

PETITIONER:
MUNICIPAL COUNCIL, RATLAM

Vs.

RESPONDENT:
SHRI VARDHICHAND & ORS.

DATE OF JUDGMENT 29/07/1980

BENCH:
KRISHNAIYER, V.R.
BENCH:
KRISHNAIYER, V.R.
REDDY, O. CHINNAPPA (J)

CITATION:
1980 AIR 1622 1981 SCR (1) 97
1980 SCC (4) 162
CITATOR INFO :
RF 1981 SC 344 (45)
R 1982 SC 149 (15,607,968)
RF 1986 SC 847 (12)
RF 1991 SC1902 (24)
R 1992 SC 248 (17)

ACT:
Code of Criminal Procedure 1973, s. 133 & M. P. Municipalities Act 1961, s. 123-Municipality not providing sanitary facilities and construction of public conveniences for slum dwellers-Whether Courts can compel municipal body to carry out its duty to the community to provide amenities and abate nuisance.

HEADNOTE:
The residents (respondents) of a prominent residential locality of the Municipality (petitioner) in their complaint under s. 133 Criminal Procedure Code to the Sub-Divisional Magistrate averred that the Municipality had failed despite several pleas, to meet its basic obligations, like provision of sanitary facilities on the roads, public conveniences for slum dwellers who were using the road for that purpose, and prevention of the discharge from the nearby Alcohol Plant of malodorous fluids into the public street, and that the Municipality was oblivious to the statutory obligation envisaged in s. 123 M. P. Municipalities Act, 1961

The Municipal Council contested the petition on the ground that the owners of houses had gone to that locality on their own choice, fully aware of the insanitary conditions and therefore they could not complain. It also pleaded financial difficulties in the construction of drains and provision of amenities.

The Magistrate found the facts proved, and ordered the municipality to provide the amenities and to abate the nuisance by constructing drain pipes with flow of water to wash the filth and stop the stench and that failure would entail prosecution under s. 188 I.P.C.

The order of the Magistrate was found unjustified by the Sessions Court, but upheld by the High Court.

In the Special Leave Petition by the Municipality to this Court on the question whether a Court can by affirmative action compel a statutory body to carry out its

duty to the community by constructing sanitation facilities at great cost and on a time-bound basis.

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HELD : 1. Wherever there is a public nuisance, the presence of s. 133 Criminal Procedure Code must be felt and any contrary opinion is contrary to the law. [112D]

2. The public power of the Magistrate under the Code is a public duty to the members of the public who are victims of the nuisance and so he shall exercise, it when the jurisdictional facts are present. [107G]

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3. The Magistrate's responsibility under s. 133 Cr.P.C. is to order removal of such nuisance within a time to be fixed in the order. This is a public duty implicit in the public power to be exercised on behalf of the public and pursuant to a public proceeding. Failure to comply with the direction will be visited with a punishment contemplated by s. 188 I.P.C. [109C-D]

4. The Municipal Commissioner or other executive authority bound by the order under s. 133 Criminal Procedure Code shall obey the direction because disobedience, if causes obstruction or annoyance or injury to any persons lawfully pursuing their employment, shall be punished with simple imprisonment or fine as prescribed in the section. The offence is aggravated if the disobedience tends to cause danger to human health or safety. [109E]

5. Public nuisance, because of pollutants being discharged by big factories to the detriment of the poorer sections, is a challenge to the social justice component of the rule of law. [110C]

6. The imperative tone of s. 133 Criminal Procedure Code read with the punitive temper of s. 188 I.P.C. make the prohibitory act a mandatory duty. [109E]

7. The Criminal Procedure Code operates against statutory bodies and others regardless of the cash in their coffers, even as human rights under Part III of the Constitution have to be respected by the State regardless of budgetary provision. [108H]

8. Section 123 M. P. Municipalities Act 1961 has no saving clause when the municipal council is penniless. [108H]

9. Although the Cr.P.C. and I.P.C. are of ancient vintage the new social justice orientation imparted to them by the Constitution of India makes them a remedial weapon of versatile use. Social Justice is due to the people and, therefore, the people must be able to trigger off the jurisdiction vested for their benefit in any public functionary like a Magistrate under s. 133 Criminal Procedure Code. In the exercise of such power, the judiciary must be informed by the broader principle of access to justice necessitated by the conditions of developing countries and obligated by Art. 38 of the Constitution. [109F-G]

