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Sewerage Employees Union (Regd.), Municipal Corporation, Chandigarh v Union of India, 2008

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Sewerage Employees Union (Regd.) M.C. v Union of India and Ors.

High Court of Punjab and Haryana

C.W.P. No. 1983 of 2008

Judgment of 10 December 2008

Surya Kant, J.

1. This writ petition has been filed in Public Interest. While highlighting the plight and deplorable conditions under which the Sewerage Workers are required to work in the States of Punjab, Haryana and U.T., Chandigarh, the Petitioners--the Sewerage Employees Union [Registered] Municipal Corporation, Chandigarh and Voluntary Health Association of Punjab, seek the following directions:

[i] a restraint order against the Respondents from employing any person to enter the manhole or sewer for any purpose whatsoever ;

[ii] all the cleaning work of sewerage be done mechanically;

[iii] If a Sewerage Worker is required to enter the manhole or the sewer in an emergent situation, he should be provided with protection clothing and equipments as set out by the Gujrat High Court in its order, dated 15th February, 2006 [Annexure P-8].

[iv] the Respondents be directed to provide alternative work on permanent and regular basis to all the existing Sewerage Workers ;

[v] the Respondents be directed to pay compensation of Rs. 10 lac each to the families of those Sewerage Workers who have died after entering the manhole for sewage cleaning;

[vi] the Respondents be directed to carry out the comprehensive medical check-up of all the Sewerage Workers and thereafter provide them adequate medical treatment free of costs and also to pay them full wages and other benefits for the entire period for which they are unable to work while undergoing treatment;

[vii] the Respondents be directed to accept and follow the recommendations made by the Centre for Education and Communication [Annexure P-7);

[viii] the Respondents be directed to ensure that all the Sewer-Workmen get benefits of the legislations ; like [a] The Provident Fund Act ; [b] The ESIC Act; [c] The Workman Compensation Act; [d] The Payment of Gratuity Act; [e] The Payment of Bonus Act; [f] The Maternity Benefit Act ; [g] The Payment of Bonus Act ; [h] The Disabilities Act and [i] The Minimum Wages Act respectively from the dates of their joining [ix] a direction be issued to increase the special pay/risk allowances to the Sewer-Workers keeping in view the nature of their work ;

[x] the Respondents be further directed to ensure that medical and industrial waste is properly treated before its discharge in the sewage.

Interim directions for comprehensive medical check-up and treatments etc. have also been sought.

2. Notwithstanding the prohibition on the age-old practice of 'manual scavenging' imposed under the Employment of Manual Scavengers and Construction of Dry Latrines [Prohibition] Act, 1993 or abolition of the social-slur of 'untouchability' by Article 17 of our Constitution, the sewage-cleaning work in India is being described as a modern day extension of those socially abhorrent practices. The expression 'sewage' is used for waste water containing solid and liquid human excreta derived from residential or non-residential areas and carried in sewer lines. It is other than 'sullage' which contains wastes from the house-hold sinks and showers but not the toilets. Earlier, the human waste used to be disposed of in cess pools or privies or carried in buckets to rivers. The garbage used to be dumped into the streets only or a little away to be flushed out in the rainy season or by storm. Such like unsanitary conditions resulted in objectionable sights and odours and caused diseases which led to the conceptualization and installation of a 'separate pipe system' for carrying human waste to be dumped into nearby fields or rivers. Since the untreated human waste dumped in the fields or rivers cause pollution to the surrounding areas including the ground water, the Sewerage Treatment Plants are now being established as the only effective answer to these alarming problems. No matter, whether the sewerage waste is carried to the fields or rivers or to the Sewerage Treatment Plants for its ultimate disposal, the sewage system consisting underground pipes or drainage for carrying the sewage have its own complexities.

