

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

#14

+ W.P.(C) 5913/2010

COURT ITS OWN MOTION

Through

..... Petitioner
Mr.Colin Gonsalves, Amicus
Curiae with Ms.Jayshree Satpute, Adv.
Mr.Jayant Bhushan, Amicus Curiae
with Mr.Gautam Talukdar, Adv.

versus

U.O.I.

Through

..... Respondent
Mr.A.S. Chandhiok, ASG with
Mr.Atul Nanda, Adv. R-1
Mr.N. Waziri, Adv. for GNCTD

CORAM :
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

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ORDER
12.01.2011

The present public interest litigation was initiated suo motu by this Court taking into consideration a newspaper report dated 29th August, 2010 published in the 'Hindustan Times' that a destitute woman breathed her last on a busy street after giving birth to a baby girl, namely, Karishma who had been struggling for life at a foster home, namely, 'Udayan'.

The matter was dealt with to some extent on 1st September, 2010 and how important and significant the life of a child who forms the vertebra of a spine of the nation and the role of the mother in building the nation.

On 20th October, 2010, after hearing Mr. Colin Gonsalves, learned Amicus Curiae along with Ms. Jayshree Satpute, Advocate, this Court had issued the following directions: -

“(1) Government of NCT of Delhi to demarcate five secured shelter homes exclusively meant for destitute women, pregnant and lactating women so that apposite care can be taken and no destitute women would be compelled to give birth on the footpath.

(2) The availability of the facilities in such shelter homes shall be monitored by the helplines handled by professionally trained people.

(3) In the aforesaid shelter homes, food and medical facility shall be available for 24 hours as such facilities are imperative for the cases of the present nature.

(4) Despite various schemes being framed by the State Government, as the people are not aware of the same, especially due to illiteracy, there would be dissemination of information by radio as well as television in Hindi.

(5) There should be awareness camps in the areas or cluster of areas by professionally trained people every fortnight.

(6) The State Government shall provide a mobile medical unit so that the people, especially who are living in slum areas can be taken to the shelter homes or to the hospital as the case may be.

(7) The State Government shall make endeavour to involve the genuine NGOs so that they can also work for getting the scheme fortified as such an activity has to flow from the top to the ground reality level.”

Thereafter, when the matter was listed, Mr. Jayant Bhushan, learned senior counsel was requested to assist the court and to give certain suggestions. In pursuance of our earlier orders, a counter affidavit has been filed by the Government of NCT of Delhi. In the counter affidavit, many an assertion has been made but on a perusal of the same, it transpires that the stand and stance of the State is that there are various homes which are meant to take care of destitute and pregnant woman as well as the lactating woman.

Ms. Satpute has submitted a written note of submission especially referring to the seven shelter homes which are available to the destitute, deserted women and girls who are in need of immediate protection or are in moral danger. As is evincible from the written note of submission, the learned Amicus Curiae has contacted ‘Jivodaya Ashralayam’ Care and ‘Rehabilitation Centre for destitute women’, “Santidham” a home for destitute women care and rehabilitation centre for destitute women, ‘Shri Digambar Jain Mahila Ashram’, “Missionaries of Charity” – Shelter for unwed mothers.

On a perusal of the submissions, it is perceptible that the said rehabilitation centres for destitute women and care homes are not funded by the State Government and they have categorically stated that they do not intend to provide care and service for pregnant and lactating women in future as it is beyond their functioning capacity. It is also discernible that the Missionaries of Charity are only devoted for unwed mothers and also availed the government funds. That apart, it is evident that the shelter has capacity to service only 20 unwed pregnant women with medical, nutritional and social services. Thus, what has been stated in the counter affidavit really does not take care of the situation obtaining in the ground reality.

