

ITEM NO.5

COURT NO.4

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s)(Civil) No(s).406/2013

RE-INHUMAN CONDITIONS IN 1382 PRISONS

Date : 27-03-2018 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MR. JUSTICE DEEPAK GUPTA

For Petitioner(s)	Mr. Gaurav Agrawal, Adv. (A.C.) By Post
For Respondent(s)	Ms. Vibha Dutta Makhija, Sr. Adv. Mr. R.M. Bajaj, Adv. Ms. Binu Tamta, Adv. Ms. Sushma Suri, AOR Mr. B.K. Prasad, Adv. Ms. Sushma Manchanda, Adv. Mr. M.K. Maroria, Adv. Ms. Disha Vaish, Adv. Mr. B.V. Balaram Das, Adv.
For States of Andhra Pradesh	Mr. Guntur Prabhakar, Adv. Ms. Prerna Singh, Adv.
Arunachal Pradesh	Mr. Anil Shrivastav, Adv. Mr. Rituraj Biswas, Adv.
Assam	Mr. Shuvodeep Roy, Adv. Mr. Sayooj Mohandas M., Adv.
Bihar	Mr. M. Shoeb Alam, Adv. Ms. Fauzia Shakil, Adv. Mr. Ujjwal Singh, Adv. Mr. Mojahid Karim Khan, Adv.
Chhattisgarh	Mr. Sandeep Jha, Adv. Mr. Dharmendra Kumar Sinha, Adv.
Goa	Mr. Anshuman Srivastava, Adv. Mr. S.S. Rebello, Adv. Apoorva Bhumes, Adv.
Gujarat	Ms. Hemantika Wahi, AOR

	<p>Ms. Puja Singh, Adv. Ms. Mamta Singh, Adv. Ms. Vishakha, Adv. Ms. Shodhika Sharma, Adv.</p>
H.P.	<p>Mr. Ajay Marwah, Adv. Mr. Mool Singh, Adv.</p>
Haryana	<p>Mr. B.K. Satija, Adv. Mr. Sanjay Kr. Visen, Adv.</p>
J&K	<p>Mr. M. Shoeb Alam, Adv. Ms. Fauzia Shakil, Adv. Mr. Ujjwal Singh, Adv. Mr. Mojahid Karim Khan, Adv.</p>
Jharkhand	<p>Mr. Tapesk Kumar Singh, AOR Mohd. Waquas, Adv. Mr. Aditya Pratap Singh, Adv.</p>
Karnataka	<p>Mr. V.N. Raghupathy, AOR Mr. Parikshit P. Angadi, Adv. Mr. Prakash Jadhav, Adv.</p>
Kerala	<p>Mr. C.K. Sasi, Adv.</p>
Madhya Pradesh	<p>Mr. Arjun Garg, Adv. Mr. Manish Yadav, Adv. Mr. Rohit Chandra, Adv. Mr. Aakash Nandolia, Adv.</p>
Maharashtra	<p>Mr. Mahaling Pandarge, Adv. Mr. Nishant R. Katneshwarkar, Adv.</p>
Manipur	<p>Mr. Leishangthem Roshmani KH., Adv. Ms. Maibam Babina, Adv.</p>
Meghalaya	<p>Mr. Ranjan Mukherjee, AOR</p>
Mizoram	<p>Mr. K.N. Madhusoodhanan, Adv. Ms. Nitya Madhusoodhanan, Adv. Mr. T. G. Narayanan Nair, AOR</p>
Nagaland	<p>Mrs. K. Enatoli Sema, AOR Mr. Edward Belho, Adv. Mr. Amit Kumar Singh, Adv. Mr. K.Luikang Michael, Adv. Mr. Z.H. Isaac Haiding, Adv.</p>
Odisha	<p>Ms. Anindita Pujari, Adv. Ms. Kavita Bhardwaj, Adv. Mr. Ashok Panigrahi, AOR</p>

