

High Court of Sikkim

Record of proceedings

WP(PIL) No.10 of 2017

In Re - Inhuman Conditions in 1382 Prisons

For Petitioner

Mr. Sudesh Joshi, Advocate as Amicus Curiae.

For Respondents

R-1 to R-4

Mr. Karma Thinlay, Senior Government Advocate.
Mr. Thinlay Dorjee Bhutia, Government Advocate.
Mr. S. K. Chettri, Assistant Government Advocate.
Mrs. Pollin Rai, Assistant Government Advocate.

R-5

Dr. (Mrs.) Doma T. Bhutia, Advocate.

and

WP(PIL) No.01 of 2015

In Re : High Court of Sikkim

For Petitioner

Mr. A. K. Upadhyaya, Senior Advocate as Amicus Curiae.
Ms. Aruna Chhetri, Advocate as Amicus Curiae.
Mr. Karma S. Lhendup, Advocate on behalf of Mr. Jorgay
Namka, Advocate as Amicus Curiae.

For Respondent

R-1 to R-5

Mr. Karma Thinlay, Senior Government Advocate.
Mr. Thinlay Dorjee Bhutia, Government Advocate.
Mr. S. K. Chettri, Assistant Government Advocate.
Mrs. Pollin Rai, Assistant Government Advocate.

Date : 21-09-2018

CORAM :

**THE HON'BLE ACTING CHIEF JUSTICE
MRS. JUSTICE MEENAKSHI MADAN RAI
THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE**

ORDER

Rai, ACJ

1. Seen the Report dated 18-09-2018 filed by the Learned Amicus Curiae with regard to the Open Air Jail facility in Himachal Pradesh and the modalities of its functioning. It is worthwhile mentioning here that the Hon'ble Supreme Court in

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its Judgment in *RE - Inhuman Conditions in 1382 Prisons : (2017) 10 SCC 658* had taken into consideration the suggestions put forwarded by the Learned Amicus and Learned Counsel for the National Forum therein encouraging the establishment of “Open Jails” or “Open Prisons” and remarked that it is certainly worth considering. The experiment in Shimla, Himachal Pradesh and the semi-Open Prisons in Delhi was also brought to the notice of the Hon’ble Supreme Court.

2. In this context, we may now refer to the Affidavit of the Secretary (Protocol), Home Department, Government of Sikkim, dated 25-07-2018, filed through Government Advocate, stating therein, in Paragraph 3(6) “Open Prisons”, unequivocally that *“The proposition of the Hon’ble Court in regard to the establishment of open Court (sic) is found not tenable or feasible owing to the difficult and unsuitable topography of the State.”*

3. We have to observe with anguish that the Affidavit exhibits the ignorance of the Officer pertaining to the observation of the Hon’ble Supreme Court and the statements made therein borders on being contumacious for which we however restrain ourselves from taking steps today. The Secretary (Protocol), Home Department, Government of Sikkim, shall be present in person before this Court on the next date to clarify the position reflected in his Affidavit.

4. The Affidavit dated 18-04-2018 of the Additional Chief Secretary, Home Department, Government of Sikkim, while dealing overcrowding in Prisons states that the capacity of Namchi District Jail, South Sikkim, is presently sixty, however this will be increased to seventy-six once vertical extension therein is completed. That, the present capacity of the Central

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Prison, Rongyek, East Sikkim, is one hundred and eighty six and upon completion of two additional barracks having a capacity of fifty each, this will increase to two hundred and eighty six in total.

5. It cannot but be remarked that the Affidavit is sans any basis since it gives no indication of how the assessment has been arrived at inasmuch as the Affidavit is devoid of any fact as to whether the extensions would suffice for housing the under-trial prisoners and convicts. Denial of overcrowding without revealing statistics is not sufficient. No efforts have been made to conduct a study of the present number of inmates, the increase/decrease over the years and whether the extension would be adequate in terms thereof. The Affidavit lacks any background study to substantiate the statements.

6. This matter has been pending since 10-10-2017 on which date pursuant to the observations made by the Supreme Court on 15-09-2017 in WP(C) No.406 of 2013 (*Re : Inhuman conditions in 1382 prisons : (2017) 10 SCC 658*) the *Suo Motu* Public Interest Litigation was registered before this Court. Hence bearing in mind the views reflected in the Affidavit *supra*, it is indeed imperative that this Court direct the State Government to constitute a study team or Committee comprising of the following;

- (i) The Legal Remembrancer-cum-Secretary, Law Department, Government of Sikkim;
- (ii) The Superintendent of Police, Central Prison, Rongyek, East Sikkim;
- (iii) The Superintendent of Police, Namchi Prison, South Sikkim;
- (iv) The Assistant Superintendent of Police, Central Prison, Rongyek, East Sikkim;

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- (v) The Assistant Superintendent of Police, Namchi Prison, South Sikkim;
- (vi) and such other person as would be on the suggestions of Learned Counsel for the parties be directed by this Court on the next date.

For the said purpose the Learned Amicus Curiae and the Counsel appearing for the parties, before this Court may provide a list of names of experts to be considered/included in the study group before the next date.

7. The study team/Committee shall,
- (a) examine the condition of the Prisons in the State of Sikkim;
 - (b) examine the compliance of the directions issued by the Supreme Court in *Re : Inhuman Conditions in 1382 Prisons* from time to time as well as other Judgments of the Supreme Court including *R.D Upadhyay vs. State of Andhra Pradesh and Others : (2007) 15 SCC 337* and whether the directions issued by the Supreme Court has been complied with, in the State Prisons;
 - (c) study the national standards required to be maintained in Prisons in India and whether the State Prisons are in compliance thereof;
 - (d) suggest measures to be taken by the State Government to improve the conditions of the State prisons and facilities required to be provided as per the national standards including addressing mental health issues;
 - (e) study the Open Jail concept;

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- (f) give such other relevant recommendation keeping in mind at least a Five year Plan for the same.

8. While examining the aforesaid, the Committee shall also conduct a study of the number of inmates who on an average are housed in the Prisons per annum and thereby assess the requirement for extension of accommodation. They shall take into consideration construction of separate barracks for the prisoners and under-trials under the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) and the Sikkim Anti Drugs Act, 2006 (SADA). The Committee shall also take into consideration the number of barracks required for accommodation of the prisoners with contagious diseases and facilities essential for their welfare. They shall take special care in considering separate Cells for women bearing in mind their requirements. They shall also make efforts for increasing the visits of Counselors and Psychiatrists in Jail, over and above what is being provided by the Sikkim State Legal Services Authority. The Study Team shall also look into any other related facility required in both Jails.

9. List on 24-09-2018 for personal appearance of the Secretary (Protocol), Home Department, Government of Sikkim and furnishing the list of names for other Members of the Committee, suggested by Learned Amicus Curiae, which has been consented to by Learned Senior Government Advocate and Respondent No.5.

Judge
21-09-2018

Acting Chief Justice
21-09-2018

Index : Yes/No

Internet : Yes/No

pm/ds/avi