

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

W.P. (C) No. 630 of 2013

Smt. Elangbam Ongbi Amubi Devi, aged about 35 years, W/o (Late) Elangbam Ranjit Singh, resident of Tentha Mayai Leikai, P.O. Wangjing, P.S. & District: Thoubal, Manipur.

... PETITIONER

- Versus -

- 1.** The State of Manipur, through the Principal Secretary/Commissioner (PHE), Government of Manipur, Imphal, Manipur – 795001.
- 2.** The Chief Engineer, Public Health Engineering Department, Government of Manipur, Imphal, Manipur – 795001.
- 3.** The Executive Engineer, Sewerage Project, PHED, Govt. of Manipur, Imphal, Manipur – 795001.

... RESPONDENTS

With

W.P. (C) No. 631 of 2013

Smt. Elangbam Ongbi Gitarani Devi, aged about 32 years, W/o (Late) Elangbam Indra Singh, resident of Tentha Mayai Leikai, P.O. Wangjing, P.S. & District: Thoubal, Manipur.

... PETITIONER

- Versus -

- 1.** The State of Manipur, through the Principal Secretary/Commissioner (PHE), Government of Manipur, Imphal, Manipur – 795001.
- 2.** The Chief Engineer, Public Health Engineering Department, Government of Manipur (PHED), Imphal, Manipur – 795001.

3. The Executive Engineer, Sewerage Project,
PHED, Government of Manipur, Imphal,
Manipur – 795001.

... **RESPONDENTS**

B E F O R E
HON'BLE MR. JUSTICE KH. NOBIN SINGH

For the Petitioners : Shri Kh. Tarunkumar, Advocate.
For the Respondents : Shri R.K. Nokulsana, Sr. Advocate
asstd. by Shri Y. Sanajaoba, Advocate
& Shri K. Jagat, Govt. Advocate.
Date of Hearing : 09-02-2017
Date of Judgment & Order : 27-02-2017

JUDGMENT AND ORDER

[1] Heard Shri Kh. Tarunkumar, the learned counsel appearing for the petitioners; Shri R.K. Nokulsana, the learned Senior Advocate assisted by Shri Y. Sanajaoba, the learned counsels appearing for the respondent Nos. 2 and 3 and Shri K. Jagat, the learned Government Advocate appearing for the respondent No. 1.

[1.1] The facts and circumstances of these cases are almost identical and therefore, the same are being disposed of by this common judgment and order.

W.P. (C) No. 630 of 2013

[2] The instant writ petition has been filed by the petitioner praying for a direction directing the respondents to pay adequate compensation for a sum of Rs. 20,00,000/- (Rupees twenty lakh) to the petitioner.

[3.1] According to the petitioner, she is the widow of late Elangbam Ranjit Singh who was engaged as a labourer in the Sewage Project undertaken by the Department of Public Health Engineering, Government of Manipur (hereinafter referred to as the 'PHED') near Kekrupat Area, Imphal and expired while performing the work of cleaning inside the manhole of the said Sewage Project. On 25-04-2013 at around 07:30 AM, her husband went down inside the manhole for cleaning work by lifting the cover of the hole using a ladder and as soon as he reached the bottom of the manhole, he fell unconscious because of suffocation. On seeing the said situation, another co-worker namely Elangbam Indra Singh who also hails from the same village of the petitioner went inside the manhole to save the life of her husband and unfortunately, he also fell down unconscious inside the manhole. As the other co-workers could not lift him up immediately for want of emergency materials to save the worker/ labourer, some personnel of the Manipur Fire Service who came there pulled up her husband from inside the manhole. Thereafter, he was taken to JNIMS where the doctor declared him as brought dead.

[3.2] The news about the death of her husband and another co-worker came to be published in the local daily called the "POKNAPHAM" in its edition dated 26-04-2013 wherein it was clearly written that they had died while cleaning the manhole of the Sewage Project. A post mortem was conducted on her husband's dead body and an FIR in respect thereof was also registered by the Imphal Police Station. The authorities of the PHED gave a sum of Rs. 2,10,000/- (Rupees two lakh ten

thousands) only to the petitioner but they did not provide adequate compensation to the petitioner for her livelihood and three minor children left behind by her husband who was the sole bread earner of her family. Accordingly, she submitted a representation to the Chief Engineer, PHED on 10-06-2013 praying for providing adequate compensation and the same is still pending for consideration. Being aggrieved by the inaction on the part of the authorities of the PHED, the instant writ petition has been filed by the petitioner.

