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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 3444/2008

LALIT & ORS

..... Petitioners

Through: Mr. Niloy Dasgupta, Advocate

versus

GOVT OF NCT & ANR

..... Respondents

Through: Ms. Sonia Mathur with Mr. Sumit Kumar
Singh, Advocates

CORAM: JUSTICE S.MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the order? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the order should be reported in Digest? Yes

ORDER
07.05.2010

W.P.(C) 3444/2008 CM.No.6573/2008 (for stay)

1. This writ petition was filed on 30th April 2008 by 12 inmates of the hostel attached to the Andh Mahavidyalya, at Panchkuian Road, New Delhi, an institution for visually challenged students. They sought a direction to Respondent No.1, Department of Education, Government of the National Capital Territory of Delhi (GNCTD) and Respondent No. 2, the Authorised Officer of the Andh Mahavidyalya not to dispossess the Petitioners or compel to leave the Andh Mahavidyalya.

2. It was claimed in the petition that although till 1976-1977 only students studying up to Class X were admitted to the hostel, that condition was waived and all visually challenged persons, irrespective of their age and the level in

the school were permitted to live there.

3. On 2nd May 2008 an interim order was passed by this Court directing that the Petitioners shall not be dispossessed. An application was filed soon thereafter by the Respondents seeking vacation of the interim order. In the said application it was stated that a wrong statement had been made in the writ petition that the 12 Petitioners were being expelled. In fact an expulsion order was passed on 29th April 2008 against the following 5 inmates of the hostel:

Lalit Kumar	-	Petitioner No.1
Bacchu Chowdhary	-	Petitioner No.5
Rajinder Kumar	-	Petitioner No.6
Manoj Kumar	-	Petitioner No.9
Raj Bali	-	Petitioner No.11

4. It was stated that the aforesaid five petitioners were in the age group of 25-35 years and had already completed their studies. They were creating unnecessary disturbance and causing a lot of inconvenience to the students of Classes I to VIII. In para 6 of the application it was stated:

“6. The Authorised Officer was compelled to pass the Order of eviction with respect to the five petitioners as these persons were by their rude language and indisciplined behavior were preventing the young students from pursuing their study and other creative activities. The petitioners referred to hereinabove were discouraging the students to attend the classes and were misguiding them. The younger students were traumatized particularly when some of the occupants indulged in the use of intoxicants and subjected the genuine students to sexual abuse.”

5. Representations had been received by the Authorised Officer from some of

the students on 10th April 2008 and thereafter steps were taken for evicting the said five inmates.

6. In a counter affidavit filed on 5th September 2008 it was stated by the Respondents that the on 4th November 1980 the Andh Mahavidyalaya had been taken over by the Administrator of Delhi under Section 20 of the Delhi School Education Act 1973. Pursuant to orders passed by this Court on 29th October 2003 in LPA No. 551 of 2001 (*Darshan Khattar v. The Lt. Governor*) the Lt. Governor (LG) in exercise of his powers under Rule 43 of the Delhi School Education Rules, 1973 took over the hostel and its staff initially for a period of three years. The Director of Education was to manage the hostel. It was stated that the hostel is meant only for young visually challenged students in Classes I to VIII. On account of the over-staying of older inmates, like the five Petitioners who were in the age group of 25-35 years, there was a severe shortage of space for deserving young students. The institution was on a plot of 400 sq. yards and there was a limitation on the number of students who could be admitted to the hostel. Enclosed with the affidavit was the complaint made by the younger students that the older inmates were intimidating and even sexually abusing some of them. The complaint (as translated into English) inter alia was “Sir, it is not fair to call them ‘students’ anymore. These people have made the ‘temple of education’ a place for immoral activities.”

