

**CASE DETAILS**

DR. BALRAM SINGH

v.

UNION OF INDIA & ORS.

(Writ Petition (Civil) No(s). 324 of 2020)

OCTOBER 20, 2023

**[S. RAVINDRA BHAT AND ARAVIND KUMAR, JJ.]**

**HEADNOTES**

**Issue for consideration:** Implementation of the provisions of Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013 and the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993.

**Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013 – Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 – Directions by Supreme Court – Eradication of manual scavenging in a phased manner – Rehabilitation measures – Compensation for sewer deaths etc.:**

**Held:** The Union should take appropriate measures and frame policies and issue directions, to all statutory bodies to ensure that manual sewer cleaning is completely eradicated in a phased manner, and also issue guidelines and directions that any sewer cleaning work outsourced, or required to be discharged, by or through contractors or agencies, do not require individuals to enter sewers, for any purpose whatsoever – States and Union Territories to ensure that all departments, agencies, corporations ensure that guidelines and directions framed by the Union are embodied in their own guidelines and directions – States to ensure that such directions are applicable to all municipalities, and local bodies functioning within their territories – The Union, State and Union Territories to ensure that full rehabilitation (including employment to the next of kin, education to the wards, and skill training) measures are taken in respect of sewage workers, and those who die – Compensation for sewer deaths shall be Rs.30 lakhs – Compensation stated in the case of sewer victims suffering disabilities, depending upon the severity of disabilities – Mechanism be devised to

ensure accountability, especially wherever sewer deaths occur in the course of contractual or outsourced work – A model contract to be devised, to be used wherever contracts are to be awarded and in the event of any mishap, the agency would lose its contract, possibly blacklisting – Modalities be drawn for the conduct of a National Survey – NALSA shall be part of the consultations, toward framing the policies as directed – The Union, State and Union Territories to ensure coordination with all the commissions like National Commission for Safai Karamcharis (NCSK), State Commission for Safai Karamcharis (NCSC) for setting up of state level, district level committees and commissions, in a time bound manner – NCSK, NCSC, National Commission for Scheduled Tribes (NCST) and the Union government to coordinate and prepare training and education modules, for information and use by district and state level agencies, under the 2013 Act – A portal and a dashboard, containing all relevant information, including the information relating to sewer deaths, victims and the status of compensation disbursement, as well as rehabilitation measures taken, and existing and available rehabilitation policies be developed and launched – Prohibition of Employment as Manual Scavengers and Their Rehabilitation Rules, 2013– National Commission for Safai Karamchari Act, 1993– Constitution of India– Articles 15(2), 17, 23, 24– Civil Rights Act, 1955 – Contract Labour (Prohibition and Regulation Act), 1970. [Para 96]

**Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013 – s.11 – Interpretation of – Plea of the Union that s.11 requires localized surveys by local bodies and not a national survey:**

**Held:** 2013 Act is not a regular statute, it is emancipatory in character and is a manifestation of the constitutional code of upliftment – The groundbreaking purpose of the 2013 Act is to ensure that manual scavengers are rehabilitated – Rehabilitation is a step after identification – Without a survey, rehabilitation is not workable – The statutory scheme cannot be undermined through an interpretation that would leave the implementation of the 2013 Act solely with the local bodies, without any guidance from the Governments, State and Central – The Central and State Governments were and are, duty-bound to lay down the parameters under which a local body was mandated to conduct a survey – While the methodology of the Survey

is provided under the 2013 Rules, the trigger for conducting the Survey is conspicuously absent from both the 2013 Rules as well as the 2013 Act – The absence of a trigger cannot render the 2013 Act and its constitutional commitments otiose by non-implementation – Local bodies must be guided by the central and state governments by laying down guidelines on when a survey must be conducted, and which local bodies must conduct a survey – Without a policy of this nature, a local body cannot be expected to implement the 2013 Act in a proper manner – while local governments must conduct surveys, it was for the appropriate authorities, at both the central and state levels, to lay down parameters for the surveys to be conducted – Prohibition of Employment as Manual Scavengers and Their Rehabilitation Rules, 2013 – Constitution of India – Article 17 – Civil Rights Act, 1955. [Paras 53, 54 and 56]

**Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013 – s.11 – Prohibition of Employment as Manual Scavengers and Their Rehabilitation Rules, 2013 – r.11 – Insufficiency of the previous Surveys:**

**Held:** Neither the 2013 nor the 2018 surveys could have been conducted as prescribed under the scheme of the 2013 Rules and the 2013 Act for the reason that the institutions entrusted with duties to conduct the Surveys were either not constituted or were not functioning – Where the Act and Rules prescribe a particular method and manner of survey, that method and manner only ought to have been followed and no other method or manner could have been followed – No provisional list u/s.11(4) was prepared; no objections were called for and decided u/s.11(5) and no final list was published u/s.11(6) – In the absence of following, the contention that there was a valid survey conducted cannot be accepted – Also, this Court in Safai Karamchari Andolan case had noticed the short-comings of the survey of 2013 – Hence, when this Court had already found that the survey was insufficient, the Union cannot possibly rely on the same survey once again. [Paras 57, 60, 66]

**Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013 – Short-coming in the implementation – Non-constitution of various institutions required for implementation of the Act:**

**Held:** A major short-coming in the implementation of the 2013 Act is the fact that the State and the Central Governments have not even constituted the various institutions required to implement the Act— Implementation of the statute depends on the effective functioning of the institutions like National Commission for Safai Karamcharis, State Commission for Safai Karamcharis, Central Monitoring Committee, State Monitoring Committee, Vigilance Committees, State/District Level Survey Committee – Unfortunately, these institutions have not been constituted by the States and the Union and where they have been constituted, the institutions are not functioning at all – The Act has created the institutions to ensure a check and balance on the implementation of the statute – However, instead of being a check on the implementation, the lack of institutions has effectively brought the implementation of the Act to a total stand-still – Functioning of each of the institutions dealt with specifically. [Paras 67, 68]

**Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013 – Manual scavenging and hazardous cleaning, separately treated under the 2013 Act – Plea that this violates Article 14 as there is no rational differentiation between the two:**

**Held:** This court is not faced with a challenge to the statute – Without a challenge to the provisions, the differentiation cannot be held unconstitutional – Constitution of India – Article 14. [Para 82]

**Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013 – Prohibition of Employment as Manual Scavengers and Their Rehabilitation Rules, 2013 – rr.3, 5 – Mechanization of hazardous cleaning through ‘cleaning devices’ and ‘protective gear’ – Exceptions – Discussed.**

**Constitution of India – Article 23 – Status of hazardous cleaning u/Article 23 – Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013:**

**Held:** Article 23 prohibits forced labour and makes it an offence punishable in accordance with law – The expression ‘other forms of forced labour’ in Article 23 strike at all forms of labour which offend human dignity – This would include not just remuneration but would also include all labour where the absolute minimum standards of safe employment are not met –

Where minimum protective gear and cleaning devices are not provided to hazardous workers, the employment of hazardous workers amounts to forced labour and is thus prohibited under the Constitution – The provisions for protective gear and cleaning devices are not mere statutory rights or rules, but are entitlements and it is due to these entitlements that the provisions of the 2013 Act are in consonance with the Constitution – A contract for employment of a hazardous cleaner without protective gear and cleaning devices would violate Article 23 even if it were voluntary because such an agreement would violate human dignity. [Paras 88, 90, 91]

#### **LIST OF CITATIONS AND OTHER REFERENCES**

*Safai Karamchari Andolan and Others vs. Union of India & Ors.* (2014) 11 SCC 224 : [2014] 4 SCR 197; *Safai Karamchari Andolan v. Union of India* [2014] 4 SCR 197; *People's Union for Democratic Rights v. Union of India* [1983] 1 SCR 456; *Sanjiv Roy v. State of Rajasthan* [1983] 2 SCR 271; *Bangalore water Supply and Sewerage Board v A. Rajappa* [1978] 3 SCR 207; *Xv. Principal Secretary, Health and Family Welfare, Govt. of NCT Delhi* 2022 SCC OnLine SC 1321; *Swaraj Abhiyan v. Union of India* (2016) 7 SCC 498; *State of U.P. v. Singhara Singh* [1964] 4 SCR 485 – referred to.

*Vimla Govind Chorotiya and Others v. State of Maharashtra* 2021 SCC OnLine Bom 3002; *All India Council of Trade Unions v. Union of India* 2020 SCC OnLine Kar 2420 – referred to.

#### **OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES**

CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 324 of 2020.

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

**Appearances:**

Petitioner-in-person

Attorney General for India, Ms. Aishwarya Bhati, A.S.G., K. Parameshwar (Amicus Curiae), Gurmeet Singh Makker, Ms. Ruchi Kohli, Ms. Shradha Deshmukh, Ms. Swarupama Chaturvedi, Himanshu Chakravarty, Ms. Ripul Swati Kumari, Ms. Astha Sharma, Amrish Kumar,

Mrs. Ruchi Kohli, Mrs. Shraddha Deshmukh, Mrs. Swarupama Chaturvedi, Purnendu Bajpai, Mrs. Amiyavikrama Thanvi, Dr. N. Visakamurthy, Ms. Arti Gupta, Ms. Kanti, MV Mukunda, Chinmay Kalgaonkar, Ms. Anindita Pujari, Sanjay Jain, Dr. Monika Gusain, Advs. for the Respondents.

**JUDGMENT / ORDER OF THE SUPREME COURT**

**JUDGMENT**

**S. RAVINDRA BHAT, J.**

1.. The unforgettable annals of our history not only have charted the numerous sacrifices of the people who fought for independence from the foreign imperial ruler but also a lesser-known freedom that for millennia eluded a large mass of people, who were nearly invisible. They were trapped in the thrall of a solitude from which there was no liberation. That was centuries old stigmatising social practices that led to their depravation, to such levels that they were not even recognised as human beings. Among these practices was one which generations of people, were made to perform the meanest task of manual scavenging. It was to address this kind of social practice and with the resolve to completely out light and emancipate those trapped in it from the thrall of bondage, that the constitution framers ensured three important provisions, which stare at us like beacons, assuring not only equality but fraternity amongst all people: the prohibition of untouchability; the outlawing of forced or involuntary labour and the freedom against exploitation.

2. To flesh out and give shape to the objects of these provisions, Parliament intervened and enacted several legislations. The first was the Civil Rights Act 1955; its provisions were amended in 1976 to outlaw the practice of untouchability. The penalization of these severe forms with stringent punishment was sought to be achieved by the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 which was further strengthened by later amendments. In that ensuring full economic freedom and true emancipation were two enactments, the “Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993” (hereinafter “Act 1993”) and the “Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013” (hereinafter “Act 2013”).

