



IN THE HON'BLE HIGH COURT OF KARNATAKA AT BANGALORE

W.P No. 3211/2018

I.A. NO. \_\_\_\_\_/2020

BETWEEN

High Court Legal Services Committee

...PETITIONER

AND

State of Karnataka & Ors.

...RESPONDENTS

IMPLEADING APPLICANT:

"Thamate" Centre for Rural Empowerment

A Society registered under the Karnataka Societies Registration Act, 1960

Having its project office at:

Thamate, 1<sup>st</sup> Block, 2<sup>nd</sup> Main,

Kuvempunagar, Tumkur -572103

Represented by its Secretary

Mr. K. B. Obalesha

IMPLEADING APPLICANT

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**APPLICATION FOR IMPLEADMENT / INTERVENTION UNDER ARTICLE 226 OF  
THE PETITION READ WITH ORDER 1 RULE 10 (2) READ WITH SECTION 151 OF  
THE CODE OF CIVIL PROCEDURE, 1908**

The Applicant most respectfully submits as follows:

1. The Present petition has been filed by the Petitioner seeking certain reliefs under the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013 ("PEMSRA"). Thereafter this Hon'ble Court also enlarged the scope of this petition to review the implementation of the PEMSRA.

2. The present application has been made by Thamate, Centre for Rural Empowerment seeking to implead in the instant writ petition. The Impleading Applicant is an organisation registered as a society. It has been working for the eradication of manual scavenging and development of the manual scavengers in the state and the guarantee of the rights of persons employed as manual scavengers under the law. It was founded in 2006 by senior Dalit human rights activists from the safai karmachari community with the goal of breaking the vicious cycle of caste-based occupation leading to lack of education, poverty, discrimination and exclusion through community-based mobilization. The Applicant organisation's work is aimed at ending the practice of manual scavenging and help those engaged in it find dignified work. The Applicant's work is focused on eradication of manual scavenging practice in Karnataka including through legal interventions, improving education among families of safai karmacharis / manual scavengers, improving the health status of families of safai karmacharis and organisation of the community for their rights. The Applicant organisation is represented by its Secretary.

(A copy of the Applicant Organisation's Registration Certificate is annexed herein and is marked as **ANNEXURE – A**)

3. Towards the goal of eradicating manual scavenging, the Applicant has been employing following strategies: –

- (i) Mobilization and formation of Community Based Monitoring Groups (CBMG) and Leadership building among SK/MS;
- (ii) Legal Interventions like registration of FIRs under criminal provisions of relevant Acts after conducting Fact Findings whenever incidents of manual scavenging come to light;
- (iii) Setting up Education Centres (called Bheemshalas) in residential areas of SK/MS with the objective of providing a conducive educational environment and reducing school drop-out so that children STOP engaging in their parent's unclean occupation;
- (iv) Conducting pre-coaching classes and practice exams for assisting students to secure admissions into government residential schools and colleges;

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- (v) Establishing Youth Resource Centres (YRC) for strengthening life skills of youths and motivating them for alternative employment;
- (vi) Identification of potential youths for alternative employment and training;
- (vii) Networking/Coordinating the collective advocacy process at the State and National Level for strengthening policies and legislation for eradication of manual scavenging and overall development of the community.
- (viii) Secretary of the organization is instated as a Member of the State Monitoring Committee under PEMSRA nominated by the Government of Karnataka.

4. The Applicant organisation's work has been reported widely in the media. The Secretary of the Applicant Organisation Sri. Obalesh Bheemappa, is also the State Convenor of a network known as the Safai Karamchari Kavalu Samithu in Karnataka and has himself done an immense amount of work on getting rehabilitation for manual scavengers. The Applicant along with the Safaikarmachari Kavalu Samithi-Karnataka has prepared a Situation Assessment Report on Manual Scavenging Practice in Karnataka in the year 2020 which gives a detailed report on the extent of the practice of manual scavenging in the State.

(A copy of the report titled 'Manual Scavenging in Karnataka -Situation Assessment Report' dated January 2020 is annexed herein and is marked as ANNEXURE – B)

(A copy of the article titled, 'Only 905 out of 1 lakh sanitation workers in Karnataka given ID cards' dated 19.09.2018 published in the New Indian Express is annexed herein and is marked as ANNEXURE – C)

(A copy of the article titled, 'Rehabilitation, still a far cry for manual scavengers in state' dated 24.02.2018 published in the Deccan Herald is annexed herein and is marked as ANNEXURE – D)

(A copy of the article titled, 'Unpaid pourakarmikas turn manual scavengers' dated 06.03.2019 published in the Hindu is annexed herein and is marked as ANNEXURE – E)

