

(2018) 02 DEL CK 0637

In the Delhi High Court

Case No : Civil Writ Petition No. 7030 Of 2012

Rajesh And Anr

APPELLANT

Vs

Delhi Jal Board And Ors

RESPONDENT

Date of Decision : 27-02-2018

Acts Referred:

Constitution Of India, 1950 — Article 21

Indian Penal Code, 1860 — Section 304A

Prohibition Of Employment As Manual Scavengers And Their Rehabilitation Act, 2013
— Section 7

Citation : (2018) 02 DEL CK 0637

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : Sakshi Popli, Ritesh Kumar, Jagdish Singh, N.K. Kapoor, Arvind Kr. Trikha, Anusuya Salwan, Nikita Salwan

Final Decision : Allowed

Judgement

V. Kameswar Rao, J

1. The present petition has been filed by the petitioners, seeking the following prayers:

â??In view of the facts and circumstances of this petition, the petitioner prays before this Honâ??ble Court, inter alia, as under:

a. For an order and direction declaring the respondents herein severely and collectively responsible and liable to pay the compensation,

entitlements under labour legislations and other entitlement under various welfare schemes to the families of the victims.

b. For an order and direction to the respondents herein to compensate the families of each of the victims who are being represented by the

petitioners herein separately to the tune of Rupees Ten Lacs for the death of each

victim.

c. For an order and direction to the respondents herein to pay the entitlements under National Family Benefits Scheme, Indira Gandhi

National Widow Pension Scheme and other welfare schemes to the petitioners.

d. For an order and direction to the respondents to pay the due entitlements, statutory dues to the families of the victims the dues and

entitlements under relevant labour laws in force.

e. For an order and direction to the respondents to adequately compensate the petitioners as quantified by this Honâ??ble Court, for the

loss and detriment suffered by them in view of the delay in payment of their due entitlements.

f. For an order and direction to the respondents to pay the cost of this petition as quantified by this Honâ??ble Court.

g. For any other order or direction that this Honâ??ble Court may deem fit and appropriate under the circumstances of the instant case

and in the interest of justice.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER SHALL EVERY AS IN THE DUTY BOUND EVER PRAYâ??.

2. The brief facts leading to the present petition are, the respondent No. 1-Delhi Jal Board, constituted under Delhi Water Board Act, 1998,

responsible for production/distribution of drinking water in Delhi is also meant for collection, treatment and disposal of waste water/sewage in the

capital. Respondent No. 2 i.e. the Delhi State Industrial and Infrastructure Development Corporation Limited (DSIIDC), a government company is

responsible for developing and providing industrial infrastructure facilities to the entrepreneurs in Delhi. Respondent Nos. 1 and 2 agencies function

under respondent No. 3 i.e. the Govt. of NCT of Delhi. Respondent No. 3 is responsible for implementation of welfare schemes which are also meant

for the victims and their family members. Respondent Nos. 4 to 6 are private individuals.

3. Petitioner No. 1 is the wife of Late Mr.Tilak Ram @ Tilak Raj. Petitioner No. 2 is the mother of Late Mr.Bhagwan Singh @ Rajesh. It is the case

of the petitioners (wife and mother of the deceased persons) that on October 22, 2011, respondent No. 4 Vinod and the contractor engaged the 3

persons namely Mr.Bhagwan Singh @ Rajesh, Mr.Tilak and Mr. Rohit for cleaning

the sewerage near factory situated at I-127, Sector 2, DSIIDC, Bawana, Delhi on the behest of the respondent Nos. 5 and 6 herein. It is their case that Mr. Bhagwan Singh @ Rajesh and Mr. Tilak Raj stepped into the blocked sewerage for cleaning it, but due to non-supply of safety equipment, masks and oxygen cylinder by the respondent Nos. 4 to 6, they lost consciousness because of fumes and gases and died on the spot. In this connection, FIR No. 366/2011 at Bawana Police Station was also got registered. After conducting the investigation, the prosecution has booked the accused persons namely respondent Nos. 4 to 6 under Section 304A IPC before the Court of learned M.M., Rohini Courts. The said case is reported to be pending consideration before the learned M.M. The petitioners' case is that the deceased persons were the sold bread-winners of the families of the petitioners, who died while cleaning the sewerage in the Bawana Industrial Area.

4. The petitioners' case is that even after a lapse of more than a year, there has not been any effort to compensate the petitioners and the deceased persons died while cleaning the sewerage in the DSIIDC area in Bawana, the cleaning of which area was the responsibility of DSIIDC and Delhi Jal Board, the respondent Nos. 1 and 2 respectively herein but the authorities have failed to do so and the deceased persons were forced to go into the sewerage without any safety equipment. The deceased persons, although, were not regular employees of these statutory agencies, but were regularly employed by the Contractor Mr. Vinod (respondent No. 4) for cleaning the drainage and sewerage in the area.

