

Andhra High Court

C.V.L. Narasimha Rao vs Principal Secretary, Medical And ... on 21 September, 2001

Equivalent citations: 2001 (6) ALT 1

Author: S Sinha

Bench: S B Sinha, V Rao

JUDGMENT S.B. Sinha, C.J.

1. Pitiab conditions of the inmates of a Government Hostel for blind found placed in a Telugu Daily newspaper "Eenadu", which was published on 25-3-2001. 'Raksha', a non-voluntary organization, sent a letter to the Chairman of the High Court Legal Services Committee, enclosing the paper clipping of the said report, stating that due to lack of safety measures in the said blind hostel a student fell from the building and died and therefore requested for intervention in the matter in the interest of justice. The said letter was taken up as public interest litigation.

2. The paper report inter alia states that due to the negligence of the authorities, one student of Government hostel for Blind at Dilsukhnagar has fallen down from the Hostel Building and died. The newspaper report further discloses that the authorities have paid deaf ear to the request of the students to put grills in the open area from where the student had fallen and that despite the incident, the authorities have not taken any preventive measures. It was further stated that the Hostel has 32 rooms meant for 75 students, but there are about 125 students and a subsistence allowance of Rs, 20/- per month is being paid to each student, which is not sufficient. It was further alleged that bed-sheets, plate and glass etc. were not given to the students for the last four years. The letter also highlights the poor condition of the food being supplied to the students. It was also alleged that the kitchen was stinking with foul smell and that medicines were not being supplied to the sick students in spite of a sum of Rs. 4.00 lakhs having been sanctioned by the Government and the students have to buy medicines from outside with their own money.

3. In the counter-affidavit filed by the District Collector, Hyderabad, who is in charge of the said hostel, he has denied and disputed the allegations made in the newspaper.

4. We, by our order dated 14-6-2001, requested Sri P. Balakrishna Murthy, a prominent long standing Advocate of this Court to visit the hostel and submit a status report. Accordingly Sri P. Balakrishna Murthy has filed a report before this Court. Paragraph 2 of his report, which is in the following terms, is disturbing in nature:

Rather unexpectedly my office received telephone calls on one afternoon in the 1st week of July in my absence from one Narsimhulu said to be the Asst. Director of the Office of the Commissioner, Disabled Welfare Department. Again on the same evening he phoned again stating that he wants to meet me. In the evening he along with one G. Appalanaidu, Dy. Director (Employment) Office of the Commissioner, Disabled Welfare Dept., came to my office at about 6.45 p.m. and informed me that the Commissioner of the Dept., directed them to arrange my visit to the Govt. Hostel of Blinds, Bhavaninagar, Dilsukhnagar, Hyderabad. This, I was told, was planned in pursuance of the letter I served on the Govt. Pleader concerned viz., Shri Prabhakar Reddy. I was not able to restrain myself

from being very unhappy as the above sponsored visit will be wholly tailored one and I will not be able to see for myself the factual position prevailing in the hostel. I felt very uncomfortable and could not hold back the same from the above officers and I told them that it is not fair for them to prepare my visit to the hostel and I will be constrained to inform the Court about their visit to my office.

He, however, visited the Government Hostel for Blind, Bhavaninagar, Dilsukhnagar, Hyderabad on 17-7-2001 at 11-30 a.m. On verifying the Attendance Register, the learned counsel found that some employees are absent. According to the report, in each room there are about eight inmates, but there are only two cots therein. The cots are made of iron and no mattresses have been provided to the students. The inmates have been sleeping on empty gunny bags. The pillows provided to them had been emanating bad smell. Though the capacity of the hostel is 100, present strength was 130. Expected facility of ventilation and air was absent. As regards the place of incident from where a student has died, the learned counsel states:

We went to the terrace and asked the warden accompanying me as to how the death has occurred by fall as reported in the press. He showed me a duct measuring about 4 to 5 feet on all sides, which is presently covered by an iron mesh which according to him was fixed after the death of the inmate. I went further and asked him as to how the incident has happened resulting in death by falling into the said duct. He tried to impress me that while playing Kabadi on the terrace one of the inmates by mistake went over the wall and died by falling from the 2nd floor. I am sure the warden himself could not have expected any takers for the theory propounded by him. The wall on all the four sides of the duct is certainly more than 4 to 4.5 feet and it would not be even in the realms of imagination to buy the theory of one going over such a height while playing the Kabadi amongst blind inmates of the hostel. Still I am not in a position to venture as to how the unfortunate incident has happened but certainly the reason is not the one sought to be put across by the warden.

5. When the learned senior counsel had questioned the inmates, he was told that they were being looked-after well, but he had a feeling that they had been tutored, which fact was fortified by confession of some inmates.

6. Unfortunate although it may seem to be, the District Collector has filed an objection report denying and disputing the statements made by the learned senior counsel.

