

(2006) 12 OHC CK 0015
In the Orissa High Court

Orissa Patita Udhar Samiti

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 11-12-2006

Acts Referred:

Constitution of India, 1950 — Article 142, 21, 23

Citation : (2007) CLT 781 Supp : (2007) 1 OLR 150

Hon'ble Judges : S.B. Roy, C.J;M.M. Das, J

Bench : Division Bench

Judgement

M.M. Das, J.—Though this matter was listed for orders, but this being a writ petition of the year, 1998, with consent of the learned Counsel for the parties, the matter was taken up for final disposal.

2. We have heard learned Counsel for the petitioner, learned Addl. Government Advocate on behalf of the State and the learned Counsel appearing for the Bhubaneswar Municipal Corporation.

3. On perusal of the record, it is seen that by order dated 13.7.1998 passed in Misc. Case No. 7984 of 1998, this Court while considering the said misc. case petition for interim orders directed as follows:

We direct the Director, Social Welfare that an inquiry be made and after proper verification regarding such victims now residing at Mallisahi, Bhubaneswar on encroached land it shall be ensured that such victim persons shall not be evicted without proper rehabilitation. But this order shall not apply to other person residing in that area.

4. This writ application has been filed by an NGO taking up the cause of the commercial sex workers residing in Mallisahi at Bhubaneswar. According to the petitioner, the members of the weaker sex being victims of circumstances like extreme poverty or having been forced by abductors to take up such activities, have become as such and no other avenue is available to them, they are compelled to work as such for their survival.

5. It has been averred in the writ application that more than forty thousand of such commercial sex workers are living in the State Capital and the NGOs like the petitioner are relentlessly working with a goal to make them aware of their rights. They are living in certain red light areas in a distress condition and Mallisahi situated in Unit-III, Kharavelanagar, Bhubaneswar is one of such places. Though admittedly they are living in the slums at Mallisahi over Government land, no amenities are being provided to them by the Bhubaneswar Municipal Corporation for which they are leading a life of misery and are being repeatedly threatened by the authorities to be forcibly evicted from their residential houses in which they are residing since almost for last more than four decades. According to the petitioner, the State Mahila Commission in a report has highlighted the exploitation to which some inhabitants of Mallisahi are being subjected to. Various other allegations have been made in the writ application against the public authorities as well as the police personnel describing the torture and harassment which the inhabitants of Mallisahi are being subjected to in various manner and are being victimized. The petitioner has pleaded that instances as narrated in the writ application make out a clear case of violation of the Article 21 of the Constitution. The petitioner further contends that it being a service oriented organization has approached the Bhubaneswar Municipal Authorities for rehabilitation of such commercial sex workers residing at Mallisahi by making construction of habitable house and allotting the same to them as a measure of rehabilitation thereby eradicating some of the maladies of the said inhabitants and in the process, there would be clearance of the slum which also would result in some amount of public beautification of the locality. Various suggestions have been made by the petitioner in the writ application so as to achieve such goal and thereby create a congenial atmosphere for such commercial sex workers living at Mallisahi which they claim as of right, under Article 21 of the Constitution. On the above basis, the petitioner has sought for various directions from this Court, such as, direction to the State Government to provide identity cards to the victims of sexual exploitation till their rehabilitation, direction to the State to provide special women police squad for the area in question and not allowing the general public to enter into the said area, direction to the Health Department of the State to provide proper medical health care to such commercial sex workers and last but not the least, directing the State not to disturb/evict such commercial sex workers residing at Mallisahi from their existing place of residence till they are rehabilitated by the Government.

6. Though this writ application was taken up for hearing on the question of admission on 13.7.1998, this Court while issuing a rule Nisito the opp. parties specifically directed that in the counter affidavit, the State Government will furnish the details of the actions so far taken and proposed to be taken, regarding rehabilitation of the victims of commercial sexual exploitation as per the direction of the Supreme Court made in the case of Gaurav Jain Vs. Union of India and others, . In spite of such specific direction, though this matter is pending before this Court from the year, 1998, no counter affidavit whatsoever

has been filed on behalf of the State. Such inaction of non-filing of the counter affidavit, *ex facie* discloses the callous attitude of the State Government towards the victims as well as the scant regard to the orders passed by this Court wherein it was directed to file counter affidavit, as stated earlier.

