

CWP-PIL-191-2019

Court on its own motion vs. Union of India & Ors.

Present: Mr. Baldev Raj Mahajan, Advocate General, Haryana,
Mr. Deepak Balyan, Addl. A.G., Haryana.

Mr. Suveer Sheokand, Addl. A.G. Punjab.

Ms. Sukhmani Patwalia, Advocate
for U.T. Chandigarh.

Mr. Satya Pal Jain, Addl. Solicitor General of India
with Mr. Arvind Seth, Advocate
for Union of India.

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1. The Local Government Department, Punjab; Urban Local Bodies Department, Haryana, through their respective Principal Secretaries; the Punjab State Pollution Control Board, the Haryana State Pollution Control Board; and the Central Pollution Control Board, through their respective Member Secretaries, are impleaded as respondents No. 5, 6, 7, 8 and 9, respectively, in the memo of parties. The National Safai Karamcharis Finance & Development Corporation through its C.E.O is impleaded as respondent No.10 in the memo of parties. Registry is directed to carry out necessary corrections in the memo of parties.

2. The Court has taken *suo-motu* cognizance of the news item which appeared in "Sunday Tribune" dated 29.09.2019 under the caption "How we have failed the manual scavenger. And Gandhi" and also 'We let a person die for Rs.300, that's our *kirdar*'. There is another article under caption "8 years after SC's intervention, executive unmoved". These articles are authored by Shiv Visvanathan, Vishav Bharti and Satya Prakash.

3. In the article written by Shiv Visvanathan, the learned author has highlighted “A scavenger dying in a drain is the epitome of unthinking urban violence. Manual scavenging has to be rethought and in the failure of rethinking lies the failure of Indian democracy to rethink citizenship and livelihood”. It is also stated that the status of the scavenger is an index of well being. The status of the scavenger shows the emptiness of current Gandhian thought and its alienation from justice. The scavenger is a reminder that democracy has a deodorised conscience. When it wears out, it stinks.

4. In the article written by Vishav Bharti, it is stated that eight decades back, the Mahatma compared the work of a scavenger to the services offered by a mother to her children. Vishav, an LLM student at Guru Nanak Dev University has told the author of the article that in almost 20 per cent of the area, residents make septic tanks outside their homes and the scavengers clean it manually.

5. According to the report of the National Commission for Safai Karamcharis, 30 persons have lost lives in manholes across Punjab since 1993.

6. In article written by Satya Prakash, various articles of the Constitution have been mentioned including a picture showing the man being lowered into manhole with rope.

7. The Parliament has enacted the Act called The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 (hereinafter referred as “Act”) prohibiting employment as manual scavengers, rehabilitation of manual scavengers and their families, and for

matters connected therewith. According to the aims and objects of the Act, the right to live with dignity is also implicit in the Fundamental Rights guaranteed in Part III of the Constitution. 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. The dehumanising 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.

8. Section 2 (d) defines “hazardous cleaning” as under:-

“(d) “hazardous cleaning” by an employee, in relation to a sewer or septic tank, means its manual cleaning by such employee without the employer fulfilling his obligations to provide protective gear and other cleaning devices and ensuring observance of safety precautions, as may be prescribed or provided in any other law, for the time being in force or rules made thereunder;”

Section 2 (e) defines “insanitary latrine” as under:-

“(e) “insanitary latrine” means a latrine which requires human excreta to be cleaned or otherwise handled manually, either *in situ*, or in an open drain or pit into which the excreta is discharged or flushed out, before the excreta fully decomposes in such manner as may be prescribed.”

Section 2 (g) defines “manual scavenger” as under:-

“(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.”

