

(2006) 11 MAD CK 0249

In the Madras High Court

Case No : Writ Petition No. 9220 of 2005

P. Bharathi

APPELLANT

Vs

Union Territory of Pondicherry

RESPONDENT

Date of Decision : 06-11-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21

Penal Code, 1860 (IPC) — Section 148, 302

Pondicherry Prison Rules, 1969 — Rule 364, 382, 383, 512, 516

Citation : (2007) CriLJ 1413 : (2007) 1 MLJ 345

Hon'ble Judges : S. Tamilvanan, J; P. Sathasivam, J

Bench : Division Bench

Advocate : T. Murugesan, Govt. Pleader, for the Appellant;

Judgement

P. Sathasivam, J.—This Writ Petition has its origin in a letter dated 10.02.2005 by one P. Bharathi, a prisoner of Central Prison, Puducherry-1, addressed to one of the Hon'ble Judges of this Court, making grievance about some jail matters. The letter was ordered to be treated as a writ petition and court proceedings followed which are being wound up by delivering this Judgment.

2. Petitioner P. Bharathi, S/o. Panchanathan, was lodged in Central Prison, Puducherry, on 16.11.2000 as he was convicted along with others by the III Additional Sessions Judge, Puduchery, in Sessions Case No. 33 of 1999 and sentenced to undergo Rigorous Imprisonment for one year u/s 148 IPC and imprisonment for life u/s 302 read with 149 IPC. While he was undergoing imprisonment as life convict, according to him, he had bitter experience with regard to poor hygienic condition and maintenance inside the prison and also restrictions on the visit by relatives of the prisoners. Projecting his grievances, he made the above said letter, which resulted in this Public Interest Litigation.

3. Considering the grievance expressed, this Court, by order dated 24.03.2005, directed the Chief Judge, Pondicherry, to inspect the Central Prison at Puducherry and submit a report on the allegations made and in respect of the amenities

being provided to the convicts as well as the prison conditions. Pursuant to the same, the Chief Judge, visited the Central Jail, Puducherry, on 29.03.2005 between 2 PM and 5 PM and recorded the statements of life convict Bharathi and another convict Rajakkannu. In addition to the same, the Chief Judge has also examined Mr. S. Subramanian, Chief Superintendent of Jails, Pondicherry, and recorded his statement. The following details/conclusions in the report dated 01.04.2005 of the Chief Judge are relevant,

5. I submit that I personally visited all the cells of the convicts. Each cell measures 4 x 3 x 3 meters. The entrance to each cell is provided with iron grated door and there are two windows, one near the iron door and the other on the rear side wall or on the side wall. My personal inspection of the cells reveals that there is proper ventilation, air and light. The allegation in the complaint that there is no ventilation, air or light is not correct. The prisoners are locked after 6.00 PM. and the locks will be opened at 6.00 a.m. on the next day. They are continuously locked up for 12 hours. Therefore, the prisoners would find it difficult to have toilet facility during night time. But in each cell, two plastic buckets with lid are provided during night to collect human excreta and the buckets containing human excreta has to be cleaned by the inmates of that cell on turn basis on the next day morning. It is felt that asking a prisoner to use buckets for answering the call of nature is worse than cleaning of dry latrines which existed in the past and which system has now been abolished by the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993. Though this Act has been enacted uniformly throughout India, by declaring the employment of manual scavengers for removal of human excreta as an offence and thereby ban the further proliferation of dry latrines in the country, the system of collecting human excreta in buckets in each cell in the prison is to be avoided. It is, therefore, suggested that some effective steps have to be taken by the Government immediately for providing water-seal latrine facility in each cell, so as to enable the convicts kept in the lock-up during night hours to use such latrines instead of collecting excreta in buckets and cleaning the next day. Such an emergent step would eliminate the dehumanizing practice and it would also protect and improve the human environment.

6. I further submit that when I visited the Sub Jail at Karaikal, I found that internal water supply has been provided in all cells. Similar provision can also be made in each cell for the hygienic use of the convicts.

7. I further submit that when I asked the other convicts in the jail to put forth their grievances, they only insisted upon to relax the restriction made on the visitors to visit them once in a fortnight. Rule 512 of the Pondicherry Prison Rules enables every prisoner to have an interview with his friends or relatives once in a fortnight during the term of his imprisonment, provided that the exercise of this privilege shall be contingent on good conduct. Further, Rule 516 of the said Rules, gives discretion to the Superintendent of Jails, to fix the date, time and place of such interviews with convicts.

8. I further submit that according to Rule 870 of the Pondicherry Prison Rules, the minimum dimension of every cell built in future shall be 12 feet x 8 feet x 13 feet high and shall be ventilated by an iron grated door in front 6 1/2 feet x 2 1/4 feet and by two windows 4 feet x 2 feet, one being placed above the door and the other on a level with it on the back wall and there shall also be a recess for night urinals. Therefore, the dimensions of the present cells are almost in conformity with the Prison Rules.