10. A responsible municipal council constituted for the precise purpose of preserving public health and providing better finances cannot run away from its principal duty by pleading financial inability. Decency and dignity are non-negotiable facets of human rights and are a first charge on local self-governing bodies. Similarly, providing drainage systems not pompous and attractive, but in working condition and sufficient to meet the needs of the people-cannot be evaded if the municipality is to justify its existence. [110E]

11. The Court, armed with the provisions of the two Codes and justified by the obligation under s. 123 of the

Act, must adventure into positive directions as it has done in the present case. Section 133 Criminal Procedure Code authorises the prescription of a time-limit for carrying out the order. The same provision spells out the power to give specific directives. [111A-B]

Govind Singh v. Shanti Sarup, [1979] 2 SCC 267, 279 referred to.

12. The state will realise that Art. 47 makes it a paramount principle of governance that steps are taken for the improvement of public health as amongst its primary duties. The municipality also will slim its budget on

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low priority items and elitist projects to use the savings on sanitation and public health. [114C]

13. Where Directive Principles have found statutory expression in Do's and Don'ts the court will not sit idly by and allow municipal government to become a statutory mockery. The law will relentlessly be enforced and the plea of poor finance will be poor alibi when people in misery cry for justice. The dynamics of the judicial process have a new 'enforcement' dimension not merely through some of the provisions of the Criminal Procedure Code (as here) but also through activated tort consciousness. The officers in charge and even the elected representatives will have to face the penalty of the law if what the Constitution and follow up legislation direct them to do are defied or denied wrongfully. The wages of violation is punishment, corporate and personal. [114G-115A]

[The Court approved a scheme of construction work to be undertaken by the Municipality for the elimination of the insanitary conditions and directed that the work be commenced within two months and that the Magistrate inspect the progress of the work every three months and see that it is implemented. [113 D-114 B]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Special Leave Petition (Crl.) No. 2856 of 1979.

From the Judgment and Order dated 6-8-1979 of the Madhya Pradesh High Court in Crl. Revision No. 392/76.

Sobhag Mal Jain and S. K. Jain for the Petitioner.

C. S. Chhazed, Miss Manisha Gupta and M. S. Gupta for Respondents 1-5.

S. K. Gambhir for the State.

The Order of the Court was delivered by

KRISHNA IYER, J.-'It is procedural rules', as this appeal proves, 'which infuse life into substantive rights, which activate them to make them effective'. Here, before us, is what looks like a pedestrian quasi-criminal litigation under s. 133 Cr.P.C., where the Ratlam Municipality-the appellant-challenges the sense and soundness of the High Court's affirmation of the trial court's order directing the construction of drainage facilities and the like, which has spiralled up to this Court. The truth is that a few profound issues of processual jurisprudence of great strategic significance to our legal system face us and we must zero-in on them as they involve problems of access to justice for the people beyond the blinkered rules of 'standing' of British Indian vintage. If the centre of gravity of justice is to shift, as the Preamble to the Constitution mandates, from the traditional individualism of locus standi to the community orientation of public interest litigation, these issues must be

considered. In that sense, the case before us between the Ratlam Municipality and the citizens of

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a ward, is a path-finder in the field of people's involvement in the justicing process, sans which as Prof. Sikes points out, (1) the system may 'crumble under the burden of its own insensitivity'. The key question we have to answer is whether by affirmative action a court can compel a statutory body to carry out its duty to the community by constructing sanitation facilities at great cost and on a time-bound basis. At issue is the coming of age of that branch of public law bearing on community actions and the court's power to force public bodies under public duties to implement specific plans in response to public grievances.

