

## **Chinchurgheria Silicosis Victims Win Compensation Case**

*By Aditi Roy Ghatak*

This is a story of many heroes; many martyrs; and of the villain slain! Almost.

The happy ending – if ever tragic deaths can culminate in joy – saw the Sub-Divisional Officer, Jhargram, District Midnapore, Mr Baidya, hand over compensation cheques worth Rs 17.5 lakhs to 11 survivors of the silicosis-afflicted workers of Surendra Khanij, Village Chinchurgheria – once owned by the Malpanis, Shreekant and Sushil and others – and to the next of kin of the 15 deceased on April 3, 2001. The Malpanis had, during the initial months of legal process in 1995, agreed to pay no more than a princely Rs 1.25 lakhs in all for all the dead and the ailing.

Laid up in their beds for years now, breathless and fevered, on April 3, the ailing seem to have been invested with some dramatic strength. Dressed in their colourful best, they literally pulled themselves up to stand erect for Swati of the social action group, Nagarik Mancha, to click what was certainly an historic photograph.

For the first time ever, unorganized sector workers, afflicted by an occupational disease, had received compensation, after a prolonged battle with the management (indirectly also with an unsympathetic West Bengal bureaucracy and local political leadership) in the Supreme Court of India. It was historic because the battle was started at the grassroots – courtesy, Bijon Sarangi of Quark Science Centre, Jhargram – who drummed up enough support down the line for the non-government social action system to battle out their case in the Supreme Court of India.

The compensation is no great fortune. Mr Justice Kuldip Singh admitted as much in his November 1996 judgment, emphasizing that the compensation was on the "lower side" and could not be held as precedent for other cases. The next of kin of the dead workers received only Rs 1 lakh while the survivors received between Rs 21,000 to Rs 41,000 each. Nevertheless, fate had smiled on them, cynically though, on April 3, 2001, when they were heroes for a day.

Braving the Jhargram Bandh, people from the silicosis-afflicted villages had assembled for the compensation giving ceremony. The beneficiaries had reason to smile for the first time since death hit their village in 1991 preceded by agonizing suffering of the dead and dying. Hope had all but faded as months turned into years even after the Supreme Court ordered a total compensation of Rs 18,05,983. Adept at dilatory moves, the owners had gone on appeals and instigated other bureaucratic delays; adept at legerdemain, they seem to have got away by paying Rs 17,05,930. The petitioners have gone back to the apex court for justice.

On April 3 though, the living heroes smiled; perhaps there was some goodness in the world, as Sankro Hansda, on Death Row for a crime she has not committed, said. Sankro would have died long ago had it not been for the commitment of Lalmohan or of livewire Manju. Latter's sister, Shakuntala Mahato, had succumbed to silicosis, literally choking to death while she and her hapless family looked on. Lalmohan, was a caretaker of the Surendra Khanij on behalf of the owners but played an Oscar-winning role in keeping everyone associated with the legal and medical process on their toes, while ensuring that the enthusiasm of the victims never flagged, arranging for medical attention when things looked bleak.

Equally laudatory was the role of young members of the Jhargram Quark Science Centre, led by the then 40-year old school teacher, Bijon Sarangi, who had the doggedness, dynamism and enthusiasm to shake things up; two forest officers, Mr Aditya Jha and Jagannath Sinha – government servants with souls, who have disappeared from the scene – sensitive enough to report the pathetic state of the Khanij workers' health; young film makers Samit Basu-Mallik, Supriya Sen, Tathagata Banerjee and Jayanta Chakraborty

of Perspective Audiovisuals who on their did everything to screen a soul-touching documentary titled 'Wait Until Death'; the ebullient Mr Raj Kumar Gupta, of Noida, UP, the lawyer who fought like a tiger in the Supreme Court, without pay or publicity; and, of course, Nagarik Mancha, a social action group headquartered in Calcutta, who stuck it through seven years of state government apathy and legal delays engineered by the Malpanis, till compensation was paid for the first time ever, to workers in the unorganized sector, falling prey to an occupational disease.

Arrayed against Mr Raj Kumar Gupta in the Supreme Court over the seven years battle were stalwarts such as Soli Sorabjee, Kapil Sibal, Shanti Bhushan, Pradosh K. Mullik, Shankar Ghosh and many others; stalwarts all. It was left to Mr Gupta to hold fort in New Delhi while constantly guiding, prodding and encouraging Nagarik Mancha to fight. The Mancha came into the picture when the silicosis deaths were brought to its notice thanks to the screening of 'Wait Until Death' by Nandan on 5 June 1994. It persuaded six central trade unions (INTUC, AITUC, HMS, AICCTU, UTUC and UTUC-LS) to join it in its appeal in a letter to the Supreme Court, then hearing the celebrated M C Mehta vs. Union of India case (polluting the Ganges) to widen the purview of its hearing.

