

Dr. Upendra Baxi and Others (Ii)

Vs

State of U.P. and Others

Writ Petition (Criminal) No. 1900 of 1981

(CJI P. N. Bhagwati, V. Khalid, M. M. Dutt JJ)

23.07.1986

JUDGMENT

BHAGWATI, C.J. –

1. This writ petition has come up for hearing in view of certain developments which have taken place since the making of our last order. It was on the basis of a letter addressed by the petitioners that this writ petition came to be entertained by the court. The petitioners pointed out in the letter which was treated as a writ petition that the conditions in which girls were living in the Government Protective Home at Agra were abominable and they were being denied their right to live with basic human dignity by the State of Uttar Pradesh which was running the Protective Home. The court thereupon made various orders from time to time with a view to improving the living conditions of the girls in the Protective Home and ensuring a decent and healthy standard of living for them. The court also asked the District Judge to make periodic inspections of the Protective Home with a view to monitoring full and effective implementation of the various orders made by the court from time to time. The District Judge himself or an Additional District Judge nominated by him, inspected the Protective Home from time to time and submitted Inspection Reports which came up for consideration before the court on various occasions. It appears that the efforts made by the petitioners aided by Dr R.S. Sodhi, Honorary General Secretary, Association for Social Health in India, were nearing successful conclusion when everything which had been done by the court in order to improve the living conditions of the inmates of the Protective Home was set at naught by the State Government by shifting the Protective Home from its location in Vijaynagar colony to Adarsh Nagar, Rajwara.

2. The accommodation in the premises in Vijaynagar colony had been made fairly satisfactory by the State Government pursuant to the orders made by the court from time to time and the living conditions had considerably improved. But sometime in March, 1984 Dr R.S. Sodhi who lived in Agra (he died some time back) came to know that the State Government was contemplating shifting of the Protective Home from the Vijaynagar colony to another locality. Immediately, on coming to know of this contemplated move on behalf of the State Government, Dr R.S. Sodhi in a letter dated March 14, 1984 addressed to the District Judge, Agra pointed out that since the matter was pending in the court, the Protective Home should not be shifted without the permission of the court and the District Judge in his Inspection Report dated March 15, 1984 drew attention to this fact. The District Judge also in his Inspection Report dated May 11, 1984 once again pointed out that he had already made it clear that in case the government wants to shift the Government Protective Home to any other building, the contention of Dr Sodhi that permission of the Hon'ble Supreme Court is mandatory, may be considered seriously before taking any steps in this regard.

The District Judge reiterated in his Inspection Report dated January 5, 1985 that since the writ petition concerning the welfare of the inmates and smooth running of the Protective Home is pending before the Hon'ble Supreme Court and the shifting of the Home to new building is concerned with this subject, hence it will be advisable for the Administration and the Government to seek prior approval of the Hon'ble Supreme Court before shifting the Home to the new building.

It seems, however, that no steps were taken by the State Government or the Administration to obtain the permission of this Court for shifting the Protective Home to another building and without obtaining such permission the State Government, sometime in the middle of 1985, surrendered possession of the premises in Vijaynagar colony to the landlord and shifted the Protective Home to new premises in Adarsh Nagar, Rajwara. It may be pointed out that the landlord had filed a suit against the State Government for eviction from the premises in Vijaynagar colony but the suit was ultimately dismissed and the dismissal was upheld by the High Court of Allahabad. There was, therefore, no pressure on the State Government to vacate the premises in Vijaynagar colony. Yet, the State Government surrendered possession of the premises to the landlord and accepted from him tenancy of the premises in Adarsh Nagar, Rajwara. Perturbed by this action on the part of the State Government, Dr R.S. Sodhi addressed a letter dated June 17, 1985 to the District Judge drawing his attention to the shifting of the Protective Home to the new premises without the permission of this Court and on the basis of this letter, the District Judge instructed the Additional District Judge to visit to new premises and to submit a report in regard to the comparative facilities of security, toilet and other amenities available in the new premises as compared to the old premises. The Additional District Judge after visiting the new premises submitted a Report dated July 17, 1985 in which he pointed out the following facts :

