
(2007) 05 AHC CK 0205

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 15630 of 2006

Vishnu Dayal Sharma

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 10-05-2007

Acts Referred:

Citation : (2007) 05 AHC CK 0205

Hon'ble Judges : Amar Saran, J and R.N.Misra, J

Final Decision : Allowed

Judgement

1. We have heard Shri Sukhendu Pal Singh, learned Counsel for the petitioner, Shri A.K. Sand, learned Additional Government Advocate, Shri K.C. Sinha, learned Assistant Solicitor General of India and Shri D.K. Singh, Joint Registrar (Inspection), High Court, Allahabad.

2. An affidavit, dated 952007 sworn by Dr. Anil Mishra, Deputy Superintendent of Police (Legal Cell), D.G.P. Headquarters, Lucknow, on behalf of the State of U.P., an affidavit dated 95 2007 sworn by Shri Shyam Vidyarthi, Senior Director, Doordarshan Kendra, Allahabad on behalf of Director Prasar Bharti, New Delhi and a compliance report by the Registry have been produced before us today.

3. It is gratifying to note that in pursuance of our order dated 2232007 and earlier orders, out of 719 children, who were reported missing in the year 2006, 183 children have been traced out within a period of about three months between the first week of January, 2007 and 342007. Efforts are being made for locating the remaining 536 missing children, who were reported missing in the year 2006.

4. So far as the children who are missing for the earlier five years are concerned, it is reported that in the previous five years there are 1971 children missing, out of whom 1440 were male and 531 are female, who are missing from the period 20022006. Out of the 1971 children missing for five years 462 children have been traced/recovered in the period of 1st week of January till 342007, and 1509

children still remain to be found/recovered. Therefore as a result of this Court's orders in a period of a little over 3 months, as many as 645 children have been traced out and united with their parents.

5. Further gender and agewise disaggregated breakup shows that the majority of children who are still traceless belong to higher age groups who sometimes run away because of the stress of studies or examinations and parental criticism or in connection with romantic liaisons. Thus the figures mentioned in the State's affidavit reveal that 38 male children up to the age of 5 years, 152 male children up to the age of 10 years and 913 male children up to the age of 18 years and 31 female children up to the age of 5 years, 43 female children up to the age of 10 years and 332 female children up to the age of 18 years are yet to be traced out.

6. In pursuance of the directions in our order dated 2232007 to furnish better details with regard to directions 1 to 5 of the D.G.P.'s circular dated 1012007, better districtwise details have now been provided. Thus, separate registers of missing persons and better cells for monitoring the matter of missing children have been constituted in which the SSP/SP incharge of the districts have been made nodal officers. They are to maintain records and to make detailed enquiries about all missing children. Also this Court was interested in being acquainted with the difficulties faced by the different districts in implementing the orders of this Court and the DGP's circular dated 1012007 pursuant thereof. The Dy. S.P.'s affidavit shows that whereas the majority of the districts have stated that there are no difficulties in implementing these directions, however some districts, such as Gautam Budh Nagar, Baghpat, Muzaffarnagar, Etawah, Agra, Mathura, Hathras, Jaunpur, Ambedkar Nagar the nodal officers of the districts have pointed out the difficulties. We do wonder whether the nodal officers of districts which report no difficulty in implementing the Court's orders are seriously concerned about tracking the missing children, or have reported to paper compliance of our orders and have given a blanket reply of 'no difficulty' only to avoid censure by this Court.

7. However the SSP Gautam Buddh Nagar's report points out that in some cases the complainants do not cooperate or provide photographs of the missing child, or shift the entire burden on the police. Financial aid is not forthcoming for publicizing news or photographs of missing children on television, radio and newspapers. Due to excess workload the police has also expressed some difficulty in recording the information and taking action when a child is reported missing. The legal aid committee is not readily available to give advice. The cells for missing children have not been constituted or operationalized as yet in violation of direction No. 4 of our earlier order and DGP's circular dated 1012007, due to paucity of resources.

8. The Baghpat District report shows that so far as direction No. 2 is concerned, funds have not been provided for publishing matters about missing children in newspapers. The report from Saharanpur points out that there is inadequate

support from guardians for locating the missing child and there is inadequate provision in the district for publication of information about missing children. Due to excess of work also difficulties are being faced in appointing Public relations officers for dealing with the matters relating to missing children.

9. Similar problems have been indicated in the report of District Muzaffarnagar. It has also been pointed out that computer photo scan facility should be made available to the cells, which have been constituted for missing children.

