
(2014) 02 MP CK 0060
In the Madhya Pradesh High Court
Case No : Writ Petition No. 4780/11

Ram Lakhan Kewat

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 21-02-2014

Acts Referred:

Constitution of India, 1950 — Article 21 21A 227 256 32

Citation : (2014) 2 JLJ 10 : (2014) 2 MPHT 292 : (2014) 2 MPLJ 341

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

Bench : Division Bench

Advocate : Rohit Mishra, Sushil Chaturvedi, for the Appellant; Praveen Newaskar, Govt. Advocate for Respondent/State, for the Respondent

Final Decision : Disposed Off

Judgement

G.D. Saxena, J.—This petition under Article 227 of the Constitution of India as a Public Interest Litigation has been filed by the Working blind teacher posted in the Madhav Andhashram for issuing of a writ in the nature of mandamus or any other suitable writ, order, direction for better management of such Institution situated in Naka Chandrawadani Gwalior. The grievance raised by the petitioner, by an large, is covered by the earlier directions given by this court in W.P. No. 3393/2009 (PIL) on 23rd December 2009 for issuance of the commission to monitor the present status of management of the Institution, the present conditions of the blind inhabitants/students of the Institution including adoption of the reforms for welfare of the Institution. The anxiety expressed is only with regard to their implementation by the State authorities within a reasonable period. It is not in dispute that "Madhav Andhashram is a public institution which is running in its own old constructed building situated at Naka Chandrawadani Gwalior by a public trust registered under M.P. Society Registration Act 1973 by the Board of Directors, duly appointed by its members in the election of their General Assembly of the members of the Institution under the control of Assistant Registrar M.P. Society Registration Act 1974 Gwalior. This Institution is

running for the welfare of the neglected blind children (boarding)/inhabitants on receiving donations from the State, or from public or institution of the society as well as rents which is being received from some part of the building. It is unfortunate that at present, no Board of Directors validly elected by the members of the Institution is working. Shri R.S. Sikarwar, the Administrator appointed by the Assistant Registrar M.P. Registration of Society Act 1973 Gwalior due to his incompetence in working for the welfare of the Society had already been removed. So, in these state of affairs, the management of the Institution is totally paralyzed and the inhabitants and students of the Institution are compelled to lead a miserable life. To know the scenario of the management and condition of living of the blind inhabitants of the institution, who are virtually down trodden helpless and physically handicapped students and the pathetic situation of the present management, this court appointed a local commission of two respectable members from the High Court Bar Associations to visit the Institution and submit a detailed status report which is also submitted on record. Even after the directions issued as an interim manner in present petition and finally in previous W.P. No. 3393/2009, discussed above, the State/local authorities and Managers of the institution are not vigilant.

2. At this stage, it may be mentioned that Article 21 of the Indian Constitution grants the protection of life and liberty whereas Article 21A Indian Constitution grants for providing right to free education to all children of the age of six to fourteen years in such a manner as the State may by law determine. Further Article 39 of the Indian Constitution described the directive principle as fundamental in the governance of the country which are complimentary and supplementary to the fundamental rights directing the State to secure a social order for promotion of welfare of the people residing in different area and or engaged in different vocations.

3. In *Kharak Singh Vs. The State of U.P. and Others*, the Hon. Apex Court considered "life" as something more than the animal existence and the term liberty, as used in the provision something more is meant than mere freedom from physical restraint or the bounds of a prison and observed the life and liberty as follows:-

11. The content of Article 21 next calls for examination. Explaining the scope of the words "life" and "liberty" which occurs in the 5th and 14th Amendments to the U.S. Constitution reading "No person...shall be deprived of life, liberty or property without due process of law", to quote the material words, on which Article 21 is largely modelled, Field, J. observed:

By the term "life" as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all these limits and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body or amputation of an arm or leg or the putting out of an eye or the destruction of any other organ of the body through which the soul communicates with the outer world...By the term liberty, as used in the provision something more is meant than mere freedom from physical restraint or the bounds of a

prison.

