

IN THE HIGH COURT OF ORISSA AT CUTTACK

SUO MOTU W.P.(C) No.14589 of 2021-PIL

In Re: Deaths of Sanitation Workers

-versus-

State of Odisha and Others

...

Opp. Parties

CORAM:

THE CHIEF JUSTICE

MR. JUSTICE B. P. ROUTRAY

Or.
No. Date

ORDER

02. 19.04.2021
1. The shameful practice of making persons belonging to the underprivileged and poorest sections of Indian society undertake the hazardous manual cleaning of sewers and septic tanks continues unabated notwithstanding the enactment of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 ('PEMSR Act'). It shocks the judicial conscience, as it should the society's collective conscience.
 2. The most recent instance is the tragedy that unfolded in Cuttack city on 15th April, 2021 at Sector-10, CDA, where two sanitation workers engaged in manually cleaning a sewer line died of asphyxiation. A report in the Bhubaneswar Edition of 'New Indian Express' dated 16th April 2021 pointed out that the condition of the third worker was critical. Reportedly, one of the sanitation workers entered the sewer line, which was over 15 feet deep, became unconscious inside the tank due to asphyxiation. Two other sanitation workers went inside to rescue him, but they too fell unconscious. The three were

brought out with the help of firefighters and rushed to the SCB Medical College & Hospital, Cuttack. The hospital authorities declared two of them, Bishnu Naik of Badamba and T.Prabhakar of Pattapol area of Cuttack brought dead, whereas the third one, S. Siba Rao was stated to be receiving treatment. All of them were in the age group of 30 to 35 years.

3. This comes close on the heels of another tragic incident that took place in Odisha's capital Bhubaneswar on 19th March, 2021, when two sanitation workers, Sunaram Sardar (55) hailing from Jharkhand and Silup Birua (25) from Mayurbhanj engaged in the maintenance of a sewage tank at Brahmeswar Bagh area under Badagada police limits in the city, died of asphyxiation. In that incident Sunaram Sardar first entered the septic tank that was over 25 feet deep, without any protective gear, and became unconscious due to asphyxiation. Silup Birua then entered the tank, again without any protective gear, for his rescue. He too became unconscious. Both of them were rescued by Orissa fire brigade service, but were brought dead to the local hospital.

4. When Article 17 was written into the Indian Constitution more than seventy years ago, abolishing untouchability, forbidding its practice in any form and declaring that enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law, it was with the hope that the practice of untouchability in general and manual scavenging in particular would not continue in a free and independent India. It is inexplicable that a democratic

country governed by the Constitution, the Preamble to which assures to all Indians social justice, equality of status and of opportunity, fraternity assuring the dignity of the individual, should witness, and condone, in the 21st century, the deplorable practice of making humans enter sewer lines and septic tanks that require cleaning, without protective gear, and in that process sacrifice their lives for the better health of their fellow beings. According to the Ministry of Social Justice and Empowerment, Government of India, in the last five years at least 340 sanitation workers in India lost their lives cleaning sewers and septic tanks.

5. It appears that in both incidents, there were egregious violations of the mandatory provisions contained in Section 7 read with Section 2 (1) (d) and Section 9 of the PEMSR Act which read thus:

“Section 2 Definitions

(1) In this Act, unless the context otherwise requires -

...

(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;

(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.

Explanation.—For the purpose of this clause,—

(a) “engaged or employed” means being engaged or employed on a regular or contract basis;

(b) a person engaged or employed to clean excreta with the help of such devices and using such protective gear, as the Central Government may notify in this behalf, shall not be deemed to be a ‘manual scavenger’;

“Section 7. Prohibition of persons from engagement or employment for hazardous cleaning of sewers and septic tanks. - 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 9. Penalty for contravention of section 7. – 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 fine years or with fine which may extend to fine lakh rupees, or with both.”

6. Rules 3 to 8 of the PEMSR Rules, 2013 contain other mandatory provisions on the obligations of an employer

towards an employee engaged in the cleaning of sewer lines and septic tanks.

7. The Parliament enacted the PEMSR, which became operative on 1st October 2013, after finding that the existing law, viz., the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 ('EMSCDLP Act') was not stringent enough to eliminate the evils of insanitary latrines and manual scavenging. In *Safai Karmachari Andolan v. Union of India (2014) 11 SCC 224*, the Supreme Court of India that the PEMSR Act "expressly acknowledges the Article 17 and Article 21 rights of the persons engaged in sewage cleaning and cleaning tanks as well as persons cleaning human excreta on railway tracks." What is immediately relevant are the following directions issued by the Supreme Court in para 23 of the aforesaid judgment:

"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. ...

