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

Date of decision: 16th FEBRUARY, 2023

IN THE MATTER OF:

\+ **W.P.(C) 2108/2020 & CM APPL. 7418/2021**

JAI A. DEHADRAI AND ANR .... Petitioners

Through: Petitioner No.1-in person

versus

GOVERNMENT OF NCT OF DELHI ANDANR ..... Respondents

Through: Mr. Satyakam, ASC for GNCTD with Ms. Pallavi Singh, Advocate

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SUBRAMONIUM PRASAD, J.

1. The instant writ petition has been filed as a Public Interest Litigation (PIL) challenging Rule 585 of the Delhi Prison Rules, 2018. The Petitioners have also prayed for amendment of Rules to include interview with legal advisers be open from Monday to Friday for an appropriate allotted time with no cap on interviews per week. The Petitioners in the interim have prayed for visit of the legal counsel to their clients in Delhi prisons more than twice a week.

2. Rule 585 of the Delhi Prison Rules, 2018 read as under:-

> *"**585.** Every prisoner shall be allowed reasonable facilities for seeing or communicating with, his family members, relatives, friends and legal advisers for the preparation of an appeal or for procuring bail or for arranging the management of his property and family affairs."*

3. It is the contention of the Petitioners that limiting the number of visits by family members, relatives, friends and legal advisers to twice a week is violative of Article 21 of the Constitution of India inasmuch as it limits the right of an undertrial to have adequate resources to legal representation. The Petitioners' contention is that fixing a cap on the number of visits to an undertrial is manifestly arbitrary as it imposes an unreasonable restriction on the right to legal representation and is violative of the right to access justice which is guaranteed under Article 14 of the Constitution of India.

4. A counter-affidavit has been filed by the State. It is contended in the counter affidavit that there are 16 Jails in Delhi housing with more than 18,000 prisoners against the sanctioned capacity of 10,026. It is stated that looking at the number of inmates in the Delhi Prisons, it was decided to put a cap on the number of visits permitted by the family members, relatives, friends and legal counsel. It is contended that providing two legal interviews to a prisoner can be increased on the request of a prisoner or a visiting counsel and it does not fall foul of the constitutional right of the prisoner.

5. Pursuant to the Order dated 13.01.2023 passed by this Court, the State has filed Model Prison Manual, 2016 and also the Prison Rules of other States to demonstrate that in no other State are prisoners allowed visitation more than two times a week from relatives, friends and legal advisors. In fact, Mr. Satyakam, learned ASC, places reliance on Clause 8.01 of the Model Prison Manual, 2016, which reads as under:-

> *"8.01 Every prisoner shall be allowed reasonable facilities for seeing or communicating with, his/her family members, relatives, friends and legal advisers for the preparation of an appeal or for procuring bail or for arranging the management of his/her property and family affairs. He/she shall be allowed to have*

> *interviews with his/her family members, relatives, friends and legal advisers* ***once in a fortnight****. The number of letter a prisoner can write in a month shall be fixed by the Government under the rules."*
>
> (emphasis supplied)

6. He states that the Model Prison Manual only permits visits once in a fortnight, which is twice a month, whereas in Delhi, the prisoners are permitted visits twice a week. He states that in no other State, prisoners are permitted visitation more than twice a week. He states that these are matters of policy and this decision has been taken by the State in the best interests of the prisoners and to provide a congenial atmosphere not only to the prisoner but also to the visiting counsel while conducting their legal interviews and to avoid crowding at the time of visitation.

7. In a catena of judgments passed by the Apex Court, the scope of interference by the courts in matters of policy is well established. Judicial review is the cornerstone of constitutionalism and is a part of our basic structure. Despite this understanding, the Supreme Court has time and again reiterated how, by way of judicial review, policy decisions of the State should not be interfered with unless they are grossly arbitrary or irrational as there is a need to maintain separation of powers.

