

(2008) 08 DEL CK 0099

In the Delhi High Court

Case No : Writ Petition (Civil) No. 5232 of 2007

National Campaign for Dignity and Rights of Sewerage and
Allied Workers

APPELLANT

Vs

MCD and Others

RESPONDENT

Date of Decision : 20-08-2008

Acts Referred:

Citation : (2008) 155 DLT 136

Hon'ble Judges : A.P. Shah, C.J;Dr. S. Muralidhar, J

Bench : Division Bench

Advocate : Colin Gonsalves and Jai Singh, for the Appellant; Ajay Arora, for MCD, Suresh Tripathi, for DJB, Zubeda Begum, for PWD, Ajay Verma, for DDA, Jyoti Singh, for NDMC, R. Nanavaty, for Delhi Cantt. Board and Yogesh Malhotra, for R-4, for the Respondent

Judgement

1. This public interest litigation concerns the working conditions of those employed for cleaning of the sewers in the city of Delhi. It shows that their working conditions are wholly incompatible with human dignity and hazardous for their health and safety. The report by the Centre for Education and Communication (CUC) is placed on record, which apart from analysing the data gathered through the survey conducted in Delhi also suggests short and long term measures to tackle the issue. Reliance is also placed on the order dated 15th February, 2006 of the High Court of Gujarat in Praveen Rashtupal v. Chief Officer, Kadi Municipality (SCA Nos. 8989/2001 and 11706/2004) where a series of directions have been issued.

2. At the first hearing of the PIL, Division Bench of this Court while directing Rule issued, inter alia, the following directions:

Having given our careful consideration to the submissions made at the bar, we are of the opinion that a case is made out for the intervention of this Court in public interest. We are also of the view that any process of evaluation of the existing systems, the feasibility of reforms in the same would require to be

monitored. This can, in our opinion, be done more effectively if the agencies concerned have an opportunity to first interact with each other and evaluate the options available to them. That process could be undertaken before a local commissioner or a committee appointed by this Court as has been done in many cases involving public interest, but to save cost and yet make the process effective and speedy, we would request one of our Hon''ble brother judges to donate some time beyond the court hours to work out a feasible solution to the problem acceptable to all. If that happens, the matter can be listed for orders and disposal before the Court subject to such modifications in the proposed solution as the Court may deem fit and proper. In case, however, a solution eludes the exercise requiring any direction from this Court, the matter shall be listed for directions before the Court.

We accordingly request Hon''ble Dr.Justice S. Muralidhar, a judge of this Court, to donate some of his valuable time beyond court hours in an attempt to find out a workable solution to the problem in consultation with all concerned including experts, if any on the subject. The parties shall appear before Dr. S. Muralidhar, J on Saturday the 18th August, 2007 at 11.00 a.m. in his lordships chamber.

3. Thereafter, fairly elaborate detailed hearings were held by Dr.S. Muralidhar, J on 18th August, 2007, 22nd September, 2007 and 1st December, 2007. Although a number of issues have been highlighted by the petitioner, the issues that have been considered on priority basis include : (a) deaths of the sewer workers, (b) their health and safety, (c) the steps to prevent recurrence of deaths and injuries of the sewer workers and to improve their working conditions (d) the compensation if any paid for the deaths of the workers in the course of their employment and (e) the steps to be taken to phase out manual work and replace it with mechanized sewer cleaning. By order dated 5th April, 2008, which is in the form of a report, magnitude of the problem has been noted with reference to the affidavit dated 4th April, 2008 of Delhi Jal Board (DJB) wherein it is mentioned that "the infrastructure in the National Capital comprises of a network of 6150 Kms long sewers. Out of this 150 Kms is the length of trunk sewers, 1500 Kms is the length of peripheral sewers and 4500 Kms is the length of internal sewers. The sewer network is connected to 17 Sewage Treatment Plants, having a composite capacity of 512.4 MGD. Besides, there are 33 major Sewage Pumping Stations located at various locations to pump the sewage wherever required." It was noted that at present 3923 permanent workers are employed against 4171 sanctioned posts. In addition there are 1403 muster roll workers. Apart from these workers, contract labour is also engaged from time to time. It was further noted that although guidelines on safety have been issued by DJB in November, 2002, they are being observed more in its breach and the DJB is not serious about the implementation of its own safety guidelines. It was further noted that so far as DJB is concerned there have been a total of 36 deaths of sewer workers since 2002 out of which 30 were contract workers and 6 were in regular employment. It was also noted that in spite of repeated directions, DJB has failed to conduct inquiries into the deaths and injuries of sewer workers. It