9. I further submit that Rule 867 of the Pondicherry Prison Rules provides that no prisoner in excess of the accommodation fixed shall be confined in any ward. However, during emergencies such as sudden influx of prisoners, overcrowding etc. the Superintendent of Jails may temporarily relax the minimum standard of accommodation.

10. I submit that on going through the statement of the convict Bharathi, it is seen that he was asked to perform the last rituals for his father with handcuff on his right hand and the other end of the lead chain was held by the escort police. However, in future, the prisoners may be allowed to participate in such rituals freely without handcuffs, but with proper escort and security without allowing them to escape.

11. I also seen the O.P.D. Register maintained in the dispensary and it shows that the doctor gives treatment to about 40 to 60 prisoners a day, out of the reported number of 108 convicts and 163 under-trials, totalling to 271 prisoners. The doctor orally submitted before me that needy prisoners are given treatment and everyday he treats 40 to 60 patients, besides referring some prisoners to General Hospital, Pondicherry, for better and higher treatment.

12. I submit that there is no complaint from any of the prisoners with regard to the food served to them. I also found that good water supply facility is available outside the cells as well as in the lavatory. However, the general grievance of the prisoners is that they wish to have their relatives and friends visit them at least once in 10 days.

4. Before analysing the report of the Chief Judge, Pondicherry, in contrast with the stand of the Government and issuing directions, if any, let us consider various Case Laws of the Hon"ble Supreme Court with regard to jail conditions, maintenance, reforms etc.

A. The earliest decision of the Supreme Court is the one reported in Sunil Batra Vs. Delhi Administration and Others etc., . The grievance projected by one of the petitioners by name Sunil Batra, who was sentenced to death by the Delhi Sessions Court, was against de facto solitary confinement, pending his appeal, without de jure sanction. The compliant made by other petitioner by name Sobraj was against the distressing disablement, by bar fetters, of men behind bars especially of undertrials and that for unlimited duration, on the ipse dixit of the prison "brass". Both of them were imprisoned in Tihar Jail, Delhi. V.R. Krishna Iyer, J., considered almost all aspects including fundamental rights,

facilities, etc. available to prisoners in the light of constitutional provisions as well as Prisons Act. We intend to quote certain passages which are applicable to the case on hand,

53. ... The operation of Articles 14, 19 and 21 may be pared down for a prisoner but not puffed out altogether....

157. The humane thread of jail jurisprudence that runs right through is that no prison authority enjoys amnesty for unconstitutionality, and forced farewell to fundamental rights is an institutional outrage in our system where stone walls and iron bars shall bow before the rule of law. Since life and liberty are at stake the gerontocracy of the Jail Manual shall have to come to working terms with the paramountcy of fundamental rights.

207. Prison laws, now in bad shape, need rehabilitation; prison staff, soaked in the Raj past, need reorientation; prison house and practices, a hangover of the die-hard retributive ethos, reconstruction; prisoners, those noiseless, voiceless human heaps, cry for therapeutic technology; and prison justice, after long jurisprudential gestation, must now be re-born through judicial midwifery, if need be. No longer can the Constitution be curtailed off from the incarcerated community since pervasive social justice is a fighting faith with Indian humanity.... So it is that there is urgency for bridging the human gap between prison praxis and prison justice; in one sense, it is a battle of the tenses and in another, an imperative of social justice.

While agreeing with Krishna Iyer, J.; on behalf of himself and other two Hon''ble Judges, D.A. Desai, J., expressed thus:

Convicts are not, by mere reason of the conviction, denuded of all the fundamental rights which they otherwise possess.... Likewise, even a convict is entitled to the precious right guaranteed by Article 21 of the Constitution that he shall not be deprived of his life or personal liberty except according to procedure established by law.... The Court has, therefore, to strike a just balance between the dehumanizing prison atmosphere and the preservation of internal order and discipline, the maintenance of institutional security against escape, and the rehabilitation of the prisoners. "

B. In the decision reported in Sunil Batra Vs. Delhi Administration and Others etc., , V.R. Krishna Iyer, J., delivering the Judgement on behalf of three Judges Bench of the Supreme Court, strongly emphasised the importance of ensuring the rights and facilities due to the prisoners by reiterating thus,

21. ... Today, human rights jurisprudence in India has a constitutional status and sweep, thanks to Article 21 so that this magna carta may well toll the knell of human bondage beyond civilized limits....

30. ... The Court need not adopt a "hands off" attitude... in regard to the problem of prison administration. It is all the more so because a convict is in prison under the order and direction of the court.... Whether inside prison or

outside, a person shall not be deprived of his guaranteed freedom save by methods "right, just and fair."...

