

Vishal Jeet

Vs

Union of India and Other States and Union Territories

Writ Petition (Criminal) No. 421 of 1989

(S. Ratnavel Pandian, K. Jayachandra Reddy JJ)

05.02.1990

JUDGMENT

S. RATNAVEL PANDIAN, J-

1. This writ petition under Article 32 of the Constitution of India at the instance of an advocate is filed by way of a public interest litigation seeking issuance of certain directions, directing the Central Bureau of Investigation (1) to institute an enquiry against those police officers under whose jurisdiction Red Light areas as well Devadasi and join traditions are flourishing and to take necessary action against such erring police officers and law breakers; (2) to bring all 'flesh trade' to protective homes of the respective States and to provide them with proper medical aid, shelter, education and training in various disciplines of life so as to enable them to choose a more dignified way of life and (3) to bring the children of those prostitutes and other children found begging in streets and also the girls pushed into 'flesh trade' to protective homes and then to rehabilitate them.

2. The averments made in the writ petition on the basis of which these directions are prayed for can be summarised thus:

Many unfortunate teenaged female children (hereinafter referred to as 'the children') and girls in full bloom are being sold in various parts of the country, for paltry sum even by their parents finding themselves unable to maintain their children on account of acute poverty and unbearable miseries and hoping that their children would be engaged only in household duties or manual labour. But those who are acting as pimps or brokers in the 'flesh trade' and brothel keepers who hunt for these teenaged children and young girls to make many either purchase or kidnap them by deceitful means and unjustly and forcibly inveigle them into 'flesh trade'. Once these unfortunate victims are taken to the dens of prostitutes and sold to brothel keepers, they are shocked and brutally treated and confined in complete seclusion in a tiny claustrophobic room for several days without food until they succumb to the vicious desires of the brothel keepers and enter into the unethical and squalid business of prostitution. These victims though unwilling to lead this obnoxious way of life have no other way except to surrender themselves retreating into silence and submitting their bodies to all the dirty customers including even sexagenarians with plastic smile.

3. The petitioner has cited certain lurid tales of sex with sickening details alleged to have been confessed by some children and girls either escaped or rescued from such abode of ill-fame. After giving a brief note on Devadasi system and Jogin tradition, the petitioner states that this system and tradition which are still prevailing in some parts of the country should be put to an end. The ultimate plea of the Petitioner is that the young children and girls forcibly pushed into 'flesh trade' should be rescued and rehabilitated. With this petition, the petitioner has filed 9 affidavits said to

have been sworn by 9 girls who claim to be living in the brothel afraid to swear the affidavits. Be it noted that no counter had been filed by any one of the respondents.

4. The matter is one of great importance warranting a comprehensive and searching analysis and requiring a humanistic rather than a purely legalistic approach from different angles. The question invalid cause considerable anxiety to the court in reaching a satisfactory solution in eradicating such sexual exploitation of children. We shall now examine this problem and address ourselves to the merits of the prayers.

5. No. denying the fact that prostitution always remains as a running sore in the body of civilization and destroys all moral values. The causes and evil effects of prostitution maligning the society are so notorious and frightful that none can gainsay it. This malignity is daily and hourly threatening the community at large slowly but steadily making its way onwards leaving a track marked with broken hopes. Therefore, the necessity for appropriate and drastic action eradicate this evil has become apparent but its successful consummation ultimately rests with the public at large.

6. It is highly deplorable and heartrending to note that many poverty stricken children and girls in the prime of youth are taken to 'flesh market' and forcibly pushed into the 'flesh trade' which is being carried on in utter violation of all canons of morality, decency and dignity of humankind. There cannot be two opinions- indeed there is none-that this obnoxious and abominable crime committed with all kinds of unthinkable vulgarity should be eradicated at all levels by drastic steps.