4. In *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, the Hon. Apex court again considered the life and liberty in true sense to live with human dignity with all human amenities of life and observed as follows:-

It is the fundamental right of everyone in this country, assured under the interpretation given to Article 21 by this Court in *Francis Mullin* case to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State-neither the Central Government nor any State Government-has the right to take any action which will deprive a person of the enjoyment of these basic essentials. Since the Directive Principles of State policy contained in clauses (e) and (f) of Article 39, Articles 41 and 42 are not enforceable in a Court of law, it may not be possible to compel the State through the judicial process to make provision by statutory enactment or executive fiat for ensuring these basic essentials which go to make up a life of human dignity but where legislation is already enacted by the State providing these basic requirements to the workmen and thus investing their right to live with basic human dignity, with concrete reality and content, the State can certainly be obligated to ensure observance of such legislation for inaction on the part of the State in securing implementation of such legislation would amount to denial of the right to live with human dignity enshrined in Article 21, more so in the context of Article 256 which provides that the executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State. We have already pointed out in *Asiad Construction Workers* case that the State is under a constitutional obligation to see that there is no violation of the fundamental right of any person, particularly when he belongs to the weaker sections of the community and is unable to wage a legal battle against a strong and powerful opponent who is exploiting him. The Central Government is therefore bound to ensure observance of various social welfare and labour laws enacted by Parliament for the purpose of securing to the workmen a life of basic human dignity in compliance with the Directive Principles of State Policy. This is a constitutional obligation which can be enforced against the Central Government and the State by a writ petition under Article 32 of the Constitution.

5. In *Air India Statutory Corporation, etc. Vs. United Labour Union and others* [overruled], : the Hon. Apex court reiterated the above constitutional fundamental rights and the directive principles and observed as follows:-

42. The Preamble and Article 38 of the Constitution envision social justice as the arch to ensure life to be meaningful and livable with human dignity. Jurisprudence is the eye of law giving an insight into the environment of which it is the expression. It relates the law to the spirit of the time and makes it richer. Law is the ultimate aim of every civilized society, as a key system in a given era, to meet the needs and demands of its time. Justice, according to law, comprehends social urge and commitment. The Constitution commands justice, liberty, equality and fraternity as supreme values to usher in the egalitarian social, economic and political democracy. Social justice, equality and dignity of person are cornerstones of social democracy. The concept of "social justice" which the Constitution of India engrafted consists of diverse principles essential for the orderly growth and development of personality of every citizen. "Social justice" is thus an integral part of justice in the generic sense. Justice is the genus, of which social justice is one of its species. Social justice is a dynamic device to mitigate the sufferings of the poor, weak, dalits, tribals and deprived sections of the society and to elevate them to the level of equality to live a life with dignity of person. Social justice is not a simple or single idea of a society but is an essential part of complex social change to relieve the poor etc. from handicaps, penury to ward off distress and to make their life liveable, for greater good of the society at large. In other words, the aim of social justice is to attain substantial degree of social, economic and political equality, which is the legitimate expectation and constitutional goal. Social security, just and humane conditions of work and leisure to workman are part of his meaningful right to life and to achieve self-expression of his personality and to enjoy the life with dignity. The State should provide facility and opportunities to enable them to reach at least minimum standard of health, economic security and civilized living while sharing according to their capacity, social and cultural heritage.

6. In *Gaurav Jain Vs. Union of India and others*, : the Hon. Apex court defined the rights of children and the protections which shall be provided to the child disabled by birth and neglected from his own and society due to his physically enabled by birth or after birth and left in open sky or orphan or like institutions run by the State or other organizations of the society but are kept neglected by the State or their managers and the children living or kept by their fate are left to live a miserable life. The Hon. Apex court considered all aspect of these heart burning conditions and observed as follows:-

