



WP (MD) No. 15321 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 02.01.2023

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE J. SATHYA NARAYANA PRASAD

Writ Petition (MD) No. 15321 of 2017
and
WMP(MD)Nos.9492, 9493 and 9495 of 2022

People's Watch
represented by its Executive Director
Henri Tiphagne
No.6, Vallabai Road
Chokkikulam
Madurai - 625 002

.. Petitioner

Versus

1. The Home Secretary
Home Department (Prison)
Secretariat
St. George Fort
Chennai - 600 009
2. The Additional Director General of Police (Prisons)
Tamil Nadu Prison Department
Chennai Metropolitan Development Authority Tower II
No.1, Gandhi Irwin Road
Egmore, Chennai - 600 008

.. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus directing the respondents to appoint trained and skilled Non-Official Board of Visitors to Jails as per Rule 507 of the Tamil Nadu Prison Rules, 1983 for visiting each of the Central Jails and Sub Jails to address the grievance of prisoners and helping the prisoner administration on the development of correctional administration and consequently the



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respondents may be directed to incorporate the directions issued by the Joint Secretary of Home Department to the Government of India vide proceedings in F.No.16014/4/2005-PR dated 18.02.2011 and chapter 29 of the Model Prison Manual, 2003 of appointing the Non-Official Board of Visitors within a time that may be stipulated by this Court.

For Petitioner : Mr. Henry Tiphagne
Petitioner-in-Person

For Respondents : Mr. S.P. Maharajan
Special Government Pleader for R1

Mr. T. Senthilkumar
Additional Public Prosecutor for R2

ORDER

R. MAHADEVAN, J.

*"No one truly knows a nation until one has been inside its jails.
A nation should not be judged by how it treats its highest citizens, but its
lowest ones."*

- Nelson Mandela

The aforesaid words of the South African anti-apartheid activist resonate in the mind of this court, while we deal with the issue involved in this public interest litigation.

2.The petitioner, a Human Rights Organisation based at Madurai, represented by its Executive Director, has filed this writ petition seeking to issue a Writ of Mandamus directing the respondents to appoint trained and skilled non-official visitors to the Board of Visitors to Jails as per Rule 507 of the Tamil Nadu Prison Rules, 1983 for visiting each of the Central Jails and



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Sub Jails to address the grievance of prisoners and helping the prison administration and also to incorporate the directions issued by the Joint Secretary of Home Department to the Government of India vide proceedings in F.No.16014/4/2005-PR dated 18.02.2011 and Chapter 29 of the Model Prison Manual, 2003 within a time that may be stipulated by this Court.

3.(i) According to the petitioner, prisons in our State still remain closed institutions and its physical structure and rules endow them with a cover of obscurity in which fundamental human rights can be unofficially violated and officially denied. It is stated that over the years, prisons have become places of low visibility, where inhuman and even cruel conditions of prisoners continue to prevail. There are adequate possibilities where the inmates are inflicted with injuries and in order to prevent such situations, the Prisons Act, 1894 (hereinafter shortly referred to as “Act”) was enacted. The petitioner referring to Section 59 (25) of the Act which deals with appointment and guidance of visitors of prison, stated that such right to visit the prisoner is a mechanism provided where people from the outside community are appointed by governments to enter the prison and assess the human rights situation prevailing there. He also referred to Rule 507 of the Tamil Nadu Prison Rules, 1983, which provides for the appointment of non-official visitors to ensure continuous monitoring of the conditions inside all prisons/jails,



particularly, the manner in which human rights of prisoners are safeguarded.

The petitioner also furnished the statistics of the number of prisons and the capacity of each prison to accommodate the prisoners in para No.5 of the affidavit.

(ii) The grievance of the petitioner is that the State Government has not appointed non-official visitors, thereby violating the provisions of the Tamil Nadu Prison Rules, 1983. It is further stated that appointment of such non-official visitors is necessary to ensure the manner in which the prisoners are treated. According to the petitioner, even though the Government of India, in its proceedings dated 18.02.2011, issued guidelines to be followed in the matter of appointment of non-official visitors, it has not been followed by the respondents in letter and spirit. In this context, the petitioner referred to a news paper article published in 'The Hindu' dated 03.08.2014 stating that 69 prison inmates died in Tamil Nadu. Further, as per the response received by the petitioner to the applications submitted under the Right to Information Act, 2005, between 2010 and 2014, 33 persons died in Palayamkottai Central Prison alone. The petitioner also furnished the statistics relating to number of deaths in various prisons across the State and submitted that if trained non-official visitors visit the jails across the State frequently, the conditions of inmates will largely improve and the grievance, if any, of the inmates relating



to human rights violation, can be addressed then and there.

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(iii) The petitioner further pointed out that the State Government shall appoint non-official visitors for every jail and such appointments made by the Government shall be notified in the State Government Gazette. The Members of the Legislative Assembly representing concerned constituency, social workers and those interested in correctional works, psychiatrists, psychologists, etc. are appointed as non-official visitors. Inspection of jail by the visitors and their remarks in the visitor's minutes books are aimed at improving the condition, toning up the efficiency and management of jails. The Prison Visiting System comprises official visitors (also known as ex-officio visitors) and non official visitors. The official visitors consist of persons who are members of the prison visiting system by virtue of the post they hold at that time, i.e. ex-officio and non-official visitors are people from the community appointed by the government for a period of two to three years and they are eligible for re-appointment.

(iv) The petitioner referred to Chapter - 7 of the Manual published by the Tamil Nadu Prison Department under the Right to Information Act, 2005 and reiterated that appointment of non-official visitors is very essential



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especially when human rights violations are galore in all the prisons across the State, silently. Further reference was made to the Report of All India Committee on Jails Reforms, which had recommended criteria for appointment of non-official visitors and the qualification to be possessed by such appointee. He also referred to the duties and responsibilities of such officers as prescribed under the Model Prison Manual, 2003, particularly the appointment of those who are interested in the welfare of the prisoners and are willing to accept such duties. In effect, placing reliance on the information obtained under the RTI Act, he stated that the board of visitors for jails has not been appointed in the State. Therefore, the petitioner submitted a representation to the respondents on 13.07.2017 requesting to appoint non-official visitors to the Board. Finding no response on the same, he is before this court with the present writ petition enclosing the replies received from the various Central Prisons across the State as well as newspaper reports in the form of typed set of papers, for the aforesaid relief.

(v) During the pendency of this writ petition, the petitioner has taken out three miscellaneous petitions viz., WMP(MD) Nos.9492, 9493 and 9495 of 2022 seeking direction to the respondents (i)to comply with the order of the



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Hon'ble Supreme Court in CrI.MP.No.16086 of 1997 dated 24.07.2015 in

D.K.Basu v. State of West Bengal and others to install CCTV cameras and ensure that no part of a prison is left uncovered in all the prison premises in the State of Tamil Nadu equipped with uninterrupted power supply, night vision, audio as well as video footage recording facility and with a facility to preserve data that is stored thereon, shall be preserved for a period of 18 months or more by ensuring the fundamental rights of each citizen of India guaranteed under Article 21 of the Indian Constitution, (ii) to provide a copy of the CCTV footage in cases of any custodial violation or torture or death on request of the victim families, police/investigation agencies and board of visitors immediately or within 48 hours from the receipt of the request, and (iii) to select and train professionally qualified persons to the post of non-official visitors to the board of visitors as per Rule 507 of the Tamil Nadu Prison Rules, 1983 for visiting each of the prisons to address the grievance of prisoners and helping the prison administration in the development of correctional administration.

