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Dharmendra Kumar Paswan v State of Bihar, 2011

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Civil Writ Jurisdiction Case No.6334 of 2011

In the matter of an application under Article 226 of the Constitution of India.

Dharmendra Kumar Paswan, Advocate, son of Ram Preet Paswan, resident of House of Baba Baliram Singh, Yarpur, PS Sachivalaya, District and town Patna

..... Petitioner

Versus

1. The State Of Bihar through Chief Secretary, Government of Bihar, Old Secretariat, Patna
2. The Principal Secretary, Urban Development and Housing Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna
3. The Special Secretary, Urban Development and Housing Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna
4. The Joint Secretary, Urban Development and Housing Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna
5. The Deputy Secretary, Urban Development and Housing Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna
6. Sulabh International Social Service Organization through its General Secretary Akhauri Prem Prakash, Sulabh Bhawan, New Patliputra Colony, PS Patliputra, Patna - 800013

.... Respondent/s

For the Petitioner : Dr. S K Verma, Advocate
Mr. Atul Kumar, Advocate
Mr. L B Singh, Advocate
For the State : Mr. Anjani Kumar
Additional Advocate General No.X
For the Intervenor –Respondent
No.6 : Mr. M L Verma, Senior Advocate
Mr. Alamdar Hussain, Advocate

P R E S E N T

HON'BLE MR. JUSTICE SUDHIR KUMAR KATRIAR
and
HON'BLE MR. JUSTICE SAMARENDRA PRATAP SINGH

S K KATRIAR, J. This writ petition is in the nature of a Public Interest Limitation, and seeks meaningful implementation of the scheme of the Government of India known as Integrated Low Cost Sanitation Scheme (ILCS), (hereinafter referred to as 'the Scheme'),

after proper appreciation of the spirit and the requirements of the Scheme, by allotment of work to experienced agencies and NGOs, rather than entrustment of the work to those without any experience and expertise as is happening so far, as a result of which the aims and objects of the Scheme is getting frustrated, and it has become another source of corruption and diversion of funds.

2. A brief statement of facts essential for the disposal of the writ petition may be indicated. In India, on account of absence of water closet in the houses of many, particularly poor people due to poverty, have been defecating either in the open fields or dry latrines in the houses. In so far as the latter is concerned, human excreta was being manually cleared and carried away in containers on heads by human beings, i.e. professional scavengers. This shocked the conscience of the Father of the Nation who initiated a movement against this inhuman practice of leading by example. It appears that it came to an end with his assassination, and the old practice of use of dry latrines without any flush facility and its disposal of human excreta by carriage as head-loads persisted till such time it was undertaken by NGOs, which possibly originated in Bihar, and we will have the occasion to deal with it at the proper place. It has culminated in the Parliamentary enactment, namely, the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act 1993 (Act no.46 of 1993).

2.1) In implementation of the provisions of the Act, Government of India prepared the Scheme for abolition of dry latrines to be substituted by flush latrines, construction of septic

latrines where dry latrines did not exist, complete abolition of human scavenging, rehabilitation of the displaced scavengers, and to educate the poor masses about hygiene and health. The proposal will have to be submitted by the Urban Local Bodies (ULBs for short), like Housing Board, Slum Clearance Board, etc. to the State Urban Development Authority for undertaking the programme. It stated in no uncertain terms as follows (Annexure -A/1 to the Petitioner's reply to the Supplementary counter affidavit on behalf of Respondent nos. 2 to 5):-

“The States should select NGOs having adequate experience in this field who will be funded maximum to the extent of 15% over and above the total project cost to be borne by the Centre and States based on the ratio of 5:1 at different stages of implementation. Further, NGOs will be required to conduct a survey for identification of beneficiaries and the ULBs will finalize the list of beneficiaries on the basis of the survey to be conducted within a year. NGOs will also issue biometric photo Identity Cards, look after operation and maintenance of the converted units, and organize training/seminars for preparation of project reports and estimates by Urban Local Bodies (ULBs) / Development Authorities (DAs) after ensuring willingness of identified beneficiaries.”

It provided for a detailed machinery to implement the Scheme, and concluded by stating that the State Government shall constitute a State Co-ordination Committee in the manner indicated therein.