[4] To contest the writ petition, an affidavit on behalf of the respondent Nos. 2 and 3 has been filed wherein it is stated that the Sewage Project Phase-I, Zone-I for Imphal Town was undertaken by the PHED, Government of Manipur by awarding the work to a Contractor. The petitioner's husband was not known to the PHED because he was not engaged by it for the work of cleaning the manhole of the Sewage Project. The PHED came to know about the incident from the newspaper and on coming to know about it, the Chief Engineer, PHED rushed to the site of the incident and consoled the petitioner and other bereaved members of the family. The PHED managed to help the petitioner by giving monetary help because the incident took place in the execution of the work undertaken by it. A sum of Rs. 2,10,000/- (Rupees two lakh ten thousand) only was paid to the petitioner as agreed between the petitioner and the PHED to be the last and final demand for settlement in connection with the death of her husband. The stand of the respondent No. 1 as indicated in its affidavit, is similar to that of the respondent Nos. 2 & 3 and in addition thereto, it is stated that safety measures

were taken from the day the execution of the Sewage Project came to be started by the PHED and that the issue as regards the determination of liability or inadequacy of the amount already paid to the petitioner is the one which can be decided by a competent Civil Court.

W.P. (C) No. 631 of 2013

[5] The instant writ petition has been filed by the petitioner praying for a direction directing the respondents to pay adequate compensation for a sum of Rs. 20,00,000/- (Rupees twenty lakh) to the petitioner.

[6] The facts of the instant case are almost identical to that of the writ petition being W.P. (C) No. 630 of 2013 mentioned above. The petitioner herein is the widow of late Elangbam Indra Singh who was also engaged as a labourer for the Sewage Project undertaken by the PHED near Kekrupat Area, Imphal and expired on 25-04-2013 while performing the work of cleaning inside the manhole of the said Sewage Project. The detailed facts of the present case are not narrated herein for the sake of brevity and moreover, the stands of the respondents remain the same in both the cases.

[7] Shri Kh. Tarunkumar, the learned counsel appearing for the petitioners submitted that the respondents failed to take preventive safety measures and to provide equipment/kits before such hazardous activities being carried out by them through the workers/labourers, as a result the petitioner's husbands who were the bread winners of their family, met the unfortunate incident and lost their lives. The respondents are

absolutely responsible for the unfortunate incident and due to their negligence or inaction, the fundamental rights and in particular, the right to life of the petitioner's husbands have been infringed and therefore, they are liable to pay adequate compensation to the petitioners. In order to substantiate his contention, he has relied upon the decision of the Hon'ble Supreme Court in ***Delhi Jal Board Vs. National Campaign for Dignity and Rights of Sewerage and Allied Workers & ors.***, reported in **(2011) 8 SCC 568** wherein an interlocutory order passed by the High Court of Delhi by which the Delhi Jal Board was directed to deposit Rs. 79,000/- in addition to Rs. 1.71 lakhs already paid to the families of the deceased worker, came to be challenged by the Delhi Jal Board. The learned counsel appearing for the appellant submitted that the impugned order was liable to be set aside because the Hon'ble High Court transgressed the limit of its jurisdiction under Article 226 of the Constitution and usurped the legislative power of the State; that the High Court did not have the jurisdiction to directly or indirectly alter the terms of agreement between the appellant and the Contractor and that the Hon'ble High Court committed serious error by directing the appellant to pay compensation to the family of the worker ignoring that he was employed by the contractor to whom the contract had been awarded. Three issues came to be considered and decided by the Hon'ble Supreme Court which held that in terms of its earlier decisions referred to therein, the writ petition was maintainable and that the High Court, by issuing the said directions, did not assume the legislative power of the State. The Hon'ble Supreme Court rejected the appellant's challenge to the interim directions for

payment of compensation to the families of the workers and rather, it felt that the High Court should have taken cue from the judgment in ***Railway Board Vs. Chandrima Das***, reported in **(2000) 2 SCC 465** and awarded compensation which could be treated as reasonable. In this Chandrima Das case, the Hon'ble Supreme Court observed that where public functionaries are involved and the matter relates to the violation of fundamental rights or the enforcement of the public duties, the remedy would still be available under the public law notwithstanding that a suit would be filed for damages under the private law. The Hon'ble Supreme Court held:

