

ITEM NO.1

COURT NO.5

SECTION II-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No(s).135/2010

BUDHADEV KARMASKAR

Appellant(s)

VERSUS

THE STATE OF WEST BENGAL & ORS.

Respondent(s)

(Mr. Jayant Bhushan, Sr. Adv. (A.C.)Mr. Pijush K. Roy, Adv.
(A.C.)/Appellant may be shown as Amicus curiae Mob.9810158653 ONLY
I.A NO. 80140/2020 APPROPRIATE ORDERS/DIRECTIONS TO BE LISTED)

Date : 14-12-2021 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE L. NAGESWARA RAO
HON'BLE MR. JUSTICE B.R. GAVAI
HON'BLE MRS. JUSTICE B.V. NAGARATHNA

Mr. Jayant Bhushan, Sr. Adv. (A.C.)
Mr. Amartya Bhushan, Adv.
Mr. Tushar Bhushan, Adv.
Mr. Ketan Paul, Adv.

Mr. Pijush K. Roy, Adv. (A.C.)
Ms. Kakali Roy, Adv.
Mr. Abhisekh Kaushik, Adv.

For Appellant(s)

Jail Petition, AOR

For Impleader(s)

Mr. Anand Grover, Sr Adv
Ms. Tripti Tandon, Adv
Ms. Savita Singh, AOR
Mr. Ashok Kumar Singh, Adv

For Respondent(s)

Mr Anand Grover, Sr Adv
Ms Tripti Tandon, Adv
Ms Savita Singh, AOR
Mr Ashok Kumar Singh, Adv
Mr. R.S. Suri, Ld. ASG
Mr. B.K. Satija, Adv.
Ms. Sunita Sharma, Adv.
Mr. Vikas Bansal , Adv.
Mr. Digvijay Dam, Adv.
Mr. G.S. Makker, Adv.

Nagaland

Ms. K. Enatoli Sema, Adv.

Mr. Amit Kumar Singh, Adv.
Ms. Chubalemla chang, Adv.

Mizoram Ms. Pragya Barsaiyan, Adv
Mr. Nirnimesh Dube, AOR

Uttarakhand Mr. Jatinder Kumar Bhatia, AOR
Mr. Tanmay Agarwal, Adv.

Uttarakhand Mr. Saurabh Trivedi, AOR
Mr. Ashutosh Kumar Sharma, Adv.

Meghalaya Mr. Avijit Mani Tripathi, AOR
Mr. T.K. Nayak, Adv.
Mr. K.V. Kharlyngdoh, Adv.
Mr. Daniel S. Lyngdoh, Adv.
Mr. Upendra Mishra, Adv.

Mr. Mohd. Akhil, Adv
Mr. Sanjay Kr.Tyagi, Adv
Ms. Sunita Sharma, Adv
Mr. O.P.Shukla, Adv
Ms. Jyoti Mendiratta, AOR
Mr. Anil Kumar, Adv.

Mr. Narender Mohan Gupta, Adv.
Mr. Hitesh Kumar Sharma, Adv.
Mr. S.K. Rajora, Adv.
Mr. Akhileswar Jha, Adv.
Ms. Madhumita Gupta, Adv.
Mr. Kamal Mohan Gupta, Adv.

Ms. Diksha Rai, AOR
M/S. Arputham Aruna And Co, AOR
Mr. P. V. Dinesh, AOR
Ms. Aswathi M.k., AOR
Ms. Kiran Bhardwaj, AOR
Mr. Rameshwar Prasad Goyal, AOR
Ms. Hemantika Wahi, AOR
Ms. Savita Singh, AOR
Ms. Aparna Bhat, AOR
Ms. Liz Mathew, AOR
Mr. Gopal Singh, AOR
Mr. Ashok Kumar Singh, AOR
Mr. Garvesh Kabra, AOR

State of Kerala Mr. C. K. Sasi, AOR
Mr. Abdulla Naseeh V.T., Adv.
Ms. Meena K.P., Adv.