2.2) In due implementation of the Scheme, the State Government took the first step to implement the Scheme by constituting a Committee headed by the Principal Secretary, Urban Development Housing Department, and others, which also included respondent no.6 herein. Minutes of the three meetings dt. 16.2.2008 (Annexure -17), 25.2.2008 (Annexure-18), and 27.3.2008 (Annexure

-19), form part of "The petitioner's reply to the counter affidavit of respondent nos. 2 to 5". It acknowledged the pioneering role and experience of respondent no. 6 in the field, and the innovative steps undertaken by it to tackle the menace. The relevant portion of the minutes dated 19.2.2008, is reproduced hereinbelow:-

"बैठक में इस बात पर सहमति हुई कि सुलभ इन्टरनेशनल सोशल सर्विस ऑर्गेनाइजेशन एक ख्याति प्राप्त राष्ट्रीय स्वयं सेवी संस्था है तथा अन्तराष्ट्रीय स्तर पर भी कार्य करते हैं तथा वर्तमान में इनके द्वारा पटना नगर निगम को दो चलन्त वाहन उपलब्ध कराये गये हैं, जिसकी उपयोगिता की प्रशंसा की जा रही है, को दृष्टिगत रखते हुए यह निर्णय लिया गया कि चलन्त शौचालय वाहनों का क़य सुलभ इन्टरनेशनल सोशल ऑर्गेनाइजेशन से किया जाय।"

It was resolved to request respondent no.6 to prepare the survey report within a period of 10 days at the first meeting of 16.2.2008, and later on raised to four weeks by resolution dated 27.3.2008. It was further resolved that the survey job for the areas of Patna City Anchal, Khagaul, Phulwarisharif, Danapur Nagar Parishad and Maner Nagar Parishad shall be done by door-to-door visit.

2.3) Government of Bihar took the follow-up action and issued resolution dated 9.5.2008 (Annexure -1), wherein the State Government determined the details of the modalities to implement the Scheme. Consistent with the terms of the Scheme, the State Government stated in this resolution that survey shall be conducted by ULBs within a period of one year and shall prepare the list of prospective beneficiaries. Their bio-metric identity cards shall be prepared, steps shall be taken for training programmes/ seminars and the work shall be entrusted to experienced, reliable, reputed and recognized NGOs. Thereafter invitation for Expression of Interest was published in the local dailies on 17.5.2008

(Annexure:7).

2.4) According to the petitioner, records reveal that on the one hand respondent no.6 was asked to do the work on 27.3.2008, and on the other hand the same work by ULBs viz. Danapur and Khagaul by letter dated 29.3.2008 and Maner and Phulwarisharif by letter dated 2.4.2008 allotted the work to one NGO, viz. Samadhan Seva Samiti on nomination basis without any advertisements, i.e. within 2 and 4 days after it was allotted to respondent no.6, and the question of completing any work in so-called time schedule did not arise. The Samadhan Seva Samiti did not have the requisite experience in the field of liberation and rehabilitation of scavengers.

2.5) The work for preparation of detailed project report (DPR), by orders of 29th of March and 2nd of April 2008 (Annexure – A/2 series), by the ULBs viz. Danapur, Khagaul, and Maner and Phulwarisharif, to Samadhan Seva Samiti on nomination basis in complete disregard and violation of the ILCS scheme and the contents of the four letters allotting work on nomination basis are verbatim similar which speaks volumes about the connivance between the four ULBs and the beneficiary NGO. The petitioner has placed on record various charts to demonstrate this position. This organization and other allottees have been advanced huge sums of money and the work remains grossly incomplete, steps have not been taken for implementation of the work, recovery of the amount, and initiation of criminal proceedings.

3. Learned counsel for the petitioner submits that without proper survey, identification of the prospective beneficiaries, and

preparation of biometric cards, work has been allotted to various NGOs without any experience at all, and completely overlooking the important resolution of the State Government dated 9.5.2008. Consequently, the work has remained incomplete and the money meant for such a laudable cause has been siphoned off. He also submits that none of the organizations to whom work have been allotted, have the experience and infrastructure to implement all the jobs together. The Government has also not taken steps towards completion of the work and recovery of the amounts. A job which had to be completed in one year's time, has not been completed after more than three years. He also submitted with emphasis that the work had to be allotted and supervised by the Central Co-ordination Committee, rather than by ULBs, leaving full scope for collusion between the ULBs and allottees. He also submits that there is no transparency, fairness, adoption of norms, resulting in improper utilization of the government funds. He relies on the following reported judgments:-

