

**IN THE HIGH COURT OF KARNATAKA**

**KALABURAGI BENCH**

**DATED THIS THE 14<sup>TH</sup> DAY OF JUNE 2016**

**PRESENT**

**THE HON'BLE MR.JUSTICE ANAND BYRAREDDY**

**AND**

**THE HON'BLE MR.JUSTICE RAGHVENDRA S. CHAUHAN**

**WRIT APPEAL Nos.200391 & 200393/2015 (S-RES)**

**C/w. WRIT APPEAL Nos.200384-385/2015 (S-RES)**

**WA.Nos.200391 & 200393/2015 :**

**BETWEEN:**

1. The State of Karnataka  
Represented by the Chief Secretary  
Government of Karnataka  
Vidhana Soudha  
Bengaluru -- 560 001.
2. The Principal Secretary  
Urban Development Department  
Government of Karnataka  
Vikasa Soudha  
Bengaluru - 560 001.
3. The Director  
Directorate of Municipal Administration  
9<sup>th</sup> Floor & 10<sup>th</sup> Floor

Vishweshwaraiah Tower  
Dr. Ambedkar Veedhi  
Bengaluru – 560 001.

4. The Deputy Commissioner  
Raichur District  
Raichur – 584 101. ... Appellants

(By Sri R.V. Nadagouda, AAG)

AND:

1. Smt Ramadevi  
W/o Late M. Venkatesha  
Aged about 26 years  
Occ: Housewife  
R/o H.No. 1-4-27, Ashapur Road  
Station Area, Raichur District  
Raichur – 584 101.
2. The Raichur City Municipal Council  
Represented by its Commissioner  
Near Head post office  
Raichur Taluk  
Raichur District  
Raichur – 584 101.
3. The Asst. Executive Engineer  
The Raichur City Municipal Council  
Near Head post office  
Raichur Taluk, Raichur District  
Raichur – 584 101. ... Respondents

(By Sri Jambayya Swami Hiremath, Adv. for R1  
Sri Gourish S Khashampur, Adv. for R2 & R3)

These Writ Appeals are filed under Section 4 of the Karnataka High Court Act, prayed to allow the Writ Appeal and set aside the impugned order, dated 5.6.2015 passed by the learned Single Judge of this Hon'ble Court in Writ Petition Nos. 201021-022 of 2015 (S-RES).

**WA.Nos.200384-385/2015 :**

**BETWEEN:**

1. The Raichur City Municipal Council  
Represented by its Commissioner  
Near Head Post Office  
Tq & Dist. Raichur  
Raichur.
2. The Asst. Executive Engineer  
The Raichur City Municipal Council  
Near Head Post Office  
Tq & Dist. Raichur  
Raichur. ... Appellants

(By Sri Gourish S Khashampur, Adv.)

**AND:**

1. Smt Ramadevi  
W/o Late M. Venkatesha  
Occ: Housewife  
R/o H.No. 1-4-27, Ashapur Road  
Station Area, Raichur, Dist: Raichur  
Raichur.

2. The State of Karnataka  
Represented by the Chief Secretary  
Government of Karnataka  
Vidhana Soudha  
Bangalore. Bengaluru City.
3. The Principal Secretary  
Urban Development Department  
Government of Karnataka  
Vikasa Soudha  
Bangalore, Bengaluru City.
4. The Director  
Directorate of Municipal Administration  
9<sup>th</sup> Floor & 10<sup>th</sup> Floor  
Vishveshwaraiah Tower  
Dr. Ambedkar Veedhi  
Bangalore, Bengaluru City.
5. The Deputy Commissioner  
Raichur District, Raichur  
Raichur. ... Respondents

(By Sri R.V. Nadagouda, AAG for R-2 to 5)

These Writ Appeals are filed under Section 4 of the Karnataka High Court Act praying to set aside the order passed in Writ Petition No.201021-022 of 2015 dated 05.06.2015 and consequently dismiss the writ petition.