Mr. Sanjay Kumar Visen, AOR
Mr. M. T. George, AOR

Mrs. Swarupama Chaturvedi, AOR
Mr. Kuldip Singh, AOR
Mr. Balaji Srinivasan, AOR
Mr. Saurabh Trivedi, AOR
Dr. Joseph Aristotle S., AOR
Mr. D. Mahesh Babu, AOR
M/S. Corporate Law Group, AOR
Mrs. Anil Katiyar, AOR
Ms. Jaspreet Gogia, AOR
Mr. Sunil Fernandes, AOR
Ms. Asha Gopalan Nair, AOR
Mr. Anuvrat Sharma, AOR
Mr. B. V. Balaram Das, AOR
Mr. Anil K. Jha, AOR
Mr. Irshad Ahmad, AOR
Mr. Jatinder Kumar Bhatia, AOR

Ms. G. Indira, AOR
Mr. Dhiraj Kumar, Adv.
Mr. Sanveer Mehlwal, Adv.
Mr. Abdul Gaffar, Adv.
Ms. Geetanjali Mehlwal, Adv.

Mr. Dharmendra Kumar Sinha, AOR
Mr. Rohit Kumar Singh, AOR
Mr. Kamal Mohan Gupta, AOR

Telangana

Mr. S.Udaya Kumar Sagar, AOR
Mr. P.Mohith Rao, Adv.

Mr. Radha Shyam Jena, AOR
Ms. A. Subhashini, AOR
M/S. PLR Chambers And Co., AOR
Mr. Anil Shrivastav, AOR
Mr. Abhinav Mukerji, AOR
Mr. M. Yogesh Kanna, AOR
Mr. Gurmeet Singh Makker, AOR
Mr. Ravi Prakash Mehrotra, AOR
Mr. Sachin Patil, AOR
Mr. Aravindh S., AOR
Mr. Vinod Sharma, AOR
Mr. Nirnimesh Dube, AOR
Mr. Sandeep Kumar Jha, AOR
Mr. Tanmaya Agarwal, AOR
Mr. Pukhrambam Ramesh Kumar, AOR
Mr. Avijit Mani Tripathi, AOR
Mr. Abhay Pratap Singh, AOR
Mr. Sumeer Sodhi, AOR
Ms. Deepanwita Priyanka, AOR
Ms. Tulika Mukherjee, AOR
Ms. Astha Sharma, AOR
Mr. Raj Bahadur Yadav, AOR

Karnataka	Mr. Shubhranshu Padhi, AOR Mr. Rakshit Jain, Adv. Mr. Vishal Bansal, Adv. Mr. Shuvodeep Roy, AOR Mr. Satish Pandey, AOR
State of Sikkim	Mr. Raghvendra Kumar, Adv. Mr. Simanta Kumar, Adv. Mr. Rajiv Sinha, Adv. Mr. Nishant Verma, Adv. Mr. Narendra Kumar, AOR Ms. K. Enatoli Sema, AOR Mr. Sunny Choudhary, AOR
State of West Bengal	Mr. Rupinder Singh Suri, ASG Mr. Sanjay Kumar Tyagi, Adv. Ms. Sunita Sharma, Adv. Mr. Om Prakash Shukla, Adv. Mr. Mohammed Akhil, Adv. Mr. Arvind Kumar Sharma, AOR Mr. Suhaan Mukerji, Adv. Mr. Vishal Prasad, Adv. Mr. Nikhil Parikshith, Adv. Mr. Sayandeep Pahari, Adv.
State of U.P.	Mr. Tanmaya Agarwal, AOR Mr. Wrick Chatterjee, Adv
State of Haryana	Dr. Monika Gusain, AOR
Union of India	Mr. Rupinder Singh Suri, ASG Mr. Digvijay Dam, Adv. Ms. Sunita Sharma, Adv. Mr. Vikas Bansal, Adv. Mr. B K Satija, Adv. Ms. Sakshi Kakkar, Adv. Mr. Gs Makker, AOR
State of Tamil Nadu	Dr. Joseph Aristotle S., AOR Ms. Preeti Singh, Adv Mr. Sanjeev Kumar Mahara, Adv
UT OF ANDAMAN AND NICOBAR ISLANDS	Mrs.G.Indira, AOR Ms.Habilila Nana, ADV
NCT of Delhi	Mr. R.S.Suri, Ld ASG Mr. Gurmeet Singh Makker, AOR

Mr. Mohd. Akhil, Adv
Mr. Sanjay Kr.Tyagi, Adv
Ms. Sunita Sharma, Adv
Ms. Sakshi Kakkar, Adv

WCD

Mr. R.S.Suri, Ld ASG
Mr. Gurmeet Singh Makker, AOR
Ms. Sunita Sharma, Adv
Mr. Vikas Bansal, Adv
Mr. Digvijay Dam, Adv
Mr. B.K.Satija, Adv

