5 Nos. 101 and 107, Rajajinagar West Division, which were granted on 28.12.2012 and 29.12.2012 respectively. The recitals therein make it very clear that the said contract is transferred in favour of those three persons. Though the contract stands in the name of Sriramulu, it is they who have to carry out the work. Further it is stated that they have to open a joint account in the bank and the amounts received from the Corporation could be withdrawn by them by signing the cheque jointly. If there is any violation of the terms of the contract, he would withdraw the said power conferred on them. Now, the said Sri M.N.Sriramulu is appointed as the President of the Karnataka Safai Karmachari Commission. It is submitted that the said office is equal to a Minister of

State Rank. He is a public servant. He cannot be a contractor having contract with the BBMP and he cannot be holding the said post as a public servant. The BBMP shall not release any amount under the aforesaid contract from today and they shall take appropriate action for transferring the contract. This only shows that powerful persons are able to obtain the contract and then they are transferring the contract and getting the work done through their nominees. That may be one of the reason for the problem which Bangalore is facing. Therefore, to ensure that such things do not re-occur and if it has already occurred that such things cannot be continued any further, the Corporation shall issue notice to all the contractors to whom the contracts are entrusted and call upon them to file an affidavit duly sworn to before a jurisdictional Magistrate declaring that

(a) they are personally carrying on the contract work;

(b) they have not assigned, transferred in any manner the rights under that contract

to any person whatsoever;

(c) that the entire money paid by the Corporation is received by them;

and submit the said record before this Court.

If the Corporation finds there is any violation of any of the terms, they are at liberty to immediately take action against such contractors to put an end to the contract, stop all further payment and initiate proceedings for recovery of the payments made.

The State is also directed to take note of the aforesaid conduct and decide whether it is in the interest of public and the Safai Karmachari to have such person as the President of the said organization and whether the interest of these Safai Karmacharis is safe in their hands.

A copy of this order shall be furnished forthwith to all concerned.

List the matter on 02.04.2013.

(N. KUMAR)

JUDGE

(B V NAGARATHNA)

JUDGE

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