

Dr. Upendra Baxi And Ors. (li) vs State Of U.P. And Ors. on 23 July, 1986

Equivalent citations: AIR1987SC191, JT1986(1)SC23, 1986(2)SCALE146, (1986)4SCC106, AIR 1987 SUPREME COURT 191, 1986 (4) SCC 106, (1986) SCCRIR 1301, 1986 CRILR(SC MAH GUJ) 483, (1986) 3 SCJ 291, 1986 CRI APP R (SC) 242, 1986 SCC (CRI) 381, (1986) JT 23 (SC), 1987 (1) RENT CR 181

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Bench: P.N. Bhagwati, G.L. Oza, V. Khalid

JUDGMENT

P.N. Bhagwati, CJ.

1. This writ petition has come up for hearing in view of certain 45 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 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 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

14th March 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 15th March 1984 drew attention to this fact. The District Judge also in his Inspection Report dated 11th May, 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 5th January 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, some time 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 premise in Adarsh Nagar, Rajwara. Perturbed by this action on the part of the State Government, Dr. R.S. Sodhi addressed a letter dated 17th June, 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 the 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 17th July 1985 in which he pointed out the following facts :

In the previous building situated at Vijay Nagar 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 store-rooms 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 court-yard 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 out-post 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 out-skirts 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 purposes of human dwelling. There are no cross ventilators and windows in these rooms and one will feel suffocation in entering in 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 in one side and one in 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 the rooms. There are 7 flush latrines and 7 bath-rooms in this new building which are quite sufficient for the inmates. There is a big-court yard 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 out-post are at much distance from this building. For the security of the inmates it is necessary that the 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 2nd September 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 27.7. 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 required, 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 his department emphasizing the need for an electric generator keeping in view that the building is situated in industrial area where electric cut is every day affair.

Dr. R.S. Sodhi has drawn my attention to the fact that inspite 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 21.8. 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 Vijay Nagar 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 Protective Home. It is a matter of regret that highly placed officers in the Administration should have totally ignored the pendency of the present case and proceeded to shift the Protective Home 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 17th July 1985 and 2nd September 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 17th July and 2nd September 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 17th July 1985 and 2nd September 1985. We would require the Commissioner, Agra Division to state in his affidavit as to whether 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 that be made into a pucca or semipucca 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 class-rooms 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 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 through-out day and night for the inmates of the Protective 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 dampne Sub-section We find from the latest Inspection Report of the Additional District Judge dated 30th June 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 the 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 & 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 15th of every month.

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