

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF DECEMBER, 2020

PRESENT

THE HON'BLE SHRI ABHAY S. OKA, CHIEF JUSTICE

AND

THE HON'BLE SHRI JUSTICE S. VISHWAJITH SHETTY

**WRIT PETITION NO. 8928 OF 2020 (LB-RES) PIL
C/W**

WRIT PETITION NO. 3211 OF 2018 (GM-RES) PIL

IN WRIT PETITION NO. 8928 OF 2020

BETWEEN:

ALL INDIA COUNCIL OF TRADE UNIONS

... PETITIONER

(By Sri Clifton D Rozario &
Smt Maitreyi Krishnan, Advocates)

AND:

1. UNION OF INDIA
REPTD BY ITS SECRETARY
MINISTRY OF DEFENCE
NEW DELHI AND OTHERS

... RESPONDENTS

(By Ms Aparna L V, Advocate for R-1 to 3;
Sri C M Poonacha, AGA for R-4 to 9;
Sri V Srinidhi, Advocate, for R-10;
Sri B L Sanjeev, Advocate, for R-11;
Sri H N Shashidhara, Advoate for R-12;
Sri Jeevan J Neeralagi, Advocate for R-13;
Sri Sridhar Prabhu, Advocate for R-15)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DISCONTINUE THE PRACTICE OF ALLOWING/FORCING SANITARY WORKERS TO PHYSICALLY ENTER MANHOLES, SEWER LINES, SEPTIC TANKS ETC.

IN WRIT PETITION NO. 3211 OF 2018

BETWEEN:

HIGH COURT LEGAL SERVICES COMMITTEE
... PETITIONER
(Ms K Sheela Anish, Advocate)

AND:

1 . THE STATE OF KARNATAKA
AND OTHERS
... RESPONDENTS

(By Sri C M Poonacha, AGA for R-1 & 2;
Sri K N Puttegowda, Advocate, for R-3;
Sri M S Narayana, Advocate, for R-4;
Sri Thimmanna Bhat, CGC, for R-5 & 6;
Ms Jayana Kothari, Senior Advocate for
Sri Rohan Kothari, Advocate for R-7)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECT THE RESPONDENTS TO GIVE A REPORT ON THE ACTION TAKEN BY THEM FOR REMOVAL OF THE INHUMAN PRACTICE AND THE IMPLEMENTATION OF THE PROVISIONS OF THE PROHIBITION OF EMPLOYMENT AS MANUAL SCAVENGERS AND THEIR REHABILITATION ACT, 2013 AND ETC.

THESE WRIT PETITIONS, HAVING BEEN HEARD AND RESERVED FOR ISSUE OF INTERIM DIRECTIONS, COMING ON FOR PRONOUNCEMENT OF ORDER, THIS DAY, THE **CHIEF JUSTICE** PRONOUNCED THE FOLLOWING:

O R D E R

Both the writ petitions concern the implementation of the provisions of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 (for short ‘the Manual Scavengers Act’). The issue involved is also of the implementation of the provisions of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Rules, 2013 (for short ‘the Manual Scavengers Rules’).

2. Writ petition No.3211/2018 has been filed by the Karnataka High Court Legal Services Committee on 18th January, 2018 containing a prayer for issue of a writ of mandamus for implementation of the provisions of the Manual Scavengers Act. The petition also concerns an incident that occurred in the city of Bengaluru on 7th January, 2018. It is one of the several incidents in which three manual scavengers died due to suffocation, while cleaning a pit in an apartment complex at Bengaluru. A First Information Report had been registered in respect of the said incident. A writ of mandamus has been sought in the said petition for implementation of the directions issued by the Apex Court in

the case of ***Safai Karamchari Andolan and others –vs- Union of India and others***¹.

3. Writ petition No. 8928/2020 is more exhaustive out of the two petitions. It is filed by All India Central Council of Trade Union (Karnataka State Unit). Reliance is placed in this petition on the report dated 28th March, 2011 submitted by a Committee appointed by this Court to look into welfare measures evolved by the Government of Karnataka with regard to conditions of work of Poura Karmikas and sanitary workers in the State. The said Committee was appointed by this Court by an order dated 20th April 2010 passed in writ petition No.30221/2009. The said Committee submitted the aforesaid report dated 28th March 2011. Writ Petition Nos. 30221/2009 and No.41076/2010 were disposed of by a Division Bench of this Court on 22nd June, 2015 directing the State of Karnataka, the Directorate of Municipal Administration, the Bangalore Water Supply and Sewerage Board and the Karnataka Urban Water Supply and Drainage Board to expedite the matter of eradication of manual scavenging in terms of the directions issued by the Apex Court in the case of ***Safai Karamchari Andolan*** (supra).

¹ (2014) 11 SCC 224

4. In writ petition No. 8928/2020, various developments which have taken place after disposal of writ petition No. 30221/2009 have been set out. In paragraph 58, large number of instances of deaths of manual scavengers have been set out with details and it is pleaded that in none of these cases, the accused have been convicted for the charges leveled against them. Apart from praying for issue of various directions for the implementation of the directions issued by the Apex Court in the case of ***Safai Karamchari Andolan*** (supra), various other prayers have been made for specific implementation of the Act and Rules.

5. We have perused the orders passed from time to time by this Court on the issues involved. We have heard the submissions of the learned counsel appearing for the parties. We have found that there is hardly any implementation of the provisions of the Manual Scavengers Act and the Rules in the State of Karnataka. Therefore, this is a case where continuous monitoring will be necessary and the power of issuing continuing mandamus will have to be exercised.