3. There can indeed be no denial of the fact that the sewerage network in urban areas is meant for the disposal of domestic as well as industrial effluents which include solid waste, manure as also the storm water. The studies have revealed that the domestic, as well as, the Industrial Effluents generate poisonous gases like Carbon Dioxide, Hydrogen Sulphide, Methane, Amonia etc. in the drainage. Hydrogen Sulphide gas is reportedly the most dangerous as a breath or two in the air containing even a fraction of it, can make a person unconscious and the continuous exposure thereof can certainly prove fatal. It would be far away from the truth if denied that most of the Municipalities are not equipped with the latest machines to clean sewage system and manual workers are, therefore, employed under compulsion to enter the underground sewerage lines through the manholes and cleanse them wherever the lines are clogged for whatever reason.

4. On a plain reading of the averments made in this petition which are duly supported by a report on "Health and Sewerage Studies of Sewerage Workers in Delhi" by the Centre for Education and Communication, various news items reporting deaths of Sewerage Workers in different municipal areas of Punjab as also the information received by the Petitioners under the Right to Information Act, 2005 which confirm the fatal accidents in the sewage cleaning process, it can be noticed in no uncertain terms that the working conditions of those employed for cleaning the underground sewage lines are wholly incompatible with human dignity and hazardous for their health and safety. The study-report clearly suggests that the workers employed for cleaning the drains suffer from high mortality and morbidity due to overexposure to gases, filth etc. at their workplaces. Similarly, the authentic information obtained and placed on record tells the horrifying tales of those poor children of a lessor God who lost their lives inside the manholes, leaving the starving families behind. That apart, many of these workers are not even regularly employed and are working on 'contract' basis. Cuts or injuries eye diseases, skin related ailments or respiratory problems are commonly prevalent among these poor workers, majority of whom belong to the poor strata of society.

5. We are also aghast, at seeing the photographs [Annexure P-1] placed on record by the Petitioners which clearly indicate that these Sewerage Workers enter the manholes in semi-naked condition thereby exposing themselves to all kinds of fatal diseases or consequences awaiting them inside the underground drains.

6. The State of Punjab--Respondent No. 2 alone has filed its counter-affidavit. While admitting that "on some occasion the sewage-men have to enter the manholes in order to keep the sewage systems in working condition", a loud claim of issueing instructions to all the municipal corporations/councils, Nagar Panchayats to provide sewer-men with uniform, gum boots, goggles, torches, masks and gloves etc. has been made in the counter-affidavit. Suffice it to say that the photographs and report on confirmed casualties, apparently belie the stand taken by the second Respondent.

7. The Petitioners have further pointed out that as per the prevailing practice in the Respondent-States, a Sewerage Worker while entering the narrow and dark drain carries only one instrument, namely, a splashed Bamboo stick to dislodge the blockade. The worker while inside the drain holds his breath, closes his eyes and keeps on plunging head-long time and again and some of them are even known as 'divers' who swim through the large pipelines to locate the blockade and clear them. Contrary to it, most of the developed nations are said to have taken a number of protective measures including provision for bunny suits to avoid contact with contaminated water, a respiratory apparatus, the sewers are well lit and mechanically aerated with huge fans so that these are not oxygen-deficient. According to the Petitioners, some of these safety measures, which do not even cost much, arc also not being taken by the municipal authorities who have scant regard or care for the life and dignity of the Sewerage Workers. The Petitioners allege that most of the Sewerage Workers die even before their date of retirement due to multiple health problems suffered in the course of their average life span has been reduced to 45 years only. Not only this, except in a case where a worker dies inside the manhole, the Civic Body concerned pays no monetary compensation on account of illness or death owing to occupational hazardous. Giving details of the Chandigarh Municipal Corporation, on illustrative basis, the Petitioners have pointed out that for a population of over 10 lacs, there are 70 regular and 60 contractual Sewerage Workers only. It is alleged that the workers employed through the Contractor are paid Rs. 2,500 per month only and the risk/special allowance payable to a Sewerage Worker in Chandigarh is Rs. 40 as compared to Rs. 80 admissible in Punjab.

8. The Petitioners have placed reliance upon a Division Bench judgment of the Gujarat High Court, dated 15th February, 2006 passed in Parveen Rashtrapal v. Chief Officer, Kadi Municipality SCA No. 8989 of 2001 [Annexure P-8] wherein after taking note of the plight of the Safai Karamcharis working in Ahemdabad Municipal Corporation, several directions were issued to the civic bodies as also to the Government for taking steps to ensure their safety and security from the health point of view. The Petitioners also rely upon the orders passed from time to time by the Delhi High Court in W.P. [C] No. 5232 of 2007 [National Campaign for Dignity and Rights of Sewerage and Allied Workers v. Municipal Corporation, Delhi and Ors.] wherein also an identical issue has been raised.