These Appeals are coming on for Orders this day, *Raghvendra S. Chauhan, J.*, delivered the following :

### JUDGMENT

Both the State of Karnataka, and the Raichur City Municipal Council have filed separate Appeals, namely Writ Appeal Nos.200391 & 200393/2015, and Writ Appeal Nos.200384-385/2015, challenging the order dated 5.6.2015, passed by the learned Single judge of this Court in the case of *Smt.Ramadevi v. The State of Karnataka and others*. By the impugned order, the learned single Judge has not only directed the City Municipal Council to give both compassionate appointment to the petitioner, Smt.Ramadevi, as a group-D employee, and to pay a compensation of Rs.10 lakhs to her. More importantly, the learned Single Judge has proceeded further and issued general directions to the State of Karnataka to regularise all the daily wage sweepers, scavengers or *poura karmikas* either working on out-source, or through contractors, within three months from the date of receipt of copy of the order. Furthermore, the learned Single Judge has directed the Commissioners of certain cities to regularise all the daily wage

sweepers, scavengers or *poura karmikas* working under them, and to pay compensation of Rs.10 lakhs, and to provide compassionate appointments wherever the death of sweepers, scavengers or *poura karmikas* take place while in service.

2. The facts are being taken from the Writ Appeal Nos.200391 & 200393/2015 mentioned above. The petitioner-respondent, Smt.Ramadevi, claimed that her husband, Mr.Venkatesh, was working as a daily wage underground and open-drainage cleaner (Scavenger) in the office of the City Municipal Council, Raichur. On 28.4.2013, he was deputed to work at the Bangareppa Tank Distributor canal Nos.94, 95 and 96. During the course of his work, he died by drowning in the canal. The petitioner and her daughter approached the City Municipal Council, and requested the Council to provide them with compassionate appointment. However, the Council neither provided compassionate appointment, nor granted them any compensation on account of death of Mr.Venkatesh.

Therefore, she filed Writ Petition Nos.201021-022/2015 before this Court. After hearing both the parties, the learned Single Judge issued the directions as aforementioned. Hence these two appeals before this Court.

3. The learned Addl.Advocate General for the State Mr. R. V. Nadagouda, has raised the following pleas before this Court:-

Firstly, the petitioner-respondent had made merely two prayers before the Court that she should be appointed on compassionate ground, and that the compensation of Rs.10 lakhs should be granted to her. However, the petitioner-respondent did not seek any general directions to the State Government. Yet in the operative portion of the impugned order, the learned Single Judge has given certain directions to the State Government for regularising the services of all the daily wage sweepers, scavengers or *poura karmikas* within a period of three months from the date of the order. Thus, the

learned Single Judge has gone beyond the prayers made by the petitioner-respondent.

Secondly, relying on the case of *State of Rajasthan And Others –v- Daya Lal And Others* { (2011) 2 SCC 429} and on the case of *State of Karnataka –v- Umadevi* ( AIR 2006 SC 1806), the learned counsel has pleaded that since the sweepers, scavengers and *poura karmikas* are appointed on daily wage basis, they cannot be regularised. In case, they were to be regularised, it would tantamount to back door entry. Moreover, such directions have financial repercussions. Thus, an opportunity should have been given to the State to plead its cause. Therefore, the learned Single Judge is not justified in issuing the said direction.

4. On the other hand, Mr.Gourish Kashampur, learned counsel for the City Municipal Council has pleaded that the Municipal Council cannot hire anyone belonging to Group-D. Thus, Mr.Venkatesh was not even hired as a scavenger.



Therefore, the directions given by the learned Single Judge are misplaced.

Secondly the Municipal Council is not in a position to give a compassionate appointment to the petitioner as the Municipal Council cannot appoint anyone in Group-D category. However, the learned counsel has frankly conceded that after the direction was issued by the learned Single Judge, the petitioner has been hired on a contractual basis by the contractor and she has been working as a Gardner for the Municipal Council for the last six months.

Lastly, he has contended that the compensation of Rs.10 lakhs is on the higher side; it should be reduced to Rs.5 lakhs.

5. On the other hand, Mr.Jambayya Swami Hiremath, learned counsel for the petitioner-respondent, has raised the following contentions before this Court:-

Firstly, the City Municipal Council has not placed any evidence to show that the petitioner-respondent's husband was not appointed as a Scavenger. Even in the appeal filed before this Court, they have admitted to the fact that the petitioner-respondent's husband was appointed as a Scavenger.

Secondly, in order to ameliorate the conditions of the manual scavengers, the Parliament has enacted Prohibition of Employment As Manual Scavengers and Their Re-habilitation Act, 2013 ('the Act' for short). Section 13 of the Act prescribes the steps that are required to be taken by the State for rehabilitating persons who are identified as manual scavengers by a Municipality. Therefore, according to the learned counsel, the petitioner is entitled to the benefits which would have extended to her under the Act, as her husband was appointed as a scavenger.

