REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5322 OF 2011
(Arising out of Special Leave Petition (Civil) No. 12345 of 2009)

Delhi Jal Board ……Appellant

Versus

National Campaign for Dignity and Rights
of Sewerage and Allied Workers & others ……Respondents

J U D G M E N T

G.S. Singhvi, J.

1. Leave granted.

2. This appeal filed by Delhi Jal Board for setting aside an interlocutory order passed by the Division Bench of the Delhi High Court whereby it has been directed to deposit Rs.79,000/- with Delhi High Court Legal Services Committee in addition to Rs.1.71 lacs already paid to the families of the

deceased worker, namely, Rajan is one of the several thousand cases filed by the State and/or its agencies/instrumentalities to challenge the orders passed by the High Courts for ensuring that the goal of justice set out in the preamble to the Constitution of India is fulfilled, at least in some measure, for the disadvantaged sections of the society who have been deprived of fundamental rights to equality, life and liberty for last more than 6 decades. The appeal is also illustrative of how the State apparatus is insensitive to the safety and well being of those who are, on account of sheer poverty, compelled to work under most unfavourable conditions and regularly face the threat of being deprived of their life.

3. The laws enacted by Parliament and State legislatures provide for payment of compensation to the legal representatives of those killed in air, rail or motor accident. The legal representatives of a workman, who dies while on duty in a factory/industry/establishment get a certain amount of compensation. Even those who are killed in police action get compensation in the form of ex-gratia announced by the political apparatus of the State. However, neither the law makers nor those who have been entrusted with the duty of implementing the laws enacted for welfare of the unorganized workers have put in place 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/instrumentalities like the appellant for doing works, which are inherently hazardous and dangerous to life nor made provision for payment of reasonable compensation in the event of death.

4. Since the legal representatives of the persons who work in the sewers laid or maintained by the State and/or its agencies/instrumentalities on their own or through the contractors and who get killed due to negligence of the employer do not have the means and resources for seeking intervention of the judicial apparatus of the State, the National Campaign for Dignity and Rights of Sewerage and Allied Workers, which is engaged in the welfare of sewage workers filed Writ Petition No.5232/2007 in the Delhi High Court to highlight the plight of sewage workers many of whom died on account of contemptuous apathy shown by the public authorities and contractors engaged by them and even private individuals/enterprises in the matter of providing safety equipments to those who are required to work under extremely odd conditions. In paragraphs 4 to 6 and 8 of the petition, the petitioner made the following averments:

"4. That the Petition seeks to highlight the plight of sewage workers in Delhi. Delhi generates large quantities of sewage. At present, the total quantity of sewage generated is 2871 mld. Delhi Jal Board is responsible for treatment and disposal of wastewater through a network of about 5600 km of internal, peripheral and trunk sewers, for which approximately 5500 sewage workers are employed with Delhi Jal Board for maintenance of the sewage system and other related works. The working conditions for sewage workers are such that they are not only exposed to maximum risk against numerous toxic and harmful substances, but also they face suffocation and accidental deaths, while working. These workers suffer from high morality and morbidity due to such exposure at workplace. Hereto marked and annexed as Annexure P-1 are the photographs showing the sewage workers of Delhi as photographed by Indian Express. These photographs tell the sad story of the plight of these workers as of today.

5. Scores of sewage/manhole workers die every year doing this work in Delhi. These deaths are rarely documented. On 7.5.07 it was reported by Navbharat Times that in 2003 the following deaths of manhole workers took place:

Date	Place	Number of Deaths.
22 March	Brahmpuri	1
23 March	Shahdara	2
11 April	Shaktinagar	3
25 June	Rithala STP	5
July	Connaught Place	3
July	Okhla	1
October	Uttamnagar	4

In 2004 the following deaths took place:

Date	Place	Number of Deaths.
24 May	Vazirpur	3
25 May	Gautampuri	1
11 June	Samaypur	2
July	Vazirpur	2
October	Rohini	2
October	Padpadur	2

Hereto annexed an (Annexure P-2 is the translated copy of the news article titled 'Thekedaron Ki Laparwahi se ho rahi hain mauten' appearing in Navbharat Times on 7.05.07.

6. Even in year 2007, on 6.5.07 three sewage workers Ramemsh, Santosh and Ashish while working inside the sewer inhaled poisonous gases and died of suffocation. Hereto marked and annexed as Annexure P-3 is the news report appearing in the Times of India dated 7.5.2007. The accident took place near Madrasi Nallah in front of Vijay Enclave, Dabri (South West Delhi). The claiming work was being done in complete violation of the National Human Rights Commission guidelines. The victims worked without any helmet or gas masks, which are mandatory, as stated by NHRC, for the kind of work, they were doing. Neither there was any first aid kit with the workers nor artificial respirators and portable ladders were made available to them by the contractors. Apparently contractors violated all the rules and guidelines.

8. That, a report has been prepared by Centre for Education and Communication in collaboration with Occupational Health & Safety Management Consultancy Services on "Health & Safety Status of Sewage Workers in Delhi". The report concludes:

"...The workers are suffering from high mortality and morbidity due to exposure at workplace. 33 workers had died in last 2 years due to accidents while working on the blocked sewer lines...Fifty-nine per cent of the workers enter underground sewer manholes more than 10 times a month and half of them have to work more than 8 hours a day. While working in underground pipelines, an overwhelming majority of them have had cuts or injuries, experienced irritation of eyes and suffered from skin rash. Forty-one workers have reported syncope, and other 24 reported temporary loss of consciousness. A little over one-third of the workers had been immunized against tetanus while none of them had been vaccinated against hepatitis B.

Approximately 46 per cent of workers across all age group were found to be underweight according to Body Mass Index (BMI) calculation. 37 per cent have less hemoglobin than the normal range. More than 65 per cent have higher eosin Phil count (6 per cent) in spite of having normal leukocyte counts (91 per cent). None of the samples tested for HBsAg were tested positive. Results of urine examination pointed to irreversible damaged done to the body organ system.

More than 50 per cent of the pulmonary function tests results were abnormal. Chest X-rays results further confirmed the loss of functional capacity of the respiratory system of the workers.

None of the worker has been given any formal communication by the employer about the hazard present during the work. None has been trained to provide first aid during any miss-happening.....usage of other protective gears like gloves, mask, and shoes were bare minimum. Even

> supply of necessary safety gears was not adequate to meet the requirements.
>
> All daily wagers were getting a wage of approximately 2950 rupees per months without any other benefit irrespective of service period."”

