

Praveen Rashtrapal, I.R.S.

vs

Chief Officer, Kadi Municipality

Gujarat High Court

15 February 2006

Citations: (2006) 3 GLR 1809

Bench: K Vyas, A H Mehta

JUDGMENT

Akshay H. Mehta, J.

1. In both these petitions, a common cause has been espoused for the betterment of the service conditions of sewerage cleaners, who are popularly known as Safai Kamdar, in view of the fact that they have to perform their duties in such adverse conditions that these conditions invariably pose danger to their health and some time even result into fatality. According to the petitioners, these workers belong to downtrodden lower strata of the society and they are not able to approach this Court to ventilate their grievances, and therefore, the petitioners have filed these petitions on their behalf as Public Interest Litigation. Petitioner of Special Civil Application No. 11706 of 2004 is a retired member of the Indian Revenue Service and is a person in public life. So far as Special Civil Application No. 8989 of 2001 is concerned, petitioner No.1 is a registered organization addressing the issue of occupational health and safety amongst the workers working in various factories. Petitioner No. 2 is a Union of manhole workers working with Ahmedabad Municipal Corporation. It is registered and also formed to carry out its main objectives to organize the manhole workers and to work for the promotion and protection of their basic rights. Petitioner No. 3 is a Human Rights Organization whose main objective is to work for the defence and protection of civil liberties and democratic rights of the people and particularly of the poor and downtrodden in the State of Gujarat. Since, both these petitions involve identical issue, they have been heard together and now they are being disposed of by this common judgment.

2. The city of Ahmedabad and other major cities of the State have sewerage network for the disposal of domestic as well as industrial effluents, the night-soil, manure, solid waste and also the storm water. As a result of industrial effluents containing obnoxious chemical substances, there is always a possibility of such effluent creating poisonous gas in the drainage. On account of the domestic effluent also, carbon dioxide is generated in the sewage. Rotting manure produces gases like Hydrogen Sulphide (H₂S), methane, ammonia and carbon dioxide. Out of these H₂S is very dangerous. As per the scientific study one or two breaths of air, with as little as 600 parts per million H₂S, can cause a person to lose consciousness and continued exposure to H₂S can be fatal. Gases concentrate or build up in a confined space like underground drainage. Anytime a worker goes in or enters the drainage these gases are a hazard and he is affected by such poisonous gases rendering him totally unconscious and there are cases when such workers have succumbed to ill-effect of the gases. This happens normally sometime prior to the commencement of the monsoon season because

during that time, de-silting process of drainage is being carried out. According to the petitioners, in spite of the fact that there are Regulations framed for discharge of the chemical effluents, the Regulations and the norms prescribed for such discharge are not being observed and without treating this effluent, the polluted water is being released in the sewerage network. It is their say that the cleaning operation of the sewerage network is carried out in Ahmedabad by the workers employed by the Ahmedabad Municipal Corporation, whereas at some places, it is got done through the contractor and at places by the workers employed by Local Civic Bodies. However, all these agencies apply common process for the cleaning work to get it done manually. It is also the say of the petitioners that such workers are neither trained properly nor they, are equipped with the safety apparatus such as mask, oxygen cylinders, protective eye glasses etc. As a result of that, whenever a person enters the manhole he exposes himself to danger of being afflicted by poisonous gases. The petitioners have, therefore, prayed that such practice should be totally banned and discontinued forthwith and it should be replaced by proper machinery and necessary equipment. In other words, according to them, the work of cleaning sewage/drainage and de-silting, should not be done manually and no human agency should be made to enter the manhole to carry out this operation. Instead, this process should be carried out by employing proper machinery as per the requirements.

3. It is the contention of the petitioners that sewerage workers are the citizens of this country and they also deserve proper treatment and dignified life. But these aspects are being completely ignored in their case. In these petitions, several items which have appeared in the newspaper have been reproduced to bring to the notice of this Court the casualties suffered by sewerage workers. They reflect the incidents that have taken place at places like Siddhpur, Surat, Ahmedabad etc. The petitioners have, therefore, asserted that these workers are entitled to enjoy fundamental rights as prescribed by the Constitution of India and they cannot be subjected to carry out such duties which may deprive them of enjoyment of the rights prescribed under Article 21 of the Constitution of India. They have, therefore, prayed that this Court may issue direction on the respondents to constitute High Level Committee representing the Government, Municipal Authorities, the workers and the petitioners organization with some independent persons to inquire into living and working conditions of the manhole workers and to submit immediately the report along with the suggestions and recommendations to this Court. It is also prayed that till such time the permanent solution is evolved, such workers be provided with the complete safety and security while entering the manhole and carrying out the cleaning operation.