The six CTU's and Nagarik Mancha appealed for the court to include in the purview of its current hearing, cases against factories that had caused environmental pollution and loss of health/lives and employment of workers but had avoided consequences of their actions because they had been closed down on environmental grounds. They sought penal action against the guilty, directions from the court for safeguarding the worker's right to a livelihood and for the court "to give directions/orders to safeguard workers' health from occupational disease which is ultimately related to factors creating environmental pollution outside the factory". The appellants also stated that "...environmental pollution outside the unit and occupational diseases inside the unit are perhaps the two sides of the same coin". Essentially, the Mancha had faith in the long arm of the law and its strength and used the support of the courts and the provisions of the pollution control act to their full to take on the vested interests of Surendra Khanij which, though clearly a violator of environmental laws, was getting away after causing death and destruction.

And of course, the hero of the story is Mr Justice Kuldip Singh who had the sensitivity to respond to the collective letter from a little known social action group and six West Bengal trade unions, to accept the letter as a Public Interest Litigation and also direct the West Bengal Pollution Control Board to ask Nagarik Mancha and six CTUs to submit reports on the workers suffering from occupational diseases in West Bengal. Nagarik Mancha sent in its report to the Pollution Control Board on several factories guilty of such violation. The killer Surendra Khanij was one of them.

Mr Biswajit Mukherjee of the West Bengal Pollution Control Board submitted to the court that 20 workmen of Surendra Khanij had succumbed to the occupational disease and another 12 were suffering from it. The Supreme Court then ordered the owners of Surendra Khanij and the Pollution Control Board "through Labour Secretary, to file an affidavits within three weeks". It also directed the Superintendent of Police to extend all help to the Pollution Control Board to comply with the court's orders. The "matter regarding the condition of workers in coal mines, stone-crushing units, textile industries, asbestos handling units, jute industries etc shall be taken up on February 23, 1996".

The ball had been set rolling, down the long and dusty road to justice, when on November 26, 1996, the final order on Writ Petition No 3727 of 1985, November 26, 1996 from Mr Justice Kuldeep Singh and Mr Justice S. P. Kurkudkar, of the Supreme Court of India was read out.

It said: "...A compensation of Rs 1 lakh each (which is still at the lower side) to the heirs of the deceased workmen would meet the ends of justice. We make it clear that the quantum of compensation being awarded in this case shall not be a precedent in other cases because the compensation in such cases should have been much more ...The first installment of Rs 2 lakhs shall be deposited with the Labour Commissioner on January 1, 1997. The monthly installments of Rs 2 lakhs shall be deposited thereafter by

Ist of every month till the total amount is paid. The Labour Commissioner shall proportionately disburse the installment amount among the heirs of the deceased workmen.

We further direct the Labour Commissioner to have those workmen who are suffering from occupational diseases, medically examined within one month of the receipt of the order, so that the extent of the disablement is determined."

Ever since the fateful year of 1986, when the owners of Surendra Khanij, the Malpanis of No 7, Rabindra Sarani (3rd Floor) Kolkata 700 001, brought in "livelihood" to the work-starved villages near Jhargram, Midnapore District of West Bengal, the spectre of death has haunted the villagers. In 1986 though, minds and souls of the local tribals residents, emaciated with poverty since birth, saw in the stone-quarrying operations of Surendra Khanij hopes of life. Never mind that the owners were paying only Rs 12 (against an assured Rs 15) that, in any event, was way lower than the statutory minimum payable in West Bengal.

For Sankro Hansda, a tribal girl from the Chinchurgheria village, the journey from 1986 to April 2001 has been a bewildering and painful experience. Names such as Mr Justice Kuldip Singh or Mr Justice Umesh Chandra Banerjee and Mr Justice G. B. Pattanaik – to whom the petitioners had to go, time and again, even after the Supreme Court had spoken, to obtain justice for these dead and dying tribals – mean very little to her. Yet, she understands the meaning of a bank account with actual money in it. The only fear that plagued her on April 3, was whether she would reach home safely with the banker's cheque. Indeed, she had all but given up hope.

The owners had much to say in their favour, as they denied all charges: "...Medical teams have visited Chinchurgheria in June 1993 and July-August 1993 but have not found any incidence of silicosis. Jhargram Hospital has, at the instance of the medical teams, searched its records for the past seven years and reported that none of the persons alleged to have died or suffering of silicosis had come to it for treatments".

"No complaints were ever made to the Assistant Labour Commissioner about the working conditions at the factory unit or about any incidence of silicosis, nor was any notice received by the company from the Labour Department to this effect".

"The West Bengal Pollution Control Board, while filing its affidavit dated 17.10.1995 did not make any inquiry to the knowledge of or in the presence of, the company, nor was any medical study undertaken or any doctor

consulted. The alleged confirmation by the District Magistrate, Midnapore, is contrary to the report of Medical team sent by him in June 1993 and is totally baseless and devoid of substance..." Events of April 3, 2001, were to bear testimony to whose position was baseless.