3. The present petition is filed under Article 32 of the Constitution of India, seeking directions to Respondents (Union of India and all the States and Union Territories) to implement provisions, *inter alia*, of the Act of 1993 and Act of 2013.

4. In the year 1993, a special Commission for Safai Karamchari was established as per the provisions of National Commission for Safai Karamchari Act, 1993 (hereinafter “NCSK Act”) to give its recommendations to Government regarding specific programmes for the welfare of Safai Karamcharis. In the same year, India took another significant step by prohibiting the employment of manual scavengers responsible for the daily manual emptying of certain types of dry toilets. Subsequently, the Parliament enacted the Act of 2013 which extended and clarified its scope to include insanitary latrines, ditches and pits. However, the petitioner claims that the respondents have not implemented essential provisions of these statutes. Regrettably, manual scavenging persists despite these legislations. Petitioner prayed that Act of 1993 and 2013 should be implemented in letter and spirit and to do so, it is necessary to impose a blanket ban on manual scavenging, while simultaneously ensuring adequate rehabilitation and employment opportunities for those currently engaged in these practices.

5. This Court previously addressed this subject matter in *Safai Karamchari Andolan and Others vs. Union of India & Ors*<sup>1</sup> and after analyzing the provisions of 2013 Act, issued following directions:

**“23. We have already noted various provisions of the 2013 Act and also in the light of various orders of this Court, we issue the following directions:**

**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.

**23.2.** 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 gear 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.

**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.*

**23.4. Rehabilitation must be based on the principles of justice and transformation.**

In the present writ petition, the petitioner claims several directions such as:

- (a) *directing the respondents to implement provisions of the Water Prevention and Control of Pollution Act, 1974; The Air (Prevention and Control of Pollution) Act, 1981; The Environment Protection Act, 1986, The Public Liability Insurance Act, 1991; The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 and other statutes rules and regulation pertaining to protection of environment and human health and direct respondent to*
- (b) *make provisions for underground sewer /drainage system for disposal of used water and for treatment of used water in all villages towns and cities including slum areas*
- (c) *make used water reusable after treatment for use of cattle, agricultural and other purposes except for human drinking and separate ponds should be made for collecting water for human use and animals use;*
- (d) *make provisions for supply of goods, clean and un contaminated water in all villages, towns and cities and for this purpose to install big water purifier plans so that every citizen of the country can have good and purified drinking water of high quality;*
- (e) *provide for rain water harvesting system throughout the country. It must be made a pre-requisite for raising any type of construction*
- (f) *connect all toilets with sewage system*
- (g) *install sewage treatment plants waste plants in all villages, towns and cities of the country*

- (h) convert all open drains into close one and construct all drains underground in further
- (i) provide for mechanical scavenging measures for cleaning drains and sewages lines and to stop manual immediately
- (j) repair roads within a prescribed period
- (k) fix liabilities of government officer who do not follow and implement provisions for environmental protection. They should be punished for every negligence act of non-compliance of provisions
- (l) pay compensation of rupees fifty 50,00,000/- (Rupees fifty lacs) in case any person dies while entering or after entering into sewage for cleaning it manually during pendency of this petition,
- (m) provide for good drinking water on demand of public in areas where there is no provision for water supply and water available is contaminated and not fit for human use
- (n) repair all roads on demand of public within a period of three months<sup>2</sup>

6. On February 22, 2023, this court, *inter alia*, issued several directions aimed at ensuring effective implementation of the provisions outlined in the two acts, which is reproduced below:

- (I) the respondent – Union shall place on record the steps taken pursuant to the judgment of this Court, viz.-a-viz. The Status of implementation of the 2013 Act i.e., Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013 including the steps towards rehabilitation of such persons falling within the definition of ‘Manual Scavengers’.
- (II) Steps taken towards abolition/demolition of Dry Latrines, state-wise.
- (III) Status of Dry Latrines and Safai Karamcharies in Cantonment Boards and Railways.

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<sup>2</sup> (pg. 17-20 of Writ Petition)

*(IV) Employment of Safai Karamcharies in Railways and Cantonments Boards whether directly or indirectly i.e., through Contractors or otherwise.*

*(V) State-wise set up of Municipal Corporation and the nature of equipment (as well as the description of technical equipment), deployed by such bodies to mechanize sewage cleaning.*

*(VI) The feasibility of developing internet-based solutions for real time tracking of sewage deaths and action taken by their concerned authorities including the appropriate Government towards payment of compensation and rehabilitation of families.*

7. Further, this court also added as parties to the present proceedings, the Union of India through Secretary, Ministry of Social Justice & Empowerment (hereafter “Union”); the National Commission for Safai Karamcharis (hereafter “NCSK”); the National Commission for Scheduled Castes (hereafter “NCSC”), and the National Commission for Scheduled Tribes (hereafter “NCST”). The court appointed Mr. K Parmeshwar, Advocate as *Amicus Curie*. On April 12, 2023, this court took note of two notifications issued by the Ministry of Railways dated 4.6.2014, and 13.10.2014 which stipulates that individuals engaged in cleaning sanitary latrines in passenger coaches and railway tracks at stations would not be subject to the prohibitions set forth in the Act of 2013 if they are provided with basic equipment such as face masks, gloves, boots, and brooms. Additionally, this court considered the observations made by the NCSK regarding the lack of action by the Railways, as presented in reports included in the compilation submitted to the court by the Amicus Curiae. In light of this, the court directed the Railways to submit a specific affidavit addressing these aspects.

8. During the course of proceedings, on May 2, 2023, it was brought to notice of this court about irregular functioning of the Central Monitoring Committee envisaged under the Act of 2013. In response, this court observed :

*“[...] learned Additional Solicitor General should indicate a practical method for the operationalization of the Central Monitoring Committee. That Committee comprises of more than 20 members*

*and has apparently not met for the last three years. The record also discloses that in the last ten years, the Committee has met seven times”.*

9. The *Amicus* submitted that Article 15, 17, 23 and 24 of the Constitution form an emancipatory Code. He submitted that the content of these fundamental rights must *per force* include the right for the oppressed classes to break away from oppressive structures and move to alternative sources of dignified employment. In other words, the aforesaid Articles form a fundamental right to emancipation from oppressive structures. He contended that the emancipatory code is referable to the preambular principle of fraternity and hence capable of horizontal application of fundamental rights. The 2013 Act is in furtherance of this emancipatory code, and thus attains constitutional status.

10. After going through the scheme of the 2013 Act, the *Amicus Curiae* submitted that the 1993 Act as well as the 2013 Act were both made in furtherance of the right to dignity of the individual. He made reference to the emancipatory nature of the Act in its identification, prohibition, criminalization of manual scavenging and the rehabilitation provisions for manual scavengers.

11. In so far as institutions created under the 1993 Act, 2013 Act and the NCSK Act are concerned, he pointed to the factual position that the most of the institutions are non/sub functional. These institutions, he submitted, are at the National, State, District and Sub-district level.

12. The *Amicus Curiae* submitted that the survey envisioned under the 2013 Act is inextricable from the emancipatory nature of the Act, in that without a survey there cannot be any identification and rehabilitation of manual scavengers. He submitted, with reference to the judgments of the High Court of Bombay in *Vimla Govind Chorotiya and Others v. State of Maharashtra*<sup>3</sup> and High Court of Karnataka in *All India Council of Trade Unions v. Union of India*<sup>4</sup>, that a survey must be conducted in accordance with the provisions of the 2013 Act and the Rules made thereunder.

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3 (2021 SCC OnLine Bom 3002)

4 (2020 SCC OnLine Kar 2420)

13. The surveys conducted in 2013 and 2018, he contended, were not in accordance with the 2013 Act and Rules and thus cannot be considered as surveys. More specifically, he urged that the NCSK itself in its annual report has stated that till date, no reliable figure is available with the Government about the manual scavenging in the country and the figure is varying at various places. He also linked the absence of institutions under the 2013 Act and Rules to the inadequacies of the Survey process by contending that when the institutions for a Survey have not been put in place, there is no question of a Survey being conducted in terms of the Act and Rules. To this end, he also cited the judgment of this Court in *Safai Karamchari Andolan v. Union of India*<sup>5</sup> where this court held that the 2013 Survey was inadequate as it was confined only to 3546 statutory towns and did not extend to rural areas. This Court also held that the States were able to identify only a minuscule proportion of the number of people actually engaged in manual scavenging.

14. On the aspect of sewer deaths, he brought to the attention of this Court the definitions of 'hazardous cleaning' under Section 2(d) of the 2013 Act as well as the definitions of 'sewer' and 'septic tank' under Sections 2(p) and 2(q). He stated that though the Act prohibits hazardous cleaning under Section 7 and 9, no specific bar is made to the manual cleaning of sewers and septic tanks as long as protective gear is given. To this end, he referred to Rule 3(1) of the 2013 Rules and laid stress on the words "*No person shall be allowed to clean a sewer manually*" to contend that the statutory scheme recognized that *entry* into a sewer or a manhole can only be after the sewage is totally emptied by machines.

15. It was argued that there is a legislative vacuum in so far as rehabilitation for hazardous workers is concerned. The sole rehabilitation, according to him, is by virtue of the judgment of this Court in *Safai Karamchari Andolan* (*supra*) where this Court granted compensation of Rs. 10 lakhs to the family of a person who died in a sewer.

16. He argued that constitutionally speaking, hazardous cleaning amounts to *forced labour* under Article 23 of the Constitution as explained

by this Court in *People's Union for Democratic Rights v. Union of India*<sup>6</sup> (para 13-14). It was further highlighted that the Act of 2013 intends that no person should come in direct contact with human excreta and hazardous cleaning whereby as person is coerced to immerse himself in or be in contact with human excreta without protective gear/safety precautions is nothing but forced labour prohibited under Article 23. A narrow interpretation of "forced labour", restricting it to only those cases where there is lack of remuneration, is contrary the intention of Article 23. This is because such a narrow interpretation would fail to address structural discrimination and would also render the phrase "*other similar forms of forced labour*" otiose. Additionally, it was further submitted that "*consent*" given by the worker to perform hazardous cleaning would not mean that labour is not forced. Reliance placed on *People's Union for Democratic Rights* (supra) followed in *Sanjit Roy v. State of Rajasthan*<sup>7</sup>.

