

(2011) 08 SC CK 0023

In the Supreme Court Of India

Case No : Criminal Appeal No. 135 of 2010

Budhadev Karmaskar

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 24-08-2011

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2011) 3 ACR 3474 : (2012) CriLJ 316 : (2011) 9 JT 361 : (2012) 1 RCR(Criminal) 598 : (2011) 9 SCALE 327 : (2011) 10 SCR 577 : (2011) 3 UC 1784

Hon'ble Judges : Markandey Katju, J;Gyan Sudha Misra, J

Bench : Division Bench

Advocate : Solicitor General of India, Pradip Ghosh, Jayant Bhushan, T.S. Doabia, Ashok Bhan, A. Mariarputham, AG, Manish Singhvi, Shail Kr. Dwivedi, Manjit Singh, S.V. Madhukar, AAG, Pijush K. Roy, Rebecca George, Gautam Talukdar, Lajja Ram, Gaurav Sharma, Sushma Suri, Anjani Aiyagari, Anil Katiyar, Sadhana Sandhu, Mohd. Khairati, D.S. Mahra, Irshad Ahmad, Vijay Verma, Anitha Shenoy, Ashutosh Sharma, Alka Sinha, Anuvrat Sharma, D. Mahesh Babu, Ramesh Allanki, Savita Dhanda, Ranjan Mozumbar, for Corporate Law Group, Anil Shrivastav, Rituraj Biswas, Gopal Singh, Manish Kumar, S. Wasim A. Quadiri, A.J. Faisal, Anil Kaityar, Hemantika Wahi, Nupur Kanujo, Suveni Banerjee, Tarjit Singh, Kamal Mohan Gupta, Abhishek Sood, Rohit Kr. Singh, Sunil Fernandes, Suhaas R. Joshi, Astha Sharma, P.V. Dinesh, Liz Mathew, Jogy Scaria, Sanjay V. Kharde, for Asha Gopalan Nair, Kh. Nobin Singh, Sapan Biswajit Meitei, Balaji Srinivasan, Radha Shyam Jena, Kuldip Singh, R.K. Pandey, M. Mohit Mudgil, Aruna Mathur, Avneesh Arputham, Yusuf Khan, Arputham, Aruna and Co., Aniruddha P. Mayee, Chanchal Kr. Ganguly, Abhijit Sengupta, Anil K. Jha, Chhaya Kumari, Atul Jha, Dharmendra Kr. Sinha, Saurabh Mishra, Vibha Datta Makhija, V.G. Pragasam, S.J. Aristotle, Prabu Ramasubramanian, Savita Singh, Tripti Tandon, Shefali Malhotra, Prakash Kumar Singh, Ravi Kant, A. Subhashini, Aishwarya Bhati, C.D. Singh, K.N. Madhusoodhanan, M.T. George, Subramonium Prasad, J.K. Bhatia, Manpreet Singh Doabia, Kiran Bhardwaj, Edward Belho, P. Athuime R. Naga, K. Inatoli Sema, Nimshim Voshum and Ranjan Mukherjee, for the Appellant;

Final Decision : Dismissed

Judgement

Madad chaahati hai ye hawwaa ki beti Yashodaa ki hamjins raadhaa ki beti Payambar ki ummat zulaikhaa ki beti Sanaakhwaan-e-taqdees-e-mashriq kahaan hain? Zaraa mulk ke rahbaron ko bulao Ye kooche ye galiyaan ye manzar dikhao Sanaakhwaan-e-taqdees-e-mashriq ko lao Sanakhwaan-e-taqdees-e-mashriq kahaan hain?

- Sahir Luhdhianvi: Chakle

1. This order is in continuation of our earlier orders in this case which aim at providing a life of dignity to the sex workers in our country by giving them some technical skills through which they can earn their livelihood instead of by selling their bodies. The legal background of these orders is Article 21 of the Constitution, in which the word 'life' has been interpreted by this Court to mean a life of dignity, and not just an animal life.

