

Court on Its Own Motion Vs. Municipal Corporation of Delhi and Others

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Court : Delhi

Decided On : Aug-24-1998

Reported in : 1998VAD(Delhi)872; 75(1998)DLT327; ILR1998Delhi637

Judge : Dalveer Bhandari and; Arun Kumar, JJ.

Acts : [Constitution of India](#) - Article 226

Appeal No. : C.W.P. No. 3875 of 1996

Appellant : Court on Its Own Motion

Respondent : Municipal Corporation of Delhi and Others

Advocate for Pet/Ap. : Mr. N.K. Kaul, amices Curiae and; Mr. Rajiv Awasthi, Adv;

Judgement :

Dalveer Bhandari, J.

1. The exact date when Dengue fever was first detected or recognised in the world is still not known. Perhaps the first recorded description in the literature was an epidemic of new fever in Cairo and its suburbs in 1779 described by Aljabarti. During the same year an epidemic in Jakarta, Indonesia also occurred.

2. In September and October, 1996 national daily newspapers had published extensive reports about wide spread Dengue and a number of deaths which had

taken place in Delhi and other parts of the country on that count. The newspaper reports also indicated that the Health Ministry of India was not at all equipped to tackle the wide spread disease. The weakest and lowest sections of the society were particularly worried. It was reported that the respondent Government is not taking adequate steps to prevent this epidemic at this stage. In these circumstances this Court took suo motu notice of this grave and serious problem in which people of Delhi were particularly engulfed. This Court issued show cause notices to the respondents Health Ministry, The Municipal Corporation of Delhi and others to explain what action - if any, was taken to prevent and control the epidemic? The Court issued notice to the Head of the Anti Malarial Cell, Medical, and to the Commissioner of MCD to show cause why action be not taken against them for criminal negligence of duty resulting in deaths of hundreds of innocent people?

3. In reply to the show cause notices, the respondents had filed separate replies. On behalf of the Ministry of Health and Family Welfare Mr. M. Kannan, Deputy Secretary to the Government filed an affidavit on 25.1.1997 in which he had highlighted the steps taken from time to time before and during the outbreak of Dengue fever in Delhi. It is mentioned in the affidavit that the Prime Minister personally reviewed the position by visiting major hospitals and making on the spot assessment about patient care services in Delhi. The affidavit indicated detailed steps taken by the respondent including the augmentation of blood component separation facility, augmentation of bed facility in emergency wards of all the government hospitals and help of voluntary bodies like the Indian Medical Association, the Delhi Medical Association, the Indian Red Cross Society also joined in combating the problem of Dengue epidemic.

4. A high level central coordinating committee under the Chairmanship of the Union Health Secretary was set up to review the Dengue situation in Delhi and to advise remedial action to be taken by the concerned agency of the State Government.

5. On behalf of the MCD Mr. P.K. Sharma, Medical Officer filed the affidavit in which he had indicated the list of areas within the jurisdiction of the MCD, from

where stagnated water had been removed, besides the list of areas from where the water collection, could not be drained out and the reasons thereof.

6. In the Action Plan for prevention or control of Dengue fever/Haemorrhagic fever mentioned in the last four to five months of the year, Delhi faced an explosive outbreak of Dengue/Haemorrhagic fever. During the outbreak 10,252 patients of DHF were admitted in all the medical hospitals and nursing homes of Delhi. The death toll due to DHF/DSS was 423 by December, 1996. Haemorrhagic nature of the disease and sudden deaths frightened the citizens. It is mentioned in the affidavit that 'everything happened all of a sudden and we were caught in a state of unpreparedness for controlling the exposure of outbreak of DHF/DSS and deaths'. It is mentioned in the Action Plan that the MCD had no existent programme for controlling DHF/DSS. therefore, new 'Action Plan' for prevention or control of DHF/DSS is proposed so that citizens can be saved from the sufferings and deaths due to DHF/DSS.

