

Sanat Paul: A Patient 'Victim' And A Fighter

Who is he?

Sanat Kumar Paul was an unorganised sector worker in 1992. He worked at the ECCO Battery Ltd. of 73 Belgachhia Road Kolkata 700037. He was one of the five workers employed in this lead battery-manufacturing unit. He received Rs. 876 (gross) per month. There was no ESI coverage for workers. There were several lead battery-manufacturing units under the same roof.

What did he do at his workplace?

Sanat had to handle various chemicals in powder form. He had to knead them with his bare hands and then spread it out in the form of a plate. These plates were then dried and charged to make the structural units of large lead batteries. There was lead in the powder and paste he had to handle. This is a hazardous process as per Factories Act, 1948. Workers at ECCO Battery Ltd were neither given any personal protective equipment nor told about any hazards while at work.

Sanat gets affected and seeks treatment

After working for 3 years, he started facing problems. Lonely and hapless he thought he needed medical attention. There was no state run Occupational Disease Detection Centre in West Bengal. He started by consulting general practitioners. Then somebody told him about Peerless Hospital. It was very costly for him. Yet, he was on the right track. Then he met experts at Bangur Institute of Neurology, School of Physical Medicine, and ESI Hospital Manicktala. It was then confirmed around June 1995 that Sanat had contracted an occupational disease.

What was his problem?

He found his hands and fingers losing strength. He could not hold a glass of water when the problem started. Progressively he lost control of his fingers and palms, which were as if paralysed. The hands dropped absolutely limp from wrist downward. The disease he had contracted was 'lead neuropathy'.

What is Lead Neuropathy?

Lead neuropathy is a neurological disorder caused by lead poisoning. This is caused when exposed to dangerously high levels of lead. The symptoms are blue lines on the gums and 'bi-lateral wrist drop'. Lead Neuropathy is included in Schedule III of Workmen's Compensation Act, 1923 and Factories Act, 1948. It is a notifiable disease for which compensation is payable to the victim.

What is Wrist Drop?

'Wrist drop, also known as radial nerve palsy, is a condition where affected persons cannot extend their wrist and it hangs flaccidly. To demonstrate wrist drop, hold your arm out in front of you with your forearm parallel to the floor. With the back of your hand facing the ceiling (i.e. pronated), let your

hand hang limply so that your fingers point downward. A person with wrist drop would be unable to move from this position to one in which the fingers are pointing up towards the ceiling... Wrist drop is ... associated with lead poisoning because of the effect of lead on the radial nerve.' [Source: Wikipedia].

How did his employers react?

When informed, Sanat's employer immediately terminated his job on 1 July 1995. There was not even a show cause letter. He had never been given an appointment letter in the past. His real fault was his inability to continue with his job because he had no strength in his hand. The employer thought that he had no responsibility though Sanat had picked up this disability from his workplace. So Sanat was fired and someone else probably got hired.

Negotiations, disputes and appeals

He requested his employer for the actual medical expenses and it was refused. Repeated verbal requests for redeployment in a lighter job were refused too. Even his registered letters were refused. He informed his union in writing. In September 1995, he raised a dispute with the Assistant Labour Commissioners. Three tri-partite meetings over almost a year yielded no results. Sanat wrote to the Labour Minister too, but that too in vain.

Sanat Paul's case in Supreme Court Matter

In the meantime his case was cited in the report on occupational disease in eleven industries submitted to the Supreme Court by Nagarik Mancha in July 1995. The Supreme Court directed the Government of West Bengal to look into the incidence of lead poisoning among workers of ECCO Battery. The concerned Medical Inspector under the Chief Inspector of Factories, West Bengal visited the factory premise on 27 May 1996 and found a lockout notice of the same date displayed. The main door was locked but there were clear signs of industrial activity going on inside. Sanat was examined by the said Medical Inspector at the latter's office and distinct symptoms of Lead Neuropathy was detected. The said report was duly sent to the Supreme Court. Sanat's plight was reported in many dailies but nothing seemed to happen.

Sanat at the Workmen's Compensation Court

As a last resort, Sanat lodged a case at the Court of the Commissioner of the Workmen's Compensation, West Bengal in August 1997. For more than two years, the case was not heard for one reason or the other. At times the Courts had no judges. In the second phase, the employer refused to accept the summons of the court. Next, the errant proprietor failed repeatedly to appear in Court. During mid-2000 the hearing finally started. Witnesses including doctors in Government organisations appeared on behalf of Sanat on 29 November 2000.

Sanat awarded compensation

Finally on 20 September 2001 Hon'ble Justice H M Ghatak, Commissioner for Workmen's Compensation, West Bengal, observed that "The

evidence... taken together with the documents...proves that the petitioner was suffering from occupational disease due to lead neuropathy and the petitioner had contracted such occupational disease while working at the manufacturing unit of the opposite parties. According to Item No. 3 of Part II of Schedule III of Workmen's Compensation Act, the petitioner is entitled to get compensation at the rate of 100% loss of earning capacity for his occupational disease." Based on the above Sanat Paul was awarded compensation amounting to Rs. 95,690 to be deposited in the Court by the Proprietor of M/s ECCO Battery Ltd.

Legal 'battle' during the last six years

- On 1 December 2004 the order of the Commissioner for Workmen's Compensation, West Bengal regarding payment of compensation was finally served to the proprietor of M/s ECCO Battery Ltd.
- In January 2005 the proprietor of M/s ECCO Battery Ltd. filed an application to the Court of Commissioner for Workmen's Compensation, West Bengal challenging the compensation order of 20 September 2001.
- The said appeal for recalling the award of compensation to Sanat Paul was dismissed at the Court of Commissioner for Workmen's Compensation, West Bengal on 6 June 2006.
- Proprietor of M/s ECCO Battery Ltd. submitted a writ petition in the High Court at Calcutta on 6 June 2006 for setting aside the compensation order of the Court of Commissioner for Workmen's Compensation, West Bengal.
- On 6 September 2007 the above writ petition was disposed of by the High Court at Calcutta, the allegations challenging the compensation award were not admitted and the High Court saw 'no reason to interfere with' the award of compensation made on 20 September 2001.