- (i) (2009) 6 SCC 171 (Paras – 37 and 38)
Meerut Development Authority vs. Assn. of
Management Studies
- (ii) 2002 Andhra Pradesh 327
A Kamladhar Gupta v. Govt. of India

He next submits that in situations involving mass-scale problems, there is no need to hear all. The authorities should only satisfy themselves after proper enquiry that it was afflicted by large-scale malaise, accompanied with follow-up action. He relies on the following reported judgments :-

- (i) 1971 SC 2206 (Para 5)
Makhan Lal vs. State of Jammu & Kashmir
- (ii) 1974 SCC 335 (Paras 12 to 15)
General Manager, S C Railways vs. Siddhantti
- (iii) (1983) 3 SCC 601 (Para 36)
A Janardhana vs. Union of India

He lastly submits that memo no. 3649, dated 07.07.2008, is inconsistent with the Scheme, which has diluted the basic spirit and objective of the Scheme by allowing the ULBs to select the NGOs to do the work after inviting expression of interest. By this memo dated 7.7.2008, the aspect of selecting NGOs having adequate experience, credibility, recognition and past performance was given a complete go-bye. By this memo, the discretion was given to ULBs to select any organisation they liked irrespective of the fact whether or not they had expertise or credibility or experience in the filed of liberation and rehabilitation of scavengers. The obvious reason for this dilution is to overcome the hurdles of the revised guidelines of 2008, the resolution dated 9.5.2008, and advertisement dated 17.5.2008. This was done with the design to bring in the NGOs who otherwise could not have been able to make it, and also to justify the work allotted on nomination basis.

4. Learned counsel for respondent no.6 has adopted the submissions made on behalf of the petitioner, and further submits that it does not seek any relief for itself. Being a pioneer in this filed, it only claims complete, effective, and meaningful implementation of the Scheme of the Government under the vigilant eyes of the Central Supervisory Committee. He next submits that every plank of the Scheme is very important, but particular emphasis has to be placed

on exhaustive survey, identification of prospective beneficiaries by allotment of biometric cards, and rehabilitation of the manual scavengers. After completion of the work of survey and preparation of biometric cards covering a period of one year, the actual work had to be completed from 15.7.2008 to 28.2.2009, which has not been achieved, and the work has not been completed. He further submits that the primary reason for entry of respondent no.6 into the present writ petition is the adverse observation made against it in the counter affidavit of respondent nos. 1 to 5 sworn on 17.5.2011. It has thereafter filed I A No.477 of 2011 to be impleaded as party-respondent to salvage its reputation. He has also placed before us various authoritative observations to establish its high credentials.

5. Learned Additional Advocate General No.X has submitted that the writ petition is maintainable because it espouses a laudable cause. He next submits that respondent no.6 could not be allotted the work because it failed to submit pilot project in time, and thereafter steps were taken to decentralize the work under the Scheme. He also submits that the State Government did create the Central Supervisory Committee and is functional. He submits that the aforesaid resolution of 9.5.2008 is fully consistent with the provisions of the Scheme.

6. We have perused the materials on record and considered the submissions of the learned counsel for the parties. In India, the practice of defecating in open places has been widely prevalent. Far worse has been the practice of setting up of dry latrines in houses, accompanied with the extremely inhuman and

soul-stirring practice of removal of human excreta by professional human scavengers carrying away the same as head-loads. Mahatma Gandhi felt abhorrent about it. He personally followed what he preached and had taken up these jobs himself personally to act as a model and leader in the field, and to attract the attention of the countrymen to this inhuman practice. Sadly and most unfortunately, it came to an end with his assassination, and this inhuman practice persisted unabated till such time the movement was started in early seventies in this land of Lord Buddha and Lord Mahavira by a crusader known as Dr. Bindeshwar Pathak, who set up an organization which is respondent no.6 herein. It is indeed the movement created by Dr. Bindeshwar Pathak in the name of Sulabh Sanitation Movement which received the attention of the Government of India, woke up from its stupor resulting in the Parliamentary enactment, namely, the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act 1993 (Act No.46 of 1993). In implementation of the provisions of this Act, Government of India issued the Scheme, the basic features of which have been indicated hereinabove.

