

MANU/MH/2811/2021

**IN THE HIGH COURT OF BOMBAY**

Writ Petition (L) No. 15651 of 2021

Decided On: 17.09.2021

Appellants: **Vimla Govind Chorotiya and Ors.**  
**Vs.**  
Respondent: **State of Maharashtra and Ors.**

**Hon'ble Judges/Coram:**

*Ujjal Bhuyan and Madhav J. Jamdar, JJ.*

**Counsels:**

*For Appellant/Petitioner/Plaintiff: Isha Singh*

*For Respondents/Defendant: P.H. Kantharia, G.P., Prashant Mohite and Gurnath R. Sawant*

**ORDER**

**Ujjal Bhuyan, J.**

**1 .** Heard Ms. Isha Singh, learned Counsel for the Petitioners; Ms. P.H. Kantharia, learned Government Pleader for Respondent Nos. 1 and 2; and Mr. Prashant Mohite, learned Counsel for Respondent No. 3.

**2 .** This case should be an eye opener for all of us. Three widows are before us seeking compensation on account of death of their husbands who were manual scavengers and died while performing their duties in the premises of Respondent No. 3.

**3 .** In this connection a first information was registered with Govandi police station bearing FIR No. 261 of 2019 under section 304(A) of Indian Penal Code. As per statement of the informant i.e. Mr. Uttam Kangne, Sub-Inspector of Police serving in the Govandi police station, on 23/12/2019 at about 11.45 am one resident of Respondent No. 3 informed the police station that three persons had fallen into the drainage tank of Respondent No. 3; when the informant went to the place of occurrence, he found the drainage tank covers open. Fire brigade personnel could extract three persons out of drainage tank but on reaching Shatabdi hospital they were declared dead on arrival.

**4 .** Petitioners filed representation on 8/01/2020 before Respondent No. 2 seeking compensation but no such compensation was paid to them compelling them to approach this Court by way of the present Writ Petition seeking the following reliefs:

(i) Respondents be directed to pay an amount of Rs. 10,00,000/- each to the three Petitioners as compensation;

(ii) Respondents be directed to pay additional amount of Rs. 1,00,000.00 each to the three Petitioners for violation of the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989;

(iii) For a direction to the Respondents to adopt rehabilitation measures of the Petitioners in terms of the Prohibition of Employment as Manual Scavengers and

their Rehabilitation Act, 2013.

**5 .** Respondent No. 2 has filed an affidavit through Mr. Sandeep Laxman Thorat, Tahsildar of Kurla. In the affidavit he has stated that he had conducted hearing after the matter was endorsed to him by the Sub-Divisional Officer, Eastern Suburban District, Mumbai whereafter he had passed the order dated 3/09/2021.

**5.1.** Referring to the judgment of the Supreme Court in *Safai Karamchari Andolan Vs. Union of India* reported in MANU/SC/0233/2014 : (2014) 11 SCC 224, he has stated that Government Resolution dated 12/12/2019 has been issued by the Social Justice and Special Assistance Department, Government of Maharashtra. As per the said Government Resolution in case of death of manual scavengers in private sector, compensation of Rs. 10,00,000.00 has to be paid by the concerned head of the private sector/area to the families of the victim.

**5.2.** Elaborating further he has stated that in the course of hearing he had issued demand notice dated 15/12/2020 to Respondent No. 3 as well as to M/s. Concrete Builders. On receipt of such demand notice M/s. Concrete Builders has preferred an appeal before the Sub-Divisional Officer, Eastern Suburban, Mumbai Suburban District. During the appellate proceedings M/s. Concrete Builders deposited an amount of Rs. 3,75,000.00 i.e. 25% of the amount as per demand notice dated 15/12/2020. The aforesaid amount has since been deposited in the account of the Tahsildar. The deponent has stated that he had conducted the hearing whereafter he had passed the order dated 3/09/2021 by which M/s. Concrete Builders and M/s. Greenact Enviro Engineering Pvt. Ltd. have been made jointly liable to pay compensation of Rs. 10,00,000.00 each to the families of the deceased workers working in private sector having regard to the agreement dated 1/02/2018 between the developer M/s. Concrete Builders and the agency M/s. Greenact Enviro Engineering Pvt. Ltd. as well as the agreement dated 20/08/2018 between M/s. Concrete Builders and Respondent No. 3 - society. The deponent has further stated that compensation amount of Rs. 10,00,000.00 each for the Petitioners has not been deposited by M/s. Concrete Builders or by M/s. Greenact Enviro Engineering Pvt. Ltd.

