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Safai Karmachari Andolan v. Union of India (interim orders)

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WRIT PETITION (CIVIL) NO.583 OF 2003

SAFAI KARAMCHARI ANDOLAN AND ORS.

Petitioner(s)

VERSUS

UNION OF INDIA AND ORS.

Respondent(s)

Date: 12/01/2011

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE K.S. PANICKER RADHAKRISHNAN
HON'BLE MR. JUSTICE SWATANTER KUMAR

O R D E R

As far back as on 5th October, 2007, this Court had directed the States, which have adopted the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 ['1993 Act', for short] but had not appointed Executive Authorities, as required under Section 5 of 1993 Act, to appoint such Authorities. The position as of today is that, even in 2011, the following States and a Union Territory have failed to comply with our directions dated 5th October, 2007.

They are as follows:

- [a] Punjab;
- [b] Tamil Nadu;
- [c] Uttarakhand;
- [d] U.T. of Dadra and Nagar Haveli; and
- [e] Manipur.

We hereby direct the concerned Secretary of each of the above States to remain present in this Court on 18th February, 2011, to explain why our directions dated 5th October, 2007, have not been implemented till date. It is made clear that, in the meantime, if the States take requisite steps to make appointments, as required under Section 5 of 1993 Act before the next date, then the concerned Secretary need not remain present in Court. We also give liberty to the petitioners to take appropriate action if the directions are not complied with.

We have examined the writ petition. We find that the prayers made in the writ petition are very wide. Be that as it may, in the present case, this Court has been monitoring the issue concerning prohibition and employment of manual scavengers as well as construction or continuance of dry latrines for the last decade. Detailed directions have been given from time to time by this Court vide Orders dated 29th April, 2005, 14th November, 2005, 20th March, 2006, 5th October, 2007, 11th December, 2007, 30th April, 2009, and 8th May, 2009.

For implementation of those directions, we direct the Registry of this Court to forward a copy of the writ petition along with Orders dated 29th April, 2005, 14th November, 2005, 20th March, 2006, 5th

October, 2007, 11th December, 2007, 30th April, 2009, and 8th May, 2009, to respective High Court and we request those High Courts to enforce the directions given by this Court from time to time. We make it clear that the High Courts will see to it that the provisions of 1993 Act are implemented by the Authorities within their respective jurisdiction.

In cases where the Railways is the employer, we request the Delhi High Court to enforce the provisions of 1993 Act as also the directions issued by this Court from time to time.

Place this matter on 18th February, 2011, as last item on Board.

[T.I. Rajput]
A.R.-cum-P.S.

[Madhu Saxena]
Assistant Registrar

WRIT PETITION (C)NO.583/2003

SAFAI KARAMCHARI ANDOLAN AND ORS.

Petitioner(s)

VERSUS

UNION OF INDIA AND ORS.

Respondent(s)

Date: 08/05/2009

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE DR. JUSTICE ARIJIT PASAYAT
HON'BLE MR. JUSTICE P.SATHASIVAM

ORDER

Issue notice to the State of Uttaranchal (Respondent No.22). The respondent State is directed to file an affidavit to the following effect within six weeks:

- a) The information given by the petitioners shows that survey confined to one District (Haridwar) reveals that there are 88 manual scavengers working in 159 dry latrines in the urban area of Rourkee alone;
- b) Pending information regarding the prevalence of manual scavenging in other districts in the State, the District Magistrate, Haridwar must show cause why prosecution has not been initiated against the dry latrine owners;
- c) The State to file affidavit indicating the position with regard to other districts after conducting re-survey in all the districts. It may be noted that according to the National Commission for Safai Karmacharis, in 2007 there were 1,477 manual scavengers in the State of Uttaranchal;
- d) State government to comply with the directions contained in order dated 11.12.2007 to appoint Executive Authorities under Section 5 of the 1993 Act.

Issue notice to State of Delhi (Respondent NO.34). The State is directed to file an affidavit to the following effect within six weeks:

- a) As per letter dated 26.5.2008 of the PIO, Delhi SC/ST/OBC/Minorities & Handicapped Financial & Development Corpn. Ltd. it has been stated that there are 1085 manual scavengers in Delhi;
- b) Further, a letter dated 30.1.2008 of the Director in Chief, MCD annexed to the Affidavit filed by the State of Delhi, admits that dry latrines are in existence in Delhi;
- c) The survey conducted by the petitioners gives details that in the North-East District alone, there are 5 manual scavengers and 15 individual dry latrines at present;

d) In view of the above, it is mandatory that action must be taken under the 1993 Act. Unfortunately, the State of Delhi not yet adopted the 1993 Act and notified the same, and as such Executive Authorities which can launch prosecutions under the 1993 Act do not Exist.