7. On a combined reading of the Scheme read with the consequential notifications of the Bihar Government, it is evident that the State Government decided that the survey operation, identification of the prospective beneficiaries, issuance of biometric cards to them, shall be done over a period of one year. We find from the resolutions of the Committee headed by respondent no.2, the minutes of which of February and March 2008 are on record, it was

decided to associate respondent no.6 from the inception in view of its outstanding track-record, wide experience and reputation travelling beyond India. It was, therefore, invited to these preliminary meetings from the beginning, and was represented on all these dates. The Committee asked respondent no.6 to prepare survey reports of the areas like Patna City Anchal, Khagaul, Phulwarisharif, Danapur Nagar Parishad, Maner Nagar Parishad, initially within a period of ten days, which was later on modified to four weeks on 27.3.2008 and on 29.3.2008 and 2.4.2008, and the ULBs instead allotted the work to Samadhan Seva Samiti.

8. The Committee committed the stupendous blunder of setting up unachievable target for respondent no.6 to prepare survey reports of the areas like Patna City Anchal, Khagaul, Phulwarisharif, Danapur Nagar Parishad, Maner Nagar Parishad, initially within a period of ten days, which was later on modified to four weeks. The problem arose here. Respondent no.6 could not achieve this target and incurred the displeasure of the State Government. In view of the extra-ordinary standing of respondent no.6 as a pioneer with wide net-work all over India in this field, had the Committee allotted one year's period to respondent no.6 to complete the task of survey, identification of the prospective beneficiaries, and preparation of bio-metric cards, respondent no.6 would not have incurred the displeasure of the Government, and the Scheme would have been successful. How can the Scheme be successfully implemented unless the beneficiaries have been identified covering large populations spread over big areas. And the period of one year was

fixed by the State Government itself by its notification.

9. We would like to emphasize that, inspite of clear averments by the petitioner in his pleadings, the State Government has not made any effort to satisfy us that the allottees are NGOs or organizations of experience, standing and reputation or have expertise or experience in liberation and rehabilitation of scavengers. On the contrary, as discussed hereinbelow, respondent no.6 is undoubtedly a pioneer in the field, having originated the work in Bihar and spread throughout the country and beyond India. The State Government made the mistake of leaving the entire job in the hands of the ULBs who, with a myopic view, were unable to appreciate that preference had to be given to a NGO or organization which could do the job on a turn-key basis. The State Government has not at all placed on record any material to satisfy us that any meaningful survey was conducted by the State Government or its instrumentalities or the allottees, the prospective beneficiaries were identified and biometric cards were issued, in the absence of which it was left to the ULBs in collusion with the allottees to pick and choose the beneficiaries. We feel very unhappy at such an irresponsible approach of the ULBs, accompanied with complete abdication of the essential duties and functions on the part of the State Government through the Central Advisory Committee.

10. The State Government took a very myopic view of the situation and seems to have placed entire emphasis on the job of civil construction of flush latrines. In the totality of the situation, as we see on a combined reading of the Scheme and the follow-up

notifications, we are of the view that rehabilitation of the manual scavengers is also an important part of the entire Scheme.

11. The petitioner has placed on record materials to show that large sums have been advanced to various NGOs and organizations to whom work has been allotted and very little work has been done and an amount of Rs. 2,18,18,680/- is lying with one NGO viz. Samadhan Seva Samiti, and the work has not been completed even after a period of three years. The State Government has failed to ensure meaningful implementation of the work, and proper utilization of the funds allotted to them. Indeed the State Government is guilty of complete abdication of essential duties and functions, has acted contrary to the Scheme by allowing the ULBs to allot the work which had to be done by the Central Advisory Committee, and its complete failure to supervise the work. Had the State Government taken upon itself, as has been envisaged by the Scheme, to allot the work after ensuring exhaustive survey, and exercise of identifying an organization and or NGO capable of doing all the jobs, the Scheme would have been successful and complete by now. The State Government instead dealt with the entire Scheme like an untouchable. In view of the counter affidavits of the State Government, a clear impression is created in our minds that money is not being usefully utilized, is instead being diverted, and seems to have become a source of corruption. A time has now reached for the State Government to wake up to the situation and take effective steps for recovery of the amounts in question and, if necessary, to start criminal case against the various allottees. After writ petitions

started being filed in this Court, for example, CWJC No. 825 of 2010 and the present writ petition, the State Government issued letter dt. 28.6.2010 (Annexure-10), calling upon the ULBs to explain the position, and to take stock of the situation. The step is not only belated, but is also half-hearted, perhaps a window-dressing.