5. The Applicant seeks to be impleaded as a Respondent / Intervenor in the present writ petition so that it can highlight the areas of non-implementation of the PEMSRA and



seek specific directions for its implementation in Karnataka and assist this Hon'ble Court with data and statistics on manual scavenging. A brief outline of the current status of manual scavenging in the country and in Karnataka is given below:

6. It is submitted that manual scavenging is a practice that continues widely in India and Karnataka despite its legal prohibition. "The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 ("PEMSRA") was notified. This Act stresses on not only eradicating manual scavenging but rehabilitating families which were dependent on manual scavenging as a profession. However, this Act has also not proved to be a deterrent as manual scavengers continue to be employed due to apathy of general public and lack of proper implementation of the law by the field level authorities which is the subject matter of the present petition.
7. It is submitted that despite the PEMSRA being enacted in 2013, the prohibition on manual scavenging is still not being implemented by the state government of Karnataka and the local authorities. Amidst this apathy of the authorities, people are still being employed for manual scavenging and are losing their lives. The act of employing someone to clean drains or toilets is dangerous, heinous and degrading and cannot be permitted to be carried on as the same is prohibited under the PEMSRA.
8. It is submitted that as per the 2011 Census, there are 7,94,390 dry latrines where humans' clean excreta - 73 per cent of these are in rural areas whereas 27 per cent are in urban areas. India still has 26 lakh dry latrines. This implies that they are being cleaned by manual scavengers. According to Socio-Economic and Caste Census (2011) of rural India, 1,80,657 rural households surveyed were engaged in manual scavenging. Persons are employed as manual scavengers without any adequate safety equipment necessary to deal with sludge, sewage or excreta, which can be hazardous in nature. Gloves, protective clothing, gas masks are not provided by employers, resulting in many manual scavengers losing their lives over the course of their profession.

9. It is submitted that according to the National Safai Karamchari Finance and Development Corporation's 20th Annual Report (2016-2017) there are 26 lakh insanitary latrines in the country, of which 13.29 lakh are in urban areas and 12.71 lakh in rural areas. An inter-ministerial task force has released figures on manual scavengers and has counted up to 53,236 people involved in manual scavenging in India, a four-fold rise from the 13,000-odd such workers accounted for in official records until 2017.

10. It is submitted that the inhuman practice of manually removing night soil which involves removal of human excrements from dry toilets with bare hands, brooms or metal scrappers; carrying excrements and baskets to dumping sites for disposal is a practice that is still prevalent in many parts of the country. While the surveys conducted by organizations estimate the large-scale prevalence of this practice of manual scavengers' employment, the official statistics issued by the Ministry of Social Justice and Empowerment are grossly inadequate. There is a mismatch between independent studies which have surveyed the number of manual scavengers and the number of manual scavengers identified by State Governments. The National Crime Records Bureau does not publish distinct data on manual scavenging due to 'low numbers of cases reported'.

11. Additionally, the manual scavengers identified over 95% are persons belonging to Scheduled Castes, who are compelled to undertake this denigrating task. Manual scavengers are considered as untouchables by other mainstream castes and are thrown into a vortex of severe social and economic exploitation.

## 12. Manual Scavenging in Karnataka

12.1. It is submitted that statistics from Karnataka State Commission for Safai Karmacharis show that there were as many as 68 deaths in the state of Karnataka alone since 2008. In accordance with the data in the Socio Economic and Caste Census 2011, Karnataka has 15,375 persons engaged in manual scavenging in only the rural areas. However, the Karnataka

government in 2016 and 2013 respectively has so far identified only 726 manual scavengers - 424 (rural) and 302 (urban).

(A copy of the data on Manual Scavenging provided by the House Listing and Housing Census 2011 under the Socio-Economic and Caste census 2011 published by Press Information Bureau dated 15.12.2015 is annexed herein and is marked as ANNEXURE - F)

12.2. It is submitted that in addition, the National Safai Karamchari Finance Development Corporation has initiated a survey as part of which the State government has identified as many as 1,720 manual scavengers in 6 of the 30 districts of Karnataka and suggested that the count might have been over 10,000 if the survey to be conducted as per the Act had been conducted in all districts.

12.3. It is submitted that in Karnataka in the cases of *PUCL-Karnataka v. State of Karnataka* (WP 30221/2009) and *RN Narasimhamurthy v. State of Karnataka* (WP 41076/2010), this Hon'ble court has directed government authorities not to allow any worker to enter manholes even if they are wearing safety gear. Workers have rarely received any safety equipment or gear. In Bangalore, despite the interim orders passed by the High Court of Karnataka prohibiting any worker from entering manholes, each and every day the government authorities continue to send workers inside these manholes to manually clean blockages. It is thus submitted by the Impleading Applicant that the PEMSRA is not being implemented in Karnataka adequately at all.