(vi) It is stated in the miscellaneous petitions that earlier the petitioner filed WP(MD)No.2168 of 2016 to appoint non-official members for visiting each of the central jails, district jails and sub jails and the same was disposed of on 02.08.2017 by this court, upon production of the copy of the order issued



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by the Additional Chief Secretary of Home (Prisons) Department in G.O.Ms.No.613 Home (Prison IV) Department, dated 01.08.2017. However, the said order was not properly complied with. According to the petitioner, non-compliance of the said G.O and keeping the appointment of non-official visitors in abeyance, he preferred this writ petition. It is further stated that according to the responses received from the Right to Information Act, 2005, only in 5 prisons, the appointment of non-official visitors were materialized in the State and in 48 prisons, the appointment of non-official visitors have not taken place and the posts are kept vacant, despite the order of this court. It is the grievance of the petitioner that most of the official visitors are unaware of their duty and responsibilities to inspect the prisons and address the grievances of the prisoners. Therefore, it is necessary to appoint trained and skilled non-official visitors to the board of visitors as per 507 of the Tamil Nadu Prison Rules, 1983.

4.(i) On notice, the Additional Director General of Prisons and the Inspector General of Prisons, Chennai - 600 008 filed a counter affidavit repudiating the averments made by the petitioner. It is stated that the appointment of non-official visitors is one of the mechanisms provided under the Act to check for any violation of basic human rights of the prisoners and



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the non-official visitors are frequently carrying out visits to various prisons, inspecting all the buildings, interacting with the prisoners, besides hearing their grievances. The prisons are fully equipped with CCTV Surveillance system and all the activities in the prisons are recorded and kept for scrutiny in future. The guidelines issued by the Ministry of Home Affairs, Government of India in letter No. FN 16014/4/2005/PR, dated 18.02.2011 are scrupulously followed in all the prisons across the State.

(ii) The respondents further stated in the counter affidavit that the prisoners are permitted to meet their friends and relatives, to use telephone to contact their relatives once in a week and for 45 minutes in a month. For this purpose, 54 telephone booths were installed in 9 central prisons, 3 special prisons for women and in Borstal school, Pudukottai at a cost of Rs.2.01 crores. This facility reduces the stress level of the inmates drastically as they are able to keep in touch with their family members, friends and advocates. The prisoners can also air their grievance during the visit of Magistrates, Collectors, Deputy Inspector General of Prisons and Additional Director General of Police. Such right is not curbed to any prisoner in any manner. The Prison Welfare Officer is also making necessary arrangements for interview with the relatives of the prisoners, including those who do not have a permanent address. Above all, the Superintendent of Prisons conducts an



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Inspection Parade of all prisoners every week to hear their grievances and redresses them.

(iii) The counter affidavit also proceeds to state that nutritious and balanced diet is provided to the prisoners as per the scale prescribed in Chapter XXII of the Tamil Nadu Prison Manual (Volume-II). The prison kitchens are maintained in a good hygienic condition provided with stainless steel cooking vessels and trolleys are used to serve food to the prisoners in stainless steel plates and mugs. Special diet is also provided to the prisoners during Pongal, Republic Day, Independence Day and Gandhi Jayanthi. Above all, the Government also sanctioned Rs.51.75 lakhs in G.O. Ms. No.943, Home (Prison-IV) Department dated 22.12.2015 for purchase and installation of Reverse Osmosis plants with accessories having a capacity of 1000 litres per hour in 9 Central Prisons and 500 litres per hour in 3 Special Prisons for Women at Puzhal, Vellore and Tiruchirapalli and they are presently functioning. As a welfare measure, life saving medical equipments were installed in Ambulances in Central Prison-I, Puzhal and in Central Prison, Madurai. The Government also sanctioned Rs.2.19 crores in G.O. Ms. No.150, Home (Prison-IV) Department dated 10.02.2016 and G.O. Ms. No.257, Home (Prison-IV) Department dated 23.03.2017 for purchase of 21 types of life saving medical equipments for all the 9 Central Prisons, 5 Special Prisons for Women and Borstal School, Pudukottai and also for use in 35 ambulances



used in prisons. Thus, various facilities have been provided to ensure that the prisoners are housed in a hygienic environment with all required facilities.

(iv) The respondents further stated in the counter affidavit that non-official visitors are appointed in all the prisons across the State. Their appointment is a continuous process and well before the period of expiry of the non-official visitor, proposals will be sent to the competent authority for appointment of non-official visitors. Therefore, the writ petition filed by the petitioner is devoid of merits and is liable to be set aside.

5.(i) The respondents also filed an additional counter affidavit on 28.10.2022 specifically clarifying that the duties and responsibilities of non-official members are entirely different from that of non-official visitors. According to the respondents, a non-official member would only participate in the proceedings of the Advisory Board which considers the possibility of a prisoner to get premature release. The Government also issued G.O. Ms. No. 687, Home (Prison-IV) Department dated 19.08.2009 on the basis of the directions issued by this Court *vide* order dated 29.01.2016 in WP (MD) No. 2168 of 2016 followed by another order in G.O. Ms. No.613, Home (Prison-IV) Department dated 01.08.2017 appointing non-official members of the Advisory Board for considering premature release of prisoners. The term of non-official members expired on 31.07.2020 and therefore, the list of



suitable persons for appointment as non-official members was called for from the respective District Collectors and upon receipt of such list, a proposal had been sent to the Government for appointment of non-official members. On the other hand, the role of non-official visitor is advisory in nature and they frequently visit the Central Prison/Special Prison for Women/District Jail/Special Sub Jail and Sub Jail. Such non-official visitor would suitably advise the Superintendents of Prisons on the works to be undertaken in the prison for better administration, improvement in sanitation, facilities to be provided to the prisoners, grievance of the inmates etc., which are by and large recorded in the visitors' book. The respondents therefore submitted that the work of non-official members and non-official visitors in the prison administration is entirely different and independent of each other, which the petitioner has failed to understand.

(ii) The additional counter affidavit further proceeds to state that the petitioner has misunderstood the rules relating to appointment of non-official members under Rule 338 of the Tamil Nadu Prison Rules, 1983 and the appointment of non-official visitors under Rule 507 of the Tamil Nadu Prison Rules, 1983. The respondents also furnished the number of non-official visitors appointed in various prisons and the action taken for appointment of non-official visitors to the remaining prisons/jails. That apart, the respondents furnished the details of ex-officio visitors of the prisons in the respective



jurisdictions presided by the District Collectors of the respective District.

According to the respondents, the official visitors so appointed are periodically visiting the prisons and recording their observations in the visitors' book and that, the remarks so made are periodically assessed by the concerned Superintendents of Prisons. The respondents also furnished the year wise details of the number of inspections conducted by the Judicial Magistrates, Medical Officers, Executive Officers and other persons authorised to visit the prisons in para No.8 of the additional counter affidavit and submitted that it is not as if non-official visitors are not appointed at all, as alleged by the petitioner.