7. The Parliament enacted Act No. 1 of 1996 viz., The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, (hereinafter referred to as 'the 1995 Act' for the sake of brevity) which has come into force from 01-01-1996. The 1995 Act was passed, having regard to the proclamation adopted at Beijing on 1st to 5th December 1992, to launch the Asian and Pacific Decade of Disabled Persons 1993-2002, convened by the Economic and Social Commission for Asia and Pacific, to which India was a signatory for purpose of implementing the proclamation. In the said Act, "blindness", "disability" and "institution of persons with disabilities" in Section 2 (b), (i) and (m) would mean:

2. in this Act, unless the context otherwise requires:-

xxx

(b) "blindness" refers to a condition where a person suffers from any of the following conditions, namely :--

(i) total absence of sight; or

(ii) visual acuity not exceeding 6/60 or 20/200 (snellen) in the better eye with correcting lenses; or

(iii) limitation of the field of vision subtending an angle of 20 degree or worse;

xxx

xxx

xxx

(i) "disability" means --

(i) blindness

(ii) low vision;

(iii) leprosy - cured;

(iv) hearing impairment;

(v) locomotor disability;

(vi) mental retardation;

(vii) mental illness;

xxx xxx

xxx

(m) "institution of persons with disabilities" means an institution for the reception, care pro

8. In terms of the 1995 Act, the Central and the State Governments have to constitute Central Coordination Committee and State Coordination Committee to exercise the powers conferred on, and to perform the functions assigned to them. In the State of Andhra Pradesh, we are informed, no such Committee has yet been constituted.

9. The said Act provides for prevention and early detection of disabilities, education, employment,

affirmative action and non-discrimination as regards transport, built environment and in Government employment. Chapter IX of the said Act provides for Research and Manpower Development. Chapter X provides for Recognition of Institutions for Persons with Disabilities. Chapter XI provides Institution for persons with severe disabilities. The Chief Commissioner and Commissioners for Persons with Disabilities are required to be appointed in terms of Chapter XII. Chapter XIII deals with Social Security. Sections 61, 62 and 66 to 68 of the 1995 Act read thus:

61. The Commissioner within the State shall --

(a) coordinate with the departments of the State Government for the programmes and schemes for the benefit of persons with disabilities;

(b) monitor the utilization of funds disbursed by the State Government;

(c) take steps to safeguard the rights and facilities made available to persons with disabilities;

(d) submit reports to the State Government on the implementation of the Act at such intervals as the Government may prescribe and forward a copy thereof to the Chief Commissioner.

62. Without prejudice to the provisions of Section 61 of the Commissioner may of his own motion or on the application of any aggrieved person or otherwise look into complaints with respect to matters relating to --

(a) deprivation of rights of persons with disabilities;

(b) non-implementation of laws, rules, bye-laws, regulations, executive orders, guidelines or instructions made or issued by the appropriate Governments and the local authorities for the welfare and protection of rights of persons with disabilities, and take up the matter with the appropriate authorities.

66. (1) The appropriate Governments and the local authorities shall within limits of their economic capacity and development undertake or cause to be undertaken rehabilitation of all persons with disabilities.

(2) For purposes of Sub-sections (1), the appropriate Governments and local authorities shall grant financial assistance to non-governmental organizations.

(3) The appropriate Governments and local authorities while formulating rehabilitation of policies shall consult the non-governmental organizations working for the cause of persons with disabilities.

67. (1) The appropriate Government shall by notification frame an insurance scheme for the benefit of its employees with disabilities.

(2) Notwithstanding anything contained in this Section, the appropriate Government may instead of framing an insurance scheme frame an alternative security scheme for its employees with disabilities.

68. The appropriate Governments shall within the limits of their economic capacity and development shall by notification frame a scheme for payment of an unemployment allowance to persons with disabilities register with the Special Employment Exchange for more than two years and who could not be placed in any gainful occupation.

10. Yet again, in a conference on "the rights of people with disabilities in the new century" held in Beijing from 10-12 March 2000 to develop a new century strategy for the full participation and equality of people with disabilities, the leaders of Disabled Peoples' International, Inclusion International, Rehabilitation International, the World Blind Union, and the World Federation of the Deaf, as well as national non-governmental organizations (NGOs) of and for people with disabilities from all continents, adopted declaration on 12-3-2000 at World NGO Summit at Beijing. It is necessary to extract the same, which reads:

"BEIJING DECLARATION ON THE RIGHTS OF PEOPLE WITH DISABILITIES IN THE NEW CENTURY.

(1) We, the leaders of Disabled Peoples' International, Inclusion International, Rehabilitation International, the World Blind Union, and the World Federation of the Deaf, as well as national nongovernmental organization (NGOs) of and for people with disabilities from all continents, have convened in Beijing from 10-12 March 2000 to develop a new century strategy for the full participation and equality of people with disabilities.