Overtaking the joy of Sankro and the other victims on 3 April 2001,

is the significance of this landmark achievement for workers in the unorganised sector in India. Says the

Silicosis is a dust-related occupational disease of the lungs caused by inhalation of fine particles of silica. The particles get deposited in the lungs causing the death of some lung cells, owing to the natural defence mechanism of the body. Over a period of time, the affected portion of the lung tissues – on which silica gets deposited – loses its elasticity, hardens and can no longer take part on the gaseous exchange for blood purification.

Silicosis is an incurable disease. Its earliest symptoms are shortness of breath on exertion that worsens progressively to constant belaboured breathing. This is accompanied by an impairment of capacity to work and even standing erect becomes difficult, some of the victims are actually bent double. There is blood in the victim's sputum, cough, chest pain, weight loss, heart problems and the victims are more susceptible to tuberculosis. While silicosis can develop over a five to ten year span, there are acute forms of silicosis that affect the victim suddenly, taking toll of his health and even culminating in early death.

A report in the National Institute of Occupational Health, Ahmedabad (1986) says that even exposure to silica inhalation for a year can cause silicosis and the amount of silica in the working environment determines the speed with which the disease strikes. Any good X-ray along with the occupational case history of the victim and his symptoms can form the basis of the diagnosis. There are, besides, lung function tests to assist the diagnostic process.

Nagarik Mancha secretary, Mr Naba Dutta: "We knew there were laws that ensured compensation for workers affected by occupational disease. We were equally aware that lack of awareness, motivation and political will conspired to deny the workers their rights. The Right to Life enshrined in the Article 21 of our Constitution includes the right to breathe pollution free air and work in a pollution-free environment. Our fight for justice was seven years long but it has been a satisfying experience at the end of it all".

What is this killer disease silicosis? It is an affliction of the lungs from prolonged exposure to silica dust – something that the quarry workers were not protected from. Silicosis destroys pulmonary capacities of the lungs, resulting in breathlessness, total emaciation and gradually chokes the victim to death. Surendra Khanij (P) Ltd incorporated under Companies Act was a stone-crushing company with quartzite stone quarries in Keonjhar, Orissa and Shilda (Belpahari) West Bengal. In the Chinchurgheria operations, "lumps of quartzite pieces were broken into smaller pieces in a machine which was located in front of the main gate of the factory shed. The broken pieces were carried by 'head loads' to the grinders inside the factory shed. The ground powder was then graded in a sieve and packed by workers for transportation in trucks", explains Bijon Sarangi, who has constantly provided leadership to the movement to bring relief to the dying workers. "There were no safety measures in terms of health inside the factory nor any pollution control measures outside. The factory had no pollution control certificate from the West Bengal Pollution Control Board".

Mr Sreekant Malpani, however, had a different story to tell the Supreme Court in his affidavit: "The factory unit is fully mechanized, sealed and dust free and the final product is automatically bagged. The only manual operation involved is to put quartz lumps into the machine and to remove the bags after they have been automatically filled. All requisite precautionary and protective devices were installed. There is no question of contracting silicosis in view of the dust-free procedure adopted". The Malpanis also produced certificates from a local doctor, Dr Pranab Majumdar, on March 16, 1996, saying that two of the victims, Panchanan Mahato and Nandalal Mahato did not even need any medication.

But people at Chinchurgheria were dying since 1991 and under Sarangi's initiative most villagers were medically examined and some diagnosed as suffering from silicosis. Thereafter began a local campaign to have the factory closed down – time and again thwarted by the police who had the gates opened. It was not till April 1993 that the SDO, Jhargram could be persuaded to have the shutters brought down on Surendra Khanij operations.

Not one of the local political leaders showed any sympathy for the dead. Bholu Mahato, the local Jharkhand leader joined hands with the management to run down the protest movement saying that anti-development groups were trying to destroy industries in the region. The local CPI(M) leaders were equally dismissive. Mr Dahar Sen (husband of the now celebrated Nandarani Dal, the victorious MLA from Kespur), Mr Rabi Sarkar and Ashok Mandal, spoke to a film crew, sitting in their office, beneath the portrait of Lenin, accusing the environmental agitation as "apoprachar" (misinformation campaign), blaming tribal deaths, if any, to excessive drinking and tuberculosis, unrelated to occupation. In fact, this was the burden of their song to the Joint Labour Commissioner. They were not indifferent; they were opposed to justice being done to the dead. The only political support came from the late Mrs Geeta Mukherjee, M. P., who traveled to Chinchurgheria, in November, 1994, met some of the dying – and then wrote to the district magistrate, Midnapore, Mr Hem Pandey, explaining the background story about the deaths and pointing out that "It is most unfortunate that three official medical teams from Midnapore visited those villages but still there is no official report from the C. M. O. H. Midnapore".

Mrs Mukherjee also pointed out: "there may be some technical difficulty to pay compensation to the victims by the company because they died ultimately at their own home without any treatment and they don't have any death certificate. But, I believe that human lives are more precious than technical difficulties. I, therefore, also request you to examine this aspect". She marked a copy of her letter to the

then West Bengal Minister for Forest and Environment, Mr Banamali Roy and to the Health Secretary, Mrs Leena Chakravarty. Not much support was forthcoming from Writers' Buildings though.

