

Court on Its Own Motion Vs. Union of India Though Ministry of Urban Developmen

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Court : Delhi

Decided On : May-06-2015

Judge : Rajiv Sahai Endlaw

Appellant : Court on Its Own Motion

Respondent : Union of India Though Ministry of Urban Developmen

Advocate for Pet/Ap. : Mr. Nidhesh Gupta, Mr. Tarun Gupta, Mr. Avijit Mani Tripathi, Mr. Amit Mahajan, Mr. Raman Duggal, Mr. Ajay Arora, Mr. Sanjeev Sabharwal, Mr. Anil Grover, Ms. Divya Jain, Mr. Balendu Shekhar, Mr. Vivek Jaiswal, Mr. Jaypal

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of decision:

6. h May, 2015 + W.P.(C) No.2345/2014 & CM No.5406/2015 (of Amicus Curiae for directions) COURT ON ITS OWN MOTION Petitioner Through: Mr. Nidhesh Gupta, Sr. Adv. (Amicus Curiae) with Mr. Tarun Gupta and Mr. Avijit Mani Tripathi, Advs. Versus UNION OF INDIA THROUGH: MINISTRY OF URBAN DEVELOPMENT & ORS Respondents Through: Mr. Amit Mahajan, CGSC for UOI. Mr. Raman Duggal, Adv. for GNCTD. Mr. Ajay Arora, Adv. for MCD. Mr. Sanjeev Sabharwal, Adv. for DDA. Mr. Anil Grover and Ms. Divya Jain, Advs. for

NDMC. Mr. Balendu Shekhar and Mr. Vivek Jaiswal, Adv. for EDMC with Mr. Jaypal, Dy. Director (Horticulture). Mr. Sunil Satyarthi, Adv. for R9/Delhi Cantonment Board. Mr. Rahul Arya, Adv. for applicant Peoples Action. CORAM: HON'BLE THE CHIEF JUSTICE HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW RAJIV SAHAI ENDLAW, J.

1. This petition was registered taking cognizance of the letter dated 12th April, 2014 of Honble Mr. Justice Kurian Joseph, Judge Supreme Court of India regarding the deplorable state of affairs in the Childrens Park near India Gate and the Lake Park near Sarojini Nagar / opposite Laxmi Bai Nagar, Type IV Quarters and suggesting that the Delhi Legal Services Authority addresses the issue, so that the human rights of the children to get a congenial atmosphere in these parks befitting their age and dignity are not violated.

2. Notice was issued to the Ministry of Urban Development, Government of India, Govt. of National Capital Territory of Delhi (GNCTD), Central Public Works Department, New Delhi Municipal Council (NDMC), Delhi Development Authority (DDA), East Municipal Corporation of Delhi, North Municipal Corporation of Delhi, South Municipal Corporation of Delhi and Delhi Cantonment Board and vide order dated 16th April, 2014 direction was issued to the NDMC to ensure that immediate steps are taken in repairing the broken / damaged playing equipments, swings and other facilities in the aforesaid two parks and for upgrading and maintaining the same. Mr. Nidhesh Gupta, Senior Advocate was also requested to assist the Court as an Amicus Curiae.

3. Thereafter also from time to time, directions were issued and the various authorities filed status reports before us. The learned Amicus Curiae, in exemplary discharge of his duties and we must say, at the expense of his time and money, visited a large number of parks in Delhi and photographed them to demonstrate the prevalent state of affairs to us. He demonstrated that the status reports filed before us were deceptive in inasmuch as on closer scrutiny it was found that the swings and slides and other equipment installed in the various parks continued to be broken and not well maintained and thereby not only depriving the children from use thereof but also posing a safety hazard to them.

4. We vide our order dated 16th July, 2014 asked all the agencies concerned, to suggest long term measures to tackle the issue and to ensure that a permanent machinery is in place, so that even without supervision of the Court, the children get their due. Attention of all concerned was also invited to an experiment done for some years, of vesting the maintenance of children park at India Gate in Maruti Udyog Limited and during which time, the users thereof had found the park to be better maintained than being earlier done by the local authorities. We had in the said order asked all the agencies to consider the feasibility of so entrusting the maintenance and upkeep of the parks either to philanthropic organizations or others evincing interest in the same or even to corporates, in return for advertising or other rights in or around the said parks and by constituting a watchdog either of concerned Residents Welfare Association (which have a statutory recognition in MPD-2021) or other bodies of citizens to ensure that such organizations / corporates fulfil the obligations promised by them.

5. The learned Amicus Curiae during the proceeding on 13th August, 2014 placed certain suggestions before us for upkeep and management of the Childrens Park and the same were circulated to the agencies for their comments.

