

Dr.Ashwani Kumar vs Union Of India And Ors. Ministry Of ... on 13 December, 2018

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Bench: Deepak Gupta, Madan B. Lokur

REPORT

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) No. 193 OF 2016

Dr. Ashwani Kumar

....Pe

versus

Union of India & Ors.

.... Re

JUDGMENT

Madan B. Lokur, J.

1. “Social justice” in the Preamble of our Constitution has been given pride of place and for good reason since it is perhaps the most important and significant form of justice.

2. In his address on Constitution Day on 26 th November, 2018 the Hon’ble President of India emphasised that social justice remains a touchstone of our nation building. The conceptualisation of justice by our Constitution framers was as much valid in 1949 (when the Constituent Assembly debates took place) as it is today. But, with times having changed, varied situations have emerged which may not have existed in 1949 and were perhaps not foreseen at that time. The Hon’ble President spoke on the subject of justice and particularly social justice in the following words:

W.P(Civil) No.193 of 2016 Page 1 “In the Preamble, justice is not seen as unidimensional. It is viewed as having implications across political, economic and social spheres. Political justice implies the equal participation of all adults in the political process and the just formulation and implementation of laws. Economic justice implies the ultimate eradication of poverty, equal opportunities to earn a livelihood, and fair wages. As such the expansion of economic,

entrepreneurship and job opportunities are among examples of economic justice.

Given the diverse history of our people, and given imbalances and hierarchies that have sometimes marked our past, social justice remains a touchstone of our nation building. At the simplest level, it implies the removal of societal imbalances and the harmonisation of rival claims and needs of different communities and groups. Social justice is about providing equal opportunities.

Such a conceptualisation of justice was valid in 1949 and broadly remains relevant today. Even so, the 21st century has brought new challenges. No doubt the concept of justice - political, economic and social – has a resilient core but it needs to be thought of in innovative ways. It requires to be applied afresh to emerging situations – situations that may not have existed or been foreseen when our Constitution framers were at work.” (Emphasis supplied by us).

3. The rights of elderly persons is one such emerging situation that was perhaps not fully foreseen by our Constitution framers. Therefore, while there is a reference to the health and strength of workers, men and women, and the tender age of children in Article 39 of the Constitution and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want in Article 41 of the Constitution, there is no specific reference to the health of the elderly or to their shelter in times of want and indeed to their dignity and sustenance due to their age.

4. Eventually, age catches up with everybody and on occasion, it W.P(Civil) No.193 of 2016 Page 2 renders some people completely helpless and dependent on others, either physically or mentally or both. Fortunately, our Constitution is organic and this Court is forward looking. This combination has resulted in path- breaking developments in law, particularly in the sphere of social justice which has been given tremendous importance and significance in a variety of decisions rendered by this Court over the years. The present petition is one such opportunity presented before this Court to recognise and enforce the rights of elderly persons - rights that are recognised by Article 21 of the Constitution as understood and interpreted by this Court in a series of decisions over a period of several decades, and rights that have gained recognition over the years due to emerging situations. Brief background

5. The petitioner Dr. Ashwani Kumar has preferred a writ petition under Article 32 of the Constitution with regard to enforcement of the rights of elderly persons under Article 21 of the Constitution. The petitioner, who appears in person, has made several prayers in the writ petition but during the course of submissions, he limited the relief prayed for to four issues. These are:

1. Pension for the elderly.
2. Shelter for the elderly.
3. Geriatric care and medical facilities for the elderly.

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4. Effective implementation of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 ('MWP Act').

6. During the course of the proceedings and submissions, we were assisted by HelpAge India through Mr. Mathew Cherian as Amicus Curiae and Mr. Nikhil Dey a social activist as an Intervener. We were also assisted by the learned Additional Solicitor General appearing for the Union of India who specifically underlined the fact that the Union of India does not consider this as an adversarial litigation.