The petitioner then referred to order dated 15.6.2006 passed by the Gujarat High Court in Special Civil Application No. 8989/2001 – Kamdar Swasthya Suraksha Mandal and Special Civil Application No.11706/2004 – the Manhole Workers Union and Lok Adhikar Sangh and made various prayers including issue of a mandamus directing the respondents to provide every sewage worker with protective gears, clothing and equipments in terms of the order passed by the Gujarat High Court in the two Civil Special Applications, pay compensation of Rs.10 lacs to the families of the workers who died after entering the manhole for sewage cleaning and make provision for comprehensive medical checkup of all the sewage workers and provide them medical treatment free of cost along with full wages for the period of illness.

5. After taking cognizance of the averments contained in the writ petition, the Division Bench of the High Court issued notice to the respondents and also made a request to one of the Judges – Dr. Justice S.

Muralidhar, to make an attempt to find out workable solution to the problems faced by sewage workers. The learned Judge heard the representatives of the writ petitioner, appellant and other instrumentalities of the State, examined the documents produced by them and passed order dated 5.4.2008 incorporating therein several suggestions for protection of the workers engaged in cleaning of manhole etc.. The Division Bench of the High Court, considered the suggestions made by Dr. Justice S. Muralidhar, the affidavits and documents filed by the appellant and the New Delhi Municipal Council and passed detailed order dated 20.8.2008, paragraphs 9 and 10 of which read as under:

> "9. Having considered the various reports made by the concerned agencies and also the submissions made by the concerned agencies and also the submissions made at the bar, we pass the following interim directions pending final disposal of this writ petition:
>
> (a) The medical examination and medical treatment will be given free of charge to sewer workers and the treatment will continue for all such workers found to be suffering from an occupational disease, ailment or accident until the workman is cured or until death.
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> (b) The services of the sewer workers are not to be terminated, either by the respondents or the contractors engaged by them, during the period of illness and they shall be treated as if on duty and will be paid their wages.
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> (c) Compensation shall be paid by the respondents and recoverable from the contractors, if permissible in law, to all the workmen suffering from any occupational disease,

ailment or accident in accordance with the provisions of the Workmen's Compensation Act, 1923.

(d) The respondents shall pay on the death of any worker, including any contract worker, an immediate ex-gratia solatium of Rs. One lac with liberty to recover the same from contractors, if permissible in law.

(e) The respondents shall pay / ensure payment of all statutory dues such as Provident Fund, Gratuity and Bonus to all the sewer workers, including contract workers, as applicable in law.

(f) The respondents shall provide as soon as possible modern protective equipments to all the sewer workers in consultation with the petitioner organization.

(g) The respondents shall provide soap and oil to all the workmen according to the present quota, but on monthly basis and not at the end of the year.

(h) The respondents shall provide restrooms and canteens, in accordance with the DJB model rules, including therein first-aid facilities, safe drinking water, washing facilities, latrines and urinals, shelters, crèches and canteens as set out in the model rules. There are to be provided at what is known as 'stores' which are the places where the workers assemble to give their attendance and from where they depart to their respective work sites.

(i) The respondents shall provide all workman, including contract workmen, with an accident-card-cum-wage-slip as set out in clause 8 of the C.P.W.D./PWD (DA)/Delhi Jal Board Contractors Labour Regulations (for short "Labour Regulations").

(j) The respondents shall provide all workers, including contract workers, employment cards as set out in clause 9 of the Labour Regulations and, on termination of services provide the contract workers and others with a

service certificate as set out in clause 10 of the Labour Regulations.

(k) The respondents shall authenticate by signing the payment of wages register for contract workers in terms of clause 5 of the Labour Regulations.

(l) The respondents shall submit to this court and to the petitioner within four weeks from today the full list of contract workers and contractors engaged for work relating to the sewers together with the wages paid to such workmen and the number of years of employment of the workers.

(m) The DJB is directed to ensure that the ex-gratia payment in case of deaths of sewer workers has been paid to the families of deceased workmen and in case such compensation is not paid, release the same within a period of eight weeks.

(n) NDMC is directed to pay ex gratia payment of Rs. one lac each in respect of the accident of 7th December, 2003 where three persons working under the NDMC contractors died, with liberty to recover the same from the contractor, if permissible in law.

(o) The DJB and NDMC are directed to hold an inquiry into deaths of sewer workers referred to in paragraphs 15 and 16 of the written submission of the petitioner dated 22nd July, 2008 and submit a report to this Court within a period of eight weeks. If it is found that the contract workers in question were working under the contractors employed by NDMC/DJB, ex-gratia compensation of Rs. One lac shall be released forthwith to the families of the victims subject to right of recovery from contractors in accordance with law.

(p) The respondents shall place on record a map showing the areas within the NCD (1) where no sewage facilities are available (2) where modern machinery cannot enter due to narrow lanes or otherwise (3) the areas serviced by

> modern machinery and (4) critical area where frequent deaths, accidents and blockages occur, it shall be done within three months from today.
>
> (q) Lastly, the respondents are directed to place on record the proposals and plans to phase out manual work and replace it with mechanized sewer cleaning, as envisaged by DJB as well as NDMC, which shall be done within three months.

10. In order to ensure the compliance of the above directions, we constitute a Committee consisting of:

> (i) Mr. S.R. Shankaran, IAS retired Chief Secretary to the Government of Tripura, Chairman:
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> (ii) One officer each to be nominated by NDMC, DDA and DJB respectively, who shall not be less than the rank of Under Secretary to the Government of India.
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> (iii) Joint Secretary of the Social Welfare Department, Government of NCT of Delhi to be nominated by the Secretary of that Department who shall be the Convener of the committee.
>
> (iv) One representative of the petitioner organization."

6. While the Committee constituted by the High Court was examining various issues concerning the sewage workers including their health and safety, Hindustan Times (Metro edition) dated 26.3.2009 reported that as many as 6 sewage workers had died in Delhi in the month of March 2009 due to inhaling of toxic gasses in the manholes because they did not have protective gears. Two of the workers died in the area of Alipur (Narela),

two in the area of Bawana and one each in Sector 6, Narela and Delhi Zoo, Sunder Nagar, New Delhi. Four of these deaths occurred within the jurisdiction of appellant – Delhi Jal Board, Delhi Development Authority and Delhi State Industrial Development Corporation and two deaths occurred in private farm house – Katyal Farm House, Bakhtawarpur Road, Narela.

