

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 2.09.2014

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.(MD).No.9793 of 2014

and

M.P.(MD).Nos.1 to 6 of 2014

C.Muthurani

: Petitioner

Vs.

- 1.The State of Tamil Nadu,
rep.by the Home Secretary,
Fort.St.Geroge,
Chennai-9.
- 2.The Department of Welfare of Differently
Abled Persons,
rep.by its Secretary,
Ministry of Social Welfare and Nutritious
Noon Meal Programe,
Fort.St.Geroge, Chennai-9
- 3.The State Commissioner for
Differently Abled,
Government of Tamil Nadu,
State Resource cum Training Centre Campus,
Jawaharlal Nehru Inner Wing Road,
K.K.Nagar, Chennai-78.
- 4.The District Collector,
Madurai District.

5.The Superintendent of Police,
Madurai District.

6.The Inspector,
All Women Police Station,
Samayanallur,
Madurai District.

7.The Akshaya Trust,
rep.by its Managing Trustee,
Mr.N.Krishnan,
No.9, West Main Street,
Doak Nagar Extension,
Madurai-925 016.

: Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus to direct the respondents 2 & 3 to strictly enforce the provisions in Chapter X to XII of the Public Works Department Act 1995 and also the provisions of the Tamil Nadu Rules 2002 with specific reference to rules 20(i) and 29 of the said rules and evolve an effective mechanism to monitor / regulate and ensure the safety and well being of the mentally retarded / mentally ill-women and child inmates housed in all the Non-governmental organisations / institutions / Homes in the State of Tamil Nadu.

For Petitioner : Mr.U.Nirmalarani

For R.1 to 6 : Mr.K.Chellapandian
Additional Advocate General
assisted by A.K.Baskara Pandian

For R.7 : Mr.Yashod Vardhan,
Senior Counsel for
Mr.G.R.Swaminathan and
Mr.Natesaraja

ORDER

M.JAICHANDREN,J.

This Writ Petition has been filed, as a Public Interest Litigation, praying that this Court may be pleased to issue a Writ of Mandamus to direct the second respondent and the third respondent herein, to enforce the relevant provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, and the Rules framed thereunder, for ensuring the safety and the well being of the mentally challenged inmates, housed in Governmental Organisations and Other institutions in the State of Tamil Nadu.

2. The petitioner, who is the District President of the All India Democratic Women's Association of Madurai District has filed the present Writ Petition stating that in the Madurai Edition of the Tamil Newspapers, namely "Dinamalar" and "Dinamani", dated 06.06.2014, it had been reported that one Mehar Nisha, aged about 21 years, had been allegedly subjected to sexual abuse in a private 'Home' run, by the seventh respondent Trust, [hereinafter referred to as 'the Home']. It had also been reported that the victim had run out of the Home, in a nude condition, at about 02.00 p.m, on 05.06.2014. Upon enquiry.

it had been found that she was an inmate of the Home and that she had been subjected to sexual abuse, by the employees of the Home. The victim had been admitted in the Government Rajaji Hospital, Madurai. The said incident had resulted in agitations, by the Public. On further enquiry, it had been found that some of the other female inmates of the Home had also been sexually abused, by the employees of the Home. It had also been learnt that many inmates of the seventh respondent Home had died, under suspicious circumstances. The victim had also expressed her apprehension that some of the inmates might have been exploited and involved in the trading of their organs.

3. In such circumstances, this Court had passed an order, dated 19.06.2014, appointing V.Shyamala Devi, the Additional Superintendent of Police, Headquarters, Madurai District, to conduct an investigation, with regard to the alleged activities said to have taken place in the Home. D.Geetha, an Advocate, had also been appointed, as an Advocate Commissioner, to visit the Home, along with Rani Chakkaravarthi, a Psychologist, to ascertain the conditions prevailing therein, including the infrastructural facilities and the safety and the security of the inmates, maintenance of Records and Registers and other connected matters.

