

(2012) 03 AHC CK 0285

In the Allahabad High Court

Case No : Criminal M. (P.I.L.) W.P. No. 20736 of 2011

In Re : Inmates of Women Protection Home, Varanasi

Date of Decision : 28-03-2012

Acts Referred:

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 37

Citation : (2012) 03 AHC CK 0285

Hon'ble Judges : Ashok Srivastava, J; Amar Saran, J

Bench : Division Bench

Advocate : Manju R. Chauhan Amicus Curiae, for the Appellant; Vimlendu Tripathi, A.G.A., for the Respondent

Judgement

Amar Saran and Ashok Srivastava, JJ.—We have heard Sri Vimlendu Tripathi, learned A.G.A. and Ms. Manju R. Chauhan, amicus curiae In this Criminal P.I.L. Three affidavits of compliance dated 19.3.2012 of the order dated 12.1.2012 on behalf of the Director and Secretary, Women and Child Development. U.P. on behalf of the District Magistrate, Probation Officer, Superintendent Government Protection Home, Varanasi and on behalf of U.P. Legal Service Authority have been filed in this case.

2. We have also perused the Uttar Pradesh Immoral Traffic (Prevention) Rules. 1993. hereinafter referred to as "I.T.P. Rules" and Immoral Traffic (Prevention) Act, 1956 (hereinafter the "I.T.P. Act").

3. The affidavit on behalf of the Director and Secretary. Women and Child Development has provided data relating to the period 1.9.2011 to 29.2.2011. According to the affidavit across the State of U.P. there are 714 women, who are in the women's homes because they were either wanted in cases or for giving evidence. 188 inmates are in the homes for want of shelter. It is further mentioned that 356 inmates have been rescued to their parents. 163 inmates to their husbands, 1 inmate has been provided employment. 6 inmates have been married off. 28 inmates have been transferred to other Protection Homes, one inmate has died and 5 inmates have run away. This comes to a total of 561. Charts giving a detailed break up regarding such women with reasons for their

non-release have been annexed as Annexures 1, 2 and 3.

4. At the outset this Court would like to record its appreciation that as a result of its intervention as many as 526 inmates have been rehabilitated by being restored to their parents, husbands or have otherwise been provided employment or have been married off.

5. A perusal of the I.T.P. Rules shows that a "Chief Inspector" has been appointed under Rule 2 (d) of the Rules to discharge the functions mentioned under Rule 40 to superintend, supervise and control the working of the Homes and to control the staff of the protective homes and corrective institutions whether established or licensed by the State Government. Under Rule 38 on a report of the Superintendent, the Chief Inspector may order release of any person detained in a protective home or corrective institution, if in the opinion of the Inspector the person is not likely to commit any offence under the Act after the inmate has undergone six months in a corrective institution or one-third of detention in the protective home. We entertain serious doubts whether the Chief Inspector, Smt. Arti who we are informed by the learned A.G.A. was appointed as far back as 1997 has been exercising any of the functions mentioned above. She was also shown as holding charge of Assistant Director, Women Welfare since 1997. We also wonder how any official could handle both these important charges.

6. On the next date, we would like the Chief Inspector to be present and also to inform this Court as to what steps she has been taking for enforcement of the Rules as mentioned above for improving the living conditions in the homes and for securing the releases of the women detained therein, who are entitled for release in the light of Rule 36.

7. Learned A.G.A. informs that there are two such homes viz. homes at Agra and Varanasi, which are functioning as corrective or protection homes for women, who are involved in cases covered under the I.T.P. Act and Rules. There are said to be 10 other protective homes, in Allahabad, Kanpur, Moradabad, Meerut, Etawah, Lucknow, Mathura, Bareilly, Gorakhpur and Faizabad for providing shelter to women whose evidence is required in cases, or who are devoid of shelter, or are victims of domestic violence. However, learned A.G.A. was unable to inform this Court as to the statutory provisions, under which this category of women are detained and under which these homes are being run. We would like the Principal Secretary, Women and Child Development and the Chief Inspector to inform this Court about the statutes under which such women (who are not involved in I.T.P. matters) may be detained. Especially this Court would like to be informed about the legal basis by which women who are adults may be detained in such homes, sometimes even against their wishes, for the purpose of providing them protection, shelter or for giving evidence, the criteria for their detention and whether any maximum time period has been prescribed for their detention in such homes and the mode available for their release.