(2) We recognize, with appreciation, that the last two decades of the twentieth century witnessed and increased awareness of issues faced by over 600 million people with disabilities, assisted in part by various United Nations instruments.

(3) We expressed deep concern, that such instruments and mandates have yet to create a significant impact on improving the lives of people with disabilities, especially women and girls with disabilities, who remain the most invisible and marginalized of all disadvantaged social groups.

(4) We emphasize, that the constituted exclusion of people-with disabilities from the mainstream development process is a violation of fundamental rights and an indictment of humankind at the inception of the new century, (5) We share the conviction, that the full inclusion of people with disabilities in society requires our solidarity in working towards an international convention that legally binds nations, to reinforce the moral authority of the United Nations Standard Rules on the Equalisation of Opportunities for Persons with Disabilities.

(6) We believe, that the inception of the new century is an opportune time for people with diverse disabilities and their organizations, and other civic organizations, local and national governments, members of the United Nations system and other international bodies, as well as the private sector,

to collaborate closely in an inclusive and wide consultative process aimed at the development and adoption of an international convention to promote and protect the rights of people with disabilities, and enhance equal opportunities for participation in mainstream society.

(7) We therefore urge, all heads of state and government, public administrators, local authorities, members of the United Nations system, people with disabilities, civic organizations that participate in the development process, and socially responsible private sector organizations, to immediately initiate the process for an international convention, including by raising it in all forthcoming international forums, especially the Special Session of the United Nations General Assembly on Social Development, the NGO Millennium Forum, the United Nations Millennium General Assembly and Summit and related preparatory meetings, (8) We further urge, all participants in this process to actively facilitate the adoption of such convention, which should address, inter alia, the following areas of priority concerns:

- (a) Improvement of the overall quality of life of people with disabilities, and their upliftment for deprivation, hardship and poverty.
- (b) Education, training, remunerative work, and participation in decision-making process levels.
- (c) Elimination of discriminatory attitudes and practices, as well as information, legal and infrastructure barriers.
- (d) Increased allocations of resources to ensure the equal participation of people with disabilities.

1. We hereby, send out a call to action, to all concerned with equality and human dignity, to join together in widespread efforts embracing capitals, towns and cities, remote villages, and the United Nations forums, to ensure the adoption of an international convention on the rights of all people with disabilities, and

2. We commit our , respective organizations to strive for a legally binding international convention on the rights of all people with disabilities to full participation and equality in society.

11. The Protection of Human Rights Act, 1993 (No. 10 of 1994) ('Human Rights Act' for brevity) had been enacted by the Parliament with a view to give effect to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, adopted by the General Assembly of the United Nations on 16-12-1996. "Human Rights" defined in Section 2 (d) of the Human Rights Act would mean:

"rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by Courts in India."

12. The conditions of inmates of the said hostel who suffer from a great disability must be considered keeping in view the International Covenants, Promulgations, Protocols and Charters.

13. A broad meaning was given by the Apex Court to the word "Life" while interpreting Article 21 of the Constitution of India. Life, it is trite, is something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed. (See: *Munn v. Illinois*, (1877) 94 US 113). This observation has been quoted with approval by the Apex Court in *Kharak Singh v. State of U.P.*. Reference in this connection may also be made to the decisions of the Apex Court in *Olga Tellis v. Bombay Municipal Corporation*, *Consumer Education & Research Centre v. Union of India*, and *Sita Ram v. Delhi Administration*, . Right to Education has also been held to be a Fundamental Right in *Unni Krisnan v. State of A.P.*, .

14. The Constitution of India guarantees life and liberty, which would inter alia include right to live with dignity.

15. Mr. Balakrishna Murthy, learned senior counsel, has placed before us a large number of decisions of the Apex Court reported in *Javed Abidi v. Union of India*, , *Indian Council of legal Aid & Advice v. Union of India*, , *Chameli Singh v. State of U.P.*, , *Dalmia Cement (Bharat) Ltd., v. Union of India*, , *Vishaka v. State of Rajasthan*, , *N.H.R.C. v. State of Arunachal Pradesh*, , *C. Masilamani Mudaliar v. Idol of Sri Swaminathaswami Thirukoil*, , *Madhu Kishwar v. State of Bihar*, and *Charan Lal Sahu v. Union of India*,

16. Although, as noticed hereinbefore, Mr. Balakrishna Murthy has cited a number of decisions, it would suffice to notice a few.

17. In *Consumer Education & Research Centre* (4 supra), the Apex Court explaining the concept of social justice observed that the same envisages justice to all members of society by removing the handicaps and disabilities suffered by the poor and secure their human dignity, having regard to the preamble, as also Article 38 of the Constitution of India. The Apex Court further observed:

18..... In other words, the aim of social justice is to attain substantial degree of social, economic and political equality, which the legitimate expectation. Social, security, just and humane conditions of work and leisure to workman are part of his meaningful right to life and to achieve self-expression of his personality and to enjoy the life with dignity, the State should provide facilities and opportunities to enable them to reach at least minimum standard of health, economic security and civilized living while sharing according to their capacity, social and cultural heritage.