6. Hence, we issue *rule nisi*. The Advocates on record for the respondents waive service.

7. Now, we proceed to consider the question of issuing interim directions. There can be no dispute that our Constitutional philosophy does not permit any form of manual scavenging. Right of a citizen to live with dignity is an integral part of the fundamental rights guaranteed to the citizens under Article 21 of the Constitution of India. The preamble of the Constitution shows that the Constitution seeks to protect the dignity of an individual. There can be no dispute that manual scavenging is most inhuman and it infringes the fundamental rights guaranteed under Article 21.

8. If any citizen is forced to do manual scavenging, it will be a gross violation of his fundamental right conferred under Article 21 of the Constitution of India. Under Article 47 of the Constitution of India which is a part of Directive Principles of the State Policy, the State is under an obligation to endeavor to improve the standard of living of its people. Under Article 42 of the Constitution, the State must endeavor for securing just and humane conditions of work. Before the Manual Scavengers Act came into force, the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 (for short, ‘the old Act’) was in force. There is a vast difference between the old Act and the

Manual Scavengers Act. The definition of 'manual scavenger' in the Manual Scavengers Act is much wider than the definition of 'manual scavenger' defined under clause (j) of Section 2 of the old Act. The other important difference between the two enactments is that under sub-section (1) of Section 5 of the Manual Scavengers Act which starts with *non obstante* clause, there is a complete prohibition on manual scavenging. Under Section 3 of the old Act, the State Government was required to issue a notification for prohibiting engagement or employment of any person for manual scavenging. Thus, under the old Act, the prohibition was not automatic. The provisions of the new Act are more comprehensive.

9. It is necessary to look at the preamble of the Manual Scavengers Act which reads thus:

"An Act to provide for the prohibition of employment as manual scavengers, rehabilitation of manual scavengers and their families, and for matters connected therewith or incidental thereto.

Whereas promoting among the citizens fraternity assuring the dignity of the individual is enshrined as one of the goals in the Preamble to the Constitution;

And WHEREAS the right to live with dignity is also implicit in the fundamental rights guaranteed in part III of the Constitution;

And WHEREAS article 46 of the Constitution, *inter alia*, provides that the State shall protect the weaker sections, and, particularly, the Scheduled Castes and the Scheduled Tribes from social injustice and all forms of exploitation;

And whereas the dehumanizing practice of manual scavenging, arising from the continuing existence of insanitary latrines and a highly iniquitous caste system, still persists in various parts of the country, and the existing laws have not proved adequate in eliminating the twin evils of insanitary latrines and manual scavenging;

And whereas it is necessary to correct the historical injustice and indignity suffered by the manual scavengers, and to rehabilitate them to a life of dignity”.

(emphasis added)

10. In the case of ***Safai Karamchari Andolan*** (supra), the Apex Court had an occasion to consider the provisions of both the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 as well as the Manual Scavengers Act of 2013. The Apex Court has issued several directions for implementation of some of the provisions of the Manual Scavengers Act.

11. Now we come to the provisions of the Manual Scavengers Act. Clause (g) of Section 2 defines ‘manual scavenger’ which reads thus:

"(g) "manual scavenger" means a person engaged or employed, at the commencement of this Act or at any time thereafter, by an individual or a local authority or an agency or a contractor, for manually cleaning, carrying, disposing of, or otherwise handling in any manner, human excreta in an insanitary latrine or in an open drain or pit into which the human excreta from the insanitary latrines is disposed of, or on a railway track or in such other spaces or premises, as the Central Government or a State Government may notify, before the excreta fully decomposes in such manner as may be prescribed, and the expression "manual scavenging" shall be construed accordingly".

12. As observed earlier, the definition is very wide. Any person who is employed for manually cleaning, carrying, disposing of any manner human excreta in an insanitary latrine or in an open drain or pit into which the human excreta from the insanitary latrine is disposed of, becomes a manual scavenger. Even a person who is engaged for manually cleaning, carrying or disposing of human excreta on the railway tracks or in such other spaces, as may be specified by the State or Central Government, becomes a manual scavenger. Even a person who otherwise handles such human excreta also becomes a manual scavenger. Explanation (b) to clause (g) of Section 2 provides that a person engaged or employed to clean excreta with the help of such devices or using such protective gear, as the Central Government may notify in this behalf, shall not be deemed to be a manual scavenger. It

means that a person employed to clean human excreta by using a mechanical device will be a person otherwise handling human excreta, and therefore, he will be a manual scavenger which is covered by clause (g) of Section 2, unless a notification is issued by the Central Government notifying the mechanical device used by him and protective gear used by him as provided in explanation (b) to clause (g) of Section 2. Thus, a person engaged or employed to clean human excreta with the help of such device and using such protective gear, as the Central Government may notify in this behalf, will not be a manual scavenger. In view of clause (i) of Section 2, such a notification will have to be published in the Official Gazette. No such notification is placed on record.

13. ‘Insanitary latrine’ is defined in clause (e) of Section 2. It means a latrine which requires human excreta to be cleaned or otherwise handled manually, either *in situ* or in an open drain or a pit into which the excreta is discharged before the excreta fully decomposes in such manner as may be prescribed. However, a water flush latrine in railway coaches is cleaned by an employee with the help of a device and by wearing a protective device as

may be notified by the Central Government shall not be deemed to be an insanitary latrine.

