

Supreme Court of India

Re-Inhuman Conditions In 1382 ... vs State Of Assam on 25 September, 2018

Author: M B Lokur

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 406 OF 2013

RE- INHUMAN CONDITIONS IN 1382 PRISONS

ORDER

Madan B. Lokur, J.

1. Over the years, public interest litigation has brought immense social change through interventions made and directions issued by this Court. Public interest litigation has been initiated, very rarely, by suo motu¹ exercise of jurisdiction by this Court. On most occasions, it has been initiated through a writ petition filed by activist individuals or organisations². Again, quite infrequently, it has been initiated on the basis of a communication received by this Court³.

Suo Motu Writ Petitions:

In Re: Outrage As Parents End Life After Childs Dengue Death, (2016) 10 SCC 709, In Re: Death of 25 Chained Inmates in Asylum Fire in Tamil Nadu v. Union of India, (2002) 3 SCC 31, In Re: Indian Woman says gang-raped on orders of Village Court published in Business and Financial News, (2014) 2 Signature Not Verified SCC 786 Digitally signed by Writ Petitions filed:

SANJAY KUMAR Date: 2018.09.25 17:26:35 IST MC Mehta v. Union of India [Oleum Gas Leak], (1986) 2 SCC 176, Pt. Parmanand Katara v. Union of Reason:

India, (1989) 4 SCC 286, Bachpan Bachao Andolan v. Union of India, (2011) 5 SCC 1
Letters Petitions:

Prem Shankar Shukla v. Delhi Administration, (1980) 3 SCC 526, Sheela Barse v.
State of Maharashtra, (1983) 2 SCC 96, D.K. Basu v. State of W.B., (1997) 1 SCC 416

2. During the last several decades, public interest litigation has compelled this Court to consider issues relating to the environment, social justice, violation of human rights and disregard for Article 21 of the Constitution; either because of an absence of governance due to the failure of the State to faithfully and sincerely implement laws enacted by Parliament⁴ or due to mis-governance by the State, that is, the Central Government, the State Governments and Union Territory Administrations leading to rampant illegalities⁵. The failure of the State to take remedial steps to fill in the gap when

there is no operative law⁶, except that enshrined in the Constitution, more particularly Article 21 has resulted in public interest litigation and at least two cases where a treaty obligation ought to be fulfilled⁷.

3. In recent times, usually and regrettably, the State has chosen to challenge the idea of public interest litigation or denigrate it by chanting the mantra of judicial activism or separation of powers. In most cases, these mantras are nothing but a fig leaf to cover the failure of the State to Absence of Governance:

Bandhua Mukti Morcha v. Union of India, (1997) 10 SCC 549, *Sampurna Behura v. Union of India*, (2018) 4 SCC 433, *Swaraj Abhiyan v. Union of India*, (2016) 7 SCC 498 Mis-Governance:

Common Cause v. Union of India, (2017) 3 SCC 501, *Goa Foundation v. Union of India*, (2014) 6 SCC 590, *Manohar Lal Sharma v. Principal Secretary & Ors.*, (2014) 9 SCC 516 When there is no operative law:

Laxmi v. Union of India, (2014) 4 SCC 427, *In Re: Noise Pollution (V)*, (2005) 5 SCC 733, *Environment & Consumer Protection Foundation v. Union of India & Ors. [Vrindavan Widows]* (2017) 16 SCC 780, *MC Mehta [Taj Trapezium] v. Union of India*, (1997) 2 SCC 353 Treaty Obligation:

Vishaka v. State of Rajasthan [CEDAW], (1997) 6 SCC 241, *Consumer Education & Research Centre v. Union of India [ILO Asbestos Convention]*, (1995) 3 SCC 42 recognise the existence of the rule of law and the need for providing social justice to the people of the country, as stated in the Preamble to our Constitution. There must be a realization that public interest litigation has given a voice to millions of marginalized sections of society, women and children. Public interest litigation is one of the more important contributions of India to jurisprudence. In fact, the Indian experience has encouraged some other countries to introduce public interest litigation in their jurisprudence.

4. This is not to suggest that public interest litigation has not been misused or that occasionally this Court has not exceeded its jurisdiction, but it must be emphasised that wherever this Court might have exceeded its jurisdiction, it has always been in the interest of the people of the country prompted by administrative mis-governance or absence of governance. There are, therefore, occasional transgressions on both sides, but that cannot take away from the significance of public interest litigation as a non-adversarial source of righting some wrongs and encouraging social change through accountability and, in cases, transparency.

5. Even the present petition concerning the rights of prisoners, which was initiated on the basis of a letter received by this Court from a former Chief Justice of India, was initially resisted by the State, but with the intervention of the learned Attorney General, it appears that the need for introspection and reform has been recognised and there has been a positive and constructive expression of interest shown by the Union of India in this regard. The present petition arose out of a concern shown by former Chief Justice R.C. Lahoti on four issues, namely, overcrowding in prisons; unnatural deaths of prisoners; gross inadequacy of staff; and the available staff being untrained or

inadequately trained. Ever since this petition has been pending disposal, despite several directions issued by this Court from time to time, no finality has yet been attached to the rights of prisoners. On the contrary, issues that require consideration have multiplied and new vistas have opened for consideration.