7. After taking cognizance of the aforesaid report, the Division Bench of the High Court directed appellant - Delhi Jal Board and the Delhi Development Authority to file their respective affidavits. Notices were also issued to Delhi State Industrial Development Corporation, the owners of private farm house and the police department.

8. In the affidavit filed by him, Sri Sukhai Ram, Chief Engineer, Delhi Jal Board claimed that the person who died on 15.3.2009 was a painter and not a sewage beldar. He gave out that the victim was engaged by a sub-contractor, namely, Kanta Prasad who, in turn, had been engaged by M/s. AARSELF Michigan-JV, to whom contract was awarded for rehabilitation of sewer in the zoo area. According to Shri Sukhai Ram, the victim fell into the sewer because he became unconscious after inhaling the fumes of epoxy. He also stated that a sum of Rs.1.71 lacs was paid to the family of the victim

by the contractor. In the affidavits filed on behalf of the Delhi Development and the Delhi State Industrial Development Corporation, it was claimed that the deceased workers were not employed by or through them. However, during the course of hearing, learned counsel appearing on behalf of the appellant and other authorities conceded that as per the FIRs., the workers had died because they were not provided with protective gears before being asked to work in the manholes.

9. After considering the affidavits filed by the State agencies and the arguments made before it, the Division Bench of the High Court passed order dated 21.4.2009 (impugned order), the relevant portions of which read as under:

> "On going through the FIR, however, it is clearly seen that the affidavit filed on behalf of DJB is completely misleading. It is seen from the FIR that the victim Rajan and another workman, namely, Raj Kumar went inside the sewer through stairs. Before going down they had asked the official of the contractor for safety equipments and oxygen masks, but the official of the contractor did not pay heed to their requests. It is further seen from the FIR that they were working in the same manner for the last one week but despite repeated requests made to the contractor they were not provided with safety equipments and oxygen masks. It is further seen that they were painting the sewer and due to presence of toxic gases and lack of oxygen in the sewer, Rajan became unconscious and ultimately declared to be dead when he was taken to the hospital. The other workman was feeling giddy and fell down and sustained injuries on his face.

Learned counsel appearing for the DJB conceded that protective equipments were not provided by the DJB in spite of the directions issued by this Court vide order dated 20th August, 2008. According to him the responsibility was of the contractor to provide safety equipments as per the contract. It is clear that the sewage workers were left at the mercy of the contractor who failed to take basic precautions resulting in death of workman Rajan.

Insofar as the death that occurred within the jurisdiction of DDA, it has been stated in its affidavit that no work of de-silting of sewage lines or otherwise was in progress in the concerned division of DDA in which the accident took place. It was stated that possibly some local residents had employed a person by the name Rakesh Kumar on their own to check the particular manhole, in which the incident took place. During the course of arguments, however, learned counsel for DDA conceded that the affidavit does not reflect the correct position. He admitted that Rakesh Kumar Saini was entrusted with the work of desilting of the sewage lines, but according to him the contract was completed in December, 2008. Further, according to him though the contract provided for a warranty period six months, the contractor could not have carried out any further work in the sewage line without prior permission of the DDA. Counsel states that the DDA had not provided protective gears and equipments as directed by this Court because under the contract it was the responsibility of the contractor to provide the protective gears and equipments.

Insofar as DSIDC is concerned, it is seen from the FIR that four workers were involved in the incident. Two workers namely, Manpal and Ram Braj Yadav died while two others namely, Shyambir Sarvesh and Brajpal Yadav were injured. They were working under the contractor engaged by the DSIDC i.e. M/s Arun Kumar Goel. It is seen from the FIR that the workers were not provided with protective gears and safety equipments.

As already noted, two deaths occurred in Katyal Farms House, Bhaktwarpur Road, Narela. It is seen from the FIR that the workers who died while carrying out the work of cleaning the sewer were employees of the contractor by name Sunil, engaged by the Farm House owners. Learned counsel appearing for the farm house owners state that the owners have paid a sum of Rs. 1 Lac in ex-gratia to the families of each of the victims.

At the outset it must be stated that both DJB and DDA have not complied with the directions issued by this Court on 20 August, 2008, particularly directions for providing protective gears and equipment and for issuing employment cards to the contractor's workers. Let notice be issued to the CEO, DJB and the Vice Chairman, DDA to show cause as why action for contempt should not be initiated against them under the Contempt of Courts Act for violating the directions issued by this Court vide order dated 20th August, 2008. Notice shall be returnable on 27th August, 2009.

DDA and DSIDC are directed to deposit the amount of compensation of Rs.2.5 lacs per worker with the High Court Legal Services Committee (DHCLSC) for being paid to the families of the victims within four weeks. It will be open to the DDA/DSIDC to adjust/recover the amount paid from the contractor. According to the DJB, the contractor has already paid a sum of Rs.1.71 lacs to the victims' families. DJB is directed to deposit the balance amount to compensation i.e. Rs.79,000/- with the DHCLSC within four weeks. DHCLSC will ascertain whether the amount of Rs.1.71 lacs has been received by the victims' families as stated by the DJB. The owners of Katyal Farm House shall deposit a sum of Rs.1.5 lacs per worker, i.e., in all Rs.3 lacs, with DHCLSC. DHCLSC will ascertain whether the victims' families have received the amount of Rs. 1 lac as claimed by the farm house owners.

The CEO of DJB, Vice Chairman of DDA and Managing Director of DSIDC are directed to file their respective affidavits before the Committee within four weeks confirming that their respective affidavits before the Committee within four weeks confirming that their organizations have complied with all the

> directions issued by this Court from time to time and if there are any shortcomings, to specify them and also to give an undertaking in writing before the Committee that all shortfalls shall be rectified within a period to be fixed by the Committee. All the three organizations are directed to file documents before the Committee indicating:
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> > (i) That all the muster roll workers and the contract workers have been provided with protective gears.
> >
> > (ii) That all the muster roll workers and the contract workers have been provided provident fund.
> >
> > (iii) That all the muster roll workers have been given employment card.
> >
> > (iv) That medical examination, as directed by this Court, is being conducted in respect of contract workers fee of cost and copies of the medical records may also be furnished to the petitioner union."