14. Chapter II deals with insanitary latrines. Section 4 reads thus:

“4. (1) Every local authority shall, -

- (a) Carry out a survey of insanitary latrines existing within its jurisdiction, and publish a list of such insanitary latrines, in such manner as may be prescribed, within a period of two months from the date of commencement of this Act;
- (b) Give a notice to the occupier, within fifteen days from the date of publication of the list under clause (a), to either demolish the insanitary latrine or convert it into a sanitary latrine, within a period of six months from the date of commencement of this Act;

Provided that the local authority may for sufficient reasons to be recorded in writing extend the said period for not exceeding three months;

- (c) Construct, within a period of not exceeding nine months from the date of commencement of this Act, such number of sanitary community latrines as it considers necessary, in the areas where insanitary latrines have been found.

(2) Without prejudice to the provisions contained in sub-section (1), Municipalities Cantonment Boards and railway authorities shall also construct adequate number of sanitary community latrines, within such period not exceeding three years from the date of commencement of this Act, as the appropriate Government may, by notification, specify, so as to

eliminate the practice of open defecation in their jurisdiction.

(3) It shall be the responsibility of local authorities to construct community sanitary latrines as specified in sub-section (1) and (2), and also to make arrangements for their hygienic upkeep at all times.

Explanation – For the purpose of this section, “community” in relation to railway authorities mean passengers, staff and other authorized users of railways.”

15. There are very important provisions in Chapter-III of the Manual Scavengers Act. Sections 5 to 9 are relevant which read thus:

“5.(1) Notwithstanding anything inconsistent therewith contained in the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, **no person, local authority or any agency shall, after the date of commencement of this Act, -**

- (a) Construct an insanitary latrine; or**
- (b) Engage or employ, either directly or indirectly, a manual scavenger, and every person so engaged or employed shall stand discharged immediately from any obligation, express or implied, to do manual scavenging.**

(2) Every insanitary latrine existing on the date of commencement of this Act, shall either be demolished or be converted into a sanitary latrine, by the occupier at his own cost, before the expiry of the period so specified in clause (b) of sub-section (1) of Section 4:

Provided that where there are several occupiers in relation to an insanitary latrine, the liability to demolish or convert it shall lie with, -

- (a) the owner of the premises, in case one of the occupiers happens to be the owner; and
- (b) all the occupiers, jointly and severally, in all other cases:

Provided that the State Government may give assistance for conversion of insanitary latrines into sanitary latrines to occupiers from such categories of persons and on such scale, as it may, by notification, specify:

Provided further that non-receipt of State assistance shall not be a valid ground to maintain or use an insanitary latrine, beyond the said period of nine months.

- (3) If any occupier fails to demolish an insanitary latrine or convert it into a sanitary latrine within the period specified in sub-section (2), the local authority having jurisdiction over the area in which such insanitary latrine is situated, shall, after giving notice of not less than twenty one days to the occupier, either convert such latrine into a sanitary latrine, or demolish such insanitary latrine, and shall be entitled to recover the cost of such conversion or, as the case may be, of demolition, from such occupier in such manner as may be prescribed.

6. (1) Any contract, agreement or other instrument entered into or executed before the date of commencement of this Act, engaging or employing a person for the purpose of manual scavenging shall, on the date of commencement of this Act, be terminated and such contract, agreement or other instrument shall be void and inoperative and no compensation shall be payable therefor.

(2) Notwithstanding anything contained in sub-section (1), no person employed or engaged as a

manual scavenger on a full-time basis shall be retrenched by his employer, but shall be retained, subject to his willingness, in employment on at least the same emoluments, and shall be assigned work other than manual scavenging.

7. No person, local authority or any agency shall, from such date as the State Government may notify, which shall not be later than one year from the date of commencement of this Act, engage or employ, either directly or indirectly, any person for hazardous cleaning of a sewer or a septic tank.

8. Whoever contravenes the provisions of Section 5 or section 6 shall for the first contravention be punishable with imprisonment for a term which may extend to one year or with fine which may extend to fifty thousand rupees or with both, and for any subsequent contravention with imprisonment which may extend to two years or with fine which may extend to one lakh rupees, or with both.

9. Whoever contravenes the provisions of section 7 shall for the first contravention be punishable with imprisonment for a term which may extend to two years or with fine which may extend to two lakh rupees or with both, and for any subsequent contravention with imprisonment which may extend to five years or with fine which may extend to five lakh rupees, or with both."

(emphasis added)

16. The effect of Sections 4 to 5 can be summarized as under:

(a) There is a complete prohibition on constructing insanitary latrines. All the insanitary latrines constructed after coming into force of Manual Scavengers Act, have to be either demolished or converted into sanitary latrines by the occupier as defined in clause (j) of Section 2;

- (b) There is a complete prohibition on engaging or employing, either directly or indirectly, a manual scavenger. If any person who has been so engaged prior to coming into force of the Act shall stand discharged immediately from any obligation, express or implied, to do manual scavenging; and
- (c) If any occupier fails to demolish an insanitary latrine or convert it into a sanitary latrine within the period provided in sub-clause (b) of sub-section (1) of Section 4 (period not exceeding three years from the date of commencement of the Manual Scavengers Act), it is the duty of the Local Authority to either demolish or to convert the existing insanitary latrine into a sanitary latrine.

17. Section 6 provides for automatic termination of any contract for engaging or employing a person for the purpose of manual scavenging on the date of commencement of the said Act. Sub-section (2) of Section 6 is a very salutary provision which provides that no person employed or engaged as a manual scavenger on a full-time basis shall be retrenched by his employer and shall be retained subject to his willingness on the same emoluments by assigning work other than the work of manual scavenging.

18. Section 7 imposes a complete embargo on any person, Local Authority or agency engaging or employing either directly or indirectly any person for hazardous cleaning of a sewer or a septic tank. This provision is very important as number of workers have died while doing such work, as can be seen from the record. This provision needs very strict implementation especially in the cities.

