

\$~37.

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

+ W.P.(C) 3146/2012

%

Date of Decision: 16th September, 2019

JOSE ABRAHAM

..... Petitioner

Through: Ms.Ritu Kumar, Adv.

Versus

GOVT OF NCT AND ORS

..... Respondents

Through: Mr.Rahul Mehra, Standing Counsel
(Criminal) with Mr.Gautam Narayan, ASC;
Mr.Anuj Aggarwal, ASC, Mr.Chaitanya Gosain,
Mr.Anand Thumbayil, Mr.Deepak Shrivastava,
Advs. for GNCTD.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

J U D G M E N T

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

1. This public interest litigation has been preferred with the following prayers:-

“1. Pass an order/s for setting up an independent committee to conduct an inquiry into the custodial death of Santosh Kumar and taking administrative and penal action against all those involved in abetting the death of Santosh Kumar including the hospital authorities like DDU and AIIMS.

2. Pass an order/s for conducting investigation in all incidents of custodial death, especially those due to illness in the prison premises and provide adequate compensation to the next of kin of the deceased.

3. Pass an order/s for ensuring that adequate medical

facilities including a Primary Health Care Centre with IPD, OPD Facilities, an OPD within the prison premises with proper medical facilities, and at least two doctors in each jail in two shifts, so as to ensure that at least one doctor is present at any time of the day and night within each of the jails, are put in place for all the prison inmates at Tihar jail.

4. *Pass an order/s for ensuring that the prisoners with disabilities and persons suffering with contagious diseases are provided with special wards equipped with their specific requirements and that they are provided with the special aids and appliances or other special facilities needed for their leading a life of dignity equal to other inmates.*
5. *Pass an order/s for ensuring that adequate food is provided to all the prison inmates that the sick inmates are provided food appropriate to their medical requirements.*
6. *Pass an order/s for setting up an independent monitoring authority to oversee the functioning of the Medical Officers and the Senior Medical Officers in the jail and to monitor the conditions of the sick inmates, and constituting a panel of doctors who would visit the jail premises regularly and not less than twice a month.*
7. *Pass such other order or orders as this Hon'ble Court may deem fit in the facts and circumstances of the case."*

2. Having heard the learned counsel for the parties, it appears that this petition has been preferred because of custodial death of one Santosh Kumar, who expired on 25th February, 2012. At the time of death of Santosh Kumar, he was in the custody of the respondents. Therefore, this petition has been preferred for a variety of suggestions including holding

inquiry, investigation and establishing primary health centres with at least two doctors and special ward for prisoners with disabilities and for prisoners suffering from contagious diseases so also to provide adequate food and to oversee the functions of the medical officers.

3. Learned counsel appearing for the respondents submitted that the counsel for the petitioner was part of a Committee constituted by the respondents which framed the rules known as Delhi Prison Rules, 2018. In the said Rules, adequate care has been taken regarding all the aspects of the matter which are enumerated in the aforesaid prayer clause. Hence, the suggestions made in this writ petition have already been taken care of in the said Delhi Prison Rules, 2018. It is also submitted by the counsel for the respondents that an independent inquiry has already been conducted by Justice I.S.Mehta, who, at the relevant time, was District and Sessions Judge. The inquiry report is dated 12th February, 2013 and the said report indicates that death of Santosh Kumar was a natural death. Nevertheless, the suggestions in the inquiry about malnutrition etc. have also been taken care of in the jails in Delhi. It is also submitted by the counsel for the respondents that now, adequate food is being supplied and sufficient medical facilities are also provided in Delhi jails.

4. Having heard learned counsel for both the sides and looking into the facts of the case, it appears that Delhi Prison Rules, 2018 have now been enacted and adequate provisions have been made for the health, food, safety etc. of the convicts and undertrial prisoners.

5. Even though, the Rules have been enacted, it is the duty of the respondents to see that the said enacted rules be executed in their true letter and spirit. We, therefore, direct the respondents to provide adequate

medical facilities to undertrial prisoners and convicts. We also direct the respondents to provide the convicts and the undertrials lodged in jail with sufficient medicines and if need arises, they must be taken out of jail to the relevant specialized hospitals/medical facilities, as per medical advice. Essential medicines as per National List of Essential Medicines, 2015 will also be kept available with the jail dispensaries. It is suggested by the counsel for the petitioner that action to be taken in cases of communicable diseases are as under:-

Delhi Prisons Rules, 2018 (Relevant Extract)	Comments/Suggestions
466. Action in cases of communicable diseases	
The Medical Officer In-charge shall maintain a special record, in the prescribed form, of all cases of communicable diseases, whether sporadic, or epidemic and shall furnish necessary report required by the directions for the time being in force in that behalf. He shall submit such report to the Superintendent and the Resident Medical Officer of the measures and the precautions taken to meet the emergency and prevent spread of the disease. The Resident Medical Officer will in turn inform the Inspector	Proper diagnosis and treatment should be done in cases of communicable diseases like Tuberculosis, Malaria, HIV/AIDS, water-borne diseases, etc. so as to ensure that other co-inmates are not affected by the disease. The drinking water facilities need to be kept clean. The basic cleanliness standards should be ensured. The treatment of the diseases should be in accordance with the latest guidelines that are prescribed by the Government on TB, Malaria, HIV/AIDS, etc. for eg. the NACO guidelines for

General (Prisons).	HIV/AIDS patients, Revised National Tuberculosis Control Programme (RNTCP) Guidelines for Tuberculosis, National Vector-borne Disease Control Programme for Malaria, and other clinical guidelines as prescribed by WHO and Centre for Disease Control (CDC) The inmates who have been detected with the communicable diseases be kept in separate wards or cells so as to avoid contact with other inmates to prevent spread of the disease, especially those who are at an advanced stage. They should also be provided with N-95 masks.
--------------------	--

6. Looking to the provisions of the Delhi Prison Rules, 2018, there are provisions at Rule 466 onwards for medical facilities and care to be taken of the convicts/undertrial prisoners. There are several suggestions by the petitioner about the constitution of a separate committee to monitor the care of the undertrial prisoners and convicts in case of varieties of diseases, including contagious diseases. It is expected from the respondents that as and when any undertrial prisoner or convict suffers from Tuberculosis or any other contagious disease, necessary steps will be taken immediately through their medical officer and if need arises, such patients may be provided specialized treatment in specialized hospitals, even out of jail, as per medical advice.

7. We are of the clear opinion that we do not want to constitute any committee over and above the Governmental officers. Enough and adequate officers are available at the jail authorities and they are expected to perform their duties efficiently. Constitution of a committee over and above the aforesaid officers is not desirable. As and when any violation of the aforesaid Delhi Prison Rules is brought to notice in any individual case, action shall be initiated by the respondents in accordance with law against the erring officers.

8. So far as the availability of primary health centre facilities are concerned, the respondents have assured the Court that as per the Delhi Prison Rules, 2018, as stated hereinabove, medical facilities are being provided and doctors are also available in jail. As and when an individual case will be brought to our notice regarding violation of particular rule(s) of Delhi Prison Rules, 2018, action will be initiated in accordance with law after looking to the evidences on record. We expect that the rules enacted in the form of Delhi Prison Rules, 2018 shall be followed in its true letter and spirit.

9. With these observations, this writ petition is disposed of. Liberty is, however, reserved with the petitioner to move this Court in an individual case in case the aforesaid rules are being violated.

CHIEF JUSTICE

C.HARI SHANKAR, J

SEPTEMBER 16, 2019

'anb'