The circumstances of the case are typical and overflow the particular municipality and the solutions to the key questions emerging from the matrix of facts are capable of universal application, especially in the Third World humscape of silent subjection of groups of people to squalor and of callous public bodies habituated to deleterious inaction. The Ratlam municipal town, like many Indian urban centres, is populous with human and sub-human species, is punctuated with affluence and indigence in contrasting co-existence, and keeps public sanitation a low priority item. What with cesspools and filth menacing public health. Ward No. 12, New Road, Ratlam town is an area where prosperity and poverty live as strange bedfellows. The rich have bungalows and toilets, the poor live on pavements and litter the street with human excreta because they use roadsides as latrines in the absence of public facilities. And the city fathers being too busy with other issues to bother about the human condition, cesspools and stinks, dirtied the place beyond endurance which made the well-to-do citizens protest, but the crying demand for basic sanitation and public drains fell on deaf ears. Another contributory cause to the insufferable situation was the discharge from the Alcohol Plant of malodorous fluids into the public stream. In this lawless locale, mosquitoes found a stagnant stream of stench so hospitable to breeding and flourishing, with no municipal agent disturbing their stinging music at human expense. The local denizens, driven by desperation, at long last, decided to use the law and call the bluff of the municipal body's bovine indifference to its basic obligations under s. 123 of the M. P. Municipalities Act, 1961 (the Act, for short). That provision casts a mandate:

123. Duties of Council.-(1) In addition to the duties imposed upon it by or under this Act or any other enactment for the time being in force, it shall be the duty of a Council to

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undertake and make reasonable and adequate provision for the following matters within the limits of the Municipality, namely:

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(b) cleansing public streets, places and sewers, and all places, not being private property, which are open to the enjoyment of the public whether such places are vested in the Council or not; removing noxious vegetation, and abating all public nuisances:

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

And yet the municipality was obvious to this obligation towards human well-being and was directly guilty of breach

of duty and public nuisance and active neglect. The Sub Divisional Magistrate, Ratlam, was moved to take action under s. 133 Cr.P.C., to abate the nuisance by ordering the municipality to construct drain pipes with flow of water to wash the filth and stop the stench. The Magistrate found the facts proved, made the direction sought and scared by the prospect of prosecution under s. 188 I.P.C., for violation of the order under s. 133 Cr.P.C., the municipality rushed from court to court till, at last, years after, it reached this Court as the last refuge of lost causes. Had the municipal council and its executive officers spent half this litigative zeal on cleaning up the street and constructing the drains by rousing the people's sramdan resources and laying out the city's limited financial resources, the people's needs might have been largely met long ago. But litigation with other's funds is an intoxicant, while public service for common benefit is an inspiration; and, in a competition between the two, the former overpowers the latter. Not where a militant people's will takes over people's welfare institutions, energises the common human numbers, canalises their community consciousness, forbids the offending factories from polluting the environment, forces the affluent to contribute wealth and the indigent their work and thus transforms the area into a healthy locality vibrant with popular participation and vigilance, not neglected ghettos noisy with squabbles among the slimy slum-dwellers nor with electoral 'sound and fury signifying nothing.'

The Magistrate, whose activist application of s. 133 Cr.P.C., for the larger purpose of making the Ratlam municipal body to do its duty and abate the nuisance by affirmative action, has our appreciation. He has summed up the concrete facts which may be usefully quoted in portions:

"New Road, Ratlam, is a very important road and so many prosperous and educated persons are living on this Road. On

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the southern side of this Road some houses are situated and behind these houses and attached to the College boundary, the Municipality has constructed a road and this new Road touches the Government College and its boundary. Just in between the said area a dirty Nala is flowing which is just in the middle of the main road i.e. New Road. In this stream (nala) many a time dirty and filthy water of Alcohol Plant having chemical and obnoxious smell, is also released for which the people of that locality and general public have to face most obnoxious smell. This Nala also produces filth which causes a bulk of mosquitoes breeding. On this very southern side of the said road a few days back municipality has also constructed a drain but it has (?) constructed it completely but left the construction in between and in some of the parts the drain has not at all been constructed because of this the dirty water of half constructed drain and septic tank is flowing on the open land of applicants, where due to insanitation and due to non-removing the obstructed earth the water is accumulated in the pits and it also creates dirt and bad smell and produces mosquitoes in large quantities. This water also goes to nearby houses and causes harm to them. For this very reason the applicants and the other people of that locality are unable to live and take rest in their respective houses. This is also injurious to health".

