

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.559 OF 1994

R.D. UPADHYAY Petitioner(s)

VERSUS

STATE OF A.P & ORS Respondent(s)

(With appln(s) for directions and office report)

WITH Criminal Appeal No.69 of 2000  
(With office report)  
Civil Appeal No.2468 of 1998  
(With office report)  
W.P.(C) No.84 of 1998  
(With office report)  
S.L.P.(C)...CC No.5347 of 1998  
(With appln.(s) for permission to file SLP)  
S.L.P.(C) Nos.14303-14305 of 1998  
(With office report)

Date: 01/08/2013 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE  
HON'BLE MRS. JUSTICE RANJANA PRAKASH DESAI  
HON'BLE MR. JUSTICE RANJAN GOGOI

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Ms. Binu Tamta, Adv. (A.C.)

For Petitioner(s)

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Mrs Rachna Gupta, AOR

Mr. Ambhoj Kumar Sinha, AOR

SLP 14303-05/98 & Ms. Lalita Kohli, Adv.  
CC 5347/98 Mr. Abhishek Swarup, Adv.  
for M/s. Manoj Swarup & Co.

For Respondent(s) Mr. B. Krishna Prasad, AOR

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Mr. Anshuman, Adv.

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Mr. Abhishek Swarup, Adv.  
M/s. Manoj Swarup & Co.  
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Mr. Abhishth Kumar, AOR  
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Mr. Upendra Mishra, Adv.  
Mr. Raman Yadav, Adv.  
Mr. Parth Tiwari, Adv.

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Mrs. K. Enatoli Sema, Adv.

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Mr. R. Rakesh Sharma, Adv.

A & N Administration      Mr. Balasubramanian, Adv.  
                                 Mr. K.V. Jagdish Varan, Adv.  
                                 Mrs. G. Indira, Adv.

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                                 Mrs. Vivekta Singh, Adv.  
                                 Mr. Tarjit Singh, Adv.

State of Maharashtra      Ms. Asha G. Nair, AOR  
                                 Mr. Abhishek Kumar Pandey, Adv.

State of Rajasthan        Dr. Manish Singhvi, AAG, Rajasthan  
                                 Mr. Milind Kumar, Adv.

                                 Mr. Anip Sachthey, Adv.  
                                 Mr. Mohit Paul, Adv.  
                                 Ms. Shagun Matta, Adv.  
                                 Mr. Saakaar Sardana, Adv.

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

Considering the plight of undertrial prisoners languishing in various jails of our country, various directions were issued by this Court from time to time. On 13th April, 2006, this Court issued the following directions:

" In light of various reports referred to above, affidavits of various State Governments, Union Territories, the Union of India and submissions made, we issue the following guidelines :

1. A child shall not be treated as an undertrial/convict while in jail with his/her mother. Such a child is entitled to food, shelter, medical care, clothing, education and recreational facilities as a matter of right.

2. Pregnancy:

a. Before sending a woman who is pregnant to a jail, the concerned authorities must ensure that jail in question has the basic minimum facilities for child delivery as well as for providing pre-natal and post-natal care for both, the mother and the child.

b. When a woman prisoner is found or suspected to be pregnant at the time of her admission or at any time thereafter, the lady Medical Officer shall report the fact to the superintendent. As soon as possible, arrangement shall be made to get such prisoner medically examined at the female wing of the District Government Hospital for ascertaining the state of her health, pregnancy, duration of pregnancy, probable date of delivery and so on. After ascertaining the necessary particulars, a report shall be sent to the Inspector General of Prisons, stating the date of admission, term of sentence, date of release, duration of pregnancy, possible date of delivery and so on.

c. Gynaecological examination of female prisoners shall be performed in the District Government Hospital. Proper pre-

natal and post-natal care shall be provided to the prisoner as per medical advice.

3. Child birth in prison:

a. As far as possible and provided she has a suitable option, arrangements for temporary release/parole (or suspended sentence in case of minor and casual offender) should be made to enable an expectant prisoner to have her delivery outside the prison. Only exceptional cases constituting high security risk or cases of equivalent grave descriptions can be denied this facility.

b. Births in prison, when they occur, shall be registered in the local birth registration office. But the fact that the child has been born in the prison shall not be recorded in the certificate of birth that is issued. Only the address of the locality shall be mentioned.

c. As far as circumstances permit, all facilities for the naming rites of children born in prison shall be extended.