In the previous building situated at Vijaynagar Colony in which the Government Protective Home was situated had 4 flush latrines and 4 bathrooms constructed on the directions given by the Hon'ble Supreme Court. Besides, there was separate residence for Superintendent, Government Protective Home and one room measuring 22'x 15' half of which was used for the office and other half was used to hold classes for the inmates. Behind this hall there were two big verandas each measuring 21'x 12' and 18'x 12' which were used for the purpose of bedrooms for inmates after putting up 3 curtains as directed by the Hon'ble Supreme Court. Two rooms measuring 13'x 13' were used for sewing classes and for indoor games. Three underground cellars were used as storerooms for miscellaneous purposes. There was one kitchen measuring about 15'x 15' in one corner. In addition to this there was a big lawn in front of the building wherein inmates could walk and play outdoor games and there was a big courtyard inside the building adjoining the verandah. Near about Rs. 15,000 were spent by the State Government to make improvements as directed by the Hon'ble Supreme Court. The situation of the building was such that it was easily accessible and was not at much distance from hospitals and courts. The police outpost was quite near. The locality was very decent and safe and neat and clean. The building by appearance looked like a residential bungalow. From the safety point of view the old building was very good.

The new building where the Home has been shifted is situated at 34/58/2, Adarsh Nagar, Rajwara, Agra which is at the outskirts of town, far away from the hospitals and courts where the inmates have to be frequently taken. The Yamuna river is just near this new building and there is 'Behar'. Even from the consideration of staff which is mostly consisting of female it is very unsafe place for them to come and go back to their homes. No public conveyance is available near it. The approach

road is kachcha and uneven and is likely to be blocked during rains. From the security point of view this building is most unsafe. This new building is much inferior in every respect to the old building. Though the rooms in this building are quite big but they appear to have been constructed for the purposes of godown and not for the purpose of human dwelling. There are no cross ventilators and windows in these rooms and one will feel suffocation on entering the room. This building belongs to the same person who is owner of the old building.

As regards the accommodation in this building; there is one room for the Superintendent's residence and 3 rooms for office purposes and for the actual living of the inmates. There is one big hall having no cross ventilation. There is only one window which opens in the veranda. When the room was opened bad smell was coming out of it and it is actually very difficult to live in the room during summer season. There is one big kitchen which too has no cross ventilation. There are 3 rooms, 2 on one side and one on the other side of the kitchen which are to be used as class rooms for the inmates. These rooms also have no cross ventilation. Therefore, it will be very difficult to run classes in these rooms. There are 7 flush latrines and 7 bedrooms in this new building which are quite sufficient for the inmates. There is a big courtyard in the building. The roof cannot be used for want of stairs. There is no privacy for the inmates and members of the staff. The police station and police outpost are at much distance from this building. For the security of the inmates it is necessary that an armed police guard should be posted here round the clock. On comparison I find that this new building is much inferior to the old building from the point of view of security.

The new building is at a considerable distance from the Civil Courts. Therefore, the government should be requested to provide conveyance to the Inspecting Judge...

The Additional District Judge in his subsequent Inspection Report dated September 2, 1985 expressed his agreement with the finding reached by his predecessor "that the building is not suitable for the keeping of inmates as well as from the security point of view" and added :

I have been told by the Superintendent that the electric connection of the building had to be cut due to leakage of electric current a month back. It is told that due to rains the building becomes very dampy and place where the electric meter is installed is filled up with water. The electric line to the Home is of 440 volts instead of 220 volts as the building is in industrial area. That the inmates felt electric shocks on many occasions and ultimately the connection had to be cut off as per oral directions of the A.D.M. City Agra on July 27, 1985. That the Superintendent has contacted the owner of the present building who has promised to help. The electricity department has not yet submitted an estimate for changing the meter to a safer place. The Superintendent has been asked to contact the Executive Engineer, Electricity Board and if require, the district administration to get the electricity resumed as early as possible. The electricity is not only essential for the daily needs but it is very much essential from the security point of view also. The building is situated in a lonely place and sufficient light throughout the day and night is a must. Dr R.S. Sodhi has suggested that the Superintendent should ask for a generator. I agree with him. The Superintendent should write to her department emphasizing the need for an electric generator, keeping in view that the building is situated in industrial area where electric cut is an everyday affair.

Dr R.S. Sodhi has drawn my attention to the fact that in spite of the mention by my learned predecessor in his last inspection about the necessity of posting a Police Guard, no such

arrangement has yet been made by the District Police. I have asked the Superintendent to send a letter to the Senior Superintendent of Police, Agra, for either posting an Armed Guard at the Protective Home or opening a police outpost nearby. In this reference I would like to mention an event narrated to me by Smt Sood. Smt Sood on her last visit dated August 21, 1985 found an outsider on the roof of the Protective Home when asked how she came to the roof, the outsider told her that it is very easy to climb the western wall of the Protective Home. Keeping this fact into mind that it is an easy task for a girl to climb the roof of this new building, it becomes all the more necessary that proper security arrangement be made for the life and safety of the inmates and the lady staff working there.

