

Daily Order

Judge Name **Case No/Year** **Date of Order** **Daily Order**

CHIEF JUSTICE AND S VISHWAJITH SHETTY WP 8928/2020 16/03/2021 ORDER IN

W.P. No.8928/2020 c/w

W.P. No.3211/2018

The learned counsel appearing for the twelfth respondent states that steps will be taken to withdraw the report at Annexure-R.3 annexed to the submission dated 26th February, 2021.

2. The learned Additional Government Advocate seeks time to take instructions whether charge sheet has been filed. To enable him to do so, we grant time of one week. A detailed report on the investigation shall be tendered across the Bar in a sealed cover on 26th March, 2021.

3. Now, we turn to the issue of compliance with the directions contained in the order dated 9th December, 2020. As regards clause (i) of paragraph 48 of the said order, certain details have been placed on record. However, on the issue of penal action, further directions will have to be issued after hearing the learned counsel for various parties. As regards clause (ii) of paragraph 48, Volume-II tendered across the Bar contains Annexure-2 containing details of the action taken in the meeting held on 24th February, 2021 under the Chairmanship of the Additional Chief Secretary. We permit the parties to make submissions on the question whether any further action is required to be taken on the basis of the decisions arrived at in the meeting held on 24th February, 2021.

4. So far as clause (iv) of paragraph 48 of the order dated 9th December, 2020 is concerned, in Volume-I of the compilation filed by the State Government, a copy of the Government Order dated 22nd February, 2021 is placed on record. However, the said order does not show that the State Level Survey Committee has been constituted. The State

Judge Name **Case No/Year** **Date of Order** **Daily Order**

WWW.LIVELAW.IN

Government will immediately constitute the said Committee. As regards clause (v), it is obvious that a survey of insanitary latrines has not been carried out by the local authorities in terms of sub-section (1) of Section 4 of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 (for short, “the said Act of 2013”). The State Government shall ensure that the survey commences immediately and is completed within a time bound schedule. Unless the said survey is carried out in its true letter and spirit, the very important provision of sub-section (1) of Section 4 of converting insanitary latrines into sanitary latrines cannot be given effect to. The State Government shall issue directions to all the local authorities fixing a time bound schedule for completing the survey and to place the same on record.

5. So far as the second proviso to sub-section (2) of Section 5 of the said Act of 2013 is concerned, a notification has been issued on 22nd February, 2021. There is no compliance made to the direction contained in clause (vii) of paragraph 48 of the order dated 9th December, 2020. As regards clause (viii), the State Government has relied upon a notification dated 3rd May, 2014 nominating officers to effectively implement the provisions of the said Act of 2013. The direction contained in clause (viii) is to call for the reports from the officers mentioned in the said notification dated 3rd May, 2014. However, nothing is placed on record to show the steps, if any, taken by the officers nominated under the notification dated 3rd May, 2014. Thus, the State Government has not reported compliance with clause (viii).

6. Our attention is invited to the notification dated 3rd May, 2014 by which some health inspectors have been appointed as inspectors to exercise the power under the said Act of 2013. A submission is made that in many offences registered, the very same health inspectors are the accused. Therefore, the State Government will have to take a call on the question whether health inspectors can be appointed as the inspectors. The State Government to take an appropriate decision on this aspect within one month from today.

7. As regards clause (ix) of the directions issued, it appears that no meetings have been held. The minutes of the meeting

Judge Name **Case No/Year** **Date of Order** **Daily Order**

WWW.LIVELAW.IN

of the State Level Monitoring Committee have been placed on record. As can be seen from the minutes, the last meeting was held on 20th August, 2020 and thereafter, not a single meeting has been held. The State Government must explain the reasons why regular meetings of the State Level Monitoring Committee have not been held. As regards the direction contained in clause (x), the State Government has issued directions to the local authorities as late as on 22nd February, 2021.

8. Compliance with the direction contained in clause (xi) has not been reported. As regards clause (xii), the learned Additional Government Advocate states that all the details of the awareness campaign are available on the official website, i.e. www.sbm.gov.in. The learned counsel for the parties will access the said website and thereafter, address the Court on reporting compliance with clause (xii).

9. As regards clause (xiii), what is placed on record by the State Government is the material showing availability of the schemes. The question is in what manner the schemes will be implemented for rehabilitation of manual scavengers as contemplated by Section 13 of the said Act of 2013. The State Government must place on record material showing implementation of the schemes and must devise a comprehensive program for rehabilitation of all manual scavengers as provided in Section 13 of the said Act of 2013.

