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Lalit Kishore and MP Gupta v State of Bihar, 2003

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Lalit Kishore and M.P. Gupta v State of Bihar

High Court of Patna

JUDGMENT of 14 August 2003

Ravi S. Dhavan, C.J.

1. The Court is dealing with the subject of untouchability. This is mentioned in Article 17 of the Constitution which says:

"17. Abolition of Untouchability.--"Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability rising out of "Untouchability" shall be an offence punishable in accordance with law."

2. No one can deny that when the Constitution of India was being framed, half a century of dedication by Mahatma Gandhi supported by an equally dedicated parliamentarian and social reformer, Dr. B.R. Ambedkar, made the contribution of inserting this article. It is under Chapter 3. It is part of Fundamental Rights. This article does not guarantee any right, but it takes away, by a Constitutional mandate, the horrible scourge which defiles our republic by treating one class of citizens as "untouchables". Constitution or no Constitution this horrible practice of Untouchability continues in the nation. No deterrent, whether law or the mandate of the Constitution, has been able to eradicate this shameless practice. Fifty-four years after the Republic the stories of that great Hindi writer Premchand can be read even today as an indictment on any government which has not been able to eradicate Untouchability, which the Constitution of India desired to be wiped out by one stroke of the pen. Two stories of Premchand particularly fit in with this theme, of how society is divided between people who claim to have a superior class, and others who belong to a lower class. The two are "Thakur Ka Kuan" and "Mandir".

3. All Untouchability is not about open latrine cleaning and scavenging the carcasses of dead animals. It is much more, though these "unclean" occupations have sometimes been mentioned as some sort of logic for the isolation of certain groups of people from society. Slavery could be attributed to having its origins in exploitation for economic reasons. Origins of Untouchability cannot be traced so easily. It has created a new jurisprudence within the Republic of India of balancing the unequal. Special laws have been passed for the eradication of Untouchability and the factors that contribute to it.

4. The most scandalous, if not shameless, part is that in the State of Bihar the administrators are not even aware of these laws. Total lip services has been done to this provision of the Constitution on abolishing Untouchability. Even after the Court sought information, no official of the State Government, amongst the first five state respondents, (The State of Bihar through the Chief Secretary; the Secretary, Home Department, Government of Bihar, Patna; The Secretary, Welfare Department, Government of Bihar, Patna; the Secretary, the Urban Development Department, Government of Bihar, Patna; the Secretary, Rural Development Department, Government of Bihar, Patna), even took care to check with the Statutes of India of supporting enactments as a sequel to Article 17 on abolition of Untouchability. In a state which speaks so loudly of caring for the reserved classes, its administration is still ignorant of the relevant laws. Political platform speeches having no intention in their content will not

eradicate Untouchability nor scavenging. A political will between the political and the bureaucrat may make a dent, but unless it is done the results cannot be seen.

5. It is startling that the state administration in Bihar except one Municipality of Muzaffarpur does not even know that there is The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act of 1993. It is for this reason that the Court in its order dated 10th May, 2001 (CWJC No. 600 of 2001, order dated 10th May, 2001) had pointed out that every village in Bihar must see eradication of the open latrine, and this should be a basic amenity in keeping with sanitation. It was one basic amenity among the five which had been suggested.

6. The State of Bihar cannot pretend what the Controller and Auditor General has mentioned on this very subject in Report No. 3 of 2003, the text of which is reproduced.

"What the CAG's Audit Reports Say

REPORT NO. 3 OF 2003 (CIVIL) :

PERFORMANCE APPRAISALS

This Report contains performance appraisals of three centrally sponsored schemes namely (i) National Scheme of Liberation and Rehabilitation of Scavengers and their dependents, (ii) Swarnjayanti Grain Swarozgar Yojana and (iii) Rural Housing.

Ministry of Social Justice and Empowerment

National Scheme of Liberation and Rehabilitation of Scavengers and their dependents,

The scheme aimed at providing alternative, dignified and viable occupations to scavengers and their dependents by the end of Eighth Plan period (1992-97). The scheme, however, failed to achieve its intended objectives even after a decade of its implementation involving investments of more than Rs. 600 crore.

The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 though adopted by 16 States by April 2002, was not enforced in any State. As such, the scheme suffered due to absence of linkage with the law.

No special curriculum was developed for training of scavengers though it was recognized that occupational shift in low-skill areas would require special measures. On receipt of the survey results from the States, the Ministry fixed the targets for training during the Ninth Plan period (1997-2002). These targets were not communicated to the States and, as a result, the States either did not fix any targets or fixed only ad hoc targets unrelated to the targets of the Government of India. As against 3.50 lakh eligible scavengers and their dependents targeted for training during 1992-97, only 2.02 lakh scavengers could be imparted training by March 2002. Shortfall in training during the Ninth Plan period (1997-2002) was as high as 77 per cent.