2. Mr. Pradip Ghosh, Chairman of the Panel appointed by us, submitted a report stating that a meeting of the Panel on Sex Workers was held at the Arbitration Room of M.C. Setalvad Lawyers' Chambers Block, Supreme Court on 05.08.2011. At a subsequent meeting held on 17.08.2011, the members of the Panel along with representatives of the State Governments of Delhi, Maharashtra, Karnataka, Tamil Nadu, Andhra Pradesh, West Bengal, Haryana and the Central Government as well as representatives of some NGOs and some senior Police Officers of the State of Tamil Nadu and Delhi were present. In its report the Panel has mentioned the State wise figures of sex workers rehabilitated so far.

3. By our orders dated 19.07.2011 and 02.08.2011 we had directed the Central Government and State Governments to provide certain funds to the Panel so that it could function effectively. However we are informed that as yet No. funds have been provided, which is hampering the work of the Panel. The Panel has suggested that the Central government be directed to provide Rupees 10,00,000/-, each state Government a sum of Rupees 5,00,000/- and each union territory Rupees 2,00,000/- to the Panel. We accept this recommendation and direct accordingly, with the modification that States/Union Territories which have No. sex workers as stated in their affidavits need not make this payment. This amount should be paid positively by 07.09.2011 to the Secretary General of this Court who will deposit it in a nationalized bank nominated by the Chairman of the Panel, Mr. Pradip Ghosh, Sr. Advocate.

4. Mr. Pradip Ghosh, Senior Advocate (whose full name for Banking purpose is Pradip Kumar Ghosh) and Mr. Jayant Bhushan, Senior Advocate, who is a member of the Panel, are jointly authorized to open a bank account in the nationalized Bank where the money is deposited, to be operated jointly by them. The Chairman of the Panel will furnish to the Secretary General of this Court accounts of the expenditure incurred by the Panel from time to time. It will be open to the Chairman of the Panel to seek further orders of this Court in this

connection.

5. It is also prayed in the report of the Panel submitted before us today that there is No. proper accommodation for the functioning of the Panel. We agree that unless some accommodation is provided the Panel will not be able to function properly and effectively. We are informed that the Central Government has in its occupation a portion of the Indian Law Institute Building. We direct that the said accommodation/office space shall be allotted forthwith to the Panel constituted by us, and not later than 01.09.2011. The said office space shall be properly furnished and equipped by the Central Government with computer, furniture etc. so that the Panel may be able to carry out the day to day activities thereon. Secretarial assistance and services of office attendants and other staff shall also be made available forthwith by the Central Government as requested by Shri Pradip Ghosh, Chairman of the Panel.

6. By our order dated 19.7.2011, this Court was pleased to direct the States/ Union Territories and the Union of India to carry out surveys through their Agencies and to report to the Panel the findings of the said surveys. The survey was meant to ascertain as to how many sex workers want rehabilitation and how many of them would voluntarily continue in the same profession. Each State Government should undertake such survey through their Agencies in collaboration with the Central Government on the lines as recommended by the Panel. For this purpose, the help of NGOs, Expert Bodies and Demographers may be obtained by the Governments concerned. At the first instance, the said surveys may be made with regard to the four Metropolitan Cities, namely, Delhi, Mumbai, Chennai and Kolkata. Subsequently other States and Union Territories should also carry out such surveys.

7. The Panel will make recommendations in respect of such surveys and the same should be complied with by the respective State Governments. The results of the surveys shall be reported to the Panel.

8. We convey our gratitude to the Central Government and various State Governments who sent their representatives to the meeting held on 17.08.2011. Many of them have made valuable contributions in the said meeting as mentioned in the report of the Panel. We request them to continue attending the Panel meetings whenever requested by the Chairman, and give all help in this connection.