(iii) The respondents also submitted that sufficient teachers are available in prisons to look after literacy programme in prisons facilitated by the District Education Officers to ensure that no prisoner remains illiterate. The details of visits of ex-officio visitors are also periodically communicated to the Director General of Prisons by way of reports. Further, the health facilities, education, better sanitation, counselling and yoga programmes and vocational courses are provided to the prisoners. Training in various skills, psychological guidance and family support are being extended as a correctional mechanism through the Department of Prisons and Correctional Services. However, the petitioner has made wild allegations against the ex-



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officio visitors, without any basis. The respondents also made reference to the estimates prepared to the tune of Rs.13,37,800/- by the Executive Engineer, Tamil Nadu Police Housing Corporation to carry out certain repair works in the Sub-Jail, Paramakudi as has been recommended by the learned Principal District Judge, Ramanathapuram during his visit on 03.01.2020 and 31.01.2022. Thus, periodical repair works are also being carried out to ensure a better prison environment.

(iv) Listing out the steps taken during the Covid-19 Pandemic, it is stated by the respondents that the prisoners were given adequate opportunity to meet their counsel to air their grievance, subject to adherence to Covid-19 protocols. It is also stated that all cases of deaths either inside prisons or in hospitals are being enquired by the jurisdictional Judicial Magistrate as required under Section 176-A of the Criminal Procedure Code and reports are sent to the State Government through the District Collector. If any negligence is found during such inquiry, appropriate departmental action will be initiated against those who are found guilty. A copy of the report as regards death of an inmate is also forwarded to the National Human Rights Commission and State Human Rights Commission by the respective Superintendents of Prison. In the



present case, the petitioner has not furnished specific instance of custodial torture or death inside the prison, but what has been stated by him is a generic statement.

(v) The respondents also stated in the additional counter affidavit that as per Chapter XXVI of the Tami Nadu Prison Rules, 1983, non-official visitors are appointed to each prison by duly following the procedure after thorough analysis and verification with respective agencies. The petitioner's statement that non-official visitors are not professionally qualified and they are hand picked by the respective District Collectors without following the procedures is baseless.

(vi) With reference to the allegations that CCTV cameras are not installed in various prisons, it is stated by the respondents that at present, 556 CCTV cameras, with recording facility, have been provided in 9 Central Prisons, 5 Special Prison for women, 7 District Jails, Borstal School, Pudukottai and Special Sub-Jail at Poonamallee. The respondents also sent a proposal to purchase 1000 CCTV cameras for being installed in all the Central Prisons. On the basis of such proposals, the Government vide Letter No. 32641/Prison-IV/2021-1, Home Department dated 13.10.2022 agreed to



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consider the proposal in two phases i.e., to install 556 CCTV cameras by replacing the existing 556 cameras in the first phase and the balance to be undertaken during the financial year 2023-2024 and thus, it is submitted that action is being taken to install CCTV cameras in the prisons.

(vii) As regards the appointment of the non-official visitors, along with the additional counter affidavit, the respondents have annexed a list containing the district-wise details of the persons appointed as non-official visitors in Central Prison or Special Prison for Women etc., and their tenure. Thus, according to the respondents, non-official visitors are periodically appointed by following procedures under the Act and the Rules made thereunder and hence, the writ petition filed by the petitioner will have to be dismissed.

6.(i) By way of reply, the Petitioner / party-in-Person invited the attention of this Court to the typed set of papers containing various applications filed under the Right to Information Act and the replies received thereof. The applications have been filed by one Mr. R. Karthik, a resident of Plot No.92, Karpavinayagar Third Street, Maraniyendhal Post, Thirumalpuram Post, Madurai. According to the petitioner, in almost all the applications submitted to the District Collector of various Districts, which were forwarded



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to the concerned Central Prison, it was stated that the information sought is protected under section 8 (1) (e) of the Right to Information Act, 2005 and it cannot be furnished. The applicant also preferred appeal(s) as against the orders refusing to divulge the information. In all the applications under the Right to Information Act, 2005, the applicant has only sought to know the details of the official visitors, details of prisoners request and suggestion made by the board of visitors, if any. However, in the counter affidavit filed before this Court, such details have been furnished. Even as per the information provided in the annexure to the counter affidavit, the tenure of several non-official visitors had expired and it is not known as to whether fresh appointments have been made.

(ii) The petitioner in support of his claim, placed reliance on the decision of the Bombay High Court in **Muktaram-Sitaram Shinde v. The State of Maharashtra [1997 Cri.Law Journal 3458]** which reiterated the need for appointment of non-official visitors. He also referred to the decision of the Hon'ble Supreme Court in **Sunil Batra v. Delhi Administration [AIR 1980 Supreme Court 1579]** wherein, referring to the state of the prisoners, it was noted that prisoners are doubly handicapped, as they are housed in a walled-off world, which remains incommunicado, their voices unheard and existence invisibled. Therefore, it was reiterated that life and liberty enshrined under Article 21 of the Constitution of India shall not be kept under suspended



animation or concealed into animal existence without the fresh flow of air. The petitioner also referred to the decision in **Re : Inhuman conditions in 1382 prisons [(2017) 10 Supreme Court Cases 658]** wherein, the Hon'ble Supreme Court expressed concern over the custodial deaths in various prisons spread across the Country. By pointing out the said decisions, the Petitioner prayed to issue appropriate direction to the respondents to ensure the implementation of the directions and/or guidelines issued by the Joint Secretary of Home Department to the Government of India vide proceedings in F.No.16014/4/2005-PR dated 18.02.2011 and chapter 29 of the Model Prison Manual, 2003 for appointing the non-official visitors to Board of Visitors within a time that may be stipulated by this Court.

7. On the other hand, the learned counsel appearing for the respondents 1 and 2 reiterated the averments made in the counter affidavit as well as the additional counter affidavit, denying the statements of the petitioner. The learned counsel further produced a statement dated 20.09.2017 which contains the list of persons appointed as non-official visitors in the State from time to time in all the 123 Jails/Prisons, district-wise with their tenure. By pointing out the same, the learned counsel would contend that periodically non-official visitors are appointed by the State and hence, the statement of the petitioner in this regard has to be rejected.

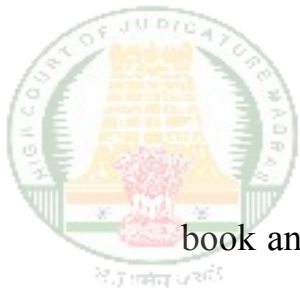


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8. We have heard the Petitioner as party in person, the learned Special Government Pleader appearing for the first respondent, the learned Additional Public Prosecutor appearing for the second respondent and also perused the documents placed before us.

9.(i) The petitioner's plea is that the appointment of non-official visitors to the Board of visitors to prisons, in accordance with Rule 507 of the Tamil Nadu Prison Rules, 1983, is essential, for addressing the grievances of the prisoners and helping the prison administration. However, the same has not been done by the state government promptly and the posts of non-official visitors are kept vacant in many prisons. To substantiate the same, the petitioner referred to the responses received under the Right to Information Act, 2005.

(ii) On the other hand, it is the stand of the respondent authorities that non-official visitors were appointed in various prisons, but there are some prisons/jails where the tenure of such non-official visitors expired and action has been taken to appoint them. It is also submitted that the official visitors are periodically visiting the prisons and recording their observations in the visitors



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book and that, the remarks so made are periodically assessed by the concerned Superintendents of Prisons. Besides that, the Judicial Magistrates, Medical Officers and Executive Officers are also conducting inspections of the various facilities available in the prisons. The Government accord continuous support for the benefit of prisoners and prison personnel. Hence, there is no requirement for this court to entertain this writ petition.