Of the 4.00 lakh scavengers and their dependents targeted by the Eighth Plan period (1992-97), only 2.68 lakh beneficiaries could be rehabilitated by 1997. The figure further reduced to 2.02 lakh during the Ninth Plan period (1997-2002). Audit review of occupational rehabilitation revealed misapplication of resources, preponderance of unviable low cost projects and, rehabilitation of untrained scavengers, while trained scavengers remained unrehabilitated, mismatches between skills acquired and occupations provided, etc.

There were glaring organizational mismatches which adversely affected the implementation of the scheme. The role of District Collectors who were to act as key functionaries for coordinating with training institutes, financial institutions and various departments of State

Governments, was confined largely to survey and identification of beneficiaries. The responsibility of the scheme was transferred to Scheduled Castes Development Financial Corporations, which were not accountable to the District Collectors in the normal course of their functioning.

Loss of link between 'liberation' and 'rehabilitation' defocused the scheme. Liberation, interpreted to mean removal of the very cause and basis of manual scavenging, thereby allowing the beneficiary release from the stigmatised occupation, should have been the cornerstone of the Scheme as there could be no rehabilitation without liberation. Lack of correspondence between 'liberation' and 'rehabilitation' was vividly demonstrated by the fact that the Ministry of Social Justice and Empowerment, the nodal Ministry for the scheme claimed to have rehabilitated 4.71 lakh scavengers during 1992-2002 while the Ministries of Urban and Rural Development projected that only 0.37 lakh scavengers were liberated during the period. There was no evidence to suggest if those liberated were in fact rehabilitated.

An assessment of the scheme by Audit revealed poor performance along all the critical parameters i.e. identification of scavengers, training of beneficiaries, rehabilitation, monitoring and evaluation of progress of implementation of the scheme."

Of the 37 districts of Bihar notices were issued to the District Magistrates. Except for three, the District Magistrates sent their subordinates to file affidavits at the High Court. In a matter relating to the subject of untouchability, one District Magistrate, rather inexplicably, asked his Land Acquisition Officer to file his response. Why is the District administration running away from a Constitutional mandate? It is also to be mentioned here that the first five respondents to whom notices had been issued conveniently evaded to file a reply before the High Court. The Court cannot run away from the Constitutional mandate and the law.

7. A Government of India Press Information Bureau release on the web site acknowledges that "nearly a century after Mahatma Gandhi's clarion call for the abolition of manual scavenging, the degrading practice still continues in many parts of India."

8. State Counsel have virtually been instructed to officially make a statement that no cases of scavenging and untouchability have been reported. The administration of Bihar on this subject is behaving like an ostrich, with its head in the sand. Running away from the reality that the Constitution of India acknowledges, will not solve a problem. The Government of India acknowledged the problem, laws have been made and schemes framed.

9. The Government of Bihar apparently does not know where to look for official acknowledgments, acts of legislature, beneficial schemes and the reforming laws to take care of the untouchable, the scavenger and the socially demeaned and outcaste downtrodden. Then for the benefit of the State Administration of Bihar, the following is the text issued by the Government of India, acknowledging that untouchability exists, that scavengers have not disappeared and that special laws have been framed to take up the reforms, except that certain states have adopted the laws but have not shown progress in implementing them. The text of the Government of India announcement in 2001 is reproduced:

"SANITARY MARTS: NOVEL SCHEME TO REHABILITATE SCAVENGERS

Nearly a century after Mahatma Gandhi's clarion call for the abolition of manual scavenging, the degrading practice still continues in many parts of India. The members of the traditional communities or castes engaged in scavenging (inhuman occupation of manually removing nightsoil and filth) are victims of untouchability, living in segregated bastis, physically and socially isolated, considered untouchables, and even historically victims of social apathy, detest and stigma, thus constituting the most vulnerable and isolated group. The Central and the State Governments have set up several committees and groups to study the living and

working conditions of the safai Karmacharis/scavengers and evaluated and reviewed measures for abolishing the system and rehabilitating them in other socially desirable and honourable occupations. The Ministry of Social Justice and Empowerment while pursuing its efforts has taken several novel initiatives in the recent years to improve the lot of the scavengers.

Legislations

The Government enacted the employment of Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 which provides for the 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 matters connected therewith. The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, notified in the Gazette on 5th June, 1993 has become applicable to Andhra Pradesh, Goa, Karnataka, Maharashtra, Tripura, West Bengal and the Union Territories (UTs) with effect from 26th January, 1997. The Assemblies of Orissa, Punjab, Assam, Haryana, Bihar and Gujarat have also adopted the Act. All the State Governments have been requested to frame the rules for enforcing the Act. The Act also provides for a penalty of imprisonment upto 1 year with or without fine which may extend to Rs. 2000/- or both in case of failure or contravention of the Act. Further, in case of repeated contraventions fine to the extent of Rs. 100/- per day for the entire period of contravention is also provided.