17. Amicus further contended that like manual scavenging, hazardous cleaning is also a practice borne out of 'untouchability' and must be prohibited under Article 17 of the Constitution. He brought to the attention of the Court Section 7A of the Civil Rights Act, 1955, which specifically bars any scavenging or sweeping or any other job of a similar nature as being an enforced disability arising out of 'untouchability'. The *Amicus Curiae* argued that if it is accepted by the Court that hazardous cleaning is violative of Article 23, then the question of persons engaged in sewage cleaning having practiced it on their own volition does not arise.

18. The *Amicus* urged that is important to note that two statutory riders empower the executive to statutorily carve out exceptions, even though they are couched as explanations: first, the definition of "insanitary latrine" in Section 2(e) states that:

*"a water flush latrine in a railway passenger coach, when cleaned by an employee with the help of such devices and using such protective gear, as the Central Government may notify in this behalf, shall not be deemed to be an insanitary latrine."*

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6 1983 (1) SCR 456

7 1983 (2) SCR 271

Second, the explanation to the definition of “*manual scavenger*” in Section 2(1)(g) specifies that

*“a person engaged or employed to clean excreta with the help of such devices and using such protective gear, as the Central Government may notify in this behalf, shall not be deemed to be a ‘manual scavenger’”*

19. It was submitted that these riders should be given the narrowest possible interpretation, given that the statute punishes untouchability and inhuman labour. It was further urged that the protective gear and devices referred to must be of such nature that they achieve substantial or near total mechanization of the process so that the dignity of the labourer is maintained and no structural discrimination is perpetuated.

20. Regarding NCSK’s working, it was submitted that at present, it has only Chairperson, Vice-chairperson and one additional member with four member posts lying vacant. Furthermore, there was no commission in place during FY 2022-23. In terms of Section 32 of the 2013 Act, even state government are expected to notify a state commission with the same powers as that of NCSK at the state level. However, State commission for Safai Karamcharis exist in only few states.

21. The learned *Amicus* also pointed out that Section 29(3) of the Act, requires the Central Monitoring Committee<sup>8</sup> (hereafter “CMC”) to meet in every six months. However, between 2013 to 2022, it met only seven times. After a gap of 3 years, CMC met for the eighth time after the intervention of this court’s order dated 02.05.2023. Similarly, the *Amicus* filed data regarding non convening of State Monitoring Committee<sup>9</sup> (hereafter “SMC”) for

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8 According to Section 29, the Central Monitoring Committee (CMC), consisting of the Union Minister for Social Justice and Empowerment, Chairperson of the NCSC, Minister of State in the Ministry of Social Justice and Empowerment, Chairperson of NCSK, Secretaries of various Ministries, etc., shall be constituted. The functions of CMC, as delineated under Section 30, are- monitoring and advising the Central Government and State Government for effective implementation of the Act, coordinating the functions of all concerned agencies, and looking into any other matter incidental to or connected with implementation of the Act.

9 Section 26 of the 2013 Act provides for the constitution of a State Monitoring Committee (SMC) in every state consisting of the Chief Minister of State or a Minister nominated by him, the Minister-in-charge of the Scheduled Castes Welfare, representatives of the National Commission for Scheduled Castes, and Safai Karamcharis, not less than two

some states and non-constitution of District Vigilance Committee (hereafter “DVC”) in some states as well and showed glaring inconsistencies in constitution of SMCs from four different sources of data.

22. Further, as per Rules of 2013<sup>10</sup> with regard to creation of State Level Survey Committee (hereafter “SLSC”) and District Level Committee (hereafter “DLC”) responsible for overseeing the survey process till the *“publication of final consolidated list of the manual scavengers”* in the respective district/state, it was highlighted that only Chhattisgarh and Odisha have constituted SLCs, with Odisha being the lone state to constitute a DLSC. However, the Union’s affidavit dated 05.07.23, claims that Karnataka, Rajasthan, and West Bengal have also constituted Survey Committees, but no information is provided regarding Chhattisgarh and Odisha.

23. The Amicus summed up by suggesting that the court should direct creation of a task force under the aegis of CMC and conduct a fresh survey by relying on inadequate data under 2013 and 2018 Survey, NCSK’s Annual reports filed for the year 2015-16, 2017-18, 2018-19, 2019-20, CMC’s meeting held on 05.07.2023 and uncertainty regarding reliable data filed in Union’s affidavit. Further to set up institutions under the Act of 2013 and Rules and take measures to identify and compensate deceased persons due to sewer cleaning.

#### ***Submissions on behalf of intervenors***

24. Ms Jayna Kothari learned senior counsel representing THAMATE, Centre for rural empowerment, a registered society submitted that the court to give purposive interpretation to explanation (b) of Section 2(1)(g) so as to give wide interpretation to the definition of manual scavenger. This interpretation would include anyone engaged in manual cleaning, whether in sewers or septic tanks, regardless of whether they use equipment or protective gear since the cleaning process is manual. This will ensure them being covered as manual scavengers for rehabilitation and relief under Section 11-16 of the Act of 2013. It was suggested that even providing some minor protective gear such as just the gloves would exempt the coverage

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members of the State Legislature belonging to the Scheduled Castes, etc. Its functions, as under Section 27, are the same as those of the Central Monitoring Committee

10 Rule 11 read with Rule 2© and 2(j)

of that person from the definition of manual scavenger in the existing section. To emphasize on giving the definition a purposive interpretation, Ms. Kothari placed reliance on *Bangalore water Supply and Sewerage Board v A. Rajappa*<sup>11</sup>, wherein the Supreme court expanded the definition of industry and on *X v. Principal Secretary, Heath and Family Welfare, Govt. of NCT Delhi*<sup>12</sup>, wherein this court interpreted the provisions of Medical Termination of Pregnancy Amendment Act 2021 to include single and unmarried women.

25. Learned counsel further emphasized on the need for mechanization and graded implementation of inclusive definition of manual scavenger. Examples like Bandicoot<sup>13</sup>, were provided to illustrate the potential for modern technology. It was noted that many countries have replaced the term “manholes” with “machine holes” emphasizing the significance of change in language. A graded timeline was suggested to completely mechanize the process. Counsel also submitted shortcomings in schemes like Swachh Bharat Mission and NAMASTE as it is only limited to urban local bodies, second it remains silent on mechanization technology deployed by the state authorities. Lastly, some directions were also suggested such as reporting on the surveys for the identification of manual scavengers being done in all districts, issuing identification cards, compliance with rehabilitation requirements and holding meetings of monitoring committees at the State, district and sub-district levels. Additionally, it was proposed that data should be segregated to specify the number of women engaged in manual scavenging.

26. The MAANGANGGO India International, NGO/Trust based in New Delhi, impleaded as intervenor prayed for the issuance of a writ or appropriate measure to direct the Vice Chairman of NITI Aayog (National Institution for Transforming India) to formulate a sustainable and time-bound Comprehensive Policy Action Plan which should include the mandatory adoption of modern technology to fully mechanize sewerage cleaning, with the declaration of manual scavenging in any form as a punishable offense. It should also address the need for upgrading outdated and hazardous

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11 [1978] 3 SCR 207

12 2022 SCC OnLine SC 1321.

13 a robot developed in 2018

sanitation infrastructure, promoting eco-friendly waste disposal methods, ensuring compulsory free education for the children of manual scavengers, particularly girls, and providing vocational training and financial incentives for the rehabilitation of manual scavengers, with a special focus on women who constitute a significant portion of those affected by this practice.

***Submission on behalf of Respondents***

27. This court by order dated May 2, 2023, requested the Additional Solicitor General (ASG) to propose a practical method for operationalization of the CMC. The ASG responded to that CMC did not convene for the past three years that these committees were conducted annually and last being on January 8, 2020. However, subsequent meetings could not be held due to COVID pandemic. Meanwhile, the tenure of the committee members, including those representing civil societies, have expired during this period.<sup>14</sup>

28. Regarding the survey, the ASG emphasized that the responsibility for conducting the survey falls under the mandate of 2013 Act. According to the provisions of this Act, the Chief Executive Officer of the municipality or gram panchayat is responsible for overseeing the completion of the survey. Furthermore, in accordance with the 2013 rules, a “District Level Survey Committee” chaired by the District Magistrate is tasked with monitoring and supervising the survey process at the district level. It was submitted that the 2013 Act itself does not envisage a nationwide survey of manual scavengers conducted by the central government; instead, it mandates localized surveys to be carried out by local bodies.<sup>15</sup> Anyhow, the Ministry of Social Justice and Empowerment has introduced the “Swachhata Abhiyaan” mobile app to allow the general public to report on insanitary latrines and any associated manual scavengers and therefore, the survey of manual scavenging is ongoing through the use of such mobile app. However, the ministry in its affidavit has stated that the app has not received credible data and the same has to be verified by the concerned administration.

29. It was further submitted that the government incurred an expenditure of ₹10.48 Crore for conducting the survey in 2013 followed

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14 (Union of India’s Note dt.12.05.2023 (Vol. 6)/ Union of India’s Note dt.26.07.2023 (Vol. 5)

15 Union of India’s Note dt.26.07.2023 (Vol. 5)

by payment of compensation to identified manual scavengers to tune of approximately ₹ 55.52 Crores. Based on survey initiated in 2013, state wise details of about 13,881 manual scavengers were prepared.<sup>16</sup> In addition to this, a National Survey was conducted between 2018 and 2020 in 194 districts, which resulted in identification of 44,217 manual scavengers and compensation to the tune of ₹ 176.87 Crore was provided to identified manual scavengers. The Union reported that 663 individuals have lost their lives while cleaning sewers and septic tanks after the year 2013. Out of these cases, compensation has been paid in 631 cases, and FIRs have been lodged in 648 cases.

30. The Union also highlighted that, in addition to providing One-Time Cash Assistance, it had provided capital subsidies (up to 5 lakhs) along with concessional loans to 2,313 manual scavengers or their dependents. Furthermore, they have enrolled 22,294 willing and eligible manual scavengers/dependents in various skill development training programs. Other benefits provided by State/UTs were also listed.<sup>17</sup>

31. Additionally, the Union submitted about its efforts in construction of 62.81 lakh sanitary toilets. Furthermore, it was submitted that out of 766 districts, 650 districts have reported themselves free of manual scavenging, while reports from 116 districts regarding their status on this matter are still pending.<sup>18</sup>

32. With regard to discrepancy in data as pointed out by Amicus, it was submitted that the National Safai Karamchari Finance and Development Corporation (hereafter “NSKFDC”) was the Implementing Agency for the National Level Survey constituted under the Aegis of NITI Aayog in consultation with State Government, Central Ministries and Civil Society Organisations. It was submitted that the data pertaining to manual scavengers, as confirmed and verified by NSKFDC, is the only reliable data and should be regarded as the authoritative. According to NSKFDC’s data, a total of 58,098 manual scavengers have been identified in the country so far.