Section 2 (p) defines “septic tank” as under:-

(p) “septic tank” means a water-tight settling tank or chamber, normally located underground, which is used to receive and hold human excreta, allowing it to decompose through bacterial activity;

Section 2 (q) defines “sewer” as under:-

(q) “sewer” means an underground conduit or pipe for carrying off human excreta, besides other waste matter and drainage wastes;

9. Section 4 provides that local authority shall conduct a survey to identify insanitary latrines and provide sanitary community latrines. Section 5 prohibits insanitary latrines and employment and engagements of manual scavenger. Section 7 provides that 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. Section 8 provides that 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. Section 9 provides that 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. Section 11 provides that every municipality shall conduct survey to find out manual scavenges in urban areas. Section 13 provides for their rehabilitation. Chapter V deals with implementing authorities. Section 18 provides that the appropriate Government may confer such powers and impose such duties on local authority and District Magistrate as may be necessary to ensure that the provisions of this Act are properly carried out, and a local authority and the District Magistrate may, specify the subordinate officers, who shall exercise all or any of the powers. Chapter VII provides for constitution of Vigilance Committees. Functions of Vigilance Committee are provided under Section 25. Section 33 enunciates that it shall be the duty of every local authority or other agency to use appropriate technological appliances for cleaning of sewers, septic tanks and other spaces within their control with a view to eliminating the need for the manual handling of excreta in the process of cleaning.

10. The Government of Punjab has issued notification on 08.07.2016 under Section 7 of the Act stating therein that no person, local

authority or any agency shall engage or employ, either directly or indirectly, any person for hazardous cleaning of a sewer or septic tank from the date of publication of the notification. Vide notification dated 20.02.2015, the State of Punjab has appointed all Chief Sanitary Inspectors and Sanitary Inspectors working in various Municipal Corporations, Municipal Councils and Nagar Panchayats in the State of Punjab to be Inspectors for the purposes of the Act.

11. The State of Punjab has placed before us the details of the implementation of Act. According to the information, 1,00,555 sanitary latrines have been constructed. 10,564 community/public toilet seats under Swachh Bharat Mission have been constructed. These details have been provided by the Local Self Government. 86 manual scavengers were identified. 38 manual scavengers were rehabilitated. There are 10 Municipal Corporations in the State of Punjab. There are 157 Nagar Palika/Municipalities. The compensation of Rs.10 lacs has been paid to the family of persons who have lost their lives while undertaking hazardous jobs in districts of Amritsar, Ludhiana, Patiala, Jalandhar, Ferozepur, Barnala, Bathinda and Tarn Taran.

12. The Sub Divisional Engineer, Urban Local Bodies, Haryana only issued a letter dated 30.04.2019 banning hazardous cleaning of sewer/septic tank manually but separate notification under Section 7 has not been issued.

13. According to Section 5, no person, local authority or any agency, after the date of commencement of the Act, permit construction of an insanitary latrine or 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. Every insanitary latrine existing on the date of commencement of the Act, i.e. 18.09.2013, shall either be demolished or be converted into a sanitary latrine by the occupier. According to Section 6, any contract, agreement or instrument entered into or executed before the date of commencement of the Act, engaging or employing a person for the purpose of manual scavenging shall be terminated. Section 7, as noticed hereinabove, specifically provides that 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.

14. The State of Punjab has already issued the notification on 08.07.2016. The State of Haryana has issued a letter dated 30.04.2019. In the State of Haryana also, scavengers have died at Rohtak while cleaning sewer lines. The U.T. Chandigarh has issued notification on 06.04.2018 under Section 7 of the Act.

15. It is duty cast upon the States of Punjab, Haryana and U.T. Chandigarh to ensure that no person is engaged as manual scavengers. No person can be engaged or employed either directly or indirectly for hazardous cleaning of sewer or septic tanks manually. It is extra duty cast upon all the Municipal Corporations, Municipalities and Nagar Panchayats in the States of Punjab, Haryana and U.T. Chandigarh to ensure that all the sewers, septic tanks and others spaces are cleaned by using appropriate

technological appliances.

16. The employment or engagement of manual scavengers for cleaning of human excreta in sewer lines, septic tanks and manholes is violation of their human rights. It is a dehumanising practice. It cannot be permitted to continue in perpetuity.

17. The dignity of every individual including a dignified life is covered under Article 21 of the Constitution of India. Article 42 provides that there should be just and humane conditions of work. Article 46 provides for promotion of education and economic interests of the Scheduled Castes and Scheduled Tribes and other weaker sections.

