

THE HIGH COURT OF MADHYA PRADESH
W.P.20353/2019 (Sandeep Sharma Vs. Union of India & Ors.)1

Gwalior, Dated:-27.09.2019

Per Justice Vivek Agarwal

Shri D.P.Singh, learned counsel for the petitioner.

Shri Vivek Khedkar, learned Assistant Solicitor General for the respondents/Union of India.

This petition has been filed as Public Interest Litigation by the petitioner who claims himself to be local resident of Gwalior possessing degree of B.Sc. in Environmental Science and earning his livelihood as an employee of Municipal Corporation, Gwalior, as 'Sthai Karmi' on contractual basis. Petitioner has claimed following reliefs:-

- (i) That, this Hon'ble Court may kind be pleased to allow this writ petition in the form of probono publico in the interest of public at large.
- (ii) That, this Hon'ble Court may kindly be pleased to conduct a fair and impartial enquiry with a further to constitute a committee for proper assessment of ranking and awarding of certification of the status of Gwalior city on the basis of feed-back or the data available on record and the respondents be commanded to take suitable steps with regard to grading/ ranking awarded to Gwalior city, in the interest of public at large/ citizens of Gwalior city.
- (iii) That, the respondents No.1 to 4 be commanded taking note of the act of the respondents companies No.6, 7 and 8 who is causing loss to the government exchequer and preparing forged data without due physical verification. Therefore, necessary steps to be taken against those erring companies played fraud and cheating with the citizens, in the interest of justice.
- (iv) That, other directions deemed fit in the facts and

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circumstances of the case be issued to the respondents.

(v) Cost of the petition be awarded.

It is petitioner's contention that when survey was undertaken by the instrumentalities of Union of India, Ministry of Housing and Urban Affairs for awarding ranking to each cities under Swachh Survekshan 2019, which is part of the Swachh Bharat mission, then Gwalior city has not been given its due ranking and there has been arbitrariness in granting markings under different heads under different parameters. Petitioner submits that he has prepared a chart to draw comparison between various cities of Madhya Pradesh, namely Indore, Ujjain, Dewas Khargone, Singroli, Pitampur, Bhopal and Gwalior to demonstrate that how discrimination has been made while awarding marks under different categories so to determine overall national ranking of a city.

It is submitted by the learned counsel for the petitioner that overall national ranking of Gwalior at serial No.59 and that of Singroli at serial No.21 itself demonstrates that there has been unfair treatment to the district of Gwalior.

After hearing arguments and going through the record, it is apparent that Ministry of Housing and Urban Affairs,

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Government of India, which had undertaken Swachh Survekshan, 2019 for 4237 cities enclosed by the petitioner as Annexure P/2, has outlined assessment and scoring methodology as under :-

“Swachh Surveshan 2019, like its three predecessors, was conducted to study the progress of Swachh Bharat Mission (Urban) and rank Urban Local Bodies in India on the basis of cleanliness and sanitation. The number of ULBs assessed has progressively increased over the years, from a modest 73 metropolitan cities and state capitals in 2016, to 434 in 2017, to a pan India coverage of 4203 ULBs in 2018, including 61 Cantonment Boards, and finally, a coverage of 4237 ULBs including 62 Cantonment Boards in the current round. Apart from Lakshadweep, which has always remained outside of the ambit of Swachh Survekshans, the state of West Bengal (barring the three Cbs within it) had also opted not to participate.

Evolving focus of successive Survekshans

In 2016 and 2017, the Swachh Survekshan indicators were constructed with the purpose of monitoring progress of ULBs towards Swachh Bharat targets. In 2018, the focus (and the indicator constructs) shifted from process and outputs to outcomes. In the current round, having already reached an advanced stage of achieving most of its targets, the Swachh Bharat Mission – Urban had mandated that Swachh Survekshan 2019 focus on sustainability. The measurement indicators within the Survekshan were redesigned to capture whether initiatives taken by cities are sustainable in the long run, thus going beyond ODF status and looking into usability of toilets and unit level faecal sludge management, levels of cleanliness and waste management protocols in place in every ward of a ULB, and bylaws and regulatory compliance. Towards this end, over and above the three pillars of the earlier Survekshans, viz. Service Level Progress and Independent Validation, Direct

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Observation, and Citizen feed-back, this year a fourth Assessment protocol was introduced by SBM – U, viz. certification of cities on ODF+/ODF++ and Star Rating of Garbage Free Cities by independent third parties.