“31. *These judgments are a complete answer to the appellant's objection to the maintainability of the writ petition filed by Respondent 1. What the High Court has done by entertaining the writ petition and issuing directions for protection of the persons employed to do work relating to sewage operations is part of its obligation to do justice to the disadvantaged and poor sections of the society. We may add that the superior courts will be failing in their constitutional duty if they decline to entertain petitions filed by genuine social groups, NGOs and social workers for espousing the cause of those who are deprived of the basic rights available to every human being, what to say of fundamental rights guaranteed under the Constitution. It is the duty of the judicial constituent of the State like its political and executive constituents to protect the rights of every citizen and every individual and ensure that everyone is able to live with dignity.*

32. *Given the option, no one would like to enter the manhole of sewage system for cleaning purposes, but there are people who are forced to undertake*

such hazardous jobs with the hope that at the end of the day they will be able to make some money and feed their family. They risk their lives for the comfort of others. Unfortunately, for last few decades, a substantial segment of the urban society has become insensitive to the plight of the poor and downtrodden including those, who, on account of sheer economic compulsions, undertake jobs/works which are inherently dangerous to life. People belonging to this segment do not want to understand why a person is made to enter a manhole without safety gears and proper equipments. They look the other way when the body of a worker who dies in the manhole is taken out with the help of ropes and cranes. In this scenario, the courts are not only entitled but are under constitutional obligation to take cognizance of the issues relating to the lives of the people who are forced to undertake jobs which are hazardous and dangerous to life.

- 33.** *It will be a tragic and sad day when the superior courts will shut their doors for those, who without any motive for personal gain or other extraneous reasons, come forward to seek protection and enforcement of the legal and constitutional rights of the poor, downtrodden and disadvantaged sections of the society. If the system can devote hours, days and months to hear the elitist class of eminent advocates who are engaged by those who are accused of evading payment of taxes and duties or otherwise causing loss to public exchequer or who are accused of committing heinous crimes like murder, rape, dowry death, kidnapping, abduction and even acts of terrorism or who come forward with the grievance that their fundamental right to equality has been violated by the State and/or its agencies/instrumentalities in contractual matters,*

some time can always be devoted for hearing the grievance of vast majority of silent sufferers whose cause is espoused by bodies like Respondent 1.

- 38.** *In view of the principles laid down in the aforesaid judgments, we do not have the slightest hesitation to reject the argument that by issuing the directions, the High Court has assumed the legislative power of the State. What the High Court has done is nothing except to ensure that those employed/engaged for doing work which is inherently hazardous and dangerous to life are provided with life-saving equipments and the employer takes care of their safety and health.*
- 39.** *The State and its agencies/instrumentalities cannot absolve themselves of the responsibility to put in place effective mechanism for ensuring safety of the workers employed for maintaining and cleaning the sewage system. The human beings who are employed for doing the work in the sewers cannot be treated as mechanical robots, who may not be affected by poisonous gases in the manholes. The State and its agencies/instrumentalities or the contractors engaged by them are under a constitutional obligation to ensure the safety of the persons who are asked to undertake hazardous jobs. The argument of choice and contractual freedom is not available to the appellant and the like for contesting the issues raised by Respondent 1.*
- 50.** *In view of the law laid down in the aforementioned judgments, the appellant's challenge to the interim directions given by the High Court for payment of compensation to the families of the workers deserves to be rejected. However, that is not the end of the matter. We feel that the High Court should have taken cue from the judgment in*

Railway Board v. Chandrima Das and awarded compensation which could be treated as reasonable. Though, it is not possible to draw any parallel between the trauma suffered by a victim of rape and the family of a person who dies due to the negligence of others, but the High Court could have taken note of the fact that this Court had approved the award of compensation of Rs 10 lakhs in 1998 to the victim of rape as also increase in the cost of living and done well to award compensation of at least Rs 5 lakhs to the families of those who died due to negligence of the public authority like the appellant which did not take effective measures for ensuring safety of the sewage workers.

He has also placed reliance on the decision of the Hon'ble Supreme Court in **Safai Karamchari Andolan & ors. Vs. Union of India & ors.** reported in **(2014) 11 SCC 224** wherein a PIL under Article 32 of the Constitution was filed praying for issuance of a writ of mandamus to strictly enforce the implementation of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993. After examining the various provisions of the Act and its various earlier orders, the Hon'ble Supreme Court issued various directions, out of which the direction No. 23.2 is relevant for the present case and the same is reproduced herein below:

“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.”*

[8] On the other hand, Shri R.K. Nokulasana, the learned Senior Advocate appearing for the respondent Nos. 2 & 3 submitted that the petitioner’s husbands were not engaged by the PHED and since the work of Sewage Project had been entrusted to a contractor, they were engaged by it. Although the contractor is a necessary party, it has not been arrayed as party in these writ petitions. Immediately, after the incident, the respondents, on humanitarian grounds, paid a sum of Rs. 2,10,000/- (Rupees two lakhs ten thousand) each to the petitioners as per the terms of the agreements entered into between the petitioners and the PHED by which the petitioners have agreed to accept the said amounts to be the full and final settlement. He has further submitted that the decisions relied upon by the learned counsel appearing for the petitioners are not applicable to the facts and circumstances of the present cases. Shri K. Jagat, the learned Government Advocate appearing for the respondent No. 1 has submitted that safety measures were taken and necessary instructions were given to the workers and since the present writ petitions have given rise to disputed

questions of fact, the petitioners remedies lie in the civil court and therefore, the same are liable to be dismissed by this court. In order to support his contention, he has relied upon the decision of the Hon'ble Supreme Court in ***Manager, St. Thomas UP School Kerala & anr. Vs. Commissioner & Secretary to General Education Department & ors.*** reported in **(2000) 2 SCC 497** wherein the question was as to whether the appellant school was established by a minority so as to be treated as minority institution under Article 30(1) of the Constitution. The Hon'ble Supreme Court held that the High Court had determined what were clearly disputed questions of fact without the benefit of a full-scale trial and the issue should have been left to the fact-finding authority and accordingly, allowed the appeal. He has placed reliance in ***Tamil Nadu Electricity Board Vs. Sumathi & ors.*** reported in **(2000) 4 SCC 543** wherein one of the issues that arose for consideration was as to whether the High Court under Article 226 of the Constitution can award compensation for death caused due to electrocution on account of improper maintenance of electric wires or equipment by the Tamil Nadu Electricity Board, the Hon'ble Supreme Court held that since disputed questions of fact arose in that case, the High Court should not have entertained the writ petitions under Article 226 of the Constitution of India.

[9] It is not in dispute that there is no any law enacted by the State Legislature to deal with the situation involved herein. In this regard, the observations made by the Hon'ble Supreme Court in Delhi Jal Board case are very much relevant when it observed that neither law maker nor those who have

been entrusted with the duty of implementing the laws enacted for the welfare of the unorganised workers have put in place an appropriate mechanism for protection of persons employed by or through the contractors to whom services meant to benefit the public at large are outsourced by the State and/or its agencies/instrumentalists like the appellant for doing work, which are inherently hazardous and dangerous to life nor made provision for payment of reasonable compensation in the event of death. Therefore, in the absence of any provision of law enacted by the State Legislature, the issues involved herein are to be decided in terms of the law laid down by the Hon'ble Supreme Court. Before deciding the main issue, this court proposes to deal with the preliminary objection raised by the learned Government Advocate as regards the maintainability of the present writ petitions and relying upon the said two decisions rendered in ***Manager, St. Thomas UP School Kerala case*** and ***Tamil Nadu Electricity Board Vs. Sumathi case***, he has submitted that since the present cases involve disputed questions of fact, their remedies lie in the civil court and therefore, this court ought not to entertain them. But he has failed to specifically spell out as to what are that disputed questions of fact and on perusal of the affidavit filed on behalf of the respondent No. 1, it is seen that it has not denied the occurrence of the said unfortunate incident in which the petitioner's husbands died and all that it stated, is that the incident took place in the early morning before no one could attend the office and it came to know about it from the newspaper only. Moreover, in ***Tamil Nadu Electricity Board Vs. Sumathi case*** relied upon by himself, the Hon'ble Supreme

Court also has held that in view of the clear position of law laid down by this court in Sukamani Das case when a disputed question of fact arises and there is clear denial of any tortious liability, remedy under Article 226 of the Constitution of India may not be proper. However, it cannot be understood as laying a law that in every case of tortious liability, recourse must be had to a suit. Where there is negligence on the face of it and enforcement of Article 21 is there, it cannot be said that there will be any bar to proceed under Article 226 of the Constitution. Right to life is one of the basic human rights guaranteed under Article 21 of the Constitution. Therefore, his contention having no substance at all, is not acceptable to this court and there is nothing wrong in entertaining the present writ petitions by this court under Article 226 of the Constitution of India.