Support also came from the CPI- MLA from the region, Mr Purnendu Sen Gupta, who publicly participated in a 1998-99 rally in support of the environmental issues.

To get back to the history of the deaths: the workers came from several villages in the region: Chinchungheria, Pasro, Boria, Kajra, Piyalgere, Ledharsohra, Joksalboni and Chhoto Lodhasuli. The offending unit was a hundred yards away from the Chinchurgheria village, about seven kilometers from Jhargram. Little did they know that the owners had suppressed the crude production process – that exposed the workers to silicosis dust – while applying for registration as a small scale industry as statutorily required. Death of the workers was foretold. Yet, it was a well-kept secret till Mr Aditya Jha and Jagannath Sinha, came to the region and found so many workers dying.

They took it upon themselves to report the cases to the Science Quark Centre and other NGOs at Jhargram who carried out a preliminary study and lead a mass deputation to the office of the Jhargram SDO, so apparent was the environmental hazard. The mass deputation worked and the District Magistrate, Midnapore, asked the General Manager, Industries Centre, Midnapore to enquire into the reported silicosis cases among the Surendra Khanij workers. Simultaneously, the National Human Rights Commission was successfully moved and the NHRC wrote to the Midnapore District Administration enquiring about the matter in December 1993.

By then silicosis deaths were rampant in the region. Death struck Surendra Khanij for the first time in 1991. Luski Mandi, only 25 years old, working in the stone-crushing unit succumbed. Within a matter of months, 19 more were to follow Luski to their graves. Kanai Murmu and Turi Hansda, a teenager of 16, died in June 1992. Weeping before the corpse of Turi, her emaciated father, Matal Hansda lamented: "She worked there for more than three years. She started coughing and became breathless; refused to eat and when we took her to the doctor, it was of no help. She lost her voice and lay in pain for months".

Kanai did receive some treatment at the Kharakpur Primary T. B. Hospital but silicosis victims do not respond to anti-tubercular drugs. Thus was 35-year old Basu Murmu widowed in June 1992. August, 1992 saw the death of Kama Mandi. A month later, Matal suffered the agony of his son dying when, in September, Lachman Hansda, only 16, died. Matal was left wondering when his other son, Lakhan, who was also in a pitiable condition would go. September also claimed the life of Dukhu Hansda, soon to be followed by his siblings, 16-year old, Dala Hansda, in October and then Ram Hansda.

Kanai Soren lived till December that year, leaving behind widow Chura Muni and her four children, two boys and two girls. Their father's death has not killed their need for food but their mother had been left with no means to provide for them. She mourned for her husband, and confessed that she was feeding her children 'mahua' so that they lost their appetite.

A dozen, including Sankro Hansda, Sunil Murmu, Ratan Hembram and Silabati Murmu, Saraswati Mahato, Jumu Hansda, Balram Hansda, Rupchand Mandi, Rabi Mahato, Lakhan Hansda have survived the silicosis assault but can scarcely be expected to work for a living, so incapacitated have they become. Dukhu's widow, Sukhul, only has venom against the killer factory owners praying that they die the same death that her husband died. She curses the police who forced open the factory gates even after they were closed down by public pressure.

The Malpanis got a whiff of what they might expect when on March 15, 1996, the Supreme Court asked the then West Bengal Health Secretary, Mr V. Subramanian, and the Director Health Services, to render all possible help to the workmen suffering after having worked in the Surendra Khanij mines and then followed it up by another direction on March 29, asking them to comply with the court orders forthwith.

Surendra Khanij, that denied all charges initially, sought shelter behind a claimed state of penury when the Supreme Court had ordered compensation.

The Labour Secretary, West Bengal, Mr V. Subramanian, was hardly of help though he did respond to the Supreme Court's directive. On April 4, 1996, his report to the apex court said: "On inquiries being made by the Directorate of Factories, Government of West Bengal in the name of Surendra Khanij, it was learnt that the said unit was not registered with the Directorate of Factories. The Medical Inspector of Factories visited the said unit on May 13 when the Unit was found to be closed. No information, therefore, could be gathered either from the management or from the workers in respect of the matter. The Medical Inspector of Factories also visited the Jhargram Sadar Hospital for the purpose of further investigation. It is learnt that there was no report of admission of any such case in the said hospital". Every family of the Chinchurgheria village that played host to the Malpani unit had paid for it either with death or disablement and the state apparatus had found nothing to report!

That the Labour Secretary had been perfunctory in his job was clear from the report that the Labour Commissioner gave a few days later. This followed a fresh admonition from the apex court and support for the workers' cause from the West Bengal Pollution Control Board. As per direction of The Supreme Court the State Labour Department constituted a commission of inquiry on the Surendra Khanij deaths. In a sworn affidavit, the Pollution Control Board gave details of the primary findings of a medical team sent to the area by the Department of Health and Family Welfare, Government of West Bengal on April 9, 1996.