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16 Also dealt in Union of India’s Note dt.26.07.2023 (Vol. 5)

17 Union of India’s Note dt.26.07.2023 (Vol. 5) / Union of India’s Note dt.05.07.2023 (Vol. 7)

18 Volume 10, pg. 29, dated 9. 8.23.

The NCSK vide reply dated 12.4.2023 stated that the figures of total number of manual scavengers identified vide National Survey 2018 conducted by NSKFDC varies with the progress of the survey mainly due to variations in the number of states and districts surveyed. The apparent discrepancy in data for 24.07.2021 and 08.12.2021 is a result of ongoing identification and subsequent verification processes.<sup>19</sup>

33. Furthermore, there is no inconsistency in the information provided by the Ministry of Social Justice and Empowerment to the Parliament. On December 1, 2021, in response to Unstarred Question No. 450 in the Rajya Sabha, it was conveyed that a total of 58,098 manual scavengers were identified through surveys conducted in accordance with the Act of 2013. Subsequently, in reply to another Rajya Sabha Unstarred Question no. 1254 dated 8.12.2021; the Government reiterated the same number of identified manual scavengers. The Government informed Parliament that there were no reports of individuals currently engaged in manual scavenging across the country and that there were no reported deaths attributed to manual scavenging. However, it was clarified that during the last five years, 321 individuals had lost their lives in accidents while undertaking hazardous cleaning of sewers and septic tanks. In response to Unstarred Question no. 3822 in the Lok Sabha dated 21.12.2021, the Government once again stated that there were no reports of individuals currently engaged in manual scavenging in the country. The number of manual scavengers identified at different times does not necessarily represent the current number of individuals engaged in manual scavenging as many people have left the work of manual scavenging due to various efforts of Govt. and provisions of Act of 2013.<sup>20</sup>

34. It was further argued that the identification of manual scavengers was primarily for the purpose of extending rehabilitation benefits in accordance with the scheme. It should not be misconstrued to mean that the increase in the number of identified individuals indicates a rise in active manual scavenging activities.<sup>21</sup>

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19 Union of India's Note dt.26.07.2023 (Vol. 5)

20 Union of India's Note dt.26.07.2023 (Vol. 5)

21 Union of India's Note dt.26.07.2023 (Vol. 5)

35. In response to the suggestions made by the *Amicus*, the Union argued against the need to establish a Task Force under the CMC as the government had formulated a Scheme of National Action for Mechanize Sanitation Ecosystem (NAMASTE)<sup>22</sup> which proposes to create three tier working committees (working committee, state monitoring committee and district/urban local body-level committee). These committees will meet quarterly to oversee the implementation of NAMASTE. Therefore, it was submitted that there is no requirement for a separate Task Force.<sup>23</sup>

36. Concerning the NCSK, the Union stated that the Chairman, Vice Chairman, and one member have been appointed on 03.03.2023, for a term till 31.03.2025. Nominations are under consideration to fill the remaining four vacant member positions.<sup>24</sup>

37. In response to recommendation contained in the Annual Report of the NCSK for the year 2019-20 regarding “*A National level census of Manual Scavengers at one platform in the Country at all administrative levels such as Country, State, District, Urban/Rural, Male/Female etc.*” as referred by *Amicus curiae*, the observation made by NCSK in its annual report have been clarified by the Government of India, in its Action Taken Report, wherein it has been submitted that this “*does not seem to be feasible, as the basis of identification of the manual scavengers should be verification with reference to their workplace/employer and not merely self-declaration alone. In Census operations, such verifications are generally not done*”.<sup>25</sup>

38. The Union informed that as on date, it received information from 34 States/Union Territories regarding the establishment of various committees mandated by the 2013 Act and Rules except the remaining 2 States (Andhra Pradesh and Telangana). In 23 states, a State Commission for

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22 A joint initiative of Department of Social Justice & Empowerment and Ministry of Housing and Urban Affairs in all 4800+ Urban Local Bodies of the country, during the next three years up to 2025-26

23 Union of India’s Note dt.26.07.2023 (Vol. 5)/ Union of India’s Note dt.05.07.2023 (Vol. 7)

24 Union of India’s Note dt.26.07.2023 (Vol. 5)/ Union of India’s Note dt.05.07.2023 (Vol. 7)

25 Union of India’s Note dt.26.07.2023 (Vol. 5)

Safai Karamcharis has been established or an agency has been designated. Additionally, 26 States/Union Territories have formed State Monitoring Committees, 27 States/Union Territories have set up District Vigilance Committees, and 23 States/Union Territories have constituted Sub-division level Vigilance Committees.<sup>26</sup> It was further submitted that except for Karnataka and Delhi, no other State or Union Territory has reported about prosecutions under the 2013 Act.<sup>27</sup>

39. In its affidavit dated 02.05.2023, Railways has outlined measures taken to eliminate manual scavenging. It was submitted that they have collaborated with the Defence Research and Development Organization (DRDO) to develop eco-friendly bio-toilets<sup>28</sup> for passenger coaches. As of March 31, 2023, a total of 2,99,880 bio-toilets have been installed in 84,402 coaches. Cleaning of train toilets is carried out using high-pressure jets and specific chemicals at designated Clean Train Stations (CTS).<sup>29</sup>

40. Additionally, in response to concerns raised by the Amicus before this Court, the Ministry of Railways has withdrawn notifications issued dated 04.06.2014<sup>30</sup> and dated 13.10.2014<sup>31</sup> by order dated 26.04.2023. The Railways has also released a model contract for outsourcing cleaning services, which mandates the use of mechanized processes and safety equipment for workers.<sup>32</sup>

41. It was submitted on behalf of NCSK that it has a limited role, primarily focused on recommending measures in respect of Safai Karamcharis and pursuing State Governments and Local Bodies to implement these measures as outlined in the 2013 Act. Unlike other Commissions, NSCK is neither a constitutional nor a statutory body. It does

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26 Union of India's Note dt.26.07.2023 (Vol. 5)

27 Union of India's Note dt.26.07.2023 (Vol. 5)

28 In these bio-toilets, the waste retention tanks are fitted below the coach floor underneath the lavatories and the human waste, discharged/collected into them, is acted upon by a colony of anaerobic bacteria that convert human waste mainly into water and bio-gases (mainly Methane CH4 & Carbon Dioxide CO2). The gases escape into the atmosphere and waste water is discharged after disinfection onto the track.

29 Union of India's Note dt.09.08.2023 (Vol. 10)

30 Vide GSR 376(E)

31 Vide GSR 726(E)

32 Union of India's Note dt.09.08.2023 (Vol. 10)

not have the powers to summon officers of the establishments concerned or have their oral evidence. Consequently, the commission is unable to assert itself effectively in providing relief to aggrieved *Safai Karamcharis*. Additionally, the commission faces challenges due to shortage of staff, with only 16 personnel responsible for all of its functions, including internal administration.

42. Since the lapsing of the NCSK Act, 1993 on 29.2.2004, the commission is functioning as a non-statutory temporary body under the Ministry of Social Justice and Empowerment. Its tenure is periodically extended through notification, with the last extension being granted from 1.4.2022 to 31.3.2025<sup>33</sup>.

43. Pursuant to this court's order and provisions of 2013 Act, the NCSK has taken certain steps such as circulating 20 points check list, advising states to open appropriate budget heads and allocate funds, etc. It was further submitted that due to continuous monitoring, in 167 cases of sewer deaths during FY 2022-23 till 31.03.2023, compensation of ₹ 10 lakhs has been paid. Commission also took *Suo motu* enquires, for instance, out of 19 cases of sewer deaths in FY 2022-23, cognizance was taken based on newspaper reports and paid compensation to legal heirs in 15 cases.

44. Regarding the information sought from respondents about the abolition of dry latrines, it was submitted that states are better equipped to provide details about the steps taken and achievements made in this regard. Additionally, the Ministry of Social Justice and Empowerment also submitted that since 1993, 1,035 individuals lost their lives due to accidents while doing hazardous cleaning of sewers and septic tanks. In compliance with a Supreme Court order dated 27<sup>th</sup> March 2014, compensation has been provided to 948 families of those who died while cleaning sewers/septic tanks. However, there have been no reported deaths resulting from manual scavenging.

45. The Union's affidavit dated 18.04.2023, disclosed that there are 4478 permanent and 9897 outsourced *Safai Karamcharis* engaged by

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33 Effected through Notification No. N-16/5/2021-PLAN dated 3.2.2022.

Cantonment Boards to upkeep general sanitation<sup>34</sup>. It was further submitted that any dry latrines that existed before the implementation of the 2013 Act were dismantled and converted into sanitary latrines. Furthermore, it was highlighted that there have been no reported incidents of sewerage-related deaths in areas managed by Cantonment Boards since the year 2013.

46. Lastly, it was proposed that this court may consider issuing some directions to all States and Union Territories to ensure that measures (establishment of an Emergency Response Sanitation Unit (ERSU), designation of a Responsible Sanitation Authority, establishment of a Helpline Number<sup>35</sup>, assurance of mechanized cleaning methods and the availability of essential safety equipment and machines at the ERSU) are in place in each district within six months from the promulgation of the Court Order.<sup>36</sup> Further, to issue appropriate directions to the States/Union Territories to fully implement the Act, including constitution of various committees under the Act and the implementation of the NAMASTE scheme, in order to prevent deaths resulting from hazardous cleaning.<sup>37</sup>

#### ***Analysis and reasoning***

47. The 2013 Act not only criminalizes manual scavenging but also provides for rehabilitation mechanisms to ensure that manual scavengers are emancipated. Chapter IV of the Act, titled '*Identification of Manual Scavengers in Urban and Rural Areas and their Rehabilitation*' spans from Section 11 to 16 and is an entire code in so far as rehabilitation is concerned. The first step towards rehabilitation that the 2013 Act makes, is the identification of manual scavengers through a survey. This survey is under Section 11 for municipalities and Section 14 for panchayats.

48. The methodology [and the institutions created] to conduct the survey are provided under the 2013 Rules. The Rules provide for specific authorities, i.e., the SLSC and DLSCs under Rule 11, to perform detailed roles. Under Rule 11(2), the SLSCs and DLSCs must carry out campaigns at various levels in all areas where insanitary latrines have been found. The

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34 (pg. 52, Vol.3).