10. Learned counsel for the appellant, who had the tacit support of the learned counsel representing the Government of National Capital Territory of Delhi, New Delhi Municipal Council and the Delhi Development Authority, argued that the impugned order is liable to be set aside because by entertaining the writ petition filed by respondent No.1 in the name of public interest litigation and passing orders dated 20.8.2008 and 21.4.2009, the High Court transgressed the limits of its jurisdiction under Article 226 of the Constitution and usurped the legislative power of the State. Learned counsel referred to the directions contained in the two orders and argued that

the High Court does not have the jurisdiction to directly or indirectly alter the terms of agreement entered into between the appellant and the contractor – M/s. AARSELF Michigan-JV. Learned counsel further argued that the High Court committed serious error by directing the appellant to pay compensation to the family of the worker ignoring that he was employed by M/s. AARSELF Michigan-JV to whom the contract for rehabilitation of sewer in the zoo area had been awarded. Learned counsel emphasized that as per the terms of the agreement, it was the duty of the contractor to provide safety equipments to the workers engaged in sewage operations and the appellant cannot be made liable for the negligence, if any, of the contractor. Learned counsel then referred to affidavit dated 18.4.2009 filed by the contractor to show that necessary safety equipments were put in place and argued that the appellant and other public authorities cannot be held liable for the accidental deaths. Learned counsel lastly argued that even if the High Court felt that it was the responsibility of the appellant and other public authorities to compensate the victims of accident, there was no occasion for directing issue of notice to the higher functionaries of the appellant and the Delhi Development Authority to show cause against the proposed initiation of proceedings under the Contempt of Courts Act, 1971 (for short, 'the 1971 Act') on the ground of alleged violation of the

directions contained in order dated 20.8.2008.

11. Shri Colin Gonsalves, learned senior counsel appearing for respondent No.1 supported the impugned order and the directions given by the High Court for ensuring safety of the persons employed by or through the appellant and other State agencies for doing hazardous work by asserting that they cannot be absolved of their liability to compensate the victims of accidents merely because the work of laying and maintaining the sewage system has been outsourced. Learned senior counsel submitted that the appellant is really not aggrieved by the direction given for payment of compensation, but is bothered by the notice issued to its Chief Executive Officer for initiation of proceedings under the 1971 Act. He submitted that this Court should not entertain the appellant's grievance against such directions because the concerned functionary can show to the High Court that he has not committed contempt within the meaning of Section 2(b) of the 1971 Act.

12. In the light of the arguments made by the learned counsel, the following three questions arise for our consideration:

(1) Whether the High Court was justified in entertaining the writ petition filed by respondent No.1 by way of public interest litigation

for compelling the respondents to take effective measures for safety of sewage workers and ordering payment of compensation to the families of the victims of accidents taking place during sewage operations,

(2) Whether the directions given by the High Court amount to usurpation of the legislative power of the State, and

(3) Whether the High Court was entitled to issue interim direction for payment of compensation to the families of deceased workers.

Re: Question No.1:

13. At the threshold, we deem it necessary to erase the impression and misgivings of some people that by entertaining petitions filed by social action groups/activists/workers and NGOs for espousing the cause of those who, on account of poverty, illiteracy and/or ignorance and similar other handicaps, cannot seek protection and vindication of their constitutional and/or legal rights and silently suffer due to actions and/or omissions of the State apparatus and/or agencies/instrumentalities of the State or even private individuals, the superior Courts exceed the unwritten boundaries of their jurisdictions. When the Constitution of India was adopted, the people of this country resolved to constitute India into a Sovereign Democratic Republic.

They also resolved to secure to all its citizens justice, social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and of opportunity; and to promote among them all fraternity assuring the dignity of the individual and the unity and integrity of the nation.

14. For achieving the goals set out in the preamble, the framers of the Constitution identified and recognized certain basic rights of the citizens and individuals and pooled them in Part III, which has the title `Fundamental Rights' and simultaneously incorporated Directive Principles of State Policy which, though not enforceable by any Court are fundamental in governance of the country and the State is under obligation to comply with the principles embodied in Part-IV in making laws. Article 38, which was renumbered as Clause (1) thereof by the Constitution (Forty-fourth Amendment) Act, 1978 declares that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. Clause (2) of this Article, which was inserted by the same Amending Act declares that State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals, but also amongst

groups of people residing in different areas or engaged in different vocations. Article 39(e) mandates that the State shall, in particular, direct its policy towards securing that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. Article 39A which was inserted by the Constitution (Forty-second Amendment) Act, 1976 lays down that the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Article 42 enjoins the State to make provision for securing just and humane conditions of work and for maternity relief.

15. In last 63 years, Parliament and State Legislatures have enacted several laws for achieving the goals set out in the preamble but their implementation has been extremely inadequate and tardy and benefit of welfare measures enshrined in those legislations has not reached millions of poor, downtrodden and disadvantaged sections of the society and the efforts to bridge the gap between the haves and have-nots have not yield the desired

result. The most unfortunate part of the scenario is that whenever one of the three constituents of the State i.e., judiciary, has issued directions for ensuring that the right to equality, life and liberty no longer remains illusory for those who suffer from the handicaps of poverty, illiteracy and ignorance and directions are given for implementation of the laws enacted by the legislature for the benefit of the have-nots, a theoretical debate is started by raising the bogey of judicial activism or judicial overreach and the orders issued for benefit of the weaker sections of the society are invariably subjected to challenge in the higher Courts. In large number of cases, the sole object of this litigative exercise is to tire out those who genuinely espouse the cause of the weak and poor.