7. In a report prepared by the Department of Women and Child Development under the Ministry of Human Resources Development of the Union of India, various suggestions have been made to improve the situation which should be taken up by the State Government and a draft plan of action has also been formulated in the said report recommending prevention of trafficking in women, awareness generation and social mobilization, health care services, education and child care amenities, housing, shelter and civil amenities, economic empowerment, legal reforms and law enforcement, rescue and rehabilitation, institutional machinery and methodology. The objective of such plan of action is to mainstream, to reintegrate women and child victims of commercial sexual exploitation in society and to provide specialized services to enable such victims to access existing schemes and services at par with other citizens.

8. Judicial notice can be taken of the fact that sincere endeavours are being made by various agencies as well as non-Government organization to eradicate the public perception of women and child victims of commercial sexual exploitation which is conditioned by patriarchal attitudes and gender roles.

9. The Supreme Court in the case of Gaurav Jain (*supra*), while addressing the above social problem categorically held that it is the duty of the State and all voluntary non-government organizations and public spirited persons to come in to their aid to retrieve them from prostitution, rehabilitate them with a helping hand to lead a life with dignity of person, self-employment through provisions of education, financial support, developed marketing facilities as some of major avenues in this behalf. Marriage is another object to give them real status in society. Acceptance by the family is also another important input to rekindle the faith of self-respect and self-confidence. Housing, legal aid, free counselling assistance and all other similar aids and services are meaningful measures to ensure that unfortunate fallen women do not again fall into the trap of red light area contaminated with foul atmosphere. Law is a social engineer. The Courts are part of the State steering by way of judicial review. Judicial statesmanship is required to help regaining social order and stability. Interpretation is effective armory in its bow to steer clear the social malady, economic reorganization as effective instruments remove disunity, and prevent frustration of the disadvantaged, deprived and denied social segments in the efficacy of law, and pragmatic direction pave way for social stability, peace and order. This process sustains faith of the people in rule of law and the democracy becomes useful means to the common man to realize his meaningful right to life guaranteed by Article 21.

10. Hon"ble Shri Justice K. Ramaswamy (as His Lordship then was) making reference to various earlier decisions of the apex Court as well as the report of

the V.C. Mahajan Committee and other international covenants, issued certain directions to the Union of India as well as the State Governments in the aforesaid case holding as follows in paragraphs-46 and 52 of the said judgment:

46. The Minister of Welfare, Government of India will constitute a Committee consisting of the Secretary in charge of Department of Women and Child Development as the chairperson and three or four Secretaries from the concerned State Governments, to be nominated by the Minister of Welfare. They would make an in-depth study into these problems and evolve such suitable schemes as are appropriate and consistent with the directions given above. The Committee should be constituted within one month from the date of the receipt of this judgment. The Committee should finalize the report within three months thereafter. As soon as the report is submitted, the same may be communicated to all the State Governments and the concerned Ministries for their examination. Within two months from date of the communication, the Minister of Welfare, Government of India, in coordination with the Prime Minister Officer should convene a meeting presided over by the Prime Minister, with Minister of Welfare, Home Minister, Human Resource Minister, the concerned Ministers of the State Governments and their Secretaries as well to discuss the problem and take decisions. The Committee should finalize the report with further suggestions or amendments, if suggested in the conference. Thereafter, the report should be finalized and then direction would be given to the State Governments for effective implementation of the schemes. The nodal Department would enforce and regularly be supervised by the Ministry of Welfare, Government of India. A permanent Committee of Secretaries should be constituted to review the progress of the implementation on annual basis, and to take such other steps as may be expedient in the effective implementation of the schemes. Periodical progress as to funding and enforcement of the scheme should be submitted to the Registry of this Court. If further directions would be needed, liberty is given to the parties to approach this Court. In that view of the matter, it is believed and hoped that the above law and directions would relieve the human problem by rehabilitation of the unfortunate fallen women caught in the trap of prostitution; their children would be brought into the mainstream of the social order; these directions would enable them to avail the equality of opportunity and of status, with dignity of person which are the arch of the Constitution.