18. According to the latest Annual Report 2018-2019 published by the Department of Social Justice and Empowerment, there are 34,749 manual scavengers in India identified upto 31.03.2019, in addition to 14,505 manual scavengers identified by 13 States as per the provisions of “Prohibition of Employment as Manual Scavengers and their rehabilitation Act, 2013”. Thus, total of 49,254 manual scavengers have been identified upto 31.03.2019. The National Safai Karamcharis Finance & Development Corporation (NSKFDC), a wholly owned Govt. of India Undertaking under the Ministry of Social Justice & Empowerment was set up on 24.01.1997 as an Apex Corporation for the all round socio-economic upliftment of the Safai Karamcharis (including waste pickers), Manual Scavengers and their dependents throughout India. Various schemes for disbursement of loans have been launched known as Mahila Samridhi Yojana, Mahila Adhikarita Yojana, Micro Credit Finance, and Swachhta Udyami Yojana. The Ministry of Social Justice and Empowerment has designated NSKFDC as Nodal

Agency for implementing Self Employment Scheme for Rehabilitation of Manual Scavengers. According to it, manual scavengers and their dependents are entitled to one time cash assistance of Rs.40,000/-; skilled development training upto a maximum period of two years with a stipend @ Rs.3000/- per month; loans for sustainable livelihood projects upto Rs.15 lacs at concessional rates of interest with a capital subsidy upto a maximum of Rs.3.25 lacs.

19. According to the news item issued by the Government of India, Ministry of Social Justice & Empowerment, there were 91 scavengers in the State of Punjab.

20. The scavengers are exposed to viral and bacterial infections that affect their skin, eyes, limbs, respiratory and gastrointestinal systems. They live in deplorable conditions. We can take judicial notice of the fact that garbage/waste is dumped on the roads, streets and public places in the cities and villages. There is no segregation of municipal waste. The medical waste is not being treated and disposed of in accordance with law. The walls are defaced by putting unauthorised posters/advertisements etc.

21. Their Lordships of the Hon'ble Supreme Court in **Delhi Jal Board Vs. National Campaign for Dignity and Rights of Sewerage and Allied Workers and others, (2011) 8 Supreme Court Cases 568** have held that the appeal was also illustrative of how the State apparatus is insensitive to the safety and well-being of those who are, on account of sheer poverty, compelled to work under most unfavourable conditions and regularly face the threat of being deprived of their life. In the last 63 years, Parliament and the State Legislatures have enacted several laws for achieving the goals set

out in the Preamble but their implementation has been extremely inadequate and tardy and benefit of welfare measures enshrined in those legislations has not reached millions of poor, downtrodden and disadvantaged sections of the society. The State and its agencies/instrumentalities cannot absolve themselves of the responsibility to put in place effective mechanism for ensuring safety of the workers employed for maintaining and cleaning the sewage system. The human beings who are employed for doing the work in sewers cannot be treated as mechanical robots, who may not be affected by poisonous gases in the manholes. Given the option, no one would like to enter the manhole of sewage system for cleaning purposes, but there are people who are forced to undertake such hazardous jobs with the hope that at the end of the day they will be able to make some money and feed their family. It will be a tragic and sad day when the superior courts will shut their doors for those, who without any motive for personal gain or other extraneous reasons, come forward to seek protection and enforcement of the legal and constitutional rights of the poor, downtrodden and disadvantaged sections of the society. Their Lordships have held as under :-

“1. Leave granted. This appeal filed by Delhi Jal Board for setting aside an interlocutory order passed by the Division Bench of the Delhi High Court whereby it has been directed to deposit Rs.79,000/- with Delhi High Court Legal Services Committee in addition to Rs.1.71 lacs already paid to the families of the deceased worker, namely, Rajan is one of the several thousand cases filed by the State and/or its agencies/instrumentalities to challenge the orders passed by the High Courts for ensuring

that the goal of justice set out in the preamble to the Constitution of India is fulfilled, at least in some measure, for the disadvantaged sections of the society who have been deprived of fundamental rights to equality, life and liberty for last more than 6 decades. The appeal is also illustrative of how the State apparatus is insensitive to the safety and well being of those who are, on account of sheer poverty, compelled to work under most unfavourable conditions and regularly face the threat of being deprived of their life.