was noted that there are many aspects of the matter that will require further monitoring to ensure that real changes are brought about in the working conditions of sewer workers. In particular the liability of the DJB and the contractors under the CLRA and their liability to pay compensation under the WC Act (as amended in 2002) will have to be examined. Even while a workable scheme of remedial measures is formulated, the reasons for the deaths of the sewer workers and for the failure of the DBJ and its contractors to comply with the 2002 guidelines must be unearthed for which the DJB has to honour its commitments to the Court with all seriousness.

4. Thereafter the matter was placed before the Division Bench and by order dated 11th April, 2008, the Court called upon the DJB and NDMC to file status report setting out the requisite information and, inter alia, stating: (a) the number of deaths that have taken place from the year 2002 onwards; (b) have any enquiries / investigations at any level been conducted by the authorities into the cases of such deaths; (c) if enquiries were conducted, was any action taken either against the contractor who employed the deceased workers or against any other functionary of the local body under whom the contractor was engaged; (d) if there any proposal for improvement of the working conditions of the sewer workers, if so what are those proposals and what steps have been taken by the local bodies to implement the recommendations, if any, made in that regard; (e) in case there are no proposals, are the local bodies willing to frame guidelines and take measures to prevent such deaths in future and to provide better working conditions to the workers engaged for cleaning work; (f) if there any provision for payment of compensation to the families of the deceased workers and for those who suffer a disability while working. If so what is the scheme and have any payments under the same been made.

5. Pursuant to the above order, NDMC has filed affidavit dated 8th May, 2008 wherein it has been asserted that no NDMC employee / contractor's labour has died during cleaning of sewer lines / manholes since the year 2002 due to negligence / non-adoption of safety measures. However, it is conceded that 3 persons working under the NDMC contractor died on 7th December, 2003 due to inhalation of toxic gases from the sewer lines. It is stated that the above three persons entered in the manholes without obtaining any permission / approval from Engineer-in-Charge of the site and without any safety precautions / measures which are required before entering into a sewer line. It is further stated that since it was a case of accident and not negligence, no inquiry was conducted. According to NDMC, there is scope for improvement of the working conditions of the sewer workers and following steps have been taken by NDMC in this direction:

1. As far as possible cleaning of sewer lines / manholes is done mechanically. Entry of human beings is being restricted to the rarest of rare cases only where mechanical cleaning is not possible.

2. In cases where manual cleaning is done, it is ensured that all safety

equipments are used and all precautions are taken. Sewermen are not allowed to remain in deep manholes for more than 5-10 minutes at a stretch. The concerned Junior Engineer / Assistant Engineer remains present at site during the entire cleaning operation.

3. All safety appliances like air breathing apparatus, full face cover safety mask, safety belts, torch, safety goggles, safety helmets, safety belts, gum boots, diving suits, air blowers and exhausts etc. are being extensively used.

4. Free medical facilities are provided to all employees for health checkup, treatment and hospitalization etc. in state of the art hospitals of capital. A list of all such hospitals is given below:

(1) Max Balaji Hospital, Indraprastha

(2) ...

(3) ...

(4) ...

26) Charak Palika Hospital, Moti Bagh

5. All the sewermen are insured for Rs. 1.00 lac each with the National Insurance Company Ltd. for which the premium is paid by NDMC. This is besides the General Insurance Scheme which is applicable to the Government Employees as per Central Govt. Rules.

6. Accommodation is given to the sewermen as per the availability / seniority. At every service centre labour rest room has been provided. For the education of their family members several NDMC schools are functioning in NDMC area.

7. Drinking water, bathing and washing facility is provided at the stores / service centres. Recreational club has been provided by NDMC for its employees.

8. Training for use of appliances and other safety equipments is given to the workers by the department itself. Programme for training from other agencies is being chalked out.