19. Section 8 makes a contravention of the provisions of Section 5 or 6 as an offence. Section 9 makes contravention of Section 7 as an offence.

20. The important provisions of Sections 5 to 8 cannot be implemented unless those who are employed or engaged in manual scavenging are identified, insanitary latrine are identified and the insanitary latrines are either demolished or converted into sanitary latrines. Therefore, Section 4 is incorporated in Chapter-II which makes it mandatory for every Local Authority to carry out a survey of insanitary latrines within its jurisdiction and publish a list of insanitary latrines as per the Rules within a period of two months from the date of commencement of the said Act. The Manual Scavengers Act came into force on 6th December, 2013. Clause (b) of Sub-Section (1) of Section 4 enjoins every

local authority to give a notice to the occupier of an insanitary latrine within a period of 15 days from the date of publication of the list as per clause (a) of sub-section (1) of Section 4 to either demolish insanitary latrine or to convert such insanitary latrine into a sanitary latrine within a period of six months from the date of commencement of the Manual Scavengers Act. There is nothing on record to indicate that these provisions have been implemented. Under sub-section (2) of Section 4, every Local Authorities are under an obligation to construct adequate number of sanitary community latrines within a period of not exceeding three years from the date of commencement of the said Act, as the appropriate Government may, by a notification, specify so as to eliminate the practice of open defecation in their jurisdiction. In fact, the practice of open defecation must be stopped or eliminated immediately. It is an important step towards eradication of Manual Scavenging. But, this cannot happen unless the Local Authorities construct adequate number of sanitary community latrines and maintain the same clean and hygienic. More importantly, all the Authorities will have to sensitize the citizens about the ill effects of open defecation. A massive awareness campaign needs to be initiated for that

purpose. Thus, sub-section (2) of Section 4 is very crucial as its implementation will go a long way.

21. The definition of Local Authorities is also very wide which includes a ‘Municipality’ or ‘Panchayat’, as defined in clauses (e) and (f) of Article 243P of the Constitution of India. Cantonment Board and Railway Authority are defined under sub-clause (ii) and (iii) of clause (f) of sub-section (1) of Section 2.

22. At this stage, we must make a note of the fact that there is nothing placed on record by the State Government even to indicate that the Local Authorities in the State have indeed discharged their statutory obligations as contemplated by Section 4. Unless the requisite survey for identification of insanitary latrines as required by Section 4 read with Rule 10 is carried out, there cannot be an effective implementation of Sub-Section (2) of Section 5 of the Manual Scavengers Act. The reason is that insanitary latrines will continue to exist and function unless proper survey is done. Moreover, the construction of adequate number of sanitary community latrines by Local Authorities is a very important step towards eliminating open defecation. The said practice compels sanitary workers of Local Authorities to do manual scavenging. It is the duty of all Local

Authorities to firstly decide how many sanitary community latrines are required in its jurisdiction and thereafter to construct it at the earliest.

23. Chapter IV deals with identification of manual scavengers in urban and rural areas and their rehabilitation. Section 11 lays down the manner in which a survey of manual scavengers in urban areas should be carried out by the Municipalities. Section 14 deals with the survey of manual scavengers in Rural areas which should be conducted by Panchayats. The survey in Urban and Rural areas is to be carried out by following the procedure prescribed under Rule 11 of the Manual Scavengers Rules. Even such surveys do not appear to have been carried out in the State of Karnataka. Section 12 contemplates an application to be made by any person working as a manual scavenger working in urban areas for being identified as a manual scavenger. Section 15 deals with an application to be made by any person working as a manual scavenger for identification as a manual scavenger in rural area. After the process of identification is completed on the basis of survey or on the basis of the applications, the manual scavengers are required to be rehabilitated, as provided in Section 13. As there is nothing

placed on record to show that the surveys in terms of Sections 11 to 14 were properly carried out and the exercise of identification was systematically carried out as required by Sections 12 and 15, obviously, there is no implementation of the provisions of the Manual Scavengers Act and especially the rehabilitation as contemplated under Section 13. Unless there is a proper survey carried out and the data of manual scavengers in the State is made available, there cannot be an effective implementation of the ban imposed by sub-section (1) of Section 5. The measures of rehabilitation should reach every manual scavengers in the State.

24. At this stage, it is necessary to refer to the directions issued by the Apex Court in paragraphs 23 and 24 of its judgment rendered in the case of ***Safai Karamchari Andolan*** (supra) which reads thus:

“23. We have already noted various provisions of the 2013 Act and also in the light of various orders of this Court, we issue the following *directions*:

23.1. The persons included in the final list of manual scavengers under Sections 11 and 12 of the 2013 Act, shall be rehabilitated as per the provisions of Chapter IV of the 2013 Act, in the following manner, namely:

- (a) such initial, one-time cash assistance, as may be prescribed;
- (b) their children shall be entitled to scholarship as per the relevant scheme of the Central Government or the State Government or the local authorities, as the case may be;
- (c) they shall be allotted a residential plot and financial assistance for house construction, or a ready-built house with financial assistance, subject to eligibility and willingness of the manual scavenger as per the provisions of the relevant scheme;
- (d) at least one member of their family shall be given, subject to eligibility and willingness, training in livelihood skill and shall be paid a monthly stipend during such period;
- (e) at least one adult member of their family shall be given, subject to eligibility and willingness, subsidy and concessional loan for taking up an alternative occupation on sustainable basis, as per the provisions of the relevant scheme;
- (f) shall be provided such other legal and programmatic assistance, as the Central Government or State Government may notify in this behalf.

