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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P. (C) No.8229 of 2011

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Decision Delivered On: 7th September, 2012

REENA BANERJEE & ANR.

. . . PETITIONERS

through :

Mr. Colin Gonssalves, Sr.
Advocate along with Mr. Pankaj
Sinha and Mr. Anant Kumar
Asthana, Advocates.

VERSUS

GOVT. OF NCT OF DELHI & ORS.

. . .RESPONDENTS

through:

Mr. Sushil Dutt Salwan along
with Mr. Aditya Garg,
Advocates for GNCTD.
Mr. P.K. Sharma, Standing
Counsel for CBI along with Mr.
Uday Prakash Yadav and Mr.
Anil Singh, Advocate for CBI.
Mr. Ajay Saroya along with Mr.
Kamal Kishan Jetley, Ms.
Geetanjaly Jetley, Rahul Vats,
Advocates for Hope Foundation.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

A.K. SIKRI, Acting Chief Justice (ORAL)

1. *Suo motu* notice of the incidents that occurred in Asha Kiran was taken and W.P.(C) 5612/2012 was registered as Public Interest Litigation. Though the issue in the said petition was redressed, the petitioners moved application for intervention stating in detail the

pathetic conditions, which prevailed in Asha Kiran. While disposing of Writ Petition (C) No.5612/2011 on 09.11.2011, application for intervention was directed to be registered as a fresh petition and posted for hearing. This is how the instant petition as PIL highlighting dismal state of affairs prevailing in Asha Kiran is brought to the limelight.

2. Asha Kiran is the lone Delhi Government run home for differently abled men, women and children. It comprises of six institutions within a complex of four buildings for mentally retarded children and adults. The petitioners have highlighted the incidents of custodial deaths in Asha Kiran and averred that it is so because of various reasons that include lack of adequate medical treatment including medical services and access to Doctors, skewed ratio of staff to residents, overcrowding, poor distribution and consumption of dietary, clothing, bedding and other items and abuses of various kinds on the mentally challenged persons particularly females. It is also pointed out that on 24/25th October, 2007, NDTV Metro Station broadcasted a documentary titled “Is This Humane” through a hidden camera depicting the abhorrent conditions in the Asha Kiran Home. Media specifically revealed the following:

- Children at Asha Kiran were lying in their own refuse for hours in appalling stench;
- There was only one attendant per 40 to 50 children;
- While the capacity of the children’s home is for 300 children, 700 children were residing within the Home;
- There is no in-house or visiting psychiatrist or neurologist;

- When the attendants take children to the hospital, the remaining children are left unattended and alone;
- Caretakers often fail to receive wages for several months at a time, leading to low morale.

3. Many other incidents are narrated alleging pitiable conditions of mental or physically challenged inmates who were subjected to various kinds of cruel treatments at the hands of some staff members working in Asha Kiran Home. It is not necessary to put it on record all those averments. We are refraining from doing so because of the positive attitude and stance adopted by the Administration. Though the respondents have refuted the allegations and maintained that things are not as bad as they are depicted in the petition, at the same time, they have not treated this petition as adversial litigation. Accepting the fact that reforms in great measures are required and as according to them, main problem is overcrowding of the Asha Kiran, the authorities have responded to the suggestions given by the petitioners, particularly, by Mr. Colin Gonsalves, learned Senior Counsel, Mr. Pankaj Sinha and Mr. Anant Kumar Asthana.
4. On 16.5.2012, we had directed to convene a Joint Meeting of the counsel for the respondents with the aforesaid counsels to sort out the issues raised in the petition and give agreed suggestions. The Advocates were also allowed to visit Asha Kiran Home and submit their reports.
5. The learned counsel had visited Asha Kiran Home and submitted the report, which is quite alarming. However, we are not specifying the

details thereof, not because of the reasons that the respondent authorities have refuted the same, but taking into consideration the positive attitude shown by the respondents in taking steps for cleaning the rut.

