

---

**(1983) 02 CAL CK 0022**  
**In the Calcutta High Court**

Rajesh Khaitan

APPELLANT

Vs

State of W.B. and Others

RESPONDENT

---

**Date of Decision :** 24-02-1983

**Acts Referred:**

Constitution of India, 1950 — Article 14, 19, 21, 226

**Citation :** (1983) 1 CALLT 101 : (1983) CriLJ 877

**Hon'ble Judges :** P.C. Borooah, J

**Bench :** Single Bench

---

**Judgement**

P.C. Borooah, J.—The instant Rule was issued by me on Jan. 11, 1983 treating a letter dated Jan. 10, 1983 of Mr. Rajesh Khaitan along with two reports appearing in the Statesman and the Telegraph as a petition under Art, 226 of the Constitution calling upon the State of West Bengal through the Secretary, Jails and Panchayuts Department the Inspector General of Prisons and the Superintendent of the Dum Dum Central Jail to show why appropriate writs should not be issued directing them to show cause why the provisions of the Jail Code should not be strictly enforced in re-card to the prisoners confined in the Dum Dum Central Jail and as to why the prisoners should not be provided with adequate food, clothing, medicines and other necessary facilities essential for the maintenance of the human life and health. The respondents were also directed to produce all the relevant records relating to the death of the late Santosh Bag explaining as to how and under what circumstances the said Santosh Bag died and why there was a delay in handing over the dead body to his relatives even though no post-mortem examination was held and also why no post-mortem examination was held.

2. By the same order I appointed the Chief Reporters of the Statesman and the Telegraph as Special Officers to visit the premises of the Dum Dum Central Jail and to enquire and submit reports to this Court about, inter alia, the living conditions of the prisoners, the medical facilities for/to the ailing prisoners, conditions of the kitchens and the quality of the food supplied to the prisoners

and any other matter which relates to the health and personal comforts and the well being of the prisoners.

3. On Jan. 25 1933 Mr. Sujoy Sen Gupta, the Chief Reporter of the Statesman and Mr. Tarun Ganguly, the Chief of the News Bureau-cum-Chief Reporter of the Telegraph submitted their reports. On Jan. 31, 1983, shortly after this Court resumed its sitting I paid a surprise visit to the Dum Dum Central Jail and went round various wards and also had some photographs taken. Incidentally, Mr. Tarun Ganguly had also submitted eight photographs along with his report and later on he handed over to me some further photographs and the negatives of the photographs which he had taken inside the Dum Dum Central Jail.

4. On Feb. 11, 1983 Sri Tarak Nath Chattopadhyaya, the Superintendant of the Dum Dum Central Jail, submitted his explanation and comments in connection with the reports of the two Special Officers. Affidavits were filed both on behalf of the State of West Bengal and also on behalf of the Inspector General of Prisons and the Superintendent of the Jail.

5. Mr. Somnath Chatterjee on behalf of the Jail authorities has firstly submitted that Mr. Rajesh Khaitan. who is a sitting M. L. A. of the West Bengal Legislative Assembly, was actuated by political motives in bringing to my notice the newspaper reports about the living conditions in the Dum Dum Central Jail. Mr. Chatterjee has further contended that this Court should sparingly invoke its powers under Article 226 of the Constitution in public interest litigations and under no circumstances should exercise such powers where there has been no violation of any legal or constitutional right or where no legal wrong or legal injury has been caused to any member of the public in whose interest the Court's power has been sought to be invoked. In this connection, Mr. Chatterjee has drawn my attention to a decision of the Supreme Court in the case of S.P. Gupta Vs. President of India and Others, . In this case the Supreme Court has observed as follows:

But, we must hasten to make it clear that the individual who moves the Court for judicial redress in cases of this kind must be acting bona fide with a view to vindicating the cause of justice and if he is acting for personal gain or private profit or out of political gain or private profit or out of political motivation or other oblique consideration, the Court should not allow itself to be activated at the instance of such person and must reject his application at the threshold whether it be in the form of a letter addressed to the Court or even in the form of a regular writ petition filed in Court.

