

WPA 5317 of 2020

**Atanu Chatterjee
Vs.
The State of West Bengal & Ors.**

Mr. Sourav Mondal

... .. for the petitioner

Mr. Asok Kr. Banerjee, Sr. Adv.

Mr. Alak Kr. Ghosh

Mr. D. Chakraborty

... .. for the KMC

1. Heard learned counsel for the parties at length.

2. This public interest litigation has been filed to stop the construction of Pay and Use toilet and demolish any structure if it was constructed and restore the children's park in the relevant area.

3. By order dated 10th December, 2020 Hon'ble Division Bench issued certain directions. For better appreciation the entire order is quoted herein below.

"This matter is of some importance. The petitioner complains of a pay-and-use toilet being set up in a children's park at Bijoygarh in ward no. 98.

It is submitted on behalf of the Kolkata Municipal Corporation that the law as it stands today provides for the Corporation or municipal bodies to set up toilets in parks for the use thereof by the visitors to the parks.

There is no doubt that there is a crying need for toilets to be constructed, both for visitors to parks and others, including people who live on the streets. In a large metropolis like this city, with its floating population of outsiders and a large number of pavement dwellers, there should be many more toilets than now available. Even the *bustees* and other tenements where the low income groups squeeze in, do not have adequate toilets and in

such clusters more than 50 to 100 persons, at places, share one toilet.

It is necessary for the Corporation to formulate a scheme to have many more toilets in the city; but construction of the toilets may not be the complete panacea for the problem. The toilets have to be kept clean and hygienic, a degree of awareness has to be inculcated and local residents, particularly from low income groups, may be engaged for the maintenance and upkeep of toilets with regular monitoring by Corporation officials.

Experiments at toilets being set up in some parks have sometimes resulted in the park itself becoming a toilet for the locals who do not have access to toilet facilities to descend thereon. It is possible, if space is a constraint, that small areas at the outer edges of a park be carved out for construction of a toilet; but there must be a clear policy as to whether that toilet is for those who use the park or for all and sundry in the locality.

For the moment, further construction of the toilet in the relevant park will remain stayed. At any rate, even if the construction is completed, the use of the same as a toilet should not be commenced without the express leave of this Court. The matter will appear a fortnight after the vacation. A clear policy and road map for the construction of public toilets for use of residents of bustees, pavement dwellers and users of parks should be indicated with a timeline and the mode of implementation also being outlined. The Commissioner of Kolkata Municipal Corporation should take a proactive role to consult experts and formulate a scheme for such purpose with guidelines and milestones clearly indicated. Corporate houses may be tapped for CSR spending on such account and NGOs also involved.

This order may be in excess of the directions sought in this petition; but that is exactly the purpose of a PIL: for a larger public cause to be taken up while

addressing a like issue of smaller magnitude. All metropolitan cities and towns in this country lack adequate public toilets and most do not possess anywhere a sense of hygiene is maintained. With the proposed scheme, Kolkata may show the way for the rest of the country.”

4. From the above order it is seen that the Court was conscious of the fact that the order may be in excess of the directions sought in the petition but that is exactly the purpose of a public interest litigation wherein a larger public cause to be taken up while addressing a like issue of smaller magnitude.

5. An affidavit has been filed on behalf of the Kolkata Municipal Corporation in compliance with the direction issued in the aforementioned order. The said affidavit states that following steps were taken by the Kolkata Municipal Corporation:

“7. That on 04.01.2021, the Special Municipal Commissioner (D,G & S) The Kolkata Municipal Commissioner wrote a letter to the Director (SUDA), ‘ILGUS BHAVAN’ HC BLOCK, SECTOR – 3, BIDHANNAGAR – 700 106 regarding medical and toilet facilities for the transgender people.

8. That on 15.01.2021 work order was issued by the EE©BS (N), Kolkata Municipal Corporation for deployment of Surveyor for survey of existing pay and use toilets and allied work fresh BR-I to XVI.

9. That another work order was issued by the EE(C)BS(HQ), Kolkata Municipal Corporation on 28.09.2021 for operation and maintenance of mobile Bio-toilets under the jurisdiction The Kolkata Municipal Corporation.

10. That on 30th September, 2021 issued work order by the Executive Engineer Bustee Service and SSEP-I, 404 Kailash Ghosh Road, Kolkata – 700008 for arrangement of child friendly urinals at different pay and use toilets under Br-XI, XIII, XVI.”

6. The above compliance report is placed on record and the writ petition is disposed of by directing the Municipal Corporation to provide adequate toilet facilities wherever there is public movement. It is not enough for the toilets to be established but the toilets to be properly maintained with adequate water supply.

7. The Commissioner of the Kolkata Municipal Corporation shall issue a circular to its field officers to ensure that the public toilets are maintained in good and hygienic condition.

8. The writ petition is accordingly disposed of.

(T.S. Sivagnanam)
Acting Chief Justice

(Hiranmay Bhattacharyya, J.)