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

Date of Decision: 28.01.2020

+ W.P.(C) 5695/2019

SR. SUMA SEBASTIAN Petitioner

Through: Ms. Ritu Kumar, Adv.

versus

GOVT. OF NCT DELHI Respondent

Through: Mr. Anuj Aggarwal, ASC with
Mr. Ankit Monga, Adv.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

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

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

“a) Issue a writ of mandamus or any other appropriate writ, order or direction to the respondents to quash and set aside Chapter XXIX of the Delhi Prison Rules, 2018 relating to the Board of Visitors but only to the extent that it is pleaded that these rules are unconstitutional and unreasonable and in violation of the Supreme Court judgements in re: Sunil Batra and Ors.

b) For an order laying down guidelines, to substitute for the rules that are quashed in Chapter XXIX, as set out in paragraphs 12.1 to 12.15 above.

c) Issue a writ of mandamus or any other appropriate writ or declaration directing the Respondent to issue fresh

notification appointing visitors in accordance with the decisions of the Supreme Court.

d) Pass any such order/s as this Hon'ble Court deems fit and proper in the facts and circumstances of this case.”

2. Having heard the counsel for both the sides and looking to the facts and circumstances of the case, it appears that several grievances have been ventilated in this writ petition about Chapter XXIX under the heading “Board of Visitors” of the Delhi Prison Rules, 2018, especially about the independence of the “Board of Visitors”, their surprise visit and about the criteria for the appointments of the members.

3. Counsel for petitioner has also placed reliance on the decision rendered by the Hon’ble Supreme Court in ***Sunil Batra (II) & Ors.*** reported in **1980 (3) SCC 488** as well as a judgment reported in ***Sanjay Suri vs. Delhi Administration, Delhi, 1988 (Supp.) SCC 160.***

4. For ready reference the Rule Nos.1640, 1641, 1642, 1644, 1646, 1648 and 1649 of Chapter XXIX of the Delhi Prison Rules, 2018 under the heading “Board of Visitors” read as under:

“1640. The task of the Board of Visitors shall include:-

a) Monitoring the Correctional work in Prisons, with special attention to the degree and quality of training and the effectiveness of infrastructure/facilities in the Prisons.

b) Suggesting new avenues leading to improvement in correctional work.

c) Going into individual or collective grievances of Prisoners and providing Redressal in consultation with the Prison authorities.”

1641. The Board of Visitors for each prison shall comprise the following Government servants who will be known as official members:

- a) The District & Sessions Judge(HQ) or his nominee not below the Rank of Additional District & Sessions Judge, In case of women prison preferably Women District & Sessions Judge,*
- b) The District Magistrate, In case of women prison preferably women District Magistrate,*
- c) Deputy Commissioner of Police, Delhi*
- d) Director of Education or his nominee not below the Rank of Deputy Director,*
- e) Director of Health Services or his nominee not below the Rank of Chief Medical Officer,*
- f) Director of Social welfare or his nominee not below the Rank of Deputy Director.”*

1642. The Board of Visitors for each prison shall also comprise the following members who are not government servants and will be known as Non-Official Members:-

- a) In case of women prison, two woman members of the Legislative Assembly and for male prison, two members (either male or female) of the Legislative Assembly, to be nominated by Speaker of Legislative Assembly.*
- b) One nominee of National Human Right Commission.*
- c) Two social workers residing in the territory of Government of National Capital Territory of Delhi; one of them should be from legal background having an interest in the administration of prisons and welfare of prisoners but should not be in active practice. Out of the two social workers one should be a Woman.*
- d) Two Doctors residing in the territory of Government of National Capital Territory of Delhi, one of them should be woman,*
- e) One psychiatrist residing in the territory of Government of National Capital Territory of Delhi.*

1644. The Board shall make at least one visit per quarter and for this purpose, presence of three members (one official Visitor and two Non-Official Visitors) and the chairman shall constitute quorum.

1646. When a non-official member of the Board of Visitors visits a prison he/she shall be accompanied by at least one more member (official or non-official). The chairman of the Board of Visitors shall make a monthly roster of visits to be paid by the members of the Board to the Prison, in consultation with the Superintendent.

1648. Every non-official Visitor is expected to interest himself in the upkeep of prisoners and visit the prison of which he is a Visitor, once a month, and oftener, if possible.

1649. During visits, a Visitor (member of the Board of Visitors) shall enjoy the right to converse secretly and separately with any prisoner who is willing to talk to the Visitor. However, such separate interaction between a Visitor and a prisoner shall be held in a place within the prison wall within sight of a prison officer and in the presence of one more Visitor. The Visitor, immediately after such conversation with a prisoner, shall inform the Chairman of the Board in writing about what transpired in the conversation with the prisoner. The Chairman, if he thinks it necessary, shall take up the matter with the Superintendent of Prison.”

5. In view of the aforesaid provisions of Delhi Prison Rules, 2018 it appears that enough and adequate care has been taken about the constitution of the Board of Visitors. Functions of the Board of Visitors have also been clearly defined. In aforesaid Rule 1641, it is categorically mentioned that who will be the official members/Government servants on the “Board of Visitors”.

Similarly in the aforesaid Rule 1642, it is categorically mentioned that

who will be non-official members/Government servants on the Board of Visitors.

6. In view of the afore-mentioned provisions, it cannot be said that independent members are not included in the “Board of Visitors”. Enough care has been taken by the aforesaid rules for constitution of the Board with official and non-official members. Social workers are also included in the aforesaid “Board of Visitors” – as non-official members under Rule 1642.

7. We have carefully scrutinized the provisions of Chapter XXIX of the Delhi Prison Rules, 2018, under the heading “Board of Visitors” and find that there is no violation of the guidelines issued by the Hon’ble Supreme Court in *Sunil Batra (II)* (*Supra*) as well as in Sanjay Suri case. Hence, we see no reason to entertain this writ petition. All care can be taken by this Court in case of violation of any of the rights of the jail inmates in an individual case being filed. So far as visits are being conducted by the “Board of Visitors” is concerned, we find that it is also in accordance with the Delhi Prison Rules, 2018. Surprise visit by “Board of Visitors” is always permissible looking to the facts and circumstances of the case and emergent situation.

8. With the aforesaid observations, the writ petition stands disposed of.

CHIEF JUSTICE

C.HARI SHANKAR, J

JANUARY 28, 2020/ns