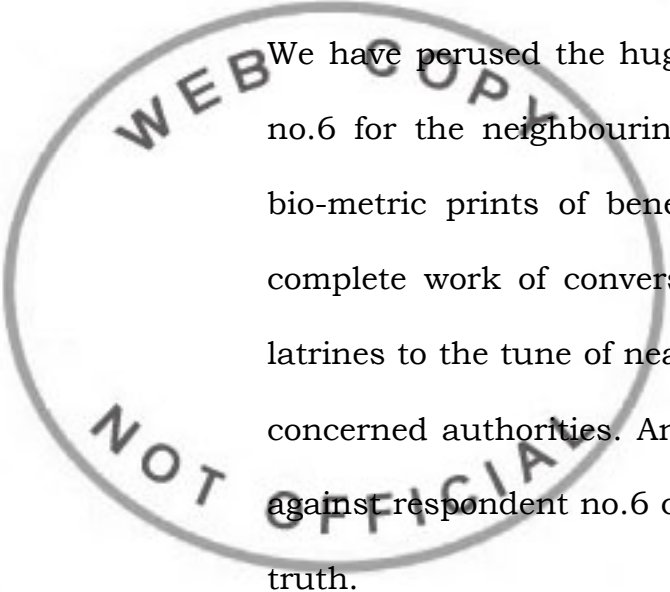
12. Learned counsel for the petitioner is further right in his submission that allotment of work is bereft of any transparency, fairness, and observance of norms. He rightly relies on the aforesaid judgments of the Supreme Court in Meerut Development Authority vs. Assn. of Management Studies, and A Kamladhar Gupta vs. Govt. of India (supra).

13. Learned counsel for the petitioner rightly submits that in a case involving wide-spread malaise, each and every individual party or adversely affected person need not be heard. It would fulfill the requirement of law if the authorities, on the basis of the materials on record before it or after an enquiry, come to the conclusion that it is a case of wide-spread malaise calling for remedial measures. He rightly relies on the aforesaid judgments in the case of Makhan Lal vs. State of Jammu & Kashmir, General Manager vs. Siddhanthi, and A Janardhana vs. Union of India.

14. Learned counsel for respondent no.6 has advanced elaborate submissions to counter-act the statements made in paragraph-10 of the counter affidavit filed by respondent nos. 2 to 5, and is reproduced hereinbelow:-

“10. That as a first step towards implementing the scheme, the State Government decided to execute a pilot on a small scale in the sub urban areas of Patna

District, Sulabh International Social Service Organization was entrusted with the work of executing the pilot project. As the Sulabh International Social Service Organization could not complete the work within the prescribed time frame and sought several extensions, and even after grant of many extensions could not perform the work at the desired level, so the work was given to the consultant appointed by the ULBs. The pilot projects were approved by the Central Co-ordination Committee, Government of India.”



We have perused the huge volume of DPR prepared by respondent no.6 for the neighbouring State of Uttar Pradesh which includes bio-metric prints of beneficiaries (Annexure -15 to the I.A.), and complete work of conversion of dry latrines/construction of flush latrines to the tune of nearly 60 crores to the full satisfaction of the concerned authorities. And thus allegation of the respondent State against respondent no.6 could not do the work seems to be far from truth.

15. Though we found that the initial minutes of the Committee of February and March 2008 recognized the pioneering role, its wide experience, proven track record, and international reputation of respondent no.6, but this was completely over-looked at the time of allotment of work. This is in part attributable to the position that actual allotment work was left to the ULBs, whereas the Scheme stipulates that it had to be done under the guidelines of the Central Government and resolution dated 9.5.2008 of the State Government.

16. Respondent no.6 has placed on record authentic materials of unimpeachable value to satisfy us that it is a pioneer in this field, with a wide net-work of organization and reputation

spread throughout the country and beyond. We first of all notice the observations of Mr. Justice Aftab Alam, a learned Single Judge of this Court, as his Lordship then was, in his judgment dated 14.5.1999, in CWJC No. 7653 of 1998, and is reproduced hereinbelow:-

“ 4. It was perhaps in view of the aforesaid facts and circumstances that Mr. Ram Balak Mahto, Senior Counsel appearing for the petitioner did not say anything in support of the second relief but confined his submissions only in respect of the first relief concerning the contract of maintenance of public lavatories popularly known as ‘Sulabh Shauchalaya’. As Mr. Mahto did not make any submission concerning the second relief it is not needed to say anything further in that regard.