6. With this preamble, before we actually pass agreed directions that have been accepted by the learned Attorney General, it is necessary to give a few background facts relating to the efforts made in the past on the issue of the rights of prisoners.

Earlier efforts on the rights of prisoners

7. The first effort relating to the rights of prisoners was made through the Report of the All India Committee on Jail Reforms, 1980-1983, commonly known as the Mulla Committee. Some of the recommendations made by the Mulla Committee were accepted by the Government of India, while some were not. But what is more important is the discussion relating to the purpose of punishment and the changes that should be brought about to achieve this purpose. These questions are valid even today and continue to demand an answer.

8. In 1987, the Justice V. R. Krishna Iyer Committee on Women Prisoners, submitted its report, which dealt with issues concerning women prisoners as a marginalised group and gave several significant recommendations. The Law Commission of India also dealt with the rights of prisoners in its 78th Report particularly dealing with congestion of undertrial prisoners in jails. The Bureau of Police Research and Development (BPR&D) also gave a report in 2007 under the Chairmanship of its Director General. Amongst other things, a National Policy on Prison Reforms and Correctional Administration was also framed.

9. Apart from the above, there have been some private and individual efforts, including a Report on Prison Visiting System in India by the Commonwealth Human Rights Initiative in 2005. The responsibilities of Visitors appointed for prisons was the subject matter of a decision of a Division Bench of the Madhya Pradesh High Court in *Ranchod v. State of M.P.* and Anr.⁸ The Centre on the Death Penalty of the National Law University, Delhi, submitted a two-volume report in 2016 which dealt with, inter alia, the conditions and treatment of prisoners on death row. There is also a significant study on Open Prisons conducted by Smita Chakraburttu MANU/MP/0313/1987 on her experiences in prisons in Rajasthan and Bihar which is of seminal importance.

10. In other words, there is a wealth of material available on record, apart from several milestone decisions⁹ rendered by this Court from time to time and also in the present petition as well as in *R.D. Upadhyay v. State of Andhra Pradesh* and others.¹⁰

11. Keeping this in mind and the dire necessity of reforms in prison administration and prison management despite earlier efforts, it was put to the learned Attorney General to consider the feasibility of appointing a Committee to look into the entire range of issues raised, not only in this petition, but also other issues that have cropped up during the hearing on several dates and from time to time. As mentioned above, the learned Attorney General accepted the suggestion of a

Committee being appointed. Therefore, the following directions are issued:

12. The Ministry of Home Affairs in the Government of India shall forthwith issue a notification constituting a Supreme Court Committee on Prison Reforms consisting of:

1. Honble Mr. Justice Amitava Roy, former Judge of the Supreme Court as its Chair.

Sunil Batra v. Delhi Administration (1978) 4 SCC 494; Charles Sobraj v. Suptd. Central Jail, Tihar (1978) 4 SCC 104; Sheela Barse v. State of Maharashtra (1983) 2 SCC 96; Prem Shankar Shukla v. Delhi Administration (1980) 3 SCC 526 (2007) 15 SCC 337

2. Inspector General of Police, Bureau of Police Research and Development as its Member

3. Director General (Prisons) Tihar Jail, New Delhi as its Member.

13. The Committee will give its recommendations on the following issues as its Terms of Reference:

1. Review the implementation of the Guidelines contained in the Model Prison Manual 2016 by States and Union Territories (UT's).

2. Review the implementation by the States and UTs of the recommendations made by the Parliamentary Committee on Empowerment of Women in its report tabled in the Parliament titled Women in Detention and Access to Justice, and the advisory issued by the Ministry of Home Affairs (MHA) in this regard.

3. To review the two training manuals for prison personnel prepared by Bureau of Police Research & Development (BPR&D), Training Manual of Basic Course for Prison Officers 2017 and Training Manual of Basic Course for Prison Warders 2017 and forwarded to States and UTs.

4. Review the recommendations made in the report of the Ministry of Women and Child Development in collaboration with the National Commission for Women and the National Law University Delhi on Women in Prisons.

5. Review the recommendations made in the report of the National Commission for Women on Inspection of Prisons/Jails/ Custodial Homes housing Women.

6. Review the implementation by States and UTs of the Guidelines contained in Living conditions in Institutions for Children in Conflict with Law prepared by the Ministry of Women and Child Development (MWCD) and the Model Rules and Procedures prepared by the MWCD under the Juvenile Justice (Care & Protection of Children) Act, 2015 and Juvenile Justice (Care and Protection of Children) Model Rules, 2016.