List after six weeks.

(G.V.Ramana)
Court Master

(Veera Verma)
Court Master

WRIT PETITION (C)NO.583/2003

SAFAI KARAMCHARI ANDOLAN AND ORS.

Petitioner(s)

VERSUS

UNION OF INDIA AND ORS.

Respondent(s)

Date: 30/04/2009

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE P. SATHASIVAM
HON'BLE MR. JUSTICE J.M. PANCHAL

ORDER

The petitioner has submitted a detailed report to the effect that in the State of Rajasthan, manual scavenger work is widely prevalent in various districts. The details i.e. names and addresses etc. of the workers and also the persons who employed these workers are also being given. It is noticed that this is prevalent in the districts of Jhunjhunu, Ajmer, Nagaur, Bikaner, Bharatpur, Churu, Karoli, Seekar and Alawar. Registry to send a copy of these details i.e. names and addresses of the Dry Latrine owners and employers along with a copy of the report submitted by the petitioner to each of the District Collectors mentioned above. Each District Collector has to explain as to why steps are not being taken against the employers who employed the manual scavengers under the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 (hereinafter referred to as 'the 1993 Act'). So also in the State of Haryana it is reported that in the Districts of Ambala, Fatehabad, Jind, Kaithal, Kurukshetra, Panipat and Yamuna Nagar this manual scavenger work is prevalent. A copy of the details be furnished to each District Collector to show cause as to why the respective Collectors have not taken steps to prosecute the concerned persons/employers under the 1993 Act. So also in the State of Punjab it is submitted that in the districts of Nava Shahar, Firozpur, Sangroor, Mohali, Amritsar, Faridkot, Ludhiana and Fateh Garh Sahib it is prevalent. The District Collectors of these districts are directed to explain as to why steps were not taken to prosecute the violators of the provisions of the 1993 Act.

List on 08.05.2009.

(G.V.Ramana)
Court Master

(Veera Verma)
Court Master

WRIT PETITION (CIVIL) NO(s). 583 OF 2003

SAFAI KARAMCHARI ANDOLAN AND ORS.

Petitioner(s)

VERSUS

UNION OF INDIA AND ORS.

Respondent(s)

Date: 05/10/2007

CORAM :

HON'BLE MR. JUSTICE H.K. SEMA

HON'BLE MR. JUSTICE LOKESHWAR SINGH PANTA

ORDER

Pursuant to our order dated 27.04.2007, it appears that all the States and concerned respondents have filed counter-affidavit. The National Commission for Safai Karamcharis constituted under Act, 1993 has also filed affidavit. From the affidavit filed by the National Commission for Safai Karamcharis, it appears that the total number of manual scavengers, needs to be rehabilitated, comes to about 3,42,468.

To take care of such situation, the Act has now been passed by the Ministry of Law, Justice and Company Affairs, called The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993. Under the Act Implementing Authorities and Schemes have provided under Chapter III of the Act. Sub-section (1) of Section 5 of the Act empowers the State Government by publication in the Official Gazette, appoint a District Magistrate or a Sub-Divisional Magistrate, as an Executive Authority to exercise jurisdiction within such area as may be specified in the order.

Section 14 under Chapter V provides procedure for imposing penalties. It is stated that some of the States have issued notification appointing the implementing agencies in terms of Section 5(1). However, some of the States have not issued such notification so far. We direct that any State who has not issued notification in terms of Section 5(1) of the Act to do so within a period of two months. Such agencies shall carry out investigation as empowered under Section 5(1) of the Act and also impose the penalties to the defaulters in terms of Section 14 of the Act, in the meantime.

List this matter for further orders after two months on a non-miscellaneous day.

(PAWAN KUMAR)
COURT MASTER

(ANAND SINGH)
COURT MASTER

WRIT PETITION (CIVIL) NO(s). 583 OF 2003

SAFAI KARAMCHARI ANDOLAN AND ORS.

Petitioner(s)

VERSUS

UNION OF INDIA AND ORS.

