

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

RECORD OF PROCEEDINGS

WRIT PETITION (Civil) NO. 117 OF 2000

KARNIKA SAWHNEY

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(With appln(s) for directions)

Date: 17/03/2005 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE Y.K. SABHARWAL

HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For Petitioner(s)

Ms. Indra Sawhney, Adv.

Ms. Karnika Seth, Adv.

Mr. Aman Usman, Adv.

For Respondent(s)

-NCT, Delhi &

Delhi Police:

Mr. H.K. Puri, Adv.

Mr. T.A. Khan, Adv.

for Mrs. Anil Katiyar, Adv.

Mr. D.S. Mahra, Adv. (NP)

-UOI:

Mr. Mohan Parasaran, A.S.G.

Mr. C.V. Subba Rao, Adv.

Mr. Nitesh Rana, Adv.

Mr. B.K. Prasad, Adv.

for Mr. S.N. Terdol, Adv.

UPON hearing counsel the Court made the following

O R D E R

Article 23 of the Constitution of India prohibits traffic in human beings, beggar and other similar forms of forced labour. It envisages legislation for the enforcement of the prohibition contained therein.

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The Bombay Prevention of Begging Act, 1959 (Bombay Act No.X of 1960)

was enacted to consolidate and amend the law relating to beggars for the purpose of making uniform and better provision for the prevention of begging in the State of Bombay and for matters connected therewith. It, inter alia, makes provisions for the detention, training, employment of beggars and their dependents in certain institutions; for the custody, trial and punishment of beggars; offenders and for other matters connected therewith. Chapter II of the said Act lays down procedure for dealing with beggars and beggar offenders. Chapter III contains provisions in relation to receiving centres and certified institutions. "Certified Institutions", in terms of the definition clause, means any institution which the State Government provides and maintains for the detention, training and employment of beggars and their

dependents, and includes an institution certified to be such under sub-section (1) of section 13. Sub-section (1) of Section 13 enables the State government to provide and maintain one or more Certified Institutions at such place or places as it thinks fit, and to certify any institution to be a Certified Institution for the purpose of the Act. Any such Certified Institution may include provision for the teaching of agricultural, industrial and other pursuits, and for the general education and medical care of the inmates. Sections 5 to 10 of Chapter II relate to the matters of dealing with the persons who may be convicted for begging and lay down different periods for their detention in Certified Institutions. Section 11 provides for stringent penalty for those who may be employing or causing persons to beg or using them for purposes of begging. It provides that whoever employs or causes any person to solicit or receive alms, or whoever having the custody, charge or care of a child, connives at or encourages the employment or the causing of a child to solicit, or receive alms or whoever uses another person as an exhibit for the purpose of begging, shall on conviction be punished with imprisonment for a term which may extend to three years but which shall not be less than a year. Thus this provision provides for minimum one year's imprisonment for the person convicted for offence under Section 11.

The aforesaid Bombay Act was extended to Delhi nearly 45 years ago. The

Delhi Prevention of Begging Rules, 1960 were also framed in February, 1961 and

came into force on 1st March, 1961. Those rules made provisions for medical

examination of persons remanded or detained in Receiving Centres or Certified

Institutions, discipline to be maintained in the Certified Institutions, the constitution of Visiting Committee and Advisory Committee and their duties.

Section 15(3)(d) of the Bombay Act postulates that the Advisory Committee may advise the State Government generally on the working of the Act in the manner stipulated therein.

In the order dated 25th January, 2005, this Court noticed the dismal implementation of the Act. It was further disturbing since the petition seeking

implementation of the Act was filed about five years back and apparently nothing had been done to implement the Act and the Rules. Noticing that hardly any concrete

steps had been taken in that direction, the Social Welfare Department and the Police

Department were directed to file detailed affidavits so as to place on record the

concrete steps taken to implement the Act and the Rules with a view to check the

menace of begging.