9. Having heard learned Counsel for the parties at some length and on perusal of the record including the judgment/orders of the Gujarat and Delhi High Courts, cited above, we are of the considered view that the seriousness of the issue raised in this Public Interest Litigation, namely, right of the Sewerage Workers to live with human dignity as guaranteed under Article 21 of the Constitution of India, is beyond any pale of doubt. We are equally satisfied that the Petitioners have come forward to espouse the cause of a class which suffers from at-least the financial disability to seek redress of its pitiable working conditions. We have also carefully considered the nature of relief sought in this petition and/or the nature of just and proper directions to be issued at this stage.

10. All the Civil Bodies of Punjab, Haryana and U.T., Chandigarh are not parties to these proceedings nor there is any material on record to throw light on several factors to be taken

into consideration before appropriate final directions can be issued. Unless it is known as to [i] how many Sewerage Workers are employed by the different municipalities in both the states ; [ii] how many of them are regular employees or work-charge or contractually employed ; [iii] what are their service conditions as compared to other semi skilled/skilled employees ; [iv] what does the expression "on some occasions" used by the Respondent No. 2 in its counter-affidavit would mean, i.e., as to how many Sewerage Workers are required to enter the manholes to clean the sewerage system and how-many times in a month ; [v] what are the medical facilities/aid presently provided to them by the civic bodies ; [vi] whether or not the uniform, goggles, gum boots, masks, gloves in terms of the State Government instructions, if any, are being provided to them; [vii] what is the financial condition of each and every civic body ; [viii] are they in a position to arrange mechanical infrastructure like the JCB suckers, JCB loaders-cum-excavators, suction machines so as to minimise the manual involvement in the cleaning work ; [ix] is there any Accidental Group Insurance facility made available to the Sewerage Workers ? We are of the considered view that composite and whole-some directions cannot be issued to both the States and the U.T., Chandigarh.

11. Similarly, we have no doubt in our minds that the plight of the Sewerage Workers highlighted by the Petitioners cannot be left at the mercy of the authorities of the State Governments/U.T. Administration who, as it appears, have failed in timely redressal thereof. In this back-drop when complexed and mixed issues of financial conditions and budgetary allocation, technical feasibilities, localised mechanical solution to minimize the manual involvement, emergent medical-aid facilities and a constant monitoring by an independent and impartial body are involved, we deem it appropriate that firstly the issues involved in this case or allied thereto need to be gone into threadbare by an Obdusman or varying experts and the authorities concerned, who alone would be in a position to process the evaluation of the existing system and the feasibility of the reforms which may be required to be introduced. The Expert Body can also recommend the long and short term suggestions after interacting with all the agencies concerned and on evaluation of the conditions available.

12. In order to make the whole process effective and speedy and yet to incur minimum cost, we have requested Hon'ble Mr. Justice S.S. Kang, former Chief Justice of J & K High Court to donate some of his precious time for this noble cause. Knowing his stature, it would not be appropriate for us to determine the honorarium to be paid to Hon'ble Mr. Justice S.S. Kang. We, therefore, leave it to the sole discretion of Hon'ble Mr. S.S. Kang to determine the honorarium and communicate it to the State Governments/U.T., Administration, who shall then give effect to such communication without any delay. However, should Justice Kang decide not to take any honorarium or till such decision is taken by him, we direct the Respondents to pay Rs. 7,000 and Rs. 10,000 to Hon'ble Mr. Justice S.S. Kang to facilitate and meet sundry expenses for every meeting to be held at Chandigarh and outside Chandigarh respectively. The Respondents shall also provide an official vehicle as and when required for travelling outside Chandigarh. All the Municipal Commissioners of Municipal Corporations and the Executive Officers of the Municipal Councils are directed to make adequate arrangements for the visit, stay and inspection etc. of the Committee as and when so required and any lapse in this regard shall be viewed seriously. Similarly, the secretarial assistance shall also be provided by the State Governments and U.T. Administration. Besides Hon'ble Mr. Justice S.S. Kang, as its Chairman, the Committee shall comprise [i] Principal Secretary to the Government of Punjab, Public Health Department ; [ii] Principal Secretary to the Government of Haryana, Public Health Department ; [iii] Secretary, Public Health Department, U.T., Chandigarh; [iv] Shri S.S. Bidha, Chief Engineer, Supply and Sanitation Wing, Public Health Department, Haryana ; [v] Shri Maharaj Singh, Chief Engineer, Public Health Department, Punjab and [vi] Dr. J.P. Singh, Joint Director, Health Services, Punjab.