6. The DJB has filed status report dated 7th July, 2008 in which it is admitted that number of deaths since 2002 is 36 and six of those workers were employed by DBJ and 30 were contract workers. The reasons for the deaths in most of the cases have not been given. In the cases in which reasons have been furnished, the cause of death has been attributed to lack of safety equipments or negligence. In none of these cases any disciplinary action has been taken and apart from simple warning, which has been issued in majority of cases, no action has been taken against the concerned official or contractor, responsible for the workers' safety. It is further stated in the status report that the DJB has now made functional Safety and Disaster Management Cell that will take care of issues concerning the sewer workers. Instructions have been issued to all concerned to incorporate a clause in the contract agreement to reserve the right

of DJB to debar/blacklist a defaulting firm. The report further states that the following proposals for improvement of the working conditions have been made:

- i. Safety awareness programs
- ii. Circulations of dos and dont's for sewer workers
- iii. Directions to procure and maintain safety equipment
- iv. Training in confined space entry and rescue imparted to ten trainers
- v. Entered into an MOU w/National disaster management for providing consultancy services for safety & disaster management.

According to DJB it has taken the following steps in an attempt to shift from manual to mechanized cleaning:

- i. DJB has stopped using manual labor to clean sewer line deeper than 5 ft. It has procured additional jetting machines.
- ii. Major trunk / peripheral sewer is desilted by super sucker machines. However, in an emergency, deep sewer entry is allowed with proper safety equipment and the presence of a junior engineer.

7. According to DJB it has also procured the necessary equipments. It is then stated that DJB has 11 dispensaries, 25 private hospitals and 37 diagnostic centres empanelled with the DBJ to provide care to the workers. It has a decentralised arrangement for reimbursement when beyond normal entitlement so relief in emergency cases is immediate. The first aid boxes are made available for workers and contractors are obliged to provide medical facilities as per provision of the contractual agreement and periodic health check ups are being done. It is stated that model rules and safety codes, which are in force, will be strictly implemented for the workers cleaning the sewers. DJB has introduced a basic safety awareness for the year 2007 - 08 in collaboration with National Institute of Disaster Management for providing consultancy services for safety and disaster management and the establishment of emergency preparedness and response teams. The guidelines issued by the NHRC are being followed by the DJB. On the issue of compensation, the DJB has stated that if a worker dies, compassionate appointment is given wherever possible. Workers facing injury are provided with compensation as per the insurance policies taken. In cases where there is death of a worker hired by contractor, Worker Compensation Act provides for payment of compensation. Although DJB has agreed to provide names of the contract workers working for the contractors, relevant details regarding contractors and the workers working under them have not been furnished.

8. In the written submissions filed on behalf of the petitioner on 22nd July, 2008, it has been brought on record that a daily wage worker by the name of Amit, working for contractor employed by NDMC, died due to inhalation of toxic gases on 20th July, 2008. It is stated that Amit was accompanied by another daily wage worker, Rajpal, who fainted due to the inhalation of gases and was

removed from the sewer. Rajpal has, however, survived. Further according to the petitioner, on 5th May, 2008, two contract workers working under contractors employed by the DJB died due to inhalation of gases in the sewer. Their names are Chintu and Pintu (Papu/Hassan Ahmed). They were working in a sewer line situated at Dabri.

9. Having considered the various reports made by the concerned agencies and also the submissions made at the bar, we pass the following interim directions pending final disposal of this writ petition:

(a) The medical examination and medical treatment will be given free of charge to sewer workers and the treatment will continue for all such workers found to be suffering from an occupational disease, ailment or accident until the workman is cured or until death.

(b) The services of the sewer workers are not to be terminated, either by the respondents or the contractors engaged by them, during the period of illness and they shall be treated as if on duty and will be paid their wages.

(c) Compensation shall be paid by the respondents and recoverable from the contractors, if permissible in law, to all the workmen suffering from any occupational disease, ailment or accident in accordance with the provisions of the Workmen's Compensation Act, 1923.

(d) The respondents shall pay on the death of any worker, including any contract worker, an immediate ex gratia solatium of Rs. one lac with liberty to recover the same from contractors, if permissible in law.