ENV. & FOREST

Mr. Tushar Mehta, Ld Sg
Mr. Gurmeet Singh Makker, AOR
Mr. K.M.Nataraj, Ld. Asg
Ms. Binu Tamta, Adv
Mr. Rajat Nair, Adv
Mr. Dl Chidanand, Adv
Ms. Suhashini Sen, Adv
Mr. S.S.Rebello, Adv

STATE OF H.P

Mr. Vikas Mahajan, Sr Adv/ Aag For H.P.
Mr. Vidit Anand, Adv
Mr. Anil Kumar, Adv
Mr. Arun Singh Adv
Mr. Vinod Sharma, Aor
Mr. Arvind Kumar, Adv
Ms. Lara Siddiqui, Adv
Mr. Prahlad Naryan Singh, Adv

State Of Rajasthan

Dr. Manish Singhvi, Sr Adv
Mr. Arpit Parkash, Adv
Mr. Sandeep Kumar Jha, AOR

Chandigarh Administration

Mr. Manpreet Singh Doabia, Adv
Ms. Kiran Bhardwaj, Adv

State of Punjab

Mrs. Jaspreet Gogia, Adv
Ms. Mandakini Singh, Adv
Mr. Karanvir Gogia, Adv
Ms. Shivangi Singhal, Adv
Ms. Varnika Gupta, Adv
Ms. Ashima Mandla, Adv

State of Bihar

Mr. Abhinav Mukerji, AOR
Mrs. Bihu Sharma, Adv.
Ms. Pratishtha Vij, Adv.
Mr. Akshay C. Shrivastava, Adv.

State of Manipur

Mr. Pukhrambam Ramesh Kumar, Adv.
Ms. Anupama Ngangom, Adv.
Mr. Karun Sharma, Adv.

State of Maharashtra

Mr. Sachin Patil, AOR.
Mr. Rahul Chitnis, Adv.
Mr. Aaditya A. Pande, Adv.
Mr. Geo Joseph, Adv.
Ms. Shwetal Shepal, Adv

State of Assam

Ms. Diksha Rai, Adv.
Ms. Palak Mahajan, Adv

State of M.P.

Mr. Mukul Singh, Dy. AG
Mr. Sunny Choudhary, AOR

Mr. Vijay Pal, Adv.
Mr. Mahendra Kumar, Adv.
Mr. Amol Vasant Kokane, Adv.
Mr. Deepankar, Adv.
Mr. Anil Shrivastava, AOR

Dr. D.V. Rao, Adv.
Mr. Harish Pandey, AOR

Puducherry

Mr. Aravindh C., AOR
Ms. C. Rubavathi, Adv.

Tripura

Mr. Shuvodeep Roy, Adv.
Mr. Kabir Shankar Bose, Adv.
Mr. Ishaan Borthakur, Adv.

M.P.

Mr. Mukul Singh, Dy. AG
Mr. Sunny Choudhary, AOR
Mr. Sachin Ranjan, Adv.

UPON hearing the counsel the Court made the following

O R D E R

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On 19.07.2011, a Committee was appointed by this Court to advise on issues relating to prevention of trafficking, rehabilitation of sex workers who wish to quit sex work and the conditions conducive for sex workers

to live with dignity in accordance with Article 21 of the Constitution of India. On the basis of the interim reports that were filed by the Committee, this Court has passed a number of orders issuing directions to the Central Government and the State Governments which are:

(a) seeking concrete information from the States about whether sex workers have been offered alternative livelihood, if they intended rehabilitation.

(b) All State Legal Services Authorities were directed to set up a helpline number for sex workers in order to provide them with free legal assistance.

(c) Directions to the Central Government to broaden the scope of their schemes meant for rescued victims of trafficking so as to include sex workers who sought rehabilitation.

(d) to facilitate sex workers access to Voter Identity cards, ration cards, opening of bank accounts etc. relaxing the rules on verification of residential addresses and

(e) to provide a range of facilities including crèche, day care centres and night care centres for children of sex workers and protecting their Right to Education.

On 14.09.2016 a final report along with recommendations of the Committee was placed on record. The Committee recommended amendments to be made to Immoral Traffic (Prevention) Act, 1956. We have been

informed that the amendments that were suggested by the Committee are under active consideration for a comprehensive law to be made by the Parliament.