18. Referring to Article (1) of the Universal Declaration of Human Rights and various provisions of the Constitution, the Apex Court held:

24.... Therefore, it must be held that the right to health and medical care is a fundamental right under Article 21 reads with Articles 39 (e), 41 and 43 of the Constitution and make the life of the workman meaningful and purposeful with dignity of person. Right to life includes protection of the health and strength of the worker and is a minimum requirement to enable a person to live with human dignity. The State, be it Union or State Government or an industry, public or private, is enjoined to take all such actions which will promote health, strength and vigour of the workman during the period of employment and leisure and health even after retirement as a basic essentials

to live the life with health and happiness....

19. In Javed Abidi (7 Supra), Pattanaik, J, has directed the Indian Airlines to grant concession for travelling by air within the country to those who are suffering from the locomotor disabilities to the extent of 80% and above.

20. In Indian Council of Legal Aid & Advice (8 Supra), a Division Bench of the Apex Court held that the scheme proposed by the Union of India for medical check-ups and treatment of visually-handicapped should be adopted by all States and Union Territories and, issued notice to all State and Union Territories to show cause why proposed scheme should not be implemented, as proposed or in any modified form.

21. The concept of social justice particularly with regard to the handicapped person, as would appear from the various decisions of the Apex Court, has undergone a sea-change.

22. It is not in dispute that the hostel is being maintained by the State. It is also not in dispute that the said hostel is being run pursuant to a scheme adopted by the State so as to equip the blind students with education and working skills for leading a better life.

23. The hostel is being run in rented building. In the counter-affidavit, the respondents have neither denied that the inmates of the hostel were playing kabadi nor also about the death of Balaswamy while so playing. Playing kabadi on a roof in such situation cannot be countenanced and thus, we are at a loss to understand as to how the blind students were allowed to play kabadi on the terrace.

24. Neither the authorities of the hostel nor the State have conducted any enquiry for the cause of the incident. The State, however, has paid only a sum of Rs. 10,000/- (Rupees ten thousand only) towards ex gratia.

25. The District Collector has stated that on food, clothing and cosmetic charges sums of Rs, 330/- per month, Rs. 100/- per annum, and Rs. 20/- per month respectively are being paid to every student. The other averments made in the counter-affidavit, as regards supply of medicine, drinking water and maintenance of bath-rooms and toilets, as also hygienic conditions, *prita facie*, cannot be accepted to be correct in view of the status report of Sri Balakrishna Murthy.

26. Although it is accepted that the Commissioner is in overall charge of the hostel, he has neither affirmed any affidavit nor produced before the Court any record that he has performed his statutory duties. The District Collector has also not stated in his affidavit as to how and in what manner either he or the Commissioner is supervising the affairs of the hostel. The very fact that Sri Balakrishna Murthy found so many irregularities in the matter of running the hostel, despite his visit being notified, clearly goes to show that all is not well in the hostel. The same is required to be better managed. The Commissioner and the District Collector, in our opinion, must therefore be directed to oversee the functioning of the hostel at regular intervals and the State should ensure the same. Having regard to the Beijing Declaration of which India is a signatory, the State should be well advised to take such steps which would be Disabled friendly as the same in turn would be of

immense benefit to those people who are not. We leave it at that.

27. We, however, by way interim measure direct the State to grant a further sum of Rs. 50,000/- (Rupees fifty thousand only) by way of ex gratia payment to the mother of the deceased Balaswamy. The State is further directed to provide on ad hoc basis a sum or Rs. 13,000/- (Rupees thirteen thousand only), apart from the grant, which is being made, towards bed and clothing of the inmates of the hostel. The State is also directed to grant a further sum of Rs. 6,500/- (Rupees six thousand and five hundred only) for purchasing the cosmetic consumables to be utilized by the students. The District Collector - 4th respondent herein shall see to it that purchases are being made under his supervision, upon ascertaining the requirements therefor from the inmates of the hostel. The State is further directed to constitute a Committee in terms of the provisions of the 1995 Act at an early date, preferably within a period of six (06) weeks from the date of communication of this order.

28. The Commissioner, Disabled Welfare Department, respondent No. 3 herein is directed to make surprise inspection of the hostel and submit a report to this Court within four (04) weeks.

29. This Court expresses its gratitude to Sri Balakrishna Murthy, learned senior counsel, for assisting the Court. We would request him to make another surprise visit of the hostel on any other day, which is convenient to him, and submit a status report to this Court.

30. Let the matter appear six (06) weeks hence for further directions.