

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIM. PUBLIC INTEREST LITIGATION [ST.] NO. 26 OF 2019

Abha Singh. ..Petitioner.
Versus
State of Maharashtra & Others. ..Respondents.

Ms. Isha Singh for the Petitioner.
Mr. J. P. Yagnik for the Respondent-State.
Mr. Ganesh Gole and Kunal Waghmare for the Respondent-MCGM.
Mr. R. S. Apte, Senior Advocate with Mr. Mandar Limaye for Respondent No.4.

Coram : RANJIT MORE &
SURENDRA P. TAVADE, JJ.
Date : **January 29, 2020.**

P. C. :

1. This PIL is filed seeking following reliefs :

- "A. That a writ of mandamus be passed directing Respondent Nos. 1 to 4 directing them to submit a report on the status of constitution of the necessary committees under the PEMSR Act, 2013 and, in particular, stating whether they have constituted the necessary committees, authorities and bodies under section 24 to 32 of the PEMSR Act, 2013;
- B. That if it comes to light that the necessary committees mandated under the PEMSR Act, 2013 are not constituted, stringent directions (writ of mandamus) may be issued directing Respondents 1 to 4 to constitute them within a period of six weeks from the date of passing the order;
- C. That comprehensive guidelines of a preventive nature be framed in order to prevent any hazardous manual cleaning of septic tanks; To this effect guidelines may be framed stating that only licensed contractors shall be permitted to clean septic tanks and advance intimation of every cleaning activity shall be given to the Local Authority or Committees constituted under the PEMSR Act, 2013 so that proper supervision is maintained at all times.;

- D. That a writ of mandamus be issued directing Respondent Nos. 1 and 2 to comply the provisions of the PEMSR Act, 2013 in letter and spirit and constitute all the committees and statutory authorities mandated to be established under the Act;
- E. That a writ of mandamus be issued directing the State of Maharashtra (Respondent No.2) to comply the provisions of the PEMSR Act, 2013 in letter and spirit and constitute all the committees and statutory authorities mandated to be established under the Act;
- F. that directions be issued to Respondent No. 5 and 6 directing them to place on record status reports of cases filed and prosecutions instituted under the PEMSR Act, 2013 and report of convictions and pendency therein (along with details of conviction rate);
- G. Issue a writ of mandamus or any other appropriate writ, declaration, or order to declare section 10 of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 which prescribes a three-month limitation period for filing complaints be declared as ultra vires to the the Constitution of India and hence be quashed and the period of limitation be made subject to section 468 of the Cr.P.C.;
- H. that a writ of mandamus be issued to the Respondents directing them to comply with the provisions of the PEMSR Act, 2013 in letter and spirit and report compliance with a period of 90 days;
- I. That a writ of mandamus be issued to the Respondents directing them to stringently enforce the implementation of the PEMSR Act, 2013."

2. On behalf of Respondent No.5 (State Government), one Pranaya Ahok has filed an affidavit dated 28th January 2020. Relying upon the said affidavit, Mr. Yagnik, learned APP submitted that directions sought in the PIL have already been complied with.

3. Ms. Singh, learned counsel for the Petitioner tenders across the bar, copy of the FIR bearing No.161 of 2019 registered with Gowandi Police Station, Mumbai and submitted that the said FIR is registered only for the offence punishable under section 304A of IPC, 1860. She further submitted that despite the fact that a person has died while cleaning the septic tank, the provisions of sections 7 and 9 of the PEMSR Act, 2013 are not applied in this case.

4. Mr. Yagnik, learned APP submitted that let the Petitioner place on record the said FIR so that appropriate action can be taken. Learned counsel for the Petitioner submitted that she will file an additional affidavit pointing out how the provisions of the said Act are not complied with. We grant liberty to the Petitioner to file additional affidavit. The Petitioner shall serve advance copy of the affidavit on the other side.

5. Mr. Apte, learned senior counsel appearing on behalf of Respondent No.5-Thane Municipal Corporation submitted that as on today, the municipal corporation drainage system does not permit construction of insanitary latrines and septic tanks and if the same are present, it must be in old buildings. He also makes a statement that the Corporation is implementing the provisions

of PEMSAR Act, 2013. He submitted that corporation would like to file an affidavit in reply in the matter and sought time. We grant liberty to the Thane Municipal Corporation to file affidavit in reply. We also direct the MCGM to file an affidavit in reply to the PIL. Copies of the affidavits be given to the other side advocates well in advance. For further hearing, we adjourn this PIL to 26th March 2020.

[SURENDRA P TAVADE, J.]

[RANJIT MORE, J.]