
(1990) 1 PLJR 769

Patna High Court

Case No: Criminal Writ Jurisdiction Case No. 182 of 1988

Sanat Kumar Sinha

APPELLANT

Vs

The State of Bihar and
Others

RESPONDENT

Date of Decision: April 5, 1990

Citation: (1990) 1 PLJR 769

Hon'ble Judges: S.S. Hasan, J; S.H.S. Abidi, J

Bench: Division Bench

Advocate: Ashok Priyadarshi, for the Appellant; J.N. Pandey and M.A. Rahmani, for the Respondent

Judgement

S.S. Hasan, J.

This application was filed by a public spirited individual who desires to invoke the jurisdiction of this Court for trying to ameliorate the appalling condition of the various institutions for women and children which have been established by the Government of Bihar in the Welfare Department. To these homes are consigned the unfortunate of unfortunates-both women and children-due to the vagaries of misfortunes that befall them in their journey of life. This Court by an order dated 20.3.1989 had constituted a committee consisting of the Registrar (Judicial) of the High Court, the Additional Advocate General Mr. Jagdish Pandey, Mr. Ram Suresh Roy, Advocate Mr. Ashok Priyadarshi, Advocate and Mr. Lala Kailash Bihari Prasad, Advocate. This committee was directed by this Court to visit the institutions concerned and submit its reports. We had also directed the Welfare Department to provide adequate funds and facilities to enable the committee to perform its self imposed and voluntary public duty at great persona sacrifice which we commend and record our appreciation Although money was provided, though not very essily, little was done by way of providing basis comforts, like boarding and lodging, in Government accommodations. In spite of this, the team went through its arduous tasks and had consequently produced reports in relation Id the following institutions:

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4. Religion
5. Caste
6. Education
7. Occupation
8. Marital Status
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2. Since the dawn of civilisation, women have always been subjected of varied interest of men and the society. They have also been subjected to multifaceted treatment at all times. Women, have been worshipped, adored, respected, honoured, loved, cared for and subjected to tender tender care but the same women, at the same time, has been subjected to ill treatment, humiliation, degradation, hatred and even harmed physically and mentally after facing inhuman treatment. They have been, in the process treated like transferable commodities on sale for whom bargains were struck in favour of depraved interested men. Now, however, social and human rights imperatives require that a woman be endowed with unflinching attention care, (sic) affection and kindness and given proper status in a society of male chauvinism. Our Constitution, the Government of the country the Governments all over the world and the International Community and organisations have laid great stress on the rights of a woman and have always striven to provide her with her rightful place in the society being equal to that of a man in all social, cultural, political and commercial spheres. Flesh trade in women and the institution as old as the time itself, is now abhorred and an all out crusade has been launched everywhere to prevent and eradicate it. Opportunities arc being created for women to move and exist side by side with men in varied fields all over the world.

3. Similarly, children have also been receiving the greatest attention by the world community in general and the Government of this country in particular. There is an all out endeavour to ensure that children are no longer subjected to the treatment meted out to them by Fagins of our society who exploit innocent children for the nefarious purposes of making easy money. Not only this poverty also leads to the abandonment of such children who at an age when they should have been free from the problems meant for

adults to solve are thrown away and they have to enter into the premature foray for making a living in this unconcerned world. They start begging for money when they should be receiving education and care. These children in spite of being the future hope of any country, in all likelihood, become the future die hard criminals in the society they live in. For this purpose, several institutions have been set up with the task of resurrecting the children from their present state of degradation and horror and to restore to them the world that is theirs in view of their age.

4. In India, in order to accomplish all this, one of the steps taken has been the creation of the Department of Welfare in the Centre and the States with the main purpose of looking after the interest of women and children in India. This department has set up the aforesaid institutions in various districts in Bihar including the Patna After Care Home for women. Since all of them are facing the same sort of problems and difficulties, we are proceeding in what we have to say hereafter by making Patna After Care Home as an example. However, whatever we say will be of universal application to all the aforesaid institutions because from a careful a careful examination of the report file by the Committee the condition of all these institutions is by and large the same as in Patna, there being only few where the condition though not very satisfactory, is really not as bad as in the rest of the institutions.

