

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on: 29th August, 2012
% Judgment Pronounced on: 12th September, 2012

+ WP(C) NO. 8674/2011

Delhi Anusuchit Jati Vikas Sangathan Petitioner
Through: Mr. Lalit Kumar, Advocate

Versus

Department for the Welfare of SC/ST/OBC
Minorities And Anr. ... Respondent
Through: Ms. Zubeda Begum, Ms. Sana
Ansari, Advocates for GNCTD
Ms. Renuka Arora, Adv. for DSIIDS
Mr. Parvinder Chauhan, Adv. for
DUSIB

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

A.K. SIKRI (ACTING CHIEF JUSTICE):

This writ petition is filed by Delhi Anusuchit Jati Vikas Sangathan (Registered) in public interest. It is stated that petitioner society is constituted for the welfare of the weaker sections living in JJ cluster/re-settlement colonies and to improve their quality of lives. In this writ petition, the petitioner has sought to espouse the cause of dwellers of jhuggi jhopri of Nangloi re-settlement colony who are stated to be people of below poverty line. This colony which is situated at Phase II Nangloi came into existence in the year 1968 on a barren and uninhibited land allotted to

unauthorized Jhuggi-jhopri dwellers of Delhi with a view to resettle them. In the said basti is the land of Slum and J.J. Department in Nangloi which is being used as water toilet for last 25 years and this land is lying vacant for years. It is an open area which is being used for the purpose of toilet. It is open garbage which is affecting the life and liberty of people residing in the said Basti. It is a health hazard. The inhabitants of the said Basti have to make this place habitable by their sheer hard work. This area at the time of resettlement was not all habitable. It was nothing but garbage in which humans were let to live in. People of the said basti have their life in danger. At the risk of their lives, they are holding on as they have no other place to live in. The demand of the petitioner Sangathan is that there should be construction of sheds in the aforesaid area so that local semi-educated persons of Nangloi could get the opportunity of employment. For this purpose, they have approached various authorities including Delhi Financial Corporation, DSIIDC, Slum & JJ Department (now DUSIB), social welfare department of the Government of NCT of Delhi etc. Since no concrete steps are taken by any of these authorities, present writ petition is filed with the following prayers:

“Issue writ of Mandamus, and any other writ or direction under Article 226 of the Constitution against non-release of funds for construction of work places for welfare of weaker sections of society like SC/ST/OBC/MINORITIES by Department of SC/ST Welfare, the respondent No.1.

a) To issue appropriate writ in favour of petitioner directing respondent to immediately release money for the cost of land of DUSIB and construction of work places to DSIDC so that the construction of work places

is started immediately and which is pending for disposal before the respondent no.1 for such a long time and is against all cannons of justice.

b) To direct the respondent no.1 to remove garbage from the said site which is being used by the people of the area as a toilet so that people of the area could live in healthy and hygienic condition improving condition of environment and making area disease free.

c) To direct the respondent no.1 to give details of expenditure specifically done by them for the welfare of SC/ST from the plan funds made available to them by the Central Government under SCSP. Respondent no.1 may be directed to ask what the schemes are being run by them both State and the Central Government schemes for the uplift of weaker sections to fulfill the constitutional mandate and Plan objectives and how much of Plan funds lapsed/diverted for other expenses.

d) To direct the respondent no.1 that if it is not possible for it to formulate a policy to fund the work Petitioner is not insisting a policy formulation to fund the proposal but it is satisfied if the vacant land lying unused to be put to fruitful use considering that fund allocated for welfare of SC/ST often remains unutilized. If funds are available Government can consider funding this proposal.

e) Cost of the suit and consequential relief may also be passed in favour of the plaintiff and against the defendants.”

2. According to the petitioner, it is the right of the weaker sections, particularly those who are living below the poverty line to get the aforesaid facilities which is in consonance with Article 21 of the Constitution as the right to life enshrined therein encompasses within it right to decent living.

It is also argued that Government is under obligation to do the needful and implement the programme which is in accord with directive principles contained in Article 38, 39, 41 and 46 of the Constitution of India.