35 preferably 14420

36 Union of India's Note dt.09.08.2023 (Vol. 10)

37 Union of India's Note dt.26.07.2023 (Vol. 5)

local authority is mandate to join hands with community leaders and NGOs working for *safai karamcharis* for their identification as per Rule 11(3). Rule 11(4) provides for self-declaration by manual scavengers whereas Rule 11(5) allows NGOs to submit lists of manual scavengers which may be verified to identify them. A house-to-house survey is mandated under Rule 11(6) to identify manual scavengers who service the insanitary latrines in any area. Overseers are appointed under Rule 11(8) to ensure that the data collected in the survey is correct. Subsequently, a list is made of the manual scavengers after inviting objections and hearings. Ultimately, the list is compiled by the DLSC. After their identification by a survey, a final publication of the manual scavengers is to be published under Section 11(6). Notably, under Section 12, a person can apply to be added to the published list under Section 11.

49. On publication of the list, the emancipatory provision under Section 11(7) read with Section 6(2) takes effect. It declares that the manual scavengers *stand discharged* from any obligation to work as manual scavengers. This provision is the heart of the law – the declaration *frees* manual scavengers from the clutches of their historically oppressive professions. The law consequently empowers them through the process of rehabilitation. The 2013 Act, including the aforementioned provisions, therefore, must be interpreted as being in furtherance of fraternity, assuring the *dignity of the individual*.

50. The entitlements for rehabilitation are provided under Section 13. It envisages that a manual scavenger must be provided, within one month, a photo identity card containing the details of dependent family members and an initial, one-time cash assistance as may be prescribed. The Act also envisages a scholarship for the children of a manual scavenger, allotment of a residential plot, financial assistance for house construction, training of the manual scavenger himself or at least one adult member of his family, in a livelihood skill with a stipend of not less than ₹ 3,000 during the period of the training, a concessional loan for taking up alternative occupation, etc.

51. These rehabilitation entitlements are available only to those included in the final list of manual scavengers published pursuant to a survey

under Section 11(6) or added to the list under Section 12(3) of the Act. It must thus be emphasized that without a survey in accordance with the Act and Rules, there cannot be any further steps of rehabilitation.

52. That rehabilitation can occur only on identification has not been seriously disputed by the Union. The Union however contends that (i) the 2013 Act does not contemplate a national survey but mandates a localized survey at the level of local bodies and (ii) two national surveys have already been conducted in 2013 and 2018.

### *Interpretation of Section 11*

53. The Union's contention that Section 11 requires localized surveys by local bodies and not a national survey is, facially, attractive. However, the 2013 Act is not a regular statute: it is emancipatory in character and is a manifestation of the constitutional code of upliftment. The groundbreaking purpose of the 2013 Act, as is evident from its title<sup>38</sup> is to ensure that manual scavengers are rehabilitated. Rehabilitation, as found above, is a step after identification. Without a survey, rehabilitation is not workable. The statutory scheme cannot be undermined through an interpretation that would leave the implementation of the 2013 Act solely with the local bodies, without any guidance from the Governments – State and Central. In other words, the salutary commitment made by the 2013 Act must be fulfilled by the local bodies in accordance with a policy-framework laid down by the Central or State Government.

54. The Central and State Governments were and are, duty-bound to lay down the parameters under which a local body was mandated to conduct a survey. While the methodology of the Survey is provided under the 2013 Rules, the trigger for conducting the Survey is conspicuously absent from both the 2013 Rules as well as the 2013 Act. The absence of a trigger cannot render the 2013 Act and its constitutional commitments *otiose* by non-implementation. That is to say, the implementation of the Act cannot be left to the whims and fancies of local bodies. Local bodies must

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38 The statute is titled “*the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013*”.

be guided by the central and state governments by laying down guidelines on when a survey must be conducted, and which local bodies must conduct a survey. Without a policy of this nature, a local body cannot be expected to implement the 2013 Act in a proper manner.

55. In a similar vein, this Court in *Swaraj Abhiyan v. Union of India*<sup>39</sup>, while monitoring the implementation of the National Food Security Act, 2013, noticed that some states were not implementing the statute. This Court noted:

*"109. It is surprising that the implementation of a law enacted by Parliament such as the NFS Act is left to the whims and fancies of the State Governments, and it has taken more than two years after the NFS Act came into force for Gujarat to implement it and Uttar Pradesh has only implemented it partially. This is rather strange. A State Government, by delaying implementation of a law passed by Parliament and assented to by the President of India, is effectively refusing to implement it and Parliament is left a mute spectator. Does our Constitution countenance such a situation? Is this what "federalism" is all about? Deliberate inaction in the implementation of a parliamentary statute by a State Government can only lead to utter chaos or worse. One can hardly imagine what the consequence would be if a State Government, on a similar logic, decides that it will not implement other parliamentary statutes meant for the benefit of vulnerable sections of society. Hopefully, someone, somewhere, sometime will realise the possible alarming consequences."*

56. The disquieting consequences referred to in the *National Food Security Act case* (supra) have also manifested in the case of manual scavengers – the entire statutory scheme of the 2013 Act has been challenged as the first step towards rehabilitation has not been taken. Our constitutional scheme does not approve of a situation where parliamentary enactments are rendered dead-letter by executive inaction. This argument of the Union

must therefore be rejected to the extent that while local governments must conduct surveys, it was for the appropriate authorities, at both the central and state levels, to lay down parameters for the surveys to be conducted. It was also incumbent on these authorities to ensure that proper implementation of the 2013 Act had taken place. On both counts, the Central and State Governments do not appear to have taken any steps.

#### ***Insufficiency of the previous (2013 and 2018) Surveys***

57. The second submission of the Union is that two surveys were in fact conducted in 2013 and 2018 and a continuous self-declaring survey is taking place on a mobile application. These submissions, too, are misplaced. It may be noticed that neither the 2013 nor the 2018 surveys could have been conducted as prescribed under the scheme of the 2013 Rules and the 2013 Act for the reason that the institutions entrusted with duties to conduct the Surveys were either not constituted or were not functioning. That is to say, where the Act and Rules prescribe a particular method and manner of survey, that method and manner only ought to have been followed and no other method or manner could have been followed.

58. The principle of law that “*where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden*”<sup>40</sup> would thus apply making the 2013 and 2018 surveys inapplicable to the processes under the 2013 Act. In fact, this very finding was arrived at by the High Court of Karnataka in *All India Council of Trade Unions v. Union of India*<sup>41</sup> where the High Court held that if a survey had been conducted without following the rigors of the 2013 Act and Rules, it would not be a valid survey in so far as the Act and Rules are concerned. It was observed:

*“30. Now, we firstly come to the survey and identification of manual scavengers in urban areas. The Manual Scavengers Act which is brought into the force in the year 2013 virtually accepts that even in 21st century, manual scavenging exists and that also in urban areas.*

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40 State of U.P. v. Singhara Singh, 1963 SCC OnLine SC 23: (1964) 4 SCR 485 at para 7.

41 (2020 SCC OnLine Kar 2420)

Even assuming that the Local Authorities have carried out survey in terms of Section 11, it cannot be a lawful survey unless the Local Authorities have followed the procedure under Sub-Rules (10) to (12) of Rule 11 of the Manual Scavengers Rules by publishing a final list. ...

33. ... *The State Government will have to also inform the Court whether District wise lists are made and whether consolidated State list has been prepared. Moreover, the State will have to place on record whether the District Level Survey Committees have been formed in all the Districts and the State Level Survey Committee has been constituted. The State Government will have to point out the details of the number of meetings held of both the Committees."*

59. A similar direction had been passed by the High Court of Bombay in *Vimla Govind Chorotiya and Others v. State of Maharashtra*<sup>42</sup> where it was held:

"31. ... (iv) Respondent No. 1 i.e. State of Maharashtra in the Social Justice and Special Assistance Department shall inform the Court on the next date whether survey of manual scavenging in urban areas in terms of sections 11 and 12 of the 2013 Act and similar exercise by Panchayats in rural areas under sections 14 and 15 of the said 2013 Act have been carried out or not."

60. This court notices that no provisional list under Section 11(4) was prepared; no objections were called for and decided under Section 11(5) and no final list was published under Section 11(6). In the absence of following, the contention that there was a valid survey conducted cannot be accepted. Yet another reason for this conclusion is that the institutions required to conduct the survey under Rule 11 were not in place and were not functioning at the relevant time in 2013 and 2018.

61. The *Amicus Curiae* had pointedly brought out the nature of data collected by the 2013 and 2018 surveys, which appear to be inconsistent

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42 (2021 SCC OnLine Bom 3002)

and contradictory on the face of it. To this end, the table submitted by the *Amicus Curiae* during arguments would itself demonstrate that the data collected in 2013 and 2018 were not consistent:

| State                     | As per<br>2013<br>Survey | As per<br>2018<br>Survey | As per<br>reply dt.<br>08.12.2021<br>to Rajya<br>Sabha<br>Unstarred<br>Question | As per reply<br>dt.24.07.2019<br>to Rajya<br>Sabha<br>Unstarred<br>Question | Union of<br>India's<br>affidavit dt.<br>18.04.2023  | NCSK's<br>affidavit dt.<br>01.05.2023 |
|---------------------------|--------------------------|--------------------------|---|---|---|---------------------------------------|
| <b>Uttar<br/>Pradesh</b>  | 12095                    | 17828                    | 32473   | 30375   | 32473   | 19712                                 |
| <b>Maharashtra</b>        | 0                        | 7298                     | 6325  | 7378<br>(identified<br>none in the<br>2013 survey)                          | 0   | 7378                                  |
| <b>Uttarakhand</b>        | 137                      | 4787                     | 4988  | 4924  | 0 in urban<br>areas   | 6033                                  |
| <b>Rajasthan</b>          | 338                      | 2590                     | 2673  | 2928  | No clear<br>response  | 2590                                  |
| <b>Karnataka</b>          | 732                      | 1754                     | 2927  | 2486  | 7 4 9 3<br>identified<br>from 2013<br>to 2020   | 1754                                  |
| <b>Andhra<br/>Pradesh</b> | 78                       | 1982                     | 1793  | 2060  | 1984 (no<br>mention of<br>any survey<br>year)   | 1982                                  |
| <b>Bihar</b>              | 137                      | 0                        | 131   | 137   | No manual<br>scavengers<br>found in<br>2018, even<br>though 2797<br>sanitary<br>latrines<br>found | 0                                     |

62. A few comments on the data are required here. A partial survey seems to have been conducted in Karnataka in 2020 which revealed the presence of 7493 manual scavengers. However, the 2013 survey stated that there were only 732 manual scavengers and the 2018 survey stated that there were 1754 manual scavengers. The exponential increase of the number

of manual scavengers from 2013 to 2018 and then in 2020, considerably reduces the credibility of both the 2013 and 2018 surveys.

