

ITEM NO.3

COURT NO.4

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s) (Civil) No(s).406/2013

RE-INHUMAN CONDITIONS IN 1382 PRISONS

Date : 12-12-2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MR. JUSTICE DEEPAK GUPTA

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for M/s. Venkat Palwai Law Associates

UPON hearing the counsel the Court made the following
O R D E R

Learned Attorney General has taken us through the order passed by this Court on 15th September, 2017, particularly paragraph 57 which contains certain directions. He has also taken us through the Note for Hearing prepared by learned *amicus curiae*.

We find from the communications that have been sent and that have been placed on record that the Union of India has complied with the directions, i.e., for circulating the Model Prison Manual, the monograph prepared by NHRC, the communications sent by NHRC, the compendium of advisories issued by the Ministry of Home Affairs, the Nelson Mandela Rules and the Guidelines issued by the International Committee of Red Cross to the concerned State authorities. The documents were circulated some time in October, 2017 followed by subsequent communications and a meeting with the Directors General/Inspectors General of Prisons on 16th November, 2017. A final communication dated 8th December,

2017 was also sent to all the Chief Secretaries of the States as well as the Member Secretaries of the State Legal Services Authorities and the Directors General and Inspectors General of Prisons.

The Union of India has also complied with the direction of being in communication with the National Crime Records Bureau which has since classified deaths - both natural and unnatural and also sub-categorise the deaths under the category of "Others".

Therefore, to the above extent, Direction Nos.2 and 3 stand complied with by the Union of India.

We expect all the State Governments and Union Territories to take appropriate action on the basis of the information and documents that have been furnished by the Union of India. Protection of human rights is always an issue of concern.

NALSA has also submitted a report dated 8th December, 2017 enclosing Standard Operating Procedure for Under Trial Review Committees. It has also included certain suggestions in the Report.

We request NALSA to place the entire Standard Operating Procedure as well as the suggestions on its website and invite suggestions and comments so that the Standard Operating Procedure for the functioning of the Under Trial Review Committee is streamlined and made more meaningful.

Mr. Surinder S. Rathi, Director of NALSA says that the draft Standard Operating Procedure already prepared will be placed on the website within a week so that comments can be invited at the earliest, considered and finalized within six weeks.

It is submitted by learned *amicus curiae* that it is important for all the State Governments/Union Territories to fill in the requisite data relating to Prison Information Report (PIR) in the portal that is being set up by the National Informatics Centre (NIC). Learned *amicus curiae* says that he has been in touch with the officials of the Ministry of Home Affairs and NIC and he expects that the portal will be ready by 1st January, 2018. He submits that the Prison Information Report should be put up on a monthly basis. We accept his submission and direct accordingly.

We have asked all learned counsel appearing for all the States and Union Territories whether they have any objection in terms of manpower, i.e., Data Entry Operator or funds for entering the data into the Prison Information Report as well as e-prison portal.

Except for learned counsel for the State of Sikkim, State of Nagaland and Andaman and Nicobar Islands, no learned counsel has voiced any objection at all. Therefore, we expect from all the State Governments and Union Territories to fully comply with the suggestions made by learned *amicus curiae* and fill in the requisite

data in the PIR portal without any excuse of shortage of manpower or funds which will be set up by NIC with effect from 1st January, 2018.

As far as the State of Sikkim is concerned, it has been stated that a request was made to Government of India for releasing funds about three months ago, but there has been no response.

We direct the Ministry of Home Affairs, Government of India to look into the matter with urgency and consider the request made by the State of Sikkim.

The State of Nagaland and the Union Territory of Andaman and Nicobar Islands may communicate their difficulty, if any, to the learned *amicus curiae*.

The Registry has reported that 16 High Courts have initiated *suo motu* public interest litigation with regard to custodial deaths in prisons. The report of the Registry is that eight High Courts have not given any intimation whether any action has been taken with regard to custodial deaths. These High Courts are:

Calcutta High Court, Chhattisgarh High Court, Gujarat High Court, Himachal Pradesh High Court, Madras High Court, Orissa High Court, Rajasthan High Court and Uttarakhand High Court.

We request the Secretary General to communicate with the Registrar General of these High Courts to look into the matter of custodial deaths at the earliest and report to us.

Learned *amicus curiae* has also submitted an application for directions in which it is prayed, *inter alia*, that the State Governments should take effective steps to set up open prisons in every district. He has made a reference to a study conducted by the Rajasthan Legal Services Authority on open prisons and a report prepared on its behalf by Ms. Smita Chakraborty and the recommendations made by her on pages 27 and 28 of the report.

A copy of this application may be furnished by learned *amicus curiae* to all learned counsel. A copy of the report prepared by Ms. Smita Chakraborty is available on the website of the Rajasthan State Legal Services Authority. Learned *amicus curiae* will send a link of the report to all learned counsel appearing on behalf of the States and Union Territories.

We require the following:

(i) The Ministry of Home Affairs to have a meeting with the Directors General and Inspectors General of Prison of all the State Governments and Union Territories to see the feasibility of establishing open prisons. The Ministry of Home Affairs will send a communication to the concerned authorities in the State Governments and Union Territories asking for their response to the idea of open prisons - whether they are willing to set up open prisons and the manner in which the open prisons could be operated. The concerned authorities should respond to

the Ministry of Home Affairs preferably within a period of four weeks and the meeting will be held immediately thereafter in the first week of February, 2018.

(ii) NALSA will also send a similar communication to the State Legal Services Authorities indicating the information required and will also try and have a meeting with the Member Secretaries with the State Legal Services Authorities, if necessary through video-conferencing so that their views may also be made available.

(iii) In the meeting that the Ministry of Home Affairs is directed to hold in the first week of February, 2018, the Member Secretary, the Director of NALSA, learned *amicus curiae* and Ms. Smita Chakraborty will also be invited.

List the matter on 21st February, 2018.

(SANJAY KUMAR-I)
AR-CUM-PS

(KAILASH CHANDER)
COURT MASTER