
(2001) 10 SHI CK 0025
In the High Court Of Himachal Pradesh
Case No : CWP No. 928 of 2001

Court On Its Own Motion

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 03-10-2001

Acts Referred:

Citation : (2002) 1 ShimLC 119

Hon'ble Judges : C.K. Thakker, C.J;R.L. Khurana, J

Bench : Division Bench

Advocate : Nemo, for the Appellant; Sanjay Karol, General Chauhan, D.A.G. and Vivek Thiakur, Assistant A.G., for the Respondent

Final Decision : Allowed

Judgement

C.K. Thakker, C.J.—A news-item appeared in the "Hindustan Times" (daily), New Delhi, Chandigarh Edition dated September 18, 2001, under the title "Deaf prisoner denied means to defend himself". The news item reads as under:

He is deaf and has his right leg amputated. Getting a cup of tea served 120 steps away is a Herculean task for convict Ian Stillman.

Fifty-one-year-old Stillman, lodged in a jail in Himachal Pradesh for the past one year for possessing narcotics, has still not been provided with either a stick to aid walking or even a wheelchair. Neither has he been provided the services of a sign language. Interpreter to help him defend himself in the Court.

Stillman was convicted to 10 years rigorous imprisonment on June 2 this year and has appealed against this in a higher court.

Delhi Association of the Deaf (DAD) and Disabled Rights Group (DRG) have raised the issue of "gross violation of human rights" in Stillman's case and asked the state to immediately provide him a wheel-chair.

"We are not defending Stillman's innocence here. We are just raising the issue of human rights. Even the worst of criminals, if he is disabled needs to be provided

certain basic facilities", DRG convenor Javed Abidi said.

Incidentally, Stillman, a UK citizen, had been working for the welfare of the hearing impaired in Tamil Nadu for the past 27 years. He lost his hearing ability at the age of two. He came to India in 1972 to work with the CSI School for the Deaf in Chennai. But stayed back to continue his work after marrying an Indian.

"Government of India through the Ministry of Social Justice and Empowerment had availed his services by appointing him as a member of the executive committee of Ali Yavar Jung National Institute for the Hearing Handicapped. He also worked with many NG Os. Yet, none of the court documents or the police acknowledge him to be a person suffering from hearing impairment", said D.S. Chauhan of DAD. They think he is pretending to be deaf, Chauhan said.

"Stillman was traveling in a share-taxi on August 28 in Himachal last year when the vehicle was stopped at a police picket. Seeing the police picket, his co-passenger fled. The police found narcotics in the taxi and Stillman was arrested. Ever since then, he has been in jail and the police do not believe he is deaf.

Abidi said Stillman's amputated leg was in bad state, as he was not given any medical care. "Now the condition has worsened so much that he cannot even walk. When he asked for a walking stick he was told that the jail manual did not allow this. Stillman then asked for a wheelchair. But, so far he has not been given any". Abidi said.

Not being able to hear or understand a word that is spoken to him, Stillman languishes in jail for he is forced to crawl to perform even the day-to-day things.

(Emphasis supplied)

2. Suo motu action was taken and the news item was ordered to be registered as CWP No. 928 of 2001. On September 20, 2001, we issued notice and the following order was passed:

Notice returnable for 3.10.2001. Mr. Sanjay Karol, Advocate General appears and waives service of notice on behalf of the Respondents. Meanwhile, it is directed that the Sessions Judge, Shimla will visit Central Jail, Kanda and record the statement of the prisoner (Stillman) and will submit his report primarily with regard to the facts stated in the news item published in Hindustan Times on September 18, 2001. The copy of the news item be also sent to the Sessions Judge and he be asked to submit his report by 1st of October, 2001.

3. In pursuance of the above order, the District and Sessions Judge, Shimla visited the jail and submitted his report, which reads as under:

In obedience to the direction given by the Hon'ble High Court, vide order dated 20.9.2001, passed in CWP No. 928/2001, titled as Court on its own motion v. The Station of Himachal Pradesh and Ors. I have visited the Model Central Jail, Kanda today and recorded the statement of the prisoner, namely, Ian Stillman in the format of questions and answers, he being a deaf person. Questions No. 1 to

4 were put to the prisoner, who has answered the same in his own handwriting. As per version given by the prisoner, it is wrong to say that he is forced to crawl to perform even the day-to-day things. In contrast to other prisoners, he has been lodged in a separate room and is having the facility of separate toilet, besides a cot. When the precincts of the jail were inspected on 20.9.2001, it was found that services of a person had been made available to him around the clock in the sense that a jail official was found deployed in order to provide assistance to this prisoner, even during odd hours.

2. As the right leg of this prisoner is in amputated state, he is using artificial leg, besides crutches and walking sticks. As per record available in the office of the Jail, on 15.9.2001, when this prisoner was taken to Indira Gandhi Medical College Hospital, Shimla, Professor, Orthopedics advised that Wheel-chair be provided and repair of prosthetics be got done through company concerned. Requisite action for providing a Wheel-chair to the said prisoner has been taken. As it has been stated that the requisite Wheel-chair is not available locally, its supply has been arranged from some other place. So it cannot be said that there is remissness on the part of the authorities to provide the requisite facility to the said prisoner.

