

ITEM NO.1

COURT NO.5

SECTION II-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s).135/2010

BUDHADEV KARMASKAR

Appellant(s)

VERSUS

THE STATE OF WEST BENGAL & ORS.

Respondent(s)

(Mr. Jayant Bhushan, Sr. Adv. (A.C.)Mr. Pijush K. Roy, Adv. (A.C.)/Appellant may be shown as Amicus curiae Mob.9810158653 ONLY I.A NO. 80140/2020 APPROPRIATE ORDERS/DIRECTIONS TO BE LISTED)

Date : 14-12-2021 This appeal was called on for hearing today.

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HON'BLE MR. JUSTICE B.R. GAVAI
HON'BLE MRS. JUSTICE B.V. NAGARATHNA

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UPON hearing the counsel the Court made the following

O R D E R

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On 19.07.2011, a Committee was appointed by this Court to advise on issues relating to prevention of trafficking, rehabilitation of sex workers who wish to quit sex work and the conditions conducive for sex workers

to live with dignity in accordance with Article 21 of the Constitution of India. On the basis of the interim reports that were filed by the Committee, this Court has passed a number of orders issuing directions to the Central Government and the State Governments which are:

(a) seeking concrete information from the States about whether sex workers have been offered alternative livelihood, if they intended rehabilitation.

(b) All State Legal Services Authorities were directed to set up a helpline number for sex workers in order to provide them with free legal assistance.

(c) Directions to the Central Government to broaden the scope of their schemes meant for rescued victims of trafficking so as to include sex workers who sought rehabilitation.

(d) to facilitate sex workers access to Voter Identity cards, ration cards, opening of bank accounts etc. relaxing the rules on verification of residential addresses and

(e) to provide a range of facilities including crèche, day care centres and night care centres for children of sex workers and protecting their Right to Education.

On 14.09.2016 a final report along with recommendations of the Committee was placed on record. The Committee recommended amendments to be made to Immoral Traffic (Prevention) Act, 1956. We have been

informed that the amendments that were suggested by the Committee are under active consideration for a comprehensive law to be made by the Parliament.

One of the terms of the reference which has been made by the panel relates to recognition of the legal status of the sex workers through official documents such as Voters Identity Card, Ration Card, Pan card etc. A perusal of the report indicates that it is very difficult for sex workers to acquire proof of identify cards such as Ration cards or Voters Identity cards owing to the lack of proof of residence. It has been mentioned in the report that District authorities do not recognize the identities of sex workers and their children. Resultantly, sex workers are deprived of their entitlement to basic human and Fundamental Rights. They are denied access to the schemes meant for rehabilitation. After detailed deliberations, the panel suggested in its interim report dated 12.09.2011, that state Governments and local authorities should issue ration cards to sex workers by relaxing the rigours of existing rules as to verification of address without reference to their profession. The Committee further recommended that a sex worker who is a citizen of this country should not be denied a voter identification card. Admission of their children to government recognized schools was also recommended by the Committee along with the benefits of Ujjawala scheme of the

Central Government to be extended to the sex workers.

On 15.09.2011, recommendations made by the Committee in its report on 12.09.2011 were accepted by this Court and the Central Government and the State Governments were directed to implement the suggestions made by the Committee in relation to issuance of ration cards and voter identity cards.

On 29.09.2020, an application was filed by Durbar Mahila Samanwaya Committee seeking a direction to the authorities to provide monthly dry rations and cash transfer to sex workers who were struggling to survive during the pandemic. The grievance of the applicant was that sex workers were deprived of dry rations on the ground that they were unable to produce proof of identity. Realising the distress of sex workers during the pandemic and to relieve them from starvation, this Court directed State Governments and Union Territories to provide dry rations to sex workers who are identified by National Aids Control Organisation without insisting on proof of identity. The District Legal Services Authorities were directed to assist the distribution of dry ration to sex workers without insisting on proof of identity. Addressing the concern of the applicant in the I.A.No.80140/2020, this Court issued further directions on 28.10.2020 asking the State Governments not to associate police authorities in the distribution of dry rations to the sex workers. The order dated 29.09.2020

was reiterated and the State Governments and Union Territories were directed to uniformly distribute the minimum quantity of dry rations as provided in the schemes formulated either by them or by the Central Government.

The State Governments and Union Territories were directed to file affidavits of compliance within a period of four weeks from 28.10.2020. Mr. Anand Grover, learned senior counsel appearing for the applicant in I.A.No.80140 of 2020, submitted that the directions issued by this Court are not being implemented. Referring to the affidavits filed by the State Governments, he submitted that issuance of ration cards to all the sex workers on the basis of their identification by NACO and Community Based Organizations would provide a solution to the problem.

Mr. Jayant Bhushan, learned senior counsel and amicus curiae assisted by Mr. Piyush Kanti Roy, learned counsel referred to some affidavits filed by the State Governments to submit that it is not clear as to whether the directions given by this Court are being implemented. Dry ration was distributed for few months and thereafter stopped. Particular reference was made to the affidavit filed by the State of Gujarat to submit that 12,291 sex workers out of the 24,579 sex workers registered with NACO are not willing to avail the benefits of the schemes. According to the learned

Amicus Curiae, this matter needs to be enquired into. The submission made by the learned Amicus Curiae is that the issuance of ration cards as directed by this Court on 15.09.2011 brooks no further delay.

As this Court has directed the State Governments and the Union Territories to issue ration cards and identity cards to sex workers almost a decade back, there is no reason as to why such direction has not been implemented till now. Right to dignity is a Fundamental Right that is guaranteed to every citizen of this country irrespective of his/her vocation. There is a bounden duty cast on the government to provide basic amenities to the citizens of this country. The State Governments/Union Territories and other authorities are directed to commence the process of issuance of ration cards/ Voters Identity cards immediately to sex workers from the list that is maintained by NACO. The authorities can take the assistance of State AIDS Control Societies who are directed to prepare a list of sex workers after verifying the information provided to them by Community Based Organisations. A status report relating to the issuance of ration cards and Voters Identity cards and Aadhar Card shall be filed within a period of four weeks from today. In the meanwhile, the State Governments and Union Territories are directed to continue distribution of dry rations to sex workers without insisting on ration cards and other proof of

residence and profession by following the procedure as mentioned in the orders of this Court on 29.09.2020 and 28.10.2020. In the process, the names of the sex workers should be kept confidential.

A copy of this order shall be sent to all the State Legal Services Authorities, who are directed to assist the concerned authorities both in the issuance of identity cards, Aadhar cards and voter identity cards, for sex workers as well as in distribution of dry ration.

List on 10.01.2022 at 2.00 p.m.

(B.Parvathi)
Court Master

(Anand Prakash)
Court Master