Respondent(s)

Date: 20/03/2006

CORAM :

HON'BLE MR. JUSTICE H.K. SEMA

HON'BLE MR. JUSTICE R.V. RAVEENDRAN

O R D E R

In our order dated 14.11.2005 words "Ministry of Social Justice and Empowerment as nodal Agency of the Centre in implementation of the various Schemes" shall now be read as "Ministry of Urban Employment and Poverty Alleviation as nodal Agency of the Centre in implementation of the various Schemes".

Office report shows that Union of India and four other States, namely, Andhra Pradesh, Madhya Pradesh, Rajasthan and Bihar have not filed affidavit. We grant last opportunity to file the affidavit failing which the Chief Secretary of the concerned States shall present before this Court on the next date of hearing and explain.

Mr. B. Dutta, learned Additional Solicitor General submits that he will file a detailed affidavit on behalf of the Railways.

List on 21.7.2006. A copy of the voluminous affidavit so filed must serve upon the petitioner.

(ANAND SINGH)

(PAWAN KUMAR)

COURT MASTER

COURT MASTER

WRIT PETITION (CIVIL) NO(s). 583 OF 2003

SAFAI KARAMCHARI ANDOLAN AND ORS.

Petitioner(s)

VERSUS

UNION OF INDIA AND ORS.

Respondent(s)

Date: 14/11/2005

CORAM :

HON'BLE MR. JUSTICE H.K. SEMA

HON'BLE MR. JUSTICE R.V. RAVEENDRAN

O R D E R

This Court on 29.4.2005 passed the following order:-

The Union of India and each State shall ask persons at the higher level in each of its Department and in its Corporation to personally check and then file affidavits in this Court as to whether or not, in their Department or Corporation any Manual Scavenging is still being resorted to, then that Department or Corporation to indicate with details what Scheme it has for eliminating it and for rehabilitating the persons concerned and within what time frame. It is clarified that the person who files the affidavit must be a person who is responsible for taking a decision in the matter. The affidavit to be filed on personal information and we propose to hold the person responsible if it is found that the affidavit does not contain the truth.

The Union of India to also state what funds it has so far allocated and under which particular Schemes and what the utilization of these funds has been, Union of India must state how many people have been rehabilitated each year since 1993.

Such affidavits to be filed within six months from today. We clarify that this does not mean that in the meantime the Union of India and the States do not continue with their efforts to eliminate this degrading practice.

List on 14th November, 2005.

It appears, in response to the aforesaid order some Corporations/ States have filed affidavits which are not in consonance with the directions by this Court in the above order. That apart, State of Andhra Pradesh, Madhya Pradesh, Uttar Pradesh, Maharashtra, Tamil Nadu, Rajasthan, Gujarat, Bihar have not filed affidavits. They are directed to file detailed affidavit within four months from today. We clarify that in the aforesaid order when we say that the State and each Department and Corporation, means that Secretary

of Health, Secretary, Ministry of Social Welfare and Justice, Secretary, Ministry of Urban Development and the concerned Department which deals with Manual Scavenging shall file detailed affidavit after collecting information from the concerned Municipality/Corporation or other local Department where Manual Scavenging is carried on in any of the State/Corporation/Municipality/Department. The affidavit shall further to state whether any scheme by the concerned State/Department is prepared for the elimination of Manual Scavenging and the time-bound implementation of the scheme shall also be indicated. We further clarify that in order dt. 29.4.2005, the Banks and other public sector undertakings and financial Institutions are excluded from the purview of our order. They need not file any separate affidavit.

Mr. B. Datta, learned ASG submits that the Union of India has declared Ministry of Social Justice and Empowerment as nodal Agency of the Centre in implementation of the various Schemes. The concerned Department shall file the detailed affidavit by a responsible person not below the rank of Secretary of Department who is responsible for taking decision in the matter. The said affidavit shall be filed by the concerned person stating that the contents are true to his information and to the best of his knowledge to be true, as such person shall be held responsible if it is found that the affidavit does not contain true facts.

With regard to the Ministry of Railways, the Secretary, Railway Board shall file detailed affidavit showing the scheme/proposed scheme prepared by the Railway Board and implementation of the scheme in time-bound programme for total elimination of Manual Scavenging. This shall also be done within four months from today.

We make it clear that affidavit so filed should be circulated to the counsel of the other side at least 10 days ahead of the next date of hearing.

It will not be necessary to circulate the counter to all the other States, except to the Union of India and the petitioner, amicus curiae.

List this matter on 20th March, 2006.

(Ganga Thakur)

(Prem Prakash)

PS to Registrar

Court Master

