

W.P.(C) No. 6610 of 2006 and W.P.(C) PIL No. 3368 of 2014

21. 09.03.2021

1. Heard Mr. Gautam Misra, learned Amicus Curiae (AC), Mr. M.S. Sahoo, learned Additional Government Advocate for the State-Opposite Parties and Mr. S.K. Nanda, learned counsel for the Petitioner.

2. Both these writ petitions highlight the various issues concerning the jails in Orissa which can broadly be categorised into Circle Jails, District Jails, Special Jails, Special Sub-Jails, Open Air Jaila, Sub-Jails, and Jail for Women. On 4th December, 2014 an order was passed by this Court in W.P. (C) No. 6610 of 2006 where the following ten issues touching upon the human rights of the inmates were listed out:

- “(i) Adoption of model jail manual prepared by NHRC.
- (ii) Setting up of an appropriate authority to enquire violation of human rights in custody.
- (iii) Procedure regarding purchase of medicine in jails.
- (iv) Effective treatment of prisoners and maintenance of good sanitation inside jails.
- (v) Payment of compensation to prisoners who die in custody due to medical negligence.
- (vi) Implementation of Hon’ble Supreme Court’s guidelines regarding handcuffing during the transit.
- (vii) Implementation of the judgments of Hon’ble Supreme Court in *Bhim Singh Vs. Union of India* [W.P.(Crl.) No. 310 of 2005] and *Arnesh Kumar vs. State of Bihar & Anr.* [Criminal Appeal No. 1277 of 2014].

- (viii) As to whether first time offenders, Under trials, life convicts, other convicts, women and children are completely segregated from each other, keeping in mind the observations of the Hon'ble Supreme Court in the case of *Sunil Batra, AIR 1980 SC 1579* (paragraph 65)?
- (ix) Whether cell phones are being used inside jails and what steps have been taken to stop the same.
- (x) The living conditions of the jails for inmates, more particular, the accommodation available vis-à-vis the number of prisoners in the jails of the State.”

3. The learned AC at the outset pointed out that as far as issue (i) is concerned, a new Odisha Model Jail Manual has been published adopting the model prepared by the NHRC.

4. As regards other issues highlighted in the above order, learned AC has placed before this Court a compilation containing useful information and suggestions. As regards issue (ii), i.e., the setting up of appropriate authority to enquire into violation of human rights of persons in custody, the learned AC has referred to the decision of the Supreme Court in ***Re: Inhuman Conditions in 1382 Prisons (2017) 10 SCC 658*** and in particular the suggestions of the AC assisting the Supreme Court at paragraph 39.7 that there should be an independent mechanism for entertaining the grievances of inmates without putting the inmates into trouble with the prison staff or other inmates. The AC before the Supreme Court had placed before the Supreme Court the Standard Minimum Rules for the Inmates of Prisons ('the Nelson Mandela Rules') which have been adopted by the United Nation on 17th

December, 2015. Accepting the submission, the Supreme Court in the aforementioned judgment issued a series of directions including circulating to the Director Generals/Inspector General of Police, as the case may be, and the in-charge of prisons in every State and Union Territory, a complete set of documents including the Nelson Mandela Rules and the Guidelines on Investigating Deaths in Custody issued by the International Committee of the Red Cross (ICRC). These specific directions are contained in paragraphs 58.2 and 58.3 of the said judgment.

5. The Supreme Court also highlighted the need for the State Legal Services Authorities (SLSAs) to be associated in these efforts. Among other things that have been highlighted is the constitution of a Board of Visitors which includes non-official visitors who can participate in initiating reforms in prisons and in the rehabilitation of prisoners.

6. The learned AC has also drawn attention to five news items concerning deaths of prison inmates in Odisha over the last five years and the issue of overcrowding of jails.

7. The Court directs the Government of Odisha to examine the detailed directions issued by the Supreme Court in its judgment dated 5th February, 2016 *In Re: Inhuman Conditions in 1382 Prisons, (2016) 3 SCC 700* as well as the subsequent judgment dated 15th September, 2017 in the same matter reported in *(2017) 10 SCC 658* and place before this Court on the next date in a

tabulated forms in two columns, the directions issued by the Supreme Court and the response of the State Government thereto. It is absolutely essential that the above directions of the Supreme Court are implemented in letter and spirit to improve the conditions of jails in Orissa and this requires to be done in a time-bound manner. The State Government will also inform this Court on the next date also the timelines within which it will implement the directions. Additionally, the State Government will inform the Court what action has been taken in relation to the incidents portrayed in the five news items that are part of the compilation prepared by the AC and handed over in Court today.