One of the terms of the reference which has been made by the panel relates to recognition of the legal status of the sex workers through official documents such as Voters Identity Card, Ration Card, Pan card etc. A perusal of the report indicates that it is very difficult for sex workers to acquire proof of identify cards such as Ration cards or Voters Identity cards owing to the lack of proof of residence. It has been mentioned in the report that District authorities do not recognize the identities of sex workers and their children. Resultantly, sex workers are deprived of their entitlement to basic human and Fundamental Rights. They are denied access to the schemes meant for rehabilitation. After detailed deliberations, the panel suggested in its interim report dated 12.09.2011, that state Governments and local authorities should issue ration cards to sex workers by relaxing the rigours of existing rules as to verification of address without reference to their profession. The Committee further recommended that a sex worker who is a citizen of this country should not be denied a voter identification card. Admission of their children to government recognized schools was also recommended by the Committee along with the benefits of Ujjawala scheme of the

Central Government to be extended to the sex workers.

On 15.09.2011, recommendations made by the Committee in its report on 12.09.2011 were accepted by this Court and the Central Government and the State Governments were directed to implement the suggestions made by the Committee in relation to issuance of ration cards and voter identity cards.

On 29.09.2020, an application was filed by Durbar Mahila Samanwaya Committee seeking a direction to the authorities to provide monthly dry rations and cash transfer to sex workers who were struggling to survive during the pandemic. The grievance of the applicant was that sex workers were deprived of dry rations on the ground that they were unable to produce proof of identity. Realising the distress of sex workers during the pandemic and to relieve them from starvation, this Court directed State Governments and Union Territories to provide dry rations to sex workers who are identified by National Aids Control Organisation without insisting on proof of identity. The District Legal Services Authorities were directed to assist the distribution of dry ration to sex workers without insisting on proof of identity. Addressing the concern of the applicant in the I.A.No.80140/2020, this Court issued further directions on 28.10.2020 asking the State Governments not to associate police authorities in the distribution of dry rations to the sex workers. The order dated 29.09.2020

was reiterated and the State Governments and Union Territories were directed to uniformly distribute the minimum quantity of dry rations as provided in the schemes formulated either by them or by the Central Government.

The State Governments and Union Territories were directed to file affidavits of compliance within a period of four weeks from 28.10.2020. Mr. Anand Grover, learned senior counsel appearing for the applicant in I.A.No.80140 of 2020, submitted that the directions issued by this Court are not being implemented. Referring to the affidavits filed by the State Governments, he submitted that issuance of ration cards to all the sex workers on the basis of their identification by NACO and Community Based Organizations would provide a solution to the problem.

Mr. Jayant Bhushan, learned senior counsel and amicus curiae assisted by Mr. Piyush Kanti Roy, learned counsel referred to some affidavits filed by the State Governments to submit that it is not clear as to whether the directions given by this Court are being implemented. Dry ration was distributed for few months and thereafter stopped. Particular reference was made to the affidavit filed by the State of Gujarat to submit that 12,291 sex workers out of the 24,579 sex workers registered with NACO are not willing to avail the benefits of the schemes. According to the learned

Amicus Curiae, this matter needs to be enquired into. The submission made by the learned Amicus Curiae is that the issuance of ration cards as directed by this Court on 15.09.2011 brooks no further delay.

As this Court has directed the State Governments and the Union Territories to issue ration cards and identity cards to sex workers almost a decade back, there is no reason as to why such direction has not been implemented till now. Right to dignity is a Fundamental Right that is guaranteed to every citizen of this country irrespective of his/her vocation. There is a bounden duty cast on the government to provide basic amenities to the citizens of this country. The State Governments/Union Territories and other authorities are directed to commence the process of issuance of ration cards/ Voters Identity cards immediately to sex workers from the list that is maintained by NACO. The authorities can take the assistance of State AIDS Control Societies who are directed to prepare a list of sex workers after verifying the information provided to them by Community Based Organisations. A status report relating to the issuance of ration cards and Voters Identity cards and Aadhar Card shall be filed within a period of four weeks from today. In the meanwhile, the State Governments and Union Territories are directed to continue distribution of dry rations to sex workers without insisting on ration cards and other proof of

residence and profession by following the procedure as mentioned in the orders of this Court on 29.09.2020 and 28.10.2020. In the process, the names of the sex workers should be kept confidential.

A copy of this order shall be sent to all the State Legal Services Authorities, who are directed to assist the concerned authorities both in the issuance of identity cards, Aadhar cards and voter identity cards, for sex workers as well as in distribution of dry ration.

List on 10.01.2022 at 2.00 p.m.

(B.Parvathi)
Court Master

(Anand Prakash)
Court Master