There are more dimensions to the environmental pollution which the magistrate points out:

"A large area of this locality is having slums where no

facility of lavatories is supplied by the municipality. Many such people live in these slums who relieve their lateral dirt on the bank of drain or on the adjacent land. This way an open latrine is created by these people. This creates heavy dirt and mosquitoes. The drains constructed in other part of this Mohalla are also not proper it does not flow the water properly and it creates the water obnoxious. The Malaria Department of the State of M.P. also pays no attention in this direction. The non-applicants have not managed the drains, Nallahs and Naliyan properly and due to incomplete construction the non-applicants have left no outlet for the rainy water. Owing to above reasons the water is accumulated on the main road, it passes through living houses, sometimes snakes and scorpions come out and this obstruct the people to pass through this road. This also causes financial loss to the people of this area. The road constructed by Nagarpalika is on a high level and due to this, this year more

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water entered the houses of this locality and it caused this year more harm and loss to the houses also. This way all works done by the non-applicants i.e. construction of drain, canal and road come within the purview of public nuisance. The non-applicants have given no response to the difficulties of the applicants, and non-applicants are careless in their duties towards the public, for which without any reason the applicants are facing the intolerable nuisance. In this relation the people of this locality submitted their returns, notices and given their personal appearance also to the non-applicants but the non-applicants are shirking from their responsibilities and try to avoid their duty by showing other one responsible for the same, whereas all the non-applicants are responsible for the public nuisance."

Litigation is traumatic and so the local people asked first for municipal remedies failing which they moved for magisterial remedies:

"At the last the applicants requested to remove all the nuisance stated in their main application and they also requested that under-mentioned works must be done by the non-applicants and for which suitable orders may be issued forthwith:

1. The drains constructed by Municipality are mismanaged and incomplete, they should be managed and be completed and flow of water in the drains should be made so that the water may pass through the drain without obstruction.

2. The big pits and earthen drains which are situated near the College boundary and on the corners of the road where dirty water usually accumulates, they should be closed and the filth shall be removed therefrom.

3. The big 'Nala' which is in between the road, should be managed and covered in this way that it must not create overflow in the rainy season.

4. The Malaria Department should be ordered to sprinkle D.D.T. and act in such a manner and use such means so that the mosquitoes may be eradicated completely from the said locality."

The proceedings show the justness of the grievances and the indifference of the local body:

"Both the parties heard. The court was satisfied on the facts contained in their application dated 12-5-72 and granted conditional order against non-applicants

No. 1 and 2 u/s 133 of Cr. P.C. (Old Code). In this order all the nuisances were described (which were there in their main application) and the court directed to remove

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all the nuisances within 15 days and if the non-applicants have any objection or dissatisfaction against the order then they must file it on the next date of hearing in the court."

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"The applicants got examined the following witnesses in their evidence and after producing following documents they closed their evidence."

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"No evidence has been produced by the non-applicants in spite of giving them so many opportunities. Both the parties heard and I have also inspected the site."

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"The non-applicant (Municipal Council) has sought six times to produce evidence but all in vain. Likewise non-applicant (Town Improvement Trust) has also produced no evidence."

The Nallah comes into picture after the construction of road and bridge. It has shown that Nallah is property of Nagarpalika according to Ex.p. 10. Many applications were submitted to remove the nuisance but without result. According to Sec. 32 to 43 of the Town Improvement Trust Act, it is shown, that it has only the provisions to make plans. Many a time people tried to attract the attention of Municipal Council and the Town Improvement Trust but the non-applicants always tried to throw the responsibility on one another shoulder.

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It is submitted by non-applicant (Municipality) that the said Nallah belongs to whom, it is still disputed i.e. whether it belongs to non-applicant 1 or 2. Shastri Colony is within the area of Town Improvement Trust. The Nagarpalika (non-applicant No. 1) is financially very weak. But Municipal Council is not careless towards its duties.

Non-applicant (Town Improvement Trust) argued that primary responsibility lies with the Municipal Council only. There is no drainage system.

At the end of it all, the Court recorded:
..... after considering all the facts I come to this conclusion that the said dirty Nallah is in between the main road of Ratlam City. This dirty Nallah affects the Mohalla of New

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Road, Shastri Colony, Volga Talkies and it is just in the heart of the city. This is the very important road and is between the Railway Station and the main city. In these mohallas, cultured and educated people are living. The Nallah which flows in between the New Road and Shastri Colony the water is not flowing rapidly and on many places there are deep pits in which the dirty water is accumulated. The Nallah is also not straight that is also the reason of accumulation of dirty water. The Nallah is not managed properly by the non-applicants. It is unable to gush the rainy water and due to this the adjoining areas always suffer from over-flowing of the water and it causes the obstruction to the pedestrians.

