



IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) No.406 OF 2013

IN RE- INHUMAN CONDITIONS IN 1382 PRISONS

ORDER

(I) CONTEXT

1. Pursuant to our order dated 23rd April, 2024, Mr. Gaurav Agrawal, learned Amicus Curiae¹ has filed a Note summarising details of information² received from the States of Bihar, Punjab, Chhattisgarh, Rajasthan, Jharkhand, Odisha, and Kerala.

2. The AC submits that the State of Uttar Pradesh has also filed a report which runs into more than 300 pages; likewise stands the position for the States of Andhra Pradesh, West Bengal and Madhya Pradesh – all their reports/responses are voluminous. Mr. Agrawal submits that these three States (supra) may file additional affidavits in terms of the order dated 23rd April, 2024, for which purpose some time be granted.

3. It is also submitted that further affidavits have been received from the States of Telangana, Assam, Gujarat, Tamil Nadu and Maharashtra. He requests for time to file a comprehensive report after going through the said affidavits.

¹ hereinafter referred to as the 'AC'

² hereinafter referred to as the 'Note'

(II) STATEWISE STUTUS REPORTS

(A) STATE OF BIHAR

4. Onto what engages us today, the AC draws the attention of this Court to the State of Bihar, where overcrowding in jails has been flagged, especially concerning the (a) District Jails at (i) Aurangabad, (ii) Darbhanga, (iii) Gopalganj, (iv) Khagaria, (v) Lakhisarai, (vi) Madhepura, (vii) Biharsharif, (viii) Navadah, (ix) Saharsa, (x) Chapra, (xi) Sitamarhi, (xii) Siwan, (xiii) Supaul, (xiv) Hajipur; (b) Adarsh Central Jail, Beur, and (c) Central Jail, Purnea.

5. The Note indicates a measure of slackness pertaining to approvals being granted for works to commence. In some jails, the capacity enhancement is likely to be completed by the end of the present Financial Year i.e. by/before March, 2025, whereas in other jails, suitable land is still being identified.

6. This Court is not satisfied with the steps taken by the concerned authorities of the State of Bihar to indicate their seriousness towards addressing issues which are urgent in nature and cannot be casually dealt with. For instance, *apropos* improvement in living conditions for the prisoners in Central Jail, Gaya, it transpires that that approval has been given for making adequate availability of drainage facility, construction of additional toilets, construction of kitchen, in the current Financial Year followed by construction over the next two years.

7. For the Sub-Jail, Sherghati, approval has been given for construction of 15 additional toilets and the work is being done by the Building Construction Department.

8. The AC has submitted that in terms of the recommendations made by the Committee constituted by this Court, in 13 Central/ District Jails, insofar as women prisoners are concerned, the State Government has indicated various steps taken in the District Jails at Aurangabad, Ara, Katihar, Lakhisarai, and the Central Jail at Gaya.

9. Again, we would note that though some recommendations made by the Committee have been accepted/processed, the State Government is yet in the process of granting approvals for construction of kitchen, increasing the height of the parameter wall as also for construction/maintenance of clean toilets, separate women prisoners' hospital, expansion of women prison-wards and barracks and construction of new prisoner cells. We find no valid reason for the delays in the approvals. Needless to state, the approval, being the starting point for any project/development to proceed, it must be dealt with on priority. The Note and the record make it clear that for various jails, approvals for the works are expected to be given in the present Financial Year 2024-25 i.e. in the next 10 months, upto March, 2025.

