
(2014) 03 MP CK 0027
In the Madhya Pradesh High Court
Case No : Writ Petition No. 442/2014

Rakhee Sharma

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 19-03-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 2 JLJ 130 : (2014) 3 MPHT 93

Hon'ble Judges : S.K. Gangele, J;G.D. Saxena, J

Bench : Division Bench

Advocate : Raju Sharma, Advocate for the Appellant; M.P.S. Raghuvanshi, Addl. Advocate General and Deepak Khot, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

G.D. Saxena, J.—This writ petition by way of Public Interest Litigation has been filed by the petitioner, under Article 226 of the Indian Constitution against mismanagement and irregularities in vogue in the Night Shelter Homes, managed by the Municipal Corporation Gwalior/respondent No. 5 and the Red Cross Society, Gwalior in Gwalior town claiming with following reliefs:--

(a) That, the respondents/State Authorities and Local Authorities, i.e., Municipal Corporation, Gwalior may be directed to open sufficient numbers of Night Shelter Homes in Gwalior town and Gwalior and Chambal Division and make them in perfect sense and spirit;

(b) That, the respondents may be directed to provide all required facilities in every Night Shelter Homes and depute Staff specified for management of Night Shelter Homes;

(c) That, the respondents may be directed to appoint NGOS for operation and management of the Night Shelter Homes of the area as per Homeless Shelter Manual;

(d) That, by way of interim relief, it is prayed that the respondents may be directed to take all measurements to save the homeless persons, who use to stay in night for their safety from the severity of the weather providing with clean water and other annuities for their saving life and appoint the efficient staff under efficient supervision.

The petitioner, who is a well-educated and belongs to well-established family of Gwalior City, came across through a news item from daily newspapers that there are Night Shelter Homes established by the Municipal Corporation, Gwalior. Some of them are running under the supervision of the Corporation whereas some of them are being managed by the "Red Cross Society", Gwalior and hence there are prevailing mis-management and irregularities in the working system. The petitioner greatly pained to read such a thing that the care-takers of the homes virtually failed to follow their duties and provide adequate shelter to the homeless/roofless persons. Consequently, those poor downtrodden persons are compelled to live restless in severe cold nights in an open sky, resulting some of them suffer from diseases and dies without proper shelter in severe cold session. It is further mentioned that some of the night shelter homes are let out or otherwise are made available for marriage or other purposes to the effective persons. Therefore, with a request for directions to the State Authorities and the Local Authorities for maintaining and proper running Shelter Homes as per directives of Hon"ble Apex Court in People's Union for Civil Liberties (Night Shelter Matters) Vs. Union of India, (2012) 11 SCC 422, at page 425 and the guidelines contained in Homeless Shelter Manual, the present petition is sought to be allowed.

2. Respondent No. 5-Municipal Corporation, Gwalior has filed reply to the petition and also made available the necessary informations regarding the Shelter Homes established for homeless in various public places, pointing out about their maintenance. It is submitted that the Shelter Homes are running on various eight public places by the Municipal Corporation and at present most of the Shelter Homes are managed by the staff of the Corporation. Now, the Municipal Corporation passed the resolution in Council that for betterment of the Shelter Homes for homeless people of the city and other people who use to visit the city and do not get roof for their stay should be run by the Red Cross Society for which financial aid as per provisions in budget shall be provided to the Red Cross Society. It is submitted that at present all Shelter Homes have sufficient furniture and other necessary facilities are also being provided to the persons getting shelter therein. These Shelter Homes are also managed by the efficient staffs under supervision of the officers of the Corporation. Learned Counsel contends that the basic object and purpose of these Shelter Homes are not to provide place for permanent stay but to provide temporary suitable stay facility to the visitors, who use to come in the City for specific purpose and are not capable to afford for their stay in the town. It is further pointed out that these shelter homes are providing all necessary facilities required for winter session as well as summer session to such persons. Most of the Shelter Homes are working near

Railway Station, Bus Stands and near reputed hospitals, where a large number of visitors come forward for a specific purpose and take temporary stay in Shelter Homes. Therefore, it is prayed on behalf of the respondent No. 5/Corporation for dismissal of the petition.