6. We were during the hearing on 29th October, 2014 informed that a draft policy to ensure proper maintenance of Childrens Park had been formulated and the process of finalizing the same was underway. However, since the said draft did not take into consideration, the various suggestions made earlier by the learned Amicus Curiae we directed the same also to be considered before finalization thereof.

7. During the pendency of the present petition, there was a report of a child dying in a park in New Moti Nagar, Delhi due to injury on head and chest caused by the iron bar swing on which she was playing. Justice Kurian Joseph vide his letter dated 5 th February, 2014 to the learned Amicus Curiae drew attention to the said incident as well as to Article 39(f) of the Constitution of India imposing a duty on the State to secure that children are given opportunities and facilities to develop in a healthy manner as well as to the Convention on the Rights of the Child adopted by the United Nations General Assembly Resolution on 20th November, 1989

ratified by India on 11th December, 1992 inter alia recognizing the right of the children to relax and play and to join in a wide range of activities.

8. We vide our order dated 25th March, 2015 drew the attention of the agencies concerned, besides to the aforesaid incident also to the incident of death of a young Advocate due to electrocution in another park in Delhi. In the said order, while expressing our anguish, we also asked the agencies concerned to submit a report on the said two incidents as well as disclose the budget for maintenance and upkeep of the park and utilization thereof.

9. It appears to us that the agencies concerned have forgotten the importance of children parks and we need to remind them of the same.

10. Parks are inherently attractive to children because they permit escape from the tight strictures of daily life. Such parks offer children the daily benefits of direct experience with nature, the motivation to explore, discover and learn about their world and to engage in health promoting physical activities. The parks have also been perceived as offering the children a sense of place, self-identity, and belonging, as an antidote to social alienation, vandalism, and violence. It is in the parks that children are able to engage in informal, experiential learning through play and shared experiences with peers, laying the foundation for effective formal education. Experts on the subject have opined that children do not learn effectively exclusively within a classroom; they need alternative, hands-on learning environment to match their varied learning styles. Parks are crucial antidote to the unhealthy trends of city life and test driven education mandates. Other studies have shown that not playing outdoors, diminution of recess, and the abandonment of outdoor play in schools is resulting in serious health effects and potentially diminishing the life spans of the present generation. Mental health experts, educationists and sociologists are beginning to suggest that when kids stop going out into the natural world to play, it can affect not just their development as individuals but society as well.

11. It is not for nothing that the said parks were felt necessary and a provision therefor was made, while drawing up the Master Plan and Zonal Plan of the city. However, the governmental agencies concerned, over the years, have forgotten

the purpose for which a provision therefor was made. Many teachers and administrators believe that after intense academic classroom pursuits, children need to let off steam.

The educators also believe that outdoor play enables children to recharge their batteries, to reinvigorate themselves by engaging in a very different activity from their classroom experience and enables children to get ready to return to the important work of academic learning, not as an important activity in its own right.

12. Supreme Court, as far back as in *Bangalore Medical Trust Vs. B.S. Muddappa* (1991) 4 SCC 54 laid down that protection of open places for recreation, play grounds for children are matters of great public concern and of vital interest to be taken care of in a development scheme.

13. In an age of cable TV, Nintendos, Facebook and YouTube, the importance of the parks, rather than diminishing, has increased manifold. The growing population of the city with consequent demand on housing has reduced most residences to cubbyholes with no windows even, what to talk of open spaces. The only place where a child can have a breath of fresh air is the park. However, if the municipal and other governmental agencies entrusted with upkeep and maintenance of the said parks also treat them merely as open spaces which cannot be built up on, then the children will be left with no place to go to.

14. There is another aspect. City kids cannot be taken to the wilderness regularly. However, thoughtful innovation can bring exciting chunk of nature to such parks. It cannot also be forgotten that we are also landed with the issue of a large number of street children in the city, who have no other place than such parks to turn to for their entertainment.

15. The importance of play equipment or apparatus installed in children parks, which the governmental agencies concerned are treating so lightly and casually, also cannot be undermined. There is substantial research showing a clear link between play and brain development, motor-skills, and social capabilities. All learning-emotional, social, motor and cognitive-is accelerated, facilitated and fueled by the pleasure of play. The Shasta Children and Families First

Commission established in California has found that (i) tactile panels promote manipulation and coordination; (ii) bridges and ramps promote loco motor skills; and, (iii) slides and swings promote balance and coordination and that depending on the child's developmental stage, these and other play components help the child encode and decode movement, inhibit reflexes and control movements.