9. We are happy to note that Mr. Pradip Ghosh, Chairman of the Panel has decided to add South India AIDS Action Programme through its director Ms. Indumati which is situated in Chennai, Shakti Vahini through Shri Ravi Kant which is a NGO based in Delhi, Prerana, an NGO based in Mumbai, and Mr. Tariq Khan, a social activist of Lucknow, as members of the Panel. Some of them have given valuable inputs in the meeting dated 17.08.2011 as mentioned in the Report of the Panel.

10. We were happy to note from the report of the Panel that the Government of

Andhra Pradesh and Prajwala, a NGO operating in Andhra Pradesh, have substantially supported each other, both in their efforts in rehabilitation of sex workers as also in the representations made before the Panel with regard to the information as regards rehabilitation. Notwithstanding the changes in the State government from time to time, Prajwala and other NGOs have received consistent support from the State Government in this connection. This seems to be a unique feature in the State of Andhra Pradesh, and should be emulated by other States.

11. In its report the Panel has mentioned that the NGO Prerana, represented by Ms. Priti Patkar situated in Mumbai has rehabilitated 4973 sex workers between 198 and 2010. The rescued women were given vocational training and made economically self-sufficient.

12. Prerana has trained women as mobile cr?ches, petrol pump fillers, catering and hospitality, beauty care, fashion designing, starting their own enterprises as small businesses and also in some other areas of vocational replacement. Some young women have been placed in McDonalds, Dominos, PPCL Petrol Pump, Food Courts in Malls etc. These are some of the areas of employment for absorbing these former sex workers. These women who have been rehabilitated by Prerana have not been seen back in the flesh trade. It seems that they have been re-integrated in the mainstream and their past identity has been completely obliterated. Some of them are still in touch with Prerana and the reports reveal that they are doing well and some are settled with their children. Some have started a life with their former clients out of the arena of the flesh trade. Some are happy with the small business of their own that they run. Some have left for their native towns/villages. Women who move out of the city are always given a list of contacts whom they can approach in case they require any assistance. All this shows that Prerna has been doing excellent work.

13. In the State of Tamil Nadu in the year 2010-2011 532 sex workers were given vocational training, and 424 restored to their respective families. Many of them were minors.

14. Ms. Archana Ramasundaram, Additional DIG of Police (Crime), Tamil Nadu stated that the major stumbling block in the matter of rescue of victims of sex trafficking is that pimps get to know about the trafficked girls before the authorities come to know of them, and often even the family of the girl is involved in the racket. We are, therefore, of the view that if an incident of the involvement of the family of the girl pushing her into the sex racket comes to the notice of anyone concerned including NGOs, authorities, etc. we direct that such incident be reported to the Executive Chairman/Secretary of the State Legal Services Authority. It will be open for the said Authority to take appropriate penal action against such illegality or person who may be found involved. Unless this nexus between the traffickers, pimps and the brothel owners, together with the family at times, is broken, successful rescue and rehabilitation becomes difficult.

Ms. Ramasundaram also suggested that instead of producing the rescued women in person in court, a system of video conferencing could be effective so that the girls do not have to actually travel and are, therefore, safe and hidden from the pimps.

We are further of the view that all the State Legal Services Authorities should provide a helpline number to the NGOs and to the State machinery as well as to the sex workers and victims of sex trade who are in distress and who are compelled to continue with the sex trade, so that they can avail the benefit of the helpline number for providing legal assistance, to get them rescued or any other assistance which may be offered to them by way of Free Legal Aid. The State Legal Services Authorities thereafter may direct them to the concerned and appropriate authorities for taking remedial measures in that regard and also report the matter to the Panel which has been constituted by us.

15. Ms. Indumati representing South India AIDS Action Program from Chennai who participated on behalf of the said NGO stated that many of the sex workers want to learn additional skills but they still want to continue with their old profession in the red light area because some of their clients are very persistent and keep on coming back and are unwilling to let the sex workers leave the profession. For many sex workers, the rehabilitation process is important but only if they are old and cannot get any income by selling their bodies. Many of them want vocational training only to add to their income while continuing with their sex work. Unless the attitude of the public in general towards the sex workers undergoes a change so as to remove the stigma attached to their profession, and there is more acceptability of the rehabilitated sex workers in the mainstream, it is difficult to persuade the sex workers to get rehabilitated leaving their old profession.