8. In Fertilizer Corporation Kamgar Union (Regd.), Sindri & Ors. v. Union of India & Ors., **(1981) 1 SCC 568,** the Apex Court has observed as under:-

> *"**35.** A pragmatic approach to social justice compels us to interpret constitutional provisions, including those like Articles 32 and 226, with a view to see that effective policing of the corridors of power is carried out by the court until other ombudsman arrangements — a problem with which Parliament has been*

> *wrestling for too long — emerges. I have dwelt at a little length on this policy aspect and the court process because the learned Attorney-General challenged the petitioner's locus standi either qua worker or qua citizen to question in court the wrongdoings of the public sector although he maintained that what had been done by the Corporation was both bona fide and correct. We certainly agree that judicial interference with the administration cannot be meticulous in our Montesquien system of separation of powers. The court cannot usurp or abdicate, and the parameters of judicial review must be clearly defined and never exceeded. If the Directorate of a government company has acted fairly, even if it has faltered in its wisdom, the court cannot, as a super-auditor, take the Board of Directors to task. This function is limited to testing whether the administrative action has been fair and free from the taint of unreasonableness and has substantially complied with the norms of procedure set for it by rules of public administration."*

9. In Directorate of Film Festivals & Ors. v. Gaurav Ashwin Jain & Ors., **(2007) 4 SCC 737**, the Apex Court had observed as follows:-

> *"**16.** The scope of judicial review of governmental policy is now well defined. Courts do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the*

> *subject of judicial review (vide Asif Hameed v. State of J&K [1989 Supp (2) SCC 364] , Sitaram Sugar Co. Ltd. v. Union of India [(1990) 3 SCC 223] , Khoday Distilleries Ltd. v. State of Karnataka [(1996) 10 SCC 304] , BALCO Employees' Union v. Union of India [(2002) 2 SCC 333] , State of Orissa v. Gopinath Dash [(2005) 13 SCC 495 : 2006 SCC (L&S) 1225] and Akhil Bharat Goseva Sangh (3) v. State of A.P. [(2006) 4 SCC 162])."*

10. The aforementioned observation had also been made in Indian Railway Catering and Tourism Corporation Ltd. v. Indian Railway Major and Minor Caterers Association and Ors., **(2011) 12 SCC 792**. The Apex Court held that policy decisions of the Government should not be interfered with unless the policy is contrary to provisions of statutory rules or of the Constitution. In the said case, no illegality or unconstitutionality had been shown and the Apex Court held as under:-

> *"**2.** By the impugned order, the High Court has interfered with the Catering Policy of 2005 in respect of reservations. By now it is a well-settled principle of law that policy decisions of the Government should not be interfered with in a routine manner unless the policy is contrary to the provisions of statutory rules or of the Constitution. Nothing has been brought to our notice that the Policy is contrary to the provisions of the statutory rules or the Constitution. For this simple reason, we set aside the order of the High Court impugned herein."*

11. Recently, in Jacob Puliyel v. Union of India and Ors., **2022 SCC OnLine SC 533,** though the Supreme Court was broadly examining policy decisions pertaining to health, it had observed that in exercise of their judicial review, Courts should not ordinarily interfere with the policy decisions of the Executive unless the policy can be faulted on grounds of

mala fide, unreasonableness, arbitrariness or unfairness, etc. The relevant portion of the judgment stating the same is as under:-

> *"21. We shall now proceed to analyse the precedents of this Court on the ambit of judicial review of public policies relating to health. It is well settled that the Courts, in exercise of their power of judicial review, do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness etc. Indeed, arbitrariness, irrationality, perversity and mala fide will render the policy unconstitutional. It is neither within the domain of the courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are the courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical. Courts do not and cannot act as appellate authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary."*

12. Depending upon the number of undertrials and prisoners, the State has taken a decision of capping total number of visits by family members, relatives, friends and legal advisers to two times a week and it cannot be said that the said decision is completely arbitrary. The said decision has been taken after careful consideration of the facilities available in the prisons, availability of the staff and the number of undertrials.

13. In matters of policy, the Courts do not substitute its own conclusion with the one arrived at by the Government merely because another view is possible. Therefore, this Court is not inclined to pass any order issuing writ of mandamus. However, keeping in view the fact that the present PIL is not an adversarial litigation and the petition has been filed in the interest of prisoners, this Court permits the Petitioner to give a representation to the State providing suggestions, which this Court expects that the State will consider in the right spirit.

14. With these observations, the petition is disposed of, along with pending application(s), if any.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

FEBRUARY 16, 2023
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