



Citation : CDJ 2008 MHC 6321

Court : High Court of Judicature at Madras

Case No : W.P. No. 36807 of 2006

Judges : THE HONOURABLE CHIEF JUSTICE MR. A.P. SHAH & THE HONOURABLE MRS. JUSTICE PRABHA SRIDEVAN

Parties : The Director, Tamil Nadu State Judicial Academy, Chennai Versus State of Tamil Nadu, Rep. by the Secretary to Government, Home Department, Chennai & Others

Appearing Advocates : For the Appearing Parties: ----

Date of Judgment : 26-03-2008

Head Note :

Constitution of India - Article 226 -

Judgment :

(Prayer: Petition under Article 226 of the Constitution of India praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to issue writ of mandamus.

“(1) to direct the respondents 1 to 3 to inquire into the grievance of each and everyone of the inmates;

(2) to frame fresh rules under Immoral Traffic (Prevention) Act, 1956;

(3) to constitute Special Courts to deal with the offences under the Immoral Traffic (Prevention) Act, 1956;

(4) to provide relief to the victims by placing them in the hands of recognized NGOs so to reintegrate the victims within the respective family members and in case of failure rehabilitate them after placing them in any appropriate institution;

(5) to direct the 4th respondent and other similar homes and institutions not to keep the accused and victim together;

(6) to direct the personal attendance of all the inmates to find out all other possible relief that could be granted to the victims as are available under the provisions of the Immoral Traffic (Prevention) Act, 1956; and

(7) to direct the 2nd respondent to make periodical inspection to the 4th respondent. Home and other similar homes and Institutions by the Magistrate.”

This writ petition coming on for orders as to admission on this day upon perusing the petition and the affidavit filed in support thereof the order of the High Court dated 29.6.2006, 12.10.2006, and 31.10.2006, 13.4.2007 and 16.8.2007 and made herein and to Counter and reply affidavits filed herein and the complaint report filed by the state Government to the writ made by the High Court and upon hearing the arguments of Ms. Vimala, Advocate for the Petitioner and of Mr. Rajakalifulla, Government Pleader on behalf of the Respondents the Court made the following order:

Prabha Sridevan, J.

By order dated 16.8.2007, the Court, after recording the compliance report filed by the State Government with regard to the directions issued by this Court vide order dated 31.10.2006, issued further directions to State Government. Now, the Government has submitted its report of compliance and the Director, Tamil Nadu State Judicial Academy has also filed his report on the action taken upon with suggestions of remarks for further directions. He is also framed a Scheme of rehabilitation for the Victims of Immoral Trafficking. The said scheme is extracted hereunder:

#### SCHEME OF REHABILITATION FOR THE VICTIMS OF IMMORAL TRAFFICKING

##### Object

The object of the scheme is to rescue and rehabilitate the victims of woman trafficking to fulfill the objectives of immoral traffic prevention Act and also to carry out the various directions of the Hon'ble High Court passed in W.P.No. 36807 of 2006 (a taken up PIL).

##### Sensitization programme for police

The police officers concerned in anti-traffic operations will be sensitized on various aspects of immoral traffic prevention Act, more particularly with regard to rescue of victims under Section 15 and 16 of the Act and shall be asked to intensify the State wide rescue operations so that notable number of victims can be rescued and thereafter, for the implementation of the rehabilitation programme for them.

##### Rescue operation

i) A police officer conducting a search without warrant under Section 15 or conducting rescue operations under section 16 of ITP Act, shall follow the provisions contained in the sections and rescue the victims of trafficking i.e. the sex workers and arrest the accused for the offences, who are the traffickers. The rescue operation will be conducted involving women organizations wherever possible.

ii) The rescued victims shall be produced before the Magistrate immediately. However, if the victim is to be taken to the police station, the victim shall be given the hand book

iii) a list containing her personal belongings shall be prepared and the same shall be produced before the Magistrate.

iv) On production of the victim, the Magistrate shall proceed under section 17(2) and (3) of the Act.

v) The Magistrate shall pass an order for the safe custody of the victim in the Vigilance/Protective Home for initial period not exceeding 21 days.