7. We propose to take up the issues raised by the petitioner in seriatim but leave it open to him and the learned Amicus to agitate any further issues that may arise during the pendency of the public interest petition. The right to dignity and adequate pension

8. It has come on record that the Union of India has categorised the elderly as those who are above 60 years of age and up to 79 years of age belonging to one category and those above 80 years of age belonging to another category. The record shows that pension was fixed for persons between the age of 60-79 years at 200 per month by the Union of India under a scheme called the Indira Gandhi National Old Age Pension Scheme. An amount of 500 per month was fixed by the Union of India for persons above 80 years of age.

9. Interestingly, the pension amount was fixed more than a decade W.P(Civil) No.193 of 2016 Page 4 ago with the latest revision in 2007. It is submitted on the side of the petitioner that the amount is a pittance and is wholly inadequate to advance the constitutional mandate of Article 21. If the current value of the rupee is taken into consideration then in real terms the amount actually works out to about 92 per month on the lower scale.

10. There is no doubt that the Scheme places a corresponding obligation on the State Governments and Union Territory Administrations to make contributions but their contributions are varying, as per the affidavits filed in this Court, from less than 500 per month to 2000 per month. One of the directions prayed for by the petitioner is that a realistic pension ought to be paid to the elderly and it is his suggestion that it should be at least half the minimum wage.

11. It was submitted by the petitioner, ably supported by the learned Amicus and the intervenor that the right to live with dignity is a fundamental right recognised by Article 21 of the Constitution. We do not doubt this and surely the Union of India would also not doubt this. The further submission of the petitioner was that availability of adequate finances is necessary for a person to live a life of dignity. An elderly person, particularly someone who is in an old age home is unable to look after himself and therefore needs financial assistance. This can be made available only if there is a viable pension scheme that is implemented W.P(Civil) No.193 of 2016 Page 5 with sincerity and which can be taken advantage of by an elderly person.

12. In support of his submissions, reliance was placed by the petitioner on four significant decisions of this Court which hold that the right to dignity is integral to the right to life guaranteed by Article 21 of the Constitution.

13. In *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*¹ this Court acknowledged that the right to life guaranteed by Article 21 of the Constitution includes the right to live with dignity which includes, inter alia, nutrition, clothing and shelter - all of which require some finances. Provision for these basic necessities can be made only if the elderly are provided with some pension which is meaningful and not pension which is equivalent to ₹ 92 per month. Reference was made to paragraph 8 of the Report which reads as follows:

“8. But the question which arises is whether the right to life is limited only to protection of limb or faculty or does it go further and embrace something more. We think 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 carry on such functions and activities as constitute the bare minimum expression of the human-self.....” (Emphasis supplied by us).

1 (1981) 1 SCC 608

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14. Reference was made by the petitioner to *Aruna Ramachandra Shanbaug v. Union of India*² and *Common Cause v. Union of India*³ wherein this Court categorically held that the right to life includes the right to live with dignity. It was said in paragraph 32 of the Report in *Aruna Ramachandra Shanbaug* as follows:

“32. Whilst this Court has held that there is no right to die (suicide) under Article 21 of the Constitution and an attempt to commit suicide is a crime vide Section 309 IPC, the Court has held that the right to life includes the right to live with human dignity, and in the case of a dying person who is terminally ill or in a permanent vegetative state he may be permitted to terminate it by a premature extinction of his life in these circumstances and it is not a crime vide *Gian Kaur* case. [*Gian Kaur v. State of Punjab*, (1996) 2 SCC 648]” (Emphasis supplied by us).