10.(i) Before appreciating the rival contentions, it is but necessary to look into the background of the prison's laws. In 1835, considering the inhumane conditions in prisons, a proposal to form a committee for better discipline, was made. Pursuant to the same, the Prison Discipline Committee was constituted in 1836, which made recommendation to increase the rigorousness of treatment and rejected all humanitarian needs and reforms for prisoners.

(ii) Consequently, the Second Commission of Inquiry was appointed in 1864, which laid down a system of regimentation. In 1877, a draft prison Bill was prepared, but never enacted. Thereafter, the Fourth Jail Commission was appointed in 1888 for uniformity in prison administration, which could not be achieved without a unified prison statute. Subsequently, a consolidated prison Bill prescribing rigorous punishment was drafted and it became the



Prisons Act, 1894, which currently governs prisons in India. The Constitution retained the position of keeping the prisons as a State subject (Entry 4, List II of the Seventh Schedule). The All India Jails Committee, 1919-1920, was a major landmark in modern prison reforms in India.

11. The prison visitation system was statutorily recognised for the first time in the Prisons Act, 1894. Section 12 requires the Superintendent of Prisons to maintain a visitors' book to maintain a record of observations by visitors *qua* administration of prisons. Section 59(25) deals with the power to make rules by the state government for the appointment and guidance of visitors of prisons.

12. In pursuance of section 59 of the Prisons Act, 1894, the Tamil Nadu Prison Rules, 1983 was formulated to operationalize the statutory recognition of prison visitors with a separate Chapter dedicated for the same. Chapter XXVI contains sixteen rules dealing with the constitution of the Board of Visitors, appointment of members, record keeping and disposal of complaints made by prisoners to the visitors. A survey of few significant rules would reveal the kind of visitation system envisaged under it. As per Rule 505, the board of visitors is required to perform periodical visits, attending to the requests of inmates regarding their care and welfare, helping in administration



of correctional services and to enter observations and complaints in the visitors book maintained under the Prisoners Act, 1894.

13. Rule 506 of the Tamil Nadu Prison Rules, 1983 provides for ex-officio members and Rule 507 deals with the appointment of non-official visitors in respect of districts to visit central prisons and sub-jails. Explanation to sub-rule (3) further states that while appointing non-official visitors, preference shall be given to social workers, who are interested in correctional works, psychiatrists, psychologists and sociologists. Rule 508 provides for weekly visits by official and non-official visitors in accordance with a roster to be prepared by the Chairman of the Board. Importantly, it also provides for a quarterly meeting of the board to discuss the roster of visits and issues raised by the prisoners during visits. The roster based visits by the board members are in addition to the surprise visits that may be conducted by the officers having jurisdiction all over the state. Visitors also have the liberty to visit the prisons on dates other than those fixed in the roster by the Chairman.

14. Rule 512 of the Tamil Nadu Prison Rules, 1983, lists down the powers and duties of the visitors which include visiting all parts of prisons and inspection of the quality of food prepared and given to the prisoners. Visitor is duty-bound to give a patient hearing to any complaint raised by the prisoners



and receive petitions if any. With regard to visits to portions of the prison housing female inmates, the rule prohibits individual male visits and provides only for collective visits. Under Rule 513, the visitors are required to record their remarks and suggestions in the visitors' book. These remarks and suggestions are forwarded to the Inspector General for suitable action under Rule 515, who shall, if necessary forward the same to the government for appropriate orders.

15. The Model Prison Manual, 2016 came into existence, after multiple judicial interventions. The Hon'ble Supreme Court has repeatedly recommended an overhaul of prison administration by suggesting reforms in treatment of prisoners and management of prisons. The dehumanized existence of prisoners was reprimanded by Justice Krishna Iyer in **Sunil Batra v. Delhi Administration**, [1980 AIR 1579] and he called for an overhaul of Prison Manuals in compliance with constitutional ideals and human rights. He further emphasised on the need for an independent oversight mechanism for operationalizing prisoners' rights and safeguards. Subsequently, after the direction of the Hon'ble Supreme Court to examine the framing of new All India Jail Manual in **Rama Murthy v. State of Karnataka**, [(1997) 2 SCC 642], the government constituted a committee to draft a model prison manual in accordance with the rights jurisprudence and constitutional ideals. The Committee was entrusted with the responsibility to compare the state prison



manually, identify the gaps in provisions related to administration and management of prisons and recommend best practices. It examined the provisions relating to internal management of prisons and treatment of prisoners and devised a framework to ensure that the prisoners are treated in accordance with the recommendations made in the judgments of the Hon'ble Supreme Court, All India Committee on Jail Reforms (1980-1983) and international instruments. Thus, the Model Prison Manual came into being in the year 2003 after national-level deliberations and development of a consensus. However, only after the nudge from the Hon'ble Supreme Court in **Inhuman Conditions in 1382 Prisons, In re, [(2017) 10 SCC 658]**, the Ministry of Home Affairs approved the Manual after 12 years in 2016. The Model Prison Manual and the system that it envisages, has to be understood as an outcome of the repeated clarion calls and demands to safeguard prisoners' rights and prison reforms.

16. The Model Prison Manual, 2016 provides for a system of board of visitors. The visitation system is a pragmatic shift from isolation of prisoners under custody from the outside world. Community interaction is a necessary postulate in transforming prisons as correctional institutions. The board of visitors, which directly interacts with the prisoners, is the driver of such transformation by acting as a connecting thread between the authorities and



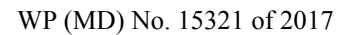
prisoners. They are entrusted with the duty to enquire into the prisoners' grievances, develop suggestions for its redressal and forward the suggestions to the concerned authorities. We may refer to the following observation of the All India Committee for Jail Reforms (Mulla Committee), while highlighting the importance of Board of Visitors:

"For long, the system of Board of Visitors in prison administration has been in place. In a way, the system indicates corrections being a concern of one in all; and correctional institutions do not have to be insular. These need to have a measure of interaction with other sectors of criminal justice system and a substantive linkage with community. The modality of Board of Visitors subserves these and similar purposes. Should the Board function effectively, it will greatly help jail inmates in redressing their grievances and in putting them on the path of reformation and rehabilitation."

17.(i) There is a catena of decisions dealing with prisoners' rights. We may now refer exclusively to the observations of the Hon'ble Supreme Court in relation to the visitation system to understand the nature of responsibility of the prison visitors. In **Sunil Batra v. Delhi Administration [AIR 1980 Supreme Court 1579]**, it was held by the Hon'ble Supreme Court as follows:

"59. The Prisons Act and Rules need revision if a constitutionally and culturally congruous code is to be fashioned. The model jail manual, we are unhappy to say and concur in this view with the learned Solicitor General, is far from a model and is, perhaps, a product of prison officials insufficiently instructed in the imperatives of the Constitution and unawakened to the new hues of human rights. We accept, for the nonce, the suggestion of the Solicitor General that within the existing statutory framework the requirements of constitutionalism may be read. He heavily relies on the need for a judicial agency whose presence, direct or by delegate, within the prison walls will deal with grievances. For this purpose, he relies on the Board of Visitors, their powers and duties, as a functional substitute for a Prison Ombudsman. A controllerate is the desideratum for in situ reception and redressal of grievances.

.....



1. The State shall take early steps to prepare in Hindi, a prisoner's handbook and circulate copies to bring legal awareness home to the inmates. Periodical jail bulletins stating how improvements and habilitative programmes are brought into the prison may create a fellowship which will ease tensions. A prisoners' wallpaper, which will freely ventilate grievances will also reduce stress. All these are implementary of Section 61 of the Prisons Act.