It is indeed surprising that the State Government should have shifted the Protective Home from the building in Vijaynagar colony to the new building in Adarsh Nagar, Rajwara without obtaining the permission of this Court. When the present case for ensuring decent living conditions for the inmates of the Protective Home was pending in this Court and this Court had shown great concern for the welfare of the inmates and issued various directions from time to time with a view to improving the living conditions in the Protective Home, the State Government ought to have applied to this Court for permission to shift the Protective Home. It is a matter of regret that highly placed officers in the Administrative should have totally ignored the pendency of the present case and proceeded to shift the Protective without as much as even informing the Court. We do not find in the affidavits filed on behalf of the State Government even an expression of regret on the part of the concerned officials for shifting the Protective Home without seeking the permission of the Court or even mentioning the proposal for shifting to the Court. It is obvious that what has been done has the effect of subverting the authority of this Court and unless proper and adequate expression of regret is forthcoming from the concerned officials, we may have to consider whether we should adopt appropriate proceedings against the erring officials.

3. The only argument put forward in the affidavit of Shri Ram Swarup, Deputy Secretary to the Government of Uttar Pradesh in support of shifting the Protective Home, was that the landlord was prepared to give more than double the carpet area in the new building at the same rent, viz., Rs. 375 p.m. and the landlord had agreed to renovate and reconstruct the new building so as to make it fit for the Protective Home. We do not think we can accept this as a valid argument. It is no doubt true that the carpet area in the new building is almost double that in the old building but, as is clear from the Inspection Reports of the Additional District Judge dated July 17, 1985 and September 2, 1985, the new building is from the point of view of security, safety and other facilities very much inferior to the old building. We do not wish to repeat what has been stated by the learned Additional District Judge in the two Inspection Reports dated July 17 and September 2, 1985, but from every point of view, except the carpet area, the new building is unsatisfactory and it is indeed surprising that the Administration should have opted in favour of the new building. Moreover, if it is true that the landlord agreed to renovate and reconstruct the new building with a view to making it fit for the Protective Home, it is difficult to understand why the Protective Home should have been shifted to the new building without the necessary renovation and reconstruction having been carried out by the landlord. The landlord should have been asked to put up windows in the hall, kitchen and the other three rooms for the purpose of providing cross ventilation, to carry out necessary repairs and renovation in the new building and to change the entire electrical wiring and the electric meter before shifting the Protective Home. But, none of these changes was required to be carried out by the landlord before shifting the Protective Home and it is indeed regrettable that Shri Ram Swarup should have stated in his affidavit that the State Government proposes to carry out the necessary repairs and renovation instead of requiring the landlord to do so as agreed by him. Should we not expect greater concern about public expenditure ?

4. But, despite our anguish at shifting of the Protective Home from the old building to the new building, we cannot do anything about it, since possession of the old building has already been surrendered to the landlord and the best that can be done in the circumstances is to start the process all over again and commence giving directions for improving the living conditions in the new building. We would, in the first place, call upon the State Government to file an affidavit of the Commissioner, Agra Division as to why the possession of the old building was handed over to the landlord in spite of the fact that the landlord had lost his suit for eviction and why the Protective Home was shifted to a place which suffers from the various drawbacks set out in the Inspection Reports dated July 17, 1985 and September 2, 1985. We would require the Commissioner, Agra Division to state in his affidavit as to whatever he had gone and seen the new building before agreeing to shift the Protective Home and what steps were taken by him in order to make the new building fit for occupation by girls before shifting to the new building. We would also like the Commissioner, Agra Division to produce the correspondence which took place between the landlord and the Administration relating to the decision to surrender possession of the old building and accept the new building for the Protective Home as also to inform the court as to what was the purpose for which the new building had been used prior to the shifting of the Protective Home. The Commissioner, Agra Division will also produce before the Court at the next hearing of the writ petition the pleadings in the suit for eviction of the old building filed by the landlord and the judgment of the Allahabad High Court confirming dismissal of the suit. Secondly, we would direct the State Government to carry out the following directions :