5. We are anguished and distressed to state straightway that the After Care Home for Women at Patna and all the other institutions mentioned above are neither a Home nor do they provide care for any women or children who have been ill fatedly consigned to these institutions after being supposedly rescued from a cruel and unhappy situation within the family or outside or from a prostitute's den or from their own homes and hearths after being subjected to brutal and inhuman treatment by those who are to love them, cherish them or protect them or as a result of men's brutal treatment in cruel satisfaction of his carnal desire thus being left abandoned. The woman finds herself within the horrendous confine of an institution which, instead of ameliorating her situation, consigns to a smake pit existence of dishonour and degradation and for physical discomforts, uncared for, unattended to and completely forgotten. One would expect that once a women, being the unfortunate victim of circumstances is brought to this institution, she will be relived of her physical and mental agony provided with sympathy, affection, kininess and, above all, a respectable and comfortable existence and a reasonably decent abode to live in with congenial surroundings provided by feeling of sympathy, kindness and understanding. It would also be expected that opportunities for rehabilitating these unfortunate women would be created. But what a victim woman faces there is entirely different. The so called Homes are structures in utter dilapidation making the existence entirely perilous and where the basic necessities of life are entirely inadequate and in some cases even absent. Basic commodities that any human being would need in course of every day existence is inadequate. Food, clothes, beddings, medical attention and the like are at places totally absent and at any rate entirely inadequate. There is no arrangement for providing education to the illiterates, to equip them with the capacity to

obtain jobs and employment or for providing vocational training which would make them adequately equipped to earn their own livelihood leading to love, living with dignity and honour in a hostile society and is weak enough to damn them but not strong enough to lift them from the situation they have fallen into No health care is provided to the inmates of these institutions which is a matter of prime importance in any place where human beings are living ostensibly for being cared for and looked after. I shall deal with this part separately later.

6. Succinctly put, if these were not enough, there are also reports of inhuman and brutal treatment of the inmates by the very persons in whose care the inmates have been put and their cohorts which at times extends to forcing them into a situation from which they have been rescued. If we may say so, the After Care Homes and the other institutions, as they stand to day are perhaps much worse than the brothels and streets from which most of them are supposed to have been resurrected and the jail where a large number of prisoners are either undertrial or are facing their punishment, or the streets of cities from where they have been picked up. Here the inmates are virtually consigned to the limbo and forgotten like lost tribe to be dealt with as if they were animals sold in a fair or even subjected to the very treatment from which they have been resurrected. From all counts, there appears to be no end of their misery. It will be correct to say that for them life is from here to eternity-and that too without raising a demur, a protest and a cry for help. All these for fear of reprisal and harsh treatment I may quote a couplet:

"Bulbulo mat ro yehan, anshu behana hai mana." In kafash ke kaidiyon ko gul machana hai mana"

(English translation)

"O night ngle don't weep here because shedding tears is prohibited;

These prisoners of the cage are forbidden from even raising a cry.

7. Similar is the condition in the institutions set up for juveniles. The situation is part material the same. Juveniles are not provided basic human necessities, proper medical care of environment conducive to their health. Facilities for education are provided on paper in some institutions which are meant for reforming the juveniles, often accused of a crime of those lifted from the streets of cities, were found themselves being inducted into a life of crime and dangerous existence by complete neglect. There are instances in which children are being misused by those who have been designated with task of protecting them. Life to them is the same from which they have been rescued. There are institutions where adults have been inducted as borders without any authorisation who treat these juveniles as their (sic). There are some institutions in which hale juveniles are living with female inmates. there are many who are undertrials or those who have been convicted. After being acquitted or after their release in pursuance of the legal situation now existing by virtue of statutory pronouncement and the decisions of the apex court

and this Court, there is once again no future for these juveniles. Once again they are placed in the same situation and the environment which brought them in this institution. No attention is being paid by the Government to all this. The plight of the juveniles cannot be expressed better than this couplet:

Phool to ek din bahara ja phija dekhla gaya. Hasrat un gencho per hai jo bin khile murjha gaya

(English translation)

Flowers display the salubrious spring but buds who whittle, many without flowering, are to be pitied.

We are also constrained to observe that the concerned departments and such persons who are entrusted with the task of exercising supervision and control over these institutions have singularly failed in their duty to do what is required of them in regard to these institutions. We are anguished to observe that not only the official machinery is completely indifferent to the situation, even the basic human feelings towards humans trapped in these homes is non-existent. Immediate attention is now required to be paid by the Government, the concerned departments and social and welfare organisations and individuals as it is intended to remedy the situation and bring about a radical change for ameliorating conditions of these institutions.