##### Reception at vigilance / Protective Home

1) An expert committee consists of Psychiatrists, Psychologist, Social Worker Counselors, Gynecologist, De-addiction professionals, Legal aid lawyer will be assessing every victim and categories them in the manner provided hereunder and prepare a report.

2. Based on the report of the expert committee and hearing the victims and considering other aspects as per law, the Magistrate will pass further orders under Section 17(4) of the Act (a) for shifting the victim to the rehabilitation home or (b) to repatriate and hand over to the legal guardian. In case of a minor girl, the Magistrate shall pass an order transferring the girl to the Child Welfare Committee or to a children Home.

### Role of Homes in Rehabilitation

There would be two types of Homes. One would be the Vigilance / Protective Home for the reception of victims and other would be the rehabilitation Home (Model Home). The first place of safe custody would be Vigilance / Protective Home. The rehabilitation of the victim starts at the Model Home. A holistic and integrated rehabilitation programme can be implemented well in a place where they could be kept for certain period to undergo the rehabilitation and skill programme. Hence, there is a need for rehabilitation Home with all facilities and training programmes.

### Intervention by Expert Committee

The expert Committee consisting of Psychologists, Counsellors, Social Worker would conduct psycho social intervention in a private and confidential manner. Psycho social intervention shall help in establishing good relationship, understanding the victims' circumstances and identifying the potential and interest of the victim. It will also enable to find out their health problem, drug addiction and the information regarding their parents, relatives, children, family background which can be addressed suitably. During the intervention, the victim woman will be informed about the scope of rehabilitation.

### Classification and segregation

Based on the recommendation of the Expert Committee the victims will be classified into three categories.

A. Women who have been recently trafficked into the trade who would be willing to undergo rehabilitation programme and stay in the home for certain period.

B. Woman who need longer duration of counseling and guidance to make a decision to choose rehabilitation

C) Woman who despite counseling are not willing for rehabilitation and need to be repatriated.

### Shelter

The victim shall be provided shelter in the Vigilance Protective home with all amenities. Each category of victim shall be sheltered in separate blocks. The first category may be allowed a limited freedom within the campus, whereas the second and third category may be kept under vigil. The first category needs to be shifted to the rehabilitation Home (Model Home) at the earliest, in any case, not later than two weeks. This rehabilitation Home would have full scope for vocational training including wherever possible, placement tie-ups. The Tamil Nadu State Legal Services Authority would intervene and obtain required order from the concerned Magistrates to keep the victim in the Home for the period that is considered necessary for rehabilitation which may extend upto three years (Sec. 17(4) of the Act).

The second category of victim would also be shifted to this rehabilitation Home from time to time as and when they show an interest for rehabilitation. Otherwise, they will be categorized ----(C).

The victims in category (c) will be repatriated after proper enquiry about the parents, husbands, guardians, fit persons after the enquiry by the Magistrate under Sec. 17(4). The Magistrate may take the assistance of the panel of 5 respectable persons for passing suitable orders.

#### Food clothing and Bedding

All victims will be provided with nutritious diet, with variety and sufficient clothing and bedding.

#### Health Care

The Homes will have facilities for regular periodical health check ups by the panel of doctors from the Government Hospitals. Part time doctor will be engaged to attend to the daily medical needs of the inmates. Para medical staff also will be appointed for the Home. Victims will be counseled to voluntarily take HIV/AIDS test and the same will be taken in specialized centres catering to the needs in association with TANSACS. Victims suffering from HIV/AIDSs will be given required treatment and medicines in association with TANSACS and Government hospitals. If any victim is found to be addicted to drug/alcohol, they will be provided with counseling and treatment through de-addiction centres.

#### Escort

Escorts for safe transfer of victims from one home to another shall be provided by the Police Department and the victims shall be escorted along with responsible staff of the Department of Social Defence. Whenever the victim need to be taken to the hospital for treatment, the police shall provide escort and vehicle and necessary security will be provided round the clock if the victim is admitted in a hospital for treatment.

In case of repatriation of the victim to be handed over to parents, husbands, guardians, escorts will be provided by the police department with plan cloth woman police constables.

#### Non Formal Education

Non-Formal education will be provided to the victims in consultation with the education department with trained teachers. Special emphasis would be given on English, Maths, and communication skills to enable them to take up suitable vocational training.