48. Inflictions may take many protean forms, apart from physical assaults. Pushing the prisoner into a solitary cell, denial of a necessary amenity, and, more dreadful sometimes, transfer to a distant prison where visits or society of friends or relations may be snapped, allotment of degrading labour, assigning him to a desperate or tough gang and the like, may be punitive in effect. Every such affliction or abridgment is an infraction of liberty or life in its wider sense and cannot be sustained unless Article 21 is satisfied....

54. Visits to prisoners by family and friends are a solace in insulation; and only a dehumanized system can derive vicarious delight in depriving prison inmates of this humane amenity. Subject, of course, to search and discipline and other security criteria, the right to society of fellow-men, parents and other family members cannot be denied in the light of Article 19 and its sweep. Moreover, the whole habilitative purpose of sentencing is to soften, not to harden, and this will be promoted by more such meetings.... We hold, subject to considerations of security and discipline, that liberal visits by family members, close friends and legitimate callers, are part of the prisoners' kit of rights and shall be respected....

68. ... We direct the Sessions Judges concerned, under his lock and seal, to keep a requisite number of grievance boxes in the prison and give necessary directions to the Superintendent to see that free access is afforded to put in complaints of encroachments, injuries or torture by any prisoner, where he needs remedial action. Such boxes shall not be tampered with by anyone and shall be opened only under the authority of the Sessions Judge. We need hardly emphasise the utmost vigilance and authority that the Sessions Judge must sensitively exercise in this situation since prisoner's personal liberty depends, in this undetectable campus upon his awareness, activism, adjudication and enforcement. Constitutional rights shall not be emasculated by the insouciance of judicial officers.

69. The prison authorities shall not, in any manner, obstruct or non-co-operate with reception or enquiry into the complaints. Otherwise, prompt punitive action must follow, the High Court or the Supreme Court must be apprised of the grievance so that habeas corpus may issue after due hearing....

71. The stress that we lay is on the need of the Court to be dynamic and diversified in meeting out remedies to prisoners. Not merely the contempt power but also the power to create ad hoc, and use the services of, officers of justice must be brought into play....

C. In the decision reported in Rama Murthy Vs. State of Karnataka, , the Supreme Court considered 9 major problems prevailing in the prison system, viz., overcrowding, delay in trial, torture and ill-treatment, neglect of health and hygiene, insubstantial food and inadequate clothing, prison vices, deficiency in communication, streamlining of jail visits and management of open-air prisons.

After analyzing all the above mentioned subjects in depth in the background of constitutional provisions, the Apex Court issued the following directions:

51. ...

(1) To take appropriate decision on the recommendations of the Law Commission of India made in its 78th Report on the subject of "Congestion of undertrial prisoners in jail" as contained in Chapter 9 (para 22)

(2) To apply mind to the suggestions of the Mulla Committee as contained in Chapter 20 of Vol.I of its Report relating to streamlining the remission system and premature release (parole), and then to do the needful (para 25).

(3) To consider the question of entrusting the duty of producing UTPs on remand dates to the prison staff (para 29).

(4) To deliberate about enacting of new Prison Act to replace the century-old Indian Prison Act, 1894 (para 33). We understand that the National Human Rights Commission has prepared an outline of an all-India statute, which may replace the old Act; and some discussions at a national level conference also took place in 1995. We are of the view that all the States must try to amend their own enactments, if any, in harmony with the all-India thinking in this regard.

(5) To examine the question of framing of a model new All India Jail Manual as indicated in para 33.

(6) To reflect on the recommendations of the Mulla Committee made in Chapter 29 on the subject of giving proper medical facilities and maintaining appropriate hygienic conditions and to take needed steps (paras 37 and 38)

(7) To ponder about the need of complaint box in all the jails (para 39).

(8) To think about introduction of liberalization of communication facilities (para 42).

(9) To take needful steps for streamlining of jail visits as indicated in para 44.

(10) To ruminate on the question of introduction of open-air prisons at least in the District Headquarters of the country (para 50)

5. Right to life is one of the basic human rights. It is guaranteed to every person by Article 21 of the Constitution and not even the State has the authority to violate that right. A prisoner, be he a convict or undertrial or a detenu, does not cease to be a human being. Even when lodged in the jail, he continues to enjoy all his fundamental rights including the right to life guaranteed to him under the Constitution. On being convicted of crime and deprived of their liberty in accordance with the procedure established by law, prisoners still retain the residue of constitutional rights. According to the definition under the Prisoners Act, there is a convict, there is an undertrial and there is a civil prisoner who may be a detenu under preventive detention law. None of the three categories of prisoners lose their fundamental rights on being placed inside a prison. The

restriction placed on their right to movement is the result of their conviction or involvement in crime. Thus, a person-prisoner is deprived of his personal liberty in accordance with the procedure established by law and the same must be reasonable, fair and just. Right to life means the right to live with basic human dignity.