2. The State shall take steps to keep up to the Standard Minimum Rules for Treatment of Prisoners recommended by the United Nations, especially those relating to work and wages, treatment with dignity, community contact and correctional strategies. In this latter aspect, the observations we have made of holistic development of personality shall be kept in view.

3. *The Prisons Act needs rehabilitation and the Prison Manual total overhaul, even the Model Manual being out of focus with healing goals. A correctional-cum-orientation course is necessitous for the prison staff inculcating the constitutional values, therapeutic approaches and tension-free management.*

4. *The prisoners' rights shall be protected by the court by its writ jurisdiction plus contempt power. To make this jurisdiction viable, free legal services to the prisoner programmes shall be promoted by professional organisations recognised by the court such as for example. Free Legal Aid (Supreme Court) Society. The District Bar shall, we recommend, keep a cell for prisoner relief."*

(ii) The Hon'ble Supreme Court in **Sanjay Suri v. Delhi Administration [1988 Supp SCC 160]** emphasized the need for diversity in the board of visitors. It recommended that members from different cross-sections of life be included in the visitors' board *viz.*, social activists, women social workers, people involved in news media, retired public servants from judiciary and executive. The relevant passage of the said decision is extracted



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"8. The Visitors' Board should consist of cross-sections to society; people with good background, social activists, people connected with the news media, lady social workers, jurists, retired public officers from the judiciary as also the executive. The Sessions Judge should be given an acknowledged position as a visitor and his visits should not be routine ones. Full care should be taken by him to have a real picture of the defects in the administration qua to the resident prisoners and undertrials."

(iii) In **Rama Murthy v. State of Karnataka [(1997) 2 SCC 642]**, the Hon'ble Supreme Court noted that to know the real picture of prisoners and prison administration, the jail visits must be done after giving the shortest notice. For better appreciation, the relevant passage of the said decision is reproduced below:

"33. What we would rather state is that if what is being done to prisoners in the above regard is to enforce prison discipline mentioned in various jail manuals, there exists a strong need for a new All India Jail Manual to serve as a model for the country, which manual would take note of what has been said about various punishments by this Court in its aforesaid decisions. Not only this, the century-old Indian Prison Act, 1894, needs a thorough look and is required to be replaced by a new enactment which would take care of the thinking of Independent India and of our constitutional mores and mandate. The National Human Rights Commission has also felt that need for such exercise, mention about which has been made in paras 4.18 and 4.21 of the aforesaid Report.

Conclusion

51. We have travelled a long path. Before we end our journey, it would be useful to recapitulate the directions we have given on the way to various authorities. These are:

(1) To take appropriate decision on the recommendations of the Law Commission of India made in its 78th Report on the subject of "Congestion of undertrial prisoners in jail" as contained in Chapter 9

(para 22).

(2) To apply mind to the suggestions of the Mulla Committee as contained in Chapter 20 of Vol. I of its Report relating to streamlining the remission system and premature release (parole), and then to do the needful

(para 25).

(3) To consider the question of entrusting the duty of producing UTPs



on remand dates to the prison staff

(para 29).

(4) To deliberate about enacting of new Prison Act to replace the century-old Indian Prison Act, 1894 (para 33). We understand that the National Human Rights Commission has prepared an outline of an all-India statute, which may replace the old Act; and some discussions at a national level conference also took place in 1995. We are of the view that all the States must try to amend their own enactments, if any, in harmony with the all-India thinking in this regard.

(5) To examine the question of framing of a model new All India Jail Manual as indicated in para 33.

(6) To reflect on the recommendations of the Mulla Committee made in Chapter 29 on the subject of giving proper medical facilities and maintaining appropriate hygienic conditions and to take needed steps

(paras 37 and 38).

(7) To ponder about the need of complaint box in all the jails

(para 39).

(8) To think about introduction of liberalisation of communication facilities

(para 42).

(9) To take needful steps for streamlining of jail visits as indicated in para 44.

(10) To ruminate on the question of introduction of open-air prisons at least in the District Headquarters of the country

(para 50)."

(iv) In **D.K. Basu v. State of W.B., [(2015) 8 SCC 744]**, the *amicus curiae* suggested the Hon'ble Supreme Court to deal with the appointment of non-official visitors to make surprise visits to prisons to check human rights violations. It was raised to enable proper implementation of the Protection of Human Rights Act, 1993. After noting that there is no harm in appointing non-official visitors, the Hon'ble Supreme Court directed the state government to consider their appointment with a caveat that the non-official visitors should not interfere with the ongoing investigations. The relevant paragraphs are



quoted below for ready reference:

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"31. There are, apart from the above, few other recommendations made by the Amicus like installation of CCTV cameras in all police stations and prisons in a phased manner, and appointment of non-official visitors to prisons and police stations for making random and surprise inspections. Initiation of human proceedings under Sections 302/304 IPC in each case where the enquiry establishes culpability in custodial death and framing of uniform definition of custodial death and mandatory deployment of at least two women constables in each district are also recommended by the Amicus.

...

35. That leaves us with the appointment of non-official visitors to prisons and police stations for making random and surprise inspection to check violation of human rights. The Amicus points out that there are provisions in the Prison Manual providing for appointment of non-official visitors to prisons in the State. These appointments are made on the recommendations of the Magistrate of the District in which the prison is situated. He urged that the provisions being salutary ought to be invoked by the Governments concerned and non-official visitors to prisons in police stations nominated including independent persons like journalist. There is, in our opinion, no real harm or danger in appointment of non-official visitors to prisons and police stations provided the visitors who are so appointed do not interfere with the ongoing investigations, if any. All that we need say is that the State Governments may take appropriate action in this regard keeping in view the provisions of the Prison Manuals and the Police Acts and the Rules applicable to each State.

.....

38. To sum up

.....

38.7. The State Governments shall consider appointment of non-official visitors to prisons and police stations in terms of the relevant provisions of the Act wherever they exist in the Jail Manuals or the relevant Rules and Regulations."

(v) **In Inhuman Conditions in 1382 Prisons, In re, [(2017) 10 SCC 658]**, the Hon'ble Supreme Court opined that participation of members of the society as non-official visitors in the Board of Visitors was of 'considerable importance' and directed the state governments to constitute an appropriate



board of visitors in terms of Chapter XXIV of the Model Prison Manual, 2016

by 30.11.2017. The relevant passage can be usefully extracted below:

"58. We are of the view that on the facts and in the circumstances before us, the suggestions put forward by the learned Amicus and the learned counsel appearing for the National Forum deserve acceptance and, therefore, we issue the following directions:

58.1. The Secretary General of this Court will transmit a copy of this decision to the Registrar General of every High Court within one week with a request to the Registrar General to place it before the Chief Justice of the High Court. We request the Chief Justice of the High Court to register a suo motu public interest petition with a view to identifying the next of kin of the prisoners who have admittedly died an unnatural death as revealed by the NCRB during the period between 2012 and 2015 and even thereafter, and award suitable compensation, unless adequate compensation has already been awarded.