The Committee shall be free to co-opt any other member or expert whose services may be considered necessary by it.

13. After apprising itself of the factual issues raised by us in para [10] of this order, the Expert Committee is requested to make its recommendations on the following issues:

- [i] steps needed to be taken for ensuring health and safety of the Sewerage Workers ;
- [ii] steps needed to be taken to prevent recurrence of death and injuries to the Sewerage Workers ;
- [iii] steps required for improving their employment conditions including suitable revision of their risk/ special allowance, especially that of the contractually employed workers;
- [iv] methodology to ensure extension of statutory benefits to Sewerage Workers under [a] The Provident Fund Act ; [b] The ESIC Act ; [c] The Workmen Compensation Act; [d] The Payment of Gratuity Act; [e] The Payment of Bonus Act; [f] The Maternity Benefit Act ;
- [g] The Disabilities Act and [h] The Minimum Wages Act or any other Statute ;
- [v] compensation and other ex-gratia facilities, if any, payable after the death of sewer-men in the course of their employment;
- [vi] the steps to be taken to phase out manual work and replace it with mechanized sewer cleaning ;
- [vii] to seek details from each municipality of the deaths, if any, of the Sewerage Workers inside the manhole or due to the cause relatable to the hazardous nature of duties and then to determine the amount of compensation, if any, payable to the dependent family members of such deceased workers ;
- [viii] compulsory prescription of appliances like air travelling apparatus, full face cover safety masks, safety belts, torches, safety goggles, safety helmets, gum boots, diving suits, air blowers and exhausts etc ;
- [ix] General Insurance Scheme at the expense of the Municipality concerned;
- [x] provision for other basic facilities like accommodation, drinking water and washing facilities to the sewer-men as also at the stores/service centres ;
- [xi] free medical examination and treatment for the workers found to be suffering from any occupational disease, ailment etc. till it is cured ;
- [xii] compulsory Training Programme for the sewer-men to ensure that only trained persons are allowed to enter or remain in deep manholes and that too for not more than the maximum prescribed period.

14. We accordingly direct the Respondents to formally notify the constitution of the Expert-Committee, referred to above, within a period of one month from the date a copy of this order is received. We request the Committee to examine all the issues with compassion and also keeping the financial conditions of the Civic Bodies in view and to make appropriate recommendations to both the State Governments and the U.T., Administration as early as possible, It shall be appreciated if these recommendations are made within a period of five months from the date of formal constitution of the Committee. We also direct the States of Punjab and Haryana and U.T. Administration to consider and implement the recommendations of the Committee. However, if the State Governments/U.T. Administration find it difficult to implement any one or more recommendations made by the Committee, it shall be open to them to move an appropriate application before this Court suggesting the suitable modification in such recommendations. The State Governments and the U.T.

Administration shall take a decision on the recommendations of the Committee within a period of two months from the date the same are received.

15. As regards the expenditure to be incurred by the Expert-Committee, the same shall be shared proportionately by the States of Punjab, Haryana and U.T., Chandigarh in the ratio of 50:40:10 respectively except that the vehicle to be provided to the Chairman of the Committee shall be arranged by the State Government concerned in whose territorial jurisdiction the Committee is required to visit.

16. Disposed of accordingly. Let a copy of this order be handed-over to learned Advocates General; for the States of Punjab and Haryana and the Senior Standing Counsel for Chandigarh Administration, for information and necessary compliance.