

R E V I S E D

ITEM NOS.33+13

COURT NO.1

SECTION PIL-W

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

Writ Petition (Civil) No. 859/2013

JAFFAR ULLAH & ANR.

Petitioners

VERSUS

UNION OF INDIA & ORS.

Respondents

WITH

W.P.(C) No. 793/2017 (X)

(and IA No.87282/2017-INTERVENTION APPLICATION NAME OF MR. TUSHAR MEHTA, ADVOCATE MAY BE SHOWN IN THE LIST and IA No.88305/2017-INTERVENTION/IMPLEADMENT and IA No.89024/2017-INTERVENTION/IMPLEADMENT and IA No.89100/2017-INTERVENTION/IMPLEADMENT and IA No.90627/2017-INTERVENTION APPLICATION and IA No.93032/2017-INTERVENTION/IMPLEADMENT and IA No.93270/2017-INTERVENTION/IMPLEADMENT and IA No.94489/2017-INTERVENTION/IMPLEADMENT and IA No.97090/2017-INTERVENTION APPLICATION and IA No.97091/2017-PERMISSION TO APPEAR AND ARGUE IN PERSON and IA No.100563/2017-PERMISSION TO FILE ADDITIONAL DOCUMENTS and IA No.107396/2017-impleading party and IA No.107402/2017-INTERVENTION APPLICATION and IA No.130783/2017-INTERVENTION APPLICATION[D.NO.32692/2017 TO BE TAKEN UP WITH THIS MATTER] and IA No.132156/2017-INTERVENTION APPLICATION and IA No.14970/2018-CLARIFICATION/DIRECTION)

W.P.(C) No. 870/2017 (PIL-W)

(FOR ADMISSION)

W.P.(C) No. 886/2017 (PIL-W)

W.P.(C) No. 919/2017 (PIL-W)

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Diary No(s). 32692/2017 (PIL-W)

W.P.(C) No. 1111/2017 (PIL-W)

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W.P.(C) No. 442/2018 (PIL-W)

(FOR ADMISSION and I.A. No. 66802/2018-CLARIFICATION/DIRECTION)

Date : 11-05-2018 This matter was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

For Petitioners

Mr. Colin Gonsalves, Sr. Adv.
Ms. Sneha Mukherjee, Adv.
Mr. Fazal Abdali, Adv.
Mr. Deepak Singh, Adv.
Ms. Jyoti Mendiratta, AOR

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Mr. Pratubhanu S. Kharola, Adv.
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Mr. Mehmood Pracha, Adv.

Mr. R.H.A. Sikander, Adv.
Mr. Prateek Gupta, Adv.
Mr. Mohd. Danish, Adv.
Mr. Mohd. Shakim, Adv.
Mrs. Sudha Gupta, AOR
Mr. A. Chariha, Adv.

Mr. Kunal Chatterji, AOR
Ms. Maitrayee Banerjee, Adv.

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Mr. Arijit Prasad, Adv.
Mr. S.S. Shamsbery, Adv.
Mr. B.V. Balaram Das, AOR
Mr. Gurmeet Singh Makker, AOR
Ms. Niranjana Singh, Adv.
Mr. S. Wasim Quadri, Adv.

Mr. Suhaan Mukerji, Adv.
Ms. Astha Sharma, Adv.
Mr. Vishal Prasad, Adv.
Mr. Amjid Maqbool, Adv.
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Mr. Debasis Misra, AOR
Mr. Manohar Singh Bakshi, Adv.
Mr. Binay Kumar Jha, Adv.
Mr. Parvez Bashista, Adv.
Ms. Alpana Sharma, Adv.

Mr. B.K. Satija, AAG, Haryana
Mr. Sanjay Kumar Visen, AOR

Ms. Sushma Suri, AOR

Ms. Archana Pathak Dave, AOR

Mr. Suvidutt M.S., AOR

Mr. Pranav Sachdeva, AOR

Mr. Lakshmi Raman Singh, AOR

Dr. Rajeev Dhawan, Sr. Adv.

