

ITEM NO.70
(NIGHT SHELTER MATTERS)

COURT NO.3

SECTION PIL

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

I.A. Nos.94 & 96 in WRIT PETITION (CIVIL) NO. 196 OF 2001

PEOPLE'S UNION FOR CIVIL LIBERTIES

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(For directions and Report submitted by Commissioner and Special
Commissioner of Supreme Court directed to be treated as I.A. vide
order dated 27.01.2010)

WITH

I.A. No.82/2008 in WRIT PETITION (CIVIL) NO. 196 OF 2001
(For directions)

Date:23/01/2012 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DALVEER BHANDARI
HON'BLE MR. JUSTICE DIPAK MISRA

For Petitioner(s) Mr. Colin Gonsalves, Sr. Adv.
Ms. Amiy Shukla, Adv.
Mr. Anuj Castleino, Adv.
Ms. Jyoti Mendiratta, Adv.

For Respondent(s) Mr. P.P. Malhotra, ASG
Mr. D.L. Chidananda, Adv.
Ms. Sunita Sharma, Adv.
Mr. D.S. Mahra, Adv.
Ms. Sushma Suri, Adv.
Mr. S. Wasim A. Qadri, Adv.
Mr. B.V. Balram Das, Adv.
Mr. S.S. Rawat, Adv.
Ms. Anil Katiyar, Adv.

Mr. P.P. Malhotra, ASG
Ms. Sunita Sharma, Adv.
Mr. D.S. Mahra, Adv.

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For DDA Mr. Vishnu B. Saharya, Adv.
For M/s. Saharya & Co., Adv.

Mr. Ranjan Mukherjee, Adv.
Mr. S. Bhowmick, Adv.
Mr. S.C. Ghosh, Adv.

Ms. Hemantika Wahi, Adv.
Ms. Jesal, Adv.
Ms. Satyabrat Panda, Adv.

Mr. D.K. Goswami, Adv.

Mr. Shirish Kr. Mishra,Adv.

Mr. Vikas Bansal,Adv.
Ms. Vibha Datta Makhija,Adv.

Dr. Manish Singhvi,AAG,Raj.
Mr. D.K. Devesh,Adv.
Mr. Irshad Ahmad,Adv.
Mr. Ashutosh Singh,Adv.
for Mr. Milind Kumar,Adv.

Mr. A. Mariarputham,Adv.Gen,
Mrs. Aruna Mathur,Adv.
Mr. Yusuf Khan,Adv.
For M/s. Arputham Aruna & Co.,Advs.

Mr. Pramod Swarup,Sr.Adv.
Mr. Raj Kumar Gupta,Adv.
Mr. Rajiv Dubey,Adv.
Mr. Anil Kr. Jha,Adv.
Mr. Kamlendra Mishra,Adv.

Mr. Riku Sarma,Adv.
Mr. Navnit Kumar,Adv.
for M/s. Corporate Law Group,Advs.

Mr. Rahul Verma,Adv.
Ms. Rachana Srivastava,Adv.

Mr. Manoj Saxena,Adv.
Mr. Mayank Nigam,Adv.
Mr. T.V. George,Adv.

Mr. Khwairakpam Nobin Singh,Adv.
Mr. Sapam Biswajit Meitei,Adv.

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Mr. R. Sundaravaradhan,Sr.Adv.
Mr. V.G. Pragasam,Adv.
Mr. S.J. Aristotle,Adv.
Mr. Prabu Ramasubramanian,Adv.
Mr. Jagjit Singh Chhabra,Adv.

Mr. Gopal Singh,Adv.
Mr. Manish Kumar,Adv.

Mr. Soumitra G. Chaudhuri,Adv.
Mr. Abhijit Sengupta,Adv.
Mr. B.P. Yadav,Adv.
Ms. Anima Kujur,Adv.

Mr. Manpreet Singh Doabia,Adv.
Mr. Sudarshan Singh Rawat,Adv.