16. Yet other researcher has found that swinging is one of the most excellent ways of helping to develop eyes, as moving back and forth constantly changes the depth of focus; it is also reported that by swinging, it is not only the eyes that are trained and exercised but also the fluid in the inner ear constantly swirls back and forth and which is great for the development of balance. Swinging is also credited with learning and training full body coordination. Swinging allows children to develop coordinated movements. Sliding contributes to vestibular stimulation which simply means that it stimulates the ear canal and the fluids in it. This stimulation helps to develop a sense of balance. Through sliding, the children learn to keep their torsos balanced as gravity pulls them down the slide.

17. Child's play is thus not just fun and games. The act of play is a crucial component in the successful growth of the brain, body and intellect.

18. Studies have also shown that play deprivation results in aberrant behaviour. Such is the importance given to playgrounds that in some foreign jurisdictions, where it was found that threat of lawsuits for compensation for injury from play apparatus or play equipment installed was resulting in removal thereof from the playgrounds, a move is afoot to protect the manufacturers of such play apparatus / play equipments and the agencies managing such parks from such lawsuits, so that they out of fear may not remove the play apparatus / play equipments from the parks.

19. We sincerely hope that the governmental agencies concerned would at least now wake up from their slumber to their responsibility in this regard.

20. We also remind the governmental agencies concerned of the Notification dated 9th February, 2004 of the Government of India notifying the National Charter for Children, 2003, in affirmation and reiteration of the Constitutional commitment

to the cause of children. The said Charter inter alia obligates the State and Community to recognise that all children require adequate play and leisure for their healthy development and requires the State and the society to ensure means to provide for recreational facilities and services for children of all ages and social groups. The said Charter also requires the State, in partnership with the community, to provide for programmes for stimulating and developing physical and cognitive capacities of the children.

21. We have already noticed above the important role which play in children parks plays in developing the physical and cognitive capabilities of children.

22. In pursuance of India, on 11th December, 1992, acceding to the Convention on the Rights of Children, an International Treaty that makes it incumbent upon the signatory States to take all necessary steps to protect childrens rights enumerated in the Convention and to give effect to the policies and the standards prescribed in the Convention on the rights of children, our Parliament has enacted the Commissions for Protection of Child Rights (CPCR) Act, 2005 to provide for constitution of a National Commission and State Commissions inter alia for protection of child rights and to provide for speedy trial inter alia of violations of child rights and matters connected therewith. The Delhi Commission for Protection of Child Rights (DCPCR) has been constituted thereunder.

23. As per the website of the DCPCR, DCPCR is mandated to intervene in matters where-ever there is a failure to implement policies, decisions, guidelines or instructions as per the perspective of the rights of a child enshrined in the Constitution of India and also the UN Convention on the Rights of the Child, including childrens right to play. DCPCR is further mandated to inspect or cause to be inspected inter alia any institution meant for children. (In our view, parks would be an institution meant for children). Even in the functions of the DCPCR, to enquire into violations of child rights and initiation of proceedings is included. Similarly, right to play and recreation is mentioned on the said website as one of the issues concerning DCPCR. We are of the view that it would thus be the duty of DCPCR to intervene in the non-maintenance by the various governmental agencies of the parks meant and devised for children and to from time to time

inspect / have the same inspected and to enquire into violations of childrens right by failure to maintain the requisite parks as per policies and standards prescribed. We may notice that the DCPCR, vide Sections 14 and 24 of the CPCR Act, while conducting such enquiries has the powers of a Civil Code trying a suit under the Code of Civil Procedure, 1908 and to forward any case to the Magistrate and to approach this Court for appropriate directions.

24. However, from a perusal of the last annual report of the DCPCR available on its website, of the year 2012-2013, we do not find DCPCR to have till now concerned itself with the matter of children parks.

25. We are of the view that DCPCR, instead of Delhi Legal Services Authority (DLSA), would be the appropriate authority to address the subject issue. Unfortunately, DCPCR remained to be impleaded in this petition. For this reason, though we while disposing of this petition are issuing certain directions to the DCPCR too but with liberty to DCPCR to apply for modification if feels the need therefor.

26. We are sad to comment that the fulfilment of the commitments under International Conventions is not to be merely by enacting laws and notifications in terms thereof and establishing and constituting authorities as DCPCR but further by enforcing and implementing such laws and notifications and by ensuring that such authorities perform their functions.

27. We are today informed by Mr. Ajay Arora, Advocate appearing for South Delhi Municipal Corporation and North Delhi Municipal Corporation that a policy dated 30th March, 2015 for regular maintenance and upkeep of Childrens Park has been finalized and upon being approved by this Court would be implemented qua all Childrens Parks in Delhi, irrespective of the agency / municipality under which they may fall and the said policy would address the issues highlighted in this petition.