52. I put a caveat upon myself and I am aware that Article 142 would be used to enforce final judgment or order which, in given special or exceptional circumstances, would include directions of this type to mitigate injustice and to elongate enforcement of fundamental and human rights. Article 142 speaks of doing complete justice in a cause. The arm of the Court is long enough to reach injustice wherever it is found and to mete out justice. Denial of the constitutional rights to the unfortunate fallen women outrages the quest for justice and pragmatism of constitutional ethos which constrain me to avail Article 142 of the Constitution of India to direct the Union of India as well as all State Governments to evolve, after indepth discussion at Ministerial level conference, such

procedures and principles or programmes, as indicated in this Order, as guidance would help rescue and rehabilitate the fallen women. Otherwise, the fundamental and human rights remain pious platitudes to these miserable souls crushed in the cruel flesh trade with grinding poverty in the evening of their lives. Generally, Article 142 may not be invoked before the difference of opinion is resolved in an adversarial litigation and in a keenly contested matters of even public interest litigation, in particular, of recent type cases. However, in the cases of the type in hand, where there would be no controversy on human problems of most unfortunate women which require their careful planning, rescue and rehabilitation, the exercise of the power under Article 142, even by a single member of the Bench, may be appropriate and efficacious to enforce fundamental and human rights of large number of neglected and exploited segments of the society. Society is responsible for a woman's becoming victim of circumstances. The society should make reparation to prevent trafficking in women, rescue them from red light areas and other areas in which the women are driven or trapped in prostitution. Their rehabilitation by socio-economic empowerment and justice is the constitutional duty of the State. Their economic empowerment and social justice with dignity of persons are the fundamental rights and the Court and the Government should positively endeavour to ensure them. The State in a democratic polity includes its three constitutional organs - the Legislature, the Executive and the Judiciary. Legislature has already done its duty. The Executive and the Judiciary are required to act in union to ensure enforcement of fundamental and human rights of the fallen women. I am also conscious that Union of India as well as the State Governments are sensitive to the conscience of their constitutional duty under Article 23 and are desirous to have the prostitution eradicated from the root with the aid of ITP Act, IPC and other appropriate legislative or executive actions. Sequential rehabilitation of the fallen women rescued from the red light areas and other areas requires enforcement. The observations made in this Order, the constitutional provisions, the human rights and other International Conventions referred to in the Order and the national policy would aid the Union of India and the State Governments as foundation and guide them to discuss the problems in Ministerial and Secretarial level Conferences and as suggested in this Order to evolve procedures and principles to ensure that the fallen women also enjoy their fundamental and human rights mentioned in the Order.

11. We are not sure as to whether the State of Orissa in compliance to the observations/directions made by the Supreme Court in the above quoted decision, has taken appropriate steps for evolving procedures and principles to ensure that the fallen women also enjoy their fundamental and human rights as mentioned in the aforesaid judgment by the apex Court, as no return whatsoever has been filed by the State, bringing it to the notice of this Court regarding any steps, if taken, pursuant to the decision of the Supreme Court in the case of Gaurav Jain (supra).

12. In view of the above, we dispose of this writ application with a direction upon

the opp. parties-State of Orissa to take immediate measures in accordance with the decision of the apex Court in the case of Gaurav Jain (supra) so as to rehabilitate the fallen women (commercial sex workers) residing at Mallisahi in Bhubaneswar by providing minimum amenities like water supply, electricity etc. by undertaking awareness camps to make such victims aware of their rights under the Constitution, providing minimum education to the children of such victims, providing health care so as to prevent spreading of AIDS and providing alternate accommodation to them. In the event it is decided to evict the said inhabitants of Mallisahi who are in such category, without complying with the aforesaid direction, such victims/commercial sex workers residing over Government land, admittedly for the last forty years, shall" not be evicted from their place of residence which are under their occupation.

A copy of this order be handed over to the learned Addl. Government Advocate for onward transmission to the appropriate authority of the State for taking steps to comply with the directions issued above.

S.B. Roy, C.J.

13. I agree.