63. Another reason for this court's skepticism about the survey is the comparison of the survey of manual scavengers with the survey on insanitary latrines. This data was provided by the cantonment boards in pursuance of the orders of this court. The Cantonment Boards stated that they have demolished 574 insanitary latrines in Agra, 153 in Jabalpur and 12 in Jammu. However, they stated that there were no manual scavengers in their jurisdiction. By their very nature, insanitary latrines are serviced by manual scavengers. The manual scavengers which were servicing these insanitary latrines were clearly missed by the 2013 and 2018 surveys. As stated above, the survey under Section 11 read with Rule 11(2), provides that the SLSC and the DLSCs shall carry out adequate campaigns in all areas *especially in all such areas where insanitary latrines are found.*

64. The above statistics demonstrate that the number of manual scavengers identified in the 2013 Survey were substantially lower than the number of manual scavengers identified in the 2018 Survey. Different numbers have also been stated by the Government in the Rajya Sabha on different dates and the Union's Affidavit before this Court. It is also unclear and inconsistent on the number of manual scavengers identified. It is in this context that the anguish expressed by the NCSK in its annual reports for nearly every year since 2015-16 must be seen. In 2015-16, the stance of the NCSK was.

*"Identification of the Manual Scavengers and their subsequent rehabilitation is the soul of the Act. However, despite repeated efforts by the Government of India, the figures with regard to the Manual Scavengers are not forthcoming correctly. It is observed that different figures are being quoted by different Government and Non-Governmental agencies. ... the Commission recommends that there is a need to have correct and authentic figures about the manual scavengers in the country."*

In 2017-18, similarly:

*"Identification of the Manual Scavengers and their subsequent rehabilitation is the soul of the Act. However, despite repeated*

*efforts by the Government of India, the figures with regard to the Manual Scavengers are not forthcoming correctly. It is observed that different figures are being quoted by different Government and Non-Governmental agencies. ... the Commission recommends that there is a need to have correct and authentic figures about the manual scavengers in the country””*

The NCSK stated in 2018-19:

*“Till date, no reliable figure is available with the Government about the manual scavenging in the country and the figure is varying at various places.”<sup>43</sup>*

Similarly, in its annual report for 2019-20, the NCSK stated:

*“The data in respect of the number of Manual Scavengers is the first requisite for abolishing the practice of manual scavenging and improving their quality of life. The survey at National or in all State/UT has not been carried out for the identification of manual scavengers. The Government is still not sure about the number of Male and Female Manual Scavengers as on date in the country.”*

65. In fact, on 05.07.2023, the CMC met after directions given by this Court. In the CMC, the Deputy Advisor to the NITI Aayog yet again stated the need for a survey as, according to him, many manual scavengers were left out of the survey. At this stage, it may be noticed that this Court in *Safai Karamchari Andolan* (supra) had noticed the short-comings of the survey of 2013 and had observed as follows:

*“the Central Government announced a ‘Survey of Manual Scavengers’. The survey, however, was confined only to 3546 statutory towns and did not extend to rural areas. Even with this limited mandate, as per the information with Petitioner No. 1, the survey has shown remarkably little progress. State records in the “Progress Report of Survey of Manual Scavengers and their Dependents” dated 27.02.2014 show that they have only been able to identify a minuscule proportion of the number of people actually*

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43 Annual Report of the National Commission for Safai Karamcharis for the year 2018-19.

*engaged in manual scavenging. For instance, the Petitioners, with their limited resources, have managed to identify 1098 persons in manual scavenging in the State of Bihar. The Progress Report dated 27.02.2014 claims to have identified only 136. In the State of Rajasthan, the Petitioners have identified 816 manual scavengers whereas the Progress Report of the State dated 27.02.2014 has identified only 46.*

*11. The aforesaid data collected by the Petitioners makes it abundantly clear that the practice of manual scavenging continues unabated. Dry latrines continue to exist notwithstanding the fact that the 1993 Act was in force for nearly two decades. States have acted in denial of the 1993 Act and the constitutional mandate to abolish untouchability.*

*12. For over a decade, this Court issued various directions and sought for compliance from all the States and Union Territories. Due to effective intervention and directions of this Court, the Government of India brought an Act called “The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013” for abolition of this evil and for the welfare of manual scavengers. The Act got the assent of the President on 18.09.2013. The enactment of the aforesaid Act, in no way, neither dilutes the constitutional mandate of Article 17 nor does it condone the inaction on the part of Union and State Governments under the 1993 Act. What the 2013 Act does in addition is to expressly acknowledge Article 17 and Article 21 rights of the persons engaged in sewage cleaning and cleaning tanks as well persons cleaning human excreta on railway tracks.”*

66. Hence, when this Court had already found that the survey was insufficient, the Union cannot possibly rely on the same survey once again.

### ***III: Institutions***

67. A major short-coming in the implementation of the 2013 Act is the fact that the State and the Central Governments have not even constituted the institutions that are required to implement the Act. A list of institutions required to be constituted under the Act are under:

| S. No. | Institution                               | Section/Rule  |
|--------|---|---|
| 1.     | National Commission for Safai Karamcharis | Section 3, National Commission for Safai Karamcharis Act, 1993; Given statutory functions under Section 31, 2013 Act. |
| 2.     | State Commission for Safai Karamcharis    | Section 32, 2013 Act  |
| 3.     | Central Monitoring Committee              | Section 29, Prohibition Act, 2013   |
| 4.     | State Monitoring Committee                | Section 26, Prohibition Act, 2013   |
| 5.     | Vigilance Committees                      | Section 24, Prohibition Act, 2013   |
| 6.     | State Level Survey Committee              | Rule 11, Prohibition Rules, 2013  |
| 7.     | District Level Survey Committee           | Rule 11, Prohibition Rules, 2013  |

68. The implementation of the statute depends on the effective functioning of the aforementioned institutions. Unfortunately, it has been seen that these institutions have not been constituted by the States and the Union and where they have been constituted, the institutions are not functioning at all. The Act has created the institutions to ensure a check and balance on the implementation of the statute. However, instead of being a check on the implementation, the lack of institutions has effectively brought the implementation of the Act to a total standstill. This systematic neglect of the statute and inaction by the executive would reduce it to a dead letter. Each of the institutions is dealt with more specifically below-

***National Commission for Safai Karamcharis***

69. The NCSK is a statutory commission which was created under the National Commission for Safai Karamcharis Act, 1993. Under this Act, the Commission was to function only till 1997. However, on amendments and executive instructions, the Commission remained functional till 2013. Section 31 of the 2013 Act, thereafter, bestowed certain powers and functions on the NCSK which are to be fulfilled by it. Therefore, though the NCSK Act, 1993 does not envisage a longer term for the NCSK, by virtue of the 2013 Act, the NCSK must remain functional. The NCSK discharges vital

functions: it is to monitor the implementation of the 2013 Act; to enquire into complaints regarding the contravention of the Act; to advise the Central and State Governments for effective implementation of the Act; and to take *suo motu* notice of matter relating to non-implementation of the Act. The non-functioning of the NCSK would therefore paralyze the implementation of the Act.

70. It is in this light that the position of the NCSK must be seen. The NCSK is manned only by a Chairperson and Vice-Chairperson and one member. It is further a matter of fact that the Commission was not even functioning in the year 2022-23. Needless to state, the Commission is short-staffed by executive inaction in appointing members to the Commission.

#### ***State Commissions for Safai Karamcharis***

71. In terms of the 2013 Act, at state level (by Section 31), all states are under a mandate to constitute State Commissions for *Safai Karamcharis*. The functions of the State Commission are identical to functions of the NCSK. The State Commissions, therefore, play an equally important role in the implementation of the Act at the State level. Repeatedly, the NCSK had noted that State Commissions were not constituted. In its Annual Report for the year 2019-20, the National Commission report that persons are approaching the NCSK because of the lack of State Commissions. It stated:

*“The Commission understands that separate State Commissions for Safai Karamcharis exist in very few States. In the absence of State level Commissions in other States, the petitioners from far off corners of the country are forced to take up their grievances with the National Commission for Safai Karamcharis. This, besides being inconvenient for the petitioners, also overburdens the National Commission. If there is State level Safai Karamchari Commission in every State, then the petitioners of that State can approach these State level Commissions for redressal of their grievances and the State level Commission, in turn, can take up the matter with the local authorities concerned in a more effective manner.”*

72. The court was appraised that during the pendency of this case, the NCSK and the Union of India submitted affidavits regarding the position of constitution of State Commissions. The *Amicus Curiae* points out that the affidavits reveal glaring inconsistencies in the data for constitution of the State Commissions. The lack of precise data due to the inconsistencies means that there is no clarity regarding the constitution of these Commissions. Nonetheless, from the tables supplied to this Court by the Union and the *Amicus Curiae*, it is clear that very few States have dedicated Commissions for *Safai Karamcharis*. In fact, the data submitted by the Union of India also shows that the Commissions which have been constituted are neither functioning nor even meeting regularly. The implementation of the 2013 Act is wanting for the lack of institutional support from the State Commissions as well.

#### ***Central Monitoring Committee***

73. A vital institution for the implementation of the Act is the CMC constituted under Section 29 of the 2013 Act, under the chairmanship of the Union Minister for Social Justice and Empowerment. The Committee is to have various *ex officio* members including Minister of State in the Ministry of Social Justice and Empowerment, Chairperson National Commission for Scheduled Castes, Chairperson, NCSK, Member of Planning Commission dealing with development of Scheduled Castes, 3 MPs from SC communities, Secretaries of 7 ministries etc. The functions of this Committee, mandated under Section 30, are equally important. It is to monitor and advise the Central and State Government regarding the implementation of the 2013 Act and to *coordinate the functions of all concerned agencies*. The 2013 Act also empowers the Committee to *look into any other matter incidental to or connected with* the implementation of the Act. The broad and sweeping powers of the Committee demonstrate its importance.

74. Regrettably, though the Committee is statutorily mandated to meet once in six months under Section 29(3), it is seen that the Committee met after a gap of three years on 05.07.2023 after a direction from this Court on 02.05.2023. The Order passed by this Court is reproduced for clarity:

*"We have heard learned counsel for the parties and are of the opinion that the learned A.S.G. should indicate a practical method for the operationalization of the Central Monitoring Committee. That Committee comprises of more than 20 members and has apparently not met for the last three years. The record also discloses that in the last ten years, the Committee has met seven times. ....*

*This Court is of the opinion that the A.S.G. should, therefore, obtain instructions with regard to the practical method to be undertaken by State Committees and other agencies, created by the Act, for survey, identification and complete operationalization of the Act. The A.S.G. may indicate also the time lines for this purpose. "*

The CMC being a central governmental authority which coordinates and monitors the implementation of the 2013 Act, must be proactive. The implementation of the 2013 Act enacted duly and empowering a downtrodden section of the society cannot be left unrealised, and especially not due to executive inaction.