15. Reference was also made by the petitioner to the opinion rendered by Justice Rohinton Fali Nariman in *K.S. Puttaswamy v. Union of India*⁴ wherein it has been observed that several decisions of this Court have recognised human dignity as being an essential part of the fundamental rights chapter in the Constitution. This observation was made in paragraph 525 of the Report which reads as follows:

“525.Many of our decisions recognise human dignity as being an essential part of the fundamental rights chapter. For example, see *Prem Shankar Shukla v. Delhi*

Admn., (1980) 3 SCC 526 at para 21, Francis Coralie Mullin v. UT of Delhi, (1981) 1 SCC 608 at paras 6, 7 and 8, Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161 at para 10, Maharashtra University of Health Sciences v. Satchikitsa Prasarak Mandal, (2010) 3 SCC 786 at para 37, Shabnam v. Union of India, (2015) 6 SCC 702 at paras 12.4 and 14 2 (2011) 4 SCC 454 3 (2018) 5 SCC 1 4 (2017)10 SCC 1 W.P(Civil) No.193 of 2016 Page 7 and Jeeja Ghosh v. Union of India, (2016) 7 SCC 761 at para 37. The dignity of the individual encompasses the right of the individual to develop to the full extent of his potential. And this development can only be if an individual has autonomy over fundamental personal choices and control over dissemination of personal information which may be infringed through an unauthorised use of such information.....” (Emphasis supplied by us).

16. In view of the various decisions of this Court, there cannot now be any doubt that the right to live with dignity is, in effect, a part of the right to life as postulated in Article 21 of the Constitution. Such a right would be rendered meaningless if an aged person does not have the financial means to take care of his basic necessities and has to depend for it on others. It is in this context that the petitioner submitted that all elderly persons must be granted adequate pension so that they are able to sustain themselves with dignity.

17. The learned Additional Solicitor General drew our attention to the National Social Assistance Programme (NSAP) which was introduced on Independence Day, 1995 as a fully funded Centrally Sponsored Scheme. In the introduction to the Programme document, it is noted that the Directive Principles of State Policy of the Constitution enjoin upon the State to undertake within its means a number of welfare measures, targeting the poor and the destitute in particular. Article 41 of the Constitution directs the State to provide public assistance to its citizens in the case of unemployment, old age, sickness and disablement as well W.P(Civil) No.193 of 2016 Page 8 as in other cases of undeserved want, within the limit of the State’s economic capacity and development. Among the initial three components of the Programme are the National Old Age Pension Scheme which subsequently came to be known as the Indira Gandhi National Old-Age Pension Scheme, referred to above. It was submitted that the Scheme is being implemented by the Government of India but active support is required from the State Governments and the Union Territory Administrations.

18. While we cannot disagree with the learned Additional Solicitor General on the issue of active support, we are of opinion that both the Government of India and the State Governments and the Union Territory Administrations must work in tandem if they are to make the Pension Scheme workable and meaningful. In fact, it is submitted that the NSAP guidelines provide that State Governments may consider equal or more top-up to be considered for extending it to the beneficiaries.

19. It was submitted by the learned Additional Solicitor General that the economic capacity of the Government of India and of the State Governments ought not to be overlooked and a caution has been administered by this Court in paragraphs 181 and 182 in the opinion of Justice B.P. Jeevan Reddy in *Unni Krishnan, J.P. v. State of Andhra Pradesh*⁵ wherein it was held that the economic capacity of the State is 5 (1993) 1 SCC 645 W.P(Civil) No.193 of 2016 Page 9 limited and is, ordinarily speaking, a matter within the subjective satisfaction of the State. This was in the context of the right to education but it is submitted that the principle laid down is equally applicable to the present petition. It was held by this Court as follows:

“181. Right to education after the child/citizen completes the age of 14 years. The right to education further means that a citizen has a right to call upon the State to provide educational facilities to him within the limits of its economic capacity and development. By saying so, we are not transferring Article 41 from Part IV to Part III — we are merely relying upon Article 41 to illustrate the content of the right to education flowing from Article 21. We cannot believe that any State would say that it need not provide education to its people even within the limits of its economic capacity and development. It goes without saying that the limits of economic capacity are, ordinarily speaking, matters within the subjective satisfaction of the State.