3. Reply affidavit to this petition is filed by the Government of NCT of Delhi. A preliminary objection is taken to the effect that the present writ petition is not maintainable in the form of public interest litigation as it does not fulfill the criteria laid down by the Apex Court in the case of ***State of Uttaranchal v. Balwant Singh Chaufal & Ors.***, (2010) 3 SCC 402 where the Court stated that it is the duty of the Court while dealing with PILs to inter alia examine:

- (i) The Courts should prima facie verify the credentials of the petitioner before entertaining a PIL.
- (ii) The Court should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.
- (iii) The Court should be fully satisfied the substantial public interest is involved before entertaining the petition.
- (iv) The court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.

4. It is argued that the present petition is guided by self-gain as the petitioner Sangathan, as per the admission in the petition itself, is the Sangathan of residents of Nangloi. The credentials of petitioner are also challenged on the ground that a chaupal had been constructed in Nangloi which is unauthorizedly occupied by the petitioner and a direction was issued by this Court in a writ petition filed by the petitioner itself to hand over the said chaupal as well as panchayat ghar to the authorities.

Therefore, petitioner is not a body dedicated for public purposes. It is also the submission of the respondents that there is no scheme of the Government to construct work centre for the benefit of scheduled caste persons and, therefore, no mandamus of this nature can be issued. It is argued that for incurring any expenditure by the Government, a scheme has to be formulated by it. Otherwise, it is pointed out, the Government is implementing a number of schemes for the welfare of scheduled castes in Delhi which include grant of scholarship to the students, free supply of stationery, construction of community halls, development work in habitation with majority population of scheduled caste, running of pre-examination coaching centre, running of hostels exclusively for SC/STMatri Shishy Yojana for pre natal care, Janani Suraksha Yojana for delivery in a hospital, providing of houses to scheduled caste free of cost, imparting of vocational training to entrepreneurs, loan facilities from the corporation to scheduled caste. It is also highlighted that respondent is implementing the SCSP and the total fund flow to SCSP out of the plan budget of the respondent for the last five years is as under:

Annual Plan	Outlay of Delhi Govt.	Expenditure of Delhi Govt.	Flow to SCSP	Rs. in Lacs
				Percentage flow to SCSP
2006-07	520000.00	508370.26	88458.95	17.40
2007-08	900000.00	874316.51	146872.24	16.79
2008-09	1000000.00	962498.80	172500.46	17.92
2009-10	1130000.00	1104241.00	209430.02	18.96
2010-11	1140000.00	1049644.06	2064499.11	19.67

5. Further, Delhi being the Capital of the country, majority of the Government funds have to be spent on infrastructure projects and other development projects. The population of Government of NCT of Delhi is also cosmopolitan in nature and most of the Scheduled Caste population in Delhi is migratory in nature and most of the Scheduled Caste population in Delhi is migratory in nature and is living inter-mix with other communities and there are no specific cluster or bastis where exclusively Scheduled Caste persons are living. Even in cases where the Government has allotted plots/flats to Scheduled Caste persons under various Government schemes, the said plots/flats have been sold to persons belonging to communities other than Scheduled Caste and the cluster has become a cluster with mix kind of habitation.

6. From the aforesaid, it is clear that the decision to construct or not to construct work places in the colony in question is a policy matter and there is no specific right in favour of the petitioner to get these work places constructed. Therefore, no mandamus can be issued. [See *State of Himachal Pradesh v. Umed Ram Sharma*, AIR 1986 SC 847; *Secretary, Cannanor District Muslim Educational Association v. State of Kerala*, 2010 (5) Scale 184]. It is also clear from the affidavit of the respondents that the Government is having various schemes for the welfare of SC/ST community and, therefore, it cannot be said that interest of this class is not taken care of by the Government. The record including the correspondence filed by the parties further reveal that the demand of the petitioner was duly considered at various levels but was not found feasible. For this reason, we are of the view that no relief can be granted to the petitioner Sangathan. In

view thereof, we are not going into the credentials of the petitioner which are questioned by the respondents.

Petition is accordingly dismissed with no costs.

ACTING CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 12, 2012
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