

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

Equivalent citations: 1996 SCC (2) 594, JT 1996 (3) 38, AIR 1996 SUPREME COURT 2969, 1996 (2) SCC 594, 1996 AIR SCW 1185, 1996 (2) UJ (SC) 26, (1996) 3 SCR 80 (SC), (1996) 3 JT 38 (SC), 1996 UJ(SC) 2 26, 1996 (3) JT 38, (1996) 63 DLT 236, (1997) 1 CURLJ(CCR) 28

Author: Kuldip Singh

Bench: Kuldip Singh

PETITIONER:

DR. B. L. WADEHRA

Vs.

RESPONDENT:

UNION OF INDIA & ORS.

DATE OF JUDGMENT: 01/03/1996

BENCH:

KULDIP SINGH (J)

BENCH:

KULDIP SINGH (J)

AHMAD SAGHIR S. (J)

CITATION:

1996 SCC (2) 594 JT 1996 (3) 38

1996 SCALE (2) 514

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T Kuldip Singh 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 Delhi-ites 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, the city is virtually an open dust-bin. 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 re-miss in the discharge of their duties under law. It is no doubt correct that rapid industrial development, urbanization 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 guarantees 'right to life', Articles 48A and 51A(g) of the Constitution are as under:-

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

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

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.

This Court on December 16, 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 centers 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 subsidized rates."

Mr. H.K. Handa, Executive Engineer MCD filed a short affidavit dated January 30, 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.

(2) New Delhi Municipal Committee

- 42.40 Sq.Km.

(3)	Delhi	Cantonment	Board
		-	42.80 Sq.Km.

			1484.46 Sq.Km."

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 centers are 1804 (337 dhalaos, 1284 dustbins, 176 open sites and 7 steel bins). The garbage collection trucks collect the garbage from the collection centers and take it to the nearest Sanitary Land Fill (SLF) 19 Hospitals, 156 Dispensaries, 160 Maternity and Child Welfare Centers, 5 Primary Health Centers, 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.

Mr. S.C. Kumar, Executive Engineer has filed further affidavit dated July 13, 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 karamchari s (SK) are deployed on each dhalao and dustbin. The list of existing dustbins and dhalaos is already on the records of this Hon'ble Court filed with additional affidavit.

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
4. Asstt.Sanitary Inspector:556 Nos

5. Sanitary Guide :603 Nos

6. Safai Karamchari s :38311 Nos"

Regarding construction of additional dhalaos it is stated as under :-

"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' The completion of work will, however, depend upon the availability of funds by Central Govt. & Delhi Govt. 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 Secy. (UD) by Commissioner, MCD vide letter no. 486 dt. 5.6.95. This estimate will also require revision in view of the drawing prepared by the Chief Architect, MCD for proposed construction of dhalaos."

Mr. Kumar has further stated in his affidavit that composting is one of the solution 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 privatization, it is stated as under:-

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

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.

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

"NDMC has introduced a scheme of door to door collection of garbage on experimental basis in few colonies. Under this scheme, introduced on Ist may, 1994, NDMC is supplying 25 polythene garbage bags of 19" X 25" capable of holding about 10-12 kg. per month at the subsidized price of Rs.15/- per house per month in the following areas.

1. North Avenue

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
7. Ravinder Nagar and Bharti Nagar The said garbage bags are connected on daily basis by our staff deployed and then deposited in the nearby dust-bins 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 avails the benefit of the scheme It is specifically stated that NDMC does not have any dumping ground within its jurisdiction."

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 12500 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 Karamcharies, 600 Muster roll workers and 149 part time Safai Karamcharies.

This Court on September 15, 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 sights and steelbins. Similarly, the area under the control of NDMC has been divided into 13 zones where there are 944 collection Points 394 arr masonry dustbins and 500 are trolies. 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 arc manning these institutions must realize their responsibilities and show the end result. Keeping that in view, we issue the following directions :

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

duties and functions of various authorities in regard to the sanitation in the city of Delhi. (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 :

(a) final date by which there 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 over-night and the city is to be left absolutely clean for the residents for their use;

(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.

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.

Issues 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 October 12, 1995."

Pursuant to the above quoted order Commander Mukesh Paul, Medical Officer of Health, NDMC has filed affidavit dated October 10, 1995. It is stated in the affidavit that lack of civic sense, lack of dustbins, absenteeism among the staff, logistic problems, multiplicity of authorities, disposal of house hold 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 NDNC indicates that the following measures for speedy removal of garbage and for maintenance of effective sanitation have been undertaken:- .1s1 a. Strengthening of Safaikaramchari 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.

Mr. C.P. Gupta filed affidavit dated October 17,1995 on behalf of MCD wherein he stated as under :-

"It is, therefore, submitted that no specific date for making Delhi 'absolutely garbage free' every morning can be given at this stage. Nevertheless, the endeavors of M.C.D. would be to achieve the spirit of the orders passed by this Hon'ble Court."

Under Secretary, Ministry of Health, Government of India in his affidavit has stated that Safdarjung hospital, Ram Manohar Lohia hospital and Lady Harding Medical college comprising Kalavati hospital and Sucheta Kriplani 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 Harding Medical College is under consideration.

According to the affidavit filed by Mrs. Satbir Silas, Joint Secretary (Medical and Public Health) Government to National Capital Territory of Delhi, there are 13 hospitals which are functioning under the control of the said Government. Lok Nayak Jai Parkash Narain Hospital has no incinerator of its own. It is using the incinerator located in G.B. Pant hospital. There is an incinerator in Guru Teg Bahadur Hospital with capacity of 125 kg per hour. The incinerator is not enough to burn the entire hospital waste. It is stated that 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 kg 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 kg 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.