5. Turning now to the first prayer, it is the case of the petitioner that the Municipal Corporations/Municipalities in this state (with the exception of the Municipal Corporations of Patna, Darbhanga, Arrah and Begusarai) were unduly favouring respondent no.29 by their action in giving the contract of maintenance of public lavatories to it. It is stated that a public auction for giving the contract would bring substantial sums of money to the concerned Corporation/Municipality. The petitioner goes on to make an offer of Rs.40 lacs, for the right to maintain public lavatories under the respondent Corporation/Municipalities and makes a prayer that a direction be made in his favour. The case of the petitioner appears to me to be plainly based on the notion that maintenance of public lavatories is analogous with the collection of tolls for a bridge or a road. In fact the main thrust of Mr. Mahto’s argument was that the State, in the distribution of its largesses cannot be allowed to take a discriminatory stance.

6. To my mind the argument is quite misconceived and it completely overlooks the circumstances in which the Sulabh Shauchalayas came into existence in the first place. The argument also fails to see that certain basic technological knowledge is necessary for the maintenance of the Shauchalayas in an efficiently working state.

7. It is common knowledge that till the late 1960s and early 1970s service latrines were a common feature in many houses even in the urban centres of this State and scavengers carrying night-soil on their

heads was a familiar sight in the lanes and streets of the State Capital. The practice was so old established that to most it was an unimutable fact of life. It is stated in the counter affidavit filed on behalf of the State that at that time Sulabh Shauchalaya (later known as Sulabh International, respondent no.29) was among the first to challenge this practice and to call it the sign of degradation of man. Sulabh Shauchalaya not only advocated for abolishing the practice of scavengers carrying night-soil on their heads but also suggested the means to do so. It took up the scheme for conversion of service latrines into Water Seal Pot Hole Latrines (Sulabh Shauchalayas). The State Government on the basis of repeated decisions taken on different dates entrusted the job of conversion of service latrines into Water Seal Pot Hole Latrines and the construction of public lavatories all over the State and change over was so rapid, noticeable and impressive that public lavatories all over the State got the popular name after the name of the organization – Sulabh Shauchalayas. In this State public lavatories are still commonly known as Sulabh Shauchalayas. As part of the Government decision Sulabh Shauchalaya was also to be given the job of maintenance of the lavatories constructed by it for a period of 30 years. It was in this background that the public lavatories of Sulabh Shauchalayas were constructed in this State and it was only after they came into existence that the petitioner has come forward to stake his claim for the contract of their maintenance.

8. It also cannot be lost sight of that a public lavatory does not only consist of building or a structure but it also has a running system. Its maintenance, therefore, does not mean simply collecting tolls on charges from its users but requires sufficient skill to efficiently maintain the running system. The system of public lavatories may be irreparably damaged in the hands of some one without sufficient skill and know-how to manage the system. The State Government, therefore, may be held to be fully justified in giving the job to agencies duly recognized by it.”

The same was quoted with approval by a Division Bench of this Court in the case of **Deputy Commissioner of Income Tax vs. Sulabh International Social Service Organisation [2011 (3) BBCJ 119]**.

16.1) The judgment dated 14.9.84 (Annexure -25), passed by

the Rajasthan High Court in Civil Writ Petition No.683 of 1984, and the judgment dated 23.12.96 (Annexure -26) of the Himachal Pradesh High Court in Civil Writ Petition no.846 of 1995, also establish the reputation of respondent no.6 as a pioneering, reliable and successful organization in this field.

17. We may also notice the observations of Smt. Pratibha Devisingh Patel, Her Excellency the President of India, at Rashtrapati Bhawan, New Delhi, on July 25, 2008. The occasion was the liberated scavengers women of Alwar who called on her to apprise her of their visit to the United Nations and United States to participate in Mission Sanitation on the initiation, having been sponsored by respondent no.6. Her Excellency observed as follows:

“I congratulate you for what you have achieved, which you richly deserve, for which there is no comparison. You have done such a great job and I would like to tell you that Dr. Bindeshwar Pathak has brought about a revolution, a very big revolution. Financial revolution can come about and can be brought about, but to bring a revolution in the mind-set of people is a very big achievement, a very difficult job which Dr. Pathak has brought about. He increased your self-respect, your self-confidence and not only your own self-confidence but also showed to society what you are worth and what you can do. What he has shown everyone sees. The whole country looks at it and every village looks at it and tries to do what he has done.