#### ***State Monitoring Committees***

75. The State Monitoring Committees, like the CMCs, have a number of *ex officio* members such as the Chief Minister or a Minister nominated by him, the Minister-in-charge of the Scheduled Castes Welfare, representatives of the National Commission for Scheduled Castes and Safai Karamcharis, etc. as mandated by Section 26 of the 2013 Act. Similarly, the functions of the State Monitoring Committee are also broad under Section 27. However, it has been brought to the notice of this Court that the State Monitoring Committees are inactive which is in direct contravention of the statutory mandate under Section 26 of the 2013 Act.<sup>44</sup>

76. The data compiled by the Union and presented by the *Amicus Curiae* in tabular form evidences that the Committees either do not exist or have not met in the recent past. There is no material on record to show that steps have been taken at any stage to constitute the Committees and ensure that they are working.

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44 See the extracted table for easy reference

| <b>State</b> | <b>NCSK<br/>Report<br/>2019-20<br/>(p.90,Vol.2)</b> | <b>Union's<br/>affidavit<br/>dt.18.04.2023<br/>(Vol.3)</b>                        | <b>NCSK's<br/>affidavit<br/>(p.44Vol.4)</b> | <b>Union of<br/>India's<br/>affidavit<br/>dt.05.07.2023<br/>(Vol.7)</b> |
|--------------|---|---|---|---|
| Assam        | No information about constitution of SMC            | Constituted (p.180of Vol.3)   | No information about constitution of SMC    | DC: 08.08.2018<br>LDM: 18.07.2019<br>(p.18ofVol.7)                      |
| Manipur      | No information about constitution of SMC            | State may decide (p. 499 of Vol.3)  | No information about constitution of SMC    | -   |
| Meghalaya    | No information about constitution of SMC            | Constituted (p. 503 of Vol. 3)  | No information about constitution of SMC    | -   |
| Nagaland     | No information about constitution of SMC            | Under process (p. 522 of Vol. 3)  | Constituted                                 | -   |
| Chandigarh   | Constituted   | Only states that this relates to the Social Welfare Department (p. 846 of Vol. 3) | Constituted                                 | Under action for constitution (p.28 of Vol.7)                           |
| Daman & Diu  | No information about constitution of SMC            | Constituted on 24.11.2022   | Constituted                                 | DC: 24.11.2022<br>LDM: Not given<br>(p.31 of Vol.7)                     |

|              |  |  |  |  |
|--------------|--|--|--|--|
| Delhi        | Constituted  | No response  | Constituted  | -  |
| Ladakh       |  | Constituted<br>vide G.O.<br>dated<br>03.02.2022<br>(p. 899<br>of Vol. 3) | No<br>information<br>provided                        | -  |
| Lakshawadeep | Constituted  | Not required<br>(p. 920<br>of Vol.3)                                     | Constituted  | -  |
| Puducherry   | No<br>information<br>about<br>constitution<br>of SMC | No response  | No<br>information<br>about<br>constitution<br>of SMC | DC: 16.06.2013<br><br>LDM: Not<br>given<br>(p.92 of Vol.7) |

***Vigilance Committees***

77. Vigilance Committees are of two types: district and sub-divisional. DVCs are mandated under Section 24(2) of the 2013 Act and consist of the District Magistrate, MLAs of Scheduled Castes from the district, Superintendent of Police, etc. Similarly, the Sub-divisional Vigilance Committees are constituted under Section 24(3) and comprise of the Sub-Divisional Magistrate, CEOs of Panchayats, Sub-Divisional level Officer in charge of Scheduled Castes Welfare etc. The Committees are mandated to meet once in three months under Section 24(4). These committees' functions under Section 25 are to oversee economic and social rehabilitation, coordinate the functions of all agencies to channelize adequate credit for the rehabilitation of manual scavengers and to monitor the registration of offences and their investigation and prosecution under the 2013 Act.

78. Even though these grass-roots institutions were empowered under the Act with specific functions, many of the States have not even constituted the Committees and where the Committees have been constituted, they are

not functional. The *Amicus Curiae* submitted a table to this Court presenting the state of affairs for Vigilance Committees. This table clearly shows that the Vigilance Committees are not functional. No further data is forthcoming from the Union to contravene this position.

| <b>State</b>                        | <b>Date of Constitution and Last Date of Meeting</b>               | <b>State</b> | <b>Date of Constitution and Last Date of Meeting</b>   |
|-------------------------------------|--|--------------|--|
| Andaman and Nicobar                 | DC:04.01.2019<br>LDM: Not given                                    | Puducherry   | DC:16.06.2023<br>LDM: Not given  |
| Assam                               | DC:08.05.2014<br>LDM: Not given                                    | Punjab       | DC: Different dates for different district between 2014and 2019.<br>LDM: Different dates for different district between 2018 and 2023. |
| Chandigarh                          | Under action for constitution                                      | Rajasthan    | DC:13.05.2016<br>LDM: No specific date   |
| Dadra & Nagar Haveli and Daman& Diu | DC:20.09.2022<br>LDM: Not given                                    | Sikkim       | DC:27.11.2014<br>LDM: Different dates for different districts in2023.  |
| Goa                                 | DC: Not given<br>LDM:06.12.2018                                    | Tripura      | DC:01.03.2019<br>LDM: Not given as state is freeofMS   |
| Karnataka                           | DC: Different dates for different district between 2014 and 2018.  | West Bengal  | DC:26.02.2014<br>LDM: 27.02.2023   |
|                                     | LDM: Different dates for different district between 2021 and 2023. |              |  |

***Survey Committees***

79. Survey Committees under Rule 11 are to be created at the State and District level. The function of the Committees is to oversee the survey process from its initiation to the publication of the list in the respective district/state. As per the data supplied to this Court, the State Level Survey Committee has been constituted only in Rajasthan, Karnataka and West Bengal as per the Union of India<sup>45</sup>. Further, District Level Survey Committee has been constituted only by Odisha. Obviously, a survey under the Act cannot take place without these Committees being constituted.

***IV. Hazardous Cleaning***

80. Manual scavenging and hazardous cleaning are separately treated under the 2013 Act. A ‘Manual scavenger’ is defined under Section 2(g) as a:

*“(g) a person engaged or employed, ... by an individual or a local authority or an agency or a contractor; for manual cleaning, carrying, disposing of, or otherwise handling in any manner, human excreta in an insanitary latrine or in an open drain or pit into which the human excreta from the insanitary latrines is disposed of, or on a railway track or in such other spaces or premises as the Central Government or State Government may notify, before the excreta fully decomposes in such manner as may be prescribed...”*

81. A manual scavenger under the 2013 Act, therefore, is employed with respect to cleaning human excreta from an insanitary latrine or a similar place. On the other hand, ‘Hazardous cleaning’ is defined under Section 2(d) as:

*“(d) “hazardous cleaning” by an employee, in relation to a sewer or septic tank, means its manual cleaning by such employee without the employer fulfilling his obligations to provide protective gear and other cleaning devices and ensuring observance of safety precautions, as may be prescribed or provided in any other law, for the time being in force or rules made thereunder;”*

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45 Union of India’s affidavit dated 5.7.2023.

‘Septic tank’ and ‘Sewer’ are in turn defined under Section 2(p) and 2(q) respectively:

*“(p) “septic tank” means a water-tight settling tank or chamber, normally located underground, which is used to receive and hold human excreta, allowing it to decompose through bacterial activity;”*

*“(q) “sewer” means an underground conduit or pipe for carrying off human excreta, besides other waste matter and drainage wastes;”*

82. A perusal of the definition would reveal that a person employed for hazardous cleaning has nexus to a sewer or septic tank. The definition of sewer and septic tank would reveal that they are concerned with human excreta and other wastes. It must also be noticed that hazardous cleaning is permitted if protective gear and cleaning devices are provided. These are prescribed under the 2013 Rules. Even though both a hazardous cleaner and a manual scavenger deal with human excreta, the statute only penalizes hazardous cleaning and does not provide for subsequent steps for rehabilitation of hazardous cleaners. Ms. Jayna Kothari, Senior Advocate, urged that the difference in the treatment between manual scavenging and hazardous cleaning violates Article 14 as there is no rational differentiation between the two. However, this court is not faced with a challenge to the statute in this case. Without a challenge to the provisions, the differentiation cannot be held unconstitutional.

#### *MECHANIZATION*

83. While the statutory scheme does not provide for rehabilitation of hazardous workers, especially those who work in sewers, the constitutional underpinnings of the 2013 Act and the prohibition of untouchability must inure to their benefit. Hazardous cleaning, like manual scavenging, is a manifestation of untouchability, and has been abolished by the adoption of Article 17 of the Constitution. This is also evident through the Civil Rights Act, 1955 which specifically proscribes scavenging under Section 7A, as being an instance of untouchability.

84. To this end, the 2013 Act and Rules provide for mechanization of hazardous cleaning through ‘cleaning devices’ and ‘protective gear’. Rule

3 of the 2013 Rules begins with the words "*no person shall be allowed to clean a sewer manually with the protective gear and safety devices under these rules except ...*" A scrutiny of the exceptions under the Rule reveals that the situations are only where mechanical equipment cannot be put into operation or when the sewer is not yet operational. In other circumstances, specific approval of the CEO of the local authority is required where he reasons that *it is absolutely necessary to have manual sewage cleaning* in writing with valid reasons.

85. Notably, Rule 3(2) ensures that even in the exceptional situations of removal of submersible pumps and reconstructions of the manhole, the sewage must be totally emptied. An exhaustive list of protective gear under Rule 4 and of cleaning devices in Rule 5 indicate the extent of mechanization required for hazardous cleaning. The further safeguards under Rule 6, 7 and 8 make it clear that a person must not enter the sewer or septic tank except under exceptional situations.

86. The clear purpose and intent of the 2013 Act and Rules is to ensure the mechanization of sewer and septic tank cleaning. In other words, the 2013 Act and Rules intends that no person should have to come in direct contact with human excreta and that protective gear and cleaning devices must be provided to ensure this. The protective gear and cleaning devices required to be prescribed under the Rules would also be required to be in furtherance with this purpose. That is to say, the prescribing authority must keep in mind that the protective gear and cleaning devices given to a hazardous cleaner ensure that he does not come into contact with human excreta.