7. In the affidavit it is admitted that there is no vaccine available for prevention of DHF/DSS treatment for the disease as there is no drug available in the market which kills the virus and stops its multiplication. The disease is passed on the human hosts through bites of Aedes mosquitoes infected with Flavi virus. The patients of DHF/DSS pass the virus to biting female Aedes mosquitoes. It develops/multiplies in her body and is passed on to a new victim of its bite and thus the cycle is maintained. According to the above explained plan the prevention lies mainly on vector control. The breeding places of Aedes should be systematically checked and destroyed. Mosquitoes should be destroyed by spraying adulticide. Observance of personal protection method is another way of preventing DHF/DSS. According to the Action Plan Dengue disease has become a major public health problem.

8. On behalf of the New Delhi Municipal Committee, Dr. Mukesh Paul, filed an affidavit in which it is mentioned that because of the directions of this Court, the NDMC started taking preventive and curative actions to prevent the outbreak of Malaria and Dengue in its area as per the NDMC Action Plan, 1997-98.

9. In pursuance to the directions of this Court spray and/or fogging had to be carried out once in a fortnight without fail till September, 1997. The entire NDMC area was divided into four anti larva zones and each anti larva zone was further sub divided into four sub zones, meaning thereby that intensive comprehensive activities had been strengthened in all the sixteen sub-zones on fortnightly basis.

1. Vector surveillance to control adult mosquitoes and its breeding for source reduction.

2. Disease surveillance for early diagnose and treatment for eliminating the reservoir of infection.

3. Information, education and communication for imparting health education.

10. Under the first heading Vector Surveillance all mosquito genie breeding conditions in each sub-zones are being treated regularly with mosquito larvicide's oil/Abate, Baytex; (ii) door to door checking of coolers, overhead tanks and other mosquito genie breeding conditions in domestic and peri domestic conditions are also being checked in each sub zone on regular basis;

(iii) Gambusia fish has already been inserted in all the water channels situated in India Gate complex and along Rajpath. Similarly, these fish have also been inserted in water lakes in ridge area and water channels/ponds in the gardens of the NDMC area; (iv) number of casual workers have been engaged for carrying out intensive checking and treatment of all the mosquito genie breeding conditions purposes prevailing in 46 clusters and all the big mullahs passing through and running along the boundary of the NDMC area; (v) a special checking squad comprising of 20 anti malaria gangmen have also been visiting the area for detection of adult mosquitoes and breeding in the given area. These workers have also been given adequate training in the office of Directorate of NMEP to assess the mosquito density and also to pin-point the specific species of mosquito in the area.

11. It is further mentioned in the affidavit that special stress is being given to areas where malarial cases are being reported. Each malaria positive house and 10

more houses around each malaria positive house are being sprayed with insecticides on compulsorily basis. Wherever an indication of even the slightest trace of adult Aedes mosquito and its breeding is brought to the notice by the checking squad, beside intensive anti larva and other health education and punitive measures, the entire radius of 400 metres is being covered with intensive fogging operation in order to eliminate possible infected Aedes mosquitoes. Each anti larva sub-zone is being covered compulsorily with fogging operations on fortnightly basis as per the advance programme. Special thrust is given to all the J.J. Clusters, labour colonies, servant quarters and wherever there is indication of trace of adult aedes mosquito and its breeding in the area.

12. It is also mentioned in the affidavit that the pamphlets showing various Do's and Dont's for preventing Malaria and Dengue have also been distributed to the residents of the area and about 30,000 such pamphlets have been distributed to various localities between 1st April, 1997 to 30th June, 1997. With the assistance of the field publicity staff of Ministry of Information and Broadcasting the film on prevention of Dengue and malaria has also been shown in various J.J. Clusters in the last three months. Twenty big hoardings in English and Hindi have been displayed at the most strategic intersections of the NDMC areas showing various Do's and Dont's for prevention of malaria and Dengue. Similarly, 75 small hoardings both in English and Hindi have also been displayed in various J.J. clusters, dispensaries showing various Do's and Dont's for the prevention of malaria and Dengue. A lot of publicity has also been carried out through newspapers, magazines and television. It is also mentioned that all the above mentioned measures are still in operation and the same would be further intensified in view of monsoon so that the possibility of any outbreak of malaria and Dengue fever in the NDMC areas is ruled out before the onset of winter.

