

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1570 OF 2023

Shramik Janata Sangh Through Its General
Secretary And Ors ...Petitioners

Versus

State of Maharashtra And Ors. ...Respondents

Ms. Gayatri Singh, Senior Advocate a/w. Ms. Sanjot Shirsath i/b. Ms. Sudha Bhardwaj, for Petitioners.

Mr. P.P. Kakade, GP a/w. R.A. Salunkhe, AGP for Respondent/State.
Mr. S.P. Tiwrekar, Law Officer from Social Justice and Special Assistance Department present.

**CORAM: NITIN JAMDAR &
M.M. SATHAYE, JJ.**

DATE : 16 APRIL 2024

P.C.:

. Heard learned counsel for the parties.

2. This petition is filed by an Association espousing the cause of manual scavenging workers. Petitioner No.2 is the father of such a worker who has died while manual scavenging.

3. By an interim order dated 18 July 2023, the Division Bench of this Court directed the Respondent- Municipal Corporation in respect of compensation of Rs.10,00,000/- to be paid to the family members of deceased sewage workers under a policy of the Municipal Corporation. Learned counsel for the Petitioners submits

that there was one more incident and seeks leave to amend the petition to incorporate the details of one more such unfortunate death and the claim of payment of the compensation.

4. According to us, the issue needs to be looked at in a wider spectrum as it is not possible for this Court to monitor each individual case and the objective should be to ensure that the Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013 (in short “the Act of 2013”) is employed in its fullest rigour in the State of Maharashtra.

5. The Act of 2013 was enacted to prohibit the employment of manual scavengers and provide rehabilitation for them and their families. Article 46 of the Constitution of India mandates that the State must protect the weaker sections of society from social injustice and all forms of exploitation. The legislation recognizes that manual scavenging, a dehumanizing practice arising from the continuing existence of insanitary latrines and social factors, is still prevalent in various parts of the country.

6. Chapter II of the 2013 Act mandates local authorities to conduct surveys on unsanitary latrines and establish community sanitary latrines. Section 5, under Chapter III, prohibits unsanitary latrines and the hiring of manual scavengers. This is the primary chapter in the statute that bans the practice of manual scavenging. Chapter IV outlines the process for surveying and identifying manual scavengers in both urban and rural areas. Chapter V lists the

implementing authorities.

7. Sections 17 to 20 provide for the responsibilities of the implementing authorities and their powers. Under Section 17 the Local authorities are responsible for ensuring that insanitary latrines are eliminated. This responsibility supersedes any other laws currently in force. Local authorities must create awareness campaigns or use other methods to ensure that no insanitary latrine is constructed, maintained or used within its jurisdiction within a period of nine months from the commencement of this Act. If any insanitary latrine is found, the occupier may face legal action under sub-section (3) of section 5.

8. The appropriate government has the authority to assign powers and duties to local authorities and District Magistrates as necessary to ensure proper implementation of this Act. The local authority and the District Magistrate may specify the subordinate officers who will exercise the assigned powers and duties, and the local limits within which they will carry them out.

9. Section 19 of the Act requires the District Magistrate and the authority authorized under section 18, or any other subordinate officers specified by them under that section, to ensure that no person is engaged or employed as a manual scavenger after the expiry of the specified period. It also prohibits the construction, maintenance, use, or availability of insanitary latrines. In addition, manual scavengers identified under this Act must be rehabilitated in

accordance with section 13, or as the case may be, section 16. Those who violate the provisions of this section will be punished accordingly.

10. Section 20 pertains to the Appointment of inspectors and their powers under the Act. The appropriate Government has the authority to appoint inspectors as it deems fit, through a notification, for the purpose of executing the provisions of this Act. The local limits within which they can exercise their powers under this Act are also defined in such notification. An inspector has the power to enter any premises or place to examine and test any latrine, open drain, or pit. He can also conduct an inspection of any premises or place where he has reason to believe that an offense under this Act has been committed, is being committed, or is about to be committed. He may prevent the employment of any person as a manual scavenger. Additionally, he can examine any person found in such premises or place who he reasonably believes is employed as a manual scavenger or can provide information about compliance or non-compliance with the provisions of this Act and the rules made thereunder. An inspector can ask any person found on such premises to provide information that is within their power to give, regarding the names and addresses of persons employed on such premises as manual scavengers, and of the persons or agency or contractor employing or engaging them. He may also seize or take copies of such registers, records of wages, notices, or portions thereof that he considers relevant in respect of an offense under this Act that he

believes has been committed by the principal employer or agency.