For Mr. Manish Pitale,Adv.
Mr. Wasi Haider,Adv.
Mr. C.S. Ashri,Adv.

Mr. Guru Krishna Kumar,Adv.
Mr. B. Balaji,Adv.

Mr. Anil Shrivastav,Adv.
Mr. Ritu Raj Biswas,Adv.

Mr. Pragyan P. Sharma,Adv.
Mrs. Mandakini Sharma,Adv.
Mr. Rupesh Gupta,Adv.
Mr. Gautam Dhamija,Adv.
for Mr. P.V. Yogeswaran,Adv.

Mr. Edward Belho,Adv.
Mr. K. Enatoli Sema,Adv.
Mr. Amit Kumar Singh,Adv.

Mr. T. Harish Kumar,Adv.
Mr. V. Vasudevan,Adv.

Mr. Sanjiv Sen,Adv.
Mr. P. Parmeswaran,Adv.
Mr. Ujjal Banerjee,Adv.
Mr. P. Kumar,Adv.

Mr. Atul Jha,Adv.
Mr. Sandeep Jha,Adv.
Mr. D.K. Sinha,Adv.

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Mr. G.V. Chandrashekar,Adv.
Mr. N.K. Verma,Adv.
Ms. Anjana Chandrashekar,Adv.

Mr. Sunil Fernandes,Adv.
Mr. Krishanu Adhikary,Adv.
Ms. Astha Sharma,Adv.

Mr. D. Mahesh Babu,Adv.
Mr. Savita Devi,Adv.
Mr. Ramesh Allanki,Adv.
Mr. Amit K. Nair,Adv.

Ms. Anuradha Rustagi,Adv.
Ms. D. Bharathi Reddy,Adv.

Mr. Sanjay R. Hegde,Adv.
Mr. Ramesh Kr. Mishra,Adv.

Mr. K.N. Madhusoodhanan,Adv.
Mr. R. Sathish,Adv.

Mr. K.K. Mahalik,Adv.
Mr. Ajay Pal,Adv.

Mr. Manjit Singh,AAG
Mr. Tarjit Singh,Adv.
for Mr. Kamal Mohan Gupta,Adv.

Ms. A. Subhashini,Adv.

Mr. Gopal Singh,Adv.
Mr. Rituraj Biswas,Adv.

Mr. R.S. Khosla,Sr.Adv.
Mr. Kuldip Singh,Adv.
Mr. R.K. Pandey,Adv.
Mr. H.S. Sandhu,Adv.
Mr. Mohit Mudgil,Adv.

Mr. Vikas Upadhyay,Adv.
Mr. B.S. Banthia,Adv.

Dr. Aman Hingorani,Adv.
Ms. Priya Hingorani,Adv.

Mr. Merusagar Samantaray,Adv.
Mr. Suresh Chandra Tripathy,Adv.
Mr. Mohit Kumar Gupta,Adv.

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Mr. Ravindra Keshavrao Adsure, Adv.
Ms. Bina Madhavan, Adv.
Mr. Sanjib Sen, Adv.
Ms. Charu Ambwani, Adv.
Mr. Prashant Kumar, Adv.
Mr. Ramesh Babu M.R., Adv.
Mr. Vishwajit Singh, Adv.
Mr. Sanjay V. Kharde, Adv.
For Ms. Asha G. Nair, Adv.
Mr. Gopal Prasad, Adv.
Mr. Tara Chandra Sharma, Adv.
Mr. Jana Kalyan Das, Adv.
Mr. G.V. Rao, Adv.
Mr. Ravi Prakash Mehrotra, Adv.
Mr. K.V. Mohan, Adv.
Mr. Rajesh Srivastava, Adv.
Mr. S. Thananjayan, Adv. (N.P.)
Ms. Kamini Jaiswal, Adv. (N.P.)
Mr. Shish Pal Laler, Adv.
Mr. Anuvrat Sharma, Adv.
Mr. Pradeep Misra, Adv.
Mr. R.C. Kaushik, Adv.
Ms. Sumita Hazarika, Adv.
Mr. Venkateswara Rao Anumolu, Adv.
Mr. G. Prakash, Adv.
Ms. Indra Sawhney, Adv.
Mr. Navneet Kumar, Adv.