- (1) The approach road to the new building shall be made into a pucca or semi-pucca road so that it does not get blocked or waterlogged by rain. This shall be done within 3 months from today.
- (2) The big hall as also the three rooms used as classrooms and the kitchen shall be provided with cross ventilation by putting up sufficient number of windows so as to ensure passage of air in and out of the rooms. The District Judge or the Additional District Judge nominated by him shall determine how many windows are necessary to be constructed for this purpose.
- (3) Exhaust fans shall be provided in the big hall, three classrooms, kitchen and offices.
- (4) The State Government shall provide police protection throughout day and night for the inmates of the Protection Home in the new building.
- (5) The State Government shall either provide accommodation to the staff of the Protective Home in or near the new building or provide conveyance to the members of the staff for coming to the Protective Home and going back to their respective homes unless public transport is available in the immediate vicinity of the Protective Home.
- (6) We are informed that mosquito nets have been provided by the State Government to each and every inmate as also to the members of the staff staying in the Protective Home but if that has not yet been done, the State Government shall immediately take steps to provide mosquito nets to each and every inmate and member of the staff staying in the Protective Home.

(7) The State Government shall provide a conveyance for taking the inmates to the court and bringing them back to the Protective Home and similarly, conveyance shall also be provided to the District Judge or Additional District Judge inspecting the Protective Home.

(8) The District Manager (Telephones), Agra shall immediately shift the telephone to the new building and whatever steps are necessary for this purpose shall be taken by the State Government without any delay.

(9) The State Government shall immediately provide cooking gas in the kitchen so that it is not necessary to use wood for cooking which may emit a lot of smoke and lead to discomfort and suffocation on account of lack of ventilation.

(10) The State Government shall immediately proceed to carry out rewiring as also to instal the electric meter in a safe place where there is no dampness. We find from the latest Inspection Report of the Additional District Judge dated June 30, 1986 that the electric meter has been shifted to the chamber of the Superintendent. We hope and trust that the new place to which it is shifted is not damp so as to imperil the safety of the inmates. That is a matter which would have to be looked into by the District Judge or the Additional District Judge when he goes for inspection. But we also think it necessary to direct that since the electric line is of 440 voltage and not 220 voltage and would, therefore, be dangerous for the inmates, the State Government shall without any undue delay proceed to take necessary steps to instal a generator so that the safety of the inmates is not jeopardised.

5. Thirdly, we find that despite directions given by this Court on various occasions, the State Government has not yet constituted a Board of Visitors as prescribed in Rule 40 of the Rules made under the Suppression of Immoral Traffic in Women and Girls Act. We would, therefore, direct the State Government to set up, within a period of two weeks from the receipt of this order, a Board of Visitors on which there shall be at least three social activists working in the field of welfare of women and particularly suppression of immoral traffic in women and there shall also be included in the Board of Visitors two persons to be nominated by the District Judge, Agra within two weeks from today.

6. Fourthly, the Superintendent of the Protective Home shall take care to see that no woman or girl is detained in the Protective Home without due authority and process of law. The District Judge, Agra who carries out monthly inspection of the Protective Home shall verify during every visit that no woman or girl is detained except under the authority of law and if he finds that any of them is detained without any authority of law, he shall take steps to see that she is released and repatriated to her parents or husband or other proper authority.

7. Fifthly, we would direct the District Judge, Agra to nominate two socially committed advocates who would by turns visit the Protective Home once in a fortnight and enquire from the inmates in regard to their needs and requirements and provide them legal aid and assistance, where required. Each of the advocates visiting the Protective Home pursuant to this direction shall be paid by the State Government an honorarium of Rs. 50 per visit plus out of pocket expenses.

8. Lastly, we are pained to point out that though we gave directions from time to time for formulating an effective programme of rehabilitation of the inmates in the Protective Home and the

State Government also on several occasions promised that they would come forward with a rehabilitation programme, nothing seems to have been done by the State Government so far except engaging a sewing teacher. We have pointed out on more than one occasion that it is absolutely essential that the inmates in the Protective Home should be provided a proper rehabilitation programme so that when they come out of the Protective Home, they are in a position to look after themselves and they do not slide into prostitution on account of economic want. The inmates must be given vocational training and guidance by way of rehabilitation. We would, therefore, once again direct the State Government to produce at the next hearing of the writ petition a detailed rehabilitation programme which they have either set up or they propose to set up within a specified time limit. We would also like the Superintendent of the Protective Home to consider whether it would be possible to arrange for their wedding to proper persons in case they want to get married. The Superintendent of the Protective Home can follow the example of the Nari Niketan in Delhi where a committee was set up by this Court for the purpose of investigating into the antecedents of the would be bridegrooms in order to ensure that they were genuine persons wishing to marry the inmates and not bogus or sham bridegrooms who were going through the ceremony of marriage merely for the purpose of selling the inmates or pushing them into prostitution. The District Judge will constitute an appropriate committee for this purpose consisting of himself and at least two social activists. The State Government will also initiate proper follow up action in this behalf with a view to ensuring that the inmates are not taken back to the brothels or/and they do not once again slide into prostitution.