58.2. The Union of India through the Ministry of Home Affairs will ensure circulation within one month and in any event by 31st October, 2017 of (i) the Model Prison Manual, (ii) the monograph prepared by the NHRC entitled "Suicide in Prison - prevention strategy and implication from human rights and legal points of view", (iii) the communications sent by the NHRC referred to above, (iv) the compendium of advisories issued by the Ministry of Home Affairs to the State Governments, (v) the Nelson Mandela Rules and (vi) the Guidelines on Investigating Deaths in Custody issued by the International Committee of the Red Cross to the Director General or Inspector General of Police (as the case may be) in charge of prisons in every State and Union Territory. All efforts should be made, as suggested by the NHRC and others, to reduce and possibly eliminate unnatural deaths in prisons and to document each and every death in prisons – both natural and unnatural.

58.3. The Union of India through the Ministry of Home Affairs will direct the NCRB to explain and clarify the distinction between unnatural and natural deaths in prisons as indicated on the website of the NCRB and in its Annual Reports and also explain the sub-categorization 'others' within the category of unnatural deaths. The NCRB should also be required to sub-categorize natural deaths. The sub-categorization and clarification should be complied with by 31st October, 2017.

58.4. The State Governments should, in conjunction with the State Legal Services Authority (SLSA), the National and State Police Academy and the Bureau of Police Research and Development conduct training and sensitization programmes for senior police officials of all prisons on their functions, duties and responsibilities as also the rights and duties of



prisoners. A copy of this order be sent by the Registry of this Court to the Member-Secretary of each SLSA to follow-up and ensure compliance.

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58.5. The necessity of having counselors and support persons in prisons cannot be over-emphasized. Their services can be utilized to counsel and advice prisoners who might be facing some crisis situation or might have some violent or suicidal tendencies. The State Governments are directed to appoint counselors and support persons for counselling prisoners, particularly first-time offenders. In this regard, the services of recognized NGOs can be taken and encouraged.

58.6. While visits to prison by the family of a prisoner should be encouraged, it would be worthwhile to consider extending the time or frequency of meetings and also explore the possibility of using phones and video conferencing for communications not only between a prisoner and family members of that prisoner, but also between a prisoner and the lawyer, whether appointed through the State Legal Services Authority or otherwise.

58.7. The State Legal Services Authorities (SLSAs) should urgently conduct a study on the lines conducted by the Bihar State Legal Services Authority in Bihar and the Commonwealth Human Rights Initiative in Rajasthan in respect of the overall conditions in prisons in the State and the facilities available. The study should also include a performance audit of the prisons, as has been done by the CAG. The SLSAs should also assess the effect and impact of various schemes framed by NALSA relating to prisoners. We request the Chief Justice of every High Court, in the capacity of Patron-in-Chief of the State Legal Services Authority, to take up this initiative and, if necessary, set up a Committee headed preferably by the Executive Chairperson of the State Legal Services Authority to implement the directions given above.

58.8. Providing medical assistance and facilities to inmates in prisons needs no reaffirmation. The right to health is undoubtedly a human right and all State Governments should concentrate on making this a reality for all, including prisoners. The experiences in Karnataka, West Bengal and Delhi to the effect that medical facilities in prisons do not meet minimum standards of care is an indication that the human right to health is not given adequate importance in prisons and that may also be one of the causes of unnatural deaths in prisons. The State Governments are directed to study the availability of medical assistance to prisoners and take remedial steps wherever necessary.

58.9. The constitution of a Board of Visitors which includes non-official visitors is of considerable importance so that eminent members of society can participate in initiating reforms in prisons and in the rehabilitation of prisoners. Merely changing the nomenclature of prisons to 'Correction Homes' will not resolve the problem. Some proactive steps are required to be taken by eminent members of society who should be included



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in the Board of Visitors. The State Governments are directed to constitute an appropriate Board of Visitors in terms of Chapter XXIX of the Model Prison Manual indicating their duties and responsibilities. This exercise should be completed by 30th November, 2017.

58.10. The suggestion given by the learned Amicus of encouraging the establishment of 'open jails' or 'open prisons' is certainly worth considering. It was brought to our notice that the experiment in Shimla (Himachal Pradesh) and the semi- open prison in Delhi are extremely successful and need to be carefully studied. Perhaps there might be equally successful experiments carried out in other States as well and, if so, they require to be documented, studied and emulated.

58.11. The Ministry of Women & Child Development of the Government of India which is concerned with the implementation of Juvenile Justice (Care and Protection of Children) Act, 2015 is directed to discuss with the concerned officers of the State Governments and formulate procedures for tabulating the number of children (if any) who suffer an unnatural death in child care institutions where they are kept in custody either because they are in conflict with law or because they need care and protection. Necessary steps should be taken in this regard by 31st December, 2017.

59. We expect the above directions to be faithfully implemented by the Union of India and State Governments. In the event of any difficulty in the implementation of the above directions, the Bench hearing the suo motu public interest litigation in the High Court in term of our first direction is at liberty to consider those difficulties and pass necessary orders and directions."

18. In the light of the aforesaid legal proposition, we now consider the provisions concerning board of visitors under the Model Prison Manual, 2016, which show a marked difference from the Tamil Nadu Prison Rules, 1983. The board of visitors is presently required to monitor the correctional work in prisons, training and effectiveness of infrastructure in prisons; and give suggestions to improve the correctional work (para 29.02). Significantly, the role of the Board is not restricted to being a messenger carrying grievances



from the prisoners to the authorities. It is now required to work on redressing their grievances in consultation with the prison authorities (para 29.02(c)). The duties of the visitors under the Manual (para 29.22) are reproduced below for the sake of specificity:

- "a. Examine cooked food;*
- b. Inspect the barracks, wards, work-sheds and other buildings of the prison generally;*
- c. Ascertain whether considerations of health, cleanliness and security are attended to, whether proper management and discipline is maintained in every respect and whether any prisoner is illegally detained, or is detained for undue length of time while awaiting trial;*
- d. Examine prison registers and records, except secret records and records pertaining to accounts;*
- e. Hear and attend to all representation and petitions made by or on behalf of the prisoners;*
- f. Direct, if deemed advisable, that any such representation or petition be forwarded to the Government; and*
- g. Suggest new avenues for improvement in correctional work"*

Further, the duties and powers of visitors under the Tamil Nadu Prison Rules, 1983 are general i.e., to visit all parts to satisfy oneself that the rules are duly complied with, give patient hearing to prisoners' complaints, inspect the maintenance of punishment books, and ensure that food is of good quality. There is a specific provision dealing with visitors' duty to attend to the quality and quantity of diet, medical facilities, sanitation, literacy programme and library facilities available to the prisoners (para 29.13). Thus, the duties of visitors under the Manual have become more specific, including the duty to ascertain if any prisoner has been detained illegally. The manual also provides for sensitization and training of non-officials after their appointment (para



29.05). The remarks by visitors during the course of inspection are forwarded to the Inspector General who shall then take steps by either passing an order or forwarding the same to the government. The Manual also recognizes the right of the prisoners to converse secretly with the visitor, but within the sight of the prison officer (para 29.11). The details of what transpired during the conversation is communicated to the Chairman of the Board (i.e., District Judge), who shall take up the matter with the prison superintendent, if found necessary. The manual has also brought changes to the non-official membership of the Board. It is mandatory to have three Members of Legislative Assembly (MLAs) (of which one has to be a woman), a nominee of the State Human Rights Commission and two social workers of the district/sub-division (of which one has to be a woman) as non-official members. This is a marked difference from the present Prison rules, which does not give a mandatory specification rather only specifies the people as a matter of preference. Thus, it is lucid that the State government has still not incorporated changes to its Prison Rules in accordance with the 2016 Model Prison Manual and it has also not implemented the visitation system under the 1983 Rules diligently.