**6.** Ms. Isha Singh, learned counsel for the petitioners submits that as per direction of the Supreme Court in *Safai Karmachari Andolan (supra)* petitioners being widows of deceased sanitary workers are entitled to compensation of Rs. 10 lakhs each. She has submitted a compilation of newspaper articles and decisions of various High Courts and thereafter submits that in the case of death of manual scavengers while carrying out manual scavenging even in private sector there is strict liability on the State and therefore it is the State which must pay the compensation. That apart, the State must also take effective steps for rehabilitation of the family members of the deceased persons in terms of section 13 of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013.

**6.1.** Ms. Kantharia, learned Government Pleader appearing for the State has relied upon the averments made in the reply affidavit of respondent No. 2. She has also placed reliance on the Government Resolution dated 12th December, 2019 and submits that as per serial No. 11 of the table contained in the Government Resolution, in case of death of sweepers in private sector, the head of the private sector would have to pay the compensation. The concerned Tahsildar has rightly decided quantum of compensation at the rate of Rs. 10 lakhs each to the petitioners but that amount would have to be paid by the developer and by the agency with whom the developer had entered into a contract. She submits that M/s. Concrete Builders i.e. the developer has deposited Rs.

3,75,000.00 with the Tahsildar which works out to Rs. 1,25,000.00 for each of the petitioners. On a query by the court she submits that three cheques each for Rs. 1,25,000.00 are with her which can be handed over to the petitioners in the court itself. However, Ms. Kantharia would like to assert that having regard to the fact that the incident took place within the premises of respondent No. 3, the said respondent would also be equally responsible and cannot escape liability.

**7.** We have heard at considerable length submissions of Ms. Isha Singh, learned Counsel for the Petitioners; Ms. P.H. Kantharia, learned Government Pleader for Respondent Nos. 1 and 2 - State; and Mr. Prashant Mohite, learned Counsel for Respondent No. 3.

**8.** It may be mentioned that in the year 1993 Parliament enacted the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 which provides for prohibition of employment of manual scavengers as well as construction or continuance of dry latrines and for the regulation of construction and maintenance of water seal latrines and for matters connected therewith or incidental thereto. Due to effective intervention and directions of the Supreme Court in *Safai Karmachari Andolan* (supra), 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. Thus, the 2013 Act is an additional armour to the 1993 Act, expressly acknowledging the rights of persons engaged in sewage cleaning and cleaning tanks as well as persons cleaning human excreta on railway tracks under Articles 17 and 21 of the Constitution of India.

**9.** The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 ("for short "the 2013 Act") was enacted by the Parliament 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. Statement of objects and reasons for introduction of the aforesaid 2013 Act reads as under:

"Statement of Objects and Reasons:- Elimination of dry latrines and manual scavenging and the rehabilitation of manual scavengers in alternate occupations has been an area of high priority for the Government. Despite the concerted efforts made in the past to eliminate the dehumanising practice of manual scavenging, the practice still persists in various parts of the country. Existing laws have not proved adequate in eliminating the twin evils of insanitary latrines and manual scavenging. These evils are inconsistent with the right to live with dignity which is an essence of the Fundamental Rights guaranteed in Part III of the Constitution. Further, there is a related problem of serious health hazard and safety of the workers employed in the manual cleaning of sewers and septic tanks.

