

(2016) 01 KAR CK 0148
In the Karnataka High Court
Case No : W.P. No. 16365 of 2014 [GM-RES]

Chinnamma and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 11-01-2016

Acts Referred:

Constitution of India, 1950 — Article 144
Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 —
Section 11, Section 12, Section 13

Citation : (2016) 01 KAR CK 0148

Hon'ble Judges : Ashok B. Hinchigeri, J.

Bench : Single Bench

Advocate : Maitreyi Krishnan, Advocate for Clifton D'rozario, Advocate, for the Appellant; R.B. Sathyanarayana Singh, A.G.A., for the Respondent

Final Decision : Allowed

Judgement

Ashok B. Hinchigeri, J.—1. The petitioner Nos. 1 to 3 are the wife, daughter and son respectively of one Chenchaiiah, who met the watery death on 18.1.2014 when he was clearing the drain. The post mortem report (Annexure-G) also states that the death is due to asphyxia as a result of drowning. The second respondent Bruhath Bangalore Mahanagara Palike (B.B.M.P.) has already given the compensation of Rs. 2,00,000/-. The dependants of the deceased Chenchaiiah are agitating their entitlement to rehabilitation, etc.

2. Ms. Maitreyi Krishnan, the learned counsel appearing for Sri Clifton D' Rozario for the petitioners submits that statements of the three eye-witnesses which are Annexures to the charge-sheet clearly indicate that the Supervisor, Sri Ramesh had put the deceased and five to six other safai karmikas on the job in question on the fateful day.

3. The learned counsel brings to my notice the relevant provisions of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 ["the said Act" for short] to support the submission that the law entitles

the dependents of manual scavengers to certain benefits like allotment of residential plot, cash assistance, etc. She assiduously draws my attention to the Hon"ble Supreme Court's decision in the case of DELHI JAL BOARD v. NATIONAL CAMPAIGN FOR DIGNITY AND RIGHTS OF SEWERAGE AND ALLIED WORKERS AND ORS. reported in , 2011 (7) SCALE 489. Paragraph No. 20 of the said decision read out by her is as follows:--

"20. These judgments are complete answer to the Appellant's objection to the maintainability of the writ petition filed by Respondent No. 1. What the High Court has done by entertaining the writ petition and issuing directions for protection of the persons employed to do work relating to sewage operations is part of its obligation to do justice to the disadvantaged and poor sections of the society. We may add that the superior Courts will be failing in their constitutional duty if they decline to entertain petitions filed by genuine social groups, NGOs and social workers for espousing the cause of those who are deprived of the basic rights available to every human being, what to say of fundamental rights guaranteed under the Constitution. It is the duty of the judicial constituent of the State like its political and executive constituents to protect the rights of every citizen and every individual and ensure that everyone is able to live with dignity. Given the option, no one would like to enter the manhole of sewage system for cleaning purposes, but there are people who are forced to undertake such hazardous jobs with the hope that at the end of the day they will be able to make some money and feed their family. They risk their lives for the comfort of others. Unfortunately, for last few decades, a substantial segment of the urban society has become insensitive to the plight of the poor and downtrodden including those, who, on account of sheer economic compulsions, undertake jobs/works which are inherently dangerous to life. People belonging to this segment do not want to understand why a person is made to enter manhole without safety gears and proper equipments. They look the other way when the body of a worker who dies in the manhole is taken out with the help of ropes and cranes. In this scenario, the Courts are not only entitled but are under constitutional obligation to take cognizance of the issues relating to the lives of the people who are forced to undertake jobs which are hazardous and dangerous to life. It will be a tragic and sad day when the superior Courts will shut their doors for those, who without any motive for personal gain or other extraneous reasons, come forward to seek protection and enforcement of the legal and constitutional rights of the poor, downtrodden and disadvantaged sections of the society. If the system can devote hours, days and months to hear the elitist class of eminent advocates who are engaged by those who are accused of evading payment of taxes and duties or otherwise causing loss to public exchequer or who are accused of committing heinous crimes like murder, rape, dowry death, kidnapping, abduction and even acts of terrorism or who come forward with the grievance that their fundamental right to equality has been violated by the State and/or its agencies/instrumentalities in contractual matters, some time can always be devoted for hearing the grievance of vast majority of silent sufferers

whose cause is espoused by bodies like respondent No. 1."