16. This Court has time and again emphasized the importance of the petitions filed *pro bono publico* for protection of the rights of less fortunate and vulnerable sections of the society. In **People's Union for Democratic Rights v. Union of India** (1982) 3 SCC 235, this Court said:

> "We wish to point out with all the emphasis at our command that public interest litigation which is a strategic arm of the legal aid movement and which is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity, is a totally different kind of litigation from the ordinary traditional litigation which is essentially of an adversary character where there is a dispute between two litigating parties, one making claim or seeking

relief against the other and that other opposing such claim or resisting such relief. Public interest litigation is brought before the court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but it is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of large numbers of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unredressed. That would be destructive of the rule of law which forms one of the essential elements of public interest in any democratic form of Government. The rule of law does not mean that the protection of the law must be available only to a fortunate few or that the law should be allowed to be prostituted by the vested interests for protecting and upholding the status quo under the guise of enforcement of their civil and political rights. The poor too have civil and political rights and the rule of law is meant for them also, though today it exists only on paper and not in reality. If the sugar barons and the alcohol kings have the fundamental right to carry on their business and to fatten their purses by exploiting the consuming public, have the *chamars* belonging to the lowest strata of society no fundamental right to earn an honest living through their sweat and toil? The former can approach the courts with a formidable army of distinguished lawyers paid in four or five figures per day and if their right to exploit is upheld against the Government under the label of fundamental right, the courts are praised for their boldness and courage and their independence and fearlessness are applauded and acclaimed. But, if the fundamental right of the poor and helpless victims of injustice is sought to be enforced by public interest litigation, the so-called champions of human rights frown upon it as waste of time of the highest court in the land, which, according to them, should not engage itself in such small and trifling matters. Moreover, these self-styled human rights activists forget that civil and political rights, priceless and invaluable as they are for freedom and democracy, simply do not exist for the vast masses of our people. Large numbers of men, women and children who constitute the bulk of our population are today living a sub-human existence in conditions of abject poverty; utter grinding poverty has broken their back and sapped their moral fibre.

They have no faith in the existing social and economic system.

Public interest litigation, as we conceive it, is essentially a cooperative or collaborative effort on the part of the petitioner, the State or public authority and the court to secure observance of the constitutional or legal rights, benefits and privileges conferred upon the vulnerable sections of the community and to reach social justice to them. The State or public authority against whom public interest litigation is brought should be as much interested in ensuring basic human rights, constitutional as well as legal, to those who are in a socially and economically disadvantaged position, as the petitioner who brings the public interest litigation before the court. The State or public authority which is arrayed as a respondent in public interest litigation should, in fact, welcome it, as it would give it an opportunity to right a wrong or to redress an injustice done to the poor and weaker sections of the community whose welfare is and must be the prime concern of the State or the public authority.

There is a misconception in the minds of some lawyers, journalists and men in public life that public interest litigation is unnecessarily cluttering up the files of the court and adding to the already staggering arrears of cases which are pending for long years and it should not therefore be encouraged by the court. This is, to our mind, a totally perverse view smacking of elitist and status quoist approach. Those who are decrying public interest litigation do not seem to realise that courts are not meant only for the rich and the well-to-do, for the landlord and the gentry, for the business magnate and the industrial tycoon, but they exist also for the poor and the down-trodden, the have-nots and the handicapped and the half-hungry millions of our countrymen. So far the courts have been used only for the purpose of vindicating the rights of the wealthy and the affluent. It is only these privileged classes which have been able to approach the courts for protecting their vested interests. It is only the moneyed who have so far had the golden key to unlock the doors of justice. ……No State has a right to tell its citizens that because a large number of cases of the rich and the well-to-do are pending in our courts, we will not help the poor

> to come to the courts for seeking justice until the staggering load of cases of people who can afford, is disposed of. The time has now come when the courts must become the courts for the poor and struggling masses of this country. They must shed their character as upholders of the established order and the status quo. They must be sensitised to the need of doing justice to the large masses of people to whom justice has been denied by a cruel and heartless society for generations. The realisation must come to them that social justice is the signature tune of our Constitution and it is their solemn duty under the Constitution to enforce the basic human rights of the poor and vulnerable sections of the community and actively help in the realisation of the constitutional goals."
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> (emphasis supplied)

17. In **Hussainara Khatoon (IV) v. State of Bihar** (1980) 1 SCC 98, P.N. Bhagwati, J. (as he then was) observed:

> "..... Today, unfortunately, in our country the poor are priced out of the judicial system with the result that they are losing faith in the capacity of our legal system to bring about changes in their life conditions and to deliver justice to them. The poor in their contact with the legal system have always been on the wrong side of the line. They have always come across 'law for the poor' rather than 'law of the poor'. The law is regarded by them as something mysterious and forbidding—always taking something away from them and not as a positive and constructive social device for changing the social economic order and improving their life conditions by conferring rights and benefits on them. The result is that the legal system has lost its credibility for the weaker sections of the community."

18. In **Municipal Council, Ratlam v. Vardhichan** (1980) 4 SCC 162, Krishna Iyer, J. said:

> "… The truth is that a few profound issues of processual jurisprudence of great strategic significance to our legal system face us and we must zero-in on them as they involve problems of access to justice for the people beyond the blinkered rules of 'standing' of British-Indian vintage. If the centre of gravity of justice is to shift, as the Preamble to the Constitution mandates, from the traditional individualism of locus standi to the community orientation of public interest litigation, these issues must be considered.…
>
> xxx xxx xxx
>
> . … Why drive common people to public interest action? Where directive principles have found statutory expression in do's and don'ts the court will not sit idly by and allow municipal government to become a statutory mockery. The law will relentlessly be enforced and the plea of poor finance will be poor alibi when people in misery cry for justice."

19. In **State of Uttaranchal v. Balwant Singh Chaufal** (2010) 3 SCC 402), this Court examined various facets of public interest litigation in the backdrop of criticism from within and outside the system. Dalveer Bhandari, J. made lucid analysis of the concept and development of public interest litigation in the following three phases:

> "Phase I.—It deals with cases of this Court where directions and orders were passed primarily to protect fundamental rights under Article 21 of the marginalised groups and sections of the society who because of extreme poverty, illiteracy and ignorance cannot approach this Court or the High Courts.
>
> Phase II.—It deals with the cases relating to protection, preservation of ecology, environment, forests, marine life, wildlife, mountains, rivers, historical monuments, etc. etc.

> Phase III.—It deals with the directions issued by the Courts in maintaining the probity, transparency and integrity in governance."

While dealing with the first phase of development, the Court referred to large number of precedents and recorded its conclusion in the following words:

> **"**We would not like to overburden the judgment by multiplying these cases, but a brief resume of these cases demonstrates that in order to preserve and protect the fundamental rights of marginalised, deprived and poor sections of the society, the courts relaxed the traditional rule of *locus standi* and broadened the definition of aggrieved persons and gave directions and orders. We would like to term cases of this period where the Court relaxed the rule of *locus standi* as the first phase of the public interest litigation. The Supreme Court and the High Courts earned great respect and acquired great credibility in the eyes of public because of their innovative efforts to protect and preserve the fundamental rights of people belonging to the poor and marginalised sections of the society."