7. Annexure R-2 to the counter affidavit gave the dates of birth, the dates of admission and the dates of each of the twelve petitioners. As regards the five petitioners who were expelled by the order dated 29th April 2004, the details

were as follows:

Petitioner No.	Name	Date of Birth	Date of Admission	Class VIII passed on
1.	Lalit Kumar	30.10.1981	1.8.1988	29.3.1996
5.	Bachchu Chowdhary	20.11.1987	5.7.1995	31.3.1988
6.	Rajinder Kumar	26.6.1982	16.7.1987	29.3.1996
9.	Manoj Kumar	4.4.1986	31.3.1998	31.3.2003
11.	Raj Bali	1.12.1982	8.5.1989	31.3.1997

8. On 8th July 2009, this Court directed the counsel for the parties to obtain instructions “whether the petitioners are ready and willing to move and can be accommodated at Seva Kutir, Kingsway Camp, New Delhi.” In response thereto an affidavit dated 6th July 2009 was filed stating that there was no policy of the GNCTD to retain at the hostel attached to the Andh Mahavidyalaya students who had passed Class VIII. Hostel facilities for the disabled were available in institutions under the Department of Social Welfare, GNCTD at Delhi Gate (for the hearing and speech impaired), Kingsway Camp [where the Hostel College Going for Blind Students (HCGBS) was housed] Rohini Hostel (for the mentally retarded) VRC Training Centre at Pusa Road (for the Orthopaedic disabled) and the Blind Relief Association (for the visually challenged up to Class XII). It was stated that “in view of the available hostel facility, the blind students who have already passed Class VIII from Andh Mahavidyalaya can be shifted to Sewa Kutir, Kingsway Camp, Delhi.” The addresses of the above five petitioners

were indicated. While Petitioner No.1 was from Delhi, Petitioner No.2 was from Rajasthan, Petitioner No.3 from Bihar, Petitioner No.4 and 5 from U.P.

9. However, at the hearing on 23rd September 2009 this Court was informed by learned counsel for the GNCTD that “due to shortage of accommodation” the petitioners could not be shifted to Sewa Kutir. This Court then required the Respondents to place on affidavit the total accommodation available in Sewa Kutir and its present occupancy. The respondents were directed to take steps to accommodate the petitioners in any of the private establishments/hostels for the blind persons. Pursuant to the above order, an affidavit was filed by the Authorised Officer on 6th January 2010. It enclosed a letter dated 3rd December 2009 from the Superintendent of the HCGBS which stated that while first preference was given to the students of the Blind School, Kingsway Camp and second to those students already living in the hostel who submit their “progress and bonafide from various regular colleges where they are studying.” As regards Sewa Kutir, it was stated that there were 114 students living there whereas the hostel facility was available only for 100 students. As far as the Andh Mahavidhyalya was concerned it could accommodate 30 to 35 children studying up to Class VIII whereas 40 to 45 persons were living there. It was stated that “efforts shall be made to adjust some of the Petitioners in JPM SSS (Jormal Periwal Memorial Senior Secondary School) Lal Bahadur Shastri Marg, New Delhi in the new academic session subject to the availability of seats.”

10. The Petitioners have filed an affidavit dated 5th May 2010 placing on record the names of the inmates of the Andh Mahavidhyalya who have been

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living there for many years.

11. Mr. Niloy Dasgupta, learned counsel for the Petitioners urged that there were many inmates in the Andh Mahavidyalya who were even older than 35 years and were permitted to stay there. His submission was that the Petitioners should not be discriminated against if others even older to the Petitioners were being permitted to stay on at the Andh Mahavidyalya.

12. Ms. Sonia Mathur, learned counsel for the Respondents, on the other hand, submitted that the hostel was meant for students up to Class VIII and the object of providing shelter to young students in their growing years would be defeated if older students who had completed their studies were permitted to stay on. She reiterated the submissions made in the affidavits that every effort would be made to help the students being evicted get accommodation in other institutions subject to availability of space in those institutions. She pointed out that on account of the interim orders passed by this Court, which had been continuing for more than two years, no action could be taken against any of the five Petitioners. Their overstay at the hostel was preventing deserving young visually challenged students from being accommodated in the hostel which was primarily meant for them. In particular, she drew attention to a request made by the Authorised Officer seeking police help way back on 26th February 2007 enclosing a list of 45 inmates who were required to be evicted.