9. The District Judge, Agra or any other Additional District Judge nominated by him shall visit the Protective Home once every month for the purpose of ensuring that the aforesaid directions given by us are carried out fully and effectively and he shall submit an Inspection Report to this Court on/or before the 15 of every month.

10. The writ petition shall now come up for hearing on September 29, 1986.

Ed. : Previous orders of the Court dated September 14, 1981 (P.N. Bhagwati and R.B. Misra, JJ.), March 1, 1982 (P.N. Bhagwati and Bahrul Islam, JJ.), March 5, 1982 (recorded by Court Master), July 19, 1982 (P.N. Bhagwati and A.N. Sen, JJ.), September 17, 1982 (recorded by Court Master), October 19, 1982 (P.N. Bhagwati, R.S. Pathak and A.N. Sen, JJ.) and February 3, 1983 (recorded by Court Master) are set out below :

Order dated September 14, 1981

The petitioners who are appearing in person have applied for time to file an affidavit in reply to the various affidavits which have been filed on behalf of the respondents since they contain various matters which need to be replied by the petitioners. We would, therefore, grant three week's time to the petitioners to file their counter-affidavit or affidavits. But in the mean while it is necessary that the information which we sought by our earlier orders should be supplied to us. Miss Tej Srivastava as also the Additional District Magistrate (City) have stated that they have not been able to supply the information sought by us since the relevant files have been taken by the Third Additional District and Sessions Judge, Agra and are not available with them. We would, therefore, direct the Third Additional District and Sessions Judge, Agra to make the necessary documents and papers available to Miss Tej Srivastava and the Additional District Magistrate (City) so that they may take inspection within two weeks from today and file further affidavit in regard to the matters in respect of

which they have not been able to give information to us. The petitioners will then file their affidavit in reply to such additional affidavit within three weeks thereafter. In the mean while, the respondents will inform the Court by an appropriate affidavit as to how many inmates have been provided a sum of Rs. 500 at the time of discharge from the Agra Protective Home during the period of last five years. We are making this inquiry since it has been stated in paragraph 6 of the affidavit of Ram Lakhan Mishra, Under Secretary to the Government of U.P. that as a gesture of sincerity in rehabilitating the inmates, a sum of Rs. 500 was so far given either in kind or in cash when an inmate left Home on the road to rehabilitation. We should also like to know from the State Government as to how much amount out of the sum of Rs. 80,000 provided by the U.P. Government for vocational training has been allotted and spent in the Protective Home, Agra. The writ petition will stand adjourned to November 2, 1981.

Order dated March 1, 1982

1. Mr Bhandari, learned counsel appearing on behalf of the State of Uttar Pradesh has made a fair and constructive suggestion that he would like to discuss various matters arising out of the proceedings in this case with the petitioners and Dr Sodhi in order to be able to make recommendations to the State Government for the purpose of setting right the deficiencies in the working of the Agra Protective Home, improving the living conditions of the inmates so that they are able to live with human dignity and introducing measures for training and rehabilitation of the inmates in the Home. The petitioners have welcomed this suggestion made on behalf of the State of U.P. and they have stated before us that they would fully cooperate with Mr Bhandari in this behalf. We are very happy that a correct approach to the problem has been adopted by both sides to this litigation. It must be remembered that this is not a litigation of an adversary character undertaken for the purpose of holding the State Government or its officers responsible for making reparation but it is a public interest litigation which involves a collaborative and cooperative effort on the part of the State Government and its officers, the lawyers appearing in the case and the Bench for the purpose of making human rights meaningful for the weaker sections of the community. It marks a step forward in the direction of reaching socio-economic justice to the deprived and vulnerable sections of humanity in this country.

