

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.406/2013

RE - INHUMAN CONDITIONS IN 1382 PRISONS (II)

ORDER

Madan B. Lokur, J.

1. By our order dated 5th February, 2016¹ we had drawn attention to over-crowding in prisons and had given directions which would assist in reducing the prison population and generally improve the living conditions of prisoners.

2. When this petition was listed on 14th March, 2016 we had noted that the Ministry of Women and Child Development of the Government of India had set up a Committee on 24th February, 2016 for drafting a Manual similar to the Prison Manual prepared by the Ministry of Home Affairs of the Government of India concerning issues pertaining to juveniles in custody either in Observation Homes or Special Homes or Places of Safety in terms of the Juvenile Justice (Care and Protection of Children) Act, 2015. We were informed that although the Committee was required to submit its report by 31st May, 2016 the time given was rather short. We were in agreement with the Member Secretary of

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the Committee in this regard and had expressed the view that there was no need to show undue haste in the preparation of the Manual or produce a half baked document. We had also suggested the inclusion of representatives from academia and NGOs in the drafting process.

3. The matter was again taken up on 6th May, 2016 when we were informed by learned *Amicus* that the Manual for juveniles in custody would take about three months for completion. With regard to over-crowding in jails, the learned *Amicus* submitted that there are several jails where over-crowding is to the extent of more than 150%, meaning thereby that there are more than one and a half times the number of prisoners than the permissible limit. It was submitted that an excessive prison population has its own problems of hygiene, sanitation, management, discipline etc. The problem of over-crowding cannot be looked at in isolation. He submitted that in the first instance the States may be directed to identify jails in which over-crowding is to the extent of 150% or more so that further directions could be given. On the basis of this submission we called for information and now find that the situation continues to be not only tragic but also pathetic. Learned *Amicus* has drawn our attention vide his Note dated 20.9.2016 to over-crowding to the extent of 150% or more in jails in Assam (8), Chhattisgarh (17), Jharkhand (3), Karnataka (7), Kerala (21), Madhya Pradesh (5), Maharashtra (16), Rajasthan (21), Uttar Pradesh (47) and Delhi (12). It is unfortunate that in spite of our directions the prison authorities have not been able to take any effective steps for reducing over-crowding in jails.

4. On the submission of the learned *Amicus* for issuance of further directions, we had vide our order dated 6th May, 2016 expanded the mandate of the under-trial Review Committee to examine the cases of under-trials who fall in the following categories:

- a) Become eligible to be released on bail under Section 167(2)(a)(i)&(ii) of the Code read with Section 36A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (where persons accused of section 19 or section 24 or section 27A or for offences involving commercial quantity) and where investigation is not completed in 60/90/180 days;
- b) Are imprisoned for offences which carry a maximum punishment of 2 years;
- c) Are detained under Chapter VIII of the Criminal Procedure Code i.e. under Sections 107, 108, 109 and 151 of Cr.P.C.;
- d) Become sick or infirm and require specialized medical treatment (S.437 of the Code);
- e) Women offenders (S.437 of the Code);
- f) Are first time male offenders between the ages 19 and 21 who are in under trial custody for offences punishable with less than 7 years of imprisonment and have suffered at least 1/4th of the maximum sentence possible;
- g) Are of unsound mind and must be dealt under Chapter XXV of the Code;
- h) Are eligible for release under Section 437(6) of the Code, wherein in a case triable by a Magistrate, the trial of a person accused of any non-bailable offence has not been concluded within a period of sixty days from the first date fixed for taking evidence in the case;

5. We had also required the States and the Inspector General of Prisons to prepare a Plan of Action either to reduce over-crowding or to augment the infrastructure so that there is more space available for each prisoner.

6. On the basis of the above, we heard learned counsel for the parties and the learned *Amicus* and find that more than sufficient time has elapsed but the Manual for juveniles in custody has not yet been prepared by the Ministry of Women and Child Development of the Government of India. Accordingly, we are left with no option but to direct the said Ministry to expedite the preparation of the Manual and ensure that it is ready positively on or before 30th November, 2016.

7. We also find that not a single State or Union Territory has bothered to prepare a Plan of Action and bring it to our notice or to the notice of the learned *Amicus*. Consequently, we are left with no option but to direct the States and the Inspector General of Prisons to prepare a Plan of Action as already directed on 6th May, 2016 for reducing the prison population. In this context we may mention that the learned *Amicus* has informed us on the basis of affidavits filed by some of the States, that there are proposals for constructing additional barracks or jails but these appear to be ad hoc proposals with no time limit specified for completion and in some cases it is not clear whether provision has been made for providing resources for the construction. A viable Plan of Action should be prepared within the next six months and in any event by 31st March, 2017. Information in this regard should be given to the learned Additional Solicitor General and the learned *Amicus*.