### 13. Health Hazards Arising from Manual Scavenging:

13.1. It is submitted that the working conditions of the sanitary workers have remained unchanged for over a century. No protective gear or equipment is provided to persons engaged in manual scavenging. Even pourakarmikaras who are engaged in sweeping are not given protective gear, and are increasingly being engaged in the work of manual scavenging. Using only a



stick broom and a small tin plate, the sanitary workers clear faeces from public and private latrines onto baskets or other containers, which they then carry on their heads to dumping grounds and disposal sites. Some are provided with wheelbarrows or carts by the municipal authorities. Due to this, the workers are also exposed to certain health problems by virtue of their occupation.

13.2. It is submitted that the Indian Council of Medical Research published a report in 2015 documenting the occupational health issues of sewage and sanitary workers. The medical conditions of the manual scavengers included infectious diseases, respiratory diseases, musculoskeletal conditions, and can be highly fatal attributing to carbon monoxide and methane poisoning, especially when most manual scavengers work without any protective equipment.

13.3. It is submitted that according to the numbers collated by the National Commission for Safai Karamcharis (NCSK), the statutory body that was set up by an Act of Parliament for the welfare of sanitation workers, one person has died every five days, on an average, while cleaning sewers and septic tanks across the country. Most of the deaths are occurring in the cleaning of septic tanks in apartment complexes and no steps are being taken to address this. Even the Karnataka State Pollution Control Board does not have the figures for the number of sewage treatment plants in Karnataka and how they are being cleaned. This is a serious violation of the PEMSRA.

(A copy of the Article titled, "KSPCB Clueless on STP Figures" dated 16.2.2018 published in the Deccan Herald is annexed herein and is marked as ANNEXURE -G)

13.4. It is submitted that interestingly, the PEMSRA does not mention health as a component of rehabilitation and provides a meagre amount of money to the worker in the name of assistance for alternative occupations. As such reliance



must be placed on the Constitution of India for protection of the right to health of the manual scavengers.

#### 14. Rehabilitation

14.1. It is submitted that under the PEMSRA, there are several provisions for rehabilitation for manual scavengers, but these are not being implemented. There are provisions for giving scholarships to children of manual scavengers, but this is not being implemented in Karnataka as no funds are being provided for the same. Therefore, it is recommended to allot the due amount of scholarship and that there is effective implementation of the scheme for the children whose parent/s engaged in occupation involving cleaning and prone to health hazards.

(A copy of the article, "Funds not provided for Scholarship to Kids of Manual Scavengers" dated 25.2.2018 and published in the Deccan Herald is annexed herein and is marked as ANNEXURE -H)

14.2. It is submitted that PEMSRA 2013 mentions only one-time cash assistance, loan, dignified (alternate) livelihood opportunity and training for the same. It also clearly mentioned residential plot and scholarship for the children. Even these provisions have been diluted in the schemes carried out. However, comprehensive rehabilitation must be provided. For instance, one adult family member of the deceased should be given adequate skills training and an opportunity of employment. It is also recommended that in incident the deceased is survived by his wife, the work opportunity should be given to her.

14.3. It is submitted that the Hon'ble Supreme Court's judgement in the case of Safai Karamchari Andolan and Ors. v. Union of India(2014) 11 SCC 224, directed states and local authority to identify and award compensation of Rs. 10 lakhs to the families of the victims who have lost their lives because of the negligence and ignorance of the employers, along with the failure in the implementation of the Manual Scavenging Act of 2013. The same judgment





also directed the initiation of the survey of the families in which death took place while cleaning septic tank since 1993. No such survey has taken place in Karnataka. Although a list has been created and compensation given to over 70 people who have died since 1995, the list is not indicative of the total deaths that have occurred due to the employment in manual scavenging. Since the cases identified were from 1992 to 2018, few cases compensation was delayed for a year to 10 years. Hence, there should be in place a mechanism to both have a comprehensive list of victims through survey and to monitor the progress in the receipt of the compensation to the family of the deceased.