#### Vocational Training and Certification

New schemes for training would be worked out with suitable NGOs and other Government agencies, community polytechnics, JSS and corporate. Infrastructure facilities will be improved, new buildings will be constructed for housing the training wing with UNODC funding and as well as funding from the Government. The vocational training scheme will include Jerdosi work, Juice/Jam/Pickles/Kari Powder making, Beautician course, tailoring, DTP, MS Office. These should be conducted for the woman based on their attitude and of their choice. Certificates will be issued by the competent authority.

#### Recreation, Sports, Fine Arts, Yoga and Meditation

The women who undergo rehabilitation programme will be provided recreational facilities, such as

television radio, indoor and outdoor sports, magazines and newspapers. They would be encouraged to pursue fine arts if they have the interest – Yoga and meditation would be conducted for them.

#### Financial Assistance

The women upon their discharge would be provided either financial assistance or material assistance from the Tamil Nadu Social Defence Fund or from Lump sum grant. Support for placement and loan assistance for self-employment under various Government schemes will be provided.

#### Discharge and reintegration

After equipping the victims, they will be able to be reintegrated to the mainstream of the society either by repatriating them to their families or placing them with suitable NGOS. On discharge from the home, the victims shall be provided with educational records, medical records, legal documents and other means such as savings and personal belongings and also the compensation, if awarded by the Criminal Compensation Injury Board.

#### Children and Dependents

(1) Suitable scheme of Government and tie-ups with NGOs would be arranged for taking care of the children and their dependents of the victims. The minor children of these victims would be allowed to stay with them and if they are at educatable age, suitable arrangements would be made to provide formal education in the regular schools, preferably Bala Vikar or Bala Mandir.

#### Funding

The Scheme shall be funded for the year 2007-2008 and the first few months of 2008-2009 with the funds available from UNODC for the aspects of counseling and vocational training. The Department of Social Defence is directed to forward a proposal to the Government for continuation of the scheme and establish Model Homes in six locations, viz. Chennai, Coimbatore, Madurai, Tiruchirappalli, Salem and Vellore.

The above Scheme is accepted and further directions are given for full implementation of the Scheme. The specific items highlighted in the report are grouped together and appropriate directions are given thereunder:

#### Homes and its facilities

##### Earlier Direction

Pursuant to the earlier direction, the Government Vigilance Home at Chennai has been repaired and renovated at a cost of Rs.4 lakhs.

##### Action Taken

Further direction was given to pursue the proposal of UNODC, which is a UN Organization providing funds for various schemes including anti-trafficking and which has given a sum of Rs.9.8 lakhs for converting the Government Vigilance Home at Chennai as a Model Home.

##### Further Direction

Immediate steps shall be taken, by utilizing the amount given by UNODC, for converting the Government Vigilance Home/Protective Home as Model Home as expeditiously as possible.

With further funding as and when provided, other Homes in the State shall also be converted on the same pattern.

The Scheme for the Model Home has also been submitted and the location of the Rehabilitation Centre shall be planned keeping in mind the best interest of the women and the convenience of the NGOs who work with the women and other administrative reasons.

#### Health Check-ups

##### Earlier Direction

Directions were given to ensure periodical health check-ups at these Homes by Government approved panel of doctors.

##### Action Taken

As per the instruction of the Commissioner, Department of Social Defence, the Director of Medical Education has issued a direction to all the Deans of Medical Hospitals and accordingly, periodical medical health check-up has commenced and is being conducted at Madurai and Trichy. A team of doctors from primary health centre also visits the institution twice a week.

At Vellore, due to lean strength, a part-time medical officer is deputed. In Chennai and Coimbatore, the victims are taken to hospitals once in a week.

At the Government Vigilance Home, Chennai, a panel of doctors from Government Royapettah Hospital conducted health check-up. This is recorded.

##### Further Direction

The panel of doctors who has been appointed and deputed to visit the Homes on part-time basis shall visit the Homes. The present practice of parading the women in public light and taking them to the clinic shall be avoided, since the women victims' sensibilities also have to be borne in mind.

#### Scheme to address the needs of victims of trafficking

##### Earlier Direction

It was directed that the needs of Traffic victims who are drug addicts or alcoholics must be addressed. For this purpose, the help of a de-addiction expert was directed to be obtained and the State Government was directed to prepare a list of de-addiction centres across the State.