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It is also proved by the evidence given by the applicants that from time to time the Power Alcohol factory which is situated outside the premises of the Municipal Council and it flows its dirty and filthy water into the said Nallah, due to this also the obnoxious smell is spreading throughout the New Road or so it is the bounden duty of the Municipal Council and the Town Improvement Trust to do the needful in this respect.

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The dirty water which flows from the lavatories and urinals of the residential houses have no outlet and due to this reason there are many pits on the southern side of the New Road and all the pits are full of dirty and stinking water. So it is quite necessary to construct an outlet for the dirty water in the said locality.

In this area many a places have no drainage system and if there is any drain it has no proper flow and water never passes through the drain properly. That causes the accumulation of water and by the time it becomes dirty and stink and then it produces mosquitoes there.

The Magistrate held in the end:

Thus after perusing the evidence I come to this conclusion and after perusing the applications submitted by the persons residing on the New Road area from time to time to draw the attention of the non-applicants to remove the nuisance, the non-applicants have taken no steps whatsoever to remove all these public nuisances.

He issued the following order which was wrongly found unjustified by the Sessions Court, but rightly upheld by the High Court:

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Therefore, for the health and convenience of the people residing in that particular area of all the nuisance must be removed and for that the following order is hereby passed:

(1) The Town Improvement Trust with the help of Municipal Council must prepare a permanent plan to make the proper flow in the said Nallah which is flowing in between Shastri Colony and New Road. Both the non-applicants must prepare the plan within six months and they must take proper action to give it a concrete form.

(2) According to para 13 a few places are described which are either having the same drains and the other area is having no drain and due to this the water stinks there; so the Municipal Council and the Town Improvement Trust must construct the proper drainage system and within their own premises where there is no drain it must be constructed immediately and all this work should be completed within six months.

(3) The Municipal Council should construct drains from the jail to the bridge behind the southern side of the houses so that the water flowing from the septic tanks and the other water flowing outside the residential houses may be channellised and it may stop stinking and it should have a proper flow so that the water may go easily towards the main Nallah. All these drains should be constructed completely within six months by the Municipal Council.

(4) The places where the pits are in existence the same should be covered with mud so that the water may not accumulate in those pits and it may not breed mosquitoes. The Municipal Council must complete this work within two months.

A notice under Section 141 of the Criminal Procedure Code (Old Code) may be issued to the non-applicants Nos. 1 and 2 so that all the works may be carried out within the stipulated period. Case is hereby finalised.

Now that we have a hang of the case we may discuss the merits, legal and factual. If the factual findings are good- and we do not re-evaluate them in the Supreme Court except in exceptional cases- one wonders whether our municipal bodies are functional irrelevances, banes rather than booms and 'lawless' by long neglect, not leaders of the people in local self-government. It may be a cynical obiter of pervasive veracity that municipal bodies minus the people and plus the bureaucrats are the bathetic vogue-no better than when the British were here:

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We proceed on the footing, as we indicated even when leave to appeal was sought, that the malignant facts of municipal callousness to public health and sanitation, held proved by the Magistrate, are true. What are the legal pleas to absolve the municipality from the court's directive under s. 133 Cr.P.C. ? That provision reads:

s. 133(1) whenever a District Magistrate or a Sub-Divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government, on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers-

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

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

(i) to remove such obstruction or nuisance; or

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

So the guns of s. 133 go into action wherever there is public nuisance. The public power of the Magistrate under the Code is a public duty to the members of the public who are victims of the nuisance, and so he shall exercise it when the jurisdictional facts are present as here. "All power is a trust-that we are accountable for its exercise-that, from the people, and for the people, all springs, and all must exist."(i) Discretion becomes a duty when the beneficiary brings home the circumstances for its benign exercise.