23.2. If the practice of manual scavenging has to be brought to a close and also to prevent future generations from the inhuman practice of manual scavenging, rehabilitation of manual scavengers will need to include:

(a) Sewer deaths — Entering sewer lines without safety gear should be made a crime even in emergency situations. For each such death, compensation of Rs 10 lakhs should be given to the family of the deceased.

(b) Railways — Should take time-bound strategy to end manual scavenging on the tracks.

(c) Persons released from manual scavenging should not have to cross hurdles to receive what is their legitimate due under the law.

(d) Provide support for dignified livelihood to safai karamchari women in accordance with their choice of livelihood schemes.

23.3. Identify the families of all persons who have died in sewerage work (manholes, septic tanks) since 1993 and award compensation of Rs 10 lakhs for each such death to the family members depending on them.

23.4. Rehabilitation must be based on the principles of justice and transformation.

24. In the light of various provisions of the Act referred to above and the Rules in addition to various directions issued by this Court, we hereby direct all the State Governments and the Union Territories to fully implement the same and take appropriate action for non-implementation as well as violation of the provisions contained in the Act 2013. Inasmuch as the 2013 Act occupies the entire field, we are of the view that no further monitoring is required by this Court. However, we once again reiterate that the duty is cast

on all the States and the Union Territories to fully implement and to take action against the violators. Henceforth, persons aggrieved are permitted to approach the authorities concerned at the first instance and thereafter the High Court having jurisdiction”.

(emphasis added)

25. The Manual Scavengers Rules contemplate constitution of two Committees for monitoring and overseeing the survey process. The first Committee is the District Level Survey Committee to be constituted under clause (c) of Rule 2 for each District and the second Committee is the State Level Survey Committee to be constituted as per clause (j) of Rule 2. Apart from monitoring and overseeing the survey process at District or State level, as the case may be, the function of the Committees is to give publicity about the survey and to distribute survey materials for awareness campaign to the designated place. One of the important function of the District Level Survey Committee is to approve final list of manual scavengers for all towns, cities and villages in the District and thereafter, to publish final consolidated list of manual scavengers for the District. One of the important functions of the State Level Survey Committee is to approve the final list of manual scavengers for all towns, cities and villages in

the State and to publish the final consolidated list of the manual scavengers in the State.

26. As per Rule 11(1), it is the duty of the Local Authority to ensure that the persons conducting survey of manual scavengers are adequately trained on the manner and the method in which the survey should be conducted. In what manner the survey should be carried out is elaborately incorporated in Rule 11. The said Rule contemplates publication of a provisional list of manual scavengers, filing of objections to the provisional list and drawing of the final list. After all the Local Authorities prepare a list of manual scavengers, the duty of the concerned District Level Survey Committee is to make compilation of the list and forward the final list to the State Government for approval. Section 12 of the Manual Scavengers Act contemplates that a person working as a manual scavenger in an urban area can apply either during the survey or at any time thereafter in the prescribed manner to the Chief Executive Officer of the Municipality for being identified as a manual scavenger. After making an enquiry, the Chief Executive Officer has to ascertain whether the applicant is a manual scavenger. If the applicant is found to be a manual scavenger, after enquiry, his name should be included in the final

list to be published as per sub-section (6) of Section 11. Similar provisions are there in case of a person working as a manual scavenger in rural area as well, as contemplated under Section 15 (1).

27. To enable the manual scavengers to take the benefit of Sections 12 and 14, the District and State Level Committees must give wide publicity to the provision of making applications for being identified him as a manual scavenger as per Sections 12 or 14, as the case may be. Only if a wide publicity is given, those who are working as manual scavengers, but have not been identified in survey will be able to apply and get their names included in the survey.

28. After the identification of manual scavengers by carrying out a survey or pursuant to Sections 12 or 14, the most important provision steps in. After final lists of manual scavengers are published or additions are made thereto, rehabilitation of manual scavengers is required to be undertaken, as provided under Section 13 of the Manual Scavengers Act. As can be seen from Rule 12, the identified manual scavengers, one from each family shall be eligible for receiving cash assistance immediately after identification. Rehabilitation of manual scavengers is the most

crucial and important part of the Scheme of the Manual Scavengers Act. The rehabilitation must be made in terms of the directions issued in paragraphs 23 of the decision of the Apex Court in the case of ***Safai Karamchari Andolan*** (supra).

29. There are charts filed on record. In W.P.No.8928/2020, the petitioner has filed a chart and in W.P.No.3211/2018, the 7th respondent has filed a chart. As observed earlier, the definition in clause (g) of Section 2 will have to be given a purposive and wide interpretation, in view of the object of enacting the Manual Scavengers Act.

30. Now, we firstly come to the survey and identification of manual scavengers in urban areas. The Manual Scavengers Act which is brought into the force in the year 2013 virtually accepts that even in 21st century, manual scavenging exists and that also in urban areas. Even assuming that the Local Authorities have carried out survey in terms of Section 11, it cannot be a lawful survey unless the Local Authorities have followed the procedure under Sub-Rules (10) to (12) of Rule 11 of the Manual Scavengers Rules by publishing a final list. Thereafter, the settlement of claims is required to be done in accordance with Sub-Rules (17) and (18) of Rule 11. After the said work of

settlement of claims and objections is completed, the District Level Survey Committee must cause compilation of the list of manual scavengers received from each Local Authority and prepare a consolidated list of manual scavengers for the entire district. The District Collector (the Deputy Commissioner) of the concerned district is enjoined to forward the same to the State Government. Thereafter, the State Government is under an obligation to publish the consolidated list of manual scavengers in accordance with sub-clause (20) of Rule 11. As provided in sub-section (7) of Section 11 read with Sub-section (2) of Section 6, on the consolidated list so published by the Local Authorities, the persons included in the said list shall stand discharged from any obligation to work as manual scavengers. Even if an application by any person working as manual scavenger in urban areas is made in accordance with Section 12, either during the survey or after enquiry, his name is required to be added to the final list.