Mr. C.B. Gupta has filed further affidavit (second) dated November 6, 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.

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

"That the NDMC as per the directions of this Hon'ble Court intends to improve sanitation in a step-wise 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 M.C.D. dumping site at Gazipur. NDMC is also utilising part of its garbage and horticulture waste for conversion into manure at Compost at Okhla.

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 upto National Stadium, C-Hexagan Road, Sher Shah Road cutting the mathura Road upto Subramaniam Bharati Marg upto Southend Road, Aurangzeb Road, Moti Lal Nehru Marg including Maulana Azad Road, Sunehri Masjid. On the other hand, site from National Stadium to part of C-Hexagan, 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 M.S. flats. Ravinder Nagar has got 124 flats. Bapa Nagar has got 102 flats. Rest big bungalows are there. The Circle No.6 also includes the JJ clusters at Humayun Road and Darbanga 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

(ii) Three Star Hotel 1

(iii) Restaurants 20 It is proposed to deploy the work force 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 J.J. Clusters, the garbage will be collected at collection points designated for this purpose, it may not be feasible 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.

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

It would be useful to mention that the MCD has a very large force of Karamcharies working for it. There are 38311 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 wan 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.

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.

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 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 cleaning 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 cleaning of public streets and other public places;

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

(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;

(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;

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

(1) the construction and
maintenance of
i) rest - houses,
ii) poor-houses,
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;

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

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

(z) the provisions 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. 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-

107A. 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 recommendations to the Administrator as to, -

(a) The principle 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 accumulation 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 and with such precautions as the Commissioner may by public notice prescribe.

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 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 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 clean, 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 the construction, repair, payment or cleaning of any latrine, or urinal on or belonging to the premises.

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 provision of this Act shall be punishable with fine which may extend to one hundred rupees and in the case of 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.

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 belong in got 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.

487. Directions by Central Government - (1) If [whether or receipt of a report or on receipt of] any information or report obtained under section 485 of section 486 or otherwise, the Central Government is of opinion -

(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

(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.

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

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."

Similarly, NDMC is governed by the New Delhi Act. Sections 11, 12, 53, 261, 263, 264, 265, 266, 267 & 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 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 .

In Ratlam Municipality vs. Vardhichand AIR 1980 SC 1622, 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:

"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 defied wrongfully. The wages of violation is punishment, corporate and personal."

Reminding the State Government of its duties under the Constitution of India, Krishna Iyer, J. observed as under:-

"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."

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:-

1. We approve the experimental schemes placed before this Court by MCD and NDMC whereunder certain localities have been selected for 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 centers every day and transported to the designated place for disposal.

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

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

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.

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. to indicate the progress made in this respect.

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.

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.

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 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.

7. We direct the 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 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.

8. The MCD has placed order for the supply of about 200 Tippers with the Ordinance 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.

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 Quiry Pits and Mandi village near Jaunpur Quiry Pits. The sites shall be handed over to the MCD within three months. The Development Commissioner shall file an affidavit in this Court before March 31, 1996 indicating the progress made in this respect.

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 June 1, 1996. The MCD shall also examine the construction of four additional compost plants as recommended by Jag Mohan Committee. The MCD shall file an affidavit in this Court within six weeks indicating the progress made in re-starting the Okhla compost plant and in the construction of four new plants.

11. The MCD shall not use the filled-up SLFs 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 April 1,

1996. An affidavit shall be filed by the end of April indicating the progress made in this respect.

12. The MCD and NDMC shall construct/install additional garbage collection centers 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.

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.

14. After some time it may not be possible to dispose of garbage and solid-waste by 'SLF' method due to nonavailability 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 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.

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 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 cleaning 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 cleaning of public streets and other public places;

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

(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;

(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;

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

(1) the construction and
maintenance of
i) rest - houses,
ii) poor-houses,
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;

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

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

(z) the provisions 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.

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-

107A. 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 recommendations to the Administrator as to, -

(a) The principle 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 accumulation 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 and with such precautions as the Commissioner may by public notice prescribe.

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 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 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 clean, 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 the construction, repair, payment or cleaning of any latrine, or urinal on or belonging to the premises.

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 provision of this Act shall be punishable with fine which may extend to one hundred rupees and in the case of 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.

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 belong in got 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.

487. Directions by Central Government - (1) If [whether or receipt of a report or on receipt of] any information or report obtained under section 485 of section 486 or otherwise, the Central Government is of opinion -

(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

(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.

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

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."

Similarly, NDMC is governed by the New Delhi Act. Sections 11, 12, 53, 261, 263, 264, 265, 266, 267 & 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 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 .

In *Ratlam Municipality vs. Vardhichand* AIR 1980 SC 1622, 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:

"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 defied wrongfully. The wages of violation is punishment, corporate and personal."

Reminding the State Government of its duties under the Constitution of India, Krishna Iyer, J. observed as under:-

"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."

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:-

1. We approve the experimental schemes placed before this Court by MCD and NDMC whereunder certain localities have been selected for 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 centers every day and transported to the designated place for disposal.

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

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

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.

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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 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.
7. We direct the 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 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.
8. The MCD has placed order for the supply of about 200 Tippers with the Ordinance 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.
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 Quiry Pits and Mandi village near Jaunpur Quiry Pits. The sites shall be handed over to the MCD within three months. The Development Commissioner shall file an affidavit in this Court before March 31, 1996 indicating the progress made in this respect.

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11. The MCD shall not use the filled-up SLFs 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 April 1, 1996. An affidavit shall be filed by the end of April indicating the progress made in this respect.

12. The MCD and NDMC shall construct/install additional garbage collection centers 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.

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.

14. After some time it may not be possible to dispose of garbage and solid-waste by 'SLF' method due to nonavailability 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.