

SUPREME COURT OF INDIA

Upendra Baxi

Vs

State of Uttar Pradesh

(P.N.Bhagwati and O.Chinnappa Reddy, JJ.)

Writ Petition No. 1900 of 1981

31.07.1981

ORDER

P.N.Bhagwati, J.

1. When this writ petition came up for hearing before us on May 8, 1981 we made an order giving various directions in order to ensure that the inmates of the Protective Home at Agra do not continue to live in inhuman and degrading conditions and that the right to live with dignity enshrined in Article 21 of the constitutions is made real and meaningful for them. We gave to the state Government which is running the home the entire period of vacation for carrying out these directions. Miss Srivastava, Superintendent of the Home, has filed an affidavit before us getting out the action taken by the state Government with a view to complying with these directions.

2. Before we proceed to consider how far the directions made by have been complied with we should like to mention that Miss Srivastava has insinuated in paragraph 2 of her affidavit that the present petition has been filed by Dr. Baxi and Mrs. Lokita Sarkar as a last resort to compel the Government. We are surprised that such a baseless insinuation should have been made by a responsible person like the Superintendent of the Home. The suggestions of a collusion between the landlord of the building on the one hand and Dr. Upendra Baxi and Mrs. Lotika Sarkars on the others, is most reprehensible and we unhesitatingly condemn it in the strongest terms. Dr. Upendra Baxi and Mrs. Lokita Sarkar have filed the petition as a "public interest" litigation with a view to ensuring to the inmates of the Home the right to live with human dignity enshrined in Article 21 of the constitution and what they have stated in their petition and in the subsequent memoranda filed by them is not only borne out by the report of Shri N. K. Sharma, chief Judicial Magistrate made on November 18, 1980 but also by the subsequent reports. We very much wish that such an institution had not been made by Miss Srivastava.

3. We are also surprised to learn from paragraph 3 of the affidavit of miss Srivastava that not a single women or girl has been sent to the Home under sub-section (2) of section 10 or sub-

section (2) of section 17 or sub-section (2) of section 19 of the suppression of Immoral Traffic in Women and Girls Act, 1956 (hereinafter referred to as 'Act'). The Home has been established by the Government as a Protective Home under the Act and we fail to understand how is it that not a single women and girl has ever been sent to the Home under the provisions of the Act. We should like to know from the State Government as to how many Protective Homes established or licensed by the State Government under the provisions of the Act and the Uttar Pradesh suppression of Immoral Traffic in Women and Girls Rules, 1961 (hereinafter referred to as "Rules") are there in the state of Uttar Pradesh and how many women or girls are sent to these Protective Homes under the provisions of the Act.

4. We should also like to know from the Additional District Magistrate (City), Agra as to what are the circumstance in which and the provisions of law under which he has been sending women and girls to the Home in Agra. We should be also like to know from the Additional District Magistrate (City), Agra as to how many women and girls he has been sent to the Home every year during the last five years and what are the circumstances in which he has so sent them. We many make it clear that we do not wish to suggest for a moment that no women or girls whose cases do not fall within sub-section(2) of section 10 or sub-section(2) of section 17 or sub-section (2) of section 19, but who are in distress for want of shelter over their head, should be sent to the Home. The Home may legitimately and whenever possible should, provide protection to women and girls who are helpless on account of want of shelter or who are in need of protection. But, what we wish to know is how, is it that no women or girls have so far been sent to the Home under the provisions of the Act and what are the circumstances in which women and girls have in fact been sent to the Home.

5. We may also emphasis that when a women and girls is admitted to the Home under the orders of the Additional district Magistrate (City), the Superintendent should comply with all the provisions of the Rules in regard to the treatment to be meted out to her, even though she may not have been admitted under the provisions of the Act. The provisions in the Rules such as Rules 8,11,19,20,22,23,24,31,34 and 35 in regard to the treatment to be meted out to a women or girls admitted to the Home, are provisions laying down humane conditions ensuring the right to live with human dignity and they must, therefore, be scrupulously followed by the Superintendent even in regard to women and girls admitted otherwise than under the provisions of the Act.

6. We should like to know form Miss Srivastava in an affidavit to be filed by her whether she has scrupulously followed the provisions of the aforesaid Rules in regard to the inmates admitted to the Home. We should like miss Srivastava to produce at the next hearing of the writ petition the Inmates Register, in Form 6, which is required to be maintained under sub-rule (1) of Rule 8. The medical report which has been filed before us shows that there are a number of women and girls suffering from extrapulmonary TB. We should like to know from Miss Srivastava whether they were taken to the nearest hospital for admission as required by sub-rule(4) of Rule 8 and if they were so taken, then on what date or dates and whether a report to that effect was sent to the District Magistrate and to the nearest Magistrate in compliance with that sub-rule.