13. The above submissions have been considered by this Court. The facts narrated underscore the problem of acute shortage of decent accommodation for the economically disadvantaged disabled students in the capital city. They

also are a pointer to the general problems that beset state managed institutions for social welfare. It appears that the institutions that provide shelter to the disabled are no different from other state-run quasi-penal custodial institutions like Observation Homes for children and *Nari Niketans*. The problems are essentially of lack of resources, trained and sensitive manpower, poor standards of hygiene, overcrowding, lack of accountability and the continued affront on the rights to life, liberty and dignity of the inmates. The decisions of the Supreme Court in *B.R.Kapur v. Union of India* (1989) 3 SCC 387, *Rakesh Chandra Narayan v. State of Bihar* 1989 Supp 1 SCC 644, *Supreme Court Legal Aid Committee v. State of Madhya Pradesh* (1994) 5 SCC 21 and *Dr. Upendra Baxi v. Agra Protective Home* (1983) 2 SCC 308, (1986) 4 SCC 106 are some instances in the past where the courts have noted with anguish the decrepit state of state-run institutions, meant for the care and protection of the socially, economically, physically and mentally disabled. This Court too repeatedly confronts these issues in its PIL jurisdiction while dealing with state-run institutions in Delhi like the Beggars' home at Lampur (See e.g. the order dated 15th October 2001 in *M.S. Pattar v. Govt. of NCT of Delhi*). The obligation of the state to protect and respect the rights to life, liberty and dignity of inmates of state-run institutions have been repeatedly emphasised in the above decisions. Therefore, while examining the problems faced by inmates of a state-run institution like the Andh Mahavidyalaya the above basic principles which are traceable to Article 21 of the Constitution require to be foregrounded.

14. In the context of the inviolable human rights of the disabled, it is necessary to take note of the binding and mandatory provisions of the Persons
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with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (specifically Sections 26 and 30) (`PDR Act') and the Convention on the Rights of Persons with Disabilities (`CRPD') which has been ratified by India. In particular, Article 7 which set out the obligations of the States towards children with disabilities, Article 9 which obliges the States to take appropriate measures to ensure access to “schools, housing, medical facilities”, and Article 24 which deals with the right to education are relevant. In the context of the present case, reference may be made to Article 24(2) CRPD which read as under:

“Article 24 - Education

2. In realizing this right, States Parties shall ensure that:

- (a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
- (b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
- (c) Reasonable accommodation of the individual's requirements is provided;
- (d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;
- (e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.”

15. More recently in the context of the right to education we have the Right of Children to Free and Compulsory Education Act, 2009 (`RTE Act'). The statute operationalises the constitutional mandate which obliges the state to provide free education to a child between the ages of six and fourteen. It

appears that on 31st March 2010 an amendment was introduced to the RTE Act in Parliament to specifically include within its ambit a child with disability.

16. Therefore, in the context of a disabled child housed in a state-run institution there are a cluster of laws and a bouquet of rights, all of which can be traced to the fundamental rights to liberty and life with dignity. Given the Parliamentary intent of making the right to education a fundamental right for every child between the ages of six and fourteen, which naturally therefore would include a disabled child, the primary responsibility of taking measures that preserve and protect this right is on the state. International human rights law, in the form of the International Covenant on Economic, Social and Cultural Rights would view this as an obligation of conduct of the State which cannot be avoided on the plea of lack of resources. The State will be obliged to take positive measures to enable realization of this right for those who are relatively weak and disadvantaged. In a lexical ordering of priority of rights, those that involve the weakest, socially and economically, deserve special treatment.

17. In the facts of the present case, the Andh Mahavidyalay is a state-run educational institution which also provides shelter to a doubly disadvantaged child, up to the age of fourteen. Such child combines in herself or himself a bundle of inviolable rights: as a person, as a young person, a disabled young person, a disabled young person whose right to education is guaranteed. In the context of a young person receiving education in a state-run institution as a resident scholar, the right to shelter and decent living is an inalienable facet of

the right to education itself. Then we have other survival rights of such child including the right to health which is an integral part of the right to life under Article 21 of the Constitution. Therefore, when the State takes over the running of an educational institution that caters to the needs of the disabled children its constitutional and statutory obligations are manifold. It has to account for the 'cascading effect' of multiple disadvantages that such children bear the burden of.