6. As regards the reports submitted by the two Special Officers Mr. Chatterjee submitted that the report of Mr. Sujoy Sengupta of "The Statesman" Hives more or less a true picture of the conditions prevailing in the Dum Dum Central Jail and the said report is acceptable to the Jail Authorities and the said Authorities are also prepared to carry out whatever suggestions have been made by Mr. Senguptn in his report and whatever recommendations I may be pleased to give

on the basis of the said report and other materials for the improvement of the conditions of the in-mates of the Jail. As regards the other report, viz., that of Mr. Tarun Ganguly, Mr. Chatterjee was highly critical. According to him the report is biased and gives a distorted and a motivated version of the conditions allegedly prevailing in the jail and also contains extraneous matters and/or comments which are outside the scope of the Special Officer's power and I should, therefore, place no reliance whatsoever on the said report.

7. Mr. Chatterjee then submitted that the non-criminal lunatics (hereinafter referred to as NCLs.) are an added burden on the Jail Authorities and the facilities available in the jail are not adequate to cope with this burden. The Jail Authorities have been forced to accept this responsibility as there are no lunatic asylums or other institutions to which these NCLs. can be sent. The same argument was advanced by Mr. Chatterjee as regards the abandoned children and Mr. Chatterjee also stated that the jail was not a proper place for their custody and the Jail Authorities would welcome any attempts on the part of the concerned authorities to take them to a better and more congenial place.

8. Mr. Nara Narayan Gooptu appearing on behalf of the State has categorically stated that the State Government will abide by whatever directions I may give regarding the improvement of the conditions of the Dum Dum Central Jail. Mr. Gooptu, however, was also equally critical of the report of Mr. Tarun Ganguly and also submitted that I should not place any reliance on his report and should accept the report of Mr. Rujoy Sengupta who has placed a well-considered report before the Court which can be safely acted upon. Mr. Gooptu has also criticised the motives of Mr. Rajesh Khaitan in bringing this matter to the notice of this Court, and according to him the object of Mr. Khaitan was not public interest but self interest, viz., to project his own political image and that would be apparent from a photograph of his published in the Sunday Magazine Section of "The Telegraph" dated February 6, 1983.

9. Mr. Gooptu then submitted that by an order of the State Government dated Aim. 10, 1970 the West Bengal Jail Code Revision Committee was constituted. The terms of reference of the said Committee were as follows:

(i) to examine thoroughly the rules and appendices contained in the West Bengal Jail Code and find out with emphasis on growing complexities of prison administration and the need for introduction of correctional measures, the extent of modification necessary in the interest of welfare of the prisoners and for the modernization of jails, and

(ii) to make a recommendation to the Government for the revision of the same.

Mr. Gooptu has handed over me the report of the Committee and has submitted that the Jail Code will be revised very shortly in accordance with the recommendations and in the near future the Government expects considerable improvement in the conditions of the prisons and inmates of the Jail in West Bengal.

10. The West Bengal Jail Code contains the Rules for the superintendence and management of jails in West Bengal. This Code has to be read with the enactments enumerated in Chap, I Vol. I of the Code to get a comprehensive guide-line for the confinement and treatment of convicts, under-trials, juveniles and NCLs. who are unfortunate to find their way into the Jails of West Bengal. To quote from the preface to the Eighth Edition of the Code:

The West Bengal Jail Code is a compilation of the statutory rules, executive instructions, extracts from the rules of the Supreme Court and Government of India's instructions, etc., all classified and put together according to their subject-matter in different chapters.

11. Therefore, the violation of the Jail Code dealing, inter alia, with the diet, medical treatment, supply of clothing and blankets to the prisoners would certainly tantamount to the violation of the legal rights of the prisoners warranting this Court's interference under Article 226 of the Constitution in fit and proper cases.

12. Apart from the provisions of the Jail Code, Article 21 of the Constitution ensures that a prisoner cannot be deprived of his life and liberty except in accordance with law. A convict, an under-trial, a NCL or whosoever has to be confined in a jail does not cease to be a human being as soon as he enters the portals of a prison and he retains all his fundamental rights, restricted however by the fact of his incarceration. At this stage it would be useful to refer to certain observations made by Mr. Justice Krishna Iyer in the case of *Sunil Batra Vs. Delhi Administration and Others etc.*, . The learned Judge observed:

Judges, even within a prison setting, are the real, though restricted, ombudsmen empowered to proscribe and prescribe, humanize and civilize the lifestyle within the careers. The operation of Articles 14, 19 and 21 may be pared down for a prisoner but not puffed out altogether.