20. These judgments are complete answer to the appellant's objection to the maintainability of the writ petition filed by respondent No.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. 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 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. 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 No.1.

Re: Question No.2:

21. There have been instances in which this Court has exercised its power under Article 32 read with Article 142 and issued guidelines and directions to fill the vacuum. **Vishaka v. State of Rajasthan** (1997) 6 SCC 241, **Vineet Narain v. Union of India** (1998) 1 SCC 226 and **Union of India v.**

Association for Democratic Reforms (2002) 5 SCC 294 are illuminating examples of the exercise of this Court's power under Article 32 for ensuring justice to the common man and effective exercise of fundamental rights by the citizens. In **Vishaka v. State of Rajasthan** (supra), the Court entertained the petition filed by certain social activists and NGOs for effective protection of fundamental rights of working women under Articles 14, 19 and 21. In paragraph 11 of the judgment, the Court made a note of its obligation under Article 32 of the Constitution in the following words:

> "11. The obligation of this Court under Article 32 of the Constitution for the enforcement of these fundamental rights in the absence of legislation must be viewed along with the role of judiciary envisaged in the Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA region. These principles were accepted by the Chief Justices of Asia and the Pacific at Beijing in 1995 as those representing the minimum standards necessary to be observed in order to maintain the independence and effective functioning of the judiciary. The objectives of the judiciary mentioned in the Beijing Statement are:
>
> "Objectives of the Judiciary:
>
> 10. The objectives and functions of the Judiciary include the following:
>
> (a) to ensure that all persons are able to live securely under the rule of law;
>
> (b) to promote, within the proper limits of the judicial function, the observance and the attainment of human rights; and
>
> (c) to administer the law impartially among persons and between persons and the State."

22. In **Vineet Narain v. Union of India** (supra), the Court observed:

> "The powers conferred on this Court by the Constitution are ample to remedy this defect and to ensure enforcement of the concept of equality.
>
> There are ample powers conferred by Article 32 read with Article 142 to make orders which have the effect of law by virtue of Article 141 and there is mandate to all authorities to act in aid of the orders of this Court as provided in Article 144 of the Constitution. In a catena of decisions of this Court, this power has been recognised and exercised, if need be, by issuing necessary directions to fill the vacuum till such time the legislature steps in to cover the gap or the executive discharges its role."
>
> (emphasis supplied)

23. In **Union of India v. Association for Democratic Reforms** (supra), this Court was called upon to examine the correctness of the directions given by the Division Bench of Delhi High Court for implementation of the recommendations made by the Law Commission in its 170th Report. While modifying the directions given by the High Court, the Court observed:

> "45. Finally, in our view this Court would have ample power to direct the Commission to fill the void, in the absence of suitable legislation covering the field and the voters are required to be well informed and educated about contesting candidates so that they can elect a proper candidate by their own assessment. It is the duty of the executive to fill the vacuum by executive orders because its field is coterminous with that of the legislature, and where there is inaction by the executive, for whatever reason, the judiciary must step in, in exercise of its constitutional

> obligations to provide a solution till such time the legislature acts to perform its role by enacting proper legislation to cover the field. The adverse impact of lack of probity in public life leading to a high degree of corruption is manifold. Therefore, if the candidate is directed to declare his/her spouse's and dependants' assets —immovable, movable and valuable articles — it would have its own effect. This Court in Vishaka v. State of Rajasthan dealt with the incident of sexual harassment of a woman at work place which resulted in violation of fundamental right of gender equality and the right to life and liberty and laid down that in the absence of legislation, it must be viewed along with the role of the judiciary envisaged in the Beijing Statement of Principles of Independence of Judiciary in the LAWASIA region. The decision has laid down the guidelines and prescribed the norms to be strictly observed in all work places until suitable legislation is enacted to occupy the field. In the present case also, there is no legislation or rules providing for giving necessary information to the voters. As stated earlier, this case was relied upon in Vineet Narain case where the Court has issued necessary guidelines to CBI and the Central Vigilance Commission (CVC) as there was no legislation covering the said field to ensure proper implementation of the rule of law."

24. In view of the principles laid down in the aforesaid judgments, we do not have any 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. 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 No.1.

Re: Question No.3:

25. We shall now consider whether the High Court was justified in issuing interim directions for payment of compensation to the families of the victims. At the outset, we deprecate the attitude of a public authority like the appellant, who has used the judicial process for frustrating the effort made by respondent No.1 for getting compensation to the workers, who died due to negligence of the contractor to whom the work of maintaining sewage system was outsourced. We also express our dismay that the High Court has thought it proper to direct payment of a paltry amount of Rs.1.5 to 2.25 lakhs to the families of the victims. **Rudul Sah v. State of Bihar** (1983) 4

SCC 141 is the lead case in which the Court exercised its power under Article 32 for compensating a person who was unlawfully detained for 14 years. Paragraphs 9 and 10 of the judgment, which contain the reasons for making a departure from the old and antiquated rule that a person, who has suffered due to the negligence of a public authority, can claim damages by filing suit, are extracted below:

> "9. It is true that Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes of courts, civil and criminal. A money claim has therefore to be agitated in and adjudicated upon in a suit instituted in a Court of lowest grade competent to try it. But the important question for our consideration is whether in the exercise of its jurisdiction under Article 32, this Court can pass an order for the payment of money if such an order is in the nature of compensation consequential upon the deprivation of a fundamental right…… ……...
>
> 10. We cannot resist this argument. We see no effective answer to it save the stale and sterile objection that the petitioner may, if so advised, file a suit to recover damages from the State Government. Happily, the State's counsel has not raised that objection. The petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial, in the sense that a civil court may or may not have upheld his claim. But we have no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in his favour. In these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which

> guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this country as it has perished in some others too well known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers."