2. We accordingly adjourn the writ petition to April 2, 1982.

Order dated March 5, 1982

There is an application made by Mr Bagga for permitting the release of ten inmates of the Government Protective Home, Agra. The application has become necessary because an order was passed by us on October 12, 1981 that no inmates from the Agra Protective Home shall be discharged without prior permission of this Court. The Superintendent, Protective Home, Agra, therefore, declined to release these ten inmates from the Home, and subsequently the Magistrate concerned also declined to release them. We would direct that appropriate application may be made by Mr Bagga before the District and Sessions Judge, Agra, for permitting release of these ten inmates and we direct that District and Sessions Judge, Agra will consider the application of Mr Bagga and decide whether it would be fair to release these ten

inmates. The only danger to which he may apply his mind is that these ten inmates may not slide back into prostitution on being released on bail. But, if that danger is not present the District and Sessions Judge, Agra, may release these ten inmates, from the Home.

Order dated July 19, 1982 [Along with WP (Cri) No. 2526 of 1981

1. Both these writ petitions are adjourned to October 12, 1982 when they will be finally heard and disposed of by the Court.
2. The first respondent in W.P. No. 1900 of 1981 has filed an affidavit of Smt. Uma Rani Agarwal, Assistant Superintendent of the Protective Home, Agra setting out the various steps taken with a view to complying with the directions given by the Court on April 13, 1982. We are very glad to note that all the directions given by us have been carried out by the Government of Uttar Pradesh and conditions have been created in the Agra Protective Home in which girls can live with basic human dignity. We would like the Government of Uttar Pradesh to evolve a scheme for rehabilitation of the girls lodged in various protective homes in the State so that at the final hearing of the writ petition, the Court can lay down broad guidelines for the administration of protective homes under the Suppression of Immoral Traffic in Women and Girls Act, 1956, so that women rescued from brothels as also deserted women may be able to live with human dignity in these protective homes and to find gainful employment after discharge. Mr Bhandari on behalf of the State of Uttar Pradesh, has readily agreed that the Government of Uttar Pradesh will take necessary steps in this behalf in consultation with the petitioners. We have no doubt that the petitioners who have brought this public interest litigation for the benefit of the girls lodged in the Agra Protective Home will render every possible assistance to the State Government in evolving proper and adequate guidelines for this purpose.
3. Meanwhile, we direct the District Judge, Agra to visit the Agra Protective Home and submit a final report to the Court in regard to the conditions prevailing there. We are making this order to be able to dispose of the writ petition effectively at the time of the final hearing.
4. We also direct Mr R.L. Gupta, Member-Secretary of the Delhi Legal Aid Board to visit Nari Niketan and submit a report to the Court in regard to the conditions prevailing there with reference to the various allegations which have been made in the writ petition and the affidavits from time to time. Mr R.L. Gupta will visit Nari Niketan along with the petitioner and Miss Nandita Haskar who were the persons who originally accompanied Mr R.L. Gupta when he first visited Nari Niketan pursuant to the Order made by this Court.

Order dated September 17, 1982

1. The writ petition is adjourned to October 1, 1982. In the mean while the District Judge, Agra will visit the Agra Protective Home and after interviewing each of the inmates in the Home individually, ascertain whether she is willing to continue in the Home or she wishes to be released from the Home and in the latter case where she proposes to go and who are the relations to take care of her. The District Judge will

submit report to this Court on or before September 29, 1982. If any of the inmates is willing to continue to stay in the Home the District Judge will obtain her consent in writing.

2. So far as Seeta, Maili, Bimla, Kamla and Kanchi lodged in the Agra Protective Home are concerned, we made an order on July 30, 1982 in the following terms :

We would, therefore, make an order similar to the one made by the Bench of Allahabad High Court consisting of Hon'ble Mr Justice B.N. Khancha and Hon'ble Mr Justice B.N. Mishra in May 1981. We, therefore, make an order to release them from the Agra Protective Home by the Order to be made by us to ensure that they do not slide back into prostitution. We accordingly direct that Seeta, Maili, Kamala and Kanchi should be taken to Nepal by an official to be appointed by the Registrar of the High Court of Allahabad under police escort and given into the custody of these relatives who have made affidavits or any other close relatives in Nepal whose names may be given by these girls. The same Indra Bahadur an employee of the Allahabad High Court who was deputed by Hon'ble Mr Justice B.N. Kancha and Hon'ble Mr Justice B.N. Mishra in that case, will accompany the official appointed by the Registrar to facilitate the repatriation of these girls to their relatives. We are suggesting his name because according to the report of that decision appearing in the issue of 'The Times of India' dated May 24, 1981 he was a resident of Kathmandu. The official who takes these girls to Nepal should obtain a report from the Panchayat regarding the delivery of these girls to their relatives. Before these girls are taken from the Agra Protective Home to Nepal the Superintendent of the Agra Protective Home will interview each of these girls separately and privately and ascertain from them as to who are their close relatives in Nepal to whom they like to go.