4. Next, the learned counsel relies on the Apex Court's decision in the case of *SAFAI KARAMCHARI ANDOLAN AND OTHERS v. UNION OF INDIA AND OTHERS*, reported in , (2014) 11 SCC 224. Paragraph Nos. 23.1, 23.3 and 23.4 of the said decision containing positive directions and affirmative actions is extracted hereinbelow:--

"23.1. The persons included in the final list of manual scavengers under Sections 11 and 12 of the 2013 Act, shall be rehabilitated as per the provisions of Chapter IV of the 2013 Act, in the following manner, namely:

(a) such initial, one-time cash assistance, as may be prescribed;

(b) their children shall be entitled to scholarship as per the relevant scheme of the Central Government or the State Government or the local authorities, as the case may be;

(c) they shall be allotted a residential plot and financial assistance for house construction, or a ready-built house with financial assistance, subject to eligibility and willingness of the manual scavenger as per the provisions of the relevant scheme;

(d) at least one member of their family shall be given, subject to eligibility and willingness, training in livelihood skill and shall be paid a monthly stipend during such period;

(e) at least one adult member of their family shall be given, subject to eligibility and willingness, subsidy and concessional loan for taking up an alternative occupation on sustainable basis, as per the provisions of the relevant scheme;

(f) shall be provided such other legal and programmatic assistance, as the Central Government or State Government may notify in this behalf.

23.3. Identify the families of all persons who have died in sewerage work (manholes, septic tanks) since 1993 and award compensation of Rs. 10 lakhs for each such death to the family members depending on them.

24. In the light of various provisions of the Act referred to above and the Rules in addition to various directions issued by the Court, we hereby direct all the State Governments and the Union Territories to fully implement the same and take appropriate action for non-implementation as well as violation of the provisions contained in the Act 2013. Inasmuch as the 2013 Act occupies the entire field, we are of the view that no further monitoring is required by this Court. However, we once again reiterate that the duty is cast on all the States and the Union Territories to fully implement and to take action against the violators. Henceforth, persons aggrieved are permitted to approach the authorities concerned at the first instance and thereafter the High Court having jurisdiction."

5. Sri K.N. Puttegowda, the learned counsel appearing for the respondent No. 2

submits that the Commissioner of the second respondent B.B.M.P. has referred the matter to the Joint Commissioner for considering the grievance of the petitioners. Without prejudice to this submission, he submits that neither the second respondent engaged the services of the deceased Chenchaiyah nor it has given any work of clearing the drain opposite to K.P. Agrahara Police Station, where the said Chenchaiyah is stated to have died. He submits that, if the petitioner died on account of his negligence, the second respondent B.B.M.P. cannot be fastened with the liability to pay the compensation. Even when the second respondent is not liable to pay the compensation, it has still paid Rs. 2,00,000/- from out of the Mayor's Fund. He submits that the same is done on the humanitarian grounds. He also submits that as per the postmortem report, the age of the deceased is shown as 75 years and the old man would not have ventured to enter the drain.

6. Sri R.B. Sathyanarayana Singh, the learned Additional Government Advocate appearing for the respondent No. 1 submits that this petition is liable to be dismissed on the short ground of the non-joinder of necessary parties. He submits that the contractor, who allegedly employed or drafted the deceased workman for the work in question is not made a party. He submits that the name of deceased Chenchaiyah does not figure in the list of scavengers.

7. In the course of rejoinder, Ms. Maitreyi Krishnan, the learned counsel for the petitioners submits that the accident in question has occurred after the commencement of the said Act. While the said Act was put into force on 18.9.2013, Chenchaiyah's death on account of his drowning in the open drain (which was filled with sewage) was on 18.1.2014. She submits that the Apex Court, in the case of Delhi Jal Board (supra) has virtually over-ruled similar objection raised by the authorities that the writ petition ought to have dismissed, as the Contractor was not made a party.