182. In the light of the above enunciation, the apprehension expressed by the counsel for the petitioners that by reading the right to education into Article 21, this Court would be enabling each and every citizen of this country to approach the courts to compel the State to provide him such education as he chooses must be held to be unfounded. The right to free education is available only to children until they complete the age of 14 years.

Thereafter, the obligation of the State to provide education is subject to the limits of its economic capacity and development. Indeed, we are not stating anything new. This aspect has already been emphasised by this Court in *Francis C. Mullin v. Administrator, Union Territory of Delhi* [*Francis C. Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608]” (Emphasis supplied by us).

In this context, it is pointed out that the NSAP Scheme of the Government of India provided for a total budget of 9975 crores for covering over 3 crore below poverty line beneficiaries exclusively. It was W.P(Civil) No.193 of 2016 Page 10 also submitted that linking pension to the index of inflation may not be appropriate since the pension provided is a welfare measure.

20. While this may be so, the issue has, nevertheless, to be looked at from the humanitarian aspect as well.

The right to shelter

21. It is about two decades since this Court recognised the right to shelter or the right to reasonable accommodation as one of the basic needs of any human being. Unfortunately, while there has been some positive development in this regard, attention has not been paid to the needs of the elderly who require special care and attention which, in many sections of our society, is missing. With this in mind, the petitioner emphasised the right to shelter and referred to several decisions, many of which recognise the right to adequate shelter as a fundamental right, which we believe applies to the elderly as well.

22. In *Shantistar Builders v. Narayan Khimalal Totame*⁶ this Court recognised the right to food, clothing and shelter as being a guarantee of any civilised society. As far as the right to shelter is concerned, it was observed that there is a right to reasonable accommodation. It was held in paragraph 9 of the Report as follows:

“9. Basic needs of man have traditionally been accepted to be three — food, clothing and shelter. The right to life is 6 AIR 1990 SC 630 W.P(Civil) No.193 of 2016 Page 11 guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in.....” (Emphasis supplied by us).

23. A much fuller discussion is to be found in *Chameli Singh v. State of Uttar Pradesh*⁷ wherein this Court explained, in a sense, the requirements of the right to shelter. It was held in paragraph 8 of the Report that the right to shelter would include adequate living space but that does not mean a mere right to a roof over one’s head. It was held that the right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. It was held in paragraph 8 of the Report as follows:

“8. In any organised society, right to live as a human being is not ensured by meeting only the animal needs of man..... Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being. Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting.....” (Emphasis supplied by us).

24. Finally, in *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan*⁸ this Court referred to and followed *Chameli Singh*. More 7 (1996) 2 SCC 549 8 (1997) 11 SCC 121 W.P(Civil) No.193 of 2016 Page 12 importantly, reference was made to our obligations under international law, including the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights. The petitioner strongly relied upon our international obligations and submitted that apart from the law laid down by this Court in several judgements, we should respect and

acknowledge our international obligations in regard to the right to shelter. Reference was made to paragraphs 12 and 25 of the Report which read as follows:

“12. Article 19(1)(e) accords right to residence and settlement in any part of India as a fundamental right. Right to life has been assured as a basic human right under Article 21 of the Constitution of India. Article 25(1) of the Universal Declaration of Human Rights declares that everyone has the right to a standard of living adequate for the health and well- being of himself and his family; it includes food, clothing, housing, medical care and necessary social services. Article 11(1) of the International Covenant on Economic, Social and Cultural Rights lays down that State parties to the Covenant recognise that everyone has the right to standard of living for himself and his family including food, clothing, housing and to the continuous improvement of living conditions.

25.....The right to life enshrined under Article 21 has been interpreted by this Court to include meaningful right to life and not merely animal existence as elaborated in several judgments of this Court including Hawkers case [SLPs Nos. 47-51 of 1996], Olga Tellis case [(1985) 3 SCC 545] and the latest Chameli Singh case [(1996) 2 SCC 549] and a host of other decisions which need no reiteration.....” (Emphasis supplied by us).