2. *The laws enacted by Parliament and State legislatures provide for payment of compensation to the legal representatives of those killed in air, rail or motor accident. The legal representatives of a workman, who dies while on duty in a factory/industry/establishment get a certain amount of compensation. Even those who are killed in police action get compensation in the form of ex-gratia announced by the political apparatus of the State. However, neither the law makers nor those who have been entrusted with the duty of implementing the laws enacted for welfare of the unorganized workers have put in place appropriate mechanism for protection of persons employed by or through the contractors to whom services meant to benefit the public at large are outsourced by the State and/or its agencies/instrumentalities like the appellant for doing works, which are inherently hazardous and dangerous to life nor made provision for payment of reasonable compensation in the event of death.*

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25. *In the last 63 years, Parliament and State Legislatures have enacted several laws for achieving the goals set out in the preamble but their implementation has been extremely inadequate and tardy and benefit of welfare measures enshrined in those legislations has not reached millions of poor, downtrodden and disadvantaged sections of the society and the efforts to bridge the gap between the haves and have-nots have not yield the desired result. The most unfortunate part of the scenario is that whenever one of the three constituents of the State i.e., judiciary, has issued directions for ensuring that the right to equality, life and liberty no longer remains illusory for those who suffer from the handicaps of poverty, illiteracy and ignorance and directions are given for implementation of the laws enacted by the legislature for the benefit of the have-nots, a theoretical debate is started by raising the bogey of judicial activism or judicial overreach and the orders issued for benefit of the weaker sections of the society are invariably subjected to challenge in the higher Courts. In large number of cases, the sole object of this litigative exercise is to tire out those who genuinely espouse the cause of the weak and poor.*

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32. *Given the option, no one would like to enter the manhole of sewage system for cleaning purposes, but there are people who are forced to undertake such hazardous jobs with the hope that*

at the end of the day they will be able to make some money and feed their family. They risk their lives for the comfort of others. Unfortunately, for last few decades, a substantial segment of the urban society has become insensitive to the plight of the poor and downtrodden including those, who, on account of sheer economic compulsions, undertake jobs/works which are inherently dangerous to life. People belonging to this segment do not want to understand why a person is made to enter manhole without safety gears and proper equipments. They look the other way when the body of a worker who dies in the manhole is taken out with the help of ropes and cranes. In this scenario, the Courts are not only entitled but are under constitutional obligation to take cognizance of the issues relating to the lives of the people who are forced to undertake jobs which are hazardous and dangerous to life.

33. *It will be a tragic and sad day when the superior Courts will shut their doors for those, who without any motive for personal gain or other extraneous reasons, come forward to seek protection and enforcement of the legal and constitutional rights of the poor, downtrodden and disadvantaged sections of the society. If the system can devote hours, days and months to hear the elitist class of eminent advocates who are engaged by those who are accused of evading payment of taxes and duties or otherwise causing loss to public exchequer or who are accused of committing heinous crimes like murder, rape, dowry death, kidnapping,*

abduction and even acts of terrorism or who come forward with the grievance that their fundamental right to equality has been violated by the State and/or its agencies/instrumentalities in contractual matters, some time can always be devoted for hearing the grievance of vast majority of silent sufferers whose cause is espoused by bodies like respondent No.1.

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38. In view of the principles laid down in the aforesaid judgments, we do not have any slightest hesitation to reject the argument that by issuing the directions, the High Court has assumed the legislative power of the State. What the High Court has done is nothing except to ensure that those employed/engaged for doing work which is inherently hazardous and dangerous to life are provided with life saving equipments and the employer takes care of their safety and health.

39. The State and its agencies/instrumentalities cannot absolve themselves of the responsibility to put in place effective mechanism for ensuring safety of the workers employed for maintaining and cleaning the sewage system. The human beings who are employed for doing the work in the sewers cannot be treated as mechanical robots, who may not be affected by poisonous gases in the manholes. The State and its agencies/instrumentalities or the contractors engaged by them are under a constitutional obligation to ensure the safety of the persons who

are asked to undertake hazardous jobs. The argument of choice and contractual freedom is not available to the appellant and the like for contesting the issues raised by respondent No.1.”