10. In the above background, the AC has prayed for issuance of directions as under:

'a) Approval for additional wards in District Jail Aurangabad, District Jail Lakhisarai and District Jail Nawadah, and the 5 women jails mentioned above may be expedited by the State Government so that process for construction can begin at the earliest. The Government has stated that the financial approval would be given in this financial year. The Government may consider giving approval in 3 months' time and take further steps thereafter.

b) It is important that with the increase in the capacity, the State Government may also be directed to ensure that other necessary infrastructure like sanitation facility, kitchen, staff etc is also upgraded to meet the additional needs.

c) Construction is going on in District Jail Darbhanga, Central Jail Purnea, District Jail Saharsa and District Jail Chhapra. Affidavit of the State Government states that most of the works would be completed by next year

i.e. 2025. The Chief Secretary, State of Bihar may take a review meeting of the ongoing construction in 6 months' time to ensure that there is no delay in the said construction.

d) Land identification process is underway interalia in Gopalganj, Khagaria, Bihar Sharif and few other districts. It is humbly prayed that the Chief Secretary may review the matter in 4 months. He may impress upon the District Magistrates of the urgency, so that land is identified at the earliest. The progress in this regard may be informed to this Hon'ble Court.

e) It appears that land has been selected for construction of new jail in Madhepura. Madhepura has huge overcrowding in as much as sanctioned capacity is 182 and existing capacity is 517 i.e. 2.5 times the sanctioned capacity. It is prayed that the State Government may be directed to complete the land acquisition process within 6 months.

f) A new jail is proposed in Supaul for which estimate has been received from Building Construction Department and process of approval is underway. The State Government may be directed to expedite approval process so that construction process can begin.'

11. The AC has also highlighted additional issues:

'... The undersigned has gone through the summary of the report and respectfully submits that the following may need the attention of the State Government:-

Sr. No.	Name of jail	Report of the Committee
1	District Jail Begusarai	<u>Facilities for children lodged with their mothers in jail:-</u> There is women's cell of 10 capacity located in the prison currently have 37 women prisoners with one child are living. A temporary crèche facility is available in the women's sections. District Education Officer/ District Programme Officer Begusarai have been requested to open an Anganwari Center in the women's wing of the jail for the primary education of the children of 0-6 years confined with female prisoners.

		There is <u>lack of space</u> inside the jail for construction of addition male cell. As the number of prisoners increases, a situation of public unrest arise. Keeping in mind the density of prisoners, there seems to be a need for <u>construction of a sub-jail inside the district</u>. The Committee unanimously decided to recommend for construction of a sub-jail inside the District between Manjhaul Sub-Division and Bakhri Sub-Division.
2	Central Jail Bhagalpur/ Women District Jail Bhagalpur	Construction of <u>toilet cum bathroom</u> with 10 commodes is <u>required</u> in Mahila Mandal Jail, Bhagalpur for the purpose of female prisoners. There is a need to construct double washing closets (toilets, urinals) inside the wards in Mahila Mandal Jail, Bhagalpur as per Model Jail Manual, 2016, which is not available in the jail. At present, the provision of flush toilet is not available in Mahila Mandal Jail, Bhagalpur. According to the Model Jail Manual, 2016, all the previously constructed toilets are required to be converted into flush toilets and the previously non-functional toilets in the jail are required to be repaired and renovated. At present, there is a provision of one washroom for every 10

		prisoners in Mahila Mandal Jail, Bhagalpur, but it needs repair/renovation. Presently, modern kitchen is not installed in Mahila Mandal Jail, Bhagalpur. As a result, as per Model Jail Manual, 2016, additional modern kitchen is expected to be installed as per the prison capacity.
3	Central Jail Buxar	On the point of welfare of women prisoners and facilities for children lodged with their mother in jails, the Jail Superintendent stated that construction of <u>canteen, crèche, toilets and bathrooms, advanced kitchen of women is required.</u>
4	District Patna	Patna has Adarsh Central Beur, District Jail Phulwarisharif and 4 sub jails. However, there is no report regarding the requirements of the said jails.
5	District Jail Rohtas (Sasaram) [As against capacity of <u>30 women</u> prisoners, there are <u>82 women</u> prisoners lodged in jail].	<u>One female ward is needed</u> for the women inmates during the meeting, Jail Superintendent submitted that place is available for enhancing the capacity of existing jail.
6	District Jail Samastipur	For the treatment of women inmates service of one Gynaecologist (sic) is required at least once in a week. Hence, Jail Superintendent is directed to communicate the matter to Civil Surgeon, Samastipur for the arrangement of one Gynaecologist (sic). It is also recommended by the

		Committee that any child between age 4-6 years, who is living with his/her mother, he/she will be enrolled to the nearest school for proper education.
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12. From the aforesaid, it transpires that no specific report regarding requirements for the Adarsh Central Jail, Beur, Phulwarisharif and 4 Sub-jails of the said jails, has been furnished.