25. We are in full agreement with the view expressed by the petitioner but we must be aware of the caution given by this Court to the effect that W.P(Civil) No.193 of 2016 Page 13 the right to shelter is subject to “economic budgeting” by the State. No blanket order can be prayed for by the petitioner or even argued for overlooking the financial capacity of the State. No doubt, at some stage the petitioner did contend that in matters of fundamental rights, financial issues take a backseat but it must be remembered at the same time that the resources of the country are not unlimited and when it comes to the Court directing the State to expend amounts, judicial restraint is necessary.

26. The learned Additional Solicitor General referred to the recently revised Integrated Programme for Senior Citizens. It is noted in the introduction to the Programme that there has been a steady rise in the population of senior citizens in India. The number of elderly persons has increased from 1.98 crore in 1951 to 7.6 crore in 2001 and 10.38 crore in 2011. It is projected that the number of 60+ in India would increase to 14.3 crore in 2021 and 17.3 crore in 2026. The main objective of the Programme “is to improve the quality of life of the Senior Citizens by providing basic amenities like shelter, food, medical care and entertainment opportunities” It is also proposed to encourage productive and active ageing through providing support for capacity building activities. It was submitted that under this Programme grant-in- aid is given for running and maintenance of senior citizens homes, homes for elderly women etc. W.P(Civil) No.193 of 2016 Page 14

27. There can be no doubt that the right to shelter is an important constitutional right and therefore shelter must be made available to everybody and to the maximum extent possible. With this in view, the Government of India has framed schemes, inter alia, for homeless persons particularly in urban areas but it is time to recognize that there are a large number of elderly persons in several parts of

the country, including rural India, who are rendered 'homeless' due to migration of their families to other parts of the country and even outside the country. While some of these elderly persons are certainly not destitute, but they do need assistance because of their age and are willing to pay and contribute for a roof over their head. In the absence of a suitable number of old age homes, and homes as per their status, they are left to fend for themselves making them vulnerable to mishaps and other unforeseen events.

The right to health

28. It was submitted by the petitioner that medical facilities and geriatric care are not given the due importance that they deserve. He submitted that, by and large, it is older persons who require medical care more frequently than younger persons and if they are not provided the necessary medical facilities, it would adversely impact on their right to health. In support of his contention that the right to health is a human W.P(Civil) No.193 of 2016 Page 15 right and a constitutional right, the petitioner referred to a few decisions which we detail hereinbelow.

29. In *Vincent Panikurlangara v. Union of India* 9 this Court did not specifically deal with the right to health of the elderly but it did make reference to Article 21 of the Constitution and noted that it includes within it the right to live with human dignity. In fact, Article 21 derives its life breath from some Articles in the Directive Principles of State Policy, particularly, Articles 39, 41 and 42 of the Constitution. While these Articles do not directly deal with the right to health of the elderly, it is quite obvious that when they refer to the protection of the health and strength of men and women, it must include the elderly. It was said in paragraph 16 of the Report as follows:

16. ... "It is the fundamental right of everyone in this country, assured under the interpretation given to Article 21 by this Court in *Francis Mullin* case [*Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, [(1981) 1 SCC 608] to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses

(e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of the workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief...." (Emphasis supplied by us).

9 (1987) 2 SCC 165 W.P(Civil) No.193 of 2016 Page 16

30. A similar view was expressed by this Court in *Consumer Education & Research Centre v. Union of India* (paragraph 25)¹⁰ and *Kirloskar Brothers Ltd. v. Employees State Insurance Corpn.* (paragraph 10)¹¹.