[10] As regards the question as to whether the petitioners are entitled to adequate compensation or not, it may be noted that the facts of the present cases may not be exactly the same but are similar to that of the Delhi Jal Board case referred to herein above and the law laid down therein shall apply to the facts of the present cases. In the present cases, the submissions on behalf of the respondents are that the Sewage Project was undertaken by the PHED, the work of which had already been entrusted to a contractor who is not a party herein; that the petitioner's husbands were not engaged by it and that on humanitarian grounds, monetary help had been extended by the PHED to the petitioners. Such similar submissions which have been made in Delhi Jal Board case, were found by the Hon'ble Supreme Court to be of no substance and merit and the Hon'ble

Supreme Court has made it very clear that the State and its agencies/instrumentalities cannot absolve themselves of the responsibility to put in place effective mechanism for ensuring safety of the workers employed for maintaining and cleaning the sewage system. The human beings who are employed for doing the work in the sewers cannot be treated as mechanical robots, who may not be affected by poisonous gases in the manholes. The State and its agencies/instrumentalities or the contractors engaged by them are under a constitutional obligation to ensure the safety of the persons who are asked to undertake hazardous jobs. The Hon'ble Supreme Court has further observed that in this scenario, the court are not only entitled to but are under constitutional obligation to take cognisance of the issues relating to the lives of the people who are forced to undertake jobs which are hazardous and dangerous to life. Accordingly, the Hon'ble Supreme Court upheld the directions given by the High Court for payment of compensation to the families of the workers.

There are other grounds which need to be considered by this court. Based on the affidavit filed on behalf of the respondent No.1, it has been submitted by the learned Government Advocate that from the day the execution of the Sewage Project came to be commenced, the workers were instructed about the safety measures as per Sewage Manual. This contention appears to be contrary to its own averments made therein that the work of execution of the Sewage Project has been entrusted to a contractor and it is the contractor who has engaged the petitioner's husbands and not the PHED. Moreover, it is not stated specifically in the affidavit as to whom

the instructions about safety measures have been given by the PHED towards the execution of its Sewage Project without any worker being engaged by it. The learned Government Advocate has further submitted that the compensations as agreed between the petitioners and the PHED as the full and final settlement, have been paid to them and therefore, this court may not interfere with it. It may be noted that it is the fundamental rights of the petitioner's husbands which have been infringed by the PHED on account of its negligence and therefore, the terms of the said agreements cannot and shall not prevail upon the provisions of the Constitution of India and in particular, Article 21 of the Constitution. Having heard the learned counsels appearing for the parties, this court is of the view that in terms of the law laid down by the Hon'ble Supreme Court in Delhi Jal Board case, the present writ petitions deserve to be allowed by this court.

[11] Having held that the present writ petitions deserve to be allowed, the next question is as to what compensation be awarded in the facts and circumstances of the present cases. In this regard, it may be noted that the Hon'ble Supreme Court in Delhi Jal Board case observed that while awarding compensation, the High Court should have taken cue from the judgment in Railway Board Vs. Chandrima Das. The Hon'ble Supreme Court further observed that though it is not possible to draw any parallel between the trauma suffered by a victim of rape and the family of a person who dies due to the negligence of the others, the High Court could have taken note of the fact that the Hon'ble Supreme Court had approved the award of compensation of Rs. 10 lakhs in 1998. Accordingly, the Hon'ble

Supreme Court directed the appellant therein to pay a sum of Rs. 3.29 lakhs to the family of the victim in addition to Rs. 1.71 lakhs already paid by the contractor and over and above, the Hon'ble Supreme Court observed that the appellant be entitled to recover the additional amount from the contractor. In **Safai Karamchhari Andolan & ors. Vs. Union of India & ors.** reported in **(2014) 11 SCC 224** the Hon'ble Supreme Court issued various directions and in particular, the direction No. 23.2 whereby the Hon'ble Supreme Court directed that in respect of Sewer deaths-entering sewer lines without safety gear should be made a crime even in emergency situations, compensation of Rs. 10 lakhs should be given to the family of the deceased. Keeping in mind the directions issued by the Hon'ble Supreme Court in similar cases referred to herein above, this court is of the view that the end of justice will be made, if the respondents are directed to pay compensation of Rs. 10 lakhs each to the petitioners. Since the petitioners have already been given Rs. 2,10,000/- (Rupees two lakhs ten thousand) each by the PHED, they will now be entitled to the balance amount of Rs. 7,90,000/- (Rupees seven lakhs ninety thousand) each.

[12] For the reasons stated herein above, the writ petitions are allowed with the following directions:

- (a)** The respondents and in particular, respondent Nos.2 shall pay compensation of Rs. 7,90,000/- (Rupees seven lakhs ninety thousand) each to the petitioners within six months from the date of this judgment and order;

(b) In the event of the said compensation as directed above (a) not being paid in six months by the respondents, the said amount shall accrue an interest @ Rs.8/- per cent annum from the date of expiry of six months till the date of payment. There shall be no order as to costs.

JUDGE

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