4. It may be noted here that so far as Special Civil Application No. 8989 of 2001 is concerned, the petitioners have discussed in detail which are the gases formed in the drainage and what are their effects on different parts of human body. They have referred to gases like ammonia, chlorine, hydrogen chloride, carbon monoxide, nitrates and nitrites, mercury etc., and their effect on the skin, eyes and other parts of the body and the resultant infectious disease caused by them. It is also stated that during medical check-up of about 400 workers, with a view to understand their health status, the medical investigation was carried out and that gave a shocking result since it revealed that at any give point of time, 680 ailments could be caused. The study has also revealed that apart from the fatalities the workers are prone to sustain serious injuries due to solid objects like blades, projecting glasses and other sharp-edged or pointed objects. The contaminated water causes them skin diseases and their eyes are damaged by gas like Hydrogen Sulphide. They also suffer circulatory and spinal problems due to crouching position in which they are required to work. It is also revealed that because of the size of the manhole, the workers are not able to enter it with helmet, goggles and the

mask on. It has also come to light that in many cases these workers are forced to enter the sewage pipe much against their wish, and ultimately, there is disaster. In view of such problems being faced by the sewerage workers and keeping in view 11 deaths caused in a span of only 40 days, public hearings were conducted in all Government organization. By Kamdar Swasthya Suraksha Mandal (K.S.S.M.), one of the leading organizations of this kind, three public hearings were conducted, in Vadodara on 25th May, 2005, in Surat on 28th May, 2005 and in Ahmedabad on 4th June, 2005. Thereafter, a report detailing the problems discussed in these public hearings and in the meetings that were held subsequently, has been prepared and copy of the same has been placed on record by Mr. Girish Patel. These hearings were attended by representatives of different Corporations, Government Departments, Government Bodies, the N.G.Os, Civic Societies and the Law agencies as well as the workers. The hearings were conducted by the retired Judge of this Court, Mr. Justice R. A. Mehta and Mr. Bhusan Oza, learned Advocate practicing in this Court.

4.1. We have perused this report closely and we appreciate the labour put in by them. The report has been of a great help to us. It has also been brought to our notice that many of the civic bodies get this work through private contractors. The employees of the private contractors are not at all equipped either by the proper apparatus or the proper training. They are exposed to such dangers without being provided with any security in the form of insurance or compensation, in the event of any mishap occurring. Because of this, there is rise in such accidents and cases have also come to light wherein the workers of the contractors have lost their lives. In view of all this, it has become absolutely essential to evolve some remedial measures so as to prevent any loss of life or injury being sustained by the sewerage workers, either employed by the local civic body directly or through the contractor.

5. It is averred by the petitioners that the sewerage workers need better treatment and they cannot be reduced to mere chattel of their employers so as to get any type of work from them. We certainly, commend efforts of the petitioners and accept the contentions raised by them in these petitions.

5.1. The sewerage workers are the citizens of this country and they are entitled to enjoy fundamental right as provided in the Constitution of India. It is a cardinal principle of the service jurisprudence that the employer has to take adequate care of the safety and well being of his employee. He cannot expose an employee performing duties which are dangerous in nature and likely to adversely affect his health or life. The employer has to provide him with all the safety measures and if he is not able to make such provision, he has to refrain from asking such employee to discharge these dangerous duties. This is not only a moral obligation on the employer, but it is a mandate given to him by labour's safety- oriented Statutes, like the Factories Act. May be the Bombay Provincial Municipal Corporation Act, the Gujarat Municipalities Act etc., are not having specific provisions like the Factories Act, but then Article 21 of the Constitution of India is always there to protect the employees of local civic bodies and also the contractors whose service are hired by the civic bodies. Article 21 of the Constitution of India, which is part and parcel of Part-III of the Constitution, namely, Fundamental Rights, envisages protection of life. The Court have considered "right to life" in various cases and by now various rights have been included within the meaning of right to life. It includes right to live with human dignity; right to have healthy environment; right to have protection against hazards of the employment; right to health; right to have medical treatment and right to have adequate compensation for the injuries suffered during the course of discharge of duty etc. Thus, as a result of liberal interpretation of the word "life", Article 21 of the Constitution of India has now come to be invoked almost as a residuary right, and it