(e) The respondents shall pay / insure payment of all statutory dues such as Provident Fund, Gratuity and Bonus to all the sewer workers, including contract workers, as applicable in law.

(f) The respondents shall provide as soon as possible modern protective equipments to all the sewer workers in consultation with the petitioner organisation.

(g) The respondents shall provide soap and oil to all the workmen according to the present quota, but on monthly basis and not at the end of the year.

(h) The respondents shall provide restrooms and canteens, in accordance with the DJB model rules, including therein first-aid facilities, safe drinking water, washing facilities, latrines and urinals, shelters, creches and canteens as set out in the model rules. There are to be provided at what is known as "stores" which are the places where the workers assemble to give their attendance and from where they depart to their respective work sites.

(i) The respondents shall provide all workman, including contract workmen, with an accident-card-cum-wage-slip as set out in clause 8 of the C.P.W.D./PWD (DA)/ Delhi Jal Board Contractors Labour Regulations (for short "Labour Regulations").

(j) The respondents shall provide all workers, including contract workers, employment cards as set out in clause 9 of the Labour Regulations and, on termination of services provide the contract workers and others with a service certificate as set out in clause 10 of the Labour Regulations.

(k) The respondents shall authenticate by signing the payment of wages register for contract workers in terms of clause 5 of the Labour Regulations.

(l) The respondents shall submit to this Court and to the petitioner within four weeks from today the full list of contract workers and contractors engaged for work relating to the sewers together with the wages paid to such workmen and the number of years of employment of the workers.

(m) The DJB is directed to ensure that the ex gratia payment in case of deaths of sewer workers has been paid to the families of deceased workmen and in case such compensation is not paid, release the same within a period of eight weeks.

(n) NDMC is directed to pay ex gratia payment of Rs. one lac each in respect of the accident of 7th December, 2003 where three persons working under the NDMC contractors died, with liberty to recover the same from the contractor, if permissible in law.

(o) The DJB and NDMC are directed to hold an inquiry into deaths of sewer workers referred to in paragraphs 15 and 16 of the written submissions of the petitioner dated 22nd July, 2008 and submit a report to this Court within a period of eight weeks. If it is found that the contract workers in question were working under the contractors employed by NDMC / DJB, ex gratia compensation of Rs. one lac shall be released forthwith to the families of the victims subject to right of recovery from contractors in accordance with law.

(p) The respondents shall place on record a map showing the areas within the NCT (1) where no sewage facilities are available, (2) where modern machinery cannot enter due to narrow lanes or otherwise, (3) the areas serviced by modern machinery and (4) critical area where frequent deaths, accidents and blockages occur. It shall be done within three months from today.

(q) Lastly, the respondents are directed to place on record the proposals and plans to phase out manual work and replace it with mechanized sewer cleaning, as envisaged by DJB as well as NDMC, which shall be done within three months.

10. In order to ensure the compliance of the above directions, we constitute a Committee consisting of:

(I) Mr.S.R. Shankaran, IAS retired Chief Secretary to the Government of Tripura, Chairman;

(II) One officer each to be nominated by NDMC, DDA and DJB respectively, who shall not be less than the rank of Under Secretary to the Government of India

(III) Joint Secretary of the Social Welfare Department, Government of NCT of

Delhi to be nominated by the Secretary of that Department, who shall be the Convener of the Committee;

(IV) one representative of the petitioner organisation.

11. The aforementioned Committee shall meet once in a fortnight. Space and other infrastructure including conveyance and secretarial staff as required by the Committee shall be provided by the Delhi Jal Board. The Chairman of the Committee shall be paid an honorarium of Rs. 5,000/- for every meeting. All possible assistance will be rendered to the Committee by the concerned civic agencies. It will be open to the Committee to approach this Court for direction, if may required. The Committee is requested to place a report before this Court before the next date of hearing.

12. Place for further hearing on 22nd October, 2008.

13. Copy of the order be given dasti to the counsel for the parties. One copy each may be sent to the Chairman of the Committee, Chairman of NDMC, Vice Chairman of DDA, CEO of DJB and Secretary, Social Welfare Department, Govt. of NCT of Delhi within five days from today for compliance.