6. Mr. S.D. Salwan, learned Standing Counsel appearing for the Govt. of NCT of Delhi, has placed on record the Report on action taken/proposed to be taken, which are as under:

- I) The existing Administrator has been phased out and the process of appointment of a new Administrator has been initiated. The government is appointing Dr. V. N. Agarwal, former Medical Superintendent of Dr. Ambedkar Hospital. He is MBBS, M.B.A., Health Care Administration from FMS, Delhi University and has done a post graduate Certificate course in Hospital Administration. Dr. Agarwal, himself being a medical doctor and having held administrative position of one of the largest Government hospitals would be totally competent to work on improvement of essential services, plight of inmates, and maintenance of infrastructure and day to day administrative work of Asha Kiran Home. The Administrator with a background of a medico shall be dedicated to reduce vulnerability of inmates; prevention of untimely deaths; and running of an effective medical team at the institution and organize value added medical services from the competent government hospitals. One of the

key purpose is to reduce deaths and increase life span of the existing inmates of Asha Kiran.

- II) The Government has approved formation of a strong Governing Council comprising of eminent citizens and experts (with core competencies in techniques of holistic shelter and rehabilitation, gender, Human Rights and Socio-Economic Empowerment of the most marginalized sections) for the holistic and integrated development and improvement of management and monitoring of the Asha Kiran institution, as well as prompt and expeditious implementation of all policies and recommendations of Government appointed Committee & various other statutory institutions, such as NHRC, NCPCR, DCPCR etc. The process of setting up of the said Governing Council will take at least 2 weeks.
- III) Ms. Sreerupa Mitra Chaudhury, a prominent rehabilitation social worker; a Member, Central Social Welfare Board; Chairperson, Committee for Review of National Policy for Empowerment of Women; Chairperson, Institute for Gender Justice, Ex-National Advisor, National Legal Services Authority; Ex-Member, Delhi Legal Services Authority; Ex-Chief Coordinator, Rape Crisis Intervention Centre of Delhi Police, Founder of Sudinalay Shelter Homes for Homeless and Destitute Citizens Living with Mental Disabilities and HIV/AIDS is being nominated as the Chairperson of the said Governing Council. She is a

senior and respected representative of the civil society who has dedicated her life for the rescue, rehabilitation, shelter and welfare of homeless citizens, particularly, living with acute forms of mental disabilities. While selecting the Chairperson of the Governing Council, adequate care has been taken to choose a person of subject knowledge, integrity, dedication, commitment and selfless humanitarian approach whose exposure of work has ranged from Civil Society to State and Central Government in various acclaimed capacity. The person who has direct, hands-on experience of rescue, shelter and rehabilitation of abandoned / most marginalized, poorest of the poor sections of citizens living with various forms of mental disabilities as well as vast experience of formulation of policy initiatives at the highest level. In several related matters, the Hon'ble Supreme Court and High Courts have appointed her as advisor and member of monitoring committees, technical committees, steering committees and empowered committees to monitor government policies and programs.

- IV) The Governing Council will be fully empowered to take decisions for improvement of the Asha Kiran Home in every manner and taking all issues pertaining to the welfare and upkeep of residents; their protection against any forms of assault/or any coercion while they are at this home, their health, habitat, education, living conditions, medical care and treatment and personal

grooming and hygiene will be given maximum consideration.

- V) The Governing Council under the Chairperson, will take utmost care to de-congest the home; to rehabilitate and restore the residents to their homes or families; or create opportunities of foster care and mainstreaming in the society or communities; will uphold the national and international policies and UN covenants pertaining the status of persons living with all forms of mental disabilities; to nurture the environment of love, care and affection for this section; and to re-affirm the concepts of dignity and human rights; to initiate all such measures which will ameliorate the existing pain and congestion; the typical sense alienation and the symptoms of marginalization; the said Governing Council will gather fresh energies, resources and friends and volunteers from the civil society and try to amalgamate all those to achieve a vision of an integrated and holistic rehabilitation shelter home for the most needy and marginalized. It will also initiate policy level dialogues and interdepartmental cooperation modules to converge benefits of various schemes of government and non-governmental organizations; re-write the policy documents, rule books and manuals to cope up with the challenges of a modern and contemporary world class institution. Efforts will be made to prepare individual care and support sheet with micro level interventions, to acquire

dignity for each one of the resident. The Governing Council will review the Budget and analyze the present-day requirements and accordingly place before the government for the rationalization. It will explore setting up of a Resident Welfare Fund to augment and take care of the employment opportunities for the residents.