Going digital

Given the target of transforming the country into a knowledge economy and information society, the initiative needs some preparation measures. Creation of sufficient physical infrastructure, providing the vital governance services to the people on e-mode and empowering people to handle digital technologies are the three key areas to prepare for the knowledge economy under Digital India. In synchronisation with this, Swachh Survekshan 2019 went 100% digital this year; with complete online submission of all documentation by ULBs through the dedicated Swachh Survekshan portal and updated progress reporting on MIS data points through the Ministry's own NIC portal. In essence, 283 GB of data (or 4.5 lakh online PDF documents) completely replaced an estimated 20 metric tonnes of paper reports that were transported from all over the country to the central hub in 2018, thus improving efficiency, freeing up space, time and expense, but more importantly, being environmentally friendly.”

For the year 2019, total marks allotted for arriving at a ranking were 5000 which were divided under four heads having equal representation in the basket i.e. 25% each. The four heads were direct observation, citizen feedback, service level progress and certification. On these parameters, a total of 33 indicators associated with service level progress were broken up into seven thematic areas. The Urban Local Bodies (ULBs), unlike last year,

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were required to upload documents pertaining to their claims of work progress against each of the thematic areas and the agency was required to review these online submissions. As per operational design of Swachha Survekshan 2019, the assessors did not interact in person with ULB officials for data verification. The ULB had to fill the online MIS portal which holistically captured 16 of the 33 indicators of Swachh Survekshan 2019. The Nodal Officers of each ULB had to upload relevant documents for substantiating claims of service level progress verification to a dedicated portal designed for the purpose and thereafter 90 scorers and 16 research managers of a dedicated team from the outsourced agency verified each and every document and MIS data files received from the Ministry for initial scoring under SLP. Thus there are four parts, namely,

Part I Service Level Progress;

Part II Certification (Star Rating of Garbage Free Cities and Open Defecation Free Protocols);

Part III Director Observation (On-filed Independent Observation and Collection of data)

Part IV Citizen Feedback (Data collected directly from citizens and through Swachhta App)

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and on such parameters table 1 was prepared in which Gwalior ranked 59, whereas Singrauli ranked 21. While Singrauli scored overall 3763 marks out of 5000, Gwalior scored 3148 out of 5000.

Since on the aforementioned four parameters, namely service level progress, certification, direct observation and citizen feedback rankings have been decided, any perceived difference in arriving at such rankings and granting of marks cannot be a matter of dispute in a writ petition, specially when the experts in the field had to trace data on as many as total of 33 indicators associated with service level progress broken up into 7 thematic areas.

Such issue of rationality or the parameters on the basis of which marks were allotted by the authority concerned cannot be a subject matter of writ petition inasmuch as in its summary jurisdiction a Writ Court is not equipped to deal with so many parameters, their perceived data and actual feedback, specially when such survey was undertaken for more than 4000 cities comprising of Urban Local Bodies and Cantonment Boards.

Where there is disputed question of fact, law is settled that High Court should not issue a writ of mandamus directing the

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respondent to put the petitioner in possession without deciding the point in dispute, as has been held in case of **State of Orissa and others vs. Rajasaheb Chandanmull Indrakumar (P) Ltd. & Ors.** as reported in (1973) 3 SCC 739. In the absence of malafides, it is settled that Court should be slow to interfere with the exercise of discretion by an expert administrative body. For reference, please see judgment of Supreme Court in case of **Shri Maheshwar Prasad Srivastava vs. Suresh Singh & Ors.** as reported in (1977) 1 SCC 627. Similarly, in case of **Khasan Singh and others Vs. Hukam Singh and others** as reported in (1977) 3 SCC 351 the Supreme Court upheld the dismissal of writ application by the High Court in limine when that Court was called upon to interfere with a finding of fact based on relevant circumstances and not shown to be perverse. In case of **Thakur Prasad Sao and others vs. The Member, Board of Revenue and others** as reported in (1976) 2 SCC 850 it has been held that the Writ Court will not determine question of fact in depth when hotly contested. Similarly, in case of **D.L.F. Housing Construction (P) Ltd. vs. Delhi Municipal Corporation and others** as reported in (1976) 3 SCC 160 it has been held that where there are complicated question of law and fact and basic

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facts are disputed, a writ cannot lie. A suit is the proper remedy.

Petitioner being an employee of Municipal Corporation which is a local body itself involved in the presentation of the data adjudged by the authority on the feedback of the citizens, even if there is any perceived gap between the projected achievement and perceived progress in the hands of the public, who are the service utilisers of the service rendered by the Local Bodies, it cannot be said that petitioner has no vested interest or the petition is totally devoid of any vested interest and has been filed solely in public interest. Municipal Corporation, Gwalior, being a beneficiary of a higher ranking in terms of better recognition, higher grants, the petition in the hands of its employee cannot be and we are not in a position to accept it as a genuine public interest litigation. Therefore, both on the ground of locus and complicated & disputed facts being involved, we do not perceive this petition to be a genuine PIL and also on the aspect of complexities involved in arriving at ranking and quantum of data which is sifted, this petition fails and is dismissed.

(Sanjay Yadav)
Judge

(Vivek Agarwal)
Judge