3. Heard the learned Counsel appearing on behalf of petitioner, learned Additional Advocate General representing the State/respondent Nos. 1 to 4 and learned Standing Counsel for the Municipal Corporation/respondent No. 5. We have also perused the petition and reply filed on behalf of Municipal Corporation and information submitted by the parties.

4. In the similar matter in People's Union for Civil Liberties (Night Shelter Matters) (supra), the Hon'ble Apex Court directed the State of Madhya Pradesh in following words:--

19. According to the norms, the State requires 57 Night Shelters, but the State has decided to construct 100 Night Shelters. 32 Night Shelters have been constructed and 68 are under construction. The State has decided to construct Night Shelters even in towns having population more than one lakh.

20. According to Annexure A, 62 temporary Night Shelters have also been erected and basic amenities such as bed, blanket, electricity, drinking water, toilet facilities, entertainment and newspapers are already in place. We direct the State to ensure that apart from these facilities, they must provide adequate bedding and heating facilities.

Further directions:

29. We direct the District Magistrates/Collectors concerned to collect information about the homeless in their districts and submit the same before the Chief Secretaries of the States concerned who shall in turn file affidavits before this Court.

30. All the Chief Secretaries and Administrators of the Union Territories of the aforesaid States and Union Territories (also the States and Union Territories, who have not filed their affidavits as on date) are directed to file the affidavits on or before 14-1-2012 indicating and giving details as to the number of permanent and temporary Night Shelters in existence, provisions of basic amenities such as potable drinking water, toilet facilities for men and women, bedding and heating facilities and some basic medical facilities. The affidavits shall also indicate, the occupancy of the Night Shelters functioning in the States with an advance copy to the learned Counsel for the petitioner.

31. We further direct all the States and Union Territories to give adequate publicity of the existence of Night Shelters in their States both through print and electronic media so that maximum number of needy and homeless people could avail the facilities.

5. It is further directed as follows:--

2. A Joint Inspection Report of Homeless Shelters has been filed by the Special Commissioner as well as the Commissioner of the Supreme Court. An inspection was carried out between 9-1-2012 and 12-1-2012 by the Commissioners and Officials of DUSIB. According to the Report:

(i) 62 out of 64 Night Shelters are in operation and 2 are closed.

The learned Additional Solicitor General submits that those two Night Shelters have also been put into operation.

(ii) Occupancy at the time of inspection was 2997 and possible optimal capacity of the shelters is 5502. The capacity of these shelters as per DUSIB is 9085. According to the survey conducted by the Civil Society Organisation, an NGO, the total number of homeless people in Delhi is 1 lakh and there is a need for 478 additional shelters.

(iii) In general, infrastructure and maintenance of permanent shelters was found to be in order with the exception of space considerations. The key areas of improvement recommended by the Commissioners are to upgrade the toilet and washroom facilities and introduction of kitchen and cooking facilities for the destitute and ailing people.

(iv) There are several shelters where occupancy is very low. There is a dire need to undertake large scale communication and information campaign and outreach among the areas of concentration of homeless and in general among the larger society about this programme. Such a campaign will also reduce the hostility that sometimes the middle class and wider society feel towards the homeless and the poor citizens.

(v) There are certain areas where more shelter homes are necessary such as areas like Jama Masjid and Bangla Sahib Gurdwara, which has a large population of homeless people.

(vi) There are shelters, which are not fully occupied.

The learned Additional Solicitor General submits that adequate publicity would be given both on electronic and print media so that homeless people can avail the facilities, which are made available for them. The learned Counsels for the parties suggest that the Joint Apex Advisory Committee be directed to visit these shelter homes and ensure the implementation of the Joint Inspection Report as far as possible without any loss of time.

(vii) Some homeless people come particularly in the category of mentally ill, addicts, destitute and old age people.