If the order is defied or ignored, s. 188 I.P.C. comes into penal play:

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188. Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to obtain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction

and if such disobedience causes or tends to cause danger to human life health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

There is no difficulty in locating who has the obligation to abate the public nuisance caused by absence of primary sanitary facilities. Section 123, which is mandatory, (we repeat), reads:

123. Duties of Council :- (1) In addition to the duties imposed upon it by or under this Act or any other enactment for the time being in force, it shall be the duty of a Council to undertake and make reasonable and adequate provision for the following matters within the limits of the Municipality, namely:-

(a).....

(b) cleansing public streets, places and sewers, and all places not being private property, which are open to the enjoyment of the public whether such places are vested in the Council or not; removing noxious vegetation, and abating all public nuisances;

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

The statutory setting being thus plain, the municipality cannot extricate itself from its responsibility. Its plea is not that the facts are wrong but that the law is not right because the municipal funds being insufficient it cannot carry out the duties under s. 123 of the Act. This 'alibi' made us issue notice to the State which is now represented by counsel, Shri Gambhir, before us. The plea of the municipality that notwithstanding the public nuisance financial inability validly exonerates it from statutory liability has no juridical basis. The Criminal Procedure Code operates against statutory bodies and others regardless of the cash in their coffers, even as human rights under Part III of the Constitution have to be respected by the State regardless of budgetary provision. Likewise, s. 123 of the Act has no saving clause when the municipal council is penniless. Otherwise, a profligate

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statutory body or pachydermic governmental agency may legally defy duties under the law by urging in self-defence a self-created bankruptcy or perverted expenditure budget. That cannot be.

Section 133 Cr.P.C. is categorical, although reads discretionary. Judicial discretion when facts for its exercise are present, has a mandatory import. Therefore, when the sub-Divisional Magistrate, Ratlam, has, before him, information and evidence, which disclose the existence of a public nuisance and, on the materials placed, he considers that such unlawful obstruction or nuisance should be removed from any public place which may be lawfully used by the public, he shall act. Thus, his judicial power shall,

passing through the procedural barrel, fire upon the obstruction or nuisance, triggered by the jurisdictional facts. The Magistrate's responsibility under s. 133 Cr.P.C. is to order removal of such nuisance within a time to be fixed in the order. This is a public duty implicit in the public power to be exercised on behalf of the public and pursuant to a public proceeding. Failure to comply with the direction will be visited with a punishment contemplated by s. 188 I.P.C. Therefore, the Municipal Commissioner or other executive authority bound by the order under s. 133 Cr.P.C. shall obey the direction because disobedience, if it causes obstruction or annoyance or injury to any persons lawfully pursuing their employment, shall be punished with simple imprisonment or fine as prescribed in the Section. The offence is aggravated if the disobedience tends to cause danger to human health or safety. The imperative tone of s. 133 Cr.P.C. read with the punitive temper of s. 188 I.P.C. make the prohibitory act a mandatory duty.

Although these two Codes are of ancient vintage, the new social justice orientation imparted to them by the Constitution of India makes it a remedial weapon of versatile use. Social justice is due to the people and, therefore, the people must be able to trigger off the jurisdiction vested for their benefit in any public functionary like a Magistrate under s. 133 Cr.P.C. In the exercise of such power, the judiciary must be informed by the broader principle of access to justice necessitated by the conditions of developing countries and obligated by Art. 38 of the Constitution. This brings Indian public law, in its processual branch, in line with the statement of Prof. Kojima : (1) "the urgent need is to focus on the ordinary man-one might say the little man..." "Access to Justice" by Cappelletti and B. Garth summarises the new change thus: (2)

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"The recognition of this urgent need reflects a fundamental change in the concept of "procedural justice"... The new attitude to procedural justice reflects what Professor Adolf Homburger has called "a radical change in the hierarchy of values served by civil procedure"; the paramount concern is increasingly with "social justice," i.e., with finding procedures which are conducive to the pursuit and protection of the rights of ordinary people. While the implications of this change are dramatic-for instance, insofar as the role of the adjudicator is concerned-it is worth emphasizing at the outset that the core values of the more traditional procedural justice must be retained. "Access to justice" must encompass both forms of procedural justice."