##### Action Taken

A comprehensive scheme of rehabilitation for the victims of immoral trafficking has already been submitted, which will fulfil these directions.

##### Further Direction

The comprehensive scheme of rehabilitation for the victims of immoral trafficking has already been extracted above and it is accepted fully by this Court and the implementation of this scheme shall fulfil the above directions.

The funding given by UNODC also includes Rs.1 lakh, which is allocated for the de-addiction programme and it is reported that there is a tie-up with Organizations getting Government of India funds under the de-addiction programme. But what has been done is not sufficient. To implement the scheme which has been accepted by us today, the de-addiction experts who have been approved by the Government shall be asked to visit the Home to give their service on a regular basis.

#### Formal Education / Vocational Training

##### Earlier Direction

As regards vocational training and guidance, the joint implementation of the rehabilitation scheme by the State Government and the Jan Shikshan Sansthan is under active consideration of the Government and it shall be implemented.

##### Action Taken

As per the Scheme for Jan Shikshan Sansthan, for a period of three months, a sum of Rs.40,000/- has been given vide letter No.17811/D4/2007.

##### Further Direction

Government and the Departments concerned are directed to give vocational training and formal education by conducting training programmes and framing schemes with suitable NGOs and other Government Agencies, Community Polytechnics, Jan Shikshan Sansthan (JSS) and corporate. Appropriate certificates shall be issued by the competent authority.

The Government shall allocate additional funds on a regular basis to provide women with vocational training.

#### Economic Rehabilitation of Victims

##### Earlier Direction

The Jan Shikshan Sansthan (JSS) was directed to evolve a programme for equipping the rescued victim with the knowledge and skills appropriate to her attitude and orientation so that her economic rehabilitation becomes easier.

##### Action taken

A comprehensive scheme has been formulated and if the same is implemented, it will fulfil the directions issued in this regard.

An order has already been passed on 25.1.2008 to extend the financial assistance from the Tamil Nadu Social Defence Welfare Fund.

##### Further Direction

The funds allotted under this head cannot be a non-recurring expenditure, but it is a recurring expenditure, and the woman victim shall be given the option to choose a particular vocational course which is suitable to her.

#### Vocational Training & Guidance

### Earlier Direction

Directions were given to the State Government to consider the proposal given for amending the Rules so that the benefits of the Tamil Nadu Social Defence Welfare Fund for Women and Children may be extended to the affected victims.

### Action Taken

These directions are reported to have been complied with.

### Further Direction

The Government shall give post-training support to the victim woman till she gets rehabilitated in the event there is no reunion of the woman with her family.

### Counselling

#### Earlier Direction

The Government was directed to notify the NGOs who were specialized in giving counseling to the inmates of the Homes, in consultation with the Tamil Nadu AIDS Control Society, to co-ordinate with the working of NGOs.

#### Action Taken

The list of NGOs who are specialized in the counseling to the inmates suffering from HIV/AIDS have been obtained from the Tamil Nadu AIDS Control Society and the copy communicated to the Superintendent of Government Vigilance / Protection Home with an instruction to avail their services.

#### Further Direction

The Superintendents of Government Vigilance / Protection Homes are directed to avail the services of the counselors.

### Psycho-Social Intervention

#### Earlier Direction

The Government was directed to appoint counselors in respect of the remaining Districts also, on the same line as it is done regarding the various Districts mentioned in the compliance report within three months.

#### Action Taken

Counsellors have been identified for all the Vigilance Homes / Protection Homes for Women belonging to other States who do not understand Tamil or English. Translators will be arranged and wherever possible, counselors who know their language would be arranged on payment of honorarium.

#### Further Direction

This is covered by the UNODC Project. But, a proposal has to be sent to the Government and



additional needs will be covered by the rehabilitation scheme.

#### Return of belonging of the Victims upon Discharge from Homes Earlier Direction

The Government was directed to issue suitable directions to all the Superintendents of Government Vigilance Home / Protective Homes to ensure that the personal belongings of the victims are directly given and also to maintain registers regarding the list of personal belongings of the rescued victims with particulars about the return.