Punjab	Ms. Uttara Babbar, Adv. Ms. Akanksha Choudhary, Adv. Ms. Bhavana Duhoon, Adv.
Rajasthan	Mr. S.S. Shamsbery, AAG Mr. Amit Sharma, Adv. Mr. Sandeep Singh, Adv. Mr. Ankit Raj, Adv. Ms. Ruchi Kohli, Adv. Ms. Pragati Neekhra, Adv.
Sikkim	Ms. Aruna Mathur, Adv. Mr. Avneesh Arputham, Adv. Ms. Anuradha Arputham, Adv. Ms. Simran Jeet, Adv. for M/s Arputham Aruna & Co.
Tripura	Mr. Gopal Singh, AOR Mr. Rituraj Biswas, Adv.
Tamil Nadu	Mr. M. Yogesh Kanna, Adv. Ms. Sujatha Bagadhi, Adv.
Telangana	Mr. S. Udaya Kumar Sagar, Adv. Mr. Mrityunjai Singh, Adv.
Uttar Pradesh	Ms. Aishwarya Bhati, AAG Mr. Adarsh Kumar Upadhyay, Adv. Mr. Vikas Chaudhary, Adv. Mr. Samir Ali Khan, Adv.
Uttarakhand	Ms. Rachana Srivastava, AOR Ms. Monika, Adv. Ms. Sudipta, Adv.
West Bengal	Mr. Suhaan Mukerji, Adv. Mr. Harsh Hiroo Gusahanbi, Adv. Mr. Vishal Prasad, Adv. Ms. Astha Sharma, Adv. Ms. Pallavi Saharma, Adv. Mr. Amith Verma, Adv. For PLR Chambers and Co.
A&N Islands	Mr. Bhupesh Narula, Adv. Mr. K.V. Jagdishvaran, Adv. Mrs. G. Indira, Adv.
Puducherry	Mr. V.G. Pragasam, AOR Mr. S. Prabu Ramasubramanian, Adv. Mr. S. Manuraj, Adv.

Mr. T.N. Rama Rao, Adv.
Mr. Hitesh Kumar Sharma, Adv.
Mr. T. Veera Reddy, Adv.

Ms. Ritu Kumar, Adv.
Ms. Pragya Singh, Adv.
Mr. Satya Mitra, Adv.

Mr. Kamal Mohan Gupta, AOR

Mr. P. Venkat Reddy, Adv.
Mr. Prashant Kr. Tyagi, Adv.
for M/s. Venkat Palwai Law Associates

Mr. Pukhrambam Ramesh Kumar, Adv.
Mr. Himanshu Agarwal, Adv.

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

We have heard learned *amicus curiae* as well as learned counsel for the Union of India.

Under Trial Review Committees

The performance of the Under Trial Review Committees is extremely dismal as it is quite apparent from the fact that unrestricted overcrowding in jails continues and in some instances it has escalated.

We have been informed by learned *amicus curiae* that there are a large number of jails where overcrowding is well above 150% and in one case it is as high as 609%, This is extremely unfortunate and clearly suggests the complete lack of commitment of the State Governments and the Union Territories to the human rights of prisoners and also indicates the failure of the Under Trial Review Committee to take their responsibilities seriously.

We have been informed by learned *amicus curiae* that some sort of Standard Operating Procedures for the Under Trial Review Committees have been prepared in consultation with NALSA and comments have been received from 18 States/Union Territories Administrations. Comments have not yet been received from remaining States and Union Territories Administration.

We grant two weeks' time to all the State Governments and Union Territories Administrations that have not responded to the Standard Operating Procedure to do so immediately so that the Under Trial Review Committee can start functioning effectively and efficiently.

We make it clear that in case comments are not received by NALSA within two weeks, it will be assumed that the State Governments/Union Territories Administrations do not have any comments to offer. The Standard Operating Procedures may then be finalized and circulated for compliance.

Learned *amicus curiae* has very graciously offered to participate in the meetings of some of the Under Trial Review Committees to get a first hand understanding of their actual functioning and also to follow up on the decisions taken by the Committees. He says that he will participate in the meetings of two or three Committees near Delhi.

Overcrowding

In terms of our order dated 6th May, 2016, we had required a plan of action to be prepared by the State Governments/Union Territories Administrations to deal with issues of overcrowding. This was reiterated in a detailed order passed on 3rd October, 2016 [reported in (2016) 10 SCC 17]. By that order, we had required the Plan of Action to be given by 31st March, 2017.

Not a single State Government/Union Territory has furnished us any Plan of Action.

We give a direction to all the State Governments and Union Territories to comply with our orders dated 6th May, 2016 and 3rd October, 2016 within a period of two weeks failing which we may have to issue notice of contempt against the Director General of Police (Prisons) of the State Governments/Union Territories which unfortunate step we would like to avoid, but if the information is not provided within two weeks we will be compelled to issue such notices.

Vacancies in the Prison Staff

With regard to vacancies of staff in the prisons, NALSA has given us a status report and we find that there are a very large number of vacant prison posts. In some cases, the vacancies run into a couple of thousands.

The combined sanctioned strength of prisons staff in all the prisons in the country is 77,230 out of which

there are 24,588 vacancies as on 31st December, 2017. Therefore, it is quite clear that there is slightly more than 30% vacancies in the prisons staff.