8. We would also like to obtain a follow up report from the Principal Secretary (Women and Child Development), U.P. and the Chief Inspector under the I.T.P. Act and Rules regarding the remaining women (adult or minor) who still continue to be detained in the homes against their wishes even though there is no legal authorization for their detention, and the steps that are being taken for their release/rehabilitation, with detailed reasons for the non-release of women whose stay in the homes is legally unjustified.

9. As residing in women's protection homes Usually require enforced detention of adult women who are not involved in any offence against their will, and usually living conditions in such homes are not very congenial, we would like the aforesaid authorities to also furnish information on the next listing whether there are any Government established or private Government licensed shelter homes, (and the details of those homes) which can function as drop in centers where women in distress who need protection, shelter or for any other purpose may voluntarily reside for some period, similar to the shelter homes provided for children in need of care and protection u/s 37 of the Juvenile Justice (Care and Protection of Children) Act. 2000 read with Rule 30 of the Juvenile Justice (Care and Protection of Children) Rules. 2007, and whether Government is providing any assistance to any voluntary organizations to run these homes.

10. We would like a response from the Chief Inspector and Principal Secretary (Women and Child Development), U.P., or other concerned Secretary as to what steps are being taken for ensuring that the homes are monitored by duly constituted Boards of Visitors, with official and especially non official members as prescribed under Rule 41 of the I.T.P. Rules also on the next listing and the up-to-date position regarding the districts where the Boards have been constituted and the steps that they are taking for ameliorating the conditions of such women.

11. Under Rule 41 (5) of the I.T.P. Rules, the Board of Visitors are required to hold meetings of the protective homes and corrective institutions every three months and the Superintendent of the protective homes are to be the Secretaries of the said institutions and the District Judges in whose jurisdiction such protective homes or corrective institutions are located or their nominee not below the rank of Additional District Judge are to be permanent invitees to such meetings of the Board.

12. We would like responses from the 12 District Judges of the concerned districts, where protection or corrective homes exist, to furnish information directly and through the State Legal Services Authority, whether the said meetings are being held with participation by the District Judges or their nominees, the steps that are being taken for releasing the women who are eligible for release and also for improving the conditions of the homes and the problems faced in carrying out these objectives on the next listing.

13. We also find from a perusal of Annexures 1, 2 and 3 that a large number of women are present in the homes purportedly because they are physically or

mentally challenged. We would like a response from the Principal Secretary and the Chief Inspector as to whether women can be detained in the protection homes or corrective homes, if they are deaf/mutes or otherwise physically and mentally challenged and the legal provisions under which they are being detained, or whether they need to be housed in separate homes for the physically or mentally challenged.

14. What are the steps for getting women married off or for providing them with employments, and the impediments if any in carrying out this objective.

15. Learned A.G.A. prays for and is granted six weeks time to file counter-affidavits on behalf of the said authorities and for taking the necessary steps.

16. List this case on 14.5.2012.

17. On that date, we would like the Chief Inspector and a senior Officer nominated by the Principal Secretary (Women and Child Development) to be present before this Court alongwith affidavits of compliance. We would also like the presence of a senior person from U.P. Legal Services Authority with the up-to-date status report. Registry to communicate this order forthwith to the Principal Secretary, (Women and Child Development). Lucknow, U.P., Secretary, Social Welfare or other concerned department. Chief Inspector appointed under I.T.P. Act and Rules, Member Secretary/ Secretary. U.P.S.L.S.A. Lucknow. District Judges/Chairpersons, District Legal Services Authorities. Varanasi. Agra. Allahabad, Kanpur, Moradabad. Meerut, Etawah, Lucknow. Mathura. Bareilly. Gorakhpur and Faizabad. Copy of this order may also be furnished to the learned amicus curiae and the learned A.G.A. forthwith for compliance.