It is a matter of anguish that though affidavits have been filed, one of

Mr. Sanjay Gihar, Joint Director (Administration), Deptt. of Social Welfare,

Government of NCT of Delhi, and the other of Mr. Alok Kumar, Dy. Commissioner of

Police, Police Headquarter, but again it is more a matter of formality to comply with

the order of the Court since the affidavits are utterly vague and give no details or

documents. It further appears that the Social Welfare Department does not know the stand of the police and vice versa as well. Although in the affidavit filed on behalf of the Police, it is stated that regular meetings are held with the Department of Social Welfare to intensify the menace of begging in Delhi and five officers/men of Delhi Police have been attached with the said department permanently, besides, DCS/

Distt.IGIA & Traffic have also been requested to provide additional force, if required

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for arrest/removal of beggars in the NCT of Delhi, the affidavit does not deal with one of the grievances of the Social Welfare Department that one anti-begging squad for entire Delhi, comprising of four police personnel consisting of one ASI, one Head Constable and three Constables, is wholly inadequate.

Though the Visiting Committee and the Advisory Committee were constituted after lapse of more than forty years of coming into force of the Act and the Rules, the so-called details supplied on inspections made by the Visiting Committee are far from satisfactory. From the document filed by the Social Welfare Department, it seems that on one particular day, namely, 22nd April, 2004, all the eleven homes were visited. The next date of inspection as per that document was six months later, on 21st October, 2004 and the next proposed visit was again six months later on 4th March, 2005. What happened during those visits is not mentioned in the affidavit.

Neither the affidavit states as to whether any minutes were prepared or not nor the

counsel is able to assist the Court in absence of instructions. Whether any meeting of the Advisory Committee has taken place or not is not mentioned in the affidavit.

Except stating that general articles of daily use from the norms prescribed in the

manual of the department are being provided, no supporting material has been placed

on record. Further, though the affidavit states that efforts are made to engage the

inmates in the custodial homes, in suitable vocational trades, the document of the

Department on record clearly demonstrate that there is no vocational training, there is

no budget for it nor any amount being spent for the said purpose.

It may be noted that under Rule 21, the Visiting Committee is required to visit centres or institutions, as the case may be, once a month and in so far as the actual visits are concerned, we have already noticed hereinbefore. Further, it appears that most of the homes being maintained for the beggars by the Delhi Government are

vacant. Obviously, the vacancy position is not because the begging has ceased in Delhi

or the number of beggars has gone down but it is for the obvious reason that there is

no implementation of the Act and the Rules. At this stage, we say no more with the

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hope that atleast now the Social Welfare Department will wake up to its obligation

under the Constitution of India, the Act and the Rules and file a detailed affidavit of

its Head of Department, with supporting documents and facts and figures, placing on

record what in field has been done to implement the Act and the Rules in letter and

spirit and also giving the details of beggar population in Delhi. Besides other aspects,

it will also be stated as to whether any person has been booked for offence under

Section 11 of the Act in the last about 45 years. The affidavit shall also give detailed scheme to control the menace of begging in Delhi.

The Ministry of Social Justice and Empowerment is the first respondent in the petition. It is the obligation of the Government to ensure implementation of the mandate of the constitutional provisions, the Act and the Rules. We direct the Government to file a detailed scheme which may result in controlling the menace of begging in the State of Delhi which can later be adopted as a model to be followed by other cities with or without modification.

The petitioner is also permitted to place on record her suggestions.

All the parties shall file their affidavits, schemes and suggestions within a period of four weeks.

Meanwhile, we constitute a Committee comprising of Mrs.Nirmal Bhatnagar, R-641, New Rajender Nagar, New Delhi-110060 and the petitioner Mrs. Karnika Seth with the power to visit any of the beggar Homes in Delhi at any time convenient to them. All concerned are directed to render the members of the Committee full assistance and cooperation. Requisite facilities, including funds, as per the directions of the Committee shall be provided for by the Social Welfare Department. The Committee shall file its report, before the next date of hearing, as to the conditions in the beggar Homes. It would not be necessary for the Committee to give prior notice before visiting to any of these Homes.

List the matter after five weeks.

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(N. Annapurna)

(V.P. Tyagi)

Court Master

Court Master

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