Nagarik Mancha was called for a meeting of the commission at the chamber of the Joint Labour Commissioner, Mr R. K. Saha, on May 5 1996. There were two more sessions of the enquiry commission on May 16 and 17 at the Surendra Khanij site. While the commission of enquiry was sincere and fair, the Labour Commissioner's office certainly was not sympathetic to the workers cause when it came to determining the compensation. The Malpanis seemed to have successfully convinced them that there was no money to pay as compensation and that the government could do what it wanted with the sale proceeds of the factory. But they had Mr Justice Kuldip Singh to contend with.

The enquiry commission comprised Mr Saha and the Deputy Labour Commissioner, Mr Murmu who would also help in translating the tribal dialect for the benefit of the commission, Mr Ghosh, Assistant Labour Commissioner, Jhargram and Mr Subrata Ghosh, Assistant Engineer, West Bengal Pollution Control Board. The May 16 meeting was attended by Mr S. Malpani, a member of the Surendra Khanij board and another Subhash Malpani claiming to be a contractor (represented by advocate, Mr Majumdar).

The formal enquiry started at the factory gate that was unlocked in the presence of all interested parties and the commission heard every one out – the victims and others in the area and then visited the adivasi villages of Chinchurgheria, Boria, Pasro, Pealgheria and Chhoto Lodhasuli. One day after, on May 17, the commission visited the Jhargram Sadar Hospital and met its superintendent and the Assistant Chief Medical Officer Health, Dr Soren.

Dr Soren informed the commission that two of the 11 workers examined in the second week of April 1996, Sunil Murmu and Ratan Hembram, were referred to the SSKM Hospital, Calcutta immediately. Curiously, now the commission received a medical certificate of Dr Pranab Majumdar MD (Calcutta) Registration No. 39790 dated April 15, 1993, that stated: "Smt Fulmoni Mundi, aged about 25 years of Chinchurgheria, has been suffering from silicosis and pulmonary tuberculosis and is under my treatment for the last three to four months".

The commission then met Dr Pranab Majumdar and Dr Ashim Bardhan, who practiced locally and was informed by Dr Majumdar that he diagnosed silicosis when the patient did not improve with anti-tuberculosis drugs." They explained the medical grounds for the diagnosis of silicosis having been caused by their occupational exposure to silica dust in the factory they were working in. It was the same Dr

Majumdar who gave a clean chit to the two Mahatos in 1996. The commission then went back to talk to some of the affected villages, met some of the survivors and the members of the families of the deceased.

Finally, the commission was shown a documentary on the Chinchurgheria victims: "Wait Until Death", prepared by Perspective Audiovisuals, Calcutta, associated with a local NGO, that spent its own money to make the documentary. The commission submitted its findings to the Supreme Court on July 7, 1996 that ordered the Labour Commissioner to ascertain the amount of compensation payable.

The court's orders were not restricted to the victims of Chinchurgheria but to others affected by occupational disease in general. This meant fresh research because the Workmen's Compensation Act specified diseases which were notifiable and for which compensation could be paid and its schedule IV enumerated the factors, given the workers age, that would be used to calculate compensation. It did not, however, specify the damages payable for "occupational diseases", which had to be worked afresh. The Labour Commissioner was asked by the Supreme Court to ascertain what a fair compensation would be.

The Mancha sought to assist the Commission in this task with several mathematical formats for scientifically calculating such compensation which it believed would be "a major step in righting a long-neglected wrong in an untouched zone of labour welfare and social justice", says Mr Dutta.

The Mancha had argued that on the basis of a compensatable unit being taken as one worker, his/her spouse and dependent, one would have to take into account their age and the expected life expectancy of all three components of the unit; this would have to be calculated with the average income per head; rate of inflation, interest rate at maximum interest on deposit and came to a figure of Rs 3 lakhs per worker by one calculation and Rs 2.67 lakhs per worker by another calculation.

However, the Labour Commissioner determined a compensation of Rs 50,000 for the next of kin of the dead and on

the basis of the provisions of the Workmen's Compensation Act for the survivors. This amount the Supreme Court enhanced, emphasizing that even the higher dispensation was on the "lower side". The Supreme Court ordered Rs 1 lakh each for the dead and for compensation according to the Workmen's Compensation Act with a proviso that any delay in paying the survivors would attract an interest of 12 per cent per annum in its landmark judgment dated 11 November 1996.

