

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 21.11.2022

% **Judgment delivered on: 25.11.2022**

+ **W.P.(C) 1396/2021 & CM APPLs. 3972-73/2021**

HARNAM SINGH

..... Petitioner

Through: Mr. Mehmood Pracha, Mr. Sanawar
& Mr. Jatin Bhatt, Advocates.

versus

GOVERNMENT OF NCT OF DELHI & ORS. Respondents

Through: Mr. Satyakam, ASC for Respondents
No.1 & 4/ GNCTD & DCSK.
Ms. Shubhra Parashar & Mr. Virender
Pratap Singh Charak, Advocates for
Respondent No.2/ NCSK.
Mr. Anil Soni, CGSC with Mr. Rahul
Mourya, Advocate for Respondent
No.3/ UOI.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The petitioner before this Court has filed the present petition as a Public Interest Litigation (PIL) stating that he is a social activist and former Chairman of Delhi Commission for Safai Karamcharis (DCSK), Government of National Capital Territory of Delhi (GNCTD). The

petitioner has shown concern in respect of sanitation workers and has prayed for the following reliefs:

“a) Issue a Writ of Mandamus or any other Writ in the nature of Writ of Mandamus directing Respondent No.2 to act and fulfil its responsibilities enshrined under the Constitution of India, 1950, National Commission for Safai Karamcharis Act, 1993, Resolution dated 28.03.2019 read with resolution dated 02.03.2009 and The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013.

b) Issue a Writ of Mandamus or any other Writ in the nature of Writ of Mandamus directing Respondent Nos.1 and 3 to act and fulfil their responsibilities enshrined under the Constitution of India, 1950 and adhere to the Technical Brief dated 03.03.2020 and Interim Guidance dated 19.03.2020 issued by the World Health Organization;

c) Issue a Writ of Mandamus or any other Writ in the nature of Writ of Mandamus directing the Respondents to provide health insurance and medical facilities to all Sanitation Workers as well as their families;

d) pass any other of further orders as this Hon'ble Court deems fit and proper in the circumstances of the case.”

2. A common counter-affidavit has been filed on behalf of the respondents No.2 & 3/ National Commission for Safai Karamcharis (NCSK) and Union of India (UOI) respectively, wherein it has been stated that the NCSK was constituted on 12.08.1994 as a statutory body by an Act of Parliament, viz. National Commission for Safai Karamcharis Act, 1993 for a period of three years, i.e. up to 31.03.1997. The validity of the NCSK was extended periodically and it finally lapsed on 29.02.2004. It has been further stated that now the Commission is acting as a non-constitutional, non-statutory and non-permanent body under the Ministry of Social Justice

& Empowerment and its tenure was also extended from time to time. The tenure of the present Commission was extended up to 31.03.2022.

3. It has been stated that as per the Constitution of India, the subject 'Sanitation' is a State Subject, and the concerned State has to constitute relevant State Commissions for the same. Sanitation workers are local employees in the administrative control of the State Government. Accordingly, for Delhi, the Delhi Commission for Safai Karamcharis Act, 2006 is in force. The DCSK has been constituted under Section 3 of the said Act of 2006 for the purpose of safeguarding the rights & interest of Safai Karamcharis in the National Capital Territory of Delhi. The Commission includes a Chairperson and two part-time Members.

4. The counter-affidavit filed by the respondents No.2 & 3 further reveals that the Commission vide letter dated 14.11.2020 directed all the District Magistrates/ District Commissioners to furnish details of all Safai Karamcharis under their respective jurisdiction who have lost their lives due to COVID-19 and the details of compensation granted to them. Further that the State Commissions are also looking after the matter.

5. Learned Counsel for the Commission has also argued before this Court that all efforts are being made to ensure that the statutory provisions as contained in the provisions of Prohibition of Employment As Manual Scavengers And Their Rehabilitation Act, 2013 and the Rules framed thereunder are religiously followed.

6. The respondent No.4/ Secretary, DCSK has filed a separate detailed reply on behalf of the DCSK and it has been stated that the Commission performs all or any of the following functions, namely

“A. To investigate, examine and monitor all matters relating to:

i. Safeguards provided to Safai Karamcharis residing in Delhi, under the Constitution of India, or under any law for the time being in force or under any judicial decisions or any orders or instructions issued by the Government of India or the Government, and to evaluate the working of such safeguards.

ii. Denial or violation of any right of Safai Karamcharis.

iii. Any other matter pertaining to the welfare and protection of Safai Karamcharis.

B. To look into the specific complaints with respect to the deprivation of the rights and safeguards of Safai Karamcharis.

C. To monitor and evaluate the implementation of the policies, and schemes of the Government for the welfare of Safai Karamcharis and to advise the Government on the planning process of socio-economic development of Safai Karamcharis.

D. To conduct studies and research in order to make recommendation to promote the socio-economic upliftment of Safai Karamcharis.