31. Therefore, publication of final consolidated list, as contemplated by sub-section (6) of Section 11 read with sub-rules (10), (11) and (18) of Rule 11, is of a great deal of significance in view of the provisions of sub-section (7) of Section 11. In case of survey and identification of manual scavengers in rural areas

as contemplated by Section 14, the survey is required to be carried out by the Chief Executive Officer of Panchayat. The provisions applicable to the survey of manual scavengers in urban areas are *mutatis mutandis* applicable to such a survey in rural areas. Hence, what is applicable to survey and identification contemplated by Sections 11 and 12 is also applicable to the survey and identification as contemplated by Sections 14 and 15 in respect of the manual scavengers in rural areas.

32. If the provisions of Section 13 and 16 are read conjointly, the provisions of Section 13 regarding rehabilitation will apply to the final list of manual scavengers prepared after survey both in urban areas as well as rural areas. Thus, conducting of survey and identification of manual scavengers in urban areas as well rural areas and the publication of consolidated final list of manual scavengers is a condition precedent for rehabilitation of the manual scavengers. In view of sub-section (1) of Section 13, the question of rehabilitation of manual scavengers arises only if the manual scavengers are included in the final list of manual scavengers published in accordance with sub-section (6) of Section 11.

33. Therefore, directions will have to be issued to the State Government to submit a report whether survey and identification of manual scavengers in the State has been conducted and whether final lists have been published. The State Government will have to also inform the Court whether District wise lists are made and whether consolidated State list has been prepared. Moreover, the State will have to place on record whether the District Level Survey Committees have been formed in all the Districts and the State Level Survey Committee has been constituted. The State Government will have to point out the details of the number of meetings held of both the Committees.

34. Section 13 which deals with rehabilitation of manual scavengers reads thus:

"13. (1) Any person included in the final list of manual scavengers published in pursuance of sub-section (6) of Section 11 or added thereto in pursuance of sub-section (3) of Section 12, shall be rehabilitated in the following manner, namely: -

(a) he shall be given, within one month, -

- (i) a photo identity card, containing, *inter alia*, details of all members of his family dependent on him, and
- (ii) such initial, one time, cash assistance, as may be prescribed;

- (b) his children shall be entitled to scholarship as per the relevant scheme of the Central Government or the State Government or the local authorities, as the case may be;
 - (c) he shall be allotted a residential plot and financial assistance for house construction, or a ready-built house, with financial assistance, subject to eligibility and willingness of the manual scavenger, and the provisions of the relevant scheme of the Central Government or the State Government or the concerned local authority;
 - (d) he, or at least one adult member of his family, shall be given, subject to eligibility and willingness, training in a livelihood skill, and shall be paid a monthly stipend of not less than three thousand rupees, during the period of such training;
 - (e) he, or at least one adult member of his family, shall be given, subject to eligibility and willingness, subsidy and concessional loan for taking up an alternative occupation on a sustainable basis, in such manner as may be stipulated in the relevant scheme of the Central Government or the State Government or the concerned local authority;
 - (f) he shall be provided such other legal and programmatic assistance, as the Central Government or State Government may notify in this behalf.
- (2) The District Magistrate of the district concerned shall be responsible for rehabilitation of each manual scavenger in accordance with the provisions of sub-section (1) and the State Government or the District Magistrate concerned may, in addition, assign responsibilities in his behalf to officers subordinate to the District

Magistrate and to officers of the concerned Municipality.”

35. Under Rule 12 of the Manual Scavengers Rules, the identified manual scavengers, one from each family, shall be eligible to receive cash assistance of Rs.40,000/- immediately after identification. Thus, the identification of manual scavengers as per Sections 11 and 14 is very crucial, inasmuch as, only the families of the identified manual scavengers are entitled to receive cash assistance of Rs.40,000/-.

36. Now, we come to the issue relating to insanitary latrines. The duty of identification of insanitary latrines is of the Local Authorities, as provided in Section 4. The State will have to respond by pointing out whether the process of identification of insanitary latrines in the State has taken place in terms of the provisions contained in Rule 10 of the Manual Scavengers Rules. A detailed procedure is laid down for carrying out the said survey of insanitary latrines in Chapter-II of the Rules. As per sub-clause (1) of Rule 10, every Local Authority is required to draw a suitable timetable for carrying out survey of insanitary latrines and publication of the list thereof. A committee is required to be constituted under sub-rule (4) of Rule 10 to monitor the survey and thereafter, publication of final list of insanitary latrines as

contemplated by sub-rule (8) of Rule 10 is to be made. Apart from the duty to conduct survey of insanitary latrines, as per section 17, it is the responsibility of the Local Authorities to ensure that no insanitary latrines are constructed, maintained or used within its jurisdiction. The obligation of the Local Authorities under sub-section (2) of Section 5 read with sub-rule (16) of Rule 10 is to ensure that all the insanitary latrines are either demolished or converted into sanitary latrines at the cost of the occupier. Sub-section (3) of Section 5 provides that if the occupier fails to either demolish insanitary latrine or convert it into a sanitary latrine within the period specified under sub-section (2), the Local Authorities, after giving twenty one days' notice to such occupier are entitled to either convert such insanitary latrine into a sanitary latrine or demolish the insanitary latrine and recover the costs incurred for such conversion or demolition, as the case may be, as provided in the Rules. Sub-rule (16) of Rule 10 provides that such costs can be recovered as arrears of land revenue.

