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

% *Date of Decision: 27th August, 2020*

+ W.P.(C) 3570/2020 & CMs No. 16876/2020 (*impleadment*) and
16877-16878/2020 (*exemptions*)

GULSHAN KHATUN AND ORS Petitioners
Through: Ms. Anupradha Singh, Adv.
versus

DELHI URBAN SHELTER IMPROVEMENT
BOARD AND ORS Respondents
Through: Mr. Anuj Chaturvedi, Adv. for R1
Mr. Sameer Vashisht, ASC for R2/GNCTD
Mr. Rajesh Gogna, CGSC with Mr. Akshay, Adv.
for R3 with Mr. Syed Hussain Adil Taqvi, GP

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

: **D.N. PATEL, Chief Justice (Oral)**

Proceedings of the matter have been conducted through video conferencing.

1. This Public Interest Litigation has been preferred with the following prayers:

“a. Pass an order directing the respondent no.1 and respondent no.2 to provide 3 nutritious meals a day including at least one serving of vegetable and fruit as per annexure P2, p. 19 to the urban homeless in all shelter

homes in Delhi;

b. Pass an order directing the respondent no.1 to respondent no.2 to provide age appropriate nutritious breakfast to children as per Schedule II of the National Food Security Act, 2013 in all shelter homes in Delhi;

c. Pass an order directing the respondent no.1 and respondent no.2 to provide soaps, detergents, hand sanitizers, hand wash and masks to urban homeless in all shelter homes in Delhi;

d. Any other order deem fit and necessary.”

2. The present petition has been filed by the petitioner regarding the implementation of Notification dated 28th March, 2020 (Annexure P-2 of the memo) issued by the Ministry of Housing and Urban Affairs, whereby the Central Government has decided to provide three hygienically-prepared meals a day during the period of nation-wide lockdown to all the urban homeless residing in Deendayal Antyodaya Yojana – National Urban Livelihoods Mission (DAY-NULM) and the Central Government also directed to all States and Union Territories(UTs) to utilize their mission funds available with them.

3. Much has been argued by the learned counsel appearing for the petitioner in favour of providing three meals per day to the urban homeless persons living in shelter homes in Delhi.

4. The Government of NCT of Delhi in their affidavit dated 26th August, 2020 has submitted that the funds released by the Central Government to Delhi Urban Shelter Improvement Board (DUSIB) under Mission Swaraj are utilized for construction of new shelters for the urban homeless which is already functioning under DAY-NULM and, therefore,

DUSIB cannot make any expenditure for providing meals and the present shelters are functioning under the Plan scheme of Delhi Government. It is therefore submitted that guidelines of Central Government issued under DAY-NULM for shelter for urban homeless are not applicable in these shelters being implemented under the Plan scheme of Delhi Government.

5. It is further submitted in the said affidavit that the Delhi Urban Shelter Improvement Board is the Nodal Agency for implementation of the scheme of shelter for urban homeless in Delhi and submits proposals for approval of the Government of NCT of Delhi under the Plan Scheme. The Delhi Urban Shelter Improvement Board as per the provision of Plan scheme of Delhi Government was providing two meals to the homeless people residing in the shelter homes of DUSIB which was stopped for some time. However, this has been re-started and is continuing as on date. The funds released to Delhi Urban Shelter Improvement Board under DAY -NULM are not allowed to be used for providing meals to urban homeless as these shelter homes are not implemented under the guidelines of DAY-NULM for providing shelter for urban homeless, as already stated above.

6. Further, the Central Government by affidavit dated 20th August, 2020 has submitted that considering the situation of the urban homeless in nationwide lockdown due to COVID-19, an urgent need was felt to support them as they may not have had any available source of livelihood. The Central Government vide letter dated 28th March, 2020 (Annexure-P2) relaxed the condition of providing free food to 10% of the homeless of the Scheme for Shelter for Urban Homeless and directed all States/ UTs that during the period of lockdown, the homeless persons

residing in DAY-NULM shelters should be provided with three hygienically-prepared meals a day free of cost. It was also instructed that for this purpose, an amount of Rs.100 per homeless per day may be incurred from the Mission funds available with the States/ UTs, and further advised to ensure cleanliness, personal hygiene and provision of sanitizers, hand wash facilities, masks in the shelters. And the expenditure can be met by the Government of NCT of Delhi from out of the unspent funds already available under DAY-NULM/SJSRY.