30. Children of the world are innocent, vulnerable and dependent. They are all curious, active and full of hope. Their life should be full of joy and peace, playing, learning and growing. Their future should be shaped in harmony and cooperation. Their childhood should mature, as they broaden their perspectives and gain new experience. Abandoning children, excluding good foundation of life for them, is a crime against humanity. The children cannot wait till tomorrow; they grow every day; along with them grows their sense of awareness about the surroundings. Tomorrow is no answer; the goal of their present care, protection and rehabilitation is the need of the hour. We have already dealt with the rights

assured to them by the Constitution, the Directive Principles and the Convention on the Right of the Child. The United Nations Declaration on the Rights of the Child made on 20-11-1959, has formulated and given 10 principles in that behalf. Principle 5 provides that the child who is physically, mentally or socially handicapped shall be given special treatment, education and care required by that particular condition. This is more relevant for the purpose of this case. Principle 6 postulates that the child, for the full and harmonious development of his personality, needs love and understanding. A child of tender years shall not, save in exceptional circumstances, be separated from his/her mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable.

32. The Government of India has adopted the National Policy for Children by Resolution No. 1-14/74-CDD dated 22-8-1974. The main purpose of the policy is that the nation's children are a supremely important asset. Their nurture and solicitude are our responsibility. Children's programmes should find a prominent part in our national plans for the development of human resources, so that our children grow up to become robust citizens, physically fit, mentally alert and morally healthy, endowed with the skills and motivations needed by the society. They participate in equal measure in democratic governance of the State as useful citizens. Equal opportunities for development to all children during the period of growth should be our aim; for this we would serve our larger purpose of reducing inequality and ensuring social justice. To care for, plan out the needs of the children and successful implementation is, therefore, our duty, as a citizen, be it an administrator, a Magistrate or a Judge.

33...Programme 8 envisages that children who are socially handicapped, who have become delinquent or have been forced to take to begging or are otherwise in distress, shall be provided facilities for education, training and rehabilitation and will be helped to become useful citizen.

...Programme 14 envisages that existing laws should be amended so that in all legal disputes, whether between parents or institutions, the interests of children are given paramount consideration. Programme 15 provides that in organizing services for children, efforts should be directed to strengthen family ties so that full potentialities of growth of children are realized within the normal family, neighborhood and community environment. Priority sectors have been provided in this behalf and paragraph 4(c) provides maintenance, education and training of orphan and destitute children. They require special care, education, training and rehabilitation of handicapped children; in clause (e) thereof, role of voluntary organizations is emphasized. Paragraph 6 thereof postulates that the Government shall endeavor that adequate resources are provided for child welfare programs and appropriate schemes are undertaken.

34. India has a tradition of voluntary action which shall be the endeavour of the

State to encourage and strengthen voluntary action so that State and NGOs complement each other. Paragraph 7 postulates legislative and administrative action in that behalf and paragraph 8 emphasises people's participation in the implementation of this programme. It would, thus, be seen that the constitutional imperatives of the national policy of children and the international principles for the development of children are of paramount need and consideration is for child development. The handicapped children and those from weaker sections are given special attention by the State and voluntary agencies.

7. In views of the above, a paramount duty is cast on State Govt. and their authorities to achieve an appropriate level of protection to human life and health which is a fundamental right guaranteed to the citizens under Article 21 read with Article 47 of the Constitution of India. The right to live with human dignity denies the life breach from the Directive Principles of the State Policy, particularly clauses (e) and (f) of Article 39 read with Article 47 of the Constitution of India.

8. Taking into consideration the whole picture, we are, of the view that the rules and regulations framed under the policy of the State have to be interpreted in strict sense and applied in the light of the Constitutional Principles, discussed above so as to achieve an appropriate level of protection of human life and health. Considerable responsibility is cast on the State Govt. to achieve the desired results. With a view to achieve an appropriate level of protection of human life and health and protection of the disabled children like blind, handicapped mentally retorted, who are admitted in Madhav Andhashram, we think it appropriate to direct the respondent No. 2/State to follow and maintain a system of control and other activities as appropriate to the circumstances and other monitoring activities covering all stages by conducting periodical inspections for ensuring welfare of such institution.