5. I note, the petitioners rely on a PIL filed on the issue of deaths of sewerage workers in Delhi [W.P.(C.) 5232/2007, titled National Campaign for Dignity and Rights of Sewerage and Allied Workers & Others Vs. Municipal Corporation of Delhi and Ors.] before the Division Bench of this Court, wherein, this Court on August 20, 2008 passed a series of orders on various issues including improving the condition of service of sewerage workers, provision of basic amenities, medical and hospitalization facilities, covering them in labour legislations, compensation etc. Against the aforesaid interim order passed by the Division Bench of this Court, an appeal was filed by the Delhi Jal Board (respondent No. 1) before the Supreme Court, wherein the Supreme Court in its order and judgment dated July 12, 2011 C.A 5322/2011

upheld the order of this Court and also modified the amount of compensation to Rs. 5 lakhs. It is the case of the petitioners that the deceased persons were living below the poverty line and even after their death, their family members are still living under poverty and are also entitled for the schemes like National Family Benefit Scheme (NBFS) and Indira Gandhi National Widow Pension Scheme amongst others as being administered by the Govt. of NCT of Delhi (respondent No. 3).

6. The respondent No. 1-Delhi Jal Board in its short counter affidavit took a stand that the reliefs claimed in the petition do not pertain to the respondent No. 1 since deaths are reported to have taken place while cleaning the area, which fell in Bawana Industrial Area and the sewer lines are being maintained by the DSIIDC (respondent No. 2). Thus, the respondent No. 1 has no role to play in the maintenance of the said lines and seeks dismissal of the petition.

7. The respondent No. 2 â?"DSIIDC in its counter affidavit has given a detailed procedure for manual scavenging. It stated that the work of cleaning and desilting of the sewer lines is being carried out with the help of a machine and the contract for the said work has been awarded to one M/s. Et. Envirotech Overseas Private Limited vide letter of acceptance dated April 5, 2011 with respect to Sector Nos. 1 to 5 of Bawana Industrial Area. The respondent No. 2-DSIIDC has averred that no complaint was filed by any of the industrial owners from that area regarding the cleaning of the sewer lines nor any information was provided to the respondent No. 2 or any permission taken from the respondent No. 2 for getting the work of cleaning of sewer lines done. It is also the case of the respondent No. 2 that it had written to the local police on April 19, 2011 pointing out that some owners are engaging private sewer cleaning men and the same is damaging the sewerage system and infrastructure of the respondent No. 2-DSIIDC. It is the stand of the respondent No. 2 that the deceased/legal heirs of the petitioners were not the employees of the respondent No. 2 â?"DSIIDC or any of its contractors. It is also the case of the respondent No. 2 that it wrote again two days after the incident asking police to investigate the matter.

8. The respondent No. 4, in his counter affidavit states, there was no privity of contract; he never engaged any labour for the purpose of cleaning sewer and he does not have any licence nor is he a contractor. He further states,

the said FIR No. 366/2011 has no connection with the respondent No. 4 as the respondent No. 4 has not been named in the FIR.

9. The respondent No. 5 in his counter affidavit has stated that the present writ petition is not maintainable in the eyes of law as it involves disputed questions of facts and held DSIIDC (respondent No. 2) responsible for maintenance of sewer system. He states that the answering respondent was also not present at the time of incident as he had gone to attend the funeral of his known. Respondent No. 5 has further averred that his plot/shed was 1½ kilometers away from the spot of incident and is in different lane and thus, he has nothing to do with the alleged incident. As per FIR, no eye witness was present at the spot alleged.

10. The respondent No. 6 in his counter affidavit, has taken a similar defence as taken by the respondent No. 5 i.e. the petition is not maintainable due to disputed question of facts and the respondent No. 2-DSIIDC is responsible for maintenance of sewerage.

11. The learned counsel for the parties in support of their submissions have reiterated the stand as taken in their respective pleadings referred to above. I may also state here that the Govt. of NCT of Delhi has not filed any counter affidavit. Its right to file counter affidavit was closed vide order dated August 05, 2013.

12. Having heard the learned counsel for the parties and perused the record, there is no dispute that DSIIDC is responsible for maintaining sewer lines in Bawana Industrial area. The primary defence of the DSIIDC in the petition being (i) it follows a definite procedure for sewage cleaning including usage of super sucker machines; (ii) the Contract was awarded to M/s. E.T. Envirotech Overseas Private Limited; (iii) two persons, who died were not employed by the agency appointed by the DSIIDC; (iv) they were engaged by the private parties for cleaning the sewage lines; (v) prior to the incident dated October 22, 2011, it had written to the police authorities to take note of the fact that some owners were engaging private sewer cleaning men and the same is damaging the sewage system and infrastructure of the respondent i.e DSIIDC; (vi) no complaint was ever received from any of the industrial owners regarding cleaning/desilting of sewer lines.