Public nuisance, because of pollutants being discharged by big factories to the detriment of the poorer sections, is a challenge to the social justice component of the rule of law. Likewise, the grievous failure of local authorities to provide the basic amenity of public conveniences drives the miserable slum-dwellers to ease in the streets, on the sly for a time, and openly thereafter, because under Nature's pressure, bashfulness becomes a luxury and dignity a difficult art. A responsible municipal council constituted for the precise purpose of preserving public health and providing better finances cannot run away from its principal duty by pleading financial inability. Decency and dignity are non-negotiable facets of human rights and are a first charge on local self-governing bodies. Similarly, providing drainage systems- not pompous and attractive, but in working condition and sufficient to meet the needs of the people-

cannot be evaded if the municipality is to justify its existence. A bare study of the statutory provisions makes this position clear.

In this view, the Magistrate's approach appears to be impeccable although in places he seems to have been influenced by the fact that "cultured and educated people" live in this area and "New Road, Ratlam" is a very important road and so many prosperous and educated persons are living on this road. In India 'one man, one value' is the democracy of remedies and rich or poor the law will call to order where people's rights are violated. What should also have been emphasised was the neglect of the Malaria Department of the State of Madhya Pradesh to eliminate mosquitoes, especially with open drains, heaps of dirt, public excretion by humans for want of lavatories and slums nearby, had created an intolerable situation for habitation. An order to abate the nuisance by taking affirmative action on a time-bound basis is justified in the circumstances. The nature of the judicial process is not purely adjudicatory nor is it functionally that of an umpire only.

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Affirmative action to make the remedy effective is of the essence of the right which otherwise becomes sterile. Therefore, the court, armed with the provisions of the two Codes and justified by the obligation under s. 123 of the Act, must adventure into positive directions as it has done in the present case. Section 133 Cr.P.C. authorises the prescription of a time-limit for carrying out the order. The same provision spells out the power to give specific directives. We see no reason to disagree with the order of the Magistrate.

The High Court has taken a correct view and followed the observations of this Court in *Govind Singh v. Shanti Sarup*(1) where it has been observed:

"We are of the opinion that in a matter of this nature where what is involved is not merely the right of a private individual but the health, safety and convenience of the public at large, the safer course would be to accept the view of the learned Magistrate, who saw for himself the hazard resulting from the working of the bakery."

We agree with the High Court in rejecting the plea that the time specified in the order is unworkable. The learned judges have rightly said.

"It is unfortunate that such contentions are raised in 1979 when these proceedings have been pending since 1972. If in seven year's time the Municipal Council intended to remedy such a small matter there would have been no difficulty at all. Apart from it, so far as the directions are concerned, the learned Magistrate, it appears, was reasonable. So far as direction No. 1 is concerned, the learned Magistrate only expected the Municipal Council and the Town Improvement Trust to evolve a plan and to start planning about it within six months: the learned Magistrate has rightly not fixed the time limit within which that plan will be completed. Nothing more reasonable could be said about direction No. 1."

A strange plea was put forward by the Municipal Council before the High Court which was justly repelled, viz., that the owners of houses had gone to that locality on their own choice with eyes open and, therefore, could not complain if human excreta was flowing, dirt was stinking, mosquitoes were multiplying and health was held hostage. A public body constituted for the principal statutory duty of ensuring

sanitation and health cannot outrage the court by such an ugly plea.

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Luckily, no such contention was advanced before us. The request for further time for implementation of the Magistrate's order was turned down by the High Court since no specific time-limit was accepted by the municipality for fulfillment of the directions. A doleful statement about the financial difficulties of the municipality and the assurance that construction of drains would be taken up as soon as possible had no meaning. The High Court observed:

"Such assurances, it appears, are of no avail as unfortunately these proceedings for petty little things like clearing of dirty water, closing the pits and repairing of drains have taken more than seven years and if these seven years are not sufficient to do the needful, one could understand that by granting some more time it could not be done."

The High Court was also right in rejecting the Additional Sessions Judge's recommendation to quash the Magistrate's order on the impression that s. 133 Cr.P.C. did not provide for enforcement of civic rights. Wherever there is a public nuisance, the presence of s. 133 Cr.P.C. must be felt and any contrary opinion is contrary to the law. In short, we have no hesitation in upholding the High Court's view of the law and affirmation of the Magistrate's order.