7. Review the status of the implementation of the guidelines and advisories issued by MHA to the States and UTs.
8. The Committee may give its consolidated recommendations based on the above and suggest measures to improve the implementation of the aforementioned guidelines and advisories, subject to budgetary resources available with the States and the UTs.
9. To examine the extent of overcrowding in prisons and correctional homes and recommend remedial measures, including an examination of the functioning of Under Trial Review Committees, availability of legal aid and advice, grant of remission, parole and furlough.
10. To examine violence in prisons and correctional homes and recommend measures to prevent unnatural deaths and assess the availability of medical facilities in prisons and correctional homes and make recommendations in this regard.
11. To assess the availability and inadequacy of staff in prisons and correctional homes and recommend remedial measures.
12. To suggest training and educational modules for the staff in prisons and correctional homes with a view to implement the suggestions.
13. To assess the feasibility of establishing Open Prisons, the possibility of and the potential for establishing Open Prisons in different parts of the country and give effect to the recommendations.
14. To recommend steps for the psycho-social well-being of minor children of women prisoners, including their education and health.
15. To examine and recommend measures for the health, education, development of skills, rehabilitation and social reintegration of children in Observation Homes, Places of Safety and Special Homes established under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015.
16. Generally, any other recommendation that the Committee may deem appropriate, fit and proper in furtherance of reforms in prisons and correctional homes.
17. The Committee while giving its suggestions and recommendations may also suggest changes or amendments to various guidelines contained in the Modern Prison Manual, 2016 and also various directives issued by the Government of India.
14. The Committee is requested to give its recommendations in respect of the first three Terms of Reference, preferably within a period of three months from the date on which the necessary facilities are provided by the Government of India.

A. It is hereby directed that the Chairman of the Committee would be entitled to financial benefits as available to a Judge of the Honble Supreme Court. The other terms and conditions of the Chairman of the Committee would be as accepted by the learned Attorney General as follows:

Sl. No.	Particulars of Conditions	Terms &	Accepted
A)	Chairperson		
i)	Residential Accommodation		Payment of HRA @30% of pay, as a special case.
ii)	LTC		As admissible to highest grade of Government official under LTC Rules in terms of OM dated 08.10.1987 (as revised).
iii)	Staff Car		Staff car may be provided, if the same can be spared by MHA. If staff car cannot be provided, the Chairman may be provided with Chauffeur driven hired conveyance with limit of 600 litres of petrol per quarter.
iv)	Travelling Allowance		Traveling allowance on appointment by air for self and dependent family members from home town to New Delhi for joining the Committee. One additional fare for the the Chairman, both onwards and return if the family members are left behind.
v)	Medical facility		Through CGHS, unless already entitled to medical facilities.
vi)	Telephone		One Residential Telephone/Mobile/Internet facility may be allowed to the Chairman with ceiling for reimbursement as applicable to the Secretary to GOI in terms of MOFs OM dated 14.11.2006 & subsequent OM dated 11.05.2012 (as revised),

unless already possessing

vii) Newspaper & Magazines such facilities.
Supply of Newspaper/Magazines
may be regulated as per
DoE/s OM No. 1(24)-
E.II(A)/96 dated
13.09.1996 (as revised).

B. Since the in service officers will be appointed as part of the

Committee, these officers will be treated as on duty. The officers would be entitled to all allowances and benefits as per the applicable rules.

C. The composition of the above Committee will be notified by the Ministry of Home Affairs, Government of India forthwith. D. The Committee will have its office in the National Capital Territory of Delhi.

E. The Committee will indicate to the Union of India as to its requirements of infrastructure support, including personnel necessary for answering the Terms of Reference. The necessary infrastructure, including manpower will be provided by Ministry of Home Affairs, Government of India.

F. All payments indicated above shall be made by the Union of India. DIRECTIONS

1. The Committee will make its recommendations as soon as feasible, other than with respect to the first three Terms of Reference, dealt with above. It may consider, if necessary, sending reports on any of the matters as and when the recommendations are finalized. It shall also make its recommendations to the State Governments.

2. The Committee will devise its own procedure and formulate modalities necessary for accomplishing the task. It may appoint such advisers, institutional consultants and experts as it may consider necessary for any particular purpose. It may call for such information and take such evidence as it may consider necessary. All State Governments, UT Administrations and the Ministries/Departments of the Central Government will furnish such information, documents and other assistance as required by the Committee.

3. We request the Committee to complete the collection of data and information and make appropriate recommendations and submit the same to this Court preferably within a period of 12 months.

4. The Committee may visit the States and interact with authorities concerned of the State Governments. All authorities of the State Governments and Union Territories may be directed to extend full cooperation with Committee. It would be the responsibility of the State Governments to

cooperate with the Committee and facilitate its visit and outreach to relevant authorities.

5. The Committee shall be at liberty to approach this Court to seek any further clarification or direction, if felt necessary.

6. The Government of India will make the services of an Additional Solicitor General of India, as and when required by the Committee for any assistance.

7. As and when a copy of the final report is submitted, the matter to be listed for further orders.

15. The writ petition may be revived and listed as and when required by the learned Amicus Curiae. We record our appreciation of the efforts put in by the learned Amicus who has devoted considerable time in assisting us and has made valuable suggestions from time to time, in a positive manner, and with a view to take forward the recognition and implementation of the human rights of prisoners.

...J
(Madan B. Lokur)

...J
(S. Abdul Nazeer)

New Delhi;
September 25, 2018

.....J
(Deepak Gupta)