Be it noted, in the counter affidavit there is reference to a family counselling, Unit helping victims of rape, Rape crisis cell, Mobile van helpline, Mahila Panchayat Programme, Pre-Marital Counselling Cell, Awareness campaigns, Scheme for implementing the protection of women from Domestic Violence Act, Scheme for working women's hostel, Scheme of short stay home for women in distress, children homes for the care and protection of destitute children, Mental health unit at Nirmal Chhaya Complex and Campaign to make Delhi free of violence against women and girls. Eventually, in paragraphs 9 and 10, it has been stated so –

“9. It is also respectfully submitted that every year, there is large influx of poor migrants from neighbouring states to Delhi. These people come from the lowest strata of society. The medical facilities available in the state of origin is extremely poor and inadequate. The Delhi Government is making efforts to cater to the increasing demand of medical and rehabilitation care for this large continuously migrating population.

10. It would however be appropriate if Union Government is requested to issue suitable directive to the neighbouring states to provide adequate infrastructure facilities for destitute women, pregnant and lactating women belonging to the deprived sections of society. Further, due to limited availability of land in the national capital, it may be difficult to set up large capacity shelters exclusively for this target group in Delhi. Large tracts of land are available in neighbouring states to set up high capacity shelter homes which can take care of this target group. These centres can be run by reputed NGOs and financial assistance can be provided by the Union Government or respective State Governments.”

It does not require solomon’s wisdom to say that the affidavit nowhere really focuses on the problem that has crept up.

Mr.Jayant Bhushan, learned senior counsel, who was requested to give certain suggestions, submitted that he has not drafted out any suggestion as nothing has been done by the Delhi Government regard being had to the directions given by this Court on earlier occasion and he will do so if something specifically is done and anything else is required to be done.

At this juncture, Mr.N. Waziri, learned standing counsel appearing for the Government of NCT of Delhi submitted that the homes that the learned Amicus Curiae has visited may not reflect the correct picture but, as advised at present, we are not inclined to accept the said submission of the learned standing counsel for the State.

Mr.Atul Nanda, learned standing counsel for the Union of India submitted that Joint Secretary, Ministry of Women and Child may be given the responsibility to coordinate with the State Government as well as the Municipal Corporation of Delhi to find out about the homes, which the learned Amicus Curiae has visited, whether they are really funded by the Government and what activities they are taking.

Though we are inclined to direct that the said exercise be done, yet we just cannot become the silent spectators waiting for the Government to move like a tortoise and allow the destitute pregnant women and lactating women to die on the streets of Delhi, may be after giving birth to a child or may be along with the child. Such a situation cannot be countenanced and is not possible to visualize in the backdrop of Article 21 of the Constitution of India. It is expected of the State and the persons who are in-charge of its departments to have a vision. It has been said long back that the personalities

who have vision can always visualize the invisibility. To elaborate: it conveys the situation which exists and are likely to eloquently get edified, must be pursued by the persons who are in the helm of administration.

In view of the aforesaid, we command the Government of NCT of Delhi to file a proper and comprehensive affidavit within a period of four weeks and pending that we direct the Government of NCT of Delhi to demarcate or hire or create at least two shelter centres meant for destitute pregnant women and lactating women so that proper care can be taken to see that no destitute woman is compelled to give birth to a child on the footpath.

We are sure, no apathy shall be shown in this regard as any kind of recalcitrant, propensity or proclivity in this regard would be violative of the concept of Rule of Law.

At this juncture, we may note with profit one of the suggestions given by Mr. Jayant Bhushan. It is submitted by Mr. Bhushan, learned senior counsel that when the State takes recourse to such an action, it should be widely published so that the people who are in such a situation or the people who are aware of such a situation and can help people and also can take them to such shelter homes. We are sure, the State Government shall live upto the same and do the needful within a week including spreading of

awareness as stated hereinabove.

Needless to say, a shelter home should have facility for food and appropriate medical aid.

Let the matter be listed on 19th January, 2011 on which date the matter shall be adverted to whether the State Government has demarcated, hired or created the shelter homes, as directed hereinbefore.

Order dasti under the signature of the Court Master.

CHIEF JUSTICE

JANUARY 12, 2011
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SANJIV KHANNA, J