Sanat has to be patient

Ten years back his appeal was submitted in a Court of law.

Six years back he was 'formally' awarded compensation as per law.

The appeal against the award of compensation has been rejected by the High Court recently.

That doesn't necessarily mean that he gets the compensation.

Sanat can hope for the best but he has to be prepared for the worst!

Twelve years of joblessness owing to occupational disease means nothing to the system.

He is a 'victim' and hence he has to be patient!

Nagarik Mancha and Sanat Paul

We met Sanat twelve years back. He was moving from pillar to post and some doctors put him in touch with us. Since then he has been with us and we have tried to stay by his side.

In 1996 Sanat was not alone. There were scores of occupational disease patients we had 'found'. The Supreme Court had directed Nagarik Mancha to submit a report on the status of occupational disease in West Bengal. We did our bit. Today

most of those and hundreds of other occupational disease patients are being compensated by ESI as per law. An infrastructure has developed from scratch and we did a little pushing and shoving as and when needed. However Sanat is still languishing since he was not covered by the ESI. Sanat was from the unorganised sector and was hence unprotected!

Unprotected workers were supposed to move the Court of Commissioner for Workmen's Compensation, West Bengal. Strangely for the last 84 years of the existence of the Workmen's Compensation Act (1923) not a single workmen had been compensated for occupational disease. Sanat was and is hence the first case of its kind.

Nagarik Mancha wrote letters to his employer, trade union leaders, Office of the Labour Commissioner, West Bengal, other relevant authority and negotiated on his behalf when necessary; pursued the case at Supreme Court, Court of Commissioner for Workmen's Compensation, West Bengal, High Court at Kolkata, discussed the matter with doctors, lawyers and officials. All expenses both legal and incidental had been taken care of by us during the last eleven years.

We hasten to add that Sanat to us was not a victim but an activist who shared the load and responsibility with us. He did a lot in this case and we ably supported him.

The case is not yet closed since Sanat is yet to receive his legal dues. His employer can still spend a couple of years in some form of a 'legal battle' or the other. We need to remain alert!

Concluding remarks: What this case reveals

1. It should be iterated that Sanat Paul is not just an occupational disease 'case'. It is a rare fight. It could be an exemplary addition to the history of workers movement. It is the first case registered in this part of the country and one in which compensation has been granted as per the *Workmen's Compensation Act, 1923*.
2. In the home ground of the so-called labour movement in India (INTUC, AITUC followed by CITU etc.) a seemingly pro-labour *Workmen's Compensation Act, 1923*, promulgated by the British, remains virtually unimplemented in parts for 84 long years. This should be a revelation of sorts.
3. The termination of a worker affected by occupational disease is not only illegal but inhuman too. This however is the order of the day. Employers in most cases sack such employees suffering from temporary or permanent disability. Whereas a section of the workers suffering physical 'employment injury' are compensated those affected by occupational disease like Sanat are unceremoniously thrown out.
4. Even judges are not assigned to some of the Courts of Commissioner for Workmen's Compensation, West Bengal causing delay in justice. Summons from such Courts can be ignored for years in spite of the fact that address is correct.

5. The procedures followed at most of the Labour Courts cause lengthy hearings and delayed justice. This acts as a deterrent for workers to go to Court. Moreover the system allows the powerful, connected and moneyed employers to hire heavy weight legal professionals in order to give them an upper hand.
6. The errant employers of small units take recourse to a common falsehood, which is an 'open secret'. When they apprehend that the order may go against them they do the 'needful' so that their factories become non-existent on paper. Names change on paper, new signboards appear, while business goes on as usual. This is a known method of shrugging off responsibility. Court orders cannot be served since the employer becomes 'untraced' officially. The Court administration knows about it but is 'helpless'; a section of the postal department is a part of the nexus; the workers suffer; but the errant employers pay appropriately to remain 'untraced' but factually remain very much in business. Everybody knows but somehow nobody cares.
7. Also notable is the attitude of the proprietor who would rather spend lakhs while contesting Court orders in higher Courts rather than pay up the awarded compensation or take adequate safety measures at their factories.
8. The plight of unorganised sector workers who are genuinely unprotected is appalling. No wonder lakhs are suffering silently and thousands are dying of occupational diseases. The onus of proving an occupational disease lies virtually with the ill-paid worker. And then they would need to prove it in the Court of Law. Nobody bothers.
9. The most important aspect of this whole exercise is to prove first that occupational disease exists. Then comes the need to legally prove it. Only after that will come a series of activities for which the support of the civil society could be really handy for these silent sufferers in the unorganised sector. The juggernaut called globalisation is aggressively prescribing the transformation of the 'organised' sector to a chaotic unorganised sector without a social security network in place. Hence a lot needs to be done.
10. We have written time and again to the Chief Minister, Labour Minister and Health Minister of West Bengal communicating the need to set up Occupational Disease Centres in all the State Hospitals and District General Hospitals for workers from the non-ESI unorganised sector. There is no sign of any such infrastructure and no sign of any political will either.

We request all of you to urge the Chief Minister, Labour Minister and Health Minister of West Bengal to take necessary steps in this regard.

Please write for clarification to:
Naba Dutta
General Secretary
Nagarik Mancha

24 September 2007