13. *Ergo*, on the recommendation of the AC, a direction is hereby issued to the State of Bihar not only to implement on priority basis, the recommendations *supra* but further, to ensure that the exercise contemplated is undertaken on an urgent basis for all the jails in its jurisdiction. Milestones be fixed for expeditious implementation/completion thereof. The State will also endeavour to shorten the timelines presently projected for various works. Fresh affidavit of compliance shall be filed by the State of Bihar before the next date.

(B) STATE OF PUNJAB

14. The AC's Note highlights overcrowding in jails and points out some timelines for infrastructural improvement in jails and their upgradation. Four five-year phases have been indicated viz. from (a) 2024-2025 to 2028-2029, (b) 2029-2030 to 2033-2034, (c) 2034-2035 to 2038-2039, and (d) 2039-2040 to 2043-2044. For the first phase comprising the Financial Years 2024-2025 to 2028-2029, the Central Jails at Patiala, Ludhiana, Amritsar, Kapurthala, Faridkot; District Jails at Nabha, Sangrur, Roopnagar,

Mansa, Barnala and Sub-Jail, Fazilka have been included detailing works *qua* repair, other constructions including sewage systems, new barracks, repair of hospital cells, bathrooms, creation of female barracks, creche etc.

15. For the State of Punjab, the AC seeks the following directions:

i) *It is humbly submitted that the Chief Secretary, Government of Punjab has merely mentioned that summary is submitted. It is hoped that the Government has decided the recommendations. It is imperative that actual decisions are taken by the State Government in this regard and atleast (sic) the works that can be approved in this financial year 2024-25 are approved in 3 months' time. The Government must try and approve as many projects/works as possible.*

ii) *Construction of additional capacity should also be matched with other infrastructure like construction of toilets, enhancement of staff etc. This aspect should also be examined by the State.*

iii) *On the last date, this Hon'ble Court had indicated about **need for de-addiction center** in atleast (sic) major jails in the State of Punjab. Only recommendation is given *qua* Central Jail Faridkot that there is a requirement for de-addiction center. It is important that the State of Punjab examines the availability of medical facilities which are required in all Central Jails atleast (sic) for purposes of de-addiction center.*

iv) *With regard to women prisoners: The State Government has mentioned in its affidavit that the Department of Jail will establish sanitary pad dispensing and disposal machine at Central Jail Ferozepur as recommended by the District Committee. It is humbly submitted that the State Government may examine whether similar such facility is required and can be made available in other Central Jails also.'*

16. The State of Punjab through its authorities concerned is directed to do the needful in the above terms and file a fresh affidavit well before the next date of hearing.

(C) STATE OF CHHATTISGARH

17. The Note, as per the Statement of the Director General, Prisons, indicates that the total capacity of the 33 jails in the State is 14483, whereas currently 18343 prisoners are lodged. The Statement informs that construction work of 78 prisoner barracks is

being undertaken to increase the capacity to 4450. 26 works would be completed by December, 2024; 40 works by June 2025, and the remaining works by December, 2025. It is stated that for ensuring that there is no overcrowding in jails for the next 10 years, action will be taken on a proposal of ₹ 22.8 crores for construction of 19 additional prisoner barracks, which would further boost the capacity by 1900. Provision thereof would be made in the Budget of the next Financial Year and the work would be completed by December, 2026.