37. Under the second proviso to sub-section (2) of Section 5, there is a power vesting in the State Government to give assistance for conversion of insanitary latrines into sanitary latrines to the occupiers from such categories of persons and on such scale, as may be provided by a notification. There is nothing

placed on record to show that such a notification has been issued. If such a notification is issued, it will help the cause.

38. Section 20 of the Manual Scavengers Act provides that the appropriate Government, by a notification, appoint the inspectors for the purposes of implementing the Manual Scavengers Act. The powers and duties of the Inspectors have been specified in sub-section (2) of Section 20 which read thus:

“20. (1) The appropriate Government may, by notification, appoint such persons as it thinks fit to be inspectors for the purposes of this Act, and define the local limits within which they shall exercise their powers under this Act.

(2) Subject to any rules made in this behalf, an inspector may, within the local limits of his jurisdiction, enter, at all reasonable times, with such assistance as he considers necessary, any premises or place for the purpose of,-

- (a) examining and testing any latrine, open drain or pit or for conducting an inspection of any premises or place, where he has reason to believe that an offence under this Act has been or is being or is about to be committed, and to prevent employment of any person as manual scavenger;
- (b) examine any person whom he finds in such premises or place and who, he has reasonable cause to believe, is employed as a manual scavenger therein, or is otherwise in a position to furnish information about compliance or non-compliance with the provisions of this Act and the rules made thereunder;

- (c) require any person whom he finds on such premises, to give information which is in his power to give, with respect to the names and addresses of persons employed on such premises as manual scavenger and of the persons or agency or contractor employing or engaging them;
 - (d) seize or take copies of such registers, record of wages or notices or portions thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed by the principal employer or agency; and
 - (e) exercise such other powers as may be prescribed.
- (3) Any person required to produce any document or thing or to give any information required by an inspector under sub-section (2) shall be deemed to be legally bound to do so within the meaning of section 175 and section 176 of the Indian Penal Code.
- (4) The provisions of the Code of Criminal Procedure, 1973, shall, so far as may be, apply to any such search or seizure under sub-section (2) as they apply to such search or seizure made under the authority of a warrant issued under section 94 of the said Code".

39. Section 19 is a salutary provision incorporated with the object of ensuring monitoring of the compliance of the provisions of the Manual Scavengers Act which reads thus:

"19. The District Magistrate and the authority authorized under section 18 or any other subordinate officers specified by them under that section shall

ensure that, after the expiry of such period as specified for the purpose of this Act,-

- (a) no person is engaged or employed as manual scavenger within their jurisdiction;
- (b) no one constructs, maintains, uses or makes available for use, an insanitary latrine;
- (c) manual scavengers identified under this Act are rehabilitated in accordance with section 13, or as the case may be, section 16;
- (d) persons contravening the provisions of section 5 or section 6 or section 7 are investigated and prosecuted under the provisions of this Act; and
- (e) all provisions of this Act applicable within his jurisdiction are duly complied with".

40. The State Government by a notification dated 3rd May, 2014 has appointed the Inspectors. However, steps taken by the Inspectors are not placed on record. The powers under Section 18 read with Section 19 have been conferred on the District Magistrates (Deputy Commissioners), the Chief Executive Officers of Zilla Panchayats, all the Commissioners of Municipal Corporations, the Commissioner of Bruhat Bengaluru Mahanagara Palike, the Commissioners of City Municipal Councils, the Chief Executive Officers of Town Municipal

Corporation and Taluk Panchayats. They have been appointed as authorized officers under the notification dated 3rd May, 2014. However, nothing is placed on record to show whether these authorized officers have taken steps as required by Section 19.

41. Memo filed on record dated 8th October, 2020 shows that on 3rd May, 2014, Vigilance Committees have been constituted at Districts and Sub-Divisional level. On the same day, by a notification, the State Monitoring Committee has been constituted. Rule 14 (1) provides that the State Monitoring Committee shall meet at least once in six months. However, the said Committee has hardly met. As far as the Vigilance Committees at Districts level are concerned, the meetings are required to be held at least once in three months. Even on this aspect, there is hardly any compliance.

42. In fact, the grievance made by the petitioner and the 7th respondent is that there is hardly any implementation of the provisions of Sections 5, 6 and 7. Sections 8 and 9 are penal provisions for non-implementation and/or for violation of Sections 5, 6 and 7. Section 10 incorporates a special provision regarding cognizance of the offences punishable under Sections 8 and 9 which reads thus:

"10. No Court shall take cognizance of any offence punishable under this Act except upon a complaint thereof is made by a person in this behalf within three months from the date of the occurrence of the alleged commission of the offence".

There are hardly any prosecutions for the offence punishable under the Manual Scavengers Act. At least no such data is on record. In fact, under Section 22, it is provided that notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence under the said Act is cognizable and non-bailable. Unless penal provisions are properly invoked, there cannot be effective implementation of the Manual Scavengers Act.

43. We must also note here that there are grievances made about non-implementation of the provisions of the Schedule Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and the Rules framed there under. However, there is a separate Public Interest Litigation pending regarding implementation of said Act of 1989 in which, the same will have to be dealt with.

44. Our attention is invited to a meeting convened by the Additional Chief Secretary on 23rd February, 2018 to discuss the implementation of the Manual Scavengers Act, in which, various stakeholders were present. On issue No.1 before the meeting,

several decisions were taken. However, nothing is placed on record to show that any of the decisions taken in the said meeting were implemented. The State Government must place on record the documents showing implementation of the said decisions.