Thirdly, relying on the case of *Safai Karamchari Andolan & Others -v- Union of India & Others*, (Writ

*Petition (Civil) No.583/2003, decided on 27.3.2014 by the Hon'ble Supreme Court*), the learned counsel has pleaded that in the said case, the Apex Court has laid down certain guidelines. According to the guidelines, in case of death of a scavenger, the family would be entitled to a compensation of Rs.10 lakhs. Therefore, the compensation awarded by the learned Single Judge is justified as it is in consonance with the guidelines issued by the Apex Court.

Lastly that, according to Section 13 (e) of the Act, an adult member of the family would be entitled to an alternative occupation of a suitable post. Thus, the learned Single Judge was justified in directing the City Municipal Council to appoint the petitioner on a compassionate basis.

6. In rejoinder, the learned counsel for the State has pleaded that while Section 13 of the Act applies to those who are in service, the benefits of the said provision cannot be extended to the family of a deceased employee.

7. Heard the learned counsel for the parties and perused the impugned order.

8. A bare perusal of the writ petition filed by the petitioner-respondent clearly reveals that the petitioner-respondent had merely made two prayers before the Court, namely to grant her compensation of Rs.10 lakhs, and to issue a writ of mandamus, directing the respondent to appoint her on compassionate basis. No prayer was made by the petitioner seeking a general direction to the State Government. Therefore, the learned Single Judge was not justified in going beyond the prayer of the petitioner and in issuing the general directions to the State.

9. Moreover, the learned Single Judge while issuing the directions to the State to regularise all the daily wage sweepers, scavengers or *poura karmikas*, should have considered the fact that such a general direction has financial implications for the

State. Therefore, before passing such a general direction, the stand of the State should have been considered. Moreover, such a general direction is clearly contrary to the decision of the Apex Court in the case of *Umadevi (supra)* and in the case of *Daya Lal and others (supra)*.

10. Therefore, this Court sets aside the general direction issued by the learned Single Judge, directing the State to regularise the services of the daily wage sweepers, scavengers or *poura karmikas* either working outsource or through contractors, within three months from the date of receipt of copy of the order. Moreover, the other general directions issued to the Commissioners of different cities of the State, and directing them to pay a compensation of Rs.10 lakhs and to provide compassionate appointments to the dependents of those sweepers, scavengers or *poura karmikas* who have expired during the course of their duty, is also, hereby, set aside.

11. Although the learned counsel for the City Municipal Council has claimed that the petitioner-respondent's husband was not appointed as a Scavenger, but in their appeal itself, the appellant has admitted to the fact that the petitioner-respondent's husband was, indeed, appointed as a Scavenger. Therefore, the oral plea raised by the learned counsel is contradictory to his own pleadings. Hence, the said plea is unacceptable.

12. Once it is admitted by the Municipal Council that petitioner-respondent's husband was a scavenger, naturally the case would be covered by the Act. Section 13 of the Act is as under :

***“ Section 13. Rehabilitation of persons identified as manual scavengers by a Municipality.-***

*(1) Any person included in the final list of manual scavengers published in pursuance of sub-section (6) of Section 11 or added thereto in pursuance of*

*sub-section (3) of Section 12, shall be rehabilitated in the following manner, namely –*

*(a) he shall be given, within one month,-*

*(i) photo identity card, containing, inter alia, details of all members of his family dependent on him, and*

*(ii) such initial, one time, cash assistance, as may be prescribed;*

*(b) his children shall be entitled to scholarship as per the relevant scheme of the Central Government or the State Government or the local authorities, as the case may be;*

*(c) he shall be allotted a residential plot and financial assistance for house construction, or a ready-built house, with financial assistance, subject to eligibility and willingness of the manual scavenger, and the provisions of the relevant scheme of the Central Government or the State Government or the concerned local authority;*

*(d) he, or at least one adult member of his family, shall be given, subject to eligibility and willingness, training in a livelihood skill, and shall be paid a monthly stipend of not less than*