13. The issue, which has been raised by the petitioners, who are the legal heirs of the deceased persons is no more a res-integra. Initially this Court

has in the case of National Campaign for Dignity and Rights of Sewerage and Allied Workers & Others Vs. Municipal Corporation of Delhi and Ors.

(supra), decided the issue of grant of compensation to the family of a deceased worker, who while working in sewer line, inhale poisonous gas and die

of suffocation. The Division Bench of the High Court issued notice and also made a request to one of the judges Dr. Justice S. Muralidhar to make an

attempt to find out a workable solution to the problems faced by sewage workers. On August 20, 2008, detailed interim directions were passed

pending final disposal of the petition. This included deposit of Rs. 79,000/- with the Delhi High Court Legal Services Committee in addition to Rs. 1.71

lacs already paid to the family of the deceased worker. In an appeal against the interim order by the DJB, the Supreme Court has enhanced the

compensation to Rs. 3.29 lacs to the family of the victim through Delhi High Court State Legal Services Committee in addition to Rs. 1.71 lacs already

paid to the family of the deceased worker. That apart, in a more recent judgment in Writ Petition (Civil) No. 583/2003 Safai Karamchari Andolan and

Ors v. Union of India (UOI) and Ors, the Supreme Court considered the Prohibition of Employment as Manual Scavengers and Their Rehabilitation

Act, 2013 and by a detailed judgment with regard to the rehabilitation of manual scavengers including death of workers while cleaning the sewers had

directed a compensation of Rs. 10 lacs to be given to the family of the deceased. The relevant paras 14 (ii) and (iii) and 15 reads as under:-

14. (ii) If the practice of manual scavenging has to be brought to a close and also to prevent future generations from the inhuman

practice of manual scavenging, rehabilitation of manual scavengers will need to include:-

(a) Sewer deaths "entering sewer lines without safety gears should be made a crime even in emergency situations. For each such death,

compensation of Rs. 10 lakhs should be given to the family of the deceased.

(b) Railways "should take time bound strategy to end manual scavenging on the tracks.

(c) Persons released from manual scavenging should not have to cross hurdles to receive what is their legitimate due under the law.

(d) Provide support for dignified livelihood to safai karamchari women in accordance with their choice of livelihood schemes.

(iii) 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.

15) In the light of various provisions of the Act referred to above and the Rules in addition to various directions issued by this 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 2013 Act. Inasmuch as the Act 2013 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.â??

14. The aforesaid conclusion of the Supreme Court in *Safai Karamchari Andolan and Ors (supra)*, would clearly establish the claim of the petitioners

for compensation because of the death of the bread earners in their family to the tune of Rs. 10 lacs each.

15. The plea of DSIIDC that neither it nor any of its contractors had engaged the deceased persons for cleaning of the sewer lines would not absolve

it of its obligation to pay the compensation in the eventuality that a person dies cleaning the same. Unfortunately, in the case in hand, each of the

respondents have denied their obligation to pay compensation. Surely, the deceased persons would not have entered the sewer lines willingly unless

someone had induced them to pay some money for cleaning it and the payment of money must have attracted them to earn livelihood for themselves

and for their families. The compulsion of the dead persons was to earn some remuneration and having died in the course of earning remuneration,

someone must be held responsible for the negligence, which resulted in their death. No doubt, an FIR has been filed but the families of the deceased

persons cannot wait for compensation, which they are entitled to in view of the judgment of the Supreme Court, till a decision in the FIR. That apart,

there is a complete prohibition from engagement or employment for hazardous cleaning of a sewer or a septic tanks under the Act of 2013 referred to

above. I reproduce Section 7 of the Act of 2013 as under:-

Section 7- Prohibition of persons from engagement or employment for hazardous cleaning of sewers and septic tanks- No person, local

authority or any agency shall, from such date as the State Government may notify, which shall not be later than one year from the date of

commencement of this Act, engage or employ, either directly or indirectly, any person for hazardous cleaning of a sewer or a septic tank.

16. In view of the prohibition, the DSIIDC should have taken necessary steps to ensure that the sewers are not opened for cleaning purposes by

anybody. Any mishap occurring surely would suggest a lapse on the part of DSIIDC. Moreover, as stated above, the grant of compensation would not

await a decision as to who was negligent to compel the deceased persons to go into the sewer lines. The liability being strict, this Court is of the view

that the DSIIDC shall pay an amount of Rs. 10 lacs each to the petitioners, who are the wife of late Tilak Ram @ Tilak Raj and mother of Late

Bhagwan Singh @ Rajesh, S/o Sodan Singh, with liberty to DSIIDC to claim the amounts from the person (s) who are held to have committed offence

in FIR 366/2011.

