

ITEM NO.102

COURT NO.2

SECTION PIL

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

WRIT PETITION (CIVIL) NO.559 OF 1994

R.D.UPADHYAY

Petitioner(s)

VERSUS

STATE OF A.P & ORS

Respondent(s)

(With appln(s) for directions and office report)

WITH Criminal Appeal No.69 of 2000

(With office report)

Civil Appeal No.2468 of 1998

(With office report)

W.P.(C) NO.84 of 1998

(With office report)

S.L.P.(C)...CC NO.5347 of 1998

(With appln.(s) for permission to file SLP)

S.L.P.(C) NOS.14303-14305 of 1998

(With appln.(s) for c/delay in filing SLP and office report)

Date: 13/11/2014 These Petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE T.S.THAKUR
HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MRS. JUSTICE R.BANUMATHI

Mr. Ranjit Kumar, Sr. Adv. (A.C.)

For Petitioner(s) Mr. Rajender Pd. Saxena, AOR

SLP 14303-05/98 & Mr. Manoj Swarup, Adv.
CC 5347/98 for M/s. Manoj Swarup & Co.

CA 2468/98 & Mrs. Rachna Gupta, AOR
WP 84/98

Crl.A.69/2000
For Respondent(s)

Mr. Ambhoj Kumar Sinha, AOR
Mr. K.Radhakrishnan, Sr. Adv.
Ms.Asha G.Nair, Adv.
Ms. Sadhna Sandhu, Adv.
Mr. A.K.Srivastava, Adv.
Ms. S.A.Siddiqui, Adv.
Ms.Sushma Suri, Adv.
Mr. B. Krishna Prasad, AOR

Ms. Asha G.Nair, Adv.
Mr. A.P.Mayee, Adv.

Mr. Anuvrat Sharma, AOR
Mr. Mukesh K. Giri, AOR

Mr. Subramonium Prasad, AOR

Ms. Susmita Lal, AOR

Mr. Rajiv Mehta, AOR

Mr. Ranjan Mukherjee, AOR
Mr. S.C.Ghosh, Adv.

For H.P.

Mr. Suryanarayana Singh, AAG
Ms. Pragati Neekhra, AOR

Mr. K.R. Sasiprabhu, AOR

For Manipur

Mr. Sapam Biswajit Meitei, Adv.
Mr.Ashok Kumar Singh, Adv.
Mr. Z.H.Isaac Haiding, adv.

Mr. Khwairakpam Nobin Singh, AOR

Mr. Sanjay R. Hegde, AOR

Ms. Kavita Wadia, AOR

Mr. K.B. Rohtagi, AOR

Ms. Bina Madhavan, AOR

For Arunachal
Pradesh

Mr. Anil Shrivastav, AOR
Mr. Rituraj Biswas, Adv.

Mr. P.V. Yogeswaran, AOR

For Bihar Mr. Gopal Singh, AOR
Mr. Chandan Kumar, Adv.
Mr. Manish Kumar, Adv.

For Tripura Mr. Gopal Singh, AOR
Mr. Ritu Raj Biswas, Adv.

Mr. P. Parmeswaran, AOR

For Sikkim Mr. A. Mariarputham, Adv. Gen.
Mrs. Aruna Mathur, Adv.
Mr. Yusuf, Adv.
for M/s. Arputham, Aruna & Co.

For Punjab Mr. Jagjit Singh Chhabra, AOR

For Karnataka Mr. V.N. Raghupathy, AOR
Mr. Parikshit P. Angadi, Adv.

Ms. Rachana Srivastava, AOR
Mr. Utkarsh Sharma, Adv.

Mr. Sunil Fernandes, AOR

Mr. Mayur R. Shah, Adv.
Mr. D. Mahesh Babu, AOR
Mr. Amit Nain, Adv.
Mr. Amjid Maqbool, Adv.

Mr. Abhijit Sengupta, AOR

For Gujarat Ms. Hemantika Wahi, AOR
Ms. Sangeeta Singh, Adv.

For Chhattisgarh Mr. C.D. Singh, AOR
Mr. M.P. Singh, Adv.

For M.P. Mr. C.D. Singh, AOR
Mr. M.P. Singh, Adv.
Mr. Sunny Choudhary, Adv.

Ms. Kamakshi S. Mehlwal, AOR

Mr. Naresh K. Sharma, AOR

Mr. D.S. Mahra, AOR

Mr. Guntur Prabhakar, AOR

For U.P. Mr. Irshad Ahmed, AAG
Mr. Ravi Prakash Mehrotra, AOR
Mr. Abhinav Kumar Malik, Adv.
Mr. Abhishth Kumar, Adv.
Ms. Archana Singh, Adv.
Ms. Pragati Neekhra, Adv.