9. For safeguarding the right to life guaranteed under Article 21 of the Constitution of India of such disabled children, who are admitted in Madhav Andhashram Gwalior, we feel it apposite to issue following directions by way of writ of mandamus to the respondent No. 2/State to take control over management of such institution established for blind, handicapped, mentally retorted children:-

(a) That, the whole management of the Institute "Madhav Andhashram", Gwalior, which is known to be established for blind, disabled and mentally retorted children, now shall run under the supervision of the State and for the best education and honourable living of such children, one competent Administrator, not below the rank of Deputy Director Panchayat/Social welfare Department shall be appointed, who shall take charge of the administration from previous Administrator.

(b) That, in the said institute, education up to the level of Higher Secondary standard shall be parted to the blind children compulsorily as resident scholar and thereafter necessary arrangements shall be made for providing them higher

education/technical education as per their ability and wishes.

(c) That, for better running of the aforesaid institution, one Principal/Headmaster and one qualified Accountant shall be appointed, positively by the State against regular cadre from the Directorate of Schooling Education, Child and Woman Welfare Department and Directorate of Treasuries, on transfer basis.

(d) That, the premises and open land attached if any cannot/shall not be used for commercial, personal purposes except for schooling and residence of the children in the said institution. If the State wishes and feels that the present building of the institute is not sufficient, in such a case the additional accommodation for their residences as per specification shall be constructed.

(e) That, the rented portions of the building "Madhav Andhashram" or unauthorized occupied portion shall be vacated by following due procedure of law, by the Administrator so appointed by the State.

(f) That, for education in the above institution, the regular staff well trained for blind children against regular cadre, on regular pay-scale and specified teachers to educate such mentally or blind children shall be appointed within a reasonable period.

(g) That, the account of the institution shall be audited annually by the State Auditors authorised for audit in similar departments of the State and audit report shall be filed for information and proper action before the appropriate authorities of the State. Said report shall also be made available under RTI as per provisions of law.

(h) That, foodstuffs to the blind children in the above institution shall be provided under food safety scheme of the State on subsidized rate regularly without fail. Other items like vegetables, spices essential for preparing healthy food shall also be provided as per scheme of the State.

(i) That, a routine medical check-up of the inhabitants of above institution shall be done by the Medical Experts posted in the District Hospitals, periodically in a year. After check-up, the reports shall be placed before the concerned Manager of the Institution. In case of emergency on information from Manager of the institution, free medical aid will be provided to them in the govt. hospitals.

(j) That, the medicines and medical supplements shall, as per advice of the Physician be provided, free of cost to the inhabitants of the Institute by the State. In case of failure to provide the medicine and food supplements from the concerning hospitals, as per State policy, the expenses for purchase of prescribed medicines shall be reimbursed by the State.

(k) That, basic items like furnitures, beddings, adequate utensils for preparing and serving food items, and other items such as musical instruments for raising extra curricular activities shall be purchased as per the State purchasing policy from open market.

(l) That, the expenses of such institution shall be borne by the State by forming the funds created for this purpose. The amount of the funds shall be collected against existing budget allocation and the charity donations received from individuals, corporate bodies and other charitable trusts. For encouraging the said collections, the attractive tax rebate as available to the Chief Minister/Prime Minister's relief funds shall be provided.

(m) That, the Manager of the Institution shall be authorized to appoint/engage cleaning workers, mess employees, electrician, plumber, carpenter, and other personnel's required for daily repairs on contract basis.

(n) That all blind orphan children wondering on public places, involved in begging shall be admitted in the above institute and looked after properly.

(o) That, for solution of the problems, faced by the inhabitants of Madhav Andhashram, it is hereby directed that the District Judge Gwalior being Chairperson of District Legal Services Authority Gwalior shall visit the institution in first week of March 2014 and thereafter twice in a year and solve the local problems relating to troubles of the blind children residing in the institution. Thereafter, he shall file the report of his inspection before the Principal Registrar of this bench for being placed before the Administrative Judge.

10. The aforesaid directions shall be complied with by the respondent No. 2/ State, within a period of six months from the date of release of this order.

11. Accordingly, the petition stands disposed of. Let a copy of this order be sent to all concerned through Principal Registrar of this bench. The compliance report be filed periodically by the State without fail.