**2.** It is also felt that the existing laws are not stringent enough to eliminate these evil practices. In view of above, there is a need to make comprehensive and stringent provisions for the prohibition of insanitary latrines and employment of persons as manual scavengers, rehabilitation of manual scavengers and their families and to discontinue the hazardous manual cleaning of sewers and septic tanks by the use of technology and for matters connected therewith.

**3.** With a view to eliminate manual scavenging and insanitary latrines and to provide for the rehabilitation of manual scavengers, a multi-pronged strategy

has been worked out in the provisions of the Bill, which consists of legislative as well as programmatic interventions."

**10.** Under section 2 words and expressions used in the 2013 Act have been defined. "Appropriate government" is defined under section 2(1)(b) to mean in relation to Cantonment Boards, railway lands, and lands and buildings owned by the Central Government, a Central Public Sector Undertaking or an autonomous body wholly or substantially funded by the Central Government, means the Central Government and in all other cases, the State Government. Section 2(1)(d) defines "hazardous cleaning" to mean manual cleaning by an employee, in relation to a sewer or septic tank 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.

**11.** Section 3 of the 2013 Act makes it very clear that the provisions of this Act shall have overriding effect notwithstanding anything inconsistent therewith contained in the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 or in any other law, or in any instrument having effect by virtue of any other law.

**12.** Section 5 completely prohibits construction of insanitary latrines and engagement/employment of manual scavengers either directly or indirectly. This prohibition applies equally to individual persons, local authority and any agency. Likewise, as per section 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. Section 9 provides for imposition of penalty for contravention of section 7. It says 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.

**13.** Section 13 is relevant. It provides for rehabilitation of persons identified as manual scavengers by a municipality. As per sub-section (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 manner prescribed in section 13 which includes giving of a photo identity card, providing for details of all family members dependent upon such person; cash assistance; scholarship to children of such person as per the relevant scheme of the Central Government or the State Government or the local authority; allotment of residential plot and providing financial assistance for house construction etc., providing of training to one adult member of his family or in a livelihood skill, and payment of monthly stipend during the period of such training, providing finance by way of subsidy and loan at concessional rate for taking up an alternative occupation on a sustainable basis etc.

**13.1.** Thus what sub-section (1) of section 13 mandates is finalization of list of manual scavengers after carrying out survey under section 11 and after carrying out the identification exercise under section 12. Once such final list is prepared then rehabilitation measures as indicated above are required to be undertaken.

**13.2.** Sub-section (2) of section 13 makes the District Magistrate of the concerned

district responsible for rehabilitation of each manual scavenger in accordance with sub-section (1) of the said section.

**14.** As per section 18, the appropriate government may confer such powers and impose such duties on the local authority and District Magistrate as may be necessary to ensure that the provisions of the 2013 Act are properly carried out. Duties of the District Magistrate and authorized officers are enumerated in section 19. Amongst others, it shall be the duty of the District Magistrate and other subordinate officers to ensure that no person is engaged or employed as manual scavenger within their jurisdiction; no one constructs, maintains, uses or makes available for use, an insanitary latrine; manual scavengers as identified are rehabilitated in accordance with section 13, or as the case may be, under section 16 which deals with rehabilitation of manual scavengers identified by Panchayats.

**15.** For the purpose of today's hearing it may not be necessary for us to delve into the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 which however has relevance vis-a-vis the present subject matter, so also Article 17 of the Constitution of India.