31. In *State of Punjab v. Mohinder Singh Chawla* (paragraph 4)¹², *Nagar Nigam v. AL Faheem Meat Exports (P) Ltd.* (paragraph 26)¹³ and in *Occupational Health and Safety Association v. Union of India* (paragraph 10)¹⁴ the right to health was given the status of a fundamental right flowing from Article 21 of the Constitution. There is, of course, no going back on this.

32. It has been brought to our notice by the learned Additional Solicitor General that the Government of India has launched the National Programme for Healthcare of the Elderly during 2010-11. The objective of this National Programme is to provide dedicated healthcare facilities to senior citizens, that is, those above 60 years of age at the primary, secondary and tertiary healthcare delivery system. The basic aim of the National Programme is to provide separate and specialised comprehensive healthcare to senior citizens at various levels of the State healthcare delivery system including outreach services. 10 (1995) 3 SCC 42 11 (1996) 2 SCC 682 12 (1997) 2 SCC 83 13 (2006) 13 SCC 382 14 (2014) 3 SCC 547.

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33. The Union of India has also pointed out that the activities relating to the implementation of the National Programme are ongoing and it is not as if the objectives and goals of the National Programme can be achieved overnight.

34. The petitioner concedes that the National Programme has some positive components but it is submitted that they are not being implemented effectively or have not been fully operationalised in some districts of the country. One of the gaps pointed out by the petitioner is that there is no reliable information about the number of beds reserved for geriatric care in government or private hospitals or information regarding specific geriatric centres. It is submitted that these details must be provided for all 719 districts of the country.

35. We fully appreciate the view of the Union of India but at the same time, it must be emphasised that the National Programme is now about six or seven years old and it must be implemented with due earnestness, otherwise it will remain only a paper programme. There is undoubtedly a lot that has been achieved in the last few years but there is still a lot that is required to be achieved and we expect the Union of India and all the State Governments and Union Territory Administrations to take an active interest in the implementation of the National Programme.

W.P(Civil) No.193 of 2016 Page 18 The Maintenance and Welfare of Parents and Senior Citizens Act,

36. While the petitioner emphasized the constitutional rights available to everybody including the elderly, such as the right to live with dignity, the right to shelter and the right to adequate medical care and geriatric care, the petitioner relied, has an alternative, on statutory provisions for the existence of these rights. It was submitted by the petitioner that even if the Constitution was not to be given an expansive meaning, there are statutory rights which are enforceable by the elderly under a law made by Parliament and that is the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (MWP Act) [37. The petitioner drew our attention to a few provisions of the MWP Act to substantiate his contention. In particular, he drew our attention to Section 19 of the MWP Act which

deals with the establishment of old age homes and requires each State Government to establish and maintain at least one old age home in every district in the country with each old age home having accommodation for 150 senior citizens who are indigent. Section 19 reads as follows:

19. Establishment of oldage homes-

1. The State Government may establish and maintain such number of oldage homes at accessible places, as it may deem necessary, in a phased manner, beginning with at least one in each district to accommodate in such homes a minimum of one hundred fifty senior citizens who are indigent.

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2. The State Government may, prescribe a scheme for management of oldage homes, including the standards and various types of services to be provided by them which are necessary for medical care and means of entertainment to the inhabitants of such homes.

Explanation. – For the purposes of this section, “indigent” means any senior citizen who is not having sufficient means, as determined by the State Government, from time to time, to maintain himself.

38. The submission of the petitioner and the learned Amicus is that though more than 300 old age homes have been established in different parts of the country, the requirement is of many more considering the large population of indigent elderly. It was submitted that some homes are in a dilapidated condition, without adequate facilities including geriatric care. In other words, in several instances, the law laid down in Section 19 of the MWP Act is being complied with only in letter and certainly not in spirit.