Medical care.

8. In this connection, we had called for reports from the Civil Surgeons of all the districts where such institutions are situate. The reports, to describe them succinctly are tardy attempt to avoid confession of negligence which, if objective reports had been given would be writ large. In most cases, Civil Surgeons have only given about the condition of the building and the lack of facilities to the inmates and have only given vague facts about the health of the inmates without any specific details in regard to any one as described by me. What they say, however, is enough to indicate that medical care is totally absent. The inmates are suffering from skin disease, malnutrition, anaemia serious afflictions like tuberculosis, Venereal diseases etc. In the Patna After Care Home an adult inmate and a child lost their lives due to the reasons unknown from the records. Regretfully, no case was instituted. In fact police was not informed and one wonders how an infant child was found there to lose its life. Others will also die if the attitude of the Civil Surgeon continues to be what it is. In fact, it is only due to our instructions that a rare visit has been made to the institution by the doctors. Perhaps, due to the paucity of fund or misuse of fund, even basic medicines have not reached the inmates.

Judiciary.

9. The district judiciary has also failed to take both judicial as well as social interest in the matter. Firstly, the District Judge on the basis of the Supreme Court decisions, referred to

above should have inspected the institutions and should not have rested if they have done so by merely having done so and they should have reported the matter to the proper authorities if they found during their visit that the situation was such that Reserved the attention of the authorities. The Court in which the inmates of these institutions are either accused or are vagrant on remand, should have also seen that their efficient interest is shown in the early disposal of these cases in trying to find the places or individuals to whom such inmates, as is possible, are handed over. Recently, in C.W.J C. No. 89 of 1989 (1989 PLJR 1024) we had in our judgment given specific instructions in relation to the cases concerning juveniles. We have received reports and we have sought another set of reports from the District Judge. The reports were utterly unsatisfactory and we have not been yet furnished complete materials to satisfy ourselves whether our orders have been obeyed. We direct the District Judge of the judgeships concerned to inspect these institutions in their jurisdictions in accordance with direction of the Supreme Court and send reports of those institutions to this Court in this application so that they may be examined here. They should also send monthly report to this Court in this application in regard to the cases pending and their stage of proceeding and the result in which juveniles and other inmates of the institutions are involved. We direct the State Government to implement the decision of the Supreme Court reported in 1988 PUR 93 (SC) Vikramdeo Singh Tomar v. State of Bihar and we direct also to take further steps in line with the direction of the Supreme Court reported in [Dr. Upendra Baxi and Others \(II\) Vs. State of U.P. and Others, .](#)

10. It appears now necessary that specific and appropriate directions are issued by us to the concerned authorities in our bid to ensure that the After Care Homes for women all over Bihar and the institutions set up for the juveniles are maintained and run like institutions meant for human beings and not sub-humans and these inmates are provided with the relief that will rescue them from their unhappy existence to which fortunes and, perhaps, their own conduct has consigned them. This we do in fulfillment of our desire of seeing that victims of momentary misfortune should not be subjected to eternal misfortune in these institutions. We, therefore, issue the following directions in regard to the inmates of all the After Care Homes for women and other institutions. Compliance of these directions will be closely watched by us and we will be constrained to take stringent legal measure to enforce them should any one be found lacking in performance of his duty because upto now we have found that the State officials have, instead of trying to cooperate with us in solving the problems which are more human and social than anything else, have always tried to create obstructions and present unjustified explanations or showing tardy and incomplete implementations to cover up a patently undesirable situation. Even the directions given by the apex Court in the cases aforementioned have been ignored by the powers that be.