87. The data submitted by the Union in its affidavits reveals a significant lack of mechanization to clean sewer lines or septic tanks. A few examples which had been raised by the *Amicus Curiae* pertain to Chittoor, Ongole, Mangalagiri-Tadeppalli in Andhra Pradesh, Kollam in Kerala, Gangtok in Sikkim, Nagercoil in Tamil Nadu all having no machines at all, and the entirety of the cleaning is being undertaken by hazardous cleaners. As held above, such a situation is against the statutory as well as constitutional mandate. Cleaning devices as well as protective gear must be provided to ensure that manual cleaning of sewers and septic tanks is not done.

*STATUS OF HAZARDOUS CLEANING UNDER ARTICLE 23*

88. Article 23 of the Constitution prohibits forced labour and makes it an offence punishable in accordance with law. The expression ‘other forms of forced labour’ in Article 23 strike at all forms of labour which offend human dignity. This would include not just remuneration but would also include all labour where the absolute minimum standards of safe employment are not met.

89. At the cost of repetition, given the importance of, it would not be out of place to mention that the meaning of *forced labour* was discussed by this Court in *People’s Union for Democratic Rights* (supra) where this Court had expanded the scope of the words and included within its sweep situations where basic dignity is violated by not adhering to the minimum wage standards. The court held that employment where minimum wage is not paid is a violation of Article 23 and an instance of forced labour.

90. Drawing from the above principles, it can be held that where minimum protective gear and cleaning devices are not provided to hazardous workers, the employment of hazardous workers amounts to forced labour and is thus prohibited under the Constitution. This attains importance as the provisions for protective gear and cleaning devices are not mere statutory rights or rules, but are entitlements and it is due to these entitlements that the provisions of the 2013 Act are in consonance with the Constitution.

91. Another consequence of this principle is that the defence of any contractor or authority that a hazardous worker had entered into a sewer or septic tank voluntarily without any protective gear or cleaning devices, would not stand constitutional scrutiny. In *People’s Union for Democratic Rights* (supra), this Court explained the reasons why the alleged consent is irrelevant, in the context of minimum wages in the following words:

“13. ... *It is therefore clear that even if a person has contracted with another to perform service and there is consideration for such service in the shape of liquidation of debt or even remuneration he cannot be forced, by compulsion of law or otherwise, to continue to perform such service, as that would be forced labour within the inhibition of Article 23. This article strikes at every form of forced labour even if it has its origin in a contract voluntarily entered into*

*by the person obligated to provide labour or service (vide Pollock v. Williams [322 US 4: 88 L Ed 1095]). The reason is that it offends against human dignity to compel a person to provide labour or service to another if he does not wish to do so, even though it be in breach of the contract entered into by him. There should be no serfdom or involuntary servitude in a free democratic India which respects the dignity of the individual and the worth of the human person. Moreover, in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, a contract of service may appear on its face voluntary but it may, in reality, be involuntary, because while entering into the contract, the employee, by reason of his economically helpless condition, may have been faced with Hobson's choice, either to starve or to submit to the exploitative terms dictated by the powerful employer. It would be a travesty of justice to hold the employee in such a case to the terms of the contract and to compel him to serve the employer even though he may not wish to do so. That would aggravate the inequality and injustice from which the employee even otherwise suffers on account of his economically disadvantaged position and lend the authority of law to the exploitation of the poor helpless employee by the economically powerful employer. Article 23 therefore says that no one shall be forced to provide labour or service against his will, even though it be under a contract of service. ””*

A contract for employment of a hazardous cleaner without protective gear and cleaning devices would, similarly, violate Article 23 even if it were voluntary because such an agreement would violate human dignity.

#### *Rehabilitation of Hazardous Workers*

92. The liberative nature of the statute coupled with the object of Article 17 and 23 require entitlements to be given to the families of those persons who died while working in sewers or septic tanks. This is also because the entire family would be rendered without a bread-winner. The economic and social status of the already downtrodden and oppressed family would dwindle further. The dignity of the individual, guaranteed by law under Article 21, must be ensured through rehabilitative processes.

93. The Court cannot be blind to such a situation. In fact, it is in pursuance of this aim that this Court in *Safai Karamchari* (*supra*) granted a sum of ₹ 10 lakhs to every family where a person had died in a sewer. The Court held:

*"23.2. 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 gear 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.*

*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.*

*23.4 Rehabilitation must be based on the principles of justice and transformation."*

94. However, mere economic measures would not suffice in the upliftment of the family. Rehabilitation would require elements of long-term and short-term socio-economic measures such as scholarships, etc. To this end, this Court finds that entitlements which are akin to those given to manual scavengers must be granted to families of hazardous workers who had died in sewers and septic tanks.

95. In addition to the families of the hazardous workers, endeavors must be made to rehabilitate such persons who continue to be employed as hazardous workers without any protective gear or cleaning devices. States must suitably frame policies to ensure that all hazardous workers are given access to rehabilitative entitlements.

#### ***Directions***

96. In view of the above discussion, the following directions are issued:

- (1) The Union should take appropriate measures and frame policies, and issue directions, to all statutory bodies, including corporations, railways, cantonments, as well as agencies under

its control, to ensure that manual sewer cleaning is completely eradicated in a phased manner, and also issue such guidelines and directions as are essential, that any sewer cleaning work outsourced, or required to be discharged, by or through contractors or agencies, do not require individuals to enter sewers, for any purpose whatsoever;

- (2) All States and Union Territories are likewise, directed to ensure that all departments, agencies, corporations and other agencies (by whatever name called) ensure that guidelines and directions framed by the Union are embodied in their own guidelines and directions; the states are specifically directed to ensure that such directions are applicable to all municipalities, and local bodies functioning within their territories;
- (3) The Union, State and Union Territories are directed to ensure that full rehabilitation (including employment to the next of kin, education to the wards, and skill training) measures are taken in respect of sewage workers, and those who die;
- (4) The court hereby directs the Union and the States to ensure that the compensation for sewer deaths is increased (given that the previous amount fixed, i.e., ₹ 10 lakhs) was made applicable from 1993. The current equivalent of that amount is Rs. 30 lakhs. This shall be the amount to be paid, by the concerned agency, i.e., the Union, the Union Territory or the State as the case may be. In other words, compensation for sewer deaths shall be ₹ 30 lakhs. In the event, dependents of any victim have not been paid such amount, the above amount shall be payable to them. Furthermore, this shall be the amount to be hereafter paid, as compensation.
- (5) Likewise, in the case of sewer victims suffering disabilities, depending upon the severity of disabilities, compensation shall be disbursed. However, the minimum compensation shall not be less than ₹ 10 lakhs. If the disability is permanent, and renders the victim economically helpless, the compensation shall not be less than ₹ 20 lakhs.

- (6) The appropriate government (i.e., the Union, State or Union Territories) shall devise a suitable mechanism to ensure accountability, especially wherever sewer deaths occur in the course of contractual or “outsourced” work. This accountability shall be in the form of cancellation of contract, forthwith, and imposition of monetary liability, aimed at deterring the practice.
- (7) The Union shall device a model contract, to be used wherever contracts are to be awarded, by it or its agencies and corporations, in the concerned enactment, such as the Contract Labour (Prohibition and Regulation Act), 1970, or any other law, which mandates the standards – in conformity with the 2013 Act, and rules, are strictly followed, and in the event of any mishap, the agency would lose its contract, and possibly blacklisting. This model shall also be used by all States and Union Territories.
- (8) The NCSK, NCSC, NCST and the Secretary, Union Ministry of Social Justice and Empowerment, shall, within 3 months from today, draw modalities for the conduct of a National Survey. The survey shall be ideally conducted and completed in the next one year.
- (9) To ensure that the survey does not suffer the same fate as the previous ones, appropriate models shall be prepared to educate and train all concerned committees.
- (10) The Union, State and Union Territories are hereby required to set up scholarships to ensure that the dependents of sewer victims, (who have died, or might have suffered disabilities) are given meaningful education.
- (11) The National Legal Services Authority (NALSA) shall also be part of the consultations, toward framing the aforesaid policies. It shall also be involved, in co-ordination with state and district legal services committees, for the planning and implementation of the survey. Furthermore, the NALSA shall frame appropriate models (in the light of its experience in relation to other models for disbursement of compensation to victims of crime) for easy disbursement of compensation.

- (12) The Union, State and Union Territories are hereby directed to ensure co-ordination with all the commissions (NCSK, NCSC, NCST) for setting up of state level, district level committees and commissions, in a time bound manner. Furthermore, constant monitoring of the existence of vacancies and their filling up shall take place.
- (13) NCSK, NCSC, NCST and the Union government are required to co-ordinate and prepare training and education modules, for information and use by district and state level agencies, under the 2013 Act.
- (14) A portal and a dashboard, containing all relevant information, including the information relating to sewer deaths, and victims, and the status of compensation disbursement, as well as rehabilitation measures taken, and existing and available rehabilitation policies shall be developed and launched at an early date.

#### ***Conclusion***

*"For ours is a battle not for wealth or for power. It is a battle for freedom. It is the battle of reclamation of human personality."*<sup>46</sup> Dr. B. R. Ambedkar

97. If we are to be truly equal, in all respects the commitment that the constitution makers gave to *all sections of the society*, by entrenching *emancipatory* provisions, such as Articles 15 (2), 17, 23 and 24, each of us must live up to its promise. The Union and the States are duty bound to ensure that the practice of manual scavenging is completely eradicated. Each of us owe it to this large segment of our population, who have remained unseen, unheard and muted, in bondage, systematically trapped in inhumane conditions. The conferment of entitlements and placement of obligations upon the Union and the States, through express prohibitions in the constitution, and provisions of the 2013 Act, mean that they are obliged to give real meaning to them, and implement the provisions in the letter and spirit. Upon all of us citizens lie, the duty of realizing true fraternity, which

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46 Address at the All-India Depressed Classes Conference held at Nagpur in July 1942

is at the root of these injunctions. Not without reason does our Constitution place great emphasis on the value of dignity and fraternity, for without these two all other liberties are chimera, a promise of unreality. It is all of us who today proudly bask in the achievements of our republic, who have to awake and arise, so that the darkness which has been the fate of generations of our people is dispelled, and they enjoy all those freedoms, and justice (social, economic and political) that we take for granted.

98. Lastly, this court also expresses its gratitude to Amicus Mr. K Parmeshwar for his valuable contribution and efforts. List the matter on 01.02.2024.

**Headnotes prepared by:**  
**Divya Pandey**

**Directions issued.**