19. At this juncture, it is pertinent to refer to United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

The mechanism for informing the prisoners of their rights, standards of



treatment in prisons and for them to make complaints and requests regarding their treatment in prisons, has been integral to the international standards for treatment of prisoners since 1955. It forms a part of the Standard Minimum Rules for the Treatment of Prisoners adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Prisoners. Rules 35-36 deal with information to and complaints by prisoners. Rule 55 specifically deals with inspections to ensure compliance with laws and regulations. In 2011, attempts to review and revise these rules were made and an open-ended inter-governmental expert group was established by the General Assembly. With respect to information and complaints by prisoners, the revision sought to strengthen the mechanism by ensuring prompt dealing of complaints and requests. The inspection mechanism was revised by introducing a two-fold system of internal inspection by prison administration and external inspection by an independent body of persons. The revision also enabled the inspectors to perform their tasks effectively, by granting them access to prison records, power to make unannounced visits and conduct confidential interviews. The revised rules were ultimately adopted by the UN General Assembly as the “United Nations Standard Minimum Rules for the Treatment of Prisoners” *vide* resolution A/RES/70/175. The General Assembly also approved the rules to be known as “the Nelson Mandela Rules” in accordance with the recommendation of the expert group in his honour.



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20. As per Rule 54 of the Nelson Mandela Rules, upon admission, every prisoner shall be promptly provided with written information about the prison law and regulations, his or her rights, including authorized methods of seeking information, access to legal advice, etc., his or her obligations including applicable disciplinary sanctions, and all other matters necessary to enable him / her to adapt himself or herself to the life of the prison. Rule 55 provides that the information referred to in Rule 54 shall be available in the most commonly used languages and shall be provided with interpretation assistance for those who do not understand the language. Rule 56 provides for an opportunity of making requests or complaints by the prisoner or his / her legal advisor, to the prison director or prison staff, regarding medical treatment to the central prison administration and to the judicial or other competent authorities, etc. According to Rule 57, every request or complaint shall be promptly dealt with and replied to without delay and if there is any undue delay, the complainant shall be entitled to bring it before a judicial or other authority. A prisoner or his / her legal advisor must not be exposed to any risk of retaliation, intimidation or other negative consequences as a result of having submitted a request or complaint. Allegations of torture or other cruel, inhuman or degrading treatment or punishment of prisoners shall be dealt with immediately and shall result in a prompt and impartial investigation conducted by an independent national authority. Under Rule 83, there shall be a two-fold



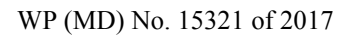
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system for regular inspections of prisons and penal services viz., internal inspections and external inspections. Internal inspections are conducted by the central prison administration and external inspections are conducted by an independent body. In both cases, the objective is to ensure that prisons are managed in accordance with existing laws, regulations, policies and procedures, with a view to bringing about the objectives of penal and corrections services, and that the rights of prisoners are protected. As per Rule 84, Inspectors shall have the authority, to access all information on the numbers of prisoners and places and locations of detention, as well as all information relevant to the treatment of prisoners, including their records and conditions of detention; to freely choose which prisons to visit, including by making unannounced visits at their own initiative, and which prisoners to interview; to conduct private and fully confidential interviews with prisoners and prison staff in the course of their visits; to make recommendations to the prison administration and other competent authorities. External inspection teams shall be composed of qualified and experienced inspectors appointed by a competent authority and shall encompass health-care professionals. Due regard shall be given to balanced gender representation. Rule 85 states that every inspection shall be followed by a written report to be submitted to the competent authority. The rule also highlights that endeavour must be made to make external inspections reports publicly available, excluding any personal



data on prisoners unless they have given their explicit consent. The prison administration or other competent authorities, as appropriate, shall indicate, within a reasonable time, whether they will implement the recommendations resulting from the external inspection.

21. In this regard, it is pertinent to refer to the second report of the Commonwealth Human Rights Initiative (CHRI), published in 2019 on the functioning of the board of visitors and the appointment of non-official visitors. Analysing the compliance in all the States (except Jammu and Kashmir) as against the respective state rules, the report provides for certain recommendations for effective implementation of board of visitors across the states. It recommends that the board of visitors must be constituted within seven days of the appointment of non-official visitors, with the District Magistrate as the Chairperson. It recommends for an assured minimum tenure of visitors for a period of one year to ensure continuity and prevent the erosion of institutional memory. It recommends bi-monthly joint inspections and quarterly meetings at the prison premises during which the Board shall also consider the visitors' book and the action taken by the Superintendent on the remarks made in the visitors' book and called for corresponding amendments to the rules. The report also recommends that non-official visitors must have genuine interest in the welfare of prisons and of the prisoners with experience



22. It is also relevant to refer to the visitorial systems prevailing in other countries. Mechanism for visiting prisons to ensure compliance with laws, handle complaints from prisons to check human rights violations, and recommending systemic and policy level changes to prison administration is in place in different jurisdictions. We may refer to three select frameworks viz.,

<https://www.mhc.tn.gov.in/judis>



United Kingdom and (iii) Directorate of Inspections/Complaints in Kenya. The first two are external and independent accountability mechanisms, while the third one is an internal mechanism to deal with complaints and recommend changes.

23.(i) In Western Australia¹, there is an Independent Visitor Service (IVS) as an integral part of the state's accountability mechanisms. Independent Prison Visitors are appointed by the Minister under the Inspector of Custodial Services Act, 2003 to ensure the prisons operate in a just and humane manner. They are required to visit the allotted prison every three months and make a report following the visit to the Inspector of the Custodial Services recording the details of the visit and any complaints made by the prison inmates. The Inspector is then bound to review such reports to identify issues with the prison systems; report to the Ministry; and take appropriate actions to improve the quality of prisons. The independent visitors thus play an important role in safeguarding the rights and wellbeing of prisoners; voicing out the concerns of prisoners to the authorities; aiding the prison reforms by documenting the state of prison management and grievances of the prisoners.

¹ <http://www.oics.wa.gov.au/about-oics/independent-visitor-service/>; Inspector of Custodial Services Act, 2003 available at: <https://testweb.oics.wa.gov.au/wp-contempt/uploads/2013/11/Inspector-of-Custodial-Services-Act-2003.pdf>



(ii) In the United Kingdom², there is an independent office of the Prison and Probation Ombudsman, sponsored by the Ministry of Justice.

Though sponsored by the Ministry, the ombudsman is independent from government services and carries out investigations on complaints filed by the prisoners, custodial deaths and deaths (except homicide), within 14 days of release. Through such investigations, the ombudsman examines whether any operational or policy changes are required in the management of prisons. The terms of reference between the Ombudsman and the Secretary of State concerning operation of Ombudsman, ensures confidentiality of communication by the prisoner-complainant and fixes a time limit for considering and investigating complaints. Every investigation results in a written report, which can recommend disciplinary action against any staff named in the complaints. The ombudsman is also required to prepare and publish an annual report and the same is laid before the Parliament for legislative scrutiny.

(iii) Kenya³ has a separate directorate called the Directorate of Inspections/Complaints under the Kenya Prisons Service. It inspects and audits penal institutions to check implementation and compliance with the Prisons Act, rules and regulations for penal institutions; sensitizes the prison

² Terms of Reference available at: <https://s3-eu-west-2.amazonaws.com/ppo-prod-storage-1g9rkhijskmgw/uploads/2021/12/PPO-2021-Terms-of-Reference-with-cover.pdf>

³ <https://www.mhc.tn.gov.in/judis>
<https://www.prisons.go.ke/inspectionsComplaintsMonitoringandevaluation>



staff. It is also conferred with the responsibility to handle complaints by establishing complaint handling offices in prisons and training the officers in complaint handling. It also recommends improvements, changes and introduction of new correctional programmes.