11. We direct as follows:

(i) The Secretary. Welfare, the Director Welfare, the Secretary, Building Construction & Development Department, the Commissioner, Human Resources Department, Health

Commissioner-cum-Secretary and the Finance Commissioner, Government of Bihar, Patna, are all directed to provide adequate finances for immediate renovation and future repairs of all the buildings in the State of Bihar in which these institutions are situated. It would be advisable if the Government itself constructs its own buildings for this purpose but till then these buildings must be kept in proper repair and maintenance and provided with necessary facilities that are required for any residence. This must be accomplished within four months definitely and positively;

(ii) The conduct of the matrons and the superintendents as well as of those class III and IV employees posted in these institutions should be kept under strict surveillance and such persons should also be subjected to frequent transfer to avoid any misuse of position by them. Unnecessary staff should be removed and persons, whose presence can be useful in the institutions, be posted. Care should be made to find persons dedicated to the spirit of public service and not those who treat these institutions as avenues for self aggrandisement;

(iii) Immediate steps should be taken to provide such personnel who can impart education and vocational training to the inmates. This should be done forthwith. We feel that these institutions should be converted into small schools and vocational centres in line with other schools so that the inmates may, if they have to stay there for some time, be imparted educational and vocational training;

(iv) The Civil Surgeons of the District and the Assistant Civil Surgeons, qualified for specific kind of ailment, must visit, the institutions every week, give a complete check up to each of the inmates and prepare a report which should be maintained, in a register signed by the doctor and the inmate both in regard to each of the inmates. In fact, it will be more advisable if Assistant Civil Surgeons are posted specially in each of such institutions or one for two institutions if there are two in one city. If any emergent treatment is necessary, it should be provided for immediately by so expert. All necessary medicines must be provided immediately when required. Civil Surgeons of the District will be personally responsible for the observance of these instructions;

(v) adequate fund should be made available for providing food, wearing apparels bedding etc. and toilet requisites for each of the inmates forthwith. We clarify-sufficient funds should be made available to each of the institutions so that an inmate is provided with three square meals per day. Each meal should consist of the barest minimum food at least wholesome that can keep body and soul together. Rice and chapatis sufficient for human requirements must be provided with dal and vegetables at two meals, that is, lunch and dinner and a breakfast of tea and bread. If any inmate, indisposed, requires special diet, that should be provided. Wearing apparels of at least four saris, four blouses, petticoat etc, and similarly payajama, kurta etc, for juveniles and shawls and Coats for winter must be provided to the inmates. Each of the inmates must be provided two blanket is de hewhrt, bedsheets and one pillow with pillow cover. In facts, we feel that all similar facilities give to A class prisoners in jail should be provided in regard to these

inmates;

(vi) efforts should be made immediately by communicating with the parents or husbands or relations as the case may be, of each of the inmates, so that if occasion arises then these inmates, after following the procedures required by law and our directions that we propose to give hereafter, can be handed over to such persons;

(vii) if any of the persons categorised above and if any person of any other categories disown the inmates then we direct the District Magistrate of the district concerned, the Superintendent of Police of that district and the Director, Welfare, to find suitable employments for these inmates in Class III or Class IV cadre of the Government in the Collectorate or in the Police Service. They should be given preference when appointments are made and in fact they should be given ad hoc appointments immediately. Efforts should also be made to provide domestic employments for such inmates by way of advertisement and interview by desirable persons and individuals who may desire the services of these adult inmates as domestics. Even in case of juveniles, attempts should be made to get them adopted by suitable persons or institutions. Who desire to settle down as a Housewife married to a suitable person, this should be done after following the prescribed procedure of informing the Court concerned and getting its approval for this purpose also, advertisement should be made. While effecting such marriages, care should be taken, firstly, to ensure that the man wanting to marry is suitable, the environment in his home is conducive and his relations proper. Care should also be taken that an inmate is married to a man of the same faith except in cases where both the man and the woman though of different faiths, agree to the marriage;

(viii) if any inmate is an accused in a criminal case then the Court concerned is directed to dispose of such cases with the greatest of expedition by giving top priority and in the case of juveniles following the directions given by us in the case of Sanat Kumar Singh vs. State and Ors. (1989 PUR J 024) and by the Supreme Court in the cases reported in (supra) and [Dr. Upendra Baxi and Others \(II\) Vs. State of U.P. and Others](#), . We are not possessed of any details. The District Judge of the district concerned is directed to see that the courts in which cases involving women and juveniles are pending are disposed of with the greatest of expedition in accordance with the statute and decisions of the Supreme Court. We have already asked for the reports from all the District Judges in regard to the cases pending in their judgements. In future, the District Judges are directed to send monthly progress report of such cases to the Hon"-ble Inspecting Judge of the judgement concerned ;