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 karmachari 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.”

8. In *Safai Karmachari Andolan v. Union of India* (*supra*), the Supreme Court noted that the official statistics issued by the Ministry of Social Justice and Empowerment for the year 2002-2003 “puts the figure of identified manual scavengers at 6,76,009. Of these, over 95% are Dalits (persons belonging to the scheduled castes), who are compelled to undertake this denigrating task under the garb of ‘traditional occupation’. The manual scavengers are considered as untouchables by other mainstream castes and are thrown into a vortex of severe social and economic exploitation.”

9. This then brings to fore another dimension to the social evil involving deaths of sanitation workers and/or manual scavengers. Where such persons belong to the scheduled castes (SCs) or the scheduled tribes (ST), the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of

Atrocities) Act, 1989('SC/ST POA Act') might get attracted. In particular Section 2 (1) (bf) of the SC/ST POA Act defines 'manual scavenger' to have the same meaning assigned to that expression in Section 2 (1) (g) of the PEMSAR Act. Under Section 3 (1) (j) of the SC/ST POA Act, making a member of a SC or ST do manual scavenging or employing or permitting the employment of such member for such purpose by a person not belonging to the SC or ST is described as an offence of atrocity punishable with simple imprisonment for a minimum six months and a maximum of five years and with fine. Under Rule 12 (4) of the SC/ST POA Rules, 1995 the District Magistrate has been made responsible for ensuring relief in cash and kind to victims of atrocity, in terms of Annexure I and II to the Schedule to the said Rules. For the atrocity defined in Section 3 (1) (j) of the SC/ST POA Act, a compensation of Rs. 1 lakh to the victim is contemplated.

10. Turning to the two incidents at hand, the Court is conscious that the Secretary, Housing & Urban Development Department, Govt. of Odisha has ordered a joint probe into the Cuttack incident by the Deputy Commissioner (Enforcement), Cuttack Municipal Corporation and the Sadar Tahsildar, Cuttack. Further it appears that the National Human Rights Commission (NHRC) has called for a report on the incident at Bhubaneswar.

11. Nevertheless, this Court considers it appropriate to take *suo motu* notice of the tragic deaths of sanitation workers in the two recent incidents at Bhubaneswar and Cuttack in order to

ensure that the above directions of the Supreme Court and all the relevant provisions of the PEMSAR Act and the Rules thereunder are implemented in letter and spirit. Further, this should not be limited to the above two incidents, but others that have taken place since 1993, as directed by the Supreme Court in para 23.3 of its judgment in ***Safai Karmachari Andolan v. Union of India*** (*supra*). The Court also considers it necessary to examine the various legal issues that arise from such incidents, including the applicability of the SC/ST POA Act and the Rules thereunder.

12. In taking *suo motu* notice of the incidents, this Court would like to recapitulate the following observations of the Supreme Court of India in ***Delhi Jal Board v. National Campaign for Dignity & Rights of Sewerage & Allied Workers (2011) 8 SCC 568***, made while negating the challenge to an interlocutory order passed by the Delhi High Court mandating payment of a compensation of Rs.2.25 lakhs for the death of a sanitation worker:

“It is the duty of the judicial constituent of the State like its political and executive constituents to protect the rights of every citizen and every individual and ensure that everyone is able to live with dignity. 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. 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.”

13. The Court accordingly issues notice to the following Opposite Parties:

- (i) The State of Odisha through its Chief Secretary;
- (ii) The Secretary, Housing & Urban Development Department, Government of Odisha, Bhubaneswar
- (iii) The Secretary, Scheduled Castes & Scheduled Tribe Welfare Department, Government of Odisha;
- (iv) The Public Health Engineering Organization, Government of Odisha
- (v) The Collector, Cuttack
- (vi) The Collector, Khurda at Bhubaneswar
- (vii) Commissioner, Cuttack Municipal Corporation
- (viii) Commissioner, Bhubaneswar Municipal Corporation
- (ix) LC Infra Project Private Limited, which is stated to be engaged in the maintenance works of the sewage tanks in the city of Bhubaneswar.