10. In District Etawah, it has been pointed out that economic aid for publishing the news of missing children in newspapers and on television is needed. Reasons for children going missing have been pointed out such as children running away to distant places because they are upset with conditions at home or at school. Sometimes children of weak mind get lost and are unable to tell their correct address. Children are abducted on occasions, but because of inadequate information from the parents, it becomes difficult to trace them out. Some difficulties for publicizing information on Television and Radio due to economic constraints have been pointed out by District Fatehgarh.

11. Similar difficulties of inadequate support from parents, inadequate resources for publicizing information about the missing child and effecting his/her recovery have been pointed out by District Agra. Similar, difficulties have been indicated by Districts Mathura, Mainpuri, Hathras and Jaunpur. District Ambedkar Nagar has pointed out that owing to election duty adequate police force was not available.

12. We must observe here that though some of the difficulties pointed out by these districts may be genuine, however we feel that largely the difficulties expressed by the complaining districts appear more to be the result of lack of will on part of the district and police administration to make a coordinated effort to trace out the missing child rather than inadequate support by the State and Central Governments. However, the demand for adequate resources for publicizing information in the newspapers about missing children and for displaying their photographs (especially of indigent parents), and absence of resources for coordinated effort across different Districts or States for rescuing the child and for pooling and exchange of information on local, State and Central level websites is valid, and we direct the State to take positive measures for addressing these problems by the next date of listing.

13. Shri K.C. Sinha, Assistant Solicitor General has pointed out that Doordarshan and the Akashwani provide facilities for free telecast and news broadcast of information about missing children. It is further mentioned in the affidavit filed by Shri Shyam Vidyarthi, Senior Director, Doordarshan Kendra, Allahabad that on 30/4/2007 in pursuance of the orders of this Court dated 12/2/2007 and 22/3/2007, the Deputy Director Prasar Bharti, New Delhi wrote a D.O. Letter to the Director General (in charge) Prasar Bharti, Lucknow to furnish details in the light of the order passed by the High Court. It is further mentioned that photographs of

missing children alongwith others are telecast from various Doordarshan Kendras during their transmission time from 4.00 p.m. to 8.00 p.m. as and when these are received in the Kendras and list of such missing children has been annexed to the affidavit. As the Assistant Solicitor General, Union of India has informed that the said services are being offered free of cost by Doordarshan and Akashvani, we think that information be telecast or announced on radio about the free facilities, so that indigent parents and guardians of missing children may avail of the same. The announcement should also indicate the time slots for the said telecasts or news broadcast about missing children from the different kendras. The District Magistrates and other administrative or police officers of the concerned districts could also explore the possibilities of requesting some local newspapers or news or TV channels for publicizing information about missing children as charitable activities.

14. By our earlier orders we had also directed putting up details of the missing child with photographs on State and Central level websites constituted for this purpose. Such a website would keep updated information about the investigation and efforts to locate the missing child for use by parents and others and also facilitate interState exchange of such information. Regrettably in the affidavits on behalf of the State and Central Governments no mention has been made of the progress in respect of this direction. However, as we have already noted in our previous order dated 2232007 that Central Government had committed to setting up the said facilities by June, 2007, we can only once again remind the concerned authorities to take effective measures to set up the website by the end of June, 2007 as per its prior commitment.

15. Likewise, the State Government is also directed to set up such a website and in case any similar websites are available with the Central Government, State Government or police departments, the State Government may consider utilizing the same for mentioning information and displaying photographs of the missing child, until separate websites are constituted for the said purpose. Detailed information about setting up the websites may be provided by the State and Central Governments on the next date of listing.

16. The detailed compliance report presented by Shri D.K. Singh, Joint Registrar (Inspection) High Court, Allahabad shows that after sending several circular letters including reminders, reports have been received from District Judges of 61 districts mentioning that legal aid has been provided by the committee to poor persons, whose children have been missing. However, information is still wanted from nine districts viz. Basti, Chitrakoot, Firozabad, Maharajganj, Mirzapur, Shahjahanpur, Sitapur, Sonebhadra and Varanasi. We deprecate the laxity of the District Judges of the aforesaid nine districts in not furnishing the required information or in complying with our directions to give legal aid to such needy persons. We also note that most districts have not pointed out any difficulties in implementing the suggestions of the Court. Only four districts, Bareilly, Gorakhpur, Pilibhit and Hamirpur have given some suggestions and

indicated some difficulties in carrying out the directions for improving access to justice of such parents, monitoring the matter in the monthly meetings of the district level committees headed by the District Judges with other district officers and suggested other areas for strengthening legal aid.