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Mrs. Honey Verma, Adv.

Mr. Goldy Goyal, Adv.

Mr. Yatish Mohan, Adv.

Ms. Vinita Y. Mohan, Adv.

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Mr. Somiran Sharma, AOR

Mr. Amit Kumar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

In pursuance of our earlier order, the compliance Report of the Committee on the present status of health facilities for the Rohingyas staying at Nuh Block, District Mewat, Haryana and Kanchankunj, Kalindikunj, Delhi has been filed. With regard to the habitation, health service delivery, water, sanitation, hygiene, electricity and education in respect of Nuh Block, District Mewat, Haryana, the Report states thus:-

"1. Habitation:

The members visited 2 (two) settlements of Rohingyas within Nuh Block of Mewat District i.e. Ferozpur Namak and Shahpur Nangli.

The members of the Rohingya community are residing in Camps made of neat rows of huts with

electricity connection and water provision. The hutments are made up of bamboo, plastic sheets (Tirpal) etc. There are open spaces all around and the camps are well spread out.

2. Health service delivery:

The settlements visited have following health facilities in and around the Nuh Block:

- Sub Centre (SC) Ferozpur Namak, which has recently been made functional as a Health & Wellness Center to provide comprehensive primary health care services (distance from Ferozpur Namak - 500 meters)
- Community Health Centre (CHC), Nuh (distance from Ferozpur Namak - 4 Kms distance)
- Primary Health Centre (PHC), Nuh (distance from Ferozpur Namak - 4 kms)
- Saheed Hasan Khan Mewati Medical College - 8 kms away from Ferozpur Namak.

The above health centres are providing all primary, secondary and tertiary health care services as per standard National/State guidelines. The Rohingyas have equal access to these health services as any other citizen in the district.

The ANM visits the camps once a week and provides basic primary health care like screening for communicable diseases, ante natal check-up, immunization etc. The ladies of the Rohingyas have home deliveries. On being enquired about its reason, it was stated that they prefer home

deliveries rather than going to the hospitals. Only in case of any complication, the pregnant women are taken to the hospitals.

The Health services are being provided by trained and competent health care providers. It was observed that the ANM providing outreach services at the visited sites had an experience of over 6 years and had adequate knowledge and skills to meet the health needs of the population. The Primary Health Centre Medical Officer and the Sub Centre ANM also had enough supplies of drugs required for providing outreach health camps.

The ANM had detailed knowledge and data of the population required for providing maternal, child health, family planning services. Eligible Couple list and 0-2 year age group children list were maintained by ANM. No Maternal Death or child death was reported.

Pregnant women, lactating mothers and children (6 months - 6 years) of the Rohingya community are registered with the Anganwadi worker and have availed benefits under the Supplementary Nutrition Programme (SNP), medicines like Albendazole, iron folic acid, etc. are being distributed by ANMs and Anganwadis.

Ferozepur Namak camp has a total population of 301, of which 43 children are in the age group of 0-2 years. Shahpur Nangli camp has a population of 507 of which 85 are in the age group of 0-2 years. So, the birth rate is quite high in the population. Even though family planning services are being provided to the eligible couples by the ANM, the usage of family

planning methods is low by the inhabitants.

Regular screening for communicable diseases are undertaken and no case of TB, Malaria or Dengue was reported from the sites visited. No disease outbreak was reported.

Health Camps, Routine immunization programme and intensified pulse polio programme were conducted for these population at monthly intervals and all records were maintained at the Sub Centre.

For example:

(a) Ferozepur Namak:

i. On 24.3.2018 Five Pregnant women and Eleven children were immunized.

ii. On 21.4.2018 One Pregnant woman and four children were immunized.

iii. Anganwadi: 25 got SNP, 35 immunizations, 13 pregnant women and 15 lactating mothers availed of other benefits.

(b) Shahpur Nangli:

i. On 21.4.2018 in the health camp, there was an OPD of 81 patients of which 21 females and 19 male patients were provided treatment.

ii. Anganwadi: 30 got SNP, 8 immunization, 6 pregnant women and 4 lactating mothers availed of other benefits.