18. With regard to the welfare of women prisoners and children in the prison, the Note sets out that the State's position is that overcrowding would be solved by completion of the already-sanctioned barracks as also barracks to be sanctioned in the coming Financial Year. It is said that free sanitary pads are being provided to the women prisoners and an incinerator machine has also been installed for their disposal. It is informed that adequate arrangements for toilets and bathrooms in the women's cells and for night toilets in the barracks has been made, to handle cleanliness and hygiene. The State submits that adequate water facilities are in place. For children living with female prisoners, who are detained in jail, it is stated that nutritious food, clothes and medical facilities as per the relevant jail rules are being provided. Babies are provided clothes, food and milk on the advice of the doctor. Baby-kit clothes, soap, oil, powder, mosquito net, rexine, etc., are being given for new-born baby/ies. A crèche has been arranged in the jails for children. Children above the age of six years, who do not have any guardian, are kept in a Children's Home, with permission from the concerned District Magistrate. It

is informed that the Children's Home is equipped for the intellectual and physical development of the children.

19. The AC has submitted that construction in the existing barracks would ease the overcrowding to some extent, but the affidavit of the Chief Secretary/Note of the Director General, Prisons does not deal with the recommendations of the Committee regarding each of the 16 Central and District Jails. The AC points out that administrative approval in many cases is pending such as construction of a special jail with capacity of 4000 prisoners in Raipur District, acquisition of land in Village Deori, approval for new jails in Balrampur etc.

20. The AC seeks following directions:

- 'a) The Government may examine the specific recommendations qua 16 central/ district jails as highlighted in the note of the undersigned and examine whether the additional construction of barracks would ease of overcrowding in that jail. The problem of overcrowding must be seen at jail level and not for the entire State as a whole.*
- b) The additional capacity should be matched with other infrastructure like toilets and enhancement of staff. This aspect should also be examined by the State.*
- c) It has been mentioned that 19 additional prison barracks of 100 each would be approved in this financial year. It is prayed that the State Government may be directed to approve the said proposals within a period of 3 months so that construction could began.*
- d) The report of the Committee constituted by this Hon'ble Court qua women prisoners and children is not available. It is submitted that the said report may be made available to the undersigned so that the problems can be highlighted and the recommendations can be brought to the notice of this Hon'ble Court.'*

21. Directions are issued to the State of Chhattisgarh on the above terms and compliance report be filed on an affidavit before the next date of hearing.

STATE OF RAJASTHAN

22. The Note by the AC states that 30 works relating to construction of jails are on-going, including construction of District Jail Dungarpur, which is likely to be completed by 31st August, 2024, construction of prison barracks in Sub-Jail Kishangarh, District Jail Barmer, Central Jail Sriganganagar, District Jail Nagaur, District Jail Churu, Central Jail Kota and District Jail Jhunjhunu. Similarly, reconstruction of open jail quarters in various jails including Central Jail Kota and District Jail Barmer, most of the works are scheduled to be completed either in the present calendar year or at the latest, by March, 2025.

23. As far as the reports of the Committee constituted by this Court are concerned, para 8 of the Chief Secretary's affidavit reads as under:

'The recommendations of the Committee formed under the chairmanship of the Hon'ble District and Sessions Judges were examined and the following land has been allotted for prisons-

1. Sub Jail Bari (Dholpur)
2. Sub Jail Hindaun City
3. District Jail Bhilwara
4. Sub Jail Phalodi
5. Sub Jail Choti Sadri
6. District Jail Rajsamand
7. Sub Jail Bheem
8. Sub Jail Ramganjmand
9. Sub Jail Nainwa
10. Sub Jail Bhawanimandi'

24. The State Government has stated that various requests for sanction of money and identification of suitable land for expansion would be done in the coming months.

25. The AC, *in praesenti*, does not seek any positive directions to the authorities concerned. However, the AC submits that the timelines be adhered to, both for works in

progress as also for analysing new proposals. The State is directed to take note of the afore-stated and proceed accordingly.