16. There is always a prevailing fear that by opting for rehabilitation they may be worse off by losing their old livelihood and also not being able to survive in the alternative vocation unless there is ready acceptance of the former sex workers in the mainstream.

17. As regards the State of West Bengal, it is well known that Calcutta has a huge number of sex workers in Sonagachi, Free School Street etc. The Government of West Bengal stated that there is no convincing data available in respect of the number of sex workers rehabilitated so far and it will take time to collect the same from the service providers. However, they are running 17 homes under the Swadhar Schemes and two homes under the Ujjwala Scheme and 43 Short Stay Homes. These homes give shelter to rescued sex workers.

18. In this connection we wish to say that providing short stay homes to sex workers is hardly a solution to their problem. They must be provided a marketable technical skill so that they can earn their livelihood through such technical skill instead of by selling their bodies. Merely sending them to homes is sending them to starvation. We were, therefore, disappointed by the approach of

the State of West Bengal, where the problem is most acute. Much more needs to be done by the State Government.

19. At the Panel meeting, the representative of the State Government who was a director in the Department of Social Welfare stated that 15 sex workers have been permanently rehabilitated in the sense that they have been given direct employment and are now married. Some sex workers have been successfully employed as Anganwadi workers and helpers. He also estimated that about another one thousand sex workers have been rehabilitated in the State in the sense that they have been given new jobs and are not likely to return to their old profession, but this is not a verified figure. Some of the rescued sex workers who were from Bangladesh and Nepal were repatriated to the countries of their origin. Ms. Bharti Dey representing Durbar Mahila Samanwaya Committee (DMSC) questioned the basis of calculation of the figures given by the Government representative. She also questioned as to where and how the sex workers have been rehabilitated.

20. On behalf of DMSC and USHA Multipurpose Cooperative Society, Dr. S. Jana and Ms. Bharti Dey who spoke at the meeting also submitted written responses, stating that:

a) DMSC itself has employed about 500 sex workers in their Health intervention Program. On enquiry, it has been learnt by DMSC that 55 have ceased to work in their old profession while the rest continue to sell sex while still holding jobs as health workers. It was learnt that those 55 who really gave up their old profession were at the fag end of their working life in sex work. They were neither able to compete with their younger colleagues nor able to perform the jobs that was required of them.

b) According to the records maintained by USHA, 8 sex workers employed as Field Collectors for the Cooperative Societies, Bank have discontinued sex work. Another 10 women have started working as beautician and do not engage in sex work.

c) According to DMSC, the inference drawn from these findings is that while women may leave sex work but they do not leave the sex work sector. Those who stop selling sex find alternative work in the red light area itself. This is because they do not experience adverse stigma and discrimination among their peers as they would face outside the red light area.

d) It was emphasized that the so-called Homes run under the Government sponsored projects virtually operate as prison houses so much so that even if a sex worker may not be willing to leave the profession they would not like to live in the so-called Homes. The reluctance is not so much due to loss of earning but more because they do not want to be imprisoned or to lose their freedom.

21. Mrs. Sunanda Bose, representing All Bengal Women's Union, emphasized that stereotypical vocational training would not work any more as the women

earn more in sex work than they are able to earn by giving up their profession. More innovative jobs have to be offered to them to induce them to leave the profession. She gave the example of one sex worker who was rescued by her who is now working as a Petrol Pump Operator and earns about Rs. 7,000/- per month.

22. Mrs. Bose made valuable suggestions and various inputs with regard to rehabilitation of the sex workers.

23. As regards Delhi there seems to be No. scheme of the State Government for rehabilitation of sex workers. This is indeed regrettable. There are many red light areas such as the one in G.B. Road etc. in Delhi. The State Government needs to do much more in this connection.