Sanitary Marts

Recently the Ministry has introduced the innovative concept of Sanitary Marts under which scavengers will be organised into groups/cooperatives and these will run the Marts as a commercial establishment capable of sustaining the alternative occupation of the scavengers. This is being done under the National Scheme of Liberation and Rehabilitation of Scavengers (NSLRS) launched by the Government in March, 1992 to provide alternate employment to the scavengers and their dependents. Under NSLRS the scavengers and their dependents are trained in trades of their aptitude which can provide them alternate employment. During the course of training, the trainees get stipend up to Rs. 500/- per month and tool kit allowance up to Rs. 2,000/-. For rehabilitation, there is a prescribed financial package for different trades by which financial assistance upto Rs. 50,000/- can be provided.

Under NSLRS, the Government of India has formulated and issued guidelines to all States and their Special Central Assistance (SCAs) to form groups of 5 to 25 scavengers and start a production-cum-trading-cum service centre for large scale conversion of dry latrines through Sanitary Marts in which the loan component would be provided by the National Safai Karmacharis Finance and Development Corporation (NSKFDC), incorporated in January, 1997. An apex institution which provides concessional financial assistance to safai karmacharis and their dependents for establishment of income-generating and viable projects, as an alternate means of vocation. The Corporation has drawn up a detailed action plan and has intimated to all the States/UTs of the role of NSKFDC and has asked for the proposals specifically on this task. In line with the Government of India's Central Assistance under NSLRS for the Sanitary Marts released by the Government of India, NSKFDC has also sanctioned loans for setting up 2221 Sanitary Marts to 27 States/UTs. In the conference of MPs belonging to SC/ST in December, 1999 the Prime Minister had announced that rehabilitation of scavengers should be taken up as a national mission with a view to rehabilitating scavengers as also to improve the general sanitary conditions. The Ministry of Social Justice and Empowerment had requested the State Governments to organise scavengers in groups and train and assist them for running Sanitary Marts which will take up

construction of new latrines, conversion of dry latrines into wet ones as well as supply sanitaryware and materials to agencies and individuals.

As per the request received from 10 States for release of funds for 738 Sanitary Marts, Rs. 11.49 crore has already been disbursed to SCAs, thereby assisting 16,353 scavenger beneficiaries during the current financial year. The loan component to the rest of the States could not be disbursed because of nonavailability of Government guarantee Assurance Letter and the request from SCA concerned for release of funds.

In Uttar Pradesh 206 groups have been formed, 137 of them have been registered, 100 marts/shops have been opened and 300 are targeted for the current year. In Tamil Nadu 61 Sanitary Marts are functioning. The Gujarat Scheduled Caste Development Corporation (SCDC) has informed that 5 Sanitary Marts have been started. The Karnataka SCDC has informed that they have started one Sanitary Mart. The progress in other States is also satisfactory and it is hoped that by this year-end most of the States will start operation of Sanitary Marts profitably.

Future Plan

In future, the Corporation plans to continue its work in liberating and uplift the economic and social conditions of the scavengers/safai karmacharis through its schemes and the most innovative scheme of the Ministry of Social Justice and Empowerment, i.e. Sanitary Mart through NSLRS. The Corporation plans to go down to small/medium towns where the practice of scavenging is still continuing, informing the local people about the plight of these scavengers and the utility of water-borne latrines. The need of the time is attitudinal change among the people and coordination among various Ministries and agencies dealing with this problem. The liberation and rehabilitation of scavengers is bound to take place, it is only a matter of time."

10. The twenty-ninth report of the Standing Committee on Urban and Rural Development (2002) presented in the Parliament also pointed out that Bihar was among the states which had adopted The Employment of Manual Scavengers and Construction of Dry Latrines. (Prohibition) Act, 1993. The Ministry of Urban Development and Poverty Alleviation reported to this Committee that it had held a meeting to review the implementation of this Act on 7th June, 2001, in which all state representatives were asked to provide information relating to implementation of the act. The Ministry also had received no information from the states until the Standing Committee met. Does no one take this matter seriously?

11. It is submitted on behalf of the Additional Advocate General - II that two Municipalities did take action in the matter but the counsel appearing on the other side Messrs. Lalit Kishore and M.P. Gupta, pointed out that even this action was taken after the Court had issued notice.

12. Thus let the administrators and the Ministry go back to their desks and take their Constitution of India out and reorient themselves on the subject and come back to this Court after two weeks to give the full details on what Bihar has done to eradicate untouchability and all its variations, particularly manual scavenging, the programme, the budget, the allocation, the implementation, all the these figures since 1950 to the present day.

Put up after two weeks.