- VI) The Governing Council shall be a decision-making body and its decisions shall be considered the ultimate and binding by the government for improvement of the essential services as well as the plight of the inmates. The Chairperson shall be competent to direct/guide/control the implementation of policies and proposals and shall be a face and a voice of the so far neglected institution. The Administrator and the Superintendents shall be responsible to assist the Governing Council and the Chairperson to spearhead the proposed developmental activities.
- VII) The Government has approved proposed development of a Terms of Reference for the functioning of the Governing Council, which shall be read with a mandate and a vision document.
- VIII) The department had already proposed appointment of 94 House Aunties and appointments shall be made at the earliest. After the appointments, proper training will be imparted through the Panel of Experts whereby the newly inducted House Aunties shall be sensitized on issues pertaining to health, hygiene and medical care.

The Governing Council will promptly act to train the staff members with the help of existing governmental and non-governmental training institutions. Special attention will be given to integrate the voluntary groups in training programs.

- IX) The government has already commissioned the activity of a new Asha Kiran Building and the DSIIDC empanelled Architect, Mr. Prabhat, involved in Half Way Home construction have been taken on board to assist in formulation of a scientific construction plan, with national and international rehabilitative standards. With regard to infrastructural development, it is proposed to shift 100 residents to a new location, i.e. Nirmal Chaya. The complex of Asha Kiran will undergo radical changes. Four new multistory cottages, having 3 floors, will be constructed. Each cottage will house 100 residents thereby catering to 400 residents. Mr. Prabath, is very well versed and acquainted with the requirement of the residents of Asha Kiran will design the new cottages, in consultation with the Governing Council as well as the government appointed committee to ensure all necessary inputs are made available for the benefit of the home. It would be pertinent to state that earlier sanction has been given to more than 15 items of Civil & other Works. The sanctioned amount is about Rs. 5,50,00,000/-. This would need further revision as additional floors are being added in the four new cottages. Several rounds of

presentations and meetings have already taken place in the last one year, to create an integrated and holistic space for cluster homes and apartments for the beneficiaries of Asha Kiran.

- X) The list submitted by Applicants contains names of private psychiatrists. Since, Dr. Nimesh Desai (Director, IHBAS, the statutory regulatory institution for all forms of mental disabilities) and Ms. Sreerupa Mitra Chaudhury (a mental health activist and expert) are already part of the Government appointed committee, some more psychiatrists on board, is unnecessary inclusion.
- XI) The women and child health specialists from nearby Government hospitals are visiting the institution on regular basis; therefore, adding names of some more is not required.
- XII) The government has instructed the Governing Council to constitute an Advisory Expert Group Panel for regular advice, academic assistance, technical and knowledge support and for creation of voluntary training opportunities at the institution and to make them part of a new action plan that shall be formulated soon by the Governing Council. The matter will be referred to the Advisory panel of experts, which would also include the first four persons suggested by the petitioners, viz. Ms. Radhika Alkazi, Merry Barua, G. Shyamala and Shanti Aulak. The Advisory panel of experts will provide technical advice and shall be

knowledge partners of the Governing Council. The Governing Council shall be authorized to expand or empanel more and more experts of proven expertise from various fields to add value.