13. On 29.9.1997 an additional affidavit was filed on behalf of Union of India by Dr. Shiv Lal , Director, National Malaria Eradication Programme (Ministry of Health and Family Welfare), Government of India. It is mentioned in the affidavit that it is generally believed that the original home of Aedes Aegypti was Africa from where it spread in conjunction with humans traveling from one part of the world to another. Urbanisation has been a major factor in the spread of the species. Any

major disturbance in human ecology, especially in urban areas in recent years has served to amplify populations of *Aedes Aegypti*. Examples of such disturbances include rapid growth of cities, population explosions, a steady deterioration of environment and standards of sanitation and increases in the number of water retaining waste containers and debris. From large urban areas the mosquito's and the disease have travelled to smaller urban and rural communities.

14. Surveillance of vectors is an essential step in the planning of control measures and their evaluation, and in studies to determine the risk of outbreak of Dengue/DHF. Surveys enable information concerning the presence of vectors, their frequency of occurrence, their abundance and distribution in time and space, their movements including migration and their establishment in other areas to be obtained.

15. In the absence of safe, effective and economic vaccine against Dengue and Dengue Haemorrhagic Fever, vector control is at present the only way to prevent the spread of this disease. Source reduction is potentially the ideal method of controlling *Aedes Aegypti*. It requires public motivation through health, education legislation and law enforcement to encourage community participation. Source reduction in permanent drinking water containers can be achieved through using proper fitting lids and screening all openings into the containers through which female mosquitoes might enter.

16. It is mentioned in the Action Plan that the Community's role in Dengue vector control is an essential one and the community itself needs to be convinced of the need to plan an active part in vector control programmes. It is also incorporated in the affidavit that the media can play a positive role by reporting factual information given by authorised outlets of the government regarding the outbreak and also educating the masses in the prevention and control campaigns.

17. The Court appointed Shri Neeraj Kishan Kaul and Mr. Rajiv Awasthi, Advocates as amices Curiae in this case. He submitted that despite repeated warnings from the World Health Organization the Union of India and the State Governments had no proper and/or sustained control programmes or information system in existence at the time of outbreak of the Dengue epidemic in

August/September, 1996. Mr. Kaul submitted that no separate programme existed for the control of Dengue. It was also submitted that the institutions which have a major role to play in the context prevention and control of Dengue are _ (a) the National Institute of Communicable Diseases, (b) The Directorate of National Malaria Eradication Programme, (c) The Indian Council of Medical Research, National Institute of Virology (Pune) and others. All these Institutes are funded by the Government of India and are under the control of the Government of India. Thus, admittedly there was no sustained Dengue control programme, research programme or information system in operation at the time of outbreak of Dengue epidemic despite repeated warnings having earlier been given by the W.H.O. and by the Pune Conference. There was thus gross negligence and dereliction of duty on the part of both, the Government of India and the Government of National Capital Territory of Delhi which is not taking adequate steps for prevention and control of Dengue epidemic at the appropriate time.

18. In the letter dated 6.12.1994 sent by the World Health Organisation to the Ministry of Health and Family Welfare, Govt. of India it was mentioned that:

'Reports appearing in the Indian national papers suggest the possibility of an outbreak of Dengue haemorrhagic fever (DHF) occurring in Delhi in the coming months. Several countries in the South East Asia Region have in the past reported outbreak of DHF, sometimes with high mortality rates.

A changing pattern of the disease has been noticed in some countries. The age group of the cases of DHF/DSS is decreasing - more and more young children are affected. The vector of Dengue (*A. aegypti*) was previously thought to be primarily urban in distribution. Now, however, it appears that the vector is spreading and is found in rural areas too.