18. Viewed in the above background, it is clear that primary purpose of having a hostel attached to the Andh Mahavidhyalya was to ensure that visually challenged young students, up to Class VIII, are provided shelter during their stint at the school. The policy of restricting the hostel facility to children who have not yet completed Class VIII is a reasonable one considering the limited scope of availability of the fundamental right to education to the age group of six to fourteen. At a practical level also, it is understandable given the shortage of space in the hostel attached to the Andh Mahavidyalaya. If inmates, are permitted to stay on in the hostel long after completing Class VIII, then it restricts the right of access to the institution by other deserving young visually challenged students who are in need of education and shelter. There is limitation as to resources and all the visually challenged persons at present at the Andh Mahavidhyalya, irrespective of their age, cannot possibly expect to be allowed to live there irrespective of their age. The primary purpose should be to cater to the needs of young children studying up to Class VIII. If this primary object is not kept in view, then it may result in an unfair denial of the right to education of other deserving young students who are visually challenged.

19. The present case highlights the competing demands by two groups of disabled inmates of an hostel attached to an educational institution: one comprising the young children studying up to class VIII and the other comprising the older inmates who have completed Class VIII, some of them many years ago, and are still staying in the hostel for the simple reason that they have not yet been evicted. It is not possible to agree with the submissions on behalf of the five inmates who are facing eviction that only because there are others of the same age group or older who are staying on in Andh Mahavidyalya they should also be permitted to stay on. It is not desirable to have different age groups of inmates living under the same roof in a cramped space. This will not be healthy for either the body or the mind. If there are other older inmates, they too will have to make way for the younger and more deserving lot of students in need of shelter during their studying years. That cannot justify the petitioners who have been asked to be evicted staying on indefinitely.

20. In the circumstances, it is held that Petitioner Nos. 1,5,6,9 and 11, who have been asked to be evicted by the order of the Authorised Officer of the Andh Mahavidyalya dated 29th April 2008, cannot continue to stay in the hostel. They should now make alternative arrangements and move on. Given the fact that there has been an interim order in their favour for two years, this Court directs that the above five Petitioners should vacate the rooms under their occupation in the hostel attached to the Andh Mahavidhyalya on or before 1st July 2010 and hand over peaceful possession of the same to the Authorised Officer. If they fail to do so, it would be open to the Authorised

Officer to take appropriate measures in accordance with law to evict them. Since this Court has held that the aforementioned five petitioners are liable to evicted, it is not considered necessary to examine if they are even otherwise liable to be evicted on account of their alleged conduct.

21. Having said the above, this Court cannot be unmindful of the fact that for many of these inmates facing eviction, finding an alternative space in another state-run institution may be difficult without state assistance. Therefore, this Court expects, consistent with its directions in this case earlier, that the Authorised Officer and the Department of Education, GNCTD will make every possible effort to see if these five persons can be accommodated in any of the other institutions in Delhi meant for such persons subject to of course availability of space.

22. Before concluding, this Court would like to advert to another aspect. In the affidavit dated 5th May 2010 of the Petitioners have given details of many other inmates who have been staying in the hostel far beyond the year in which they completed Class VIII. One of them is shown to be staying there since 1971. If this is true, then it certainly is not reflective of a healthy state of affairs. In the context of the Andh Mahavidyalaya, an immediate enquiry needs to be undertaken to ensure that it is being run as an educational institution and that its hostel is primarily for children up to Class VIII. The Authorised Officer will also ensure that necessary action is taken in respect of those inmates who ought not to be staying any longer in the hostel. The eviction should not be on a selective basis. Eviction of inmates who have been in the hostel for many years cannot obviously be undertaken overnight.

Sufficient time should be given to them to make alternative arrangements and every possible assistance should be extended to them to find an alternative accommodation. This Court would expect that an advance notice of six months would be a reasonable period to enable such inmates to make alternative arrangements with the assistance of the authorities.

23. As this Court sees it, this case is a wake-up call to the GNCTD to monitor the functioning generally of all institutions under its control for the economically and socially weaker sections and in particular the institutions that it runs for the disabled. The inmates of such institutions, particularly when they are disabled children, are hardly going to be able to complain and be heard. Given the past experience where such institutions have been the dens of nefarious activities and undesirable practices, it is imperative to have in place a system of periodic surprise inspections by senior officers of the administration. It will require coordination between different departments of the GNCTD. The immediate need for this can never be overemphasized. It is expected that the directions issued in this judgment will be strictly implemented within the time frame indicated.

24. With the above observations and directions this petition is disposed of. The application also stands disposed of.

25. A copy of this order be given dasti to the learned counsel for the parties.

S. MURALIDHAR, J.

MAY 07, 2010

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