7. Article 23 which relates to Fundamental Rights in Part III of the constitution and which has been put under the caption 'Right against exploitation' prohibits 'traffic in human beings and beggar and other similar forms of labour' and provides that any contravention of Article 23(1) shall be an offence punishable in accordance with law. The expression 'traffic in human beings' is evidently a very wide expression including the prohibition of traffic in women for immoral or other purposes. Article 35(a)(ii) of the constitution reads that notwithstanding anything in this Constitution, Parliament shall have, and the legislature of a State shall not have, and the legislature of a State shall not have, power to make laws for prescribing punishment for those acts which are declared to be offence under this part. The power of legislation, under this article, is given to the parliament exclusively, for, otherwise the laws relating to fundamental rights would not have been uniform throughout the country. The power is specifically denied to the State legislatures. In implementation of the principles underlying Article 23(1) the Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA for short) has been enacted under Article 35 with the object of inhibiting or abolishing the immoral traffic in women and girls.

8. In this connection, it is significant to refer to Article 39, which relates to 'Directive Principles of State Policy' under part IV of the Constitution. Article 39 particularizes certain objectives. Clause (f) of Article 39 was substituted by Forty-Second amendment Act, 1976. Among the objective mentions under clause (e) and (f) of Article 39, we will confine ourselves only to certain relevant objectives under those two clauses, which are sufficient for the purpose of this case. One of the objectives under clause (e) of Article 39 is that the State should, in particular, direct its policy towards securing that the tender age of children are not abused. One of the objectives under clause (f) is that the State should, in particular, direct its policy towards securing that childhood and youth are protected against exploitation and against moral and material abandonment. These objectives reflect the great anxiety of the Constitution makers to protect and safeguard the interests and welfare of the children of our country., The Government of India has also, in pursuance of these constitutional provisions of clauses (e) and (f) of Article 39, evolved a national policy for the

welfare of the children.

9. It will be apposite to make reference to one of the principles, namely, principle No. (9) formulated by the Declaration of the Rights of the child adopted by the General Assembly of the United Nations on November 20, 1959. The said principle reads thus:

"The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form."

10. Before the adoption of SITA, there were enactments in some of the States for suppression of immoral traffic, but they were not uniform nor were they found to be adequately effective. Some States did not have any law on the subject.

11. With the growing danger in society to healthy and decent living with morality, the world public opinion congregated at New York in convention of suppression of traffic in persons for exploitation for immoral purposes. Pursuant to the signing of that convention on May 9, 1950, our Parliament has passed an Act called "Suppression of Immoral Traffic in Women and Girls Act, 1956" which certain drastic amendments are introduced by the amendment acts of 46 of 1978 and 44 of 1986. This Act aims at suppressing the evils of prostitution in women and girls and achieving a public purpose viz. To rescue the fallen women and girls and to stamp out the evils of prostitution and also to provide an opportunity to these fallen victims so that they could become decent members of the society. Besides the above Act, There are various provisions in the India Penal code such as Sections 366-A (dealing with procreation of minor girl), 366-B (dealing with offence of importation of frill from foreign country), 372 (dealing with the offence of buying minor for purposes of prostitution etc.) The Juvenile Justice Act, 1986 which provides for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles contains a specific provision namely Section 13 which empowers a police officer or any other person or organisation authorized by the State Government in this behalf to take charge of any neglected juveniles and bring them before the Board constituted under this Act which Board under Section 15 has to hold an enquiry and make such orders in relation to the neglected juveniles as it may deem fit.

12. In spite of the above stringent and rehabilitative provisions of law under various Act, it cannot be said that the desired result has been achieved. It cannot be gainsaid that a remarkable degree of ignorance or callousness or culpable indifference is manifested in uprooting this can cerise growth despite the fact that the day has arrived imperiously demanding an objective multi-dimensional study and a searching investigation into the matter relating to the causes and effects of this evil and requiring most ration measures to weed out the vices of illicit trafficking. This malady is not only a social but also a socio-economic problem and, therefore, the measures to be taken in that regard should be more preventive rather than punitive.