7. We directed by our Order dated May 8, 1981 that the panel of doctors appointed by us should carry out medical check-up of inmates in the Home and make a report to us by May 31, 1981. Since the time granted by that Order was not adequate an applicant was made to the learned Vacation Judge for extension of time and on the application the learned Vacation judge extended the time for submission of the report up to July 20, 1981 and also directed that facilities be made available for transporting inmates to the S. N. Medical college, Agra for being examined by the panel of doctors appointed by us.

8. Pursuant to these directions the inmates of the Home were taken to the S. N. Medical College, Agra and were examined by a panel of doctors and the report of medical check-up carried out by them has been placed before us. It appears from the report that the 19 inmates whose names were without in paragraph 17 of the memorandum of Dr. R. S. Sodhi dated April 21, 1981 and who had, according to the averments made in that memorandum become insane or were of deranged mind, were discharged by Miss Srivastava and were no longer in the Home. Significantly, barring three all the rest out of these 19 inmates were discharge by Miss Srivastava subsequent to the making of our first order dated April 16, 1981 where we took note of the fact that there were a number of inmates in the Home who had become insane or were in a deranged state of mind. According to the affidavit of Miss Srivastava, these 19 inmates were discharged because they wanted to be released and they made applications in writing for being discharged and the necessary orders for discharge were passed on the applications by the Additional District Magistrate (City).

9. Now, most of these inmates had been in the Home for over two years, some of them being in the Home since 1972, 1974 and it is difficult to understand how suddenly at or about the time making of our order dated April 16, 1981, these 19 inmates took it into their head to apply for being discharged and where in fact discharged. We cannot help entertaining an uneasy feeling that these 19 inmates came to be discharged from the Home merely in order to avoid an enquiry by this Court.

10. We should like to know from the Additional District Magistrate(City) as to when he received the applications of these 19 inmates for discharge from Miss Srivastava and what enquiries he made for the purpose of satisfying himself as to whether circumstance existed which justified the discharge of these 19 inmates. Miss Srivastava has admitted in her affidavit that barring Poleena, Mona, and Meera who are presently undergoing treatment at a Mental Hospital the rest of the 16 inmates were "to some extent mentally retarded" and yet, despite this fact it is surprising that she should have obtained orders for discharging them and sent them out in the open world without any protection or care.

11. We should like to know whether Miss Srivastava made any entry in regard to the health of these 19 inmates in the Inmates Register on the day of discharge. We do not know whether Miss Srivastava while discharging these 19 inmates(except perhaps Poleena, Mona and Meera), enquired of them as to where they proposal to go and it is indeed regrettable that they should not have been supplied with railway tickets as contemplated under sub-rule(4) of

Rule 37, even though that rule may not be strictly applicable. If not under the rule, at least on humane grounds, Miss Srivastava should have enquired from these 19 inmates (other than Poleena, Mona and Meera) as to where they intended to go and whether they had any money for the railway ticket and their own subsistence and how they proposed to take care of themselves. Miss Srivastava could have, if necessary, obtained the orders of the Additional District Magistrate (City) or the chief inspector for the purpose of supplying these 19 inmates with railway tickets at the time of discharge.

12. We do not wish to place any blame on the shoulders of Miss Srivastava for following the practice of discharging from the Home after obtaining orders from the Additional District Magistrate (City) but so far as these 19 inmates are concerned, we are not at all happy that they should have been discharged soon after the making of our Order dated April 16, 1981 and we may point out that this order received wide publicity in the newspapers on April 17, 1981 and though most of them were mentally retarded they should have sent out into the open world without even a railway ticket or any money.

13. Before we part with this topic, we should like to know from the Additional District Magistrate (City) whether it was pointed out to him in the applications for release forwarded by Miss Srivastava that Poleena, Mona and Meera were in a mentally deranged state of mind needing treatment in the Mental Hospital and the remaining 16 inmates were mentally retarded and if so, what steps did he take in order to protect the interest of these 19 inmates. We may point out that according to the statements of Dr. Sodhi dated April 21, 1981 and July 5, 1981 these 19 inmates, whose names were mentioned in the list given to him and to Shri N. K. Sharma, chief Judicial Magistrate, on November 17, 1980, duly signed by the staff Nurse of the Home, were not just mentally retarded but were in a deranged state of mind. If this be true, the position assumes still more serious dimensions.

14. We find that according to the report of Shri N. K. Sharma, chief judicial Magistrate, dated November 18, 1980 as also the statement of Dr. Sodhi in paragraph 4 of his memorandum dated July 5, 1981, there were five girls who were suffering from TB and their names are given in the statement of Dr. Sodhi. It is clear from the record that three out of these five inmates were discharged from the Home by Miss Srivastava after the making of our Order dated April 16, 1981.