45. It is necessary also to ascertain whether the State Government has issued a notification as contemplated by sub-section (1) of Section 32, designating one of the State Commissions mentioned therein to perform the functions specified in sub-section (1) of Section 31 within the State. One of the important functions under sub-section (1) of Section 31 is to enquire into complaints regarding contraventions of the provisions of the Manual Scavengers Act and to convey the findings to the concerned authorities with recommendations. The other important function of the Commission/Authority nominated under sub-section (1) of Section 32 is to advise the State Government for effective implementation of the provisions of the Manual Scavengers Act.

46. We must note here that the respondent No.7 has relied upon the data published by the Government of India which shows that there are 53,15,715/- (fifty three lakhs fifteen thousand seven hundred and fifteen) insanitary latrines in the State of Karnataka.

This is one indication showing the failure on the part of the concerned Local Authorities and the State Government to implement the provisions of the law in its letter and spirit.

47. To conclude, amongst several important steps, according to us, the following steps are very important which need to be taken for implementation of the Manual Scavengers Act:

- (a) Implementation of the provisions of Section 4 with special emphasis on elimination of the practice of open defecation. This can happen only if adequate number of sanitary community latrines are constructed by the Local Authorities and massive campaign is conducted to stop the practice of open defecation;
- (b) Survey is carried out as contemplated by Section 4(1) (a), 11, 14 read with relevant provisions of Rule 10 and 11;
- (c) Sections 12 and 15 are effectively implemented after giving wide publicity to the said provisions;
- (d) Preparation and publication of the lists of Manual Scavengers at District level;
- (e) Rehabilitation under Section 13 read with Rule 12.

48. Therefore, this Court deems it proper to issue the following interim directions:

- i) The State Government shall place on record the details about the number of First Information Reports registered for the offences punishable under the Manual Scavengers Act, the details of the cases in which charge sheets were filed, the details of the cases which are pending and the details of the cases which resulted into conviction. The figures of cases which resulted into acquittal shall be also placed on record;
- ii) The State Government shall place on record the compliance of the decisions taken in the meeting held on 23rd February 2018 under the Chairmanship of the then Additional Chief Secretary;
- iii) The State Government shall produce necessary material to show that the District Level Survey Committees as contemplated by sub-clause (c) of Rule 2 of the Manual Scavengers Rules have been duly constituted. The State Government shall also call for the data from all the Districts for ascertaining whether the District Level Survey Committees have conducted surveys of manual scavengers and whether the Committees have published the final list of Manual Scavengers of the respective Districts;

- iv) The State Government shall place on record the necessary details as regards the constitution of the State Level Survey Committees as well as the details regarding the number of meetings of the State Level Survey Committee has held and the gist of functions so far discharged by the State level Committee;
- v) The State Government shall place on record comprehensive data about the survey of insanitary latrines throughout the State and the details about the conversion/demolition of insanitary latrines;
- vi) The State Government shall also place on record whether any notification has been issued in exercise of power conferred by the second proviso of subsection (2) of Section 5 of the Manual Scavengers Act;
- vii) The State Government shall place on record the details relating to final publication of the District-wise final lists of Manual Scavengers and the publication of State level final list of Manual Scavengers;
- viii) The State Government shall call for reports from the authorities/authorized officers specified for implementing the provisions of the Manual Scavengers Act under Section 18. The State Government shall ensure that the directions are issued to authorized officers/authorities to comply with the requirements of Section 19;

- ix) The State Government shall place on record the details about number of meetings held at the Districts, Sub-Divisional and the State level Vigilance Committees;
- x) The State Government shall issue directions to all the Local Authorities to implement the provisions of the Manual Scavengers Act and the Rules by specifically referring to the obligations and duties under various provisions. The compliance by the Local Authorities shall be monitored regularly by the State Level Monitoring Committee;
- xi) The State Government shall direct all the Local Authorities to comply with the obligations under sub-sections (2) and (3) of Section 4 and to immediately ascertain the requirement of number of sanitary community latrines within their respective jurisdictions and thereafter, make construction of such latrines. The data of such community sanitary latrines constructed in the State shall be placed on record;
- xii) The State Government shall immediately initiate awareness campaign on a large scale for elimination of the practice of open defecation and ensure that all Local Authorities comply with their obligation of eliminating the practice of open defecation in their jurisdiction. The State Government shall take help of

NGOs and the Karnataka State Legal Services Authority to conduct the campaigns in rural areas;

- xiii) The State Government shall place on record the steps taken for rehabilitation of manual scavengers as provided in Section 13 by stating whether there are any Schemes of Central and State Government for rehabilitation of the manual scavengers as contemplated by Section 13;
- xiv) The Union of India shall place on record the copies of the notifications, if any, issued in exercise of the powers under explanation (b) to clause (g) of Section 2 of the Manual Scavengers Act;
- xv) The State Government shall place on record all the details regarding the compliance with the directions contained in paragraph 23.3 of the decision of the Apex Court in the case of ***Safai Karamchari Andolan*** (Supra);
- xvi) The Karnataka High Court Legal Services Committee and all the District Legal Services Authorities will be entitled to convene meetings of all the stakeholders for assisting them for making compliance with the directions issued by this Court and for implementation of the Manual Scavengers Act and the Rules framed thereunder; and

xvii) Compliance affidavits shall be filed by the State Government and all concerned on or before 30th January 2021.

Post the petitions on 2nd February, 2021.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**

Vr