(ix) such inmates who are witnesses in criminal cases either as eye witness and/or as victims themselves should be produced by the authorities concerned before the Chief Judicial Magistrate or any other court concerned within 15 days from the receipt of the communication of this order and that court should, after recording their statement and obtaining P.R. bonds for ensuring their appearance as witness, release them forthwith from the remand home and hand them over to their parents or have them sent to the

places and the persons they want to go by Government expenses and under proper Police escort. Such transfer of custody must be properly monitored by the court concerned to ensure that it is not misused in transit. In case of such inmates who have been put in the remand homes on the complaint of the father of having fled away with the man they love and in some cases married, such inmates should be forwarded to the Courts by the Remand Home authorities immediately and the Court concerned should release them from the custody of the Home forthwith, if they are 18 years of age, after informing the persons where these inmates want to go and in case they are under 18 years of age, to their parents. If these girls are, shunned by both their husbands and parents, then they should, after reporting the matter to this Court, be remanded to the Home where suitable arrangements should be made in accordance with law on the directions issued from this Court for the purposes of their rehabilitation.

(x) we would like also to draw the attention of the aforesaid authorities of the institutions provided for juvenile children both as remanded children or as undertrial prisoners. Their problems are identical. The treatment meted out to the inmates is as bad as ever. By this order we direct the concerned Government authorities as aforesaid to endow these institutions with their attention and to make provisions to ensure that these institutions also are restored to the position that they may be useful for those who are consigned to them.

12. The above directions must be followed without any delay by the concerned authorities in letter and spirit without giving any occasion to us to enforce them by stringent measures. This is only a small effort to rectify things and to ensure that there is harmony between moral and deed. Where we talk of women's lib; where we celebrate women's year; where we reserve seats for women in various institutions-political, social, and cultural; and where the women are now becoming active in all spheres of life-social, political, and cultural, the existence of the situation created by such institutions is utterly undesirable and is a complete negation of all that we stand for. Similarly, where efforts are being made by the international community and the national institutions for the protection of the children from diseases, pestilences and the like and have provided them with everything that would ensure for them a future which in most cases they are deprived of, yet the institutions for children in Bihar are completely in antithesis to the prevailing efforts of the international world community and national institutions. Those who have been responsible for creation of such Situation will be held responsible to the society at large and those who are responsible will be required to be dealt with severely unless things are put in proper order. In fact, we have already directed the Central Bureau of Investigation to institute cases on the basis of the reports submitted.

13. In this connection, attention is drawn to the decision of the Supreme Court in the case of *Vikramadeo Singh Tomar v. The State of Bihar* (supra). The directions given in this decision have been flagrantly violated and disobeyed. We have, therefore, no option but to convey these facts to the Supreme Court. We, therefore, direct that the copy of this judgment, the entire order sheet and the copies of the reports be forwarded to the

Registrar of the Supreme Court for drawing the attention of that Court.

14. In Course of hearing of this application, we have passed numerous orders giving specific directions. They relate to finding out the persons to whom the inmates could be handed over for training of the juveniles to be sent and even restoring a child to his father and wives to husbands. We have also in another application (Cr. W.J.C. 89 of (1989) 1989 PLJR 1024 given specific directions in regard to cases in which juveniles are involved. We have so far succeeded in a very small measure, Therefore, we direct that this application should be kept on the record and the committee formed by this Court should continue to exist subject to any change in its composition that may be effected by this Court if and when necessary. We also direct the authorities to afford full facility to this Committee in the line suggested by us in order to enable them to visit any of the institutions and submit periodical reports to this Court in this application and obtain necessary directions in relation to the compliance of our order and for any future exigency. Whenever such an exigency arises, (sic) matter should be listed before a Bench (sic) over by Hon"ble Mr. Justice S.H.S. (sic)

15. We are gratified for having done so (sic) did fructification and success (sic) We want in expectant silence, (sic) disquiet and with an apparent un-(sic) because of the belief that human (sic) feelings are not yet entirely dead in the hearts those at the helm of affairs and dence of rectitude still prevails. As Ohalib said:

Nashapilake girana to sabko aata hai, maja to jab hai ki girton ko tham le shaki.

Let history not say that the women and the children of the institutions in Bihar could not, while the world holds symposiums and seminars get the professed determination to perform the miracle of resurrecting the women and the children from their dead existence. Lest history not say that these inmates have been let down by indifference, inefficiency, lack of humanity and above all unwarranted exploitation.

S.H.S. Abidi, J.

16. I agree.