17. Thus, Shri S.K. Pandey, District Judge, Bareilly has stated in his report that a panel of eight Advocates has been constituted for providing services to resourceless indigent persons who approach the SSP/SP/CO's offices, consequent on the failure of the local police in registering the FIR. The said members have been asked to maintain a register about missing children and the progress of investigation thereof, so that the matters be placed before the District Judge in the meeting of the monitoring committee every month. This approach of appointing specific Counsel and requiring them to maintain register of each such complaint, which can be placed before the District Judge in its monitoring cell in its monthly meeting for appropriate directions is a good suggestion, which we think all the District Judges should follow.

18. Furthermore, the District Judge, Bareilly has suggested that legal aid needs to be expanded to the unserved and resourceless who are in urgent need of legal aid who can be classified as (a) persons deprived of economic justice and (b) persons deprived of social justice. The former category would include labourers, particularly of the unorganized sector such as agriculture, industry and even domestic, who are victims of extended working hours more than prescribed, or are not paid minimum wages, or are subject to other inhuman treatment and violation of various labour laws by their powerful masters.

19. The persons, who are deprived of social justice are victims of (1) dowry demand (2) domestic violence and (3) sexual offences. An area of concern is sexual harassment of women at work places. Another vulnerable group in this category are the members of Schedule Castes who are frequently made victims of systematic apathy and injustice. The inmates of jails, women's protection homes and juvenile reform centres are victims of inhuman living conditions and various atrocities while in custody. These virtual voiceless people are also in crying need of legal assistance. We appreciate the sensitivity and concern of this District Judge and we think that if the District Judges and the District Administration and Police in all Districts become sensitive to the needs for legal aid of such vulnerable sections of the population we can create a new world where social and economic justice shall prevail and where legal aid shall not only be a charity, but a legal right as provided for in Article 39A, read with Articles 14 and 21 of our Constitution. Article 39A specifically provides: Equal justice and free legal aid. The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

20. Provision of legal aid is thus an inalienable part of fair procedure and

constitutes and survival of democracy can also only be ensured if the indigent and resourceless have access to justice. It would be useful here to recall the observations of the Apex Court in *M.H. Hoskot v. State of Maharashtra*, AIR 1978 SC 1549, paragraph 15, which has quoted the stirring words of Justice Brennan in this context:

“(15) The philosophy of legal aid as an inalienable element of fair procedure is evident from Mr. Justice Brennan's (3) wellknown words:

(3) Legal Aid and Legal Education p. 94.

“Nothing rankles more in the human heart than a brooding sense of injustice, illness we can put up with. But injustice makes us want to pull things down. When only the rich can enjoy the law, as a doubtful luxury, and the poor, who need it most, cannot have it because its expense puts it beyond their reach, the threat to the continued existence of free democracy is not imaginary but very real, because democracy's very life depends upon making the machinery of justice so effective that every citizen shall believe in and benefit by its impartiality and fairness.”

21. Shri Amar Sinha, District Judge, Gorakhpur has stated that in order to comply with C.L. Letter 4 of 2007, the Secretary legal services has been issued relevant directions. Notices have even been issued to the Advocates, who have been informed about the Court's orders. Information has also been given in the local newspapers that where the information about the missing children have not been registered in the police station, Legal services authority, Gorakhpur could be contacted and the news report has been annexed. In this connection a letter has also been written to the SSP by the Secretary, Legal services authority that provision may be made for allocation of seats of the Advocates in the concerned cells which have been constituted on this Court's orders, to enable them to give effective legal assistance. These are very practical suggestions which could be followed in other districts as well. We hope that the district and police administration of this district as well as other districts will endeavour to provide the facilities sought to whatever extent possible.

22. Shri R.A. Singh, District Judge, Pilibhit has written a letter dated 17/4/2007 stating therein that in pursuance of the High Court's orders the members of the district legal aid committee have visited the office of the Superintendent of Police and enquired into the position of the missing children of different age groups. They have submitted their report about the details in this regard in the office of the district legal services authority, Pilibhit on 9/4/2007. The quality of legal aid being provided by the duly appointed lawyers and their regularity in attending the office of Superintendent of Police, Pilibhit is being monitored by the Secretary, district legal services authority. So far no difficulty is being faced in implementing the directions for providing legal aid. The Superintendent of Police has been directed to place monthly reports of the special cell to D.I.G. (Region) and I.G. (Zone) about missing children in the monthly meeting of the district

level monitoring committee for effective coordination and appropriate directions. The possibility of legal aid in other areas to the unserved resourceless persons is being explored and the High Court will be duly informed. The effort of this District Judge also needs to be commended.