26. In **Nilabati Behera v. State of Orissa** (1993) 2 SCC 746, this Court awarded compensation to the mother of a young man who was beaten to death in police custody. The Court held that its powers to enforce fundamental rights carries with it an obligation to forge new tools for doing justice. In **Paschim Banga Khet Mazdoor Samity v. State of W.B.** (1996) 4 SCC 37, this Court examined the issue whether a victim of apathy of the staff of government hospital is entitled to compensation and answered the same in the following words:

> "The Constitution envisages the establishment of a welfare State at the federal level as well as at the State level. In a

welfare State the primary duty of the Government is to secure the welfare of the people. Providing adequate medical facilities for the people is an essential part of the obligations undertaken by the Government in a welfare State. The Government discharges this obligation by running hospitals and health centres which provide medical care to the person seeking to avail of those facilities. Article 21 imposes an obligation on the State to safeguard the right to life of every person. Preservation of human life is thus of paramount importance. The government hospitals run by the State and the medical officers employed therein are duty-bound to extend medical assistance for preserving human life. Failure on the part of a government hospital to provide timely medical treatment to a person in need of such treatment results in violation of his right to life guaranteed under Article 21. In the present case there was breach of the said right of Hakim Seikh guaranteed under Article 21 when he was denied treatment at the various government hospitals which were approached even though his condition was very serious at that time and he was in need of immediate medical attention. Since the said denial of the right of Hakim Seikh guaranteed under Article 21 was by officers of the State, in hospitals run by the State, the State cannot avoid its responsibility for such denial of the constitutional right of Hakim Seikh. In respect of deprivation of the constitutional rights guaranteed under Part III of the Constitution the position is well settled that adequate compensation can be awarded by the court for such violation by way of redress in proceedings under Articles 32 and 226 of the Constitution. (See: Rudul Sah v. State of Bihar; Nilabati Behera v. State of Orissa; Consumer Education and Research Centre v. Union of India.) Hakim Seikh should, therefore, be suitably compensated for the breach of his right guaranteed under Article 21 of the Constitution. Having regard to the facts and circumstances of the case, we fix the amount of such compensation at Rs 25,000. A sum of Rs 15,000 was directed to be paid to Hakim Seikh as interim compensation under the orders of this Court dated 22-4-1994. The balance amount should be paid by Respondent 1 to Hakim Seikh within one month.

> It is no doubt true that financial resources are needed for providing these facilities. But at the same time it cannot be ignored that it is the constitutional obligation of the State to provide adequate medical services to the people. Whatever is necessary for this purpose has to be done. In the context of the constitutional obligation to provide free legal aid to a poor accused this Court has held that the State cannot avoid its constitutional obligation in that regard on account of financial constraints. [See: Khatri (II) v. State of Bihar, SCC at p. 631.] The said observations would apply with equal, if not greater, force in the matter of discharge of constitutional obligation of the State to provide medical aid to preserve human life. In the matter of allocation of funds for medical services the said constitutional obligation of the State has to be kept in view. It is necessary that a time-bound plan for providing these services should be chalked out keeping in view the recommendations of the Committee as well as the requirements for ensuring availability of proper medical services in this regard as indicated by us and steps should be taken to implement the same. The State of West Bengal alone is a party to these proceedings. Other States, though not parties, should also take necessary steps in the light of the recommendations made by the Committee, the directions contained in the memorandum of the Government of West Bengal dated 22-8-1995 and the further directions given herein."

27. In **Chairman, Railway Board v. Chandrima Das** (2000) 2 SCC 465, this Court considered the question whether the High Court could entertain the petition filed by the respondent by way of Public Interest Litigation and award compensation of Rs.10 lakhs to Hanuffa Khatoon, a national of Bangladesh, who was sexually assaulted by the employees of Eastern Railway. While rejecting the argument of the appellant that the victim of rape could have availed remedy by filing suit in a Civil Court, the two-Judge

Bench referred to the distinction made between "public law" and "private law" in **Common Cause, A Registered Society v. Union of India** (1999) 6 SCC 667 and other cases in which compensation was awarded for violation of different rights and observed:

> "Having regard to what has been stated above, the contention that Smt Hanuffa Khatoon should have approached the civil court for damages and the matter should not have been considered in a petition under Article 226 of the Constitution, cannot be accepted. Where public functionaries are involved and the matter relates to the violation of fundamental rights or the enforcement of public duties, the remedy would still be available under the public law notwithstanding that a suit could be filed for damages under private law."

The Court then referred to the fundamental rights guaranteed under Articles 20 and 21 of the Constitution and proceeded to observe:

> "The word "LIFE" has also been used prominently in the Universal Declaration of Human Rights, 1948. (See Article 3 quoted above.) The fundamental rights under the Constitution are almost in consonance with the rights contained in the Universal Declaration of Human Rights as also the Declaration and the Covenants of Civil and Political Rights and the Covenants of Economic, Social and Cultural Rights, to which India is a party having ratified them, as set out by this Court in Kubic Darusz v. Union of India. That being so, since "LIFE" is also recognised as a basic human right in the Universal Declaration of Human Rights, 1948, it has to have the same meaning and interpretation as has been placed on that word by this Court in its various decisions relating to Article 21 of the Constitution. The meaning of the word "life" cannot be narrowed down. According to the tenor of the language used in

> Article 21, it will be available not only to every citizen of this country, but also to a "person" who may not be a citizen of the country.
>
> Let us now consider the meaning of the word "LIFE" interpreted by this Court from time to time. In Kharak Singh v. State of U.P. it was held that the term "life" indicates something more than mere animal existence. (See also State of Maharashtra v. Chandrabhan Tale.) The inhibitions contained in Article 21 against its deprivation extend even to those faculties by which life is enjoyed. In Bandhua Mukti Morcha v. Union of India it was held that the right to life under Article 21 means the right to live with dignity, free from exploitation. (See also Maneka Gandhi v. Union of India and Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni.)
>
> On this principle, even those who are not citizens of this country and come here merely as tourists or in any other capacity will be entitled to the protection of their lives in accordance with the constitutional provisions. They also have a right to "life" in this country. Thus, they also have the right to live, so long as they are here, with human dignity. Just as the State is under an obligation to protect the life of every citizen in this country, so also the State is under an obligation to protect the life of the persons who are not citizens."

The question whether the Central Government can be held vicariously liable for the offence of rape committed by the employees of the Railways was answered in negative by relying upon the judgments in **State of Rajasthan v. Vidhyawati** AIR 1962 SC 933, **State of Gujarat v. Memon Mahomed Haji Hasam** AIR 1967 SC 1885, **Basavva Kom Dyamangouda Patil v. State of Mysore** (1977) 4 SCC 358, **N. Nagendra Rao and**

Company v. State of A.P. (1994) 6 SCC 205 and **State of Maharasthra v. Kanchanmala Vijaysing Shirke** (1995) 5 SCC 659.