Before us the major endeavour of the municipal council was to persuade us to be pragmatic and not to force impracticable orders on it since it had no wherewithal to execute the order. Of course, we agree that law is realistic and not idealistic and what cannot be performed under given circumstances cannot be prescribed as a norm to be carried out. From that angle it may well be that while upholding the order of the Magistrate, we may be inclined to tailor the direction to make it workable. But first things first and we cannot consent to a value judgment where people's health is a low priority. Nevertheless, we are willing to revise the order into a workable formula the implementation of which would be watch-dogged by the court.

Three proposals have been put forward before us in regard to the estimated cost of the scheme as directed by the Magistrate. The Magistrate had not adverted to the actual cost of the scheme nor the reasonable time that would be taken to execute it. As stated earlier it is necessary to ascertain how far the scheme is feasible and how heavy the cost is likely to be. The Court must go further to frame a scheme and then fix time-limits and even oversee the actual execution of the scheme in compliance with the court's order.

Three schemes placed before us, together with tentative estimates of the costs, have been looked into by us. Judges are laymen and cannot put on expert airs. That was why we allowed the municipality

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and the respondents to produce before us schemes prepared by expert engineers so that we may modify the directions issued by the Magistrate suitably. Scheme 'A' is stated to cost an estimated amount of Rs. 1.016 crores. The State Government has revised this proposal and brought down the cost. In our view, what is important is to see that the worst aspects of the insanitary conditions are eliminated, not that a showy scheme beyond the means of the municipality must be undertaken and half done. From that angle we approve scheme 'C' which costs only around Rs. 6 lakhs. We fix a time limit of one year for completing execution of the work according

to that scheme. We further direct that the work shall be begun within two months from to-day and the Magistrate shall inspect the progress of the work every three months broadly to be satisfied that the order is being implemented bona fide. Breaches will be visited with the penalty of s. 188 I.P.C.

We make the further supplementary directions which we specifically enjoin upon the municipal authority and the State Government to carry out.

1. We direct the Ratlam Municipal Council (R1) to take immediate action, within its statutory powers, to stop the effluents from the Alcohol Plant flowing into the street. The State Government also shall take action to stop the pollution. The Sub Divisional Magistrate will also use his power under s. 133 I.P.C., to abate the nuisance so caused. Industries cannot make profit at the expense of public health. Why has the Magistrate not pursued this aspect ?
2. The Municipal Council shall, within six months from to-day, construct a sufficient number of public latrines for use by men and women separately, provide water supply and scavenging service morning and evening so as to ensure sanitation. The Health Officer of the Municipality will furnish a report, at the end of the six-monthly term, that the work has been completed. We need hardly say that the local people will be trained in using and keeping these toilets in clean condition. Conscious cooperation of the consumers is too important to be neglected by representative bodies.
3. The State Government will give special instructions to the Malaria Eradication Wing to stop mosquito breeding in Ward 12. The Sub Divisional Magistrate will issue directions to the officer concerned to file a report before him to the effect that the work has been done in reasonable time.
4. The municipality will not merely construct the drains but also fill up cesspools and other pits of filth and use its sanitary

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staff to keep the place free from accumulations of filth. After all, what it lays out on prophylactic sanitation is a gain on its hospital budget.

5. We have no hesitation in holding that if these directions are not complied with the Sub Divisional Magistrate will prosecute the officers responsible. Indeed, this court will also consider action to punish for contempt in case of report by the Sub Divisional Magistrate of willful breach by any officer.

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 Art. 47 makes it a paramount principle of governance that steps are taken 'for the improvement of public health as amongst its primary duties'. The municipality also will slim its budget on 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. The

pressure of the judicial process, expensive and dilatory, is neither necessary nor desirable if responsible bodies are responsive to duties. Cappelletti holds good for India when he observes :(1)

"Our judicial system has been aptly described as follows:

Admirable though it may be, (it) is at once slow and costly. It is a finished product of great beauty, but entails an immense sacrifice of time, money and talent.

This "beautiful" system is frequently a luxury; it tends to give a high quality of justice only when, for one reason or another, parties can surmount the substantial barriers which it erects to most people and to many types of claims."

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

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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.

We dismiss this petition subject to the earlier mentioned modifications.

N.V.K.

Petition dismissed.

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