24. During the course of argument, the petitioner has brought to the notice of this court the existence of the Academy of Prisons and Correctional Administration (APCA) situated at Vellore, the objective of which is to regularly train prison and correctional officers in order to achieve the goals of reformation, rehabilitation and reintegration of prisoners into the society. It offers different types of courses to the officials involved in prison administration and correctional services including:

- (i) Basic Courses for different durations for prison officers, probation officers, psychologists and welfare officers
- (ii) In-service courses for prison officers
- (iii) Refresher course for serving prison officers for mutual learning and updating oneself with the latest developments in the subject
- (iv) Computer course to appraise the officers regarding ICT applications
- (v) Special courses in collaboration with renowned national and international institutions and organizations.

These courses are organized for capacity building of the stakeholders and officials involved to effectively implement the correctional works,



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rehabilitation of prisoners and their reintegration into the society post incarceration.

25. Thus, the overall appreciation of the legal framework prevailing in the state, central and international levels would necessitate us to observe that prison administration and its reforms must be carried out by keeping the objective of the prison system in the first place i.e., reformation of inmates, their rehabilitation and successful reintegration into the society at the end of their incarceration. The prison environment and culture among the inmates instilled by such an environment are significant factors in determining the success of incarceration. Any reform in prison management in order to achieve the said purpose must start with the department of prisons and correctional services. Improving the culture among inmates and the environment by certain administrative reforms will bring about a change in the behaviour of the inmates ultimately leading to an effective incarceration system with due regard for prisoner's rights.

26. Coming to the present case, it is seen from the documents filed in the form of typed set of papers as well as the replies given by various authorities under the RTI Act that for most of the applications, the Public Information Officer concerned has either refused to divulge the information or stated that no such record exists to be divulged. There are some replies where



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it was stated that the information sought for is confidential in nature and therefore, it cannot be shared. In few replies, available records have in fact been given to the applicant. As regards the applications submitted to the Judiciary, information on dates of visits of the Judges has been furnished. In several replies, the information was refused stating minutes of the meeting could not be furnished in view of the order passed by this Court.

27. It is also seen that in case of applications filed before the District Collectorates across the State, the information sought for was not furnished at all times on the grounds of diversion of resources. For some applications, it was replied that no record is maintained relating to the requests of prisoners. In another reply, it is stated that the Chief Education Officers never visited and there are no records to be furnished. However, from the replies filed along with the typed set of papers, it could be seen that Fire and Rescue Services Department has furnished the copies of the records maintained by them and they have also answered the queries relating to fire service related provisions, periodical checking of fire extinguishers and other provisions carried out in the prisons. In the case of Animal Husbandry Department, the applications submitted were replied by stating that there was no visit by any authority and therefore, no information could be furnished. Similar was the reply given by the office of the Chief Inspector of Factories to the petitioner. Thus, it can be inferred that no periodical visits had taken place and no remarks were made in



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the visitors' book; and that, there is no clear-cut picture about the prison administration and the facilities available to the prisoners in the prisons of the state of Tamil Nadu.

28. As already observed, the state government has not incorporated changes to the Tamil Nadu Prison Rules, 1983 in accordance with the Model Prison Manual, 2016 and has not effectively implemented the provisions relating to visitation system in the Rules. It is noted earlier that the non-official visitors are appointed by the District Collector of the concerned District by following the procedures as contemplated under the Prison Rules. Such appointment is essential to continuously monitor the physical conditions prevailing in the prison, compliance with basic and fundamental rights of the prisoners, etc. Therefore, it is necessary for the respondents to not only ensure the appointment of the non-official visitors and that, the duties and responsibilities are discharged by them, but also ensure that there is no delay in appointing a non-official visitor, after expiration of his or her tenure. It is evident from the materials placed before us, that the tenure of the non-official visitors in many districts expired and the appointment is not forthcoming even for several months. When such being so, we are of the opinion that the visitors who interact with prisoners and observe their conditions in close proximity, are indispensable for the enforcement of fundamental rights of prisoners and therefore, non-official visitors will have to be appointed with immediate effect.



That apart, the prison administration needs to be reformed for creating a better environment and prison culture to ensure the prisoners enjoy their right to dignified life under Article 21.

29. Therefore, we deem it fit and appropriate to issue the following directions to the respondent authorities:

(i) To constitute a committee to ensure periodic appointment of non-official visitors to all the prisons/jails within the State promptly upon expiry of the tenure of such non-official visitor.

(ii) To constitute board of visitors in all prisons who could periodically review and advise the prison authorities on various aspects of facilities training, correctional work etc.

(iii) The minutes of the meeting of the board of visitors along with the suggestions to the government shall be uploaded on the website, district/prison wise.

(iv) To amend the Prison Act, 1894 and the Tamil Nadu Prison Rules, 1983 in accordance with the Model Prison Manual, 2016 and the United Nations Standard Minimum Rules for the Treatment of Prisoners ('the Nelson Mandela Rules').

(v) To take appropriate measures to reduce overcrowding of prisoners



in the prisons, if not taken earlier.

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(vi) To prepare a 'Prisoners' Rights Handbook' with information on their rights, applicable laws and regulations, mechanism for raising grievances/complaints with the board of visitors and other concerned authorities, expected behaviour from prisoners and disciplinary action for violations and to provide each prisoner with a copy of the same upon admission to the prisons. The same shall also be made available online on the website of the prison department.

(vii) The Office of the Inspector General of Prisons shall prepare an annual report with the remarks and suggestions of the visitors and board across the state, and the corresponding action taken by the prison department. The annual report prepared by the Inspector General containing the remarks and action taken must be published in the website.

(viii) To make all the facilities viz., medical equipment, drinking water, hygienic food available to the prisoners, at all times.

(ix) Regular training and refresher courses shall be conducted in collaboration with the Academy of Prisons and Correctional Administration for officials and prison staff, who directly interact with the inmates in order to create a sensitive and dignified prison environment.

(x) To provide effective grievance redressal system with the provisions of complaint box and CCTV cameras and alert system in the



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barracks of jails.

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(xi) To ensure the effective functioning of visitorial system in reforming the prisons, the state government shall organize a yearly conference under the aegis of the State Human Rights Commission with the official and non-official visitors of the board of visitors across the state, officials concerned with prison administration and correctional services to consider the status of prison administration, deliberate on the report of the board of visitors and recommend changes in the prison administration.

30. With the aforesaid directions, this writ petition as well as the connected miscellaneous petitions are disposed of. No costs.

(R.M.D., J.) (J.S.N.P., J.)

02.01.2023

rsh

Index : Yes / No

Internet : Yes / No

To

1. The Home Secretary
Home Department (Prison)
Secretariat

<https://www.mhc.tn.gov.in/judis>



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St. George Fort
Chennai - 600 009

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2. The Additional Director General of Police (Prisons)
Tamil Nadu Prison Department
Chennai Metropolitan Development Authority Tower II
No.1, Gandhi Irwin Road
Egmore, Chennai - 600 008



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R.MAHADEVAN, J.
and
J. SATHYA NARAYANA PRASAD, J.

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Pre-delivery order in
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02.01.2023