In view of the above, we shall be grateful if you could please take steps for intensification of Dengue surveillance activities including entomological surveillance and implementation of control measures to reduce the breeding sites of vector mosquito. This is the most effective control measure as an effective vaccine for general use is not available at present. A candidate vaccine is in the final stages of testing. A WHO publication on Dengue/DHF has already been sent

to NICD.

We shall be grateful if you could please let us have information of any outbreaks of DHF occurring in India. WHO will be pleased to provide any technical assistance upon your request.'

19. The 'International Conference on Dengue Haemorrhagic Fever' held at Pune on 6-7.2.1994 was jointly organized by the Government of India, The Indian Council of Medical Research, the Rockefeller Foundation and The World Health Organisation. In the conference the following recommendations were given:

'Recommendations from the vector control group:

a. A nation-wide vector surveillance system based on existing institutions should be established to map and publish the present distribution of *Aedes Aegypti*, and be used to restrict its spread to new areas.

b. The ecological factors that encourage the increase or decrease of vector population densities should be investigated.

c. An institute or agency should be designed to maintain a database on *Aedes Aegypti*, including distribution, population including distribution, resistance densities, insecticide resistance and vector incrimination information.

d. To ensure uniform reporting and utilization of information collected, standardized reporting of vector levels and indices should be used.

e. Every effort should be made to increase the awareness of decision makers at national, state and municipal levels of the importance's of *Aedes* transmitted disease, their public health and economic impact, to assure their support for establishing permanent vector control services.

f. Vector control must be based on inter-sartorial collaboration and such cooperation should be ensured from the very beginning.

g. Seventy-two entomological zonal units have existed in India in addition to the States and Central entomological components. These must be oriented towards

Aedes surveillance and control. While professional staff positions are unfilled, replacements must be urgently recruited.

h. Equipment, insecticides and transport should be available on a standby basis at a state level for immediate use in vector control should an epidemic outbreak occur.

i. Uniform legislation should be enacted in all municipalities specifically related to Aedes control. Equally, legislation should be enacted which would prevent the creation of breeding sites for *Aedes aegypti*.

j. Many aspects of the bionomics and control of the vector are yet unknown; research on vector biology and vector through Chemical, biological, genetic and molecular methods should be supported.

20. The World Health Organisation published a 'Monograph on Dengue/Dengue Haemorrhagic Fever' in the year 1993. This monograph deals with the clinical manifestation of Dengue and DHF. It is mentioned in the Foreword of this book of Monograph that Dengue Fever is one of the most rapidly expanding diseases of the tropics, with over two billion people at the risk of infection and millions of cases occurring every year.

21. The World Health Organisation also published a monthly Dengue Newsletter. One such newsletter published in February-March, 1998 has been placed on record. The WHO has time and again mentioned that there was sufficient material available on record and there was a clear apprehension of the spread of Dengue and DHF in August, September, 1994 but no effective measures were taken either by the Union of India or by the National Territory of Delhi to prevent the Dengue epidemic. Otherwise perhaps hundreds of lives could have been saved.

22. The newspaper reports of October, 1996 placed on record shows that hundreds of deaths have occurred because of Dengue. The Court took suo motu notice when the Court discovered that hospitals in Delhi were ill-equipped to handle this epidemic. The most important equipment, i.e., blood separator machines were not available in sufficient numbers. On the Court's directions two

blood separators were acquired by the Government which is also clear from letter dated 10.10.1996 of Mr. Ramesh Chandra, Principal Secretary(H), Medical and Public health, Government of NCT of Delhi to Mr. P.P. Chauhan, Health Secretary.

23. During the pendency of this matter, a large number of letters and documents were received from various quarters. Dr. P.N. Tiwari in his letter dated 16.10.1996 informed the Court that despite the claims of the respondents a number of colonies have been left out by the MCD. They were in fact not identified by the M.C.D. but are covered in Assembly/Parliamentary Constituencies such as : Sonia Vihar, Sri Ram Colony, Shiv Vihar and Extension, Johri Pur and Extension, Mustafabad extension (Nehru Vihar), Bhagat Vihar, Bhagirathi Vihar, Ganga Vihar, Kardam Puri Extension and Ashok Nagar Kacchi Basti, J.J. Cluster across ITC Bridge, Old Yamuna Bridge.