8. The submissions of the learned counsel have received my thoughtful consideration. Reference to Statement of Objects and Reasons is permissible for understanding the background, the antecedent state of affairs and the inhuman and obnoxious practice for the removal of which the statute is enacted. The Parliamentarians noticed with profuse concern the unfortunate situation in the following words:

"And whereas the dehumanizing practice of manual scavenging, arising from the continuing existence of insanitary latrines and a highly iniquitous caste system, still persists in various parts of the country, and the existing laws have not proved adequate in eliminating the twin evils of insanitary latrines and manual scavenging;

And whereas it is necessary to correct the historical injustice and indignity suffered by the manual scavengers, and rehabilitate them to the life of dignity.

9. On the ground that the deceased was 75 years of age or that he had shown negligence in the course of discharging his duties, this petition cannot be thrown

out. As observed by the Apex Court in the case of Delhi Jal Board (supra), no one would like to enter the manhole of sewage system for cleaning purpose; if some persons are forced to take such hazardous jobs, it is only with the hope that at the end of the day they will be able to make some money and food for their family. The manual scavengers risk their lives for the comfort of others. When somebody dies in the manhole, the Courts are not only entitled, but are under the constitutional obligation to take cognizance of the issues relating to the lives of the people who are forced to undertake jobs which are hazardous and dangerous to life.

10. The Apex Court has expressed the timely concern that when the courts can devote hours, days and months to hear the elitist class of eminent advocates who are engaged by those who are accused of evading the payment of taxes and duties or otherwise causing loss to public exchequer or who are accused of committing heinous crimes like murder, rape, dowry death, kidnapping, abduction and even acts of terrorism or who come forward with the grievance that their fundamental right to equality has been violated by the State and/or its agencies/instrumentalities in contractual matters, some time can always be devoted for hearing the grievance of vast majority of silent sufferers.

11. The Apex Court in the case of Safai Karamchari Andolan (supra) has directed all the State Governments and Union Territories to identify the families of all the persons who have died in sewage work (manholes, septic tanks) since 1993 and award compensation of Rs. 10.00 lakhs for each such death to the family members depending on him. Article 144 of the Constitution of India states that all the authorities, civil and judicial in the territory of India shall act in aid of the Supreme Court.

12. It is also worthwhile to notice that Karnataka State Commission for Safai Karmacharis has already written to the second respondent to pay the compensation of Rs. 10.00 lakhs. The first respondent through its Social Welfare Department has already recommended that Rs. 10.00 lakhs compensation and other benefits to be disbursed to the dependants of the deceased Chenchiah, as is evident from its letter, dated 16.9.2014.

13. This Court, by its order, dated 2.9.2015 directed the second respondent to take a decision within three weeks' time on the first respondent's letter, dated 16.9.2014. Four months have elapsed from the date of passing of the interim order, dated 2.9.2015. For the reasons best known to itself, the respondent No. 2 has not taken the decision in the matter. A matter of this nature cannot be made to wait indefinitely. Just as development is inclusive, justice has also got to be inclusive. The dependents of the deceased manual scavenger cannot be perennially left to their fate.

14. For all the aforesaid reasons, I allow this petition by giving the following directions:--

i) The respondent No. 2 shall disburse the balance compensation amount of Rs.

8,00,000/- (rupees eight lakhs only) to the dependents of the deceased Chenchaiyah within six weeks from the date of the issuance of the certified copy of today's order.

ii) The respondent No. 2 shall give all the benefits to the dependents of the said Chenchaiyah, which are guaranteed by Section 13 of the said Act and which are directed to be given by the Apex Court in its judgment, in the case of Safai Karamchari Andolan (supra), within six months from the date of the issuance of the certified copy of today's order.

iii) No order as to costs.