24. Shakti Vahini, represented by Shri Ravi Kant, stated in the Panel meeting that not a single victim of commercial sexual exploitation has been rehabilitated in Delhi. The Joint Commissioner of Police (Crime) of Delhi Police made significant contributions at the said meeting by making certain important suggestions. He pointed out that the reluctance on the part of the sex workers to leave their profession is because they are not sure about their future in the alternative livelihood and as to what security they would have in their life ahead since it seems to them that nothing is on a permanent basis. This lack of faith is not in the rehabilitation process but rather in its structure. The rehabilitation Scheme must be made more effective and sensitive as to the mindset of the victims. He pointed out various problems in the implementation of rescue operation and the rehabilitation process, some of which were agreed to by the representatives of the NGOs also.

25. As regards the Central Government, Ms. Sangeeta Verma, Economic Adviser, Ministry of Women & Child Development, Government of India who represented the Central Government at the Panel meeting, explained the significance of the UJWALA Scheme which has five components utilized for rehabilitation of sex workers. She also pointed out that if the sex workers do not wish to go back home, then another program called STEP is available for them which is being implemented by the Central Government effectively. She pointed out that poverty is the main factor which pushes vulnerable women to prostitution. She emphasized that the Central Government has Schemes in place which may be availed of by the sex workers who are voluntarily willing to opt for their rehabilitation, although these are not specially earmarked for the sex workers. Even such general schemes can be made use of by them once they are willing to come out of the sex trade. We request the panel to investigate whether these schemes exist largely on paper only, or whether they have been actually implemented.

26. From a perusal of the UJWALA Scheme it appears that the Central Government has scheme only for rescued trafficked women but No. scheme for those sex workers who voluntarily want to leave the sex trade. In our opinion,

proper effective scheme should be prepared for such women also. In this connection, we would like to say that the Central Government scheme has placed a condition that the rescued sex workers must stay in a corrective home in order to get technical training. In our opinion, No. such condition should be imposed as many sex workers are reluctant to stay in these corrective homes which they consider as virtual prison.

27. From a perusal of the report of the Panel dated 23.08.2011 we are not satisfied that the Central Government and State Governments are effectively carrying out the spirit of our orders in this case. While a few officers have indeed been motivated, much more needs to be done by the authorities. Hence by the next date of hearing the Central Government and State Governments must submit additional reports stating in greater detail how they are complying with our orders.

28. In our dated 02.08.2011 we observed:

We are fully conscious of the fact that simply by our orders the sex workers in our country will not be rehabilitated immediately. It will take a long time, but we have to work patiently in this direction. What we have done in this case is to present the situation of sex workers in the country in the correct light, so as to educate the public. It is ultimately the people of the country, particularly the young people, who by their idealism and patriotism can solve the massive problems of sex workers. We, therefore, particularly appeal to the youth of the country to contact the members of the panel and to offer their services in a manner which the panel may require so that the sex workers can be uplifted from their present degraded condition. They may contact the panel at the email address: panelonsexworkers@gmail.com.

We again reiterate our appeal to the public, and particularly to the youth of the country to contact members of the panel at the e-mail address panelonsexworkers@gmail.com and give their valuable suggestions and inputs. This would surely be of great help to the Panel.

29. List this case again before us on 15.9.2011.

30. Copy of this order will be sent by the Registry of this Court to the Chief Secretaries and Secretaries of the Home/Social Welfare/Women's Welfare Department of all State Governments/Union Territories and shall also be sent to the Secretaries of the concerned Departments of the Central Government e.g. Home Ministry, Urban Development Ministry, Ministry of Social Welfare, Women's Welfare Ministry etc. They will ensure compliance of this order. Copy of this order as well as our previous orders in this regard and of the Panel reports shall also be forwarded to the National Commission For Women, New Delhi through its Chairperson, and the Chairperson of the National Commission is requested to depute one or more of its members to regularly attend the meetings of the panel, whose dates will be informed in advance by the Chairman of the Panel. Copies of this order will also be given to all the counsels in this case free of

charge.