Learned *amicus curiae* informs us that when he had enquired from the prison officials about filling up of the vacancies he was told that the matter is "under process". But, the stage of the process has not been indicated.

We require the Director General of Police (Prisons) of the State Governments/Union Territories to specifically state on affidavit clearly and unequivocally the steps that have been taken to fill up the vacancies and the progress made in that regard.

The needful be done within two weeks.

Open Jails

With regard to the open jails, we have been informed that a Committee has since been formed and the Committee had a meeting on 23rd February, 2018 and the agenda items include the following:

1. Standardizing different categories of Open Jails.
2. Uniformity in the Administration of Open Institutions.
3. Issues of selection criteria, process, transfer and transition.
4. Minimum Standards regarding accommodation,

equipment, sanitation, hygiene, Medical service, Diet, Wages, etc.

5. Guidelines for family visits.

6. To draft Model "Administration of Open Jails Act & Rules".

For the purpose of draft Model "Administration of Open Jails Act & Rules", a Sub-Committee has been formed and we are told by one of the members of the Sub-Committee is, viz., Ms. Sugandha Shankar that two months' time has been granted for finalization of the Model Rules which will expire on 30th April, 2018. She assures that the needful be done by 30th April, 2018.

With regard to the other items mentioned in Agenda Note, we have not been shown the minutes of the meeting that has been held. The minutes of the meeting should be placed on record.

Children of Women Prisoners

With regard to the children of women prisoners, learned *amicus curiae* has drawn our attention to the judgment of this Court in the case of R.D. Upadhyay Vs. State of Andhra Pradesh [(2007) 15 SCC 337]. In that decision, several decisions were given way back in 2006 and 2007, but there is nothing to indicate compliance of these directions.

Learned *amicus curiae* says that he will prepare a tabular statement of the requirements in consultation

with Ms. Vertika Nanda so as to get an update on the status of women and children of women prisoners across the country.

Learned senior counsel for the Union of India has placed before us a letter dated 1st March, 2018 issued by the Ministry of Home Affairs in connection with the recommendations of the Parliamentary Standing Committee on Empowerment of Women on "Women in Detention and Access to Justice". Several recommendations, suggestions and guidance notes have been mentioned in the communication for the benefit of the State Governments/Union Territories.

As mentioned above, the letter was issued only on 1st March, 2018 and there does not seem to be any information received from various State Governments and Union Territories in this regard.

Learned senior counsel for the Union of India should endeavour to get necessary information from the Ministry of Home Affairs and the State Governments/Union Territories on the latest position with regard to the implementation of the suggestions/notes of guidance issued by the Ministry of Home Affairs within two weeks.

Our attention has also been drawn to a news item which suggests that the Ministry of Women and Child Development as well as the National Commission for Women is proposing to take up a study and is in the process of making a report for comprehensive prison reforms for

women inmates. The latest status of the deliberations with regard to the study for which the report is sought to be prepared is not available.

Learned senior counsel for the Union of India will inform us on the next date of hearing through an affidavit indicating the progress made.

List the matter on 8th May, 2018.

I.A. No.26542/2018

This is an application filed by Dr. Anup Surendranath, Assistant Professor, National Law University, Delhi.

The application concerns the human rights of prisoners who have been given the death penalty.

The application raises several issues including violation of certain provisions of the State Prison Manuals and generally with regard to violation of the human rights of prisoners who have been sentenced to death.

Learned *amicus curiae* says that as a follow up of the application and the prayers made therein, he has written a communication to the Director General of Prisons of ten States seeking information from them with regard to the rights of convicts who have been sentenced to death including issues relating to solitary confinement, legal representation and consultation with family and psychiatrists, etc.

The States to which learned *amicus curiae* has sent a communication on 13th of March, 2018 are as follows:

1. Andhra Pradesh
2. Maharashtra
3. Tamil Nadu
4. West Bengal
5. Punjab
6. Delhi
7. Goa
8. Madhya Pradesh
9. Assam
10. Bihar

We would require the Director General (Prisons) to respond to the communication sent by learned *amicus curiae* since it concerns human rights of the prisoners who are in custody and who have been awarded death sentence.

List the matter on 8th May, 2018.

I.A. No.112556 of 2017

Learned *amicus curiae* says that he will hand over a copy to learned counsel for the Union of India and learned counsel for NHRC for their views.

List the matter on 8th May, 2018.

(SANJAY KUMAR-I)
AR-CUM-PS

(KAILASH CHANDER)
COURT MASTER