has taken into its sweep the health hazards and hazard to life posed on account of various reasons such as harmful drugs, discharge of dangerous duties, unhealthy and polluted environment etc. It has also now included right to health and medical aid of workers. Right to health and medical care is now considered to be fundamental right under Article 21 read with Arts. 39(e), 41 and 43 of the Constitution of India. This makes life of the workman meaningful and purposeful with dignity of person. The health and strength of the workers are integral fact of right to life. Denial thereof, denudes the workman of the finer facets of life violating Article 21 of the Constitution of India.

5.2, In the decision of Consumer Education and Research Centre v. Union of India , the Apex Court has said as

under:

The right to health to a worker is an integral facet of meaningful fight to life to have not only a meaningful existence but also robust health and vigour without which worker would lead life of misery. Lack of health denudes his livelihood. Compelling economic necessity to work in an industry exposed to health hazards due to indigence to bread-winning to himself and his dependents, should not be at the cost of the health and vigour of the workman. Facilities and opportunities, as enjoined in Article 38, should be provided to protect the health of the workman. Provision for medical test and treatment invigorates the health of the worker for higher production or efficient service. Continued treatment, while in service or after retirement is a moral, legal and constitutional concomitant duty of the employer and the State. Therefore, it must be held that the right to health and medical care is a fundamental right under Article 21 read with Arts. 39(e), 41 and 43 of the Constitution and make the life of the workman meaningful and purposeful with dignity of person. Right to life includes protection of the health and strength of the worker is a minimum requirement to enable a person to live with human dignity. The State, be it Union or State Government or an industry, public or private, is enjoined to take all such action which promote health, strength and vigour of the workman during the period of employment and leisure and health even after retirement as basic essentials to live the life with health and happiness. The health and strength of the worker is an integral facet of right to life. Denial thereof denudes the workman the finer facets of life violating Article 21 of the Constitution of India. The right to human dignity, development of personality, social protection, right to rest and leisure are fundamental human rights to a workman assured by the Charter of Human Rights, in the Preamble and Arts. 38 and 39 of the Constitution of India. Facilities for medical care and health against sickness ensures stable manpower for economic development and would generate devotion to duty and dedication to give the workers best physically as well as mentally in production of goods or services. Health of the worker enables him to enjoy the fruit of his labour, keeping him physically fit and mentally alert for leading a successful life, economically, socially and culturally. Medical facilities to protect the health of the workers, are therefore, the fundamental and human right to the workman.

5.3. When one looks at the plight of the sewerage workers which has been narrated in detail above, it clearly appears that their employers have shown scant respect for their employees, the sewerage workers and in turn for Article 21 of the Constitution of India. It is, therefore, high time that the Court may look into this problem seriously and prescribe such measures so as to avoid any such accidents occurring in future. In the case of Consumer Education & Research Centre v. Union of India (supra), the Apex Court has observed as under :

In an appropriate case, the Court would give appropriate directions to the employer, be it the State or its undertaking, private employer to make the right to life meaningful; to prevent pollution of work place; protection of the environment; protection of the health of the workman or to preserve free and unpolluted water for the safety and health of the people. The authorities or even private persons or industry are bound by the directions issued by the Supreme Court under Article 32 and Article 142 of the Constitution.

5.4. This was the precise reason why we had issued notice to different civic bodies of the State to join as party to this proceedings, so that they can be given adequate directions.

6. During the course of hearing, which took place on 27th July, 2005, a detailed discussion was made to explore the possibility of applying machinery in place of human agency for sewerage cleaning operation. Mr. Sudhir I. Nanavati learned Senior Advocate appearing for the Ahmedabad Municipal Corporation had drawn our attention to various equipment which could be applied for de-silting process. In the affidavit filed on behalf of respondent Nos. 1 and 2 of Special Civil Application No. 8989 of 2001 by Mr. B. R. Sheth, City Engineer, A.M.C., details of such equipments have been furnished in a tabular form. Mr. Nanavati has also placed on record a booklet on Sewage Treatment Plant published by Sewer Cleaning Equipment Division of Ahmedabad Municipal Corporation wherein, detailed description of each of such machinery is given. There are 12 such equipments of the price ranging from Rs. 5,000/- to Rs. 35,00,000/- which can be had for various purposes in the cleaning operation. This is as per the statement contained in the said booklet. The name of these machines are as under :

INDEX

Sr. Name of Machine Qty. Year of Approx. Operation & No. Purchase Cost per Maintenance Cost Rs.