10. The Union of India has not complied with the directions contained in clause (xiv). As regards clause (xv) of the said order dealing with the implementation of the direction contained in paragraph 23.3 of the decision of the Apex Court in the case of SAFAI KARAMCHARI ANDOLAN AND OTHERS .v. UNION OF INDIA AND OTHERS , the State Government has placed on record some data. As regards clause (xvi), before we hear the stand of the local authorities, it is necessary for the State Government and all the concerned respondents to provide copies of all the affidavits, statement of objections, compliance reports to the learned counsel representing the Karnataka State Legal Services Authority (KSLSA) to enable KSLSA to assist the Court.

11. In the last order of this Court, there was a direction issued

Judge Name **Case No/Year** **Date of Order** **Daily Order**

WWW.LIVELAW.IN

to the State Government to deal with the facts stated in the memo tendered across the Bar pursuant to the incident that took place at Maddur. The State Government has submitted a compliance report signed by the Under Secretary to the State Government, (Municipal Administration), Urban Development Department. It is true that a First Information Report has been registered. But it contains an allegation that Shri Narayana committed suicide. The allegation made in the memo is that he was forced to do acts of manual scavenging. The State Government, in the compliance report, has oversimplified the whole issue by stating that the provisions of the said Act of 2013 will not apply. It is the duty of the State to ascertain irrespective of the outcome of the police investigation whether the said deceased was compelled to do manual scavenging. Even if it is found that there is a substance in the said allegation, those who are involved in pressurizing him to do manual scavenging should be brought to book. We, therefore, direct the State Government to file on record the steps taken in this behalf on or before the next date.

12. A memo has been filed by the fourth respondent which records that a large number of persons who were engaged in manual scavenging have made applications to the concerned authorities for being identified as manual scavengers. Necessary documents have been annexed to the memo. The State Government will respond on the steps taken to deal with these applications.

13. The State Government has also filed on record a response to the suggestions made by the learned advocate appearing for the petitioner. As regards the suggestion at item No.2, the stand of the State Government requires re-examination. The question is, whether a survey of insanitary latrines is carried out in terms of the provisions of the said Act of 2013. The State Government cannot simply rely upon the survey conducted on the basis of the letter dated 22nd February, 2013 of the Central Government. In this petition, we are not concerned with the survey of insanitary latrines carried out de hors the provisions of the said Act of 2013. Therefore, the compliance made on the basis of Annexure-R.1 cannot be treated as sufficient compliance.

14. Reliance is placed in the said memo on the order passed on 15th March, 2021 in compliance with the provisions of

Judge Name **Case No/Year** **Date of Order** **Daily Order**

WWW.LIVELAW.IN

Section 19 of the said Act of 2013.

15. As regards item No.4, the State Government must place on record how many persons are the beneficiaries under the schemes set out and in what manner the beneficiaries are made aware of the availability of the schemes.

16. The only conclusion which can be drawn is that there is hardly any compliance by the State Government with the provisions of the said Act of 2013.

17. We, therefore, direct the State Government to file a detailed affidavit regarding compliance with the directions issued in the order dated 9th December, 2020 and the directions contained in this order as well. We grant a long time to the State Government to do so till 20th April, 2021.

18. At this stage, our attention is invited to Section 33 of the said Act of 2013 which reads thus:

Duty of local authorities and other agencies to use modern technology for cleaning of sewers, etc.--

(1) It shall be the duty of every local authority and other agency to use appropriate technological appliances for cleaning of sewers, septic tanks and other spaces within their control with a view to eliminating the need for manual handling of excreta in the process of their cleaning.

(2) It shall be the duty of the appropriate Government to promote, through financial assistance, incentives and otherwise, the use of modern technology, as mentioned in sub-section (1).

While filing the affidavit, the State Government will place on record whether it has discharged its duty as provided under sub-section (2) of Section 33 of the said Act of 2013. The State Government will also consider of issuance of notices to all the local authorities to take steps to comply with the

Judge Name **Case** **Date of**
No/Year **No/Year** **Order** **Daily Order**

WWW.LIVELAW.IN

obligation of sub-section (2) of Section 33 of the said Act of 2013.

19. List these petitions on 26th March, 2021 under the caption of 'Orders' to deal with the report submitted in terms of paragraph 2 above.

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