The learned Judge further observed:

So the law is that for a prisoner all fundamental rights are an enforceable reality, though restricted by the fact of imprisonment.

13. Whether Mr. Rajesh. Khaitan had any political motive in moving this Court is immaterial in view of the numerous letters received by me from the inmates of the Dum Dum Central Jail. In a letter dated Jan. 31, 1983 signed by 17 inmates complaints have been made about the living conditions in the jail and about their purported ill-treatment at the hands of some privileged prisoners who are supposed to be the favourites of the Jail Authorities. The contents of this letter and the other letters together with the reports of the two newspapers submitted by Mr. Rajesh Khaitan with his letter addressed to this Court certainly justifies the issuance of this Rule in the interest of public justice. At this stage I wish to emphasise that politics should not be involved in dealing with a purely humanitarian problem. Those who contemplate to make any political capital out

of this case deserve the severest condemnation in no uncertain terms, j also make it clear that in issuing the Rule I have not put the State Government in the dock. There is nothing for the State to be ashamed of, and if in this judicial exercise facts have been disclosed which would so to show that there have been gross violations of the provisions of the Jail Code, then the State Government should welcome this Rule and should take appropriate remedial measures and if necessary weed out inept, incompetent, callous or indifferent officials who are connected with the prison administration and the welfare of the inmates.

14. About the conditions in the jail I have before me the reports of the two Special Officers. Mr. Sujoy Sengupta's report is mellower and he has been more kind to the Jail Authorities whereas Mr. Tarun Ganguly has condemned them in no uncertain terms. Both the reports, however lose much of their importance as I myself have visited the prison and also had photographs taken.

15. I have been asked by both Mr. Chatterjee and by Mr. Gooptu to reject the report of Mr. Tarun Ganguly as it is a biased and motivated report. Even if I oblige the learned Advocates by ignoring this report I cannot shut my eyes to the photographs submitted by Mr. Ganguly. These photographs cannot and do not lie and, in my view, present a horrifying picture of the conditions prevalent in the Dum Dum Central Jail at the time of Mr, Ganguly's visit. These photographs conclusively establish that the inmates of the jail, particularly the NCLs, were deprived of. their basic human rights.

16. When I visited the prison on the 81st January, 1983 there were visible improvements in most spheres inside the jail premises. Some of the NCLs whom I saw had been provided with brand new clothes and many of them admitted this fact. Some sick NCLs in the sick ward had been provided with red coloured blankets. That the blankets which I saw were factory fresh there cannot be any doubt, as on the foot of the bed of each of the NCLs they were found neatly folded. In such circumstances, if the report of Mr. Tarun Ganguli can be terms as motivated, the .supply of brand now clothings and brand new blankets, even in honour of ray visit, is certainly equally motivated.

17. Coming now to the reports of the Special Officers, as regards the living conditions in the jail Mr. Sujoy Sengupta has observed at PP. 2 and 3 of his report as follows:

On Jan. 17, when this officer visited the jail, the rooms of the wards and other buildings he visited, particularly the floor appeared to have just been thoroughly cleaned and washed with liberal use of disinfectants. A few prisoners in these wards shouted . in the presence of officials that this had specially been done in view of the visit of the Special Officers appointed by the High Court and that the routine cleaning and washing of the wards, kitchen and etc. were unsatisfactory, Jail officials, however, later denied this and asserted that there were paid gangs of sweepers who regularly swept and cleaned the wards, latrines, kitchens, hospitals and etc, every day. This officer, however, found the walls inside the

wards mostly dirty and, at places, full of blood-stains, indicating that bugs and mosquitoes pestered the prisoners, more so in the wards where the lunatics are kept.

Mr. Sen Gupta has further observed at p. 5 of his report. : .

The roof of one of the buildings inhabited by prisoners was leaking and another Government. Department which was carrying on the repairs was stated to be taking a long time because of paucity Of funds. The power connection to this building had been cut several months ago and had not been restored yet because of the repair work.