13. In Our view, it is neither practicable and possible nor desirable to make a roving enquiry through the length and breadth of this country and no useful purpose will be served by issuing any such direction, as requested buy the petitioner. Further, this malignity cannot be eradicated either by banishing, branding, scourging or inflicting severe punishment on these helpless and hapless victims most of whom are unwilling participants and involuntary victims of compelled circumstances and who, finding no way to escape, are weeping or wailing throughout.

14. This devastating malady can be suppressed and eradicated only if the law enforcing authorities in that regard take very severe and speedy legal action against all the erring persons such as pimps,

brokers and brothel keepers. The courts in such cases have to always take a serious view of this matter and inflict condign punishment on proof of such offences. Apart from legal action, both the Central and the State Governments who have got an obligation to safeguard the interest and welfare of the children and girls of this country have to evaluate various measures and implement them in the right direction.

15. BHAGWATI, J.- (as he then was) in *Lakshmi Kant Pandey v. Union of Indida*¹ while expressed his view thus: (SCC p. 249, para 6)

"It is obvious that in civilizes society the importance of child welfare cannot be over-emphasized, because the welfare of the entire community, its growth and development, depend on the important national asset' and the future well- being of the nation depends on how its children grow and develop."

16. We, after bestowing our deep and anxious consideration on this matter feel that it would be appropriate if certain directions are given in this regard. Accordingly, we make the following directions:

- (1) All the State Governments and the Governments of Union territories should direct their concerned law enforcing authorities to take appropriate and speedy action under the existing laws in eradication child prostitution without giving room for any complaint of remissness or culpable indifference.
- (2) The State governments and the Governments of Union territories should set up a separate advisory Committee within their respective zones consisting of the Secretary of the Social Welfare Department or Board, the secretary of the Law Department, sociologists, criminologists, members of the women's organizations, members of Indian council of child Welfare and India council of Social Welfare as well the members of various voluntary social organizations and associations etc., the main objects of the Advisory committee being to make suggestions of:
 - a. the measures to be taken in eradicating the child prostitution, and
 - (b) the social welfare programs to be implemented for the care, protection, treatment, development and rehabilitation of the young fallen victims namely the children and girls rescued either from the brothel houses or from the vices of prostitution.
- (3) All the State Governments and the Governments of Union territories should take steps in providing adequate and rehabilitative homes manned by well-qualified trained social workers, psychiatrists and doctors.
- (4) The Union Government should set up a committee of its own in the line, we have suggested under direction No. (2) the main object of which is to evolve welfare programmes to be implemented on the national level for the care, protection, rehabilitation etc. etc. of the young fallen victims namely the children and girls and to make suggestions of amendments to the existing laws or for enactment of any new law, if so warranted for the prevention of sexual exploitation of children.
- (5) The Central Government and Governments of States and Union territories should devise machinery of its own for ensuring the proper implementation of the

suggestions that would be made by the respective committees.

(6) The Advisory Committee can also go deep into Devadasi system and Jogin tradition and give their valuable advice and suggestions as to what best the government could do in that regard.

(7) The copies of the affidavits and the list containing the names of 9 girls are directed to be forward to the Commissioner of Police, Delhi for necessary action.

17. We may add that we are not giving an exhaustive list of the members for the constitution of the committee. Therefore, it is open to the concerned government to include any member or members in the committee as it deems necessary.

18. We hope and trust that the directions given by us will go a long way towards eradicating the malady of child prostitution, Devadasi system and jogin tradition and will also at the same time protect and safeguard the interests of the children by preventing their sexual abuse and exploitation.

19. So far as the remaining prayer regarding rehabilitation of the children of prostitutes is concerned, we understand that a similar issue is raised in a separate writ petition bearing W. P. No. 824 of 1988 pending before this court and this Court is Seized of the matter and also has given an interim direction on November 15, 1989 for setting up a committee to go into the question from various angles of the problems taking into consideration the different laws relevant to the matter and to submit its report. (*vide Gaurav Jain v. Union of India*²) Therefore, we are not expressing any opinion on this prayer regarding the rehabilitation of the children of prostitutes.

20. With the above directions, the writ petition is disposed of.

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