Mr. Ravi Prakash Mehrotra, Adv.
Mr. Ashutosh Kr. Sharma, Adv.
Mr. Gunnam Venkateswara Rao, AOR

Ms. Kamini Jaiswal, AOR

For Assam Mr. Riku Sarma, Adv.
Mr. Navnit Kumar, Adv.
for M/s. Corporate Law Group

For West Bengal Mr. Anip Sachthey, AOR
Mr. Saakaar Sardana, Adv.
MS. Shagun Matta

Mr. Jatinder Kumar Bhatia, AOR
Mr. Mukesh Verma, Adv.

Mr. Radha Shyam Jena, AOR

For Andaman & Nicobar Administration Mr. Balasubramaniam, Adv.
Ms. G. Indira, AOR
Mr. K. V. Jagdishvaran, Adv.
Mr. K. Ram Kumar, AOR

Ms. Sumita Hazarika, AOR

Mr. V.G. Pragasam, AOR
Mr. S.J.Aristotle, adv.
Mr. Prabu Ramasubramaniam, adv.

Ms. A. Subhashini, AOR

Mr. Ashok K. Srivastava, AOR

Mr. Gopal Singh, AOR

For Nagaland Ms. K. Enatoli Sema, Adv.
Mr. Amit Kumar Singh, Adv.

For Haryana Mr. Manjit Singh, AAG
 Mr. Tarjit Singh, Adv.
 Mr. Vinay Kuhar, Adv.
 MS. Vivekta Singh, Adv.
 Ms. Nupur Choudhary, Adv.

For Rajasthan Mr. S.S.Shamshery, Adv.
 Mr. Amit Sharma, Adv.
 Mr. Sandeep Singh, Adv.
 Ms. Ruchi Kohli, Adv.
 Ms. Nidhi, Adv.

For Tamil Nadu Mr. B. Balaji, Adv.
 Mr. R. Rakesh Sharma, Adv.
 Mr. S. Anand, Adv.

For Telangana Mr. P.Venkat Reddy, Adv.
 Mr. Sumanth Nookla, Adv.
 M/s. Palwai Venkat Law Associates

UPON hearing counsel the Court made the following
O R D E R

The petitioner is a practising Advocate of this Court. In the present petition filed in public interest under Article 32 of the Constitution of India, he has made an attempt to highlight the plight of under-trial prisoners said to be languishing in jails without trial for a very long period.

When this petition initially came up before this Court on 07.11.1994 this Court directed the Superintendent of Delhi's Tihar Jail to file an affidavit giving a list of the under-trial prisoners who were confined for over a period of one year. The Jail authorities filed an affidavit in response, enclosing a list of the Jail-wise

break up of under trials who had spent more than one year in confinement. The list indicated that there were under trial prisoners who are in jail for periods ranging between one year to 11 years. The total cases categorised by counsel appearing for the NCT, Delhi came to 1930 out of which as many as 880 under trials were charged with murder, 264 for commission of offence under the NDPS Act, 137 for rape, 188 for dacoity and robbery, 122 with commission of offence under the TADA and the rest with minor offences. Noticing the facts that emerged from the reports and the affidavits this Court passed an order of 19th March, 1996 directing release of all such under-trials as were charged with kidnapping, theft, cheating, Arms Act, counterfeiting, custom under Section 326, IPC, 324 and riots and 354, IPC and who had spent more than one year in jail. In other cases where the under-trials were charged with murder, rape, kidnapping and robbery, NDPS Act, TADA Official Secret Act etc. this Court directed the State Government to consider and take appropriate decisions in their cases. Several further orders were also passed by this Court one of which passed on 23.01.2002 reported in R.D.Upadhayay Vs. State of Andhra Pradesh 2007 (15) SCC 337 identified the following three major issues that fell for consideration : (1)

Creation of sufficient number of subordinate courts as well as providing adequate infrastructure and filling up of the existing vacancies (2) necessary direction with regard to the women under trial prisoner/women convicts for their children how to be dealt with inside the jail and (3) arrangement required to be made for mentally unsound people who are either under trial prisoners or have been convicted. Out of the above the issue relating to women under trial prisoners, women convicts and their children was dealt with in an order reported in R.D.Upadhayay Vs. State of Andhra Pradesh 2007 (15) SCC 337. This Court in that order referred to the constitutional and statutory provisions besides several reports touching the subject while issuing the following directions/guidelines:

“ In light of various reports referred to above, affidavits of various State Governments, Union Territories, Union of India and submissions made, we issue the following guidelines :

1. A child shall not be treated as an undertrial/convict while in jail with his/her mother. Such a child is entitled to food, shelter, medical care, clothing, education and recreational facilities as a matter of right.