22. In **Safai Karamchari Andolan and others Vs. Union of India and others, (2014) 11 Supreme Court Cases 224**, their Lordships of the Hon'ble Supreme Court have held that the International Conventions ratified by a country are binding on that country to the extent these are not inconsistent with the provisions of the domestic law of the country concerned. Their Lordships have issued mandatory directions by holding that 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, measures for rehabilitation of manual scavengers are required to be taken. Their Lordships have held as under :-

“21. For over a decade, this Court issued various directions and sought for compliance from all the States and Union Territories. Due to effective intervention and directions of this Court, the Government of India brought an Act called “The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013” for abolition of this evil and for the welfare of manual scavengers. The Act got the assent of the President on 18.09.2013. The enactment of the aforesaid Act, in no way, neither dilutes the constitutional mandate of Article 17 nor does it condone the inaction on the part of Union and State Governments under the 1993 Act. What the 2013 Act does in addition is to expressly acknowledge Article 17 and

Article 21 rights of the persons engaged in sewage cleaning and cleaning tanks as well persons cleaning human excreta on railway tracks.

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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 Part 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 gears 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.

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

23. The Central Government has framed the Solid Waste Management Rules, 2016. These Rules were notified on 8.2.2016. Under

Rule 2, these Rules have been made applicable to every urban local body, outgrowths in urban agglomerations, census towns as declared by the Registrar General and Census Commissioner of India, notified areas, notified industrial townships, areas under the control of Indian Railways, airports, airbases, Ports and harbours, defence establishments, special economic zones, State and Central government organisations, places of pilgrims, religious and historical importance as may be notified by respective State government from time to time and to every domestic, institutional, commercial and any other non residential solid waste generator situated in the areas except industrial waste, hazardous waste, hazardous chemicals, bio medical wastes, e-waste, lead acid batteries and radio-active waste, that are covered under separate rules framed under the Environment (Protection) Act, 1986.

24. The Central Government has framed the Rules called as Bio-Medical Waste Management Rules, 2016. These Rules have come into force w.e.f. 28.3.2016. Rule 3 of the Rules is the dictionary clause. The duties of operator of a common bio-medical waste treatment and disposal facility are provided under Rule 5 of the Rules of 2016. The duties of authorities are provided under Rule 6.

25. It is thus, evident that the occupier has to take as many as 20 steps to ensure scientific disposal of medical waste including making a provision within the premises for a safe, ventilated and secured location for storage of segregated biomedical waste; to dispose of solid waste other than bio-medical waste in accordance with the provisions of respective waste management rules; not to give treated bio-medical waste with municipal

solid waste and to impart training to all health workers etc.

26. The Municipal bodies/Panchayats are required to dispose all the waste garbage in a scientific method to avoid contamination of all rivers and seepage of harmful chemicals in the underground water. The non-scientific disposal of garbage also causes air pollution which degrades the quality of air and public health. Every citizen has a fundamental right to get clean and fresh air under Article 21 of the Constitution of India. The statutory authorities are remiss in discharge of their duties. The municipal laws require scientific disposal of garbage. The garbage is required to be collected, stored, segregated and transported and disposed of in a scientific manner in landfills. It is the responsibility of the States of Punjab, Haryana and U.T. Chandigarh also to ensure that the provisions of Environmental Protection Act, 1986 and the Rules, framed thereunder, are followed in letter and spirit. It is the duty of the Secretary, Executive Officers, Municipality/Panchyati Raj Institutions to ensure that the Solid Waste Management Rules, 2016 are implemented in letter and spirit.

27. According to the Status Report on Municipal Solid Waste Management, as per the Survey conducted by the Central Pollution Control Board between the years 2009-2012, 1,27,486 TPD (Tons per day) municipal solid waste is generated in the country during 2011-12, out of which, 89,334 TPD (70%) of MSW has been collected and 15,881 TPD (12.45%) is processed or treated.