#### 15. IMPLEMENTATION REQUIRED UNDER THE LAW

- 15.1. It is submitted that the continuation of the practice of manual scavenging as well as of dry latrines is illegal and unconstitutional. It violates the fundamental rights guaranteed under Articles 14, 17, 21 and 23 of the Constitution of India.
- 15.2. It is submitted that in the case of *Safai Karmachari Andolan and Ors. v. Union of India*(2014) 11 SCC 224, the Supreme Court, in the light of various provisions of the Act referred to above and the Rules in addition to various directions issued directed all the State Governments and the Union Territories to fully implement the same and take appropriate action for non-implementation as well as violation of the provisions contained in the 2013 Act. The Hon'ble Supreme Court in the above mentioned decision further reiterated that the duty is cast on all the States and the Union Territories to fully implement and to take action against the violators, allowing the persons aggrieved to approach the authorities concerned at the first instance and thereafter the High Court having jurisdiction.
- 15.3. It is submitted that the right to health is protected under the Indian Constitution. Article 21 which gives the right to life, also includes within its umbrella the right to health and the right to live with dignity. Thus, there is a

corresponding duty upon the State and Central governments to provide healthy living and working conditions. Article 39(e) of the Constitution directs the State policy that the health and strength of workers, men and women, and the tender age of children are not abused. Additionally, Article 47 puts the primary duty on the State to raise the standard of living of its people and the improvement of public health. These duties are also amplified by the Supreme Court in *Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161.

15.4. It is submitted that apart from the provisions of the Constitution, there are various international conventions and covenants to which India is a party, which prescribe the inhuman practice of manual scavenging. Article 1, 2(1) and 23(3) of the Universal Declaration of Human Rights (UDHR), Article 2 of the Convention on Elimination of Racial Discrimination (CERD) and Article 5(a) of the Convention for Elimination of all Forms of Discrimination Against Women (CEDAW) look into the aspects of discrimination, human dignity and racial discrimination. It is submitted that the international conventions and norms mentioned above are perused by this Hon'ble Court to eliminate the societal scourge of manual scavenging. Remembering the decision of the Supreme Court in the judgment of *Vishaka & Ors. v. State of Rajasthan* (1997) 6 SCC 241, reliance must be placed in the above international documents to further embed the need for equality in both our Constitution and the society.

15.5. Despite these directions there are specific provisions under the PEMSRA 2013 which are still not implemented and need implementation. These requirements are as follows:

- a. Local authorities in Karnataka are required to carry out the duties specified under Sections 4 and 17 of the Act to ensure that the existence and use of insanitary latrines is stopped immediately and that these latrines are replaced with sanitary latrines to prevent open defecation.
- b. Local authorities are required to convert all existing insanitary latrines into sanitary latrines under Sections 5(2) and (3).

17 years

Should have been done within  
6 months from commencement of Act



- c. To ensure the compliance of all persons, employers, agencies to the provisions under section 5(1), 6(2), and 7.
- d. The Chief Executive Officer of every Municipality and/or Panchayat is required to conduct a survey of manual scavengers as mandated under Section 11(1) read with Section 14 and complete the same within the maximum time period of two months.
- e. The Chief Executive Officer of every Municipality and/or Panchayat is required to publish the provisional lists for general information in an accessible form and manner as per the requirements of Section 11(4) read with Section 14 and also publish the final lists of manual scavengers after taking also applications from persons claiming to be manual scavengers as required under section 12(1) and section 15(1) within the prescribed period of 15 days.
- f. Rehabilitation of identified manual scavengers in the manner mandated by the provisions of Sections 13 read with section 16 and provide all the benefits as mandated under the Act.
- g. All apartment complexes must be directed by the local authorities that there can be no manual cleaning of STPs or septic tanks in their complexes and if there is any manual cleaning then the Occupancy certificates of such apartments should be cancelled.

16. It is submitted that the Applicant is well positioned to contribute meaningfully to such an endeavour for the implementation of the Act so that manual scavenging in Karnataka is prohibited and that there is proper rehabilitation of persons so that they do not have to engage in manual scavenging. It is reiterated that the Applicant has the requisite experience of being on the ground and working on this issue and would be able to assist this Hon'ble Court. The Applicant is therefore a necessary and proper party to be impleaded in the present matter.

17. It is submitted that no harm, loss or injury would be caused to the Parties to the instant petition if the Applicant Organisation is permitted to come on record and

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place all relevant facts and materials which are necessary for the proper adjudication of the issues raised in the present Writ Petition.

**PRAYER**

WHEREFORE, in light of the above facts and circumstances, it is most humbly prayed that this Hon'ble court may be pleased to:

- A. Pass an order impleading the applicant "Thamate" Centre for Rural Empowerment, a society registered under the Karnataka Societies Registration Act, 1960 having its project office at: Thamate, 1<sup>st</sup> Block, 2<sup>nd</sup> Main, Kuvempunagar, Tumkur - 572103, Represented by its Secretary Mr. K. B. Obalesha here in as Respondent No. 7 / Intervener in this Writ Petition, and
- B. Pass any such further orders as it may deem fit in the interest of justice and equity,

Place: Bangalore

Date:

Counsel for the Impleading Applicant