**16.** In *Safai Karamchari Andolan* (supra), Supreme Court was concerned with enforcing the provisions of the earlier Act i.e. the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 (for short "the 1993 Act") and enforcement of fundamental rights guaranteed under Articles 14, 17, 21 and 47 of the Constitution of India. It may be mentioned that the Writ Petition in the form of Public Interest Litigation was filed in the year 2003 when the 1993 Act was in force. By the time the Writ Petition came to be heard and finally decided, the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 (already referred to as "the 2013 Act" hereinabove) came into the statute book. After referring to and discussing various provisions of the 2013 Act Supreme Court directed in paragraph 23.2 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, rehabilitation of manual scavengers will need to include amongst others the following: payment of compensation of Rs. 10,00,000.00 should be given to the family member of the deceased who had entered sewer lines without safety gears which should be made a crime even in emergency situations. Supreme Court also highlighted the need to provide support for dignified livelihood to safai karamcharis. In paragraph 23.3 Supreme Court directed identification of families of all persons who had died in sewerage work (manholes, septic tanks) since 1993 and to award compensation of Rs. 10 lakhs for each of such death to the family members, further observing that rehabilitation must be based on the principles of justice and transformation. Finally, direction was issued to all State Governments and Union Territories to fully implement the 2013 Act and also to take appropriate action in case of non-implementation as well as for violation of the said Act.

**17.** We may mention that the State of Tamil Nadu during the process of identification of sewer related deaths in the said State had come across cases involving private owners of septic tanks engaging private individuals. State of Tamil Nadu expressed the view that in such cases responsibility for payment of compensation should rest with the owner of the premises and not with the State Government. State of Tamil Nadu therefore requested the Central Government to seek clarification from the Supreme Court. Accordingly, Interim Application No. 9 of 2016 was filed by the Union of India seeking clarification from the Supreme Court particularly in respect of the directions contained in paragraph 23. By the order dated 10/05/2016 Supreme Court made it clear



that the purport and effect of the directions contained in paragraph 23.3 of the order dated 27/03/2014 is clear and would apply to all victims irrespective of the place of work.

**18.** In *Baisil Attippety vs. Kerala Water Authority*, MANU/KE/0768/2021, question before the Kerala High Court was for grant of adequate compensation to the workman who died inside the manhole of Kerala Water Authority sewerage pipeline. Kerala High Court referred to the judgment of the Supreme Court in *Safai Karamchari Andolan* (supra) and after noting that an amount of Rs. 4,00,000.00 was paid by the contractor by way of compensation to the legal heirs of the deceased, held that Government of Kerala represented by the Secretary of the concerned Department was bound to pay compensation of Rs. 10,00,000.00. Interpreting the decision of the Supreme Court in *Safai Karamchari Andolan* (supra), Kerala High Court took the view that it is the State which has to pay the compensation.

**19.** Similar view has been expressed by Delhi High Court in *Rajesh Vs. Delhi Jal Board*, MANU/DE/0847/2018. Referring to the compensation directed to be paid by the Supreme Court in *Safai Karamchari Andolan* (supra) and provisions of the 2013 Act, Delhi High court was of the view that liability being strict, the State instrumentally i.e. the Delhi State Industrial and Infrastructure Development Corporation Limited should pay the amount of Rs. 10,00,000.00 to each of the Petitioners who were the wife and mother of the deceased manual scavengers.

**19.1.** In that case Supreme Court referred to and relied upon its earlier decision in *Union of India Vs. Prabhakaran Vijay Kumar*, MANU/SC/7608/2008 : (2008) 9 SCC 527, where the Supreme Court had held that when activities are hazardous and if they are inherently dangerous the statute expects highest degree of care and if someone is injured because of such activities, the State and its officials are liable even if they could establish that there was no negligence and that it was not intentional.

**20.** Likewise, Madras High Court in *Change India Vs. Government of Tamil Nadu*, MANU/TN/2579/2018, in the context of the 2013 Act has held that the State is under a bounden duty to prohibit manual scavenging and it cannot avoid its liability to compensate manual scavengers who lose their lives in the course of manual scavenging, by reason of the inability of the State to stop manual scavenging. Though in that case compensation of Rs. 10,00,000.00 was paid, in view of the delay in payment of compensation Madras High Court directed the State to pay interest on the said amount at the rate of 8% per annum. On a reading of the Supreme Court judgment in *Safai Karamchari Andolan* (supra), Madras High Court took the view that Supreme Court was not concerned with manual scavenging engaged only by the State or by State authorities but manual scavengers engaged by the private persons and/or by private entities as well.