28. According to the norms laid down by the Municipal Solid Waste Management Manual published by the Ministry of Urban Development, it is essential to segregate the wastes into wet waste (kitchen

waste) and dry waste (recyclable waste and others). It is also provided therein that the street cleaning is a fundamental service ensuring clean and hygienic urban conditions. The workers undertaking cleaning of municipal waste should be provided with uniforms, shoes, gloves and other implements etc. for their safe and easy working. Planning for street cleaning should be evolved according to the norms. The character of street and frequency of sweeping is as follows: -

<i>Class</i>	<i>Character of Street</i>	<i>Frequency of Sweeping</i>
A.	City centre-shopping areas	Daily/twice, depending on need
B.	Market areas	Daily
C.	Minor streets	Daily
D.	Sub-urban shopping streets	Daily
E.	Residential streets	Daily
F.	Roads and streets having no households/ establishments on either sides	Once a week

29. The workers who are sweeping the roads at nights should be provided with adequate protection equipments. Proper uniforms which have reflectors be provided with ID cards. They should also be provided with the brooms with sufficiently long handle and the length of the broom should be 80-85 cms. and the weight of the broom should not be more than 1 kilogram. There should be proper disposal of solid waste in landfills. The municipal solid waste is also required to be treated by composting or by incineration and/or by deploying the Bio-methanation process as well as Pyrolysis methodology.

30. Their Lordships of Hon. Supreme Court in ***Dr. B.L. Wadehra v. Union of India & others (1996) 2 SCC Page 594*** have held that the

residents have constitutional as well as statutory right to live in a clean city. The authorities concerned have a mandatory duty to collect and dispose of the garbage/waste generated from various sources in the city. Non availability of funds, inadequacy or inefficiency of staff, insufficiency of machinery etc. cannot be pleaded as grounds for non-performance of the statutory obligations.

31. The essential objective of all provisions relating to waste disposal must be the protection of human health and the environment against harmful effects caused by the collection, transport, treatment, storage and tipping of waste.

32. The zenith of civilization can only be gauged by how clean the cities and towns are. Every citizen has a fundamental as well as human right to clean and hygienic environment. Every citizen, at the same time, has a fundamental duty to maintain the cleanliness in and around his abode. There are more persons indulging in littering, dumping of garbage at public places vis-à-vis the persons employed to clean up the mess. We must keep and maintain the dignity of the workers employed to clean the cities and towns. The Court can take judicial notice of the fact that the government/public properties, walls, religious places, educational institutions, offices, sign boards, signage, are disfigured/defaced by unscrupulous persons by pasting the posters/pamphlets on them. Pasting of posters/pamphlets destroys the aesthetic values of cities and towns. Stringent law is required to be made to prohibit the persons from defacing/disfiguring the public property(s) including government or private place or building, monument, statue, post, wall, fence, tree or contrivance visible to a person being in, or passing

along, any public place.

33. An endeavour should be made to protect the natural environment and protect the health and safety of people and also remove aesthetical by unpleasant sight and smell related to solid waste management.

34. The municipal governance has failed to provide green and clean environment to its citizens. The local bodies are required to improve municipal governance and ensure efficient service delivery. According to the 14th Finance Commission report, the municipal revenue accounted for a little more than 1% of the GDP in India in 2012-13. It is much less than emerging economics such as Brazil and South Africa, where it was 5% and 6%.

35. Every citizen has a legitimate expectation and right to sue the elected representatives, officers/officials of the Municipal Corporation, Municipalities and Panchayati Raj Institutions, individually and by way of collective action claiming damages/compensation on the principle of accountability in case these officers remain remiss in discharge of their statutory duties cast upon them by the Municipalities Act, Municipal Corporation Act and Panchayati Raj Act.

36. Accordingly, we issue following mandatory directions :-

(i) The hazardous cleaning of sewers, septic tanks and manholes manually is banned in the States of Punjab, Haryana and U.T. Chandigarh.

(ii) The States of Punjab, Haryana and U.T. Chandigarh are directed to ensure that no person is employed to clean septic tank, sewer line including manholes. The sewer lines, septic tanks, manholes shall be cleaned mechanically by employing the latest technological appliances.

(iii) The States of Punjab, Haryana and U.T. Chandigarh are directed to provide financial assistance, incentives for the use of modern technology for cleaning of sewers, septic tanks and other spaces within their control within a period of three months from today.

(iv) The States of Punjab, Haryana and U.T. Chandigarh are directed to ensure that every insanitary latrine existing in their jurisdiction is demolished within three months from today. No person shall be permitted to construct insanitary latrine.