15. We should like to know from Miss Srivastava as to when the applications for discharging of these three inmates were made and we should also like the Additional District Magistrate (City) to produce before us at the next hearing of the writ petition the original applications made by these three inmates as also the orders made by him on these applications if they are available with him.

16. We should further like to know from the Additional District Magistrate (city) as to what, in his opinion, were the circumstances which justified the making of the order of discharge in the case of these three inmates and whether, before making the order of discharge, he satisfied himself as to the necessity or propriety of discharging these three inmates.

17. We should like to know from Miss Srivastava as to whether any of these five inmates (and we may for the sake of completeness give here the names, Chhoti Agiat, Kamla, Maigani, Suman and Sushila), were medically examined at the time of admission and discharge and whether they were at any time sent to the TB Hospital for the purpose of treatment and what treatment was given to them. We would require Miss Srivastava to produce before us at the next hearing of the writ petition the entire record relating to the admission and discharge of these five inmates as also the 19 inmates mentioned in the preceding paragraph along with the record showing the medical treatment given to these inmates. We should also like to know from Miss Srivastava as to whether she made any enquiry from these five inmates before discharging them as to where they were going and who was going to take care of them or did she just send them out in the open world without bothering to enquire as to what would be their fate, particularly when they were suffering from TB.

18. We were told by Mr. R. K. Bhatt, learned Advocate appearing on behalf of the respondents, that the applications for discharge made by the above 19 mentally retarded inmates and five inmates suffering from TB as also the orders of discharge made on these applications formed part of the record of the Home which had been taken charge of by the District Judge. If this be correct, we should like the District Judge to send to this Court within 10 days from today the original applications for discharge as also the orders of discharge made on them.

19. The Medical report submitted by the panel of doctors shows that out of 50 inmates of the Home examined by Dr. M. L. Mehrotra, Director of TB Demonstration Training Centre and Chest Institute, Agra, 21 were found to be suffering from TB, 14 were required to be kept under observation and in the case of eight, retesting is required to be carried out before any definite conclusion could be reached. The name of these 21 inmates who were found to suffer from extra-pulmonary tuberculosis are given in the report and the distressing fact which appears from the report is that most of these 21 inmates are very young some of them being even below the age of 18.

20. We should like to know from Miss Srivastava as to whether any medical examination of these 21 inmates was held at the time when they were admitted into the Home and what medical treatment has been given to them during the period of their residence in the Home and since when such medical treatment is being to them and what is the result of such medical treatment.

21. We would direct that these 21 inmates should be taken to the TB Hospital, Agra for treatment and they should either be hospitalised in the TB Hospital, Agra or kept at some sanatorium or other place where TB patients are kept, because their continued residence in the Home might constitute a cause of danger of infection to the other inmates. So far as the 14 inmates required to be kept under observation are concerned, we would direct that they should be kept under regular observation of the TB Demonstration Training Centre and Chest

Institute, Agra, so that a proper and adequate programme of treatment can be pursued in regard to them and they may be saved from the evil of this dreadful disease. Miss Srivastava is directed to submit a monthly report in regard to the conditions of these 21 and 14 inmates to the District Judge, Agra.

22. The medical report also shows that Dr. G. G. Dhir, Incharge, V. D. and skin Diseases, S. N. Medical College, Agra examined the inmates in the Home for the purpose of ascertaining whether any of them was suffering from venereal or other skin diseases and the result of his examination discloses that out of 50 inmates examined by him, 11 are suffering from Secondary Syphilis, 20 from Bacterial Vaginitis, one from Vaginal Venereal Warts, one from Chanoroid, two from Herpes Progenitalis, one from Scabics and four from suspected Syphilis. The names of these 40 inmates suffering from one or the other form of Sexually transmitted diseases are given in the report and the report shows that most of these inmates are young girls, some of them being less than 18 years of age. It is a most distressing state of affairs that so many young girls should have their lives blasted by sexually transmitted diseases.

23. We should like to know from Miss Srivastava as to whether 40 inmates were found to suffer from sexually transmitted diseases at the time when they were admitted, because we presume that they must have been medically examined at the time when they were admitted into the Home. We should also like to know what medical treatment was given to these 40 inmates during the period of their residence in the Home and what steps were taken in order to provide a cure for their diseases. The report points out what is the medical treatment which must be given to these 40 inmates and we would direct the State Government as also the Superintendent of the Home to provide to these 40 inmates regularly the medical treatment prescribed in the report. The State Government as also the Superintendent of the Home will ensure that every three months these 40 inmates undergo pathological examination for the purpose of determining the extent of their disease and follow-up treatment is also made available to them as directed in the report made by Dr. G. G. Dhir. Miss Srivastava, Superintendent, will report to the District Judge every month the progress made in regard to the condition of these 40 inmates.