23. Shri Rajesh Chandra, District Judge, Agra has sent a letter dated 19/4/2007 mentioning that a special cell in the name of 'Gumshuda' has been created in District Agra, which is to work under the directions of the Superintendent of Police (City), Agra. The Senior Superintendent of Police, Agra has been provided with the names of lawyers who are on the panel of the district legal services authority to provide legal assistance to those who are in need of legal advice. The SSP has been required to put up the names of such Advocates on a notice board, who are prepared to give legal aid by calling for applications in the office of the district legal services authority, situated in civil Court, Agra. The SSP has also been requested to find out the possibilities of creating special cells in all the police circles. All the Advocates on the legal aid panel at the district headquarters as well as the Tehsil level have been informed to remain available in the office of the SSP, SP and the CO to give assistance to those whose children are missing and who are in need of legal assistance. The SSP, Agra has also been requested to make arrangements for the seating of Advocates who reach the special cells to provide legal assistance to needy persons. In this regard an amount of Rs. 15,600 has been demanded from U.P. State Legal Services Board, Lucknow. The Chief Judicial Magistrate, Agra has been provided with the copy of the judgments passed by the High Court in the aforesaid writ petition alongwith the circular letters and has been asked to obtain the monthly reports from the special cell about the missing children and to place that reports for discussion in the meeting of the monitoring cell which is held every month. This effort must also be appreciated.

24. We hope that other District Judges and Administrations will also be fired with the same zeal as the District Judges who have sent in their suggestions. Also we would like to see actual pursuit of these matters by lawyers connected with the Legal Services Authority and others to persons seeking legal aid. Good institutions can be set up, but ultimately it is the living concern of human beings, and a spirit to find the missing child and to help the suffering parent that will make all the difference, and the Police and District Administration, the Courts and rights sensitive lawyers providing legal aid should devise new and creative methods how to get more and more missing children recovered, so that citizens can be truly helped.

25. We think that legal aid can be effectively given and monitored if registers of cases of missing children are maintained by the District Lawyers of the Legal Services Authority, which should note the regularity of attendance of the lawyers, the progress made in investigation into the cases and efforts at tracing out the missing child. Henceforth, we would like the District Judges to submit information to this Court in tabular form in addition to any detailed information which they

may like to furnish. The table should contain the following columns and entries viz. district, complainant (with name and address), name of missing child, dated of lodging of FIR, name of Counsel who provided legal aid, regularity of attendance by lawyer, dated of placing matter before monitoring committee in monthly meeting, difficulties/problems, and additional suggestions, dated of publication of information about missing child, medium (i.e. radio, T.V. or newspaper), number of children recovered in the month (dead or alive).

26. Finally, we must record our appreciation for the sensitive and immense help that is being rendered to this Court by Shri A.K. Sand, learned Additional Government Advocate, Shri K.C. Sinha, Assistant Solicitor General of India and Shri D.K. Singh, Joint Registrar (Inspection) High Court, Allahabad in taking up this pious issue of uniting suffering parents with their missing children which can result in immense social good. The State Government and various Districts and Police Administrations where as many as 645 children have been recovered in a period of hardly three months pursuant to the High Court's intervention needs to be lauded. But the effort must be sustained and continuous and none should rest on their laurels, as we still have a long road to travel.

27. We also think that the Secretary, State Legal Services Authority, Lucknow may be supplied with a copy of this order, and suggestions be called from him as to how to make Legal Services more effective to parents of missing children and other indigent or vulnerable sections of society, and about the support that could be given by the State Legal Services Authority to the District Level Legal Service Authorities in various districts.

28. As the investigating officer has not submitted the progress report of investigation and about the steps taken for recovery of the missing boy in the case of the petitioner, Vishnu Dayal Sharma, in pursuance of our orders dated 2232007 and 212007, he shall appear in person in this Court on the next date of listing, submit the progress report, as aforesaid, and also furnish an explanation for his lapse.

29. List this case on 1772007 for obtaining further progress reports from all the concerned parties i.e. the State Government, Central Government, District Judges, State Legal Services Authority and Registry.

Case listed.