(v) The States of Punjab, Haryana and U.T. Chandigarh are directed to ensure that no person throughout the States of Punjab, Haryana and U.T. Chandigarh is engaged or employed either directly or indirectly as manual scavenger.

(vi) All the contracts, agreements or other instruments entered into or executed engaging or employing a person for the purpose of manual scavenging in the States of Punjab, Haryana and U.T. Chandigarh are declared void.

(vii) The States of Punjab, Haryana and U.T. Chandigarh are directed to ensure that every manual scavenger identified and included in the final list of manual scavengers published under sub section (6) of Section 11 or added thereto in pursuance of sub section (3) of Section 12 shall be rehabilitated within three months. He shall be allotted a residential plot and financial assistance for constructing house or a ready built house. One adult member of his family shall be given training in a livelihood skill. One adult member of his family is ordered to be given subsidy and concessional loan for taking up an alternative occupation. It shall be the

responsibility of the District Magistrate of the concerned district to ensure rehabilitation of the manual scavengers as directed hereinabove.

(viii) The States of Punjab, Haryana and U.T. Chandigarh are directed to give pension of Rs.35,000/- every month to the legal heirs of the persons engaged in private capacity, in the State/Municipal bodies/Panchayati Raj institutions, who have died while cleaning sewers, septic tanks and manholes till the age of 60 years.

(ix) The States of Punjab, Haryana and U.T. Chandigarh are directed to provide Class IV jobs to the legal heirs of the persons who have died while cleaning sewers, septic tanks and manholes through employment by the Municipal Corporations, Municipalities, Nagar Panchayats or by private persons within a period of three months.

(x) The States of Punjab, Haryana and U.T. Chandigarh are directed to initiate criminal proceedings against the person violating Sections 5, 6 & 7 of the Act.

(xi) The State of Haryana is directed to issue notification under Section 7 of the Act banning hazardous cleaning of sewer/septic tank manually within 15 days from today.

(xii) The Union of India is directed to implement Self Employment Scheme for Rehabilitation of Manual Scavengers. The National Safai Karamcharis Finance & Development Corporation is directed to sanction the loans as per its various schemes to the scavengers and their family members.

37. The following mandatory directions are also issued for proper management of solid waste: -

A. We direct that all the streets, public premises such as parks etc. shall be surface cleaned on daily basis, including on Sundays and Public holidays by Municipal Corporations, Municipal Councils, Panchayats and Panchayati Raj Institutions.

B. All the Officers of the municipal corporations, municipal bodies, Nagar Panchayats, Panchayati Raj Institutions shall ensure that no garbage, rubbish, filth etc. is deposited by any person in any street or public place.

C. All the workers deployed for cleaning the streets and removal of garbage including bio-degradable medical waste should be provided with necessary equipments including uniforms, shoes, gloves and other implements etc. for winters and summers separately and also proper uniforms which have reflectors and be provided with ID cards also.

D. All the streets and roads falling within the municipal areas, municipal corporation/Panchayati Raj institutions should be surface cleaned in the morning.

E. The Municipal Corporation/Municipal bodies, throughout the States of Punjab and Haryana and the UT Chandigarh, may consider to provide two dustbins (for collection of dry and wet bio-medical waste), free-of-cost, to all the households in the Municipal area, depending on their financial health.

F. All the local bodies including Village Panchayats throughout the States of Punjab and Haryana and the UT Chandigarh are directed to ensure door to door collection of segregated solid waste from all households including slums and informal settlements, commercial, institutional and

other non residential institutions.

G. There shall be a general direction to all the Waste Generators, throughout the States of Punjab and Haryana and the UT Chandigarh, not to litter i.e. throw or dispose of any waste such as paper, water bottles, liquor bottles, soft drink cans, tetra packs, fruit peel, wrappers, etc., or burn or bury waste on streets, open public spaces, drains, water bodies and to segregate the waste at source. The local bodies must also consider imposing heavy fine on the violators of the order.

H. The local authorities and Village Panchayats throughout the States of Punjab and Haryana and the UT Chandigarh are further directed to set up material recovery facilities or secondary storage facilities with sufficient space for sorting of recyclable materials.