3. We are informed by Dr Sodhi and also by the information conveyed to us in the report of the District Judge that this order has not so far been implemented with the result that these five girls are still in the Agra Protective Home and they have not been repatriated to Nepal. We would, therefore, request the High Court of Allahabad to ensure that this order is carried out without any undue delay. We would very much appreciate if the High Court of Allahabad would take necessary steps in the matter at an early date and the Registrar of the High Court will submit a report to this Court in regard to the steps taken in that behalf. The District Judge, Agra who is the Chairman of the District Legal Aid Committee will depute one lady advocate and one social worker who are members of the District Legal Committee to visit Agra Protective Home once every week in order to provide to the inmates such legal assistance as they may need.

Order dated October 19, 1982

1. This writ petition has come up for hearing before us on two reports made by the District Judge, Agra, one dated August 30, 1982 and the other dated September 17, 1982.

2. The report dated August 30, 1982 states that one Meera who was an inmate of the Agra Protective Home has been admitted in the mental hospital since June 23, 1982 after check-up as per directions given in the inspection note of the District Judge

dated June 5, 1982. We are happy to note that regular inspection is being carried out by the District Judge, Agra, and appropriate directions are being given by the District Judge with a view to protecting the interest of the inmates. Since Meera has been admitted in the mental hospital since June 23, 1983, we should like the Superintendent of the Protective Home to make enquiries in regard to improvement in the mental conditions of Meera and inform the Court about the same at the next hearing of the writ petition.

3. It is also stated in the report of the District Judge dated August 30, 1982 that one Usha daughter of Basudeo has absconded from the Agra Protective Home. The District Judge is of the view that the situation of the premises of the Agra Protective Home is such that no one can escape without the connivance of some members of the staff. The District Judge has therefore directed the Deputy Director, Harijan Evam Samaj Kalyan to make a thorough inquiry in regard to this incident for fixing the responsibility and make a report so that it can be forwarded by the District Judge to this Court. We do not know how far the Deputy Director of Harijan Evam Samaj Kalyan has proceeded with the inquiry and how long it will take for him to make a detailed report. We are glad that the District Judge has directed a thorough inquiry to be made and we would add to that, our own direction that the Deputy Director, Harijan Evam Samaj Kalyan should immediately proceed to make a thorough inquiry in this matter and make detailed report fixing responsibility for the escape of Usha. We hope and trust that the Deputy Director will complete his inquiry before the next date of hearing of the writ petition and submit his report to the District Judge for being forwarded to this Court.

4. So far as observations of the District Judge in his report dated August 30, 1982 in regard to the lack of a badminton court or playing field for volley-ball are concerned, we do not propose to give any directions at this stage but we shall do so at the time of final disposal of the writ petition. It appears from this report that efforts are being made by the authorities in charge of the Agra Protective Home to find bridegrooms for the inmates and that some progress has been made in that direction so far as Kanta, Guddi alias Bimla, Usha daughter of Babu and Veena alias Baby are concerned. We hope and trust that the authorities will make detailed inquiries through the police if necessary for the purpose of ensuring that the bridegrooms selected for these inmates are honest and decent persons who are genuinely seeking marriage and who are not marrying these inmates for the purpose of taking them to prostitution or selling them to the brothel. We would direct the authorities of the Agra Protective Home to take the assistance of one or more women's organisations for the purpose of investigating the character and antecedents of the intended bridegrooms. We are afraid that if proper care is not taken in this behalf, these inmates might again slide back into prostitution.

5. We were sorry to learn from the learned counsel appearing on behalf of the State Government that according to the information available with the State Government, two of the inmates, namely Kanta daughter of Babulal and Guddi daughter of Bhura, who were directed by our order dated October 1, 1982 to be discharged provided their respective mothers, Haji and Shakuntala came to take charge of them and who were consequently discharged have again gone back to the red-light area. We are not unaware of this danger of sliding back into prostitution to which the inmates are