17. The Supreme Court in the case reported as (2008) 9 SCC 527 Union of India v. Prabhakaran Vijay Kumar and Ors has held that it is a settled

position of law that due to the action or inaction of the State or its officers, if the fundamental rights of a citizen are infringed then the liability of the

State, its officials and instrumentals is strict. Claim raised for compensation in such a case is not a private law claim for damages, under which the

damages recoverable are large. Claim made for compensation in public law is for compensating the claimants for deprivation of life and personal

liberty which has nothing to do with a claim in a private law claim in tort in an ordinary civil court. The Supreme Court extended the principle to cover

public utilities like the railways, electricity distribution companies, public corporations and local bodies which may be social utility undertakings not

working for private profit. In Prabhakaran (supra) a woman fell on a railway track and was fatally run over and her husband demanded compensation.

It was the case of the railways that she was negligent as she tried to board a moving train. Rejecting the plea, the Supreme Court held

contributory negligence should not be considered in such untoward

incidents. The railways have "strict liability". The Supreme Court held, a strict liability in torts, private or constitutional does not call for a finding of intent or negligence. In such a case highest degree of care is expected from private and public bodies especially when the conduct causes physical injury or harm to persons. The Supreme Court held when the activities are hazardous and if they are inherently dangerous the statute expects highest degree of care and if someone is injured because of such activities, the State and its officials are liable even if they could establish that there was no negligence and that it was not intentional. Public safety legislations generally falls in that category of breach of statutory duty by a public authority. To decide whether the breach is actionable, the Court must generally look at the statute and its provisions and determine whether legislature in its wisdom intended to give rise to a cause of action in damages and whether the claimant is intended to be protected. The Supreme Court also in the case reported as (2011) 14 SCC 481 *Municipal Corporation of Delhi v.*

Association of Victims of Uphaar Tragedy and Ors has in paras 59 and 60 by referring to *Union of India v. Prabhakaran Vijay Kumar and Ors*

(*supra*), held as under:-

"59. This Court in *Union of India v. Prabhakaran* (2008) (9) SCC 527, extended the principle to cover public utilities like the railways,

electricity distribution companies, public corporations and local bodies which may be social utility undertakings not working for private

profit. In *Prabhakaran* (*supra*) a woman fell on a railway track and was fatally run over and her husband demanded compensation.

Railways argued that she was negligent as she tried to board a moving train. Rejecting the plea of the Railways, this Court held that her

contributory negligence" should not be considered in such untoward incidents - the railways has "strict liability". A strict liability in torts,

private or constitutional do not call for a finding of intent or negligence. In such a case highest degree of care is expected from private and

public bodies especially when the conduct causes physical injury or harm to persons. The question as to whether the law imposes a strict

liability on the state and its officials primarily depends upon the purpose and object of the legislation as well. When activities are hazardous

and if they are inherently dangerous the statute expects highest degree of care

and if someone is injured because of such activities, the

State and its officials are liable even if they could establish that there was no negligence and that it was not intentional. Public safety

legislations generally falls in that category of breach of statutory duty by a public authority. To decide whether the breach is actionable, the

Court must generally look at the statute and its provisions and determine whether legislature in its wisdom intended to give rise to a cause of

action in damages and whether the claimant is intended to be protected.

60. But, in a case, where life and personal liberty have been violated the absence of any statutory provision for compensation in the Statute

is of no consequence. Right to life guaranteed under Article 21 of the Constitution of India is the most sacred right preserved and protected

under the Constitution, violation of which is always actionable and there is no necessity of statutory provision as such for preserving that

right. Article 21 of the Constitution of India has to be read into all public safety statutes, since the prime object of public safety legislation is

to protect the individual and to compensate him for the loss suffered. Duty of care expected from State or its officials functioning under the

public safety legislation is, therefore, very high, compared to the statutory powers and supervision expected from officers functioning under

the statutes like Companies Act, Cooperative Societies Act and such similar legislations. When we look at the various provisions of the

Cinematographic Act, 1952 and the Rules made thereunder, the Delhi Building Regulations and the Electricity Laws the duty of care on

officials was high and liabilities strict.â??

18. Further, the reliance placed by DSIIDC on this judgment is misplaced. No doubt, the Supreme Court in that case has found proximity between the

DVB and the cause for injuries and death of victims but there was no proximity held between the injuries and death of victims and the MCD, which

was the licensing authority. The judgment is distinguishable in that regard as in the case in hand there is a proximate connection between the deaths

and the obligation of the DSIIDC to maintain the sewers. Accordingly, the writ petition is allowed in terms of the directions in para 16 above. The

amount shall be paid to the petitioners within a period of three months from the receipt of copy of this order on proper verification. No costs.