The Rohingyas has access to the free ambulance services for health emergencies provided by the State Government.

3. Water, Sanitation and Hygiene:

The camp at village Ferozpur Namak has one piped water supply provided through the panchayat. The water was found to be potable and the site for water delivery was hygienic and well maintained. The waste water gets drained to a common drain (nullah) behind the camp. In village Shahpur Nangli camp, water supply is provided by tankers through the Panchayat and one water tank with 14000 liters capacity was found in the camp. The tanks were found to be clean and well maintained and no water seepage or water collection around the tank was observed. However, the community requested for one more water tank for summer season for the inhabitants of the Shahpur Rohingyas.

Each and every hut in the site visited had its own toilet and open defecation was not a practice. The overall hygiene of the visited camps was found to be good and there was no collection of garbage/solid waste in open/visible areas.

4. Electricity:

The camp at village Ferozpur Namak, and Shahpur Nangli both had electricity supply. The electricity was available for around 12 hours a day on an average. This was the pattern in the entire district based on the availability of power supply received by the district. Some of the huts had refrigerator, air cooler etc. One of the huts was also converted to a local shop for selling daily utilities which even had a computer installed.

5. Education:

The Committee visited Govt. Secondary School, Ferozpur Namak, where the children of the Rohingyas are studying. There are around 500 children and 19 teachers. In this primary school there are 41 Rohingya children who are studying and all the facilities are being provided to these children similar to Indian citizens without any discrimination. The Rohingya children are given the mid-day meals at-par with the local children. The school administration also provides them all facilities including free books, bags, etc.

In the Government Secondary School visited at Ferozpur Namak, 39 children in Class II, 6 children in Class III and one child in Class IV are pursuing their education. The Committee interacted with the class II girl children, who are regularly going to the school.

Shahpur Nangli Rohingya settlement had a Madrasa and many prefer to send their children to Madarsa.

Copy of attendance register and relevant photographs are enclosed in Annexures.

The Committee also visited another slum in the vicinity, namely Madina Basti inhabited by local Indian citizens. In comparison to the Rohingyas, the overall hygiene and sanitation was not found to be satisfactory. There was no electricity connection. Water supply was scarce even though the inhabitants were living in the area for over 15 years. Outreach services for immunization and ante natal care are being

provided to the residents. Three children, present during that time of visit, were found to be home delivered. The inhabitants had valid Aadhaar card and Election ID card.

Concluding Remark:

The Committee had an overall observation that the Rohingyas are not being discriminated against despite being illegal migrants. They are being provided with basic facilities for health care, water, sanitation and education. The quality and comprehensiveness of the services provided are not less than those provided to the Indian citizens and are within the available infrastructure and resources of the District."

In respect of Kanchankunj, Kalindikunj, Delhi, the Committee has with regard to access to health care system, recorded its findings as under:-

"Access to health care system:-

A. List of Health facilities in the nearby locality is as under:-

- a) MCW Center Madanpur Khaddar (MCD)
- b) Polyclinic Madanpur Khaddar (Delhi Govt.)
- c) SPUHC. Abul Fazal (NRHM) 4 km (Delhi Govt.)
- d) AAMC Abul Fazal Part-2 (3 km) (Delhi Govt.)
- e) AAMC Shaheen Bagh 4 km (Delhi Govt.)
- f) DGD Batla House 7 km (Delhi Govt.)
- g) Rural Health Center of HAH Centenary Hospital (Majeedia) (Pvt.) (2-3 km)

h) Safdarjung Hospital (10 km) (Central Govt.)

i) Al Sifa Hospital (6 km) Abul Fazal

j) Majeedia Hospital (10 km)

k) Mobile van from Jamia Hamdard (Pvt.) visits the area once a week.