18. On this aspect Mr. Tarun Ganguly has in paragraph A 1.2 of his report observed:

When I visited the cell blocks, some of the prisoners serving life terms (hereinafter called lifers) alleged that the blocks had been cleaned just before the inquiry had started. The bare walls of the cell, the dirty buildings and the uncleaned drains made things clear for me. The accompanying photographs will explain things better.

19. As regards medical facilities Mr. Sujoy Sen Gupta at p. 9 of his report observed ;

The authorities alleged that a racket had been operating in the jail for a long time for smuggling out medicine issued, including those drugs supplied to the lunatics, on the prescriptions of the medical officers for both the prisoners and the warders and even for the warders' families. In addition to the bulk purchase, previously there was a system of keeping a stock of essential and life saving drugs in different wards for emergencies, but there were often cases of disappearance of items of such medicine. Some warders and prisoners had allegedly been caught with stolen medicine. Action had been taken against them.

20. Mr. Ganguly, on the other hand, has on this aspect stated in paragraph B 1.3 of his report:

Most of the prisoners I interviewed (Interviews 1, 4, 5, 7B, 8, 9) complained that they were not getting proper medical treatment. The Chief Medical Officer, Calcutta Jails (Dr. N. C. Hazra Banerjee, interview 10) admitted frankly that there were practically no checks on the distribution of medicines. He was not sure whether the medicines were reaching the prisoners or not. He also admitted that there were no trained nurses in ..the Jail Hospital. On the other hand, convicts and lifers are allowed to function as nurses.

21. About the conditions of the kitchen Mr. Sujoy Sen Gupta at p. 5 of his report stated:

The floor of the main general kitchen was found to be broken and uneven at places. Apparently, nothing else looked wrong there, but later a senior medical officer stated that he had objected to the prevailing arrangement of storing the

cooked "dal" in a big masonry receptacle which involved the risk of the food being spoiled and contaminated.

22. Mr. Ganguly on this aspect in paragraph Clause 3 has observed:

The kitchens I visited, it appeared were spruced up for my visit. But the colour of the cooking utensils gave away the reality and the nearly open drains are definitely a health hazard. In fact the tickets of the prisoners show that most of them suffer from diarrhoea and dysentery.

23. When I visited the jail I went into many of the Wards and also visited the jail's kitchen and the blanket making factory. In the ward meant for keeping juveniles I was surprised and shocked to find boys roughly of the 4 to 6 age group who had been abandoned being confined together with spastics and also lunatics. The photographs taken at my direction of the interior of the juvenile ward and also a photograph submitted by Mr. Tarun Ganguly of the interior of this ward is not pleasant viewing.

24. Under no circumstances a child of tender age who is normal but has been abandoned should be confined in a prison with abnormal juveniles. This will certainly retard their mental growth and affect them both mentally and psychologically. The State Government should take immediate steps for their dispersal to some welfare home or even, if possible, to a home run by the Missionaries such as Mother Teresa so that there may be chances of their being adopted by some outside agencies.

25. What I found most shocking is the condition of the N.C.Ls. In one ward I found N.C.Ls. who were not ill sitting and/or squatting in two orderly rows with brand new clothing. They had vacant any forlorn looks in their eyes and they appeared to be ill-fed and undernourished. In the sick ward where the N.C.Ls. were found lying on their beds with new blankets near their feet the condition was slightly better. But the sanitary arrangement viz. one privy without any semblance of privacy except for a removeable gunny frame was most inadequate. However, I was surprised to find that the jail authorities had since the visit of the Special Officer taken the trouble of scraping and/or sandpapering the walls and removing the marks of the bloodstains left by killing the bugs which had infested the wards. This scraping and/or sand-papering was patent to the naked eye and I had also caused photographs of the same to be taken, it is pointless to make the wards clean without any efforts to get rid of the bed bugs and other insects. By requisitioning the services of a pest control company, these bugs and other insects can easily be eliminated.

