

ITEM NO.1 Court 5 (Video Conferencing) SECTION II-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

IA 80140/2020, in Criminal Appeal No(s).135/2010

BUDHADEV KARMASKAR Appellant(s)

VERSUS

THE STATE OF WEST BENGAL & ORS. Respondent(s)
(IA No.80140/2020 - APPROPRIATE ORDERS/DIRECTIONS)

Date : 29-09-2020 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE L.NAGESWARA RAO
HON'BLE MR. JUSTICE AJAY RASTOGI

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Ms. Tushar Bhushan, Adv
Mr. Amartya Bhushan, Adv
Mr. Pijush K. Roy, Adv. (A.C.)
Ms. Kakali Roy, Adv

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Mr. Raj Bahadur Yadav, AOR
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UPON hearing the counsel the Court made the following
O R D E R

This application has been filed by Darbar Mahila Samanwaya Committee for the following amongst other reliefs:

“(i) Monthly dry rations;

(ii) Cash transfer to the tune of Rs.5000/- per month;

(iii) Additional cash transfer to the tune of Rs.2500/- for those with school-going children;

(iv) Covid-19 prevention measures such as masks, soaps, medicines and sanitisers; to be delivered to sex workers through Targeted Intervention Projects/State AIDS Control Societies and Community Based Organizations;”

By an Order dated 04.02.2011, this Court held that

sex workers also have right to live with dignity under Article 21 of the Constitution of India since they are also human beings and their problems also need to be addressed.

This Court appointed a Panel to advise and assist the Court on a range of issues, including prevention of trafficking, rehabilitation of sex workers who wish to quit sex work and conditions conducive for sex workers to live with dignity in accordance with the provisions of Article 21 of the Constitution of India.

In its third interim report dated 12.09.2011, the Panel recommended that-

a) *The State Governments and other appropriate authorities should issue ration cards to the sex workers, relaxing the rigours of the existing rules and/or requirements as to verification of address, without mentioning the profession in the document.*

b) *A sex worker who is duly proved to be a citizen of India and is otherwise eligible to vote shall not be denied a voter identification card merely because of her profession.*

c) *The Central Government, State Governments and such appropriate authorities such as Municipal Corporations and the District level authorities shall ensure that admission of the children of sex workers to Government recognised*

schools is not hampered in any way because of their status as children of sex workers.

d) The Ujjawala scheme of the Central Government should be widened so as to make it available to sex workers who do not wish to stay in a corrective home. Accordingly, the Government should amend the Ujjawala Scheme within a period of six months.

The recommendations were approved by this Court by an order dated 15.09.2011 which reads as follows :

"We are of the opinion that the suggestions of the Panel are good suggestions. Sex workers face great difficulty in getting ration cards, voter's identity cards or in opening Bank Accounts etc. We are of the opinion that the authorities should see to it that sex workers do not face these difficulties as they are also citizens of India and have the same fundamental rights as others.

We, therefore, recommend that the suggestions made by the Panel in its Third Interim Report shall be seriously taken into consideration by the Central Government, the State Governments and other authorities and hence all efforts shall be made to implement the suggestions expeditiously".

The Panel appointed by this Court submitted its final report on 14.09.2016. The Panel found that sex workers suffer from lack of legal status in the country. It was observed that it is difficult for the sex workers to acquire proof of identity such as ration cards or voter ID cards owing to lack of proof of residence. The Panel lamented that the local district authorities do not recognize the identities of sex workers and their children even though every citizen of India is entitled to basic human and fundamental rights. The Panel concluded that the sex workers do not have access to schemes meant for their rehabilitation. Similarly, they have no access to credit facilities offered by the States because of their inability to open bank accounts due to lack of supporting documentation.

The plight of sex workers during this pandemic is highlighted by the applicant. On receipt of inputs from various community based organisations and NGOs working for the welfare of sex workers, the applicant contended that a vast majority of the sex workers have been facing untold suffering due to the fact that the schemes of the Central and the State Governments providing for distribution of ration are inaccessible to them. The reason for the sex workers not having access to ration is the lack of any document to prove their identity.