7. Having heard the learned counsel for both the sides and looking into the affidavits and the reports filed by the respondents, it appears from the facts that the Government of NCT of Delhi was initially providing three meals per day, however, the said scheme of three meals per day has been brought to an end with effect from 31st July, 2020.

8. The policy decision of the state are always based upon the priorities of the executive. The writ court cannot alter the policy decision of the Government unless any illegality or otherwise is pointed out in detail. The Hon'ble Supreme Court has, in catena of judgements, cautioned against interference in policy decision by way of public interest litigation. It is clear therefrom that the Court should be extremely slow in interfering with the same.

9. **In *State of Bihar vs. Kamlesh Jain*, 1993 Supp (2) SCC 300**, Hon'ble Supreme Court held as under:-

“6. There is no doubt that the State should strive to promote the welfare of its people so that at least the bare necessities of life are met and the needy and the sick are properly looked after. This can be done only by adopting a welfare scheme in the interest of the general public; and since the

resources of the State are not unlimited, the State is not expected, in absence of relevant reasons, to choose an individual for special treatment at the cost of the others. Ordinarily, therefore, it is desirable for the State authorities to take up the individual cases coming to their notice and do their best in accordance with the policy decision of general application. This will ensure equal treatment to all — of course in accordance with the individual needs. Unless all relevant materials are placed by an applicant, it will be an onerous task for the Court to take upon itself to determine the extent of help a particular individual has to get. The circumstance that a particular person is smart enough to approach the Court or is so fortunate to get somebody to do that on his or her behalf, cannot be a valid ground to divert the State funds to his or her advantage at the cost of corresponding disadvantage to others. A judicial process should not be allowed to be used for the satisfaction of an individual's whims, pious, though, they may apparently look. Since we do not find any reason in the impugned order or in the writ petition which may justify the relief granted in the present case, we are of the view that the writ petition should have been dismissed.”

(Emphasis supplied)

10. In *BALCO Employees' Union (Regd.) vs. Union of India*, (2002)

2 SCC 333, Hon'ble Supreme Court in paragraph 88 held that:-

“88. It will be seen that whenever the Court has interfered and given directions while entertaining PIL it has mainly been where there has been an element of violation of Article 21 or of human rights or where the litigation has been initiated for the benefit of the poor and the underprivileged who are unable to come to court due to some disadvantage. In those cases also it is the legal rights which are secured by the courts. We may, however, add that public interest litigation was not meant to be a weapon to challenge the financial or economic decisions which are taken by the Government in exercise of their administrative power. No doubt a person personally aggrieved by any such decision,

which he regards as illegal, can impugn the same in a court of law, but, a public interest litigation at the behest of a stranger ought not to be entertained. Such a litigation cannot per se be on behalf of the poor and the downtrodden, unless the court is satisfied that there has been violation of Article 21 and the persons adversely affected are unable to approach the court.”

(Emphasis supplied)

11. **In *Janhit Manch vs. State of Maharashtra*, (2019) 2 SCC 505,**

Hon’ble Supreme Court in para 13 held that:-

“13. We have to keep in mind the principles of separation of powers. The elected Government of the day, which has the mandate of the people, is to take care of policy matters. There is a democratic structure at different levels, starting from the level of Village Panchayats, Nagar Palikas, Municipal Authorities, Legislative Assemblies and the elected Parliament; each of them has a role to perform. In aspects, as presented in the instant case, a consultative process is always helpful, and is one which has already been undertaken. The philosophy of Appellant 2 cannot be transmitted as a mandatory policy of the Government, which is what would happen were a mandamus to be issued on the prayers made. Perspective of individuals may vary, but if the elected bodies which have policy formulation powers, is to be superseded by the ideals of each individual, the situation would be chaotic. The policies formulated and the legislations made, unless they fall foul of the Constitution of India, cannot be interfered with, at the behest of the appellants. The appellants have completely missed this point.”

(Emphasis supplied)

12. In the context of the issues raised in this petition, however, it is also necessary to consider that the right to food has been held by the Supreme Court to be a facet of the right to life under Article 21 of the

Constitution. In ***Olga Tellis vs. Bombay Municipal Corpn.* (1985) 3 SCC 545 (paragraph 32)**, while dealing with the right to work, the Court cited the observations of Field, J. in ***Munn vs. Illinois* (1877) 94 US 113** that *“life means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed”*. Similarly, in ***Shantistar Builders vs. Narayan Khimalal Totame* (1990) 1 SCC 520 (paragraph 9)**, while dealing with the right to shelter, the Court emphasised that the right to life, which is guaranteed in any civilized society, *“would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in”*. The Court, in ***Kapila Hingorani (I) vs. State of Bihar* (2003) 6 SCC 1 (paragraph 42)**, drew a parallel between the provisions of Parts III and IV of the Constitution, and the obligations of the State under **Article 11 of International Covenant on Economic, Social and Cultural Rights, 1966**, which includes the obligation of the State to take adequate steps to ensure the realisation of the right to food.