(D) STATE OF JHARKHAND

26. Various recommendations made by the Committee for the 14 Jails (Central/District) have been indicated. It has been stated that pursuant to the recommendations of the Committee, the Government has written to all the Prison Superintendents to seek preparation of estimates from the Jharkhand Police Housing Corporation Limited³ for the works recommended. The State Government has sought information wherever new prisons have been recommended for establishment.

27. The AC has sought directions as under:

'i) There is urgent need for construction of new jail in Deogarh for which part of the land is also acquired and another part of the land has been earmarked. The Chief Secretary of the State should ensure that necessary steps are taken for process of the construction of new Jail at Deogarh and submit a status report to this Hon'ble Court.

ii) As regards other jails are concerned, the State has directed the Superintendent of all jails to get estimates for construction of new wards and/or renovation. It may be (sic) admissible if this process is completed as soon as possible so that the requirement in each of the jails is ascertained as soon as possible and those works which can be started this year can commence at the earliest.

iii) The Superintendent of women jails/wards in the State can also examine specific issues dealing with hygiene, sanitation and medical checkup of women and also the facility required for children and communicate the same as soon as possible to the Headquarter for doing the needful.'

28. At this stage, the Court would indicate that the State does not appear serious in taking immediate remedial measures in the matter inasmuch as it has left it to the Prison Superintendents to prepare/obtain estimates for the works recommended with the aid of

³ hereinafter referred to as 'JPHCL'

JPHCL. The Prison Superintendent, being the junior-most officer in the hierarchy, cannot be expected to have much of a say, real or persuasive, to get things done at the higher/highest level. With this in mind, this Court had earlier indicated that the Chief Secretaries of the States/Union Territories would be filing affidavits, with the idea so that all the recommendations could be scrutinised at the highest level, and consequently, whatever action would be required, could be taken by the State Government, eliminating any processual delays.

29. The State shall act in terms of the directions sought by the AC, being mindful of what we have penned above.

(E) STATE OF ODISHA

30. The AC's Note indicates that the affidavit filed by the Chief Secretary is not clear on one aspect - the Chief Secretary has forwarded minutes of meetings of the Committees of 13 Districts, whereas there are 30 Districts in the State of Odisha. It is not clear if the remaining Districts (17) have held their meetings, and if yes, what report/recommendation(s) have been made. To address the problem of overcrowding in 8 jails, *inter alia*, additional wards have been constructed in 29 selected jails enhancing the total capacity of inmates by 2240 during the years 2020-2021, 2021-2022 and 2022-2023. It is stated that additional wards are also under construction in 23 jails, which would enhance the inmate capacity by 1625.

31. For five districts, namely, Nabarangpur, Kandhamal Phulbani, Doegarh, Gajapati and Sundergarh, for which recommendations have been made by the Committee concerned, there is nothing to indicate as to what action has been taken on the same.

32. The State is directed to proceed with all possible expedition to ramp up the capacity and file a fresh affidavit before the next date.

(F) STATE OF KERALA

33. The affidavit by the Chief Secretary indicates overcrowding issues in 13 prisons⁴. Recommendations have also been made by the Committees. Yet, nothing concrete is forthcoming as to what follow-up action, if any, has been taken by the State Government.

As such, the AC has prayed for issuance of these directions:

'a) In some of the Districts in the State of Kerala, the 1st meeting was adjourned awaiting reports from the Superintendent of Prisons. It is therefore, humbly prayed that in such cases, a 2nd meeting may be held and recommendations to improve the conditions in the prison may be made.

b) The State of Kerala may be directed to examine the recommendations made by the Committees in all the districts and take appropriate decisions prioritizing the cases which are urgent and which need immediate action and compliance affidavits may be filed before the next date of hearing.'

34. The State is directed to act in terms of the AC's prayers extracted above and file a compliance affidavit before the next date.

(III) WAY FORWARD

35. Upon careful consideration of the stands taken by the States *supra* as also the oral submissions of various other States made through their respective learned counsel,

⁴ For reference, the State of Kerala has 56 prisons.

we are constrained to observe that the State Governments/Union Territory Administrations have not fully woken up to the dire situation. Bereft of a sense of urgency, we sense a certain lethargy. It is most unfortunate that upon queries put by the Court to the learned counsel appearing for the States, the standard response received is that further time be given to come up with details. Obviously, learned counsel cannot address the Court without instructions.