3. The Joint Apex Advisory Committee may ensure that those people, who are critically ill may be admitted to the Government Hospital or provided with such medical facilities as may be required.

4. Some photographs have been attached with the Report, which indicates that

bunk beds have been provided in Kashmere Gate and other shelter homes. Mattresses and blankets have also been provided and that there is a serious endeavor by the Government to carry out the orders passed by this Court in letter and spirit.

6. The deprivation of the right to life in that context would not only denude right of the effective content and meaningfulness, but it would make life miserable and impossible to life. It would, therefore, be the duty of the State to provide right to shelter to the poor and indigent weaker sections of the society in fulfillment of the Constitutional objectives.

7. That apart, a statutory duty is cast on the Corporation to make provision for accommodation enjoining upon the Commissioner, if it is satisfied that within any area or any part of the City it is expedient to provide housing accommodation for the poor classes and that such accommodation can be conveniently provided without making an improvement scheme, it shall cause such areas to be defined on a plan. The Corporation is required to pass a resolution authorising the Commissioner, who shall thereupon have power to provide such an accommodation either by erecting buildings or in any other manner on any land belonging to the Corporation or any land acquired by the Corporation for the purpose or by conversion of any building belonging to the Corporation into dwelling for poor classes or by enlarging, altering or repairing or improving any buildings, which have, or an estate or interest which has been acquired by the Corporation.

8. Thus, realising the gravity of the situation that is being faced, in furtherance and consonance with the directions of Hon'ble Apex Court in People's Union for Civil Liberties (supra), reproduced above, which are in rem and not in personam, we deem it fit to issue following direction by way of mandamus as under:--

(i) That, the State through their District Authorities shall construct, if not constructed, looking to the numbers of homeless visitors, adequate number of shelter homes at public places like Railway Station, bus stops, hospitals (State and other specified), famous temples (other religious places) where a large number of pilgrims use to pay visit including public places of importance. Such places shall include basic amenities such as bed, blanket, electricity, drinking water, toilet etc.

(ii) That, the District Revenue Administration shall verify that those institutions for homeless persons are managed properly and that the available funds are properly utilised under transparency.

(iii) That, the District Revenue Authority and Local Municipal Authorities shall also survey short-term shelter homes such as Dharmshala, Saray or other institutions, which are being run by the religious trust or attached to the Temple, Mosque or Gurudwaras of the areas or run by other charitable trusts, or by some, religious persons or caste but dedicated to public with a view to find out whether all necessary basic amenities mentioned above are available in such

places or not. The purpose of such institutions shall be served in the way for which the institutions are established. No marriages or other local functions shall be carried out in the institutions and in the event of receiving complaint about misusing, proper action shall be taken by the authorities.

(iv) That for proper management of the shelter homes, the District Authorities shall properly make arrangements or a trust registered under M.P. Public Trust Act, 1961 shall be constituted or existing trusts working in charity shall be called for rendering helping hands in this pious purpose.

(v) That a list of visitors for all existing or proposed shelter homes of the area shall be prepared. The list of visitors shall include the local member of Parliament, local member of Legislative Assembly, Chairperson of the Local Municipality, District Collector, Superintendent of Police, District Authorities of Panchayat and Social Welfare Department, Chairman/Secretary of District Legal Services Authority of the area, the Registrar Public Trust under M.P. Public Trust Act, 1961, and at least five local members of the area working for charity. Those members shall inspect the institutions for homeless and note down their views of short facilities" in their visitor"s book and will try to cure at their end.

(vi) That the Management of the institution or District/Local Level Authorities by encouraging, may arrange tea or meal on subsidised rates with the help of Local Charitable Institutions.

(vii) That the medical facility from nearest State"s Hospital shall be provided to the homeless ailing persons.

(viii) That such shelter homes established or proposed homeless shelter homes be constructed from State budget and the funds be generated from Local Charitable Institutions as well as financial institutions by the District/Local Authorities.

Subject to above directions, the petition stands disposed of.