We have heard Mr. R. S. Suri, learned Additional

Solicitor General, learned counsel appearing for the State Governments and Mr. Jayant Bhushan, learned Senior Counsel and Amicus Curiae assisted by Mr. Pijush Kanti Roy and Mr. Anand Grover, learned senior counsel for the applicants.

The learned Additional Solicitor General submitted that he shares the concern of the applicant and the Union of India cannot have any objection to any initiative of the State Governments for providing dry rations to sex workers without insisting on proof of identity. We have noticed that the States of Maharashtra, Karnataka and West Bengal have already initiated steps to provide dry rations to sex workers without insisting on production of documents to prove identification. Affidavits have been filed on behalf of some State Governments informing this Court about the existing schemes for destitute women.

Mr. Jayant Bhushan, learned Amicus Curiae submitted that there is no clarity about the schemes which would benefit the sex workers with supply of dry rations. He highlighted the problem of identification of sex workers who will be entitled to receive dry rations. He commended the acceptance of the suggestions made by the applicant regarding identification of sex workers for distribution of dry rations. The suggestions made by the applicant are as follows:

"34. The applicant suggests the following mechanisms to reach and support sex workers:

a. The 346 TI projects supported by the

National AIDS Control Programme, where female sex workers are registered for the purposes of HIV related services. These projects have the necessary information and data to reach sex workers with Covid-19 relief measures including ration, food packets, medicines, masks, soaps and sanitisers.

b. CBOs that are in contact with sex workers including those who do not identify themselves as such in public fora but rely on sex work as their primary or secondary occupation. CBOs are best placed to contact sex workers and deliver services in discreet and non-stigmatising ways.

c. State and District Legal Services Authorities, who have been working with sex workers and transgender persons for access to legal and social protection measures since 2011. Over the years, they have also trained sex workers as 'Para Legal Volunteers' so that they can support their peers and other vulnerable women in the community."

Mr. Pijush K. Roy, learned Amicus Curiae argued that the order passed by this Court on 15.09.2011 should be implemented by all the State Governments by enabling the sex workers to open bank accounts.

Mr. Anand Grover, learned Senior Counsel appearing for the applicants argued that there is a problem of

identification of sex workers who would be entitled for the relief prayed for. He submitted that the State Governments have to work in tandem with the National Aids Control Organisation (NACO) and the District Legal Services Authorities to ensure that the benefits reach all the sex workers.

Basic needs of a human have traditionally been accepted to be three – food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to a decent environment and a reasonable accommodation to live in. [*Shantistar Builders v. Narayan Khimalal Totame*, (1990) 1 SCC 520)].

Right to food for those who can ill-afford to provide for their families two meals a day becomes further grave during the times of famine and drought was recognised by this Court in *PUCL (PDS Matters) v. Union of India*, (2013) 2 SCC 688 and directions were given to the Government to come to their rescue.

Covid-19 has caused severe disruption in the normal life. Sex workers have been badly affected due to loss of earnings during the pandemic. Various schemes floated by the Union Government and the State Governments to help the destitutes have not reached the sex workers. The reason for the sex workers not having access to the schemes is lack of proof of identity. It is incumbent on the Central

Government and the State Governments/ Union Territories to rescue the sex workers who are in dire straits. Starving sex workers are entitled to be provided with dry rations. Therefore, we direct the State Governments and the Union Territories to provide dry rations to the sex workers who are identified by National Aids Control Organisation (NACO) without insisting on proof of identity. The District Legal Services Authorities are directed to take active steps in assisting the distribution of dry rations to the sex workers without insisting on proof of identity.

The State Governments and Union Territories are directed to file compliance reports within a period of four weeks from today giving details of the distribution of dry rations to the sex workers.

We make it clear that the relief relating to the financial aid to the sex workers shall be considered on the next date of hearing.

List the matter on 28.10.2020.

(B.Parvathi)
Court Master

(Anand Prakash)
Court Master