14. Mr. P.K. Muduli, learned Advocate accepts notice on behalf of the Opposite Parties at (i) to (vi) above. Notice be issued to the Standing Counsels appearing for both CMC and BMC. Notice by registered Speed Post, without process fee, be issued to Opposite Parties (ix), at the address to be provided within three days by Mr. Muduli to the Registry, returnable by 10th May, 2021.

15. The following directions are issued to Opposite Parties (i) to (viii) for immediate compliance:

(i) Ensure that compensation of Rs.10 lakhs each is disbursed forthwith to the family of each of the sanitation workers who died in the aforementioned tragic incidents – in Bhubaneswar on 19th March, 2021 and in Cuttack on 15th April, 2021.

(ii) Ensure that the criminal law process has been set in motion in respect of the two incidents as required under Section 9 read with Section 10 of the PEMSR Act.

(iii) Examine, in case any of the victims belongs to the SC or ST, where the relevant provisions of the SC & ST (POA) Act and the Rules thereunder require to be activated.

(iv) Inform the Court about the status of the enquiry on the incident in Cuttack, and if the enquiry is complete, to place the copy of the enquiry report and the corrective steps taken pursuant thereto.

16. Before the next date, the Collector, Cuttack, the Collector, Khurda, the Commissioner, CMC and the Commissioner, BMC will each file an affidavit of compliance with the above directions. The State of Odisha will file a separate affidavit before the next date listing out the steps it has taken thus far to implement, in letter and spirit, the various provisions of the PEMSR Act and the Rules thereunder, as well as the EMSCDLP Act, including statistics relating to deaths of sanitation workers since 1993, the compensation paid in respect of each such death, whether the identified manual scavenger and/or sewer/septic tank cleaner has been rehabilitated and whether the parties who violated the law have been prosecuted and punished according to law. Separate affidavits shall be filed, again by the next date, by Opposite Parties (iv) and (ix) explaining why the sanitation workers who died in the tragic incidents at Cuttack and Bhubaneswar respectively were asked to undertake hazardous cleaning of the sewer line and septic tank.

17. The Court appoints Mr. Bibhu Prasad Tripathy, Advocate and Mrs. Pami Rath, Advocate as the amicus curiae (AC) to assist the Court in the matter. The Registry shall forthwith supply to each of the AC a copy of the news clipping, a copy of this order and copies of the affidavits of the Opposite Parties as and when received.

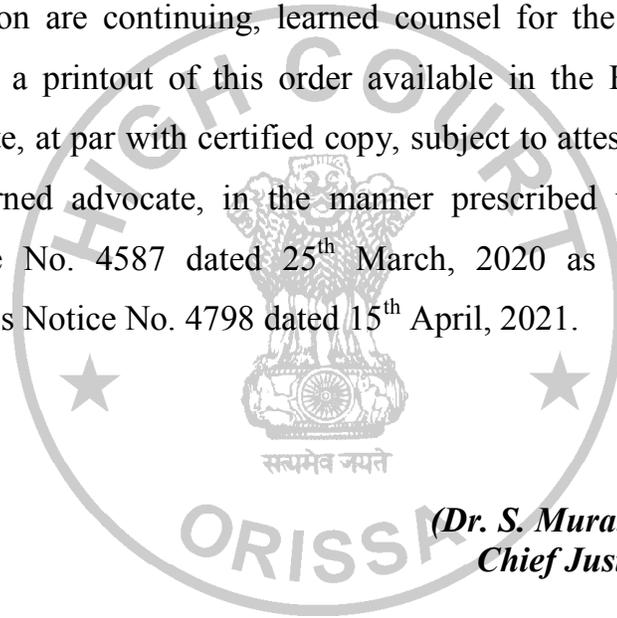
18. The Court requests the Secretary, Odisha State Legal Services Authority (OSLSA) to immediately contact the family of the victims, both in Cuttack and in Bhubaneswar, and if they

need legal assistance, to forthwith inform both the AC. The Secretary, OSLSA will also remain present in virtual mode on the next date.

19. List this matter on 10th May, 2021.

20. A copy of this order shall be delivered forthwith to the Secretary OSLSA for compliance.

21. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of this order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No. 4587 dated 25th March, 2020 as modified by Court's Notice No. 4798 dated 15th April, 2021.



(Dr. S. Muralidhar)
Chief Justice

(B.P. Routray)
Judge