28. The learned Amicus Curiae on our asking states, that he has examined the said policy which is certainly a beginning and if implemented properly, may serve the purpose.

29. We have ourselves also examined the policy and tend to agree with the learned Amicus Curiae. Moreover, the issue is such which this Court cannot supervise on a day to day basis and is an issue essentially of administration. This Court can only ensure that a proper scheme / policy is in place and the machinery for implementation thereof exists. If inspite thereof, the policy is not implemented, then it will be a non-compliance of the order / direction of the Court.

30. We have in this respect asked the counsels as to which officer would be responsible for ensuring that the policy aforesaid is implemented.

31. No answer has been forthcoming.

32. We have in Employees Provident Fund Appellate Tribunal Bar Association Vs. UOI 2015 IV AD (Delhi) 130 held that fixing of such responsibility for implementation is essential to ensure compliance and observed as under:

Accountability is one of the ingredients of good governance and no purpose will be served in this Court repeatedly issuing directions, without the responsibility being fixed. Though the Supreme Court in In Re: Special Reference No.1 of 2012 (2012) 10 SCC1 has held that every holder of a public office by virtue of which he acts on behalf of the State, is ultimately accountable to the people in whom the sovereignty vests but what is found is that for the reason of the said responsibility / accountability vesting not in a single person but collectively in several, in the event of non-performance, none is accountable with the buck being passed from one to another. We feel it our duty to now devise a system for ensuring good governance by fixing accountability of one person and have accordingly for the present purposes, fixed the responsibility of Secretary (Labour & Employment) and even if the ultimate act of appointment may be dependent upon contribution of others, the Secretary (Labour & Employment) would be responsible for ensuring compliance from other officials / offices within time. Else, the Secretary (Labour & Employment) would be guilty of violating the directions of the Court. The need for accountability, particularly on the part of the civil servants, was again emphasized by the Supreme Court in T.S.R. Subramanian Vs. Union of India (2013) 15 SCC732

33. We are of the opinion that similar direction needs to be issued in this context also.

34. We accordingly, while disposing of this petition by approving the policy aforesaid, direct: (I) that the said policy be adopted by all the governmental agencies, whether party to this petition or not, within three months hereof; (we clarify that the fact that the policy has been prepared under the directions of this Court and has been approved by us, will not come in the way of the individual agency, if finding any other change to be made in the policy for better enforcement / implementation thereof, making such changes, without being required to approach this Court); (II) that each of the agencies concerned within whose territorial jurisdiction or domain any of the parks / childrens park fall, to within the said period of three months, also designate an officer by rank, who will be personally responsible for enforcement / implementation of the said policy and who will be held responsible, in the event of any breach thereof being found; (III) each of the agencies concerned within whose territorial jurisdiction / domain any of the parks / children parks fall, to prominently display the policy aforesaid on their respective websites as well as at all parks/children parks, together with the designation of the officer so nominated for implementation thereof and from time to time also display the name of the officer occupying the said post and the telephone number(s), email address(s) and address, where grievances / complaints with respect to the implementation of the policy can be lodged, along with the address, email address(s) and telephone number(s) of DCPCR to which grievances of non-redressal of the complaints can be made; (IV) each of the agencies concerned to devise a mechanism for time bound redressal of the grievances / complaints received; (V) DCPCR, to actively concern itself with the maintenance and upkeep of all children parks in Delhi, in accordance with the policy aforesaid and to from time to time have the parks inspected and to suggest to the governmental agencies concerned the steps to be taken for improvement thereof and to either on its own or on receipt of any complaint of failure to maintain the parks in terms of policy, enquire into same and take consequent action including of identifying the erring / guilty officials and reporting the same for appropriate administrative action.

35. The disposal of this petition shall not come in the way of this Court on its own or the learned Amicus Curiae or any other person reviving these proceedings, if the need therefor is shown.

36. We express our gratitude for the laudatory assistance rendered by the learned Amicus Curiae.

37. The Registry to immediately forward a copy of this judgment to a) Cabinet Secretary, GNCTD, b) Chairman, New Delhi Municipal Council, c) Chairperson, North Delhi Municipal Corporation, d) Chairperson, South Delhi Municipal Corporation, e) Chairperson, East Delhi Municipal Corporation, f) Chairperson, DDA, g) Executive Officer, Delhi Cantonment Board and, h) Chairperson, DCPCR for compliance. The petition is disposed of. No costs. RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE MAY06 2015 bs..

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