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Mr. Anil Kumar Jha, Adv.
Mr. Vikas Mehta, Adv.
Mr. Anis Suhrawardy, Adv.
Mr. Shivaji M. Jadhav, Adv.
Mr. Navin R. Nath, Adv.

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

Article 21 of the Constitution states that no person should be deprived of his life or personal liberty except according to the procedure established by the law.

Over the years, this Court's jurisprudence has added significant meaning and depth to the right to life. A

large number of judgments interpreting Article 21 of the Constitution have laid down right to shelter is included in right to life.

In Francis Coralie Mullin v. Union Territory of Delhi (1981) 1 SCC 608, Bhagwati J stated that:-

"the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to

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carry on such functions and activities as constitute the bare minimum expression of the human-self (at para. 8)."

In Chameli Singh v. State of U.P. (1996) 2 SCC 549, this Court interpreted Article 21 in the following words:-

"Right to live guaranteed in any Civilised society implies the right to food, water, decent environment education, medical care and shelter. These are basic human rights known to any civilised society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights. Shelter for a human being, therefore, is not a mere protection of his life and limb."

In C.E.S.C. Ltd. v. Subhash Chandra Bose (1992) 1 SCC 441 this Court held that right to social and economic justice is a fundamental right. Right to health of a worker is a fundamental right. Therefore, right to life enshrined in Article 21 means something more than mere

survival of animal existence. The right to live with human dignity with minimum sustenance and shelter and all those rights and aspects of life which would go to make a man's life complete and worth living, would form part of the right to life. Enjoyment of life and its attainment -- social, cultural and intellectual -- without which life cannot be meaningful, would embrace the protection and preservation of life guaranteed by Article 21.

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The State owes to the homeless people to ensure at least minimum shelter as part of the State obligation under Article 21.

In *Parmanand Katara v. Union of India* (1989) 4 SCC 286, this Court observed that Article 21 casts the obligation on the State to preserve life which is the paramount duty of the State according to the Constitution.

We have heard the learned counsel for the parties. We would like to deal with the affidavits of the following States:

ANDHRA PRADESH:

Mr. Gonsalves, learned senior counsel appearing on behalf of the petitioner has brought to our notice that 15 deaths have taken place in the State of Andhra Pradesh during this winter due to severe cold. He states that according to the norms, 95 night shelters are required in the State of Andhra Pradesh whereas there are only 5 permanent night shelters.

Learned counsel appearing for the State of Andhra Pradesh submits that other night shelters are under construction and the State has undertaken the process to identify some already constructed buildings to be

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converted into night shelters. We direct the State to identify these buildings within four weeks from today. We direct the Chief Secretary to file an affidavit indicating the buildings which have been identified by the State for converting into night shelters, within four weeks with an advance copy thereof to the learned counsel for the petitioner.

BIHAR:

Mr. Gonsalves, learned senior counsel appearing on behalf of the petitioner submits that a number of deaths have been reported in this winter in the State of Bihar also. According to the norms, 48 night shelters are required in the State of Bihar whereas the State has constructed only 36 night shelters. If the night shelter homes are not covered, they may be adequately covered.

Mr. Gonsalves submits that a joint inspection of the night shelters would be carried out and a report would be submitted before this Court. Let the joint inspection of the night shelters be carried out within two weeks from today and a report be filed before this Court within two weeks thereafter. Let an affidavit be filed by the Chief Secretary within four weeks from today.

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GUJARAT:

According to the norms, 112 night shelters are required in the State of Gujarat whereas only 25 night shelters are operational in the State and 88 night shelters are under construction. Let the construction of the night shelters be completed on or before 31st March, 2012.

Let a joint inspection of the night shelters be carried out within two weeks from today and a report be submitted before this Court within two weeks thereafter.