26. What I also found shocking in the wards of the N. C Ls. is that they were in charge of lifers and/or other convicts serving long terms. Convicts might be experienced in committing a crime but surely they have no experience in looking after lunatics. The fact that convicts have been entrusted with the welfare of the N. C. Ls. makes the reason for their emaciated condition apparent. The possibility that the convicts are misappropriating the food and medicines meant

for the N. C. Ls. cannot be ruled out. In my view, para-medical staff should be appointed to look after the N. C. Ls. till the State Government is in a position to remove the N. C. Ls. to a mental institution, I was also informed that a psychiatrist visits the NCLs twice a month and he prescribed mostly tranquillisers, such as, largactil, chloroproezyme etc. In my view, a fortnightly visit of a psychiatrist is wholly insufficient to take care of the N. C. Ls. who numbered 811 on the day I visited the jail. Even a person who enters into the Dum Dum Central Jail as a lunatic will have no chances of regaining his sanity if he remains confined in those conditions. I was also informed that some N. C. Ls. have been there for over a decade,

27. On my visit to the kitchen I found that the walls appeared to have been recently white-washed. The floor of the kitchen was pitted with pot-holes and filled with stagnant dirty water and in a place two bamboos had been placed for crossing the kitchen from one end to the other. Most of "chullas" were found partially broken and the utensils which were being used for the cooking of the food were found to be covered with soot and far from clean. I was, however, agreeably surprised by looking at a photograph submitted by the Jail Authorities of the interior of the kitchen which shows that the kitchen, at least\* when the photograph was taken, is spotlessly clean with the Chullas repaired and the cooking utensils also nicely shining. I wonder whether the kitchen was specially cleaned and repaired for the purpose of this photograph. I only hope that the improvement as indicated in the photograph will be permanent and the kitchen will be kept clean and hygienic.

28. Of the persons amongst the inmates of the jail, I found the lifers and the warders to be the most, healthy. Lifers, many of whom also spoke to me, were also well dressed. Some of them, however, complained to me about the inadequacy of the supply of essential drugs to them by the Hospital Medical Staff. The reason for this complaint became clear when I talked to the doctors who complained to me that even for very minor ailments the doctors were forced to prescribe sophisticated and expensive drugs not only to lifers but also to warders and other members of their families for obvious reasons. On the failure of a certain Medical Officer to prescribe some expensive medicines he has (been?) beaten up and the last beating he got was in Oct. 1982 and in spite of complaints to the Jail Authorities, no action has been taken. This Medical Officer, therefore, told me that he had no other alternative but to prescribe whatever medicines the prisoners or the warders demanded.

29. It appears to me that there is a racket going on in the prison among some warders and lifers who enjoy all the benefits, such as, requisitioning of expensive drugs and also requisitioning of special food, although they are not entitled to the same. These warders cannot be transferred, according to the Inspector-General of Prisons, in view of a circular issued by the last Inspector-General that warders who are office bearers of the Union cannot, be transferred, I fail to understand why the Prison Authorities are permitting this pernicious practice to

continue. The jail warders, irrespective of the fact of their being office-bearers or members of a Union, should be periodically transferred to prevent their growing roots in a particular jail. Lifers who also indulge in malpractices should also be transferred to some other jail in the State.

30. The purpose of sending a convict to jail is twofold, namely, punishment and rehabilitation. I was surprised to find that there is very limited scope for, the rehabilitation of a prisoner inside the Dum Dum Central Jail. On my query as to what, trade the prisoners were taught so that they could come out as useful citizens, I was informed by the Superintendent that there is a blanket-making factory. When I visited the factory, I found all the looms except one were thickly coated with dust, thereby proving that the looms had not been worked for quite some time. The explanation was : dearth of raw material. I was then told that the prisoners were trained in the manufacture of soap. When I insisted on being shown the soap-making factory, I was told that there was dearth of raw materials : as such the factory was closed. When I questioned the Superintendent as to when the factory last worked, he said, not during his regime and the Superintendent has been in his present post for about three years. I was then informed that there was a phenyl-making factory. When I insisted on seeing that. I was told that there is a mistake and that the phenyl-making factory is not situated in the Dum Dum Central Jail but in some other jail. Therefore, there is very little possibility of the inmates of the Dum Dum Central Jail being taught a useful trade so that after serving their terms of imprisonment they can become useful members of the society.