6. The report of the Chief Judge, Pondicherry, shows that, on 27.02.2001, when the petitioner was taken for attending the last ritual of his father, his right hand was handcuffed with lead chain and other end of the chain was held by the escort police and he was allowed to perform the rites with the handcuff on the right hand. The Chief Superintendent of Jails, Pondicherry, has denied the allegation by pointing out that there was no such complaint to the Jail Authorities and that the said allegation was made to this Court only on 10.02.2005, viz., after a lapse of almost four years. He also stated that the Inspector General of Prisons, Puducherry, has issued a Standing Order on 11th October, 2006, prohibiting the use of handcuff or other fetters on the prisoners for strict compliance by the jail staff and police escort party in future by highlighting the directions of the Supreme Court of India.

7. The other important feature pointed out by the Chief Judge in his report is that there is no toilet facility inside the cell to answer call of nature during night time and only two plastic buckets with lid are provided in each cell for this purpose during night and in the next day morning, the buckets containing excreta are made to be cleaned by the inmates of the cell on turn basis. In this regard, the Chief Superintendent of Jails, Pondicherry, has referred to Chapter XX of the Pondicherry Prison Rules, 1969, and laid specific stress upon Rule 364, dealing with "latrine and bathing parade", Rule 382 on "latrine accommodation in wards and cells" and Rule 383, relating to "use of night latrine to be discouraged", and pointed out that in conformity with the statutory requirement as contained in Rule 382 of the said Prison Rules, each cell is being provided with separate receptacles for night soil and urine. According to him, the procedure that is being followed is in accordance with the Prison Rules and that the Department is strictly adhering to the rule provisions. However, the Officer himself has admitted that the Rules require radical changes to fall in line and suit the present day requirement. He also informed this Court that the Government is proposing to take ameliorative steps urgently for remedying the situation by providing water closet in the present jail complex and the Public Work Department, Puducherry, has been requested to initiate steps emergently for providing the above facility to each cell. He also submitted that a new modern central prison is being constructed in an area of 35 acres at a cost of Rs. 8.39 crores at Kalapet Village, Puducherry, with all basic facilities including toilets in the individual cells and outside within the jail campus. According to him, the said new complex is expected to come up by March, 2007, and efforts have been further taken to expedite the completion of the construction for shifting the present jail premises to the new one as early as possible.

8. We accept the submissions of the Chief Superintendent of Jails, Pondicherry, placed before us in the form of an affidavit dated 14.10.2006. However, the work of this Court on the issue at hand would not be complete without pointing out certain aspects for compliance at full swing. As elaborated earlier, way back in 1978 itself, the Supreme Court, by its landmark Judgment in Sunil Batra's case rather emphatically established/affirmed the rights due to the prisoners. Any Rule or Regulation or provision in the Jail Manual cannot be permitted to stand in the name of strict compliance when it goes contra to the tenets laid down by the Supreme Court and violative of fundamental rights, seriously affecting a prisoner's right to have access to basic amenities like sanitation. In the present case, the authorities, though awakened belatedly to the need of the hour, now at least they should take steps on war-footing in order to provide proper sanitation facility to the prisoners.

9. In view of the above discussion, the grievance expressed by the petitioner/prisoner in Puducherry Central Jail, various directions of the Apex Court as referred to above and the stand of the Chief Superintendent of Jails, Puducherry, we issue the following directions for due compliance,

a. The union territory of Pondicherry shall fully implement and follow the directions issued by the Supreme Court in Sunil Batra Vs. Delhi Administration and Others etc., & Sunil Batra Vs. Delhi Administration and Others etc., and Rama Murthy Vs. State of Karnataka, .

b. When a prisoner is permitted to attend his family either for marriage or for condolence on the orders of the jail authorities/government/court, he shall not be handcuffed, however, adequate police escort is to be provided till his return to the Prison.

c. While recording the statement of the Chief Judge, Pondicherry, as well as Chief Superintendent of Jails that good water supply facility is available outside the cells as well as in the lavatory, we direct the Pondicherry Government to amend the Prison Rules, which run contra to the Apex Court's directions/guidelines as well as affecting the basic rights of the prisoners, particularly Rules 382 and 383. Pending amendment of those Rules, the Government is directed to remedy the situation urgently by installing Indian Water Closet pan (with flush type toilet) with water connection in all the cells in the existing prison for being used by the convict prisoners.

d. The Jail Authorities shall allow visits and interviews by relatives and friends of the prisoners in conformity with the provisions of the Pondicherry Prison Rules, in particular Chapter XXIV thereof.

e. In the new modern Central Prison, which is being constructed at Kalapet village, all basic amenities including toilets inside the cell and outside within the jail compound should be adequately provided.

With the above directions, the Writ Petition is disposed of.