28. In **M.S. Grewal v. Deep Chand Sood** (2001) 8 SCC 151, this Court examined the question whether the High Court of Himachal Pradesh was justified in entertaining the writ petition filed by the parents of 14 children, who died due to drowning in a river when they were on picnic organised by the school authorities. While rejecting the objection to the maintainability of the writ petition, the Court referred to **Rudul Sah v. State of Bihar** (supra), **Nilabati Behera v. State of Orissa** (supra) and **D.K. Basu v. State of W.B.** (1997) 1 SCC 416 and observed:

> "Next is the issue "maintainability of the writ petition" before the High Court under Article 226 of the Constitution. The appellants though initially very strongly contended that while the negligence aspect has been dealt with under penal law already, the claim for compensation cannot but be left to be adjudicated by the civil law and thus the civil court's jurisdiction ought to have been invoked rather than by way of a writ petition under Article 226 of the Constitution. This plea of non-maintainability of the writ petition though advanced at the initial stage of the submissions but subsequently the same was not pressed and as such we need not detain ourselves on that score, excepting however recording that the law courts exist for the society and they have an obligation to meet the social aspirations of citizens since law courts must also respond to the needs of the people. In this context, reference may be made to two decisions of this Court: the first in line is the decision in Nilabati Behera v. State of Orissa wherein this Court relying upon the decision in Rudul Sah (Rudul Sah v. State of Bihar)

> decried the illegality and impropriety in awarding compensation in a proceeding in which the court's power under Articles 32 and 226 of the Constitution stands invoked and thus observed that it was a clear case for award of compensation to the petitioner for custodial death of her son. It is undoubtedly true, however, that in the present context, there is no infringement of the State's obligation, unless of course the State can also be termed to be a joint tortfeasor, but since the case of the parties stands restricted and without imparting any liability on the State, we do not deem it expedient to deal with the issue any further except noting the two decisions of this Court as above and without expression of any opinion in regard thereto."

On the question of quantum of damages, the Court made the following observations:

> "Be it placed on record that in assessing damages, all relevant materials should and ought always to be placed before the court so as to enable the court to come to a conclusion in the matter of affectation of pecuniary benefit by reason of the unfortunate death. Though mathematical nicety is not required but a rough and ready estimate can be had from the records claiming damages since award of damages cannot be had without any material evidence: whereas one party is to be compensated, the other party is to compensate and as such there must always be some materials available therefor. It is not a fanciful item of compensation but it is on legitimate expectation of loss of pecuniary benefits. In Grand Trunk Rly. Co. of Canada v. Jennings this well-accepted principle stands reiterated as below:
>
> > "In assessing the damages, all circumstances which may be legitimately pleaded in diminution of the damages must be considered. It is not a mere guesswork neither is it the resultant effect of a compassionate attitude."
>
> As noticed above, a large number of decisions were placed before this Court as regards the quantum of compensation varying between 50,000 to one lakh in regard to the unfortunate

> deaths of the young children. We do deem it fit to record that while judicial precedents undoubtedly have some relevance as regards the principles of law, but the quantum of assessment stands dependent on the fact situation of the matter before the court, than judicial precedents. As regards the quantum, no decision as such can be taken to be of binding precedent as such, since each case has to be dealt with on its own peculiar facts and thus compensation is also to be assessed on the basis thereof, though however, the same can act as a guide: placement in the society, financial status differs from person to person and as such assessment would also differ. The whole issue is to be judged on the basis of the fact situation of the matter concerned though however, not on mathematical nicety."

29. Reference also deserves to be made to **MCD** v. **Assn. of Victims of Uphaar Tragedy and others (2005) 9 SCC 586** whereby this Court entertained the appeal filed against the order passed by the Delhi High Court for payment of compensation to the families of those who died in Uphaar tragedy and directed the appellants to deposit Rs.3,01,40,000/- with a further direction that 50% of the amount shall be available for distribution to the claimants.

30. In view of the law laid down in the afore-mentioned 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 **Chairman, Railway**

Board v. Chandrima Das (supra) 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 lacs in 1998 to the victim of rape as also increase in the cost of living and done well to award compensation of atleast Rs.5 lacs to the families of those who died due to negligence of the public authority like the appellant who did not take effective measures for ensuring safety of the sewage workers. We may have remitted the case to the High Court for passing appropriate order for payment of enhanced compensation but keeping in view the fact that further delay would add to the miseries of the family of the victim, we deem it proper to exercise power under Article 142 of the Constitution and direct the appellant to pay a sum of Rs.3.29 lakhs to the family of the victim through Delhi High Court State Legal Services Committee. This would be in addition to Rs.1.71 lakhs already paid by the contractor.

31. In the result, the appeal is dismissed subject to the aforesaid direction regarding the amount of compensation to be paid by the appellant. It is needless to say that the appellant shall be entitled to recover the additional

amount from the contractor. Respondent No.1 shall also be entitled to file appropriate application before the High Court for payment of enhanced compensation to the families of other victims and we have no doubt that the High Court will entertain such request.

32. With a view to obviate further delay in implementation of the directions contained in the first order passed by the High Court on 20.8.2008, we direct the appellant to ensure compliance of clauses (a), (b), (d), (e), (f), (g), (i), (k), (m) and (n) within a period of two months from today and submit a report to the High Court. The appellant shall also ensure that these directions are complied with by the contractors engaged by it for execution of work relating to laying and maintenance of sewer system within the area of its jurisdiction. A report to this effect be also submitted to the High Court within two months. Additionally, we direct that in future the appellant shall ensure that the directions already given by the High Court and which may be given hereafter are made part of all agreements which may be executed with contractors/private enterprises for doing work relating to sewage system.

33. The directions contained in the preceding paragraph do not imply that the appellant and other agencies/instrumentalities of the State like New Delhi Municipal Council, Municipal Corporation of Delhi, Delhi State

Industrial Development Corporation are not required to comply with the directions given by the High Court. Rather, they too shall have to submit similar reports.

34. As regards the other clauses of paragraph 9 of order dated 20.8.2008, the High Court may give necessary directions so that they are complied with and implemented by the State and its agencies/instrumentalities without any delay.

35. The case be listed before the Division Bench of the High Court in the third week of September, 2011 for further orders.

…..…..…….……J.
[G.S. Singhvi]

…..…..……..…..……..J.
[Asok Kumar Ganguly]

New Delhi
July 12, 2011.