**21.** In a recent judgment in the case of *Deaths of Sanitation Workers Vs. State of Odisha*, Orissa High Court described the practice of engaging manual scavengers as 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 which continues unabated notwithstanding the enactment of the 2013 Act. It has aptly recorded that such practice not only shocks the judicial conscience but it should shock the society's collective conscience as well. In that case certain directions were issued to the State including payment of compensation of Rs. 10 lakhs to the families of deceased sanitation workers, for immediate compliance.

**22.** Reverting back to the 2013 Act we find that the legislature has cast onerous responsibility on the State including the District Magistrate to ensure that manual scavenging is completely eradicated from our society. The fact that despite such stringent provisions, this shameful practice continues should be an eye opener for all of us and this was where strict liability of the State comes in.

**23.** Thus viewed in the above context, the Government Resolution dated 12th December, 2019 in so far it pertains to the death of manual scavengers in private sector whereby it has been provided that in such event the head of the private sector would have to pay the compensation, may require a relook.

**24.** Insofar the present case is concerned, from the affidavit of Respondent No. 2 what is evident is that the Tahsildar had passed an order for payment of compensation of Rs. 10,00,000.00 each to the families of the deceased but the liability has been fastened on the contractor i.e. M/s. Concrete Builders and the agency M/s. Greenact Enviro Engineering Pvt. Ltd. As the affidavit indicates, M/s. Concrete Builders has deposited only Rs. 3,75,000.00 with the Tahsildar which would work out to Rs. 1,25,000.00 for each of the Petitioners.

**25.** Upon thorough consideration of the entire matter and considering the fact that the Writ Petition involves questions of considerable public interest we are of the view that we should monitor the same to ensure effective implementation of the 2013 Act. Accordingly and in the light of the above, we issue the following directions:

(i) Respondent No. 2 shall pay a sum of Rs. 10,00,000.00 to each of the Petitioners within a period of four weeks from the date of receipt of a copy of this order.

(ii) Respondent No. 2 may recover the aforesaid amount from persons/entities responsible for the death of the husbands of the three Petitioners.

(iii) Learned Government Pleader shall inform the Court about the status of FIR No. 261 of 2019 registered with Govandi police station on the next date.

(iv) Respondent No. 1 i.e. State of Maharashtra in the Social Justice and Special Assistance Department shall inform the Court on the next date whether survey of manual scavenging in urban areas in terms of sections 11 and 12 of the 2013 Act and similar exercise by Panchayats in rural areas under sections 14 and 15 of the said 2013 Act have been carried out or not.

(v) Respondent No. 1 i.e. State of Maharashtra in the Social Justice and Special Assistance Department shall also apprise the Court about the rehabilitation measures taken for persons identified as manual scavengers in terms of section 13 of the 2013 Act.

(vi) Respondent No. 1 i.e. State of Maharashtra in the Social Justice and Special Assistance Department shall also inform the Court as to whether identification of families of all persons who died in sewerage work (manholes, septic tanks) since 1993 has been carried out and as to whether compensation has been awarded to the dependent family members in terms of paragraph 23.3 of Safai Karamchari Andolan (supra).

(vii) Insofar Government Resolution dated 12/12/2019 is concerned, State shall look into the aspect as to whether it is in conformity with Safai Karamchari

Andolan (supra), which aspect we may consider on the next date of hearing.

**26.** Since learned Government Pleader Ms. Kantharia is carrying three cheques of Rs. 1,25,000.00 each, these cheques may be handed over to the Petitioners. This amount may be adjusted while paying compensation of Rs. 10,00,000.00 to each of the petitioners.

**27.** Stand over to 18th October, 2021.

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