E. To hold seminars, debates and discussions on problems affecting Safai Karamcharis to create public awareness.

F. To assess the representation of Safai Karamcharis in the Services of the Government, semi-government bodies, local

bodies and government undertakings and in case of inadequate representation, to recommend remedial measures.

G. To deal with any other matter pertaining to the welfare of Safai Karamcharis, which may be referred to it by the Government.”

7. In the affidavit filed by respondent No.4, it has been stated that the petitioner herein, i.e. Harnam Singh had initially moved a petition before the Hon’ble Supreme Court, i.e. W.P.(C.) No.10883/2020 and the same was disposed of by the Hon’ble Supreme Court on 15.04.2020. Therein it was observed that the Union of India (UI) had accepted that the World Health Organization (WHO) guidelines for provisions of safety equipment to sanitation workers are binding on India, and were being strictly followed.

8. Further, that another writ petition was filed by the petitioner before this Court, i.e. W.P.(C.) No. 2989/2020, for issuance of directions to protect lives of Safai Karamcharis/ sanitation workers who were working during COVID-19 Lockdown. The same was disposed of by this Court on 09.06.2020. The respondents have furnished all minute details in respect of provisioning of PPE Kits, N-95 Masks, Gloves and other articles to Safai Karamcharis/ sanitation workers. They have also furnished details of safeguards/ measures taken by the Government for providing appropriate logistics, i.e. necessary protective gear. Further, the respondents have furnished details of sanitation training to Safai Karamcharis, their vaccination and their residential arrangement. It has been stated that the benefits given to Health Care Workers were also extended to Safai Karamcharis deployed in Delhi Government Health Institutions without any discrimination in relation to providing safety kits, transportation facilities,

lodging facilities, food facility, etc. It has also been stated that proper specific precautions are being undertaken for disposal of bio-medical waste and the State Government is strictly adhering to the statutory provisions as contained under the provisions of the Prohibition of Employment As Manual Scavengers And Their Rehabilitation Act, 2013, and the Rules framed thereunder. The respondents have stated that the statutory provisions are being followed, compensation is being paid and the Government has ensured that all equipments – as provided for under the Act and the Rules framed thereunder, are being provided to the Safai Karamcharis.

9. This Court has carefully gone through the judgment delivered in the earlier round of litigation, i.e. W.P.(C.) No. 2989/2020. The operative portion of the order dated 09.06.2020 passed in W.P.(C.) No.2989/2020 titled ***Harnam Singh & Anr. Vs. Union of India & Others***, as contained in paragraphs 15 to 17 read as under:

“15. On a perusal of the affidavits and the material placed on record, we are satisfied that adequate steps have been taken by the State and civic authorities to ensure the safety of the Safai Karamcharis. We have also perused the WHO Guidelines filed by the petitioner. The affidavits filed by various Municipal Corporations would show that by and large, the Guidelines laid down by the WHO are being adhered to. It has come on record that PPE Kits are being provided on a daily basis to the Safai Karamcharis required to enter Containment zones and these PPE Kits are not reused. The affidavits also indicate that adequate number of masks (surgical and N-95) and gloves are being provided to the Safai Karamcharis.

16. The Bio medical waste is also being disposed of in accordance with the mandate of the Pollution Control Board. The Advisory issued by the Ministry of Health and Family

Welfare is clear and it recommends against spraying of individual or group. It states that use of chemical disinfectant is physically and psychologically harmful for human beings. In view of this, the action of the Municipal Corporations in not setting up sanitizing cubicles is justified. No further directions are therefore necessary in this regard.

17. Ms. Suman Chauhan would state that since Bio metric system for marking attendance has been dispensed with due to the risk of COVID-19 infection, the register on which the Safai Karamcharis sign on reporting for duty can indicate the nature of equipments given to the Safai Karamchari on a daily basis and the nature of work he is required to perform. The Municipal Authorities are directed to maintain a record of the equipments given to the Safai Karamcharis who report for duty.”

10. The counter-affidavits on record make it clear that the DCSK is in existence; the Commission is investigating, examining and monitoring all matters relating to the safeguards to be provided to Safai Karamcharis residing in Delhi – as provided under the Act and the Constitution of India; and a periodical assessment is carried out by the Commission. The recommendations of the Commission are forwarded to the GNCTD, and therefore, this Court is of the opinion that the DCSK – as prayed for by the petitioner, is discharging its responsibilities keeping in view the Delhi Act 7 of 2006.

11. In the considered opinion of this Court, GNCTD does not have any other choice except to implement the statutory provisions as contained under the provisions of Prohibition of Employment As Manual Scavengers And Their Rehabilitation Act, 2013 and the Rules framed thereunder. Therefore, the respondent Government is directed to ensure strict compliance of the

statutory provisions as contained in the Act of 2013 and the Rules framed thereunder. The Government shall also keep in mind the various recommendations submitted by the DCSK from time to time and shall take a decision positively within a period of 60 days of any such recommendation being made by the Commission to the Government.

12. In light of the aforesaid, no further orders are required to be passed in the present PIL. The same stands disposed of accordingly.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

NOVEMBER 25, 2022

B.S. Rohella