8. There is also the issue of handcuffing of prisoners in jail or while bringing them from the jail to the court. That practice has been proscribed by the Supreme Court in several judgments including *Premshankar Shukla v. Delhi Administration AIR 1980 SC 1535* and has also been highlighted in the connected writ petition W.P.(C) No. 3368 of 2014. The response of the State Government on the next date will include the instructions it has issued regarding discontinuance of the above practice anywhere in the State.

9. As regard compoundable criminal cases, this Court's attention has been drawn to the direction issued by the Supreme Court in *In Re: Inhuman Conditions in 1382 Prisons, (2016) 3 SCC 700* where in paragraph 31 it has *inter alia* been observed that efforts should be made to facilitate the release of jail inmates and

undertrial prisoners involved in compoundable offences. For this purpose the Court directs the Member Secretary, Odisha State Legal Services Authority (OSLSA) to gather information in close coordination with the Inspector General of Prisons, Odisha on the number of prisoners in various jails in Odisha, who have been unable to be released, despite their being granted bail, on account of their inability to furnish bail bonds. On that basis, the Member Secretary, OSLSA shall take steps to facilitate their release by getting panel counsel to file further applications before the Court which granted such bail to modify the conditions in terms of the judgments of the Supreme Court on this issue. The OSLSA also, in consultation with the jail authorities, shall examine the possibility of conducting Jail Adalats for the purposes of compounding offences, which can facilitate early release of such prisoners. On the next date, the Member Secretary, OSLSA will place a note on this aspect before the Court.

10. The Court also acknowledges that there may be criminal appeals pending in this Court of convicts/prisoners who may have served their entire sentences and have been released from the jail in the meanwhile. The Secretary of the Orissa High Court Legal Services Committee (OHCLSC) is directed to gather the details of all such prisoners in close coordination with the prisons authorities and place the details before the Court on the next date in the form of a note.

11. The Court would like to reiterate that without the active participation of the OSLSA and OHCLSC many of the reforms that have been proposed in the above judgments of the Supreme Court may not be able to be implemented.

12. The learned AC has highlighted the absence of jail visits by the District Magistrates and/or Visitors to jails and also the absence of visit by medical teams. In this regard the Court issues the following directions:

(i) Between 15th March, 2021 and 16th April, 2021 the DMs Magistrates of the various districts will make a surprise visit to the jails within their jurisdiction, in co-ordination with the Secretary of the concerned District Legal Services Authority (DLSA) or Taluk Legal Services Committee (TLSC) as the case may be and submit a joint report to this Court on the conditions of the jails, condition of the prisoners, issues of overcrowding, the status of facilities within the jails including provisions for food and shelter, recreation etc. Preferably, these visits should be unannounced.

(ii) The State Government will also organize at least one medical inspection of each of the district jails and sub-jails in the State of Odisha by a team of medical professionals within the aforementioned period and the

reports of such visits will also be placed before the Court on the next date.

(iii) Copies of such reports should be served in advance to the learned AC as well as Mr. Sahoo, learned AGA. The issues highlighted in such reports should be immediately acted upon by the State authorities without awaiting further directions from this Court.

(iv) The Court has been informed that every District Judge undertakes a visit to the jails within their jurisdiction every month and submits a report to this Court. A compilation of such reports for the months of January, February, and March, 2021 be placed before the Court on the next date by the Registrar General of this Court.

13. The learned AC highlighted certain issues of concern in some of the jails. This includes the rampant use of the narcotics as well as mobile phones inside the jails. The authorities visiting the jails will keep this aspect in mind and highlight it in their respective reports.

14. The learned AC also submitted that the State of Odisha has installed the least number of CCTVs in jails and that this issue also requires to be addressed by the State Government/Jail Authorities urgently. A status report on this aspect be submitted by the State Government to this Court on the next date.

15. List on 27th April, 2021.

16. A copy of this order be handed over to Mr. M.S. Sahoo, learned Additional Government Advocate for immediate communication of the same to the IG, Prisons, State of Odisha, all the District Magistrates, and other concerned departments for compliance. A copy of this order may also be sent immediately to the Registrar General of this Court, Member Secretary, OSLSA, Secretary, OHCLSC, and the learned AC. The Member Secretary, OSLSA will e-mail it to the Chairman and Secretaries of the DLSA and TLSCs for compliance.

(Dr. S. Muralidhar)
Chief Justice

(B.P. Routray)
Judge

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