exposed on being released from the Agra Protective Home, but we are afraid we cannot detain the inmates in the Agra Protective Home against their will when there is no order made for their detention under the provisions of Suppression of Immoral Traffic in Women and Girls Act, 1956. When Kanta and Guddi were produced before the learned Magistrate for an inquiry under Section 17(2) of the Suppression of Immoral Traffic in Women and Girls Act, 1956, the Circle Officer, Ferozabad who had rescued them under Section 16 and produced them before the learned Magistrate did not appear and produce evidence even though according to his statement made at the time of their initial production before the learned Magistrate, these two girls had been rescued by the police from the red-light area. This happened not once but twice and on both occasions the Circle Officer remained absent with the result that the learned Magistrate had no option but to conclude the inquiry under Section 17(2) on the basis of the statements made by Haji, the mother of Kanta and Shakuntala, the mother of Guddi and to direct that Kanta and Guddi may be returned to the custody of their respective mothers. It is quite possible that if the Circle Officer or any other officer of the police department had participated in the inquiry under Section 17(2) and produced proper material showing that the information received by the police that Kanta and Guddi were living or carrying on or were made to carry on prostitution in a brothel was true and that they were in need of care and protection, the learned Magistrate could have made an order that these two girls may be detained in the Agra Protective Home 'for such period being not less than one year and not more than three years as may be specified in the order". But the failure on the part of the police to appear and assist the learned Magistrate in inquiry under Section 17(2) resulted in the discharge of Kanta and Guddi. This lapse on the part of the police is in our opinion, a serious matter because if the information conveyed to us by the learned counsel on behalf of the State Government is true, it is the default on the part of the police in appearing and producing the necessary material before the learned Magistrate in the inquiry under Section 17(2) that is responsible for these two girls being taken back to prostitution.

6. So far as the report dated September 17, 1982 is concerned, it mentions that Anita, Kanta, Khairon, Guddi alias Sunita, Lakhkhi, Meera and Indira made statements before the District Judge when he visited the Agra Protective Home on September 17, 1982 that they wanted to go back to their homes and requested that arrangements may be made for that purpose. Now out of these inmates, Anita has already been released under the earlier order made by us while Kanta and Guddi have been released under the Order dated October 1, 1982. So far as Khairon is concerned, we are informed that though she stated before the District Judge that she would like to go back to her home, she has now expressed her desire to continue to stay in the Agra Protective Home and to be rehabilitated through marriage. That leaves Lakhkhi, Meera and Indira. Since they want to go back to their own homes, we cannot detain them any longer in the Agra Protective Home and we would therefore direct that these three inmates shall be released from the Agra (sic) comes to take charge of them and failing that, the State Government will take the necessary steps for the purpose of taking them to their respective homes.

7. So far as the other matters mentioned in the two reports dated August 30, 1982 and September 17, 1982 are concerned, we shall deal with them at the time when we take up the writ petition for final hearing.

8. The writ petition is accordingly adjourned to September 23, 1982.

Order dated February 3, 1983

1. We are informed that though we directed by our order dated October 19, 1982 that Meera and Lakhkhi be released from the Agra Protective Home yet it has been possible to do so despite intimation to that effect being given by the Superintendent, Agra Protective Home as no member of the family of these two girls has come to take charge of them. However, in that event, according to our direction, the State Government has to take necessary steps for the purpose of taking these two girls to their respective homes. We would, therefore, direct that the State Government or the appropriate officer will immediately take necessary steps for the purpose of taking these two girls, namely Meera and Lakhkhi to their respective homes and escort shall be provided by the State Government for taking them to their respective homes within one week from today. We are anxious to see that these two girls are not detained in the Agra Protective Home against their will and they must, therefore, be repatriated to their respective homes at State cost. So far as Saida Bi is concerned she was sent to Agra Protective Home for two days only but she still continues to remain there and she should also, therefore, be taken by the State Government or the appropriate officer to her home the address of which has been given by her as : Mohd. Unis, Tasha Gali, Room No. 2231, Gali 7, Distt. The fourth girl whose case has been brought before us is Saroj who got admission in the Agra protective Home voluntarily but now wants to be released to join her parents. She has given her address as follows : Shri Ram Sinhai, Village Ramput, Tundla, Distt. Agra. We would direct that the State Government or the appropriate officer will immediately take necessary steps for the purpose of taking her to her home at the address given by her.

2. Since considerable difficulty is being experienced in releasing the girls who are sent there in view of the order made by us that none of the inmates of the Agra Protective Home should be released without our permission we would direct that hereafter whenever the period for which a girl is sent to the Agra Protective Home comes to an end, the Superintendent of the Agra Protective Home will immediately report the matter to the District Judge, Agra and the District Judge, Agra will law whether such girls should be released or not. If the District Judge finds that such girls cannot or should not be detained any longer he will make an order for her release from the Agra Protective Home, after making suitable provision for her being taken to the home of her parents or any other near relations with a view to ensuring that she is not taken to prostitution.

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