4. This Court, had passed an order, dated 23.06.2014, for identifying the inmates, who are kept in the Home, without their consent. Mr.K.Chellapandiyar, the learned Additional Advocate General, had also been directed to get a Report from the Kilpauk Government Hospital, Chennai, with regard to the treatment being given to Mehar Nisha, who had been admitted in the said hospital for treatment. Based on the Report submitted by the Advocate Commissioner, appointed by this Court, dated 19.06.2014, it had been found that there were 537 inmates in the Home. Among them, 171 of the inmates were women and 366 are men. Out of them, 91 inmates were said to be mentally challenged. No records had been produced by the Home, with regard to the said inmates.

5. By an order, dated 26.06.2014, this Court had directed the Advocate Commissioner and the Psychologist to prepare the details relating to the inmates, who are willing to go back to join their families. The mental and the physical status of such inmates were also directed to be prepared. Based on the additional report filed by the Advocate Commissioner, it had been found that there were 338 inmates, who were willing to go out of the Home. Therefore, the Registrar (Administration), Madurai Bench of Madras High Court, Madurai, had been directed to take the assistance of two Senior

Medical Officers and two Senior Psychiatrists, nominated by the Dean of Government Rajaji Medical College Hospital, Madurai, to examine the mental and physical condition of the inmates, who were wanting to go out of the Home. They were directed to follow certain procedures to know about the mental and the physical condition of such inmates.

6. While so, one Sasikala, Additional Superintendent of Police, Virudhunagar District, had been directed to take over the investigation to investigate the matter from various angles. She had also been directed to examine the allegations made against the seventh respondent Trust, with regard to the circumstances leading to the alleged death of 122 persons, in a period of 14 months.

7. The Advocate Commissioner and the Registrar (Administration) had been directed to file a Report, with regard to the willingness of the inmates to go out of the Home, by 04.07.2014. Dr.S.Gnanasundaram, the Medical officer of Government Primary Health Centre, Narikudi, Virudhunagar District and Mr.Rajasundari, Psychiatrist, attached to the Sivagangai Medical College, had also been requested to assist the Court. The Registrar (Administration), Madurai Bench of Madras High Court had been directed to work in

close co-ordination with the Principal District Judge, Madurai, to ensure the release of 221 inmates of the Home. The Registrar (Administration) had also been directed to file a Report containing the names, age and addresses of those who are released and the amount of money to be paid to them to reach their destinations. Dr.C.Ramasubramanian, the Nodal Officer, appointed by the Government of Tamil Nadu, for Mental Health, assisted by Deputy Psychiatrists, had been directed to supervise the Home, from time to time, and to submit reports as to the necessity for continued treatment of the mentally ill patients, who are the inmates of the Home. The Registrar (Administration) had also been directed to make a visit to the Home, along with a team of physicians and psychiatrists belonging to the Government Rajaji Hospital, Madurai.

8. Pursuant to the orders passed by this Court, a Status Report, dated 19.07.2014, had been filed by A.Sasikala, the Additional Superintendent of Police, Prohibition and Enforcement Wing, Virudhunagar District. In the said report, it had been stated that she had enquired certain witnesses, including Aiysha @ Mehar Nisha, who has been admitted, as an inpatient, in the Government Institute of Mental Health Centre, Kilpauk, Chennai. Dr.Amudha, a Psychiatrist, had also confirmed the fact that Ayisha was mentally ill.

It had been further stated that she had examined the inmates of the Home to find out about their willingness to go out of the Home. She had also made the necessary enquires with regard to the alleged death of 122 persons, who were inmates in the Home.

9. Pursuant to the orders passed by this Court, the Registrar (Administration) had filed an Interim Report, dated 21.07.2014, giving the details about the inmates, who had been released, on their own consent and the names of the inmates, who had been handed over to their relatives. It had also been stated that two persons had been released by the Home, voluntarily. It had also been stated that, out of the 221 inmates, who were ordered to be released by this Court, 188 inmates had been released on various dates, in the presence of the Registrar (Administration) of the Madurai Bench of the Madras High Court, the Principal District Judge (in charge), the Chairman, District Legal Services Authority, Madurai, the Chief Judicial Magistrate, Madurai, the Secretary, District Legal Service Authority, Madurai, the Deputy Superintendent of Police, Samayanallur Division, the Inspector of Police and the Sub-inspector of Police, Nagamalai Pudukottai Police Station, the Tahsildar, Madurai West and the Village Administrative Officer, Kodimangalam Village.