I. The municipal authorities and Gram Panchayats throughout the States of Punjab and Haryana and the UT Chandigarh are further directed to establish waste deposition centres for domestic hazardous waste.

J. The local authorities and Gram Panchayats throughout the States of Punjab and Haryana and the UT Chandigarh are directed to ensure safe storage and transportation of the domestic hazardous waste to the hazardous waste disposal facility.

K. All the local bodies of States of Punjab and Haryana and the UT Chandigarh are directed to ensure that the Sweepers, throughout their respective States, do not burn leaves collected from street sweeping and with a further direction to store them separately and hand over the same to the waste collectors or agency authorised by the local body.

L. All the local bodies throughout the States of Punjab and

Haryana and the UT Chandigarh are directed to transport segregated bio-degradable waste to the processing facilities like compost plant, bio-methanation plant. They are further directed to transport non-biodegradable waste to the respective processing facilities.

M. All the local bodies throughout the States of Punjab and Haryana and the UT Chandigarh are hereby directed to construct, operate and maintain the solid waste processing facilities either individually or through any agency within six months.

N. All the local bodies throughout the States of Punjab and Haryana and the UT Chandigarh are directed to construct, operate and maintain the sanitary landfills as per the norms laid down in Schedule-I of the Rules of 2016.

O. The Principal Secretary(s), Urban Development Department, Gram Panchayat and Rural Development are directed to create public awareness through information, education and communication campaign and educate the waste generators by educating the citizens (i) not to litter (ii) minimise generation of waste (iii) reuse the waste to the extent possible (iv) practice segregation of waste into bio-degradable, non-biodegradable (v) practice home composting, vermin-composting (vi) wrap securely used sanitary waste as and when generated in the pouches provided by the brand owners (vii) storage of segregated waste at source in different bins. The general public be also directed to hand over segregated waste to the waste pickers, waste collectors, recyclers or waste collection agencies.

P. All the local bodies throughout the States of Punjab and Haryana and the UT Chandigarh are directed to put suitable hoardings at

tourist destinations to appraise local as well as tourists not to dispose of any waste such as paper, water bottles, liquor bottles, soft drink cans, tetra packs etc. on the streets or into water bodies or down the hills.

Q. All the municipal authorities, throughout the States of Punjab and Haryana and the UT Chandigarh are directed to ensure that the bio medical waste is disposed of strictly as per the provisions of Bio Medical Waste Management Rules, 2016. The authorities mentioned in these rules shall be personally responsible for following the mandate of Rules in letter and spirit, failing which contempt proceedings may be initiated against them.

R. There shall also be a direction to all the municipal authorities throughout the States of Punjab and Haryana and the UT Chandigarh to ensure that there is no mixing of bio-medical waste with other municipal solid waste.

S. The State Governments of Punjab and Haryana and the UT Chandigarh are directed to ensure that the Municipal Corporations and Municipal bodies frame suitable bye-laws to prohibit the ugly practice of pasting posters/pamphlets on the government/public properties including walls, religious places, educational institutions, offices, sign boards, signage etc., within a period of three months from today.

T. It is also made clear that in order to make the cities livable, all the Municipal Commissioners, Additional Commissioners, Deputy Commissioners, Executive Officers, Elected Members of the Municipalities, Municipal Corporations and Panchayati Raj Institutions throughout the States of Punjab and Haryana and the UT Chandigarh would be personally

responsible to ensure that no garbage is visible within their territorial jurisdiction.

U. All the Municipalities, Municipal Corporations and Panchayati Raj Institutions throughout the States of Punjab and Haryana and the UT Chandigarh are directed to consider granting one month salary as Bonus to the Safai Karamcharis taking into consideration the arduous and hazardous duties being discharged by them.

39. All the Deputy Commissioners throughout the States of Punjab and Haryana and the UT Chandigarh are directed to file the status report on or before February 12, 2020.

List on 17.02.2020.

(RAJIV SHARMA)
ACTING CHIEF JUSTICE

(HARINDER SINGH SIDHU)
JUDGE

October 03, 2019.
ndj/Davinder Kumar