13. In ***PUCL (PDS Matters) vs. Union of India* (2013) 2 SCC 688**, the Supreme Court has further elaborated upon the right to food as an element of the right to life, and upon the obligations of the State in this regard:

“1. In this petition that was filed little more than two years back various issues have been raised, many of which may have a direct and important relevance to the very existence of poor people; their right to life and the right to food of those who can ill-afford to provide for their families two meals a day. Their misfortune becomes further grave during the times of famine and drought.

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6. This Court in various orders passed in the last two years has expressed its deep concern and it has been observed, in one of the orders, that what is of utmost importance is to see that food is provided to the aged, infirm, disabled, destitute women, destitute men who are in danger of starvation, pregnant and lactating women and destitute children, especially in cases where they or members of their family do not have sufficient funds to provide food for them. In case of famine, there may be shortage of food, but here the situation is that amongst plenty there is scarcity. Plenty of food is available, but distribution of the same amongst the very poor and the destitute is scarce and non-existent leading to malnutrition, starvation and other related problems. The anxiety of the Court is to see that poor and the destitute and the weaker sections of the society do not suffer from hunger and starvation. The prevention of the same is one of the prime responsibilities of the Government—whether Central or the State. Mere schemes without any implementation are of no use. What is important is that the food must reach the hungry.

7. Article 21 of the Constitution of India protects for every citizen a right to live with human dignity. Would the very existence of life of those families which are below poverty line not come under danger for want of appropriate schemes and implementation thereof, to provide requisite aid to such families? Reference can also be made to Article 47 which *inter alia* provides that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties. In the light of the aforesaid, we are of the view that for the time being for the months of May, June and July 2003, it is necessary to issue certain directions so that some temporary relief is available to those, who deserve it the most.”

(Emphasis supplied)

To similar effect is the recent judgment of the Supreme Court in ***PUCL vs. Union of India (2019) 1 SCC 941 (paragraph 2)***.

14. The submission on behalf of the Government of NCT of Delhi is that, looking to the availability of the funds, coupled with the priorities of the Government and also that the earlier Central Government scheme has been brought to an end w.e.f. 31st July, 2020, the Government of NCT of Delhi is providing two meals per day to the homeless persons living in shelter homes and that they shall continue to provide two meals to the said persons. Moreover, it is submitted by the learned counsel for GNCTD that the homeless persons living in shelter homes can also get work and earn their livelihood, if at all they are able to do so. Thus, two meals per day are sufficient looking to the overall situation prevailing in the capital, including its financial position as well as important priorities of the work to be done by the Government of NCT of Delhi.

15. Looking to these aspects of the matter and looking to the fact that the Central Government scheme for providing three meals per day has been brought to an end w.e.f. 31st July, 2020, we do not intend to issue a direction to the Government of NCT of Delhi at this stage. Nonetheless, having regard to the judgments of the Supreme Court with regard to provision of adequate food to those who can ill afford it, we direct that the Government of NCT of Delhi, with the assistance of experts, should examine whether the provision currently made is sufficient to meet the minimum nutritional requirements of persons in the homeless shelters, and take adequate measures in consonance with their recommendations. We further recommend to the Government of NCT of Delhi that, as and when the financial position permits, they may provide three meals per day

to the homeless persons living in shelter homes. We also recommend to the Government of NCT of Delhi to at least provide three meals per day to the children living in shelter homes, looking to the prevalent pandemic situation.

16. Much has been argued by the learned counsel for the petitioner about the availability of the funds from the Union of India. We make it clear that we are not entering into the niceties of the accounts between the Union of India and the Government of NCT of Delhi at this stage. Suffice it is to say that both the Governments are obliged to manage their accounts properly and to give the utilization certificate in accordance with the law, rules, regulations and government policies applicable to the facts of the case

17. In view of the aforesaid observations, no further orders are required in the present writ petition, which is disposed of in the abovementioned terms.

CHIEF JUSTICE

PRATEEK JALAN, J

AUGUST 27, 2020

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