3. Be it mentioned here that in view of the topography of the area, the Wheel-chair may not be of much use to the prisoner, because the entrance to the accommodation provided to the convicts even on the ground floor has to be climbed up through stairs. He seemed to be cheerful, having good health. Problem faced by this prisoner due to some flaw or defect in the artificial leg may not continue, as the artificial leg has been taken away by an expert for requisite repair, who happened to visit the Jail, to-morrow.

4. In view of above, it follows that news item published in Hindustan Times on September 18, 2001, is not free from exaggeration.

(Emphasis supplied)

4. As stated in the report, the Sessions Judge visited the Model Central Jail, Kanda on September 29, 2001 and recorded the statement of prisoner Ian Stillman. It is in the question-answer form as the prisoner is deaf. Those questions and answers have also been made part of the report submitted by the learned Sessions Judge and annexed to the report. On the basis of questions-answers, the learned Sessions Judge has stated that it was wrong to state that the prisoner was forced to crawl to perform even day today things. In contrast to other prisoners, he has been lodged in a separate room and is having facility of separate toilet, besides a cot. It was also stated that necessary services have been made, available to him round the clock and a jail official was deployed in order to provide assistance to him even during odd hours. He also stated that right leg of the prisoner was in an amputated state and he was using artificial leg, besides crutches and walking sticks. The learned Sessions Judge noted that under the orthopedics advice, a wheel chair is to be provided to the prisoner and

necessary action has been taken by the authorities. He, however, observed that in view of the topography of the area, Wheel Chair may not be much useful to the prisoner. The learned Sessions Judge, therefore e, concluded:

In view of above, it follows that news item published in Hindustan Times on September 18, 2001 is not free" from exaggeration.

5. An affidavit-in-reply dated September 29, 2001 has been filed in Court, which is taken on record. The Respondents have stated what has been reflected in the report of the learned Sessions Judge. It is stated that the allegations made in the newspaper were not correct. In paras 4 and 5, the deponent (Deputy Inspector General of Prisons); stated as under:

Para 4: Contents of this Para that Delhi Association of the Deaf (DAD and Disabled Rights Groups (DRG) have raised the issue of gross violation of human rights". But the same did not contain any request for the wheel chair as alleged in the para. Howeverin this case a letter from British High Commission,, New Delhi dated 7.9.2001 was received whereby a request was made to provide him a wheel chair. Consequent to such request Convict Ian Stillman was got examined by an Orthopedics Surgeon of Indira Gandhi Medical College, Shimla on 15.9.2001 and on whose advice steps for for warding the wheel chair to him have already been initiated and the same shall be provided in a couple of days. Orders were already placed for procurement of wheel chair, but same being out of stock at Shimla is likely to take a couple of days. Copy of written orders for supply of wheel chair is annexed herewith as Annexure R/2 and English translation thereof is annexed as Annexure-R/2/1. However, at this stage it is relevant to submit here that wheel chair to the convict will be supplied at his own risk, as the use of wheel chair in hilly terrain is risky.

Para 5: In reply to this para it is submitted that there are no human rights violations as alleged in this para. Rather on the contrary, Mr. Stillman is being provided all necessary facilities and cares over and above the provisions lay down in the Jail Manual; like a separate room with attached toilet and bath, newspaper, a folding cot etc. and has also been allowed to use his lap-top computer. He is also being allowed to be interviewed from time to time by his well wishers and other visitors. At this stage it is relevant to submit here that consequent to the directions of the Hon''ble Court, the learned District and Sessions Judge, Shimla visited Model Central Jail, Kanda on 20.9.2001in the presence of Respondent Nos. 3 and 4, but the convict Ian Stillman did not make any complaint.

6. It was submitted by the learned Advocate General that the news item did not recite correct facts. This is clear, not only from the affidavit-in-reply filed by the Deputy Inspector General of Prisons, Himachal Pradesh but even from the report submitted by the learned Sessions Judge. He, therefore e, submitted that the notice deserves to be discharged, against the Respondents.

7. To satisfy our conscience, we had also called from the Registry, the report

regarding regular bi-monthly jail inspection carried out by the Sessions Judge, Shimla. It may be stated that it was a periodical inspection and had nothing to do with news item or issuance of notice by this Court. The said inspection, was Carried out on September 20, 2001. At Sr. No. 51, the name of prisoner Ian Stillrnan appeared in column No. 31, to the query, "whether any complaint by any prisoner", it was remarked that there was no complaint.

8. In the light of the above facts and circumstances, report of the learned Sessions Judge, Shimla and counter-affidavit by Deputy Inspector General of Prisons in our opinion, there is nothing on the basis of which it can be said that a prisoner has been meted out with inhumane treatment. The notice, therefore e, deserves to be discharged.

9. The learned Advocate General in our opinion, was right in submitting that the reporter before submitting a report for news item ought to have taken much more care. Similarly the publisher ought to have taken proper care before publishing a news item.

10. For the reasons aforesaid in our opinion, the petition deserves to be dismissed and is accordingly dismissed. Notice discharged. No costs.