#### Action Taken

Suitable directions have been issued to all the Superintendents of Government Vigilance Home / Protective Homes to ensure that the personal belongings of the victims are directly given and also to maintain registers regarding the list of personal belongings of the rescued victims with particulars about the return of the articles and to obtain the signature of the victims. This is recorded.

#### Documentation and Computerization

##### Earlier Direction

The Government was directed to develop necessary software in consultation with ELCOT and the Crime Record Bureau for creating a databass on the individual victims and also to computerize of documentation and report the same to this Court.

##### Action Taken

For developing necessary software to create a database, the Managing Director, ELCOT has been addressed by the Commissioner of Social Defence vide letter dated 3.11.2007 to inform about the financial requirement. It would take one year as it would involve response from ELCOT, allocation of funds by Government, development of software, training of institutional staff etc.

##### Further Direction

The Government shall ensure that in due course, documentation and database is possible with computerization of all the Homes in the State.

#### Sensitization Programmes

##### Earlier Direction

The Government as well as the State Judicial Academy was directed to conduct courses in consultation with the UNDP as well as UNICEF and report the same to this Court.

##### Action Taken

Regarding sensitization of judicial officers, the Director of Judicial Academy has informed the Commissioner of Social Defence that sensitization programme on ITP Act for the Judicial Officers of the entire State of Tamil Nadu was conducted in two places, one in Madurai and another in Chennai.

Further steps are being proposed for UNODC support for sensitizing law enforcement agencies with special emphasis on the officers of level above DSP, due to dual reason on lack of adequate impact of sensitizing only at lower levels, and need for clear direction from higher levels to the field staff which works exceedingly well in a uniformed force like police. This is recorded.

Accreditation Council.

Earlier Direction

The Government was directed to constitute as Accreditation council as proposed by the Special Commissioner of social Defence in 8 weeks.

Action Taken

Proposals have been received from Department of Social defence to form an accreditation council are under the duration of the Government.

Further Direction

The Government is directed to expedite the proposal for intuing the Accreditation Council within a period of three months.

Help Booths

Earlier Direction

The Government was direct to establish Help Booths at railway Stations and Bus Terminal, since these are the vulnerable places from where woman and girl children who abandon their families to towns and cities due to multiple factors are often found up.

Action Taken

The Inspector General of Police and the Railways, Chennai has addressed by the Commissioner of Social Defence to inform the present stage in the establishment of Help Booths in four railway stations at Tiruchirappalli, Palani, Karaikudi and Rameswaram.

Further Direction

The Inspector General of Police, with the co-operation of the General Manager, Southern Railways, shall open Help Booths at all railway stations and also at all bus terminals.

The Railways shall also include in its digital information shall bar on display at all the railway stations, the information being to the availability of help Booths at the railway stations.

Help Desks

Earlier Direction

The Government was directed to establish Women Help Desk at each Police station to help women victims express their grievances freely.

Action Taken.

The Additional Director General of Police (CBSTD), Chennai has been reminded by the Commissioner of Social Defence to Complete the establishment of women Help Desk in all the police stations in the State.

#### Further Direction

The Additional Director General of Police (CBCID) is directed to comply with this direction as early as possible.

#### Criminal Compensation Injuries Board Earlier Direction

The Government was directed to take appropriate steps in setting up a Criminal Compensation Injuries Board for awarding compensation to the victims of immoral trafficking.

#### Action Taken

The said proposal is under active consideration of the Government. Due to the procedure involved, a time of nine months is sought for implementation of the said proposal.

#### Further Direction

The Government is directed to expedite the proposal for setting up the Criminal Compensation Injuries Board.

#### Section 17, I.T.P Act Earlier Direction

The Government was directed to pass necessary orders in respect of formation of a panel of five respectable persons in every District for the purpose of section 17 of the ITP Act within a period of three months.

#### Action Taken

Lists have been received from ten Districts so far and the some has been sent to the Government for necessary action.

#### Further Direction

The State Government to expedite the formation of panel Constitutions of Special courts

#### Earlier Direction

The State Government was direction to forward a suitable proposal to the Chief Justice for constituting Special Courts for handling the cases involving child sexual abuse.

#### Action taken

A proposal have been submitted in this regard by the Commissioner of social Defence to the Home Department and the same is pending with the Home Department.