24. The leading English daily 'Indian Express' on 11.10.1996 published that 112 deaths had already taken place and in the last 24 hours only there have been 11 deaths of Dengue and DHF.

25. The Health department of the Municipal Corporation of Delhi published 'Action Plan' for prevention of mosquito borne disease in 1997 in which it is mentioned that Dengue fever and DHF, the fertility rate of DF/DHF cases may be as high as 20 per cent if not diagnosed early and treated promptly.

26. During the pendency of this matter a number of letters and documents were received from various quarters. Dr. P.N. Tiwari, Advocate complained that despite the claims of the Government, in number of colonies (as mentioned in preceding paragraphs) were left out and not identified by the MCD. Dr. Tiwari also mentioned that the number of dengue cases and a number of deaths were also increasing everyday. Many other organizations and societies have also sent letters indicating that a number of deaths have taken place in their respective localities but no action, whatsoever has been taken by the Government and out of frustration and desperation they had approached the Court for issuing necessary directions so that many lives can be saved.

27. According to Mr. Ramesh Chandra, Principal Secretary of Medical and Public Health Government, dated 16.9.1996, the Government came to know about the outbreak of the epidemic from the press reports. Ms Shelja Chand of the Ministry of Health and Family Welfare, Govt. of India admitted that no separate programme existed for the control of Dengue. It is also stated in the letter that institutions which have to play major role in the context of Dengue are the National Institute of Communicable Disease, the Directorate of National Malaria Eradication Programme, Indian Council of Medical Research, National Institute of Virology (Pune) and others. All these institutes are funded by the Government of India and are under the direct control of Government of India. Repeated warnings were given by the WHO and by other delegates of the conference held at Pune in 1994. There has been gross negligence and dereliction of duty on the part of Government of India. As a matter of fact, the Court while issuing suo motu notice on 8.10.1996 indicated why action should not be taken against them for criminal negligence of duty resulting in deaths of hundreds of innocent citizens? No satisfactory or convincing reply has been filed.

28. On the basis of available records, information and affidavits it can be safely concluded that at the time of the sudden outbreak of Dengue epidemic, both the UOI and the Delhi Government were not equipped to tackle the situation. Both the governments were in a total state of unpreparedness to tackle or manage the situation. The government hospitals and blood banks were totally unaware and there was severe shortage of platelet separation machines. The hospitals were totally illequipped. The blood banks were in a disorganized state, causing great inconvenience to the public.

29. In the Pune Conference in February 1994, it was categorically mentioned that the conditions were ripe for an explosive epidemic Dengue transmission.

30. As per additional affidavit filed by the Union of India on 15.12.1997, it is an admitted position that the expert group appointed by it suggested that there was an urgent need to establish 'Dengue Control Programme' with regular budgetary provisions in view of the fact that Dengue was now a widespread and recurring problem in the country. The expert group was also of the view that there is a need

for setting up training units to cover vector control and improve methods of health education. The expert group was also of the view that health education messages should be framed in such a way that they evoke interest and are easily understood.

31. Action plans have been submitted by the Union of India, MCD and NDMC. It is essential that an independent committee of experts examines the adequacy, efficacy and comprehensiveness of these action plans. It is also essential that advice is taken on the efficacy of the sprays and Chemicals etc. used by Govt. agencies as also the vehicles and spray machines used for fogging.

32. It is abundantly clear that in spite of the World Health Organization's repeated warnings, no effective steps were taken either by the Union of India or by the Delhi State government. The respondents prepared their respective action plans only in 1997 after being directed to do by this court. It is beyond comprehension why the Union of India or the Delhi State government did not take the findings of Pune Conference of 1994 and the warnings given by the World Health Organization seriously? Perhaps, the entire epidemic could have been avoided if proper actions would have been taken in 1994 in pursuance to these warnings. As per the World Health Organization, Dengue epidemic is increasing due to a number of factors which include amongst others,

- (1) Unreliable water supply;
- (2) Traditional water storage practices;
- (3) Poor garbage collection which creates more mosquito breeding places;
- (4) Inadequate health education;
- (5) Insufficient mosquitoes control programmes;
- (6) Resistance of mosquitoes to insecticides, etc.