36. There has been a detailed dialogue between the Court, the AC and the learned counsel, during the hearing. Many aspects and factors have been clarified to learned counsel appearing for the parties. We presume that learned counsel, having taken note of the same, would impress upon their respective clients i.e. the respective States or Union Territories (hereinafter referred to as 'UT') to act with diligence. *Ex consequenti*, we direct that appropriate response(s) shall be filed by way of additional affidavits personally affirmed by the Chief Secretary of the State/UT concerned, at least a week before the next date of hearing, of course, with advance copies to the AC.

37. In addition to specific directions issued to certain States, it is categorically indicated that pending approval(s), be it for sanction of projects or identification of suitable land, the same be proceeded with and brought to their logical conclusion by the States/UTs within a period of ten weeks, reckoned from today.

38. Few learned counsel have requested that the Court may specify some common/uniform parameters for States/UTs to create facilities in prisons. This suggestion is merited. To begin with, specifications/parameters for jails may be in terms prescribed by and

under the *Model Prison Manual 2016* (hereinafter referred to as the 'MPM') issued by the Government of India, Ministry of Home Affairs.

39. Learned Senior counsel for the State of Uttar Pradesh has submitted that as per the parameters in its latest Jail Manual⁵, the average area per prisoner is more than what is provided for in the MPM. It is canvassed that if the MPM specification is applied, then the capacity of prisons in Uttar Pradesh would increase substantially, with the current infrastructure alone.

40. We may note that perhaps mere existence of a large campus area would not *per se* mean that the capacity has been enhanced or augmented. What is required to be seen is that whether the requisite facilities for each individual prisoner are adequate in terms of sleeping area, mobility within the prison, kitchen/food, health facilities, other matters *etc.*

41. Thus, States/UTs, in their proposed affidavits, should address all issues holistically, including inmate-capacity enhancement/augmentation. Other logistics such as creation of posts of wardens/cooks/doctors/various jail staff *etc.* should also be factored in.

42. Before concluding, we may reiterate that prisoners are covered under Article 21 of the Constitution of India. In ***Sunil Batra (II) v Delhi Administration***⁶, this Court had pointedly answered that prisoners are persons who are entitled to Fundamental Rights even while in custody. ***Rama Murthy v State of Karnataka***⁷, was a case where

⁵ We take it that the reference is to the Uttar Pradesh Jail Manual, 2022.

⁶ (1980) 3 SCC 488

⁷ (1997) 3 SCC 642

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this Court had identified some problems plaguing jails in India, some of which continue to linger till today. Even before these cases, the view of this Court in respect of prisoners and undertrials was expounded in ***State of Maharashtra v Prabhakar Pandurang Sangzgiri***⁸ and ***Mohan Patnaik v State of Andhra Pradesh***⁹. These are merely illustrative but sufficient to demonstrate the intent of this Court to secure basic facilities for those housed in prisons and were noticed in Orders/Judgment passed in this writ petition reported as **(2016) 3 SCC 700**¹⁰, **(2016) 10 SCC 17**¹¹, **(2017) 10 SCC 658**¹², and **(2018) 18 SCC 777**¹³. We expect all stakeholders to rise to the occasion and discharge the obligation cast on them as expeditiously as is possible.

43. The matter be next listed on 11th July, 2024 at the top of the Board.

.....J.
[HIMA KOHLI]

.....J.
[AHSANUDDIN AMANULLAH]

NEW DELHI.
MAY 14, 2024.

⁸ AIR 1966 SC 424

⁹ (1975) 3 SCC 185

¹⁰ Order dated 05.02.2016.

¹¹ Order dated 03.10.2016.

¹² Judgment dated 15.09.2017.

¹³ Order dated 25.09.2018.