39. Our attention was also drawn to Section 20 of the MWP Act which provides for medical support for senior citizens. Government hospitals or hospitals funded fully or partially by the State Government are mandated to provide beds for all senior citizens, as far as possible. Facilities for geriatric patients are also required to be earmarked by this Section of the MWP Act. Section 20 of the MWP Act reads as follows:

20. Medical support for senior citizen-

The State Government shall ensure that -

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i. the Government hospitals or hospitals funded fully or

partially by the Government shall provide beds for all senior citizens as far as possible;

ii. separate queues be arranged for senior citizens; iii. facility for treatment of chronic, terminal and degenerative diseases is expanded for senior citizens;

iv. research activities for chronic elderly diseases and ageing is expanded;

v. There are earmarked facilities for geriatric patients in every district hospital duly headed by a medical officer with experience in geriatric care.

40. The submission of the petitioner and the learned Amicus is that there is a huge gap between the law and its implementation and it is submitted that even though the MWP Act came into force in 2007 and more than a decade has passed since then, serious efforts have not been made by the Government of India or by the State Governments to ensure that medical facilities for the elderly and geriatric care is made available.

41. It is further submitted by the petitioner that assuming for the sake of argument that the provisions of the MWP Act are in place and are being implemented as they should be, the elderly are not aware of their human rights guaranteed not only by the Constitution but also by the MWP Act. It is pointed out that Section 21 of the MWP Act requires the State Governments to give publicity to the provisions of the said Act through all modes of public media. There is also a mandate for effective coordination between various ministries and departments of the State W.P(Civil) No.193 of 2016 Page 21 Government to address the issues relating to the welfare of the elderly and more importantly, a periodic review is required to be conducted.

42. The submission of the petitioner is that there is hardly any publicity given to the provisions of the MWP Act and despite efforts by several organisations such as HelpAge India, the rights of the elderly to shelter and medical facilities as well as geriatric care remains only a pipe dream. It is submitted that the Government of India must come out with a workable plan to give publicity to the provisions of the MWP Act so that the elderly can live the remainder of their life with dignity.
Discussion

43. Having heard the petitioner, the learned Amicus and others including the learned Additional Solicitor General, we are left in no doubt that the petition raises significant issues relating to the recognition and enforcement of the fundamental rights of the elderly. This is perhaps the first such petition on the subject and interestingly, the submissions of the petitioner are based entirely on Article 21 of the Constitution and other supporting constitutional provisions.

44. We accept that the right to life provided for in Article 21 of the Constitution must be given an expansive meaning. The right to life, we acknowledge, encompasses several rights but for the time being we are concerned with three important constitutional rights, each one of them W.P(Civil) No.193 of 2016 Page 22 being basic and fundamental. These rights articulated by the petitioner are the right to live with dignity, the right to shelter and the right to health. The State is obligated to ensure that these fundamental rights are not only protected but are enforced and made available to all citizens.

45. The petitioner has raised, alternatively, an equally significant issue namely that even if the constitutional rights are not enforceable due to difficulties in “economic budgeting” even then the law enacted by Parliament in the form of the MWP Act mandates the protection and enforcement of the rights of elderly persons. It is quite clear, submitted the petitioner, that Parliament was fully aware of the financial impact of the law. Considerations of “economic budgeting” by the State both at the level of the Government of India and at the level of the State Governments must have been taken into account while enacting the legislation. Therefore, there cannot be any excuse of lack of finances either by the Government of India or by the State Governments in strictly implementing the provisions the MWP Act. In short, if not the constitutional then at least the statutory rights of elderly persons must be recognised and implemented.

46. The consensus that emerged during the submissions was that this Public Interest Petition should not and cannot be taken as an adversarial litigation. With this agreement we had put it to the learned counsel and W.P(Civil) No.193 of 2016 Page 23 parties before us to suggest ways and means to ensure that the rights of the elderly are addressed keeping in view the financial requirements and the availability of finances with the Government of India and the State Governments. One solution proffered was that this Court should issue a continuing mandamus so that there is effective implementation of the constitutional rights of the elderly and the provisions of the MWP Act.