If Mahatma Gandhi was watching today’s function from Heaven, his eyes would be brimming with tears of joy. I do not think any other programme in the country would give so much happiness to Mahatma Gandhi as this one.”

17.1) Mr. Timothy J Roemer, the former Ambassador of the United States of America in India, while addressing the students at the University of Notre Dame, Graduate School, Indiana, USA, on May 21, 2011 told them a motivational, inspiring story, giving the

example of Sulabh International, and Dr. Bindeshwar Pathak. The relevant extract is quoted below:

“ To motivate you, let me tell you a story about toilets!

India is a country with many inspiring people. There is, of course, Mahatma Gandhi, the father of the nation. His teachings of tolerance really are the key to the success of democracy in India and he has influenced civil rights movements around the world including in the United States.

There is Mother Teresa, who lived and worked in India although her legacy now touches the lives of children, women, and the poor all over the world.

There is Rabindranath Tagore, the first non-European to win the Nobel Prize for Literature.

But there are also many inspiring people, lesser known to the world, like Dr. Bindeshwari Pathak.

Dr. Pathak, although from a very high caste, knew at a very young age that there was nothing wrong with touching the untouchables. He has dedicated his life to restoring the human rights and providing dignity to scavengers, which is the bottom-rung caste in India responsible for cleaning up human waste.

To do so, he used technology to develop a safe and environment-friendly toilet to replace pit latrines, reducing the need for scavenging and improving sanitation and hygiene for both rural and urban poor.

He provided education to the children of scavengers, helping to break the never-ending family cycle of scavenging.

He provided alternative economic opportunities so that women no longer have to clean toilets for the rest of their lives to provide for their families.

All this has helped tackle a bigger problem – breaking the caste-system in India.”

17.2) Prof. Raj Mohan Gandhi, grandson of Mahatma Gandhi, made the following observations when he visited the Sulabh campus in 2010, with students of University of Illinois, USA:-

“I am the son of the son of Mahatma Gandhi but Dr. Bindeshwari Pathak is the son of his soul. If we were to go to meet Mohandas Karamchand Gandhi, he would first greet Dr. Pathak for the noble work that he is doing and then meet me. Dr. Pathak has restored human rights and dignity to people engaged in the manual cleaning of human excreta which they carried as head-load.”

18. We are thus convinced that respondent no.6 has been able to establish extra-ordinary reputation as a pioneer in the field, with wide net-work of its organization throughout the country and abroad. Therefore, the adverse averments made by the State Government in paragraph-10 of its counter affidavit is wholly unmentied and, in our view, has arisen out of two-fold situation attributable to the State Government, namely, at the initial stage asked respondent no.6 to prepare the complete survey work with accompanying jobs within an abnormally short period which was impossible to be done, and secondly, had left the entire scheme for its implementation to the ULBs without requisite decision-making and supervision by the State Government and ULBs had allotted the actual work of construction of septic latrines to another NGO. The survey was never done, bio-metric cards never issued, no other aspect of the Scheme taken care of except construction of septic latrines. We get a clear impression that the funds have been squandered.

19. In the result, this writ petition is disposed of with the direction to the State Government, particularly respondent nos. 1 and 2, to ensure that the Scheme is implemented in its true letter and spirit. Letter no. 3649, dated 7.7.2008, is quashed because it contravenes the norms laid down by Government of India and accepted by the State of Bihar, vide resolution dated 9.5.2008, and the contents of resolution dated 9.5.2008 shall be given effect to. The State Government shall call for fresh tenders as per

resolution dated 9.5.2008, and that selection process of NGOs shall be transparent. Effort shall be made to allot work to one organization or NGO which is capable of doing the entire range of works from beginning to end as envisaged by the Scheme. We further direct that the amount of Rs.2,18,18,680/- lying with those of the allottees who have not hitherto completed the work, shall be recovered within a period of three months, failing which proceedings under Public Demand Recovery Act may be taken. In case the local bodies fail to get the amount recovered, the District Magistrate should take appropriate action against erring Executive Officers of the local bodies. The same shall be applicable to all NGOs who have not completed the work and money is lying with them.

(S K Katriar, J.)

Samarendra Pratap Singh, J.

I agree.

(S P Singh, J.)

Patna High Court, Patna
The 24th of November 2011
AFR/mrl