JHARKHAND:

According to the norms, 31 night shelters are required in the State of Jharkhand whereas only 10 night shelters are functional in the State. We direct that the remaining night shelters be constructed on or before 31st March, 2012.

Let a joint inspection of the night shelters be carried out within two weeks from today and a report be submitted before this Court within two weeks thereafter.

MADHYA PRADESH:

According to the norms, 100 night shelters are required in the State of Madhya Pradesh. Learned counsel for the State submits that 32 permanent night shelters
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are in existence and 68 night shelters are under construction. Let the construction of the remaining night shelters be completed on or before 31st March, 2012. He has placed on record some photographs which show that the night shelters have all basic facilities. It is further stated that food is also being supplied at a very concessional rate of Rs.5/- per meal.

Let a joint inspection of the night shelters be carried out within two weeks from today and a report be submitted before this Court within two weeks thereafter.

MAHARASHTRA:

According to the norms, 284 night shelters are required in the State of Maharashtra whereas there are only 12 permanent and 12 temporary night shelters functional in the State. We direct that the remaining night shelters be constructed on or before 31st March, 2012. We also direct the State to properly comprehend the

urgency of compliance with the directions of this Court.

Learned counsel appearing for the State submits that he, along with the learned counsel for the petitioner, would meet Hon'ble the Chief Minister and would explain the problem of the homeless people and take necessary instructions in the matter.

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Let a joint inspection of the night shelters be carried out within two weeks from today and a report be submitted before this Court within two weeks thereafter.

WEST BENGAL:

According to the norms, 143 night shelters are required in the State of West Bengal whereas there are only 6 permanent night shelters. Learned counsel for the State submits that 8 more night shelters would be operational by 31st March, 2012.

This Court has been monitoring this matter for over two years now and there has not been compliance of the directions of this Court by the State of West Bengal. We direct the standing counsel for the State and learned counsel for the petitioner to have a joint meeting with the Chief Minister of the State and impress upon the urgent need of complying with the directions of this Court.

Let a joint inspection of the night shelters be carried out within two weeks from today and a report be submitted before this Court within two weeks thereafter.

UTTAR PRADESH:

According to the norms, 139 night shelters are required in the State of Uttar Pradesh. Learned counsel

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for the State submits that 18 permanent night shelters and 76 temporary night shelters are operational in the

State and 67 permanent night shelters are under construction.

Let a joint inspection of the night shelters be carried out within two weeks from today and a report be submitted before this Court within two weeks thereafter.

TAMIL NADU:

The Chief Secretary of the State of Tamil Nadu has filed an affidavit in Court today which is taken on record. A copy of the same has been given to the learned counsel for the petitioner who may file a reply to this affidavit within four weeks from today.

HARYANA:

According to the learned counsel appearing for the State of Haryana, all the night shelters in the State of Haryana have been made operational and facilities of drinking water, bathing, medical facility and separate toilets for gents and ladies have been provided in those shelters.

Let a joint inspection of the night shelters be carried out within two weeks from today and a report be submitted before this Court within two weeks thereafter.

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Nothing is more important for the State than to preserve and protect the lives of the most vulnerable, weak, poor and helpless people. The homeless people are constantly exposed to the risk of life while living on the pavements and the streets and the threat to life is particularly imminent in the severe and biting cold winter, especially in the northern India.

The State must discharge its core obligation to

comply with Article 21 of the Constitution by providing night shelters for the vulnerable and homeless people. Consequently, we direct the Collectors and District Magistrates of the States of Jammu & Kashmir, Himachal Pradesh, Uttarakhand, Punjab and Haryana, Rajasthan, Uttar Pradesh and Bihar to file affidavits with their respective Chief Secretaries within three weeks from today in which they must ensure that at least temporary night shelters are provided to protect and preserve the lives of the people in consonance with the constitutional philosophy enshrined in Article 21 of the Constitution.

List this matter for further directions on 27th February, 2012.

(A.S. BISHT)
COURT MASTER

(INDU SATIJA)
COURT MASTER