#### Further Direction

In Writ Petition No.17207 of 2006, a directions was issued to constitute a pool of 30 judicial Magistrates and special training be given to the selected judicial officers and they be posted on the Juvenile Justice Boards.

As far as possible, the cases of child sexual abuse shall also be heard and tried only by these trained judicial officers.

## Rehabilitation Process

### Earlier Direction

The Government was directed to take more efforts to involve organisations like the Jan Shikshan Sansthan in the process of rehabilitation of the victims.

### Action Taken

Involvement of more NGOs in this process has been included in the rehabilitation scheme submitted in the action taken report.

### Further Direction

The comprehensive scheme of rehabilitation for the victims of immoral trafficking has already been extracted above and it is accepted fully by this Court and the implementation of this scheme shall fulfil the above directions.

## Night Shelters

### Earlier Direction

The Government was directed to set up Night Shelters in places where the same have not been set up so far within a period of six months.

### Action Taken

Under Part-II Scheme for the year 2007-2008, orders have been issued for starting six Night Shelters in Chennai city under NGOs, to be funded by the Government. A sum of R.1.35 lakhs is being paid per annum per shelter as maintenance grant to the street children. Each shelter has 50 children as beneficiaries. This is recorded.

## Monitoring of Homes

### Earlier Direction

The Judicial Magistrates and Members of Juvenile Justice Boards were directed to supervise the women organization in dealing with the remand victims.

### Action Taken

The directions are reported to have been complied with further Direction

It has to be stated that the earlier directions have not been properly understood.

The purport of the directions is that the police shall ensure the involvement of women organizations in the rescue and remand of women victims under the I.T.P.Act

## Perspective policy Note

### Earlier Direction

The Government was directed to complete the process and finalisation of perspective policy note in consultation with the State Level Co-ordination Committee and implement the same.

#### Action Taken

The process of consultation is essential for preparation of a perspective policy. This would require both allocation of funds and further time, preferably nine months. Funds would be sought for from UNOP/UNODC.

#### Further Direction

The State Government is directed to complete the process and finalisation of the perspective policy note and implement the same with a period of six months.

#### Sensitization Programme for police officers

##### Earlier Direction

In order to formulate a detailed scheme for frequent sensitization programme for the police officers dealing with victims of immoral trafficking, the Director General of Police Training) was directed General of Police Training) was directed to take note of the remarks of the Tamil Nadu Judicial Academy regarding the syllabus.

##### Action Taken

The report of the Director General of Police on the inclusion is awaited. Further programmes for law enforcement agencies are proposed also to be pursued with the proposal to UNODC.

##### Further Direction

Training Programmes shall be organized in this regard and senior police officers shall also take part in such programmes.

The police personnel dealing with cases involving immoral trafficking and prostitution shall be sensitized and directed not to victimize the sex workers.

Judicial Magistrates before whom the women victims are produced shall treat them as victims and not as accused. Training should be given to police at all levels, including senior officials to treat the victims with greater sensitivity.

#### Psychological Counsellors

##### Earlier Direction

The Government was directed to complete the nomination of list of psychological counselors within a period of two months and furnish the same to the Court.

##### Action Taken

The Commission of Social Defences, Chennai issued orders nominating a panel of voluntary counsellors for rendering counseling services to the victims as well as to their families. The copy of the proceedings was handed over to the Member Secretary, Tamil Nadu State Legal Services Authority on 17.8.2007. This is recorded.

## Construction of Vigilance Homes

### Earlier Direction

The State Government and the Collectors of the concerned Districts were directed to prepare a report about the action and submit the same within three months.

### Action Taken

As regards our directions to complete the construction of vigilance Homes at Salem, Coimbatore, Madurai, Tiruchirappalli and Vellore, it is reported that the estimate from the Public Works Department and the Collector's report is awaited.

### Further Direction

Construction of the Vigilance Homes shall be completed within a period of two years.

### Public Awareness through Media

#### Earlier Direction

The Government was directed to prepared a scheme for creating public awareness against immoral trafficking and sexual exploitation of woman and children. In this regard, the Government was directed to issued notices to All India Radio, Doordarshan, Government of India, Woman and child Development, New Delhi and to the Dean, Institute of Medical Health, Kilpauk, Chennai.