10. It had also been stated that, totally 190 inmates had been released, including the two inmates, who had been released by the seventh respondent Home, voluntarily. It had also been stated that the remaining 31 inmates, who had originally expressed their willingness to go out of the Home had opted to remain in the Home. The Registrar (Administration) had also filed a detailed report, dated 04.07.2014, stating that the Dean, Government Rajaji Hospital, Madurai, had deputed Dr.V.T.Prem Kumar, General Medicine, Dr.Prabhakaran, General Medicine, Dr.T.Kumanan, Psychiatry, Dr.John Xever Sugadev, Psychiatry and Dr.Geethanjali, Psychiatry, to examine the willingness of the inmates, to go out of the Home and with regard to their willingness to travel to the place of their choice.

11. As per the information received from the seventh respondent Home, there were 297 male inmates, 143 female inmates, 64 mentally ill male inmates and 27 mentally female inmates, with a total strength of 531 inmates. The particulars of the inmates have been recorded in the presence of the Registrar (Administration) and D.Geetha, the Advocate Commissioner appointed by this Court. Photographs of the inmates had also been taken, before releasing them.

12. It had also been stated that necessary amounts, for sending the inmates to the places of their choice, had been taken from the funds of the Legal Service Authority and the tickets had been purchased for their travel. Necessary information had also been given to the Legal Service Authorities of the other States, in respect of the persons travelling to such States. The family members of the inmates had also been informed about their travel.

13. Mr. Yashodavardhan, the learned Senior Counsel, appearing on behalf of the Home, had submitted that no irregularities had taken place in the Home, as alleged by the petitioner. It is only the poor and the needy, who are mentally ill, had been taken into the Home, for providing them with shelter and for giving them the necessary care and protection and the medical treatment required by them, in order to make them normal citizens of this Country.

14. It had also been stated that the seventh respondent Trust has obtained the necessary licence, under the relevant provisions of The Persons with Disabilities [Equal Opportunities, Protection of Rights and Full Participation] Act, 1995, and the Rules framed thereunder. The licence is valid, upto 17.05.2016. The provisions of the Mental Act, 1987, does not apply to the Home. It had also been

submitted that periodical inspections are being conducted by the authorities concerned, as per the relevant provisions of law. He had further submitted that the Home is being run, only in accordance with The Tamil Nadu Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 2002. However, if the allegations made against some of the staff members of the Home are found to be true, on enquiry, appropriate action would be taken against them, in accordance with the procedures established by law.

15. In view of the submissions made on behalf of the parties concerned and on a perusal of the records available, we are of the considered view that the allegations made against The Akshaya Trust have not been substantiated, with sufficient evidence. It is also noted that the Trust has a valid licence to run the Home, as per the provisions of The Tamil Nadu Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 2002. However, we find it appropriate to direct the third respondent to monitor the activities of the Trust and the Home, run by the Trust, periodically, as per the procedures established by law. It is also made clear that, if any irregularities are found in the running of the Trust or the Home, or if it is found that certain unlawful activities had taken place therein, it would be open to the authorities concerned to take

appropriate action, in accordance with the relevant provisions of law. The Akshya Trust is directed to submit monthly reports, regarding the inmates of the Home, to the third respondent herein, apart from following the other necessary procedures. It is also made clear that, before ~~the~~ persons are taken as inmates, by the Home, the information relating to such persons shall be furnished to the nearest Police Station. If possible, the identity of the persons may be established and further details, if any, may also be furnished to the Police Station.

16. In such circumstances, we find it appropriate to close the Writ Petition. Accordingly, the Writ Petition is closed, with the above directions and observations. Consequently, the connected miscellaneous petitions are closed. No costs.

Index :Yes/No
Internet :Yes/No

ssm/NB