2. Pregnancy:

(a) Before sending a woman who is pregnant to a jail, the concerned authorities must ensure that jail in question has the basic minimum facilities for child delivery as well as for providing pre-natal and post-natal care for both, the mother and the child.

(b) When a woman prisoner is found or suspected to be pregnant at the time of her admission or at any time thereafter, the lady Medical Officer shall report the fact to the superintendent. As soon as possible, arrangement shall be made to get such prisoner medically examined at the female wing of the District Government Hospital for ascertaining the state of her health, pregnancy, duration of pregnancy, probable date of delivery and so on. After ascertaining the necessary particulars, a report shall be sent to the Inspector General of Prisons, stating the date of admission, term of sentence, date of release, duration of pregnancy, possible date of delivery and so on.

(c) Gynaecological examination of female prisoners shall be performed in the District Government Hospital. Proper pre-natal and post-natal care shall be provided to the prisoner as per medical advice.

3. Child birth in prison:

a. As far as possible and provided she has a suitable option, arrangements for temporary

release/parole (or suspended sentence in case of minor and casual offender) should be made to enable an expectant prisoner to have her delivery outside the prison. Only exceptional cases constituting high security risk or cases of equivalent grave descriptions can be denied this facility.

b. Births in prison, when they occur, shall be registered in the local birth registration office. But the fact that the child has been born in the prison shall not be recorded in the certificate of birth that is issued. Only the address of the locality shall be mentioned.

c. As far as circumstances permit, all facilities for the naming rites of children born in prison shall be extended.

4. Female prisoners and their children:

a. Female prisoners shall be allowed to keep their children with them in jail till they attain the age of six years.

b. No female prisoner shall be allowed to keep a child who has completed the age of six years. Upon reaching the age of six years, the child shall be handed over to a suitable surrogate as per the wishes of the female prisoner or shall be sent to a suitable institution run by the Social Welfare Department. As far as possible, the child shall not be transferred to an institution outside the town or city where the prison is located in order to minimize undue hardships on both mother and child due to physical distance.

c. Such children shall be kept in protective custody until their mother is released or the

child attains such age as to earn his/her own livelihood.

d.Children kept under the protective custody in a home of the Department of Social Welfare shall be allowed to meet the mother at least once a week. The Director, Social Welfare Department, shall ensure that such children are brought to the prison for this purpose on the date fixed by the Superintendent of Prisons.

e.When a female prisoner dies and leaves behind a child, the Superintendent shall inform the District Magistrate concerned and he shall arrange for the proper care of the child. Should the concerned relative(s) be unwilling to support the child, the District Magistrate shall either place the child in an approved institution/home run by the State Social Welfare Department or hand the child over to a responsible person for care and maintenance.

5.Food, clothing, medical care and shelter:

a.Children in jail shall be provided with adequate

clothing suiting the local climatic requirement for which the State/U.T. Government shall lay down the scales.

b.State/U.T. Governments shall lay down dietary scales for children keeping in view the calorific requirements of growing children as per medical norms.

c.A permanent arrangement needs to be evolved in all jails, to provide separate food with ingredients to take care of the nutritional needs of children who reside in them on a regular

basis.

d. Separate utensils of suitable size and material should also be provided to each mother prisoner for using to feed her child.

e. Clean drinking water must be provided to the children. This water must be periodically checked.

f. Children shall be regularly examined by the Lady Medical Officer to monitor their physical growth and shall also receive timely vaccination. Vaccination charts regarding each child shall be kept in the records. Extra clothing, diet and so on may also be provided on the recommendation of the Medical Officer.

g. In the event of a woman prisoner falling ill, alternative arrangements for looking after any children falling under her care must be made by the jail staff.

h. Sleeping facilities that are provided to the mother and the child should be adequate, clean and hygienic.

i. Children of prisoners shall have the right of visitation.

j. The Prison Superintendent shall be empowered in special cases and where circumstances warrant admitting children of women prisoners to prison without court orders provided such children are below 6 years of age.