B. Immunization:- Every month Delhi Government Dispensary (DGD) Srinivaspuri conducts 10-12 sessions of immunization at 10 different sites covering all blocks of JJ Colony and Kanchankunj. Most of the children were found to have received age appropriate immunization. Cards of some children were also verified. ANMs visit the camp for vaccinations during pulse polio campaign. Routine Immunization services are mainly provided by the MCW Center Madanpur Khaddar, nearby health center.

C. Maternal Health:- ANC care and investigations are being provided at nearby health facilities/Centers. Mother and child protection (MCP) Cards were examined and found to bear MCTS/RCH number (Mother and child tracking system). Birth certificates issued by MCD to the children were also examined.

However, most of the deliveries are taking place at home and only complicated cases go to Safdarjung Hospital, which is about 10 km away. When enquired about the factors for home deliveries, the response received was that they prefer not to go to any health facility for normal delivery.

D. Family Planning:- In spite of the access and availability of all family planning services

being provided by the local health authorities, acceptance of family planning methods was limited.

E. Outreach services:- ANM for Maternal and Family Planning Community Outreach services has also been made available by the local health authorities. In addition, Mobile Health Van comes once a week from Jamia Hamdard (Pvt.) centre to treat minor illness. For major illness, the inhabitants visit nearby public/trust/private health facilities.

There is no reported incidence of Maternal or Child death in the last 5 years."

It is submitted by Mr. Colin Gonsalves, learned senior counsel and Mr. Prashant Bhushan and Ms. Sneha Mukherjee, learned counsel appearing for the petitioners that school children are not getting books and other benefits. They have also projected that as far as the health care system is concerned, the facilities are denied to them, because of lack of proper identity.

Dr. Rajeev Dhawan, learned senior counsel would submit that human rights are extremely sacred and the same have to be given full play in the completest sense in respect of a non-citizen also, for Article 21 of the Constitution which embraces human rights and human rights correspondingly responds to the said article, and hence, there cannot be any discord between the two concepts.

Dr. Ashwini Kumar, learned senior counsel appearing for the petitioners in Writ Petition (Civil) No. 886/2017 would submit that India being a civilized and developed democracy has to stand by the fundamental concept and essential conception of human rights. Mr. P.V. Dinesh, learned counsel for the petitioners in Writ Petition (Civil) No. 262/2018 with anguish and concern, submitted his experience in a camp.

We do not intend to enter into all the issues that have been canvassed before us. We may clearly state that the same shall be addressed to at the time of final hearing of the writ petitions and the interlocutory applications.

However, for the present, we issue the following directions:-

(i) As far as Nuh Block, District Mewat, Haryana is concerned, the Sub-Divisional Magistrate or the equivalent authority of District Mewat, Haryana and in respect of Kanchankunj, Kalindikunj, Delhi, the concerned jurisdictional Revenue Magistrate, Delhi are appointed as the nodal officers. The said position is accepted by Mr. Tushar Mehta, learned ASG.

(ii) Parents or any relative or a guardian of

a child or a patient, can go with a grievance to the Nodal Officer, if any facility, as stated in the Status Report is denied to him/her. The Nodal Officer shall do the needful, as stated in the Status Report.

At this juncture, Mr. Kunal Chatterji, learned counsel for the West Bengal Commission for Protection of Child Rights submitted that there is difficulty in uniting the children of Rohingyas who are separated from their parents. Mr. Tushar Mehta, learned ASG shall obtain instructions in the matter and if there is any problem in this regard, the concerned authority of the Union of India can apprise the Commission so that an appropriate view can be taken.

Let the matter be listed on 23.8.2018.

(Deepak Guglani)
Court Master

(H.S. Parasher)
Assistant Registrar

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"1. Habitation:

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electricity connection and water provision. The hutments are made up of bamboo, plastic sheets (Tirpal) etc. There are open spaces all around and the camps are well spread out.

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planning methods is low by the inhabitants.

Regular screening for communicable diseases are undertaken and no case of TB, Malaria or Dengue was reported from the sites visited. No disease outbreak was reported.

Health Camps, Routine immunization programme and intensified pulse polio programme were conducted for these population at monthly intervals and all records were maintained at the Sub Centre.