24. It also appears from the medical report that 50 inmates of the Home were examined by Dr. R. K. Jain, Incharge of the Department of Psychiatry, S. N. Medical College, Agra for the purpose of ascertaining whether any of the inmates had psychiatric problem. The report shows that out of these 50 inmates who were examined by Dr. R. K. Jain, 10 were found to be suffering from severe mental retardation, two from profound mental retardation, four from mild mental retardation, two from inadequate personality, three from mild anxiety, eight from moderate mental retardation and four from borderline mental retardation. The names of these 33 inmates suffering from different degrees of mental retardation are given in the report. The report says that these 33 inmates who are found to be suffering from mental retardation in varying degrees were not medically examined at the time they were admitted into the Home. We should like to know from Miss Srivastava, the Superintendent of the Home, as to whether this is true. We should also like to know from Miss Srivastava as to whether any vocational

or other training programmes are conducted in the Home for be should also like to know whether any provision for separate accommodation of these 33 mentally retarded persons is made available in the Home or they are accommodated along with other inmates.

25. We would direct the state government and the Superintendent of the Home to consult Dr. R. K. Jain, Reader in Psychiatry, S. N. Medical College, Agra for the purpose of deciding which category of inmates as also which particular inmates as also which particular inmate should be transferred to some institute for mentally handicapped. We are told that there is one such institute in Okhla, New Delhi and another at Lucknow. It is not desirable that the mentally retarded inmates should live with normal inmates as it is likely to have adverse effect on both the categories. The Superintendent of the Home is directed to inform the District Judge, Agra from time to time as to the action recommended by Dr. R. K. Jain in regard to these 33 mentally retarded inmates and the programme of implementation of such recommendation. Whatever may be the costs, charges and expenses required to be incurred for the purpose of accommodating any one or more of these 33 mentally retarded persons in some institute for mentally handicapped must be borne by the Government of Uttar Pradesh, particularly since this year happens to be the International Year of the Disabled.

26. Miss Srivastava has stated in paragraph 7 of her affidavit that Lalita has been transferred to the mental home despite the fact that "she was found only to be mentally retarded and not a fit case for admission in the asylum". Miss Srivastava has suggested in paragraph 7 that despite the "disinclination of the Mental Home to receive Lalita, The Mental Home was persuaded by the City Magistrate to admit her as patient" in view of the Order dated May 8, 1981 should have been interpreted by Miss Srivastava or additional district Magistrate, City as an order to transfer Lalita to the Mental condition as deserved to be admitted to the Mental Hospital. We had clearly stated in our Order dated May 8, 1981 that "Lalita shall be transferred provided the Mental Home is prepared to admit her ". If the Mental Home was not prepared to admit Lalita on the ground that she was no insane, but was only mentally retarded, as we do not see how our Order dated May 8, 1981, could be utilised for the purpose of forcing Lalita into the Mental Asylum. We therefore direct that Lalita be immediately removed to the Home and that she may be examined by Dr. R. K. Jain, Reader in Psychiatry, S. N. Medical College, Agra for proper diagnosis and further programme of treatment.

27. That leaves only one direction given by us in our Order dated May 8, 1981 and that relates to putting up of two temporary latrines and temporary bathrooms. Miss Srivastava has stated in her affidavit that this direction has been carried out by the State government and in view of this statement made on oath by Miss Srivastava, nothing further remains to be done so far as this direction is concerned.

28. Before we close, we must point out that we had directed the State Government by our Order dated May 8, 1981 to put forward a scheme for vocational training and rehabilitation of inmates of Protective Homes. This direction does not yet seem to have been carried out by the State Government. We would expect the State Government at the next hearing of the writ

petition to state as to what steps are being taken by the State Government for the purpose of formulating and implementing a scheme for vocational training and rehabilitation of inmates of various Protective Homes in the State of Uttar Pradesh. This is a positive requirement of Rule 20 of the Rules.

29. We are also not informed as to what steps have been taken by the State Government to reconstitute the Board of Visitors. It is surprising that though the term of the non-official members of the Board of visitors has, according to affidavit of Miss Srivastava, expired, the meeting of the Board of Visitors are still being held with the same members and the State Government does not seem to have taken any steps for making appointments of non/official members so as to regularise the Board of Visitors. We hope and trust that the necessary steps will be taken by the State Government in this behalf before next hearing of the writ petition.

30. The writ petition will now stand adjourned to August 18, 1981.