11. Chapter VII provides for Vigilance Committees which have to be set up under section 24 for each District and Sub-Division. Section 25 lists the functions of such Vigilance Committee. Section 24 gives the composition of the committees. The Vigilance Committee has several functions that include advising the District Magistrate or Sub-Divisional Magistrate on the necessary actions to ensure the proper implementation of the provisions of this Act or any rule made thereunder. Additionally, the committee is responsible for overseeing the economic and social rehabilitation of manual scavengers, coordinating the functions of all concerned agencies to provide sufficient credit for their rehabilitation, and monitoring the registration of offences under this Act, their investigation, and prosecution

12. Sections 26 and 27 provide for the State Monitoring Committee and its functions. Under section 27, the State Monitoring Committee is responsible for monitoring and providing advice to the State Government and local authorities to ensure effective implementation of this Act. It is also responsible for coordinating the functions of all related agencies and addressing any other matter that is incidental or connected to the implementation of this Act.

13. The Act of 2013 provides for framing of the Rules and, if no Rules are framed by the State of Maharashtra, then the

Central Government Rules would apply. Since the State of Maharashtra has not framed Rules, the Rules framed by the Ministry of Social Justice and Empowerment (Department of Social Justice and Empowerment) Central Government, namely, Prohibition of Employment as Manual Scavengers and their Rehabilitation Rules, 2013 (in short “Rules of 2013”) are applicable. Under these Rules of 2013, District Level Survey Committee is to be constituted and its functions are provided. They are as under :

“Chapter-1 Rule 2(c) “District Level Survey Committee” means the Committee referred to in rule 11(2), 11(18) and 11(19), with the following composition:

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| 1. District Magistrate | Chairman |
| 2. District Level Officer dealing with Scheduled Castes Affairs | Member Secretary |
| 3. District Statistical Officer | Member |
| 4. District Level officer of Urban Development | Member Department/ Local Self Government Department |
| 5. One representative of railway authority | Member |
| 6. Upto two representatives of Non Government Organisations working for Welfare of manual scavengers and Safai Karamcharis to be nominated by the District Magistrate. | Member |
| 7. Upto two community representatives of whom one should be a woman to be nominated by the District Magistrate | Member |

Functions of the District Level Survey Committee:

- a. to monitor and oversee the survey process at District level.
- b. to distribute the materials for awareness campaign to designated place.

- c. to arrange publicity through local newspapers etc, about the survey.*
- d. to distribute translated survey material to designated place under its jurisdiction,*
- e. to approve final list of manual scavengers for all towns, cities and villages in the district.*
- f. Publication of final consolidated list of the manual scavengers in the district.”*

14. The functions and importance of these institutions were considered by the Hon'ble Supreme Court in the decision of *Dr. Balram Singh Vs. Union of India and Ors.*¹ The Hon'ble Supreme Court pointed out that at State level there would be a Core Committee who would be entrusted with the task of ensuring compliance with the provisions of the Act of 2013. These are State Monitoring Committee under section 26 of the Act of 2013, Vigilance Committees under section 24 of the Act of 2013, the State Level Survey Committee under Rule 11 of the Rules of 2013 and the District Level Survey Committee under Rule 11 of the Rules of 2013. The Hon'ble Supreme Court has emphasized that the implementation of the Act of 2013 depends upon the effective functioning of the institutions.

15. Therefore, the first step that needs to be taken to address the wider issue, is to ensure that the statutory authorities constituted under the Act of 2013 are established and are functional and have the requisite manpower and necessary administrative setup.

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16. In the State of Maharashtra, the concerned department is the Department of Social Justice and Special Assistance, State of Maharashtra. We direct the Secretary of the said Department to appoint one Nodal Officer who will call for information from all the local authorities in the State of Maharashtra, the District Magistrates, aforesaid Committees and other functionalities to coordinate between the said departments and the Office of the Government Pleader to file reply affidavit. Let the reply affidavit be filed by the Secretary (Department of Social Justice and Special Assistance) on the following issues.

- (a) Whether State Monitoring Committee, Vigilance Committees, State Level Survey Committee, District Level Survey Committee and Sub Divisional Committee at Divisional Level, as aforesaid, have been constituted in the State of Maharashtra ?
- (b) If they are not so constituted, what steps does the Government intends to take to constitute these committees and the time frame ?
- (c) If they are so constituted, details of the composition of the said committees and overview/report of the activities carried out by these committees in the year 2022-2023.
- (d) Information be also called from local authorities in State of Maharashtra as to steps they have taken under Chapter II of the Act of 2013 for identification, as regards the survey which they are entrusted to carry out

within their jurisdiction under the Act of 2013.

- (e) Whether any applications have been received by the Urban Manual Scavengers for identification and rehabilitation and the steps that such local authorities have taken and whether any scheme has been framed. In short, the responsibilities of such local authorities under Chapter IV of the Act of 2013.

17. At present, as phase one, let the information be called from the Municipal Corporation of Greater Mumbai, Thane Municipal Corporation, Kalyan-Dombivali Municipal Corporation and Mira-Bhayander Municipal Corporation.

18. List the petition under the caption “For Directions” on **7 May 2024** to report progress in respect of the above directions.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)