1. Sewer Line Cleaning 3 1978 - - Bucketing Machine 4 1984

2. Jetting Machine 3 1991 12.00 lacs -

3. Suction Machine

(Gulley Emptier) 4 1993. 10.00 lacs -

4. Combined Machine 3 1998

(Jetting cum Suction) 5 2003 22.00 lacs 26,000/-

5. Deep Suction 1 1998 35.00 lacs Combined Machine

(Jetting cum Suction

Machine)

6. Manual Hand 430 2003 5,000/- - Operated Grab

Bucket

7. Hydraulic 30 2004 35,000/-

Operated

Trolley

Mounted Grab Bucket

8. Truck Mounted Motor 3 2004 2.00 lacs 18.000/- & Winch Operated

Grab Bucket Machine -

9. Fixed Structure 1 2004 2.00 lacs

Mounted Motor &

Winch Operated

Grab Bucket Machine

10. Rickshaw Mounted 1 2004 3.70 lacs - Winch & Motor

Operated Desilting

Machine for Wetwell

11. Rickshaw Mounted 2 2004 3.70 lacs - Winch & Auxilliary

Engine Operated

Desilting Machine

for Manhole.

12. Escort Hydra-12 1 2004 16.00 lacs Crane Mounted

Hydraulic Winch

Operated Grab

Bucket Desilting

Machine

7. On 27th July, 2005, it was brought to our notice that Municipalities like Kapadvanj Municipality, Balasinor Municipality, Kadi Municipality, Unja Municipality, Navsari

Municipality, Siddhpur Municipality, Karjan Municipality and Bardoli Municipality were only having Jetting machine and/or Gulley Emptier Machine, but rest of the Municipalities were not having such machinery. It was also stated that some of the Municipalities were even engaging contractors for the purpose of cleaning the drainage. We therefore, issued direction to the Secretary, Urban Development and Urban Housing Department to convene a meeting of Commissioners of all the Municipalities and the Chief Officer of all the Municipalities in the State. We also directed the Chairman Gujarat Finance Board and the Director of the Municipalities and the Managing Director of the Gujarat Safai Kamdar Nigam to remain present in the said meeting. We directed them to explore the feasibility of purchasing the equipments stated above. Considering the fact that some of the equipments are quite expensive, we had directed them to even explore the possibility of making available certain equipment on rent to the Municipalities. In pursuance of our directions the meeting was convened and on subsequent date of hearing Minutes of the Meeting held at the office of the Ahmedabad Urban Development Authority on 9th August, 2005 under the Chairmanship of the Secretary, Urban Development, was placed before us along with the affidavit filed by one Mr. R. M. Sharma, Deputy Secretary, Urban Development and Urban Housing Department, Government of Gujarat. The summary of the meeting is as under :

5.1 All Municipal Corporation to send their requirement for equipment like jetting machine, gulley emptier etc., to the Dy. Section (M.N.P.).

5.2. The City Engineers of Muni. Corpo., to give suggestions to get rid of the problems from the technical point of view,

5.3. The Guj. Safai Kamdar Nigam to check the availability of fund for such training.

5.4. Next meeting will be held at A.U.D.A. office on 17-8-2005 at 11:00 hrs.

7.1 Another meeting was held on 17th August, 2005 and the Minutes of that meeting have also been produced on record by the aforesaid affidavit. In the said meeting, it was decided that 17 Municipalities of the District Town would be given financial aid by the Government for purchase of Rickshaw Mounted Jetting Machine and over and above that, all other 44 Municipalities would be given financial help by the Government for purchase of Hydraulic Pedal Rickshaw Mounted De-silting Bucket. It was also decided that the Municipalities which desire to purchase these equipments on its own, the loan would be made available on priority basis by the Government Municipal Financial Board and the Municipalities were directed to compulsorily purchase the modern equipments for cleaning underground drainage and also to see that there is no choking - up of the drainage. It was also resolved to issue private guidelines for this purpose and to impart training to the manhole workers. During the aforesaid meetings, various safety measures had also been discussed and on the basis of such discussion, safety measures have now been prescribed as well as guidelines have been evolved for carrying out the work of underground drainage cleaning.