8. We are a little distressed to note that even though this Court has held on several occasions that prisoners both under trials and convicts have certain

fundamental rights and human rights, little or no attention is being paid in this regard by the States and some Union Territories including the National Capital Territory of Delhi. Certainly fundamental rights and human rights of people, however they may be placed, cannot be ignored only because of their adverse circumstances. We need only remind the Union of India and the State Governments that as far back as in 1975 this Court reminded us in ***D. Bhuvan Mohan Patnaik v. State of Andhra Pradesh***² (referring to a decade old decision in ***State of Maharashtra v. Prabhakar Pandurang Sangziri***³) that :

“Convicts are not, by mere reason of the conviction, denuded of all the fundamental rights which they otherwise possess. A compulsion under the authority of law, following upon a conviction, to live in a prison-house entails by its own force the deprivation of fundamental freedoms like the right to move freely throughout the territory of India or the right to “practise” a profession. A man of profession would thus stand stripped of his right to hold consultations while serving out his sentence. But the Constitution guarantees other freedoms like the right to acquire, hold and dispose of property for the exercise of which incarceration can be no impediment, likewise, even a convict is entitled to the precious right guaranteed by Article 21 of the Constitution that he shall not be deprived of his life or personal liberty except according to procedure established by law.”

9. Similarly, a Constitution Bench of this Court held in ***Sunil Batra v. Delhi Administration***⁴ in paragraph 213 of the Report as follows:

“It is no more open to debate that convicts are not wholly denuded of their fundamental rights. No iron curtain can be drawn between the prisoner and the Constitution. Prisoners are entitled to all constitutional rights unless their liberty has been constitutionally curtailed (see

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(1975) 3 SCC 185

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AIR 1966 SC 424

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(1978) 4 SCC 494

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*Procunier v. Martinex*⁵). However, a prisoner's liberty is in the very nature of things circumscribed by the very fact of his confinement. His interest in the limited liberty left to him is then all the more substantial. Conviction for crime does not reduce the person into a non-person whose rights are subject to the whim of the prison administration and, therefore, the imposition of any major punishment within the prison system is conditional upon the observance of procedural safeguards (see *Wolff v. McDonell*.⁶)."

10. There are a host of decisions rendered thereafter by this Court on the same subject of the fundamental rights and human rights of convicts and under trial prisoners repeated every decade over the last so many years. We may mention only a few of them: *Charles Sobraj v. Supdt., Central Jail, Tihar*,⁷ *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*,⁸ *Nilabati Behera v. State of Orissa*⁹ and *D.K. Basu v. State of W.B.*¹⁰ More recently, in *Mehmood Nayyar Azam v. State of Chhattisgarh*¹¹ this Court observed in paragraph 38 of the Report as follows:

"It is imperative to state that it is the sacrosanct duty of the police authorities to remember that a citizen while in custody is not denuded of his fundamental right under Article 21 of the Constitution. The

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40 L Ed 2d 224 at 248 (1974)

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41 L. Ed.2d 935 at 973 (1974)

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(1978) 4 SCC 104

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(1981) 1 SCC 608

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(1993) 2 SCC 746

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(1997) 1 SCC 416

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(2012) 8 SCC 1

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restrictions imposed have the sanction of law by which his enjoyment of fundamental right is curtailed but his basic human rights are not crippled so that the police officers can treat him in an inhuman manner. On the contrary, they are under obligation to protect his human rights and prevent all forms of atrocities.”

Unfortunately, it seems that the views of this Court over the 50 years (since *Prabhakar Pandurang Sangziri* in 1966) have continuously fallen on deaf ears and the situation does not seem to be changing even now.

11. Unless due importance is given to the fundamental rights and human rights of the people, the right to life and the right to live with dignity under Article 21 of the Constitution will have no meaning.

12. Under these circumstances, we are constrained to direct the Union of India through the Ministry of Home Affairs to obtain the status of compliance of our orders passed on 5th February 2016 and 6th May, 2016 as on 30th September, 2016. The information should be collated by the Ministry of Home Affairs and shared with the learned Additional Solicitor General and the learned *Amicus* so that even the rights of prisoners, whether convicts or under trials are given due importance. The needful be done before the next hearing, that is 18th October, 2016.

.....J
(Madan B. Lokur)

.....J
(R.K. Agrawal)

New Delhi;
October 3, 2016