4. Female prisoners and their children:

a. Female prisoners shall be allowed to keep their children with them in jail till they attain the age of six years.

b. No female prisoner shall be allowed to keep a child who has completed the age of six years. Upon reaching the age of six years, the child shall be handed over to a suitable surrogate as per the wishes of the female prisoner or shall be sent to a suitable institution run by the Social Welfare Department. As far as possible, the child shall not be transferred to an institution outside the town or city where the prison is located in order to minimize undue hardships on both mother and child due to physical distance.

c. Such children shall be kept in protective custody until their mother is released or the child attains such age as to earn his/her own livelihood.

d. Children kept under the protective custody in a home of the Department of Social Welfare shall be allowed to meet the mother at least once a week. The Director, Social Welfare Department, shall ensure that such children are brought to the prison for this purpose on the date fixed by the Superintendent of Prisons.

e. When a female prisoner dies and leaves behind a child, the Superintendent shall inform the District Magistrate concerned and he shall arrange for the proper care of the child. Should the concerned relative(s) be unwilling to support the child, the District Magistrate shall either place the child in an approved institution/home run by the State Social Welfare Department or hand the child over to a responsible person for care and maintenance.

5. Food, clothing, medical care and shelter:

a. Children in jail shall be provided with adequate clothing suiting the local climatic requirement for which the State/U.T. Government shall lay down the scales.

b. State/U.T. Governments shall lay down dietary scales for children keeping in view the calorific requirements of growing children as per medical norms.

c. A permanent arrangement needs to be evolved in all jails, to provide separate food with ingredients to take care of the nutritional needs of children who reside in them on a regular basis.

d. Separate utensils of suitable size and material should also be provided to each mother prisoner for using to feed her child.

e. Clean drinking water must be provided to the children. This water must be periodically checked.

f. Children shall be regularly examined by the Lady Medical Officer to monitor their physical growth and shall also receive timely vaccination. Vaccination charts regarding each child shall be kept in the records. Extra clothing, diet and so on may also be provided on the recommendation of the Medical Officer.

g. In the event of a woman prisoner falling ill, alternative arrangements for looking after any children falling under her care must be made by the jail staff.

h. Sleeping facilities that are provided to the mother and the child should be adequate, clean and hygienic.

i. Children of prisoners shall have the right of visitation.

j. The Prison Superintendent shall be empowered in special cases and where circumstances warrant admitting children of women prisoners to prison without court orders provided such children are below 6 years of age.

6. Education and recreation for children of female prisoners:

a. The children of female prisoners living in the jails shall be given proper education and recreational opportunities and while their mothers are at work in jail, the children shall be kept in creches under the charge of a matron/female warder. This facility will also be extended to children of warders and other female prison staff.

b. There shall be a creche and a nursery attached to

the prison for women where the children of women prisoners will be looked after. Children below three years of age shall be allowed in the creche and those between three and six years shall be looked after in the nursery. The prison authorities shall preferably run the said creche and nursery outside the prison premises.

7. In many states, small children are living in sub-jails that are not at all equipped to keep small children. Women prisoners with children should not be kept in such sub-jails, unless proper facilities can be ensured which would make for a conducive environment there, for proper biological, psychological and social growth.

8. The stay of children in crowded barracks amidst women convicts, undertrials, offenders relating to all types of crimes including violent crimes is certainly harmful for the development of their personality. Therefore, children deserve to be separated from such environments on a priority basis.

