

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No. 13340 of 2017 (O&M)
Date of decision: 17.07.2017.**

Vipan Kumar and others Petitioners.

Versus

State of Punjab and others Respondents.

CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Shekhar Verma, Advocate, for the petitioners.

Mr. P.P.S. Thethi, Additional Advocate General, Punjab,
for the respondents with Ms. Komal Mittal, IAS, SDM,
Mukerian; Mr. Kamaljinder Singh, E.O., Municipal
Council, Mukerian and Mr. Dharambir Singh, J.E.,
Punjab Pollution Control Board, Hoshiarpur.

S.S. Saron, J.

The petitioners - Vipan Kumar and others by way of present petition under Article 226 of the Constitution of India seek a mandamus directing the Municipal Committee, Mukerian (respondent No. 5) to implement and comply with the Municipal Solid Wastes (Management and Handling) Rules, 2000 and Municipal Solid Wastes (Management and Handling) Rules, 2016 and in the alternative direct the State Government to dissolve the Municipal Council, Mukerian and statutorily take over its functions and ensure compliance of all statutory provisions in the interest of the residents of the Mukerian Town.

The grievance of the petitioners primarily is that garbage in large scale has been dumped all around Mukerian Town and no effective steps are being undertaken by the Municipal Council, Mukerian for its removal. Therefore, aggrieved against the complete inaction of the Municipal Council, Mukerian, they have filed the present petition in the nature of public interest.

Copies of the petition were given to Mr. P.P.S. Thethi, Additional Advocate General, Punjab, on 13.07.2017 so as to enable him to seek instructions.

Ms. Komal Mittal, IAS, Sub Divisional Magistrate, Mukerian; Mr. Kamaljinder Singh, Executive Officer, Municipal Council, Mukerian and Mr. Dharambir Singh, J.E., Punjab Pollution Control Board, Hoshiarpur are present.

Learned State counsel on instructions from the officials of the Municipal Council, Mukerian and the Punjab Pollution Control Board, Hoshiarpur, who are present submits that garbage from Mukerian Town would be lifted and put at a site which has been identified at village Tikhowal, Tehsil Mukerian, District Hoshiarpur. The said site is at a distance of 13 kilometres from Mukerian Town. The garbage from Mukerian Town, it is submitted, would be removed as expeditiously as possible and hopefully within a period of three months.

It is to be noticed that the Sub-Divisional Magistrate, Mukerian who is present in Court has powers under Section 133 of the Code of Criminal Procedure (Cr.P.C. - for short) for removal of nuisance.

Hon'ble the Supreme Court in Municipal Council, Ratlam v. Vardhichand, AIR 1980 SC 1622 has held that the Magistrate's responsibility under Section 133 Cr.P.C. is to order removal of nuisance within a time to be fixed in the order. This it was said is a public duty implicit in the public power to be exercised on behalf of the public and pursuant to a public proceeding. It was said that Section 133 Cr.P.C., permits enforcement of civic rights under the Municipal Law where the neglect had led to a public nuisance. The Section permits affirmative action to abate the nuisance on a time bound basis by issuing specific directives. Failure to comply with the directions issued by a Magistrate would be visited with the punishment contemplated by Section 188 of the Indian Penal Code ('IPC' - for short). The Municipal or other Executive Authorities are bound by the order under Section 133 Cr.P.C. and they are to obey the directions of the Sub Divisional Magistrate because disobedience, if it causes obstruction or annoyance or injury to any persons lawfully pursuing their employment is to be punished with simple imprisonment or fine as prescribed in Section 188 IPC. The offence is aggravated if the disobedience tends to cause danger to human health or safety. The imperative tone of Section 133 Cr.P.C. read with the punitive temper of Section 188 IPC makes the prohibitory act a mandatory duty.

In Dr. B.L.Wadhera v. Union of India and others, AIR 1996 SC 2969, it was held by the Supreme Court that it is clear from various provisions of the Delhi Municipal Corporation Act and the New Delhi Municipal Council Act that the Municipal Corporation

Delhi (MCD) and the New Delhi Municipal Corporation (NDMC) constituted under the Acts were under a statutory obligation to scavenge and clean the city of Delhi. It was said that it is mandatory for these authorities to collect and dispose of the garbage/waste generated from various sources in the city. The MCD and NDMC had been wholly remiss in the performance of their statutory duties. Apart from the rights guaranteed under the Constitution, the residents of Delhi had a statutory right to live in a clean city. The Courts were 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., it was said, could not be pleaded as a ground for non-performance of their statutory obligations. Accordingly, directions were issued for collection and disposal of garbage to keep the city clean.

In the circumstances, there is no reason whatsoever as to why the Municipal Authorities at Mukerian should not undertake the task of removing the garbage from the city to make the city clean and habitable for its residents. They are under a statutory duty and obligation to remove the garbage from the city. The Sub Divisional Magistrate, Mukerian is invested with the powers under Section 133 Cr.P.C. to remove the nuisance.

Therefore, the learned Sub Divisional Magistrate, Mukerian shall ensure that she performs her statutory duty and ensures that the garbage is removed from Mukerian Town preferably within a period of three months as has been submitted.

It is made clear that the Sub Divisional Magistrate shall exercise all powers contemplated by Section 133 Cr.P.C for the removal of garbage and would be at liberty to initiate action under Section 188 IPC against those disobeying her orders.

The writ petition is accordingly disposed of with liberty to the petitioners to seek revival of the same, if need be.

(S.S. SARON)
JUDGE

(AVNEESH JHINGAN)
JUDGE

17.07.2017
Ramesh

Note:

1.	Whether reasoned/speaking	:	Yes
2.	Whether reportable	:	Yes