33. As there is no drug or vaccine discovered as yet, to prevent it, some immediate steps have to be taken to prevent the spread of Dengue.

An elimination of mosquito breeding places should be done to prevent mosquito bite. Serious research must be encouraged by the government to develop an appropriate drug to control this disease.

34. For preventing Dengue and DHF, the WHO has prepared a booklet which has also been placed on record. The methods and suggestions of preventing and controlling the disease by the WHO should be taken seriously which may perhaps help in eradicating the entire problem of Dengue. According to the press reports, a number of Government Offices and buildings including hospitals were found to be a major source of mosquito breeding. It is essential that the various agencies of government must ensure that the government buildings, offices and institutions are totally kept free from mosquito breeding.

35. It is suggested that the aim of vector control during Dengue/DHF epidemics is to kill as many vectors as quickly as possible and to reduce their density sufficiently long enough to interrupt viral transmission. The essence of this control procedure is speed. The main thrust of the action is directed against adult mosquito as only the adults circulate the virus. As per the WHO, management of vector control in an epidemic should be under an inter-disciplinary committee with broad powers, to rapidly mobilize resources of manpower, spraying equipments, insecticide and transport as well as to plan and direct control operations.

36. The newspaper reports of July, 1998 also reveal that some more cases of Dengue/DHF have been recently noticed in Delhi, in this view of the matter, we deem it imperative to direct the high level coordinating committee already set up by the government of India:

(1) to examine efficacy, adequacy and comprehensiveness of the MCD, the NDMC and of the UOI's action programme and to suggest some definite measures to make the Dengue Control Programme meaningful, efficacious, comprehensive and adequate. A report in this regard be sent to this court within two months by the committee;

(2) Looking to the population, at least 10 major hospitals in Delhi must be fully equipped to deal with the day to day patients and to deal with any outbreak of the

epidemic;

(3) The Union Government and the government of NCT of Delhi are directed to prepare a National Dengue Control Programme and Dengue Control Programme for the NCT of Delhi by the Delhi Government with a regular budgetary provisions for taking effective control measures for its prevention;

(4) The Government of NCT, Delhi is directed to provide necessary information to the public DO's and Don'ts at frequent intervals by the National Media, such as Television, Radio, National Newspapers, etc. etc. The adequacy of such information must be determined by the said committee already set up including publication and distribution of pamphlets all over Delhi giving necessary information.

(5) Unreliable water supply must be stopped forthwith and reliable and regular water supply be ensured;

(6) Garbage and rubbish collection machinery be improved (which is also an important source of breeding more mosquito's);

(7) Traditional Water storage practices be suitably changed and water storage containers should be tightly covered to prevent mosquito's laying eggs therein.

(8) Covering and sealing of septic tanks and soak away pits to prevent mosquitoes breeding;

(9) Organizing of training sessions for volunteers and the health officers of the MCD and NDMC officials so that they can handle the day to day patients and be fully prepared to face the situation of sudden epidemic effectively;

(10) Regular survey of all localities by the MCD and the NDMC;

38. The said committee must carefully examine the recommendations of the Pune Conference and the World Health Organization and implement them at the earliest. The respondents must ensure that any further suggestions, directions or warnings by the World Health Organization must be taken seriously and follow the directions meticulously. In Pune conference in February, 1994 it was

recommended that the conditions were ripe for explosive epidemic Dengue transmission. In case the warning would have been taken by the respondent governments seriously, perhaps the hundreds of human lives could have been saved. Let the similar blunder may not be repeated.

39. This court would like to place on record its appreciation for the able assistance provided by the learned amices Curiae Shri Neeraj Krishan Kaul and Mr. Rajiv Awasthi, Advocates.

40. List this case for further directions on 20th November, 1998.

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