9. Diet :

Dietary scale for institutionalized infants/children prepared by Dr. A.M. Dwarkadas Motiwala, MD (Paediatrics) and Fellowship in Neonatology (USA) has been submitted by Mr. Sanjay Parikh. The document submitted recommends exclusive breastfeeding on the demand of the baby day and night. If for some reason, the mother cannot feed the baby, undiluted fresh milk can be given to the baby. It is emphasized that "dilution is not recommended; especially for low socio-economic groups who are also illiterate, ignorant, their children are already malnourished and are prone to gastroenteritis and other infections due to poor living conditions and unhygienic food habits. Also, where the drinking water is not safe/reliable since source of drinking water is a question mark. Over-dilution will provide more water than milk to the child and hence will lead to malnutrition and infections. This in turn will lead to growth retardation and developmental delay both physically and mentally." It is noted that since an average Indian mother produces approximately 600-800 ml. milk per day (depending on her own nutritional state), the child should be provided at least 600 ml. of undiluted fresh milk over 24 hours if the breast milk is not available. The report also refers to the "Dietary Guidelines for Indians - A Manual," published in 1998 by the National Institute of Nutrition, Council of Medical Research, Hyderabad, for a balanced diet for infants and children ranging from 6 months to 6 years of age. It recommends the following portions for children in the ages of 6-12 months, 1-3 years and 4-6 years, respectively: Cereals and Millets - 45, 60-120 and 150-210 grams respectively; Pulses - 15, 30 and 45 grams respectively; Milk - 500 ml (unless breast fed, in which case 200 ml); Roots and Tubers - 50, 50 and 100 grams respectively; Green Leafy Vegetables - 25, 50 and 50 grams respectively; Other Vegetables - 25, 50 and 50 grams respectively; Fruits - 100 grams; Sugar - 25, 25 and 30 grams respectively; and Fats/Oils (Visible) - 10, 20 and 25 grams respectively. One portion of pulse may be exchanged with one portion (50 grams) of egg/meat/chicken/fish. It is essential that the above food groups be provided in the portions mentioned in order to ensure that both macronutrients and micronutrients are available to the child in adequate quantities.

10. Jail Manual and/or other relevant Rules, Regulations, instructions etc. shall be suitably amended within three months so as to comply with the above directions. If in some jails, better facilities are being provided, same shall continue.

11. Schemes and laws relating to welfare and development of such children shall be implemented in letter and spirit. State Legislatures may consider passing of necessary legislations, wherever necessary, having regard to what is noticed in this judgment.

12. The State Legal Services Authorities shall take necessary measures to periodically inspect jails to monitor that the directions regarding children and mother are complied with in letter and spirit.

13. The Courts dealing with cases of women prisoners whose children are in prison with their mothers are directed to give priority to such cases and decide their cases expeditiously.

14. Copy of the judgment shall be sent to the Union of India, all State Governments/Union Territories and the High Courts.

15. Compliance report stating the steps taken by the Union of India, the State Governments, the Union territories and the State Legal Services Authorities shall be filed in four months whereafter matter shall be listed for directions.

Pursuant to the above directions, various State Governments and Union Territories submitted Compliance Report to this Court, which were catalogued by the learned Amicus Curaie. It is to be noticed that since 2007, there is no definite information from the States and the State Legal Services Authorities about compliance of various directions given in paragraph 45 of the said order.

In view of the above and in order to ascertain the present position, as directed, we hereby direct all the State Legal Services Authorities to inspect all the jails including sub-jails in their States, take note of the prevailing situations in terms of the various directions issued in paragraph 45 of the order dated 13th April, 2006, and submit a detailed report to this Court within a period of eight weeks from today. We also permit the State Legal Services Authorities to take assistance from the district/taluk level committees and submit a detailed report, including amendments/changes, if any, made in the Jail Manual.

All the respondents/State Governments/Union Territories are directed to co-operate and furnish required details to the State Legal Services Authorities. As soon as the details are received by the Registry, the Registry is directed to furnish a copy of the same to learned Amicus Curaie, who, in turn, to update the Chart as furnished earlier. The Union of India is also directed to update and submit a latest compliance report to this Court.

It is made clear that since the earlier directions were issued by this Court, as early as in 2006, we expect all the State Governments/Union Territories to co-operate and submit all the details through the State Legal Services Authorities within a time frame. The report to be filed by the State Legal Services Authorities should be in terms of the proforma prescribed in the order dated 8th January, 2008.

List the matter on 22nd October, 2013.

|(Chetan Kumar)  
|Court Master

| |(Savita Sainani)  
| |Court Master

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