For example:

(a) Ferozepur Namak:

i. On 24.3.2018 Five Pregnant women and Eleven children were immunized.

ii. On 21.4.2018 One Pregnant woman and four children were immunized.

iii. Anganwadi: 25 got SNP, 35 immunizations, 13 pregnant women and 15 lactating mothers availed of other benefits.

(b) Shahpur Nangli:

i. On 21.4.2018 in the health camp, there was an OPD of 81 patients of which 21 females and 19 male patients were provided treatment.

ii. Anganwadi: 30 got SNP, 8 immunization, 6 pregnant women and 4 lactating mothers availed of other benefits.

The Rohingyas has access to the free ambulance services for health emergencies provided by the State Government.

3. Water, Sanitation and Hygiene:

The camp at village Ferozpur Namak has one piped water supply provided through the panchayat. The water was found to be potable and the site for water delivery was hygienic and well maintained. The waste water gets drained to a common drain (nullah) behind the camp. In village Shahpur Nangli camp, water supply is provided by tankers through the Panchayat and one water tank with 14000 liters capacity was found in the camp. The tanks were found to be clean and well maintained and no water seepage or water collection around the tank was observed. However, the community requested for one more water tank for summer season for the inhabitants of the Shahpur Rohingyas.

Each and every hut in the site visited had its own toilet and open defecation was not a practice. The overall hygiene of the visited camps was found to be good and there was no collection of garbage/solid waste in open/visible areas.

4. Electricity:

The camp at village Ferozpur Namak, and Shahpur Nangli both had electricity supply. The electricity was available for around 12 hours a day on an average. This was the pattern in the entire district based on the availability of power supply received by the district. Some of the huts had refrigerator, air cooler etc. One of the huts was also converted to a local shop for selling daily utilities which even had a computer installed.

5. Education:

The Committee visited Govt. Secondary School, Ferozpur Namak, where the children of the Rohingyas are studying. There are around 500 children and 19 teachers. In this primary school there are 41 Rohingya children who are studying and all the facilities are being provided to these children similar to Indian citizens without any discrimination. The Rohingya children are given the mid-day meals at-par with the local children. The school administration also provides them all facilities including free books, bags, etc.

In the Government Secondary School visited at Ferozpur Namak, 39 children in Class II, 6 children in Class III and one child in Class IV are pursuing their education. The Committee interacted with the class II girl children, who are regularly going to the school.

Shahpur Nangli Rohingya settlement had a Madrasa and many prefer to send their children to Madarsa.

Copy of attendance register and relevant photographs are enclosed in Annexures.

The Committee also visited another slum in the vicinity, namely Madina Basti inhabited by local Indian citizens. In comparison to the Rohingyas, the overall hygiene and sanitation was not found to be satisfactory. There was no electricity connection. Water supply was scarce even though the inhabitants were living in the area for over 15 years. Outreach services for immunization and ante natal care are being

provided to the residents. Three children, present during that time of visit, were found to be home delivered. The inhabitants had valid Aadhaar card and Election ID card.

Concluding Remark:

The Committee had an overall observation that the Rohingyas are not being discriminated against despite being illegal migrants. They are being provided with basic facilities for health care, water, sanitation and education. The quality and comprehensiveness of the services provided are not less than those provided to the Indian citizens and are within the available infrastructure and resources of the District."

In respect of Kanchankunj, Kalindikunj, Delhi, the Committee has with regard to access to health care system, recorded its findings as under:-

"Access to health care system:-

A. List of Health facilities in the nearby locality is as under:-

- a) MCW Center Madanpur Khaddar (MCD)
- b) Polyclinic Madanpur Khaddar (Delhi Govt.)
- c) SPUHC. Abul Fazal (NRHM) 4 km (Delhi Govt.)
- d) AAMC Abul Fazal Part-2 (3 km) (Delhi Govt.)
- e) AAMC Shaheen Bagh 4 km (Delhi Govt.)
- f) DGD Batla House 7 km (Delhi Govt.)
- g) Rural Health Center of HAH Centenary Hospital (Majeedia) (Pvt.) (2-3 km)

h) Safdarjung Hospital (10 km) (Central Govt.)

i) Al Sifa Hospital (6 km) Abul Fazal

j) Majeedia Hospital (10 km)

k) Mobile van from Jamia Hamdard (Pvt.) visits the area once a week.