7.2. The Gujarat Safai Kamdar Vikas Nigam who also participated in the meeting through its Managing Director has appeared before this Court and has filed affidavit making certain suggestions and has expressed its willingness to provide all the necessary financial help to the concerned Civic Bodies. This Safai Kamdar Vikas Nigam is essentially for rehabilitating sewerage workers and the scavengers for their betterment. It is the object of the Safai Kamdar Vikas Nigam to promote self employment ventures and economic activities among target group and to prepare development schemes for Safai Kamdars and to examine their problems

and to find out proper solutions. The Safai Kamdar Vikas Nigam is providing loan for the betterment of the safai kamdars i.e., sewerage workers. Dr. Yogesh Maitrak, Managing Director has filed affidavit making certain recommendations for the upliftment of the workers. We have taken these recommendations/suggestions into consideration. We have also taken into considerations various suggestions made by the petitioners as well as Kamdar Swasthya Suraksha Mandal and the Government. In our view, on the basis of the various suggestions and recommendations placed before us, we can issue certain directions which can safeguard the interest of the sewerage workers in many aspects.

8. As already stated above that apart from the hazards posed to the health and life of the sewerage workers, there is another danger which is lurking over their head constantly, i.e., in the event of a worker losing his life or being injured in such a manner which may rendered him unfit in service, the family of such worker has nothing to bank upon, except some grace shown by way of ex-gratia payment by the employer, namely the civic bodies. In case, where the services of a contractor is hired, even that is not available to the bereaved family members. In the case of Consumer Education & Research Centre v. Union of India (supra), the Apex Court has by resorting to Article 21 of the Constitution held as under :

The employer is vicariously liable to pay damages in case of occupational diseases, herein this case asbestosis. The Employees State Insurance Act and the Worker's Compensation Act provide for payment of mandatory compensation for the injury or death caused to the workman while in employment. The Act does not provide for payment of compensation after cessation of employment. It therefore becomes necessary to protect such persons from the respective dates of cessation of their employment. Liquidated damages by way of compensation are accepted principles of compensation. The respective asbestos factories or companies shall be bound to compensate the workman for the health hazards which is the cause for the disease with which the workmen are suffering from or had suffered pending the writ petitions. Therefore, the factory or establishment shall be responsible to pay liquidated damages to the concerned workmen.

8.1 Of course, the said ratio is laid down while keeping in view the aftermath of the service of the employees working in asbestos factory, It can as well be applied to the workers who are exposed to the dangers to their health or to their life. Apart from the compensation that may be paid to the affected workmen, the employers of such workers can cover them under compulsory insurance scheme and they should be insured with a sum not less than Rs. 1 lakh. In the case of M.C. Mehta, v. State of Tamil Nadu, the Apex Court in slightly different circumstance has opined as under:

11. We are of the opinion that compulsory insurance scheme should be provided for both adult and children employees taking into consideration the hazardous nature of employment. The State of Tamil Nadu shall ensure that every employee working in these match factories is insured for a sum of Rs. 50,000-00 and the Insurance Corporation, if contacted should come forward with a viable group insurance scheme to cover the employees in the match factories of Sivakasi area. The premium for the group insurance policy should be the liability of the employer to meet as a condition of service.

8.2 Similarly, the employers of the sewerage workers should have compulsory insurance scheme for these workers and to pay the premium of the insurance policy should be the liability of the employer. This should form as a part of condition of services. The Apex Court

in the year 1990-1991 had suggested coverage of Rs. 50,000-00 at least. After 15 years, it should increase to double the amount.

8.3 In view of the aforesaid, we give certain directions which can be stated as under:

(1) We direct that unless it is absolutely necessary to have sewage cleaning operation done through a human agency, none of the civic bodies in the State will now employ the human agency to carry out drainage cleaning operation.

(2) The Civic bodies as far as possible should purchase the equipment/machine as indicated in Paragraph 6 of this judgment in accordance with its need and its financial position.