There was many a slip between the cup and the lip. The court may have ordered but would that be enough to move the government to act? Months turned to years, Mr Justice Kuldeep Singh retired from service and the case continued with the Nagarik Mancha's lawyer, Mr Gupta having to take the court's assistance times without number to push the matter forward. The owners were not willing to co-operate and the West Bengal Labour Secretary was sitting on his high horse. Speaking to the Economic and Political Weekly

Selected findings of the Commission:

- ☞ The unit was not registered under the Factories Act, 1948, as required under its Sections 6 & 7, though it had more than 10 workers
- ☞ Manufacturing was carried on without use of power
- ☞ There was no "No Objection Certificate" from the state Pollution Control Board
- ☞ Payment vouchers showed that male and female workers were paid Rs 12 and 10 each daily, subsequently increased to Rs 18 and Rs 16.
- ☞ Of the 20 dead, 16 worked in the unit
- ☞ There were no records related to their deaths.
- ☞ All reports on state of environment and health had to be gathered verbally from the locals and doctors.
- ☞ Most of the victims had been treated for tuberculosis but had failed to respond to the treatment.

Problem areas as reported by Economic and Political Weekly quoting Labour Commissioner

- ☞ It is not possible to inspect each and every factory under the jurisdiction of the commission
- ☞ There are only two factory inspectors for the 2,000 registered factories in Howrah District

writer, Mukul, he said (as reported in EPW, August 30, 1997) when there was restlessness all around because of the delayed compensation: "Why should I go to the Supreme Court again for the implementation of the judgment? I have the powers and the administrative structure here. First, I will pursue the issue here and then will decide the future course. Why should I try to establish a parallel health system on occupational health when state hospitals are taking care of workers' health and they are doing a fine job?"

Welcome to the world of the Labour Secretary! His views were remarkable: "The issue of occupational health is very wide. It is very complex one. Doctors, engineers, air hostesses, journalists, you and I, everybody suffers from occupational diseases. One cannot take care of the health of every citizen in the state. I do not defend environmental hazards as such. But it is better to work for 20 years and die afterwards from occupational diseases, than to die of hunger due to closure of a factory in the name of pollution and hazards". Fortunately, the Supreme Court judges, Mr Justice G. B. Pattanaik and Mr Justice K. G. Balakrishnan were not of Mr V. Subramanian's persuasion. On October 12, 2000 they said: "Learned counsel for the workers states that the factory owner has several personal properties and the collector should take steps for attaching those properties and selling the same for payment of the compensation in question. He is directed to furnish a list of private properties within four weeks from today".

If the Malpanis believed that with the retirement of Mr Justice Kuldip Singh they would be able to reverse the process, they received blow after blow. All of Mr Justice Singh's brother judges were in harmony with his thoughts: Had not Mr Justice S. Saghir Ahmad and Mr Justice S. P. Kurdurkar, Mr Justice G. B. Pattanaik, Mr Justice Faizanuddin, Mr Justice K. T. Thomas, Mr Justice Y. K. Sabharwal, Mr Justice K. G. Balakrishnan and Mr Justice Umesh Chandra Banerjee taken a tough stand the Malpanis would have got away by saying that they did not have any money.

In fact, the order of Mr Justice Singh said that the Mr. O. P. Malhotra (the Malpani advocate) had painted a rather sorry picture of the state of the company: "According to him, Surendra, proprietor of the industry, has since expired. He wanted to show us the balance sheet of the company to persuade us not to increase the quantum (of compensation) but we have declined to look at that. Mr Malhotra states that the financial position of the company is such that it would not be possible to pay even the compensation recommended by the Commissioner. Be that as it may, the law must take its own course".

What was disheartening for the Mancha was the attitude at the Labour Commissioner's office. If the Labour Secretary's should unadulterated hostility, the Labour Commissioner's office tended to treat the Supreme Court judgment with a certain measure of skepticism, insisting – in the course of discussions – that the compensation amount could never be recovered and that the judgment was unimplementable. Speaking to the EPW, Mr Saha said in 1997: "I issued notice to the management for collection of compensation money. The management said that they are not in a position to pay. They then advertised for sale of their property but there were no buyers. I filed a case against the management under the Workmen's Compensation Act. This was the only means I had. Somebody has to go to the Supreme Court once again. I cannot go there. For the living workers, who are suffering from occupational diseases, we are pursuing investigation as per the directions of the court. It is still not complete".

Even otherwise, the Labour Commission was parsimonious with the management's money, as it determined the compensation for death at Rs 50,000 a piece – an amount that the court thought fit to double – while it threw out the cases of Dukhu Hansda, who had died of silicosis though actually employed by the Malpani unit during the construction stage and not during the actual production stage. So also was little Benoy Hansda's case thrown out. The little boy was not employed by the company but spent most of his time outside the factory gate because his parents were working inside. The silica dust made short work of him. Describing the environment, Bijon says: "there were times when every leaf in every tree or plant looked gray – it was all covered with silica. What chance did the little fellow have, sitting right in the middle of it all?"