- XIII) Segregation of border line and mild cases from moderate, severe and profound category cases shall be done on war footing. Efforts will be made to absorb the Border and Mild category cases in the main stream by sending them to regular schools, NGO Institutions and in case of adults, they will be employed as ‘peer mentor’ to work upon the other residents. Remuneration would be given to such “peer mentors” at par with the policy under NREGA or any such scheme. Bank accounts of such mild to moderate residents will be opened wherein their salary shall be deposited, for their use and benefit.
- XIV) The Government is strengthening staff members by providing special training, workshops and sensitizing them with all issues pertaining to the different categories of residents (4 categories).
- XV) The Government will prepare a curriculum or co-opt an already existing curriculum to train the House Aunties and Staff of Asha Kiran and for this, the Advisory Panel’s advise and technical input, in-house training and also developing administrative acumen shall be taken. With this exercise, the house aunties as well as the other staff will get sensitized to every aspect of care to be provided to the residents. The Advisory Panel will

develop the curriculum / content for the technical course proposed for professional qualification of all house aunties and other staff of Asha Kiran home. The 'Sahyogi' program of the National Trust, suitably modified by the Advisory Panel, will be implemented for the new as well as existing house aunties.

XVI) The department is contemplating a revised salary structure with guarantee of minimum wages to the personnels employed at Asha Kiran. The unpaid dues of the staff shall be settled within 4-6 weeks.

XVII) The neighbouring government hospitals are being attached to Asha Kiran for providing ongoing medical care in case the medical care center situated within the complex is unable to cater to the ailment. The team of psychiatrists, pediatricians, gynecologists and general physicians from these hospitals will pay regular and routine duties for the care of the residents. **The entire health record will be digitalized for easy reference in case of any emergency.**

XVIII) The Department is contemplating engagement of special educators for occasional training and consultation.

XIX) With regard to inspection/supervision, an inspection committee constituted under the Section 35 of the J. J. Act as well as the committee under the DCPCR and NCPCR are at liberty to perform the statutory obligations and their reports shall be taken by the department of social welfare as well as the staff of Asha

Kiran in the right direction. The Government has also requested the Govt. appointed Committee and will call upon the Governing Council to undertake / conduct surprise visits to the institution on odd hours and record the activities and statements of inmates.

- XX) For proper surveillance and prevention of any untoward incident, CCTV system is being installed at important places.
- XXI) 26 new toilets are under construction in the home and they shall be made functional by 30.08.2012. The requirement of the additional toilets was considered by the department in June-July 2011 and the same have been duly implemented. In so far as renovation of existing infrastructure is concerned, including toilets, the process was initiated in December 2010 and an amount of Rs. 2.50 Crores has been spent.
- XXII) The government is contemplating to make Asha Kiran Home an autonomous body with a highly effective Governing Council. The appointment of the governing council at this stage by the government with Ms. Sreerupa Mitra Chaudhury as the Chairperson is a step in the right direction.
- XXIII) The chairperson, backed by the Governing Council and the Advisory Groups shall take decisions related to amendments in policy of admission of new cases; and re-location of the existing or new residents depending on their merit, criterion, requirements etc.; as well as

restoration, re-integration, mainstreaming and rehabilitation. A policy will be developed to assist the homeless, people of the street and the poorest of the poor who have no income. Consultative meetings and inter-departmental dialogues shall be held to make space for the poor and the most deserving. Maximum focus will be laid on the access to the most marginalized. In this connection, fresh intake modalities and rule books shall be amended.

7. We are of the opinion that the plan that as devised in the aforesaid report would go a long way in improving the conditions of Asha Kiran Home. We hope and expect that the respondents will adhere to the aforesaid plan and would take all necessary actions as proposed therein. We would also like to place on record that the interveners, viz., Mr. Pankaj Sinha and Mr. Anant Kumar Asthana, Advocates have filed their responses to the aforesaid Report and have also given their suggestions on the proposed actions. We expect that the Government Authorities shall take into consideration their comments/suggestions, which are also valuable. Writ petition is disposed of in the aforesaid terms.

ACTING CHIEF JUSTICE

**(RAJIV SAHAI ENDLAW)
JUDGE**

SEPTEMBER 07, 2012

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