47. We are in agreement with the consensus view that emerged during the course of discussions and submissions and are of opinion that a set of directions issued by this Court will not fulfil the constitutional mandate or the mandate of the MWP Act. There is a need to continuously monitor the progress in the implementation of the constitutional mandate to make available to the elderly the right to live with dignity and to provide them with reasonable accommodation, medical facilities and geriatric care. While this may take some time, the only available solution is a continuing mandamus which is a well-recognised practice and procedure adopted by this Court in several cases to ensure that the rights of the people are respected, recognized and enforced and that social justice as postulated by the Preamble in the Constitution is given meaning and teeth.

48. We wish to make it clear that we are not at all critical of the efforts made by the Government of India or by the State Governments, nor is this Public Interest Petition intended to undermine the efforts being made or W.P(Civil) No.193 of 2016 Page 24 contemplated. Nevertheless, we are of the view that given the constitutional importance of the issues raised, focused and perhaps more vigorous efforts are needed.

49. In this context, we may note that the learned Additional Solicitor General submitted that an evaluation study is contemplated on all aspects of the National Social Assistance Programme for use of best practices and to bring about uniformity in the implementation of the Scheme in all States. In addition, a social audit for the NSAP schemes is also contemplated and guidelines have been issued for a social audit as recently as on 30th November, 2018 for the launch of a social audit pilot in 21 States and Union Territory Administrations.

50. To take this forward, we are of opinion that it would be appropriate to issue some initial directions so that effective contributions are made to recognise and enforce the rights of elderly

persons. Directions

51. Taking note of the submissions made by the parties before us and while complimenting them for a spirited support of the rights of the elderly, we issue the following directions for the time being:

1. The Union of India will obtain necessary information from all the State Governments and the Union Territories about W.P(Civil) No.193 of 2016 Page 25 the number of old age homes in each district of the country and file a Status Report in this regard.

2. The Union of India will also obtain from all the State Governments the medical facilities and geriatric care facilities that are available to senior citizens in each district and file a Status Report in this regard.

3. On the basis of the information gathered by the Union of India as detailed in the Status Reports, a plan of action should be prepared for giving publicity to the provisions of the MWP Act and making senior citizens aware of the provisions of the said Act and the constitutional and statutory rights of senior citizens.

4. Section 30 of the MWP Act enables the Government of India to issue appropriate directions to the State Governments to carry out and execute the provisions of the MWP Act. The Central Government must exercise its power in this regard and issue appropriate directions to the State Governments for the effective implementation of the provisions of the MWP Act. Alongside this, the Central Government must, in terms of Section 31 of the MWP Act, conduct a review for the W.P(Civil) No.193 of 2016 Page 26 purposes of monitoring the progress in implementation of the MWP Act by the State Governments.

5. Some of the schemes referred to hereinabove are comparatively dated. It is high time that the Government of India has a relook at these schemes and perhaps overhaul them with a view to bring about convergence and avoid multiplicity. In particular, the Government of India and the State Governments must revisit the grant of pension to the elderly so that it is more realistic. Of course, this would depend upon the availability of finances and the economic capacity of the Government of India and the State Governments.

52. The Status Reports should be filed by the Union of India through the learned Additional Solicitor General on or before 31st January, 2019.

53. List the matters for further proceedings on receipt of the Status Reports.

.....J .

(Madan B. Lokur)

New Delhi;
December 13, 2018

.....J.
(Deepak Gupta)

W.P(Civil) No.193 of 2016

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (C) No. 81 OF 2015

Sanjeeb Panigrahi

.... Petitioner

versus

Union of India & Ors.

.... Respondents

ORDER

For orders and directions, see W.P. (C) No.193 of 2016 – Dr. Ashwani Kumar v. Union of India & Ors.

.....J.
(Madan B. Lokur)

New Delhi;
December 13, 2018

.....J.
(Deepak Gupta)

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