6. Education and recreation for children of female prisoners:

a. The child of female prisoners living in the jails shall be given proper education and

recreational opportunities and while their mothers are at work in jail, the children shall be kept in creches under the charge of a matron/female warder. This facility will also be extended to children of warders and other female prison staff.

b. There shall be a creche and a nursery attached to the prison for women where the children of women prisoners will be looked after. Children below three years of age shall be allowed in the creche and those between three and six years shall be looked after in the nursery. The prison authorities shall preferably run the said creche and nursery outside the prison premises.

7. In many states, small children are living in sub-jails that are not at all equipped to keep small children. Women prisoners with children should not be kept in such sub-jails, unless proper facilities can be ensured which would make for a conducive environment there, for proper biological, psychological and social growth.

8. The stay of children in crowded barracks amidst women convicts, under trials, offenders relating to all types of crimes including violent crimes is certainly harmful for the development of their personality. Therefore, children deserve to be separated from such environments on a priority basis.

9. Diet :

Dietary scale for institutionalized infants/children prepared by Dr. A.M. Dwarkadas

Motiwala, MD (Paediatrics) and Fellowship in Neonatology (USA) has been submitted by Mr. Sanjay Parikh. The document submitted recommends exclusive breastfeeding on the demand of the baby day and night. If for some reason, the mother cannot feed the baby, undiluted fresh milk can be given to the baby. It is emphasized that "dilution is not recommended; especially for low socio-economic groups who are also illiterate, ignorant, their children are already malnourished and are prone to gastroenteritis and other infections due to poor living conditions and unhygienic food habits. Also, where the drinking water is not safe/reliable since source of drinking water is a question mark. Over-dilution will provide more water than milk to the child and hence will lead to malnutrition and infections. This in turn will lead to growth retardation and developmental delay both physically and mentally." It is noted that since an average Indian mother produces approximately 600 # 800 ml. milk per day (depending on her own nutritional state), the child should be provided at least 600 ml. of undiluted fresh milk over 24 hours if the breast milk is not available. The report also refers to the "Dietary Guidelines for Indians # A Manual," published in 1998 by the National Institute of Nutrition, Council of Medical Research, Hyderabad, for a balanced diet for infants and children ranging from 6 months to 6 years of age. It recommends the following portions for children from the ages of 6-12 months, 1-3 years and 4-6 years, respectively:

Cereals and Millets # 45, 60-120 and 150-210 grams respectively; Pulses # 15, 30 and 45 grams respectively; Milk # 500 ml (unless breast fed, in which case 200 ml); Roots and Tubers # 50, 50 and 100 grams respectively; Green Leafy Vegetables # 25, 50 and 50 grams respectively; Other Vegetables # 25, 50 and 50 grams respectively; Fruits # 100 grams; Sugar # 25, 25 and 30 grams respectively; and Fats/Oils (Visible) # 10, 20 and 25 grams respectively. One portion of pulse may be exchanged with one portion (50 grams) of egg/meat/ chicken/fish. It is essential that the above food groups to be provided in the portions mentioned in order to ensure that both macronutrients and micronutrients are available to the child in adequate quantities.

10. Jail Manual and/or other relevant Rules, Regulations, instructions etc. shall be suitably amended within three months so as to comply with the above directions. If in some jails, better facilities are being provided, same shall continue.

11. Schemes and laws relating to welfare and development of such children shall be implemented in letter and spirit. State Legislatures may consider passing of necessary legislations, wherever necessary, having regard to what is noticed in this judgment.

12. The State Legal Services Authorities shall take necessary measures to periodically inspect jails to monitor that the directions

regarding children and mother are complied with in letter and spirit.

13. The Courts dealing with cases of women prisoners whose children are in prison with their mothers are directed to give priority to such cases and decide their cases expeditiously.

14. Copy of the judgment shall be sent to Union of India, all State Governments/Union Territories, High Courts.

15. Compliance report stating steps taken by Union of India, State Governments, Union territories and State Legal Services Authorities shall be filed in four months whereafter matter shall be listed for directions.