Meanwhile, the owners had their own gameplan – they would prove that they had nothing save the factory to pay with and the factory was already with the government of West Bengal, which could dispose of the property and do whatever it chose to do with the proceeds. The Malpanis were about to get away having surrendered the land outside the factory to the state, which fetched no more than Rs 1.5 lakhs. The directors had passed a resolution to hand over all assets of the company to the Labour Commissioner on January 13, 1997. Apparently, there were no takers for the factory itself. The court firmly ruled that the personal property of the owners would be sold to pay the compensation amount under a process similar to the recovery of land revenue arrears. This was not possible, however, without the bureaucracy's support and once again Mr Gupta had to seek the court's intervention. On September 8, 1999, Mr Justice G. B. Pattanaik and Mr Justice Santosh Hegde pointed out "By order dated 30th March, 1999, this court had called upon the Collector, Midnapore, to recover the amount through the certificate proceeding and distribute it to the beneficiaries concerned under the supervision of the Labour Commissioner and send a compliance report to this Court. This was supposed to have been done within a period of three months from the date of the order".

Upset with the fact that the Collector had not submitted any report, the Supreme Court ordered that notice be issued to the Collector "to appear in person before this Court on 12th October 1999 and show cause as to why the order of this court has not been complied with and why no report has been submitted to this court so far. This must be done within a period of four days from the receipt of this order of ours". The Collector was left with no option but to appear and give his assurance that he would take charge of matters.

However, it transpired that neither the owners nor the government were keen to disclose or discover what the personal assets of the Malpanis were. Thus, despite the pressure of the Supreme Court, hopes about realizing the compensation amount seemed to be receding. The government, already skeptical about the order, was not going to try to locate the Malpani's assets and it was left to Nagarik Mancha to trace them. This was no mean task because the Malpanis did not seem to possess anything; even their residential house in Salt Lake was rented. Not to give up easily, the Mancha tapped every possible source and after a month came up with what seemed to be substantial booty, even though Naba Dutta was certain that "the Malpanis had property in southern and northern India, which the Mancha activists had not been able to trace". The list given to the Supreme Court by Mr Raj Kumar Gupta included names of 11 companies owned by the Malpanis; 2 companies of which Malpanis were Directors with their addresses; 2 factories/plants at Jhargram, Midnapore, West Bengal, and Bahadurgarh, Rohtak, Haryana; addresses of residences at Model Town, Bahadurgarh and Lake Town, Kolkata; list of motor vehicles with relevant numbers. "Between these assets, we knew, we had the compensation amount covered", Naba Dutta said.

Earlier, on December 8, 2000, Mr Justice G. B. Pattanaik and Mr Justice Umesh Chandra Banerjee reconfirmed that: "An affidavit has been filed indicating some personal properties which could be sold by the collector by taking recourse to revenue recovery proceedings. Mr Das, appearing for the Collector, says that Collector will examine the authenticity of these properties and take such appropriate steps as permissible under law for selling these properties. Attempt shall also be made for selling the balance property of the company".

On January 17, the Malpanis made their first deposit with the district magistrate, Midnapore and the Certificate Officer, SDO, Jhargram: two demand drafts amounting to Rs 7.5 lakhs as the first installment, even while denying their personal liability. But that could not stop the recovery proceedings. Instead, the Malpanis were asked to produce proof of ownership of the two Maruti cars and of the company, Essential Suppliers Pvt Ltd. and also to deposit the remaining Rs 7.5 lakhs. Matters took an interesting turn in court, when Mr Sreekant Malpani, realizing that his group was the one making all the payments, deposed that there were three other directors of the company at the "relevant" time: Mr Radhe Shyam Sharma of 2, Red Cross Place, Calcutta: 700 001; Mr Tapas Kumar Bhattacharya, 31, Sova Bazar Street, Calcutta: 700 005 and Mr Gopal Kasera, C/o Somany Pilkingtons Ltd, Kassar, P. O. Bahadurgarh, Haryana.

Mr Sreekant Malpani submitted to the court that these directors “should also be made liable for payment of compensation on a proportionate basis. Hence this Hon’ble Court should consider directing that the sum of balance Rs 8,05,930 should be recovered from the said three ex-directors instead of the applicants herein and of the compensation already paid/deposited by the applicants, the applicants should be permitted to recover from the said persons on a proportionate basis”.

On May 8, 2001, the Midnapore District Magistrate, Mallela Venkateswara Rao, said in an affidavit to the Supreme Court that “On 3.4.2001, certificate officer disbursed a sum of Rs 15,20,930 to the heirs of the deceased workers and the workers rendered disabled in the presence of the Assistant Labour Commissioner, Jhargram. The balance amount could not be disbursed as the claim in favour of the heir of a deceased worker, Tuka Baske, could not be settled owing to the death of the said heir. The undisbursed amount will be distributed as soon as the issue regarding the heirs of the deceased heir is settled”.

Sankro Hansda is smiling: “For years I have known that I may die any time. Now I think I may live”. Sankro has reasons to hope. So is Sankro Hansda smiling!