31. On this aspect an observation made by the Supreme Court in the case of Sunil Batra Vs. Delhi Administration and Others etc., would be relevant. The Supreme Court in this case observed:

Rehabilitation is a prized purpose of prison "hospitalization". A criminal must be cured and cruelty is not curative even as poking a bleeding wound is not healing. Social justice and social defence - the sanction behind prison deprivation - ask for enlightened habilitative procedures.

32. When Swami Vivekananda visited a prison in America, he wrote to his disciple of his thoughts and impressions of the visit as follows:

They do not call it prison but reformatory here. It is the grandest thing I have seen in America. Now the inmates are benevolently treated : how they are reformed, and sent back as useful members of society; how grand, how beautiful, you must see to believe it : And. oh, my heart ached to think of what we think of the poor, the low, India. They have no chance, no escape, no way to climb up.... They sink lower and lower every day, they feel the blows showered upon them by a cruel society, and they do not know whence the blow comes. They have forgotten that they too are men, And the result is slavery...

33. As regards the death of Santosh Bag the affidavit filed on behalf of the Superintendent of the Dum Dum Central Jail goes to show that Santosh Bag who

was undergoing a life sentence died as a result of myocardial infarction after receiving proper treatment in the Jail Hospital. The death certificate which is annexed to the said affidavit also establishes this fact. In my view, some of the inmates of the jail went on hunger strike for some other reason taking advantage of the death of Santosh Bag. Mr. Sujoy Sen Gupta has, however, in his report stated that the history sheet of Santosh Bag is missing. No satisfactory explanation has been given on behalf of the Jail Authorities. Under Rule 99 of Chapter II of Volume I of the West Bengal Jail Code a prisoner's history sheet and Hospital Bed Head ticket shall be kept for two years. Therefore, there has been a violation of this provision. The Jail Authorities should institute a necessary enquiry as to how the history sheet was lost.

34. I think no useful purpose would be served by going into this problem any further. Therefore, I propose to end my judgment by making a few recommendations to the State and the Jail Authorities, which I hope, they will carry out.

(1) Dispersal of non-criminal lunatics to lunatic asylums and/or Mental Hospitals and if this is not possible, expeditious steps should be taken to keep them in more congenial and healthy surroundings. Till this is done, para-medical staff and not convicts should be appointed to look after their welfare, specially as regards the supply of food and medicine to them.

(2) Abandoned children should not be kept in the prison with juvenile delinquents and spastics and other abnormal children. If there is no place in the Homes under the Social Welfare Department, the children specially those who are of tender age, can be kept in the Homes run by Mother Teresa or other charitable or religious organisations.

(3) The convicts should be taught some useful trade so that after they serve put their sentences, they can become useful members of the society. For educated convicts shorthand and typing could be taught and for others arrangements may be made to teach them tailoring, weaving, carpentry, etc.

(4) All warders irrespective of the fact whether they are office-bearers of any Union, should be periodically transferred. The circular issued by the previous Inspector-General of Prisons preventing such transfer should be immediately recalled.

(5) The racket run by some warders and lifers forcing the doctors to issue expensive medicines and special diet, when not actually required, should immediately be put a stop to. The lifers who threaten the Medical Officers and force them to issue medicines and special food should be transferred to some other jail in the District.

(6) Cleanliness should be maintained in the kitchen and all the utensils used for cooking should be kept clean.

(7) Proper clothing and in the winter, blankets should be supplied to the

prisoners and specially to the non-criminal lunatics.

(8) Government should ensure that the ex-officio jail visitors should do their duty and pay periodical and surprise visits to the prison and submit reports to the Government in case they find any lapses.

(9) Non-official visitors should be appointed in accordance with the provisions of the Jail Code so that the welfare of the prisoners can be looked into periodically.

35. With these words I conclude my judgment with a hope that by the issuance of this Rule the conditions of the Inmates of the Dum Dum Central Jail and particularly those of the non-criminal lunatics will improve, if not already improved.

36. This Rule is thus disposed of without any order as to costs.

37. I hereby lift my ban on the publication of the photographs, but I make it clear that the photographs which Mr. Tarun Ganguly had caused to be taken of the political prisoners should under no circumstances be published.