*three thousand rupees, during the period of such training;*

*(e) he, or at least one adult member of his family, shall be given, subject to eligibility and willingness, subsidy and concessional loan for taking up an alternative occupation on a sustainable basis, in such manner as may be stipulated in the relevant scheme of the Central Government or the State Government or the concerned local authority;*

*(f) he shall be provided such other legal and programmatic assistance, as the Central Government or State Government may notify in this behalf.*

*(2) The District Magistrate of the district concerned shall be responsible for rehabilitation of each manual scavenger in accordance with the provisions of sub-section (1) and the State Government or the District Magistrate concerned may, in addition, assign responsibilities in his behalf to officers subordinate to the District*



*Magistrate and to officers of the concerned Municipality.”*

13. In order to comprehend the scope and ambit of the said provision, it is essential to look at the object with which the Act was enacted. According to the Statement of Objects and Reasons, *“Elimination of dry latrines and manual scavenging and the rehabilitation of manual scavengers in alternate occupations has been an area of high priority for the Government. Despite the concerned efforts made in the past to eliminate the dehumanising practice of manual scavenging, the practice still persists in various parts of the country. Existing laws have not proved adequate in eliminating the twin evils of insanitary latrines and manual scavenging. These evils are inconsistent with the right to live with dignity which is an essence of the Fundamental Rights guaranteed in Part III of the Constitution. Further, there is a related problem of serious health hazard and safety of the workers employed in the manual cleaning of sewers and septic tanks.*

*It is also felt that the existing laws are not stringent enough to eliminate these evil practices. In view of the above, there is a need to make comprehensive and stringent provisions for the prohibition of insanitary latrines and employment of persons as manual scavengers, rehabilitation of manual scavengers and their families and to discontinue the hazardous manual cleaning of sewers and septic tanks by the use of technology and for matters connected therewith.*

*With a view to eliminate manual scavenging and insanitary latrines and to provide for the rehabilitation of manual scavengers, a multi-pronged strategy has been worked out in the provisions of the Bill, which consists of legislative as well as programmatic interventions*

Thus, obviously, the Act is essentially a social beneficial piece of legislation that rushes to the rescue of those who have been financially exploited and socially oppressed. In order to rehabilitate not only the worker, but also his family, Section 13

of the Act, as quoted above, bestows certain rights on the scavengers and his/her family members, and prescribes certain duties to be fulfilled by the State, and especially by the Municipality. Seen in the light of the objective of the Act, Section 13 of the Act is part and parcel of the concept of social and economic justice enshrined in the Constitution of India.

14. Since after the death of the sole bread earner, the family certainly faces financial and social crises, therefore to restrict the ambit and scope of Section 13 to only those scavengers who are alive would be to dilute the beneficial effect and object of the Act. After all, a family needs more rehabilitation after it has lost its sole bread earner. Therefore, ambit and scope of Section 13 of the Act cannot be restricted only to the time period when the scavenger is alive. Most importantly, it needs to be given effect to when the family is in dire state, both financially and socially. With the loss of the sole bread earner, the family can neither be abandoned by the

State, nor be expected to fend for itself out in the cold. Therefore, the beneficial effect of Section 13 of the Act *per force* has to be extended to the families of those scavengers who have died in the course of their duty.

15. As quoted above, Section 13 (e) of the Act clearly states that at least one adult member of the family shall be given an alternative occupation of a suitable post. Keeping in mind Section 13(e) of the Act, the learned Single Judge was certainly justified in directing the City Municipal Council to appoint the petitioner-respondent on compassionate basis. Furthermore, since the petitioner-respondent has already been appointed, although through a contractor, there is no reason for this Court to interfere with this part of the direction issued by the learned Single Judge.

16. Although the learned counsel for the Municipal Council has pleaded that a compensation of Rs.10 lakhs is on the higher side, but, in the case of *Safai Karmachari Andolan*

(*supra*), the Apex Court had directed that in case of death of a scavenger, the family would be entitled to a compensation of Rs.10 lakhs. According to the learned counsel for the petitioner-respondent, the said amount has already been paid by the Municipal Council to the petitioner-respondent. Therefore, even this part of the impugned order does not deserve to be interfered with by this Court.

For the reasons stated above, the appeal filed by the State, namely, Writ Appeal Nos.200391 & 393/2015 are hereby *allowed*; the appeal filed by the City Municipal Council, namely, Writ Appeal Nos.200384-385/2015 are hereby *dismissed*.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

bk/