

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P. (C) No.6610 of 2006

Krushna Prasad Sahoo

....

Petitioner

Mr. Gautam Misra, Senior Advocate,
Amicus Curiae

-versus-

State of Orissa and others

....

Opposite Parties

Mr. Debakanta Mohanty, Additional Government Advocate
Mr. S.N. Das, Additional Standing Counsel

CORAM:

THE CHIEF JUSTICE

JUSTICE R. K. PATTANAİK

ORDER

11.04.2022

Order No.

37.

1. There are two purposes for which the matter has been taken up today, *suo motu*. One purpose is to deal with the issue concerning women inmates in the jails. A letter dated 1st April 2022 has been sent to the Court by MAADHYAM, a non-governmental organization, which is working on the project 'KIRAN' which provides rehabilitation to undertrial prisoners in various jails in Odisha in collaboration with the Directorate general (DG) of Prisons and Correctional Services. They have expressed concern about the mental health of single women inmates in as many as eight Sub-Jails in Odisha. In eleven Sub-Jails, there are two or less female under trial prisoners. The suggestion is that they should be moved to the nearest Sub-Jail which has more than one female inmate.

2. A copy of this letter be made available to Mr. Debakantoa Mohanty the learned Additional Government Advocate (AGA) who will transmit it to the DG, Prisons right away. Another copy be made available forthwith to the Secretary, Odisha State Legal Services Authority (OSLSA).

3. Mr. Subhakant Mishra, DIG, Prisons is present in virtual mode and states that instructions have already been issued to the concerned Sub-Jails to shift the single inmates to the nearest Jails/ Sub-Jails where there are other women inmates. Mr. Gautam Misra, learned Amicus Curiae has suggested that the DG Prisons may even consider the conditional release of such women prisoners. The DG Prisons is directed to consider even this possibility. A compliance report in this regard be placed before this Court by the DG, Prisons positively within one week i.e. on or before 18th April, 2022.

4. The second issue that the Court is deeply concerned about arises from a surprise visit undertaken by one of our colleagues Mr. Justice S.K. Panigrahi, J. to the Koraput Sub-Jail when he was visiting that District as the Administrative Judge In-Charge. He has reported how the condition of the toilets in the Koraput Sub-Jail is appalling. They are unusable and in an utterly filthy condition. Justice Panigrahi has also drawn the attention to the fact that the food served in Koraput Sub-Jail was of very poor quality and simply inedible. In other words, it was not fit for human consumption at all.

5. The Court expresses its deepest concern on these issues. The DG Prisons in Odisha hardly needs reminding that no prisoner is

denuded of the basic fundamental right to dignity and decent living within the prison walls. As Justice Krishna Iyer, speaking for the Supreme Court of India, reminded in *Sunil Batra (II) v. Delhi Administration (1978) 4 SCC 409*:

“Neither the Penal Code nor the Criminal Procedure Code lends validity to any action beyond the needs of safety and any other deprivation, whatever the reason, has not the authority of law. Any executive action which spells infraction of the life and liberty of a human being kept in prison precincts, purely for safe custody, is a challenge to the basic notion of the rule of law unreasonable, unequal, arbitrary and unjust.”

6. Subsequently in *Sunil Batra (II) v. Delhi Administration* the Supreme Court summarized the dictum in *Sunil Batra (I)* thus:

In *Batra's* case, this Court has rejected the hands-off doctrine and it has been ruled that fundamental rights do not flee the person as he enters the prison although they may suffer shrinkage necessitated by incarceration. Our constitutional culture has now crystalized in favour of prison justice and judicial jurisdiction.”

7. In the same judgment, the Supreme Court further held:

“We, therefore, affirm that where the rights of a prisoner, either under the Constitution or under other law, are violated the writ power of the court can and should run to his rescue. There is a warrant for this vigil. The court process casts the convict into the prison system and the deprivation of his freedom is not a blind penitentiary affliction but a belighted institutionalisation geared to a social good. The court has a continuing responsibility to ensure that the constitutional purpose of the deprivation is not defeated by the prison administration.”

8. The Court hereby issues a directive to the DG, Prisons to ensure that there is not a single Jail, Sub-Jail in Odisha where the toilets,

the prison wards are found wanting in cleanliness and hygiene. Further, the food quality has to be of the best possible standard given the budget allocated for prisoners, both undertrials and convicts. The Court would like to emphasize not only has the quality of food to be good, but the quantity too in terms of the required calorific value, has to be ensured.

9. The Court directs that every Secretary of every District Legal Services Authority (DLSA) to undertake an unannounced visit along with the concerned non-official visitors to the Jails and Sub-Jails within the jurisdiction of the concerned DLSA in next one week and specifically inspect the conditions of the toilets, the cleanliness of the wards and the quality and quantity of food being served to the inmates. They will also report on the available medical facilities both for the physical as well as mental wellbeing of the prisoners. The Court would like wherever possible the inspecting team to take photographs/videos (on their mobile phones) and submit a report to this Court in soft copy through the Member Secretary, OSLSA. Copies thereof be e-mailed directly to the learned Amicus Curiae Mr. Gautam Misra, Senior Advocate, who will then analyze them and place his submissions before the Court on the next date.

10. List on 20th April 2022 at 10.30AM.

11. A copy of this order be sent to the Member Secretary, OSLSA who will in turn hold a virtual meeting with all the Secretaries of the DLSAs not later than tomorrow morning at 10.30 am to instruct them about strict compliance of the above directions. A copy of this

order also be sent to the DG, Prisons both by e-mail and through Special Messenger forthwith.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

S.K. Guin