### **Chronology of Events:**

- 1986: Surendra Khanij, a stone-crushing unit, using quartzite stones located at Chinchurgheria, in Jhargram, District Midnapore, West Bengal. It employed local workers from among the tribal population in adjoining villages.
- 1988: Respiratory problems and distress among workers start
- 1991: Death of first worker in January 1991
- 1992: By December, the death toll rises to 10
- 1993: Spontaneous public protest results in closure of unit that reopened with police help. Quark Science Centre at Jhargram and other activists mobilises support and DM orders closure. Several newspapers take note and the Human Rights Commission expresses concern.
- 1995: Nagarik Mancha reports the matter to Supreme Court as one of the 11 industries in which incidences of occupational disease has been observed. This report was as per the directions of the Supreme Court which had accepted a letter from Nagarik Mancha and six central unions as a writ petition included in the ongoing M. C. Mehta vs. the Union of India case.
- 1996: Supreme Court directs West Bengal health secretary, to render help to ailing workers. Supreme Court also directs Labour Commissioner to investigate and submit an enquiry report.
- 1996-April: West Bengal Labour Secretary sends a strange letter saying that since the unit was not registered and since the unit was closed when the medical inspectors went to visit it, he could furnish the court with no information on the deaths or the ailing.
- 1996-November: Supreme Court Orders payment of compensation to the families of the deceased workers and directs Labour Commissioner to ascertain the amount of compensation payable to the ailing workers. Management allowed to pay the total amount in monthly installments of Rs 2 lakhs.

**1997-March:**

Review petition by management against compensation order dismissed by Supreme Court.

**1997-June:**

Application for recovery of compensation amount before commissioner as directed by Supreme Court, Labour Commissioner directs payment of compensation in terms of Workmen's Compensation Act but Surendra Khanij management expresses its inability to deposit the amount.

**July-1997:**

Appeal to Supreme Court against non-compliance of its order.

August-1997: Labour Commissioner of West Bengal continues to file application of recovery with commission WCA and does not move Supreme Court.

**1998-July:**

Families of deceased and victims write to the Chief Justice Supreme Court regarding non-compliance with Supreme Court orders

**1998-August:**

Supreme Court writes instructing the victims to write to Labour Commissioner for payment of compensation

**1999-January:**

Management fails to pay compensation of Rs 18,05,983 even to the Commissioner WCA; certificates are issued to the District Magistrate, Midnapore for recovery of the amount under provisions of the Public Demand Recovery Act.

**1999-March:**

Supreme Court orders Collector/District Magistrate, Midnapore, to recover the compensation amount through certificate proceedings and to distribute the same to the beneficiaries under the supervision of Labour Commissioner within three months from 30.3.2000.

**1999-July:**

Collector/ District Magistrate, Midnapore, in a reply to Nagarik Mancha states that official process of recovery has been started.

**1999-September:**

Supreme Court orders the Collector/District Magistrate, Midnapore before the court on 12.10.1999 since the Collector had failed to send any report or to comply with the 30.3.1999 Supreme Court orders

**1999-October:**

Collector, Midnapore, appears and prays to Supreme Court for more time since steps needed to be taken to sell the assets of the company to pay the workers. Supreme Court allows three months to complete the process and also directs the Collector/District Magistrate, Midnapore to provide adequate medical treatment to the ailing workers.

**1999-November:**

The ailing workers are medically examined and medicines are provided as per expert advise from the Jhargram State Hospital.

**1999-December:**

Rs 1.5 lakhs recovered by Collector/District Magistrate, Midnapore, by selling a piece of land adjacent to factory site. Families of deceased workers paid Rs 10,000 each on 24.12.1999 as first installment of the Rs 1 lakh per head compensation ordered by Supreme Court on 26.11.1996. No compensation received by the ailing workers.

**2000-January:**

Supreme Court allows time till September 30, 2000 to Collector/District Magistrate, Midnapore to take further steps for selling assets.

**2000-December 8:**

Supreme Court directs Collector/District Magistrate to ascertain the authenticity of the list of personal property of the management and the appropriate steps as permissible under law for selling the property. Attempts to be made again for selling the balance property of the company to realise the compensation amount payable to the workers.

**2001-January 15:**

As per Supreme Court's directive, all other properties of the Malpanis – apart from the Surendra Khanij itself – attached by the District Magistrate, Midnapore, as per his notice of January 15, 2001.

**2001-January 17:**

Srikant Malpani deposits Rs 7.5 lakhs by demand draft to District Magistrate, Midnapore.

**2001-February 9:**

Malpanis appeal to the Supreme Court for the release of their properties attached as per Supreme Court orders. The apex court rejects the appeal observing that "till date Rs 1.5 lakhs had been realised through sale proceeds from Surendra Khanij land and Rs 7.5 lakhs had been deposited with the District Magistrate recently. Supreme Court directs Malpanis to deposit the outstanding amount in two installments by March only after which their appeal for the release of attached properties would be considered.

**2001-April 3:**

Certificate Officer disburses compensation to the disabled workers and the heirs of the deceased in the presence of the Assistant Labour Commissioner, Jhargram.

**2001-May 7:**

District Magistrate, Midnapore, informs the Supreme Court in an affidavit that its order has been followed.