B. Immunization:- Every month Delhi Government Dispensary (DGD) Srinivaspuri conducts 10-12 sessions of immunization at 10 different sites covering all blocks of JJ Colony and Kanchankunj. Most of the children were found to have received age appropriate immunization. Cards of some children were also verified. ANMs visit the camp for vaccinations during pulse polio campaign. Routine Immunization services are mainly provided by the MCW Center Madanpur Khaddar, nearby health center.

C. Maternal Health:- ANC care and investigations are being provided at nearby health facilities/Centers. Mother and child protection (MCP) Cards were examined and found to bear MCTS/RCH number (Mother and child tracking system). Birth certificates issued by MCD to the children were also examined.

However, most of the deliveries are taking place at home and only complicated cases go to Safdarjung Hospital, which is about 10 km away. When enquired about the factors for home deliveries, the response received was that they prefer not to go to any health facility for normal delivery.

D. Family Planning:- In spite of the access and availability of all family planning services

being provided by the local health authorities, acceptance of family planning methods was limited.

E. Outreach services:- ANM for Maternal and Family Planning Community Outreach services has also been made available by the local health authorities. In addition, Mobile Health Van comes once a week from Jamia Hamdard (Pvt.) centre to treat minor illness. For major illness, the inhabitants visit nearby public/trust/private health facilities.

There is no reported incidence of Maternal or Child death in the last 5 years."

It is submitted by Mr. Colin Gonsalves, learned senior counsel and Mr. Prashant Bhushan and Ms. Cheryl D'Souza, learned counsel appearing for the petitioners that school children are not getting books and other benefits. They have also projected that as far as the health care system is concerned, the facilities are denied to them, because of lack of proper identity.

Dr. Rajeev Dhawan, learned senior counsel would submit that human rights are extremely sacred and the same have to be given full play in the completest sense in respect of a non-citizen also, for Article 21 of the Constitution which embraces human rights and human rights correspondingly responds to the said article, and hence, there cannot be any discord between the two concepts.

Dr. Ashwini Kumar, learned senior counsel appearing for the petitioners in Writ Petition (Civil) No. 886/2017 would submit that India being a civilized and developed democracy has to stand by the fundamental concept and essential conception of human rights. Mr. P.V. Dinesh, learned counsel for the petitioners in Writ Petition (Civil) No. 262/2018 with anguish and concern, submitted his experience in a camp.

We do not intend to enter into all the issues that have been canvassed before us. We may clearly state that the same shall be addressed to at the time of final hearing of the writ petitions and the interlocutory applications.

However, for the present, we issue the following directions:-

(i) As far as Nuh Block, District Mewat, Haryana is concerned, the Sub-Divisional Magistrate or the equivalent authority of District Mewat, Haryana and in respect of Kanchankunj, Kalindikunj, Delhi, the concerned jurisdictional Revenue Magistrate, Delhi are appointed as the nodal officers. The said position is accepted by Mr. Tushar Mehta, learned ASG.

(ii) Parents or any relative or a guardian of

a child or a patient, can go with a grievance to the Nodal Officer, if any facility, as stated in the Status Report is denied to him/her. The Nodal Officer shall do the needful, as stated in the Status Report.

At this juncture, Mr. Kunal Chatterji, learned counsel for the West Bengal Commission for Protection of Child Rights submitted that there is difficulty in uniting the children of Rohingyas who are separated from their parents. Mr. Tushar Mehta, learned ASG shall obtain instructions in the matter and if there is any problem in this regard, the concerned authority of the Union of India can apprise the Commission so that an appropriate view can be taken.

Let the matter be listed on 23.8.2018.

(Deepak Guglani)
Court Master

(H.S. Parasher)
Assistant Registrar