In terms of para 15 extracted above the petition was kept pending in this Court to monitor the implementation of the guidelines and the directions extracted above. This Court has accordingly monitored the progress made and issued further orders from time to time. For instance by an order dated 01.08.2013 this Court once again reiterated the direction issued earlier and took note of the compliance report submitted by various State Governments and Union Territories. This Court noted that since 2007 no definite information from the States and State Legal Services Authorities about compliance of various directions given in paragraph 45 of the order extracted had been received. It was in that backdrop

that this Court issued further directions with a view to ascertaining the present position as to the implementation of the guidelines issued by this Court and asked the State Legal Services Authorities to inspect all the jails including sub-jails in their States, take note of the prevailing situations in terms of the various directions issued in paragraph 45 of the order dated 13th April, 2006 and submit a detailed report to this Court within a period of eight weeks from the date of the order. The State Legal Services Authorities were permitted to take assistance from the District/Taluk level Committees and submit detailed reports including amendments/changes, if any, made in the Jail Manual. Mr. Ranjit Kumar, who was appointed Amicus Curiae in this case was in turn requested to update the chart and furnish a consolidated compilation.

The State Legal Services Authorities have pursuant to the above directions furnished the requisite information indicating the Status of the implementation of the directions issued by this Court in regard to each one of the States in the country. We have been briefly taken through the said reports. We find that while some work has been done by the concerned State Governments and other authorities towards implementation of the direction issued

by this Court, a lot more remains to be done. The State Legal Services Authorities have indicated the deficiencies in the implementation of the directions in their respective reports to which we need not refer at this stage in detail. We say so because such deficiencies noted by the State Legal Authorities remain to be removed in most of the States and would need to be addressed by all concerned. What is evident is that the implementation of the directions already issued by this Court is an on going process and will require continuous monitoring at times requiring further directions to ensure effective implementation of the same in the process of ensuring that under-trial prisoners languishing in jails do not suffer in sub-human conditions and are provided the basic amenities admissible to such persons especially the children of such prisoners who because of their tender age are at times forced to stay with their respective mothers till the trial concludes or the sentence undergone. The question however is whether the process of monitoring should continue to rest with this Court especially when this Court has done so for nearly 20 years past and although considerable work has been done both in terms of the judicial pronouncements giving guidelines and setting standards much more may require to be done in future We

had in that view suggested to Mr. K.Radhakrishnan, learned counsel for Union of India as also to Mr. Ranjit Kumar who continues to assist us as Amicus Curiae whether the process of implementation of the directions already issued could be left to be handled by the respective High Courts of the States concerned. Both of them submitted that keeping in view the wide ranging directions issued by this Court as also the time required for monitoring the implementation of the same, it is not inappropriate for us to request the High Courts concerned to continue the process of monitoring the implementation of the said guidelines and to issue further directions as and when necessary. The magnitude of the work involved in monitoring the implementation of our directions qua all the States in the country is indeed daunting and time consuming. But apart from the time constraints the monitoring of the implementation may in our view prove to be more effective if left to the jurisdictional High Courts.

Mr. Ranjit Kumar drew our attention to two other aspects that would identified for consideration by this Court namely the question of creation of sufficient number of Subordinate-Courts and providing adequate infrastructure for the same and the need for the

authorities to act in aid of those who suffer from any mental debility and are either facing trial or stand convicted. Both these aspects are no doubt equally important and cannot be neglected. Having said that we must also mention that this Court is monitoring the creation of sufficient number of subordinate courts in *Imtiaz Ahmad Vs. State of U.P & Ors.* (Crl.A. Nos. 254-262 of 2012). We see no difficulty in addressing the question relating to creation of sufficient number of the sub-ordinate courts including adequate infrastructure required for such courts in that petition as also the need for filling up of the existing vacancies in the said petition. So also we see no difficulty in the High Court examining the question regarding the rights of those who are mentally challenged whether they are under-trial prisoners or convicted or otherwise. The High Courts can in the light of the provisions of the Statues on the subject deal with that aspect in such manner as may be considered proper.

In the circumstances therefore we direct as under:

1) Copies of the reports received from the State Legal Services Authorities and Union Territories concerned shall be forwarded to the Jurisdictional High Courts along with a copy of this order with a request to the High Court

to register a PIL and to continue the proceedings and issue such directions in accordance with law as may be considered necessary in the facts and circumstances of the case.

2) While examining the issue touching the rights of the under-trial prisoners especially the females and the children with them, the High Courts may also examine the question relating to the rights of mentally challenged under-trials and convicts and issue appropriate directions. The High Court may while examining the rights of such unfortunate members of the society as suffer from any mental disability also examine whether any directions are required to be issued in relation to people who suffer from such illness but are not involved in any crime and yet suffer harassment, neglect or deprivation at the hands of their family or are seen roaming about in public places without any one taking responsibility for their care, protection or maintenance.

With the above directions these petitions shall stand disposed of. No costs.

(Shashi Sareen)
Court Master

(Veena Khera)
Court Master