(3) The Government as resolved in the meeting dated 17th August, 2005 and the Safai Kamdar Vikas Nigam are directed to advance necessary financial help to the concerned civic bodies to enable them to purchase necessary machine/apparatus for carrying out drainage cleaning operation.

(4) The civic bodies are directed to discontinue the practice of engaging contractors for this purpose.

8.4 To take care of the situation where the human agency is required to be applied for cleaning operation, we have found it necessary to issue the following directions :

(1) Whenever, a sewerage worker is required to enter the manhole before his entry into manhole, proper checking to be made to see that he is not likely to be affected by the poisonous gases.

Moreover, he shall be provided with all safety equipments such as oxygen mask, helmet, goggles, gumboots, air blower, safety belt, torch etc. The office on the spot should enforce the workers to abide by the safety Rules and Regulations and to see that he can properly utilize the safety equipments that are given to him.

(2) It is found that there is possibility of any kind of accident or presence of poisonous gas is noticed, the worker should not be allowed to go inside the manhole. If the higher authority insists upon worker entering the manhole, such order should be given in writing and in case of any accident, the responsibility would lie on the concerned officer as well as civic body, and it will expose them to civil liability as well as criminal prosecution.

(3) Before commencement of the cleaning operation, the officers on the spot should compulsorily do the sampling of the water as well as gas and if it is found that either of it is likely to adversely affect the health of the worker, he should not be allowed to enter the manhole. The Civic bodies to compulsorily have the equipments designed in the manner that would help preventing the accidents in the drainage like the gas detector which will find out the presence of poisonous gases and its intensity.

(4) A small pocket book should be provided to the workers containing information relating to manhole work, preventive measures and the contact numbers of the emergency. They may be impressed upon to follow each and every direction contained in such book.

(5) The worker should be given training on the issues relating to health and safety. They should be made aware of working conditions for e.g., presence of poisonous gases and other hazards inside the manhole. They should also be imparted proper training for knowing the pros and cons of their work and to take preventive measures. Training sessions should be held regularly. The training to be conducted by the Central Board of Workers Education, Ahmedabad. The Central Board of Workers Education is directed to train his trainers to impart training at places outside Ahmedabad. For the purpose of facilitating training programme, the Board should take such measures as would enable it to impart proper training to every sewerage working in different civic bodies regularly.

(6) The Government should form Safety Committees at different levels to monitor the safety measures and to supervise the training programmes. The Committee will be responsible for taking care of the safety aspects of the workers and the preventive measures to be taken.

(7) Every civic body shall compulsorily have the periodical medical checkup of the manhole workers. If the worker is found to be suffering from adverse effect of the cleaning operation, he should be immediately transferred to some other department.

(8) The civic bodies to maintain separate manhole department so as to have intensive department-wise monitoring. Such department can be of help in solving problems relating to sewerage workers, especially as their work is involving high-degree risk.

(9) The civic bodies shall provide basic facilities and amenities including decent and comfortable accommodation for their better living, education of their family members and to give them decent and dignified living.

(10) The civic bodies shall compulsorily have such worker insured and to pay the premium, the worker should be availed of various schemes from Social Welfare Department, such as coverage of insurance, payment of compensation, in the event of accident happening, and in the case of death, to give compassionate appointment to the dependent of the deceased worker subject to such candidate passing requisite qualifications for the employment.

(11) The aforesaid safety measures as well as service benefits should be made available to them over and above the benefits which are legally permissible to them under various Statutes and various Government beneficial Schemes.

The office is directed to forward copy of this judgment to the Secretary, Social Justice & Empowerment Department, Director of Municipalities, Secretary, Department of Labour & The Director, Gujarat Safai Kamdar Vikas Nigam, for taking appropriate action in this matter.

9. Before parting with this judgment, we earnestly hope that the aforesaid directions of this Court will be complied with by all the concerned in letter and spirit. We also make it clear that any non-compliance of the order would amount to deliberate flouting of the order of this Court and the concerned authority will expose himself to proceedings under the Contempt of Court's Act as well as criminal prosecution. We also appreciate the assistance rendered by all the learned Counsels for the parties which has enabled us to give proper directions for the upliftment and betterment of the sewerage workers. These petitions, are therefore, allowed. Rule is made absolute with no order as to costs.