

**Court-Matter
Reminder-III**

Department of Social Welfare
Govt. of NCT of Delhi,
GLNS Complex, Delhi Gate, New Delhi- 02.
(Social Defence Branch #23724496)

No. F. 30(555)/Withdrawal/SD/DSW/2018/15595-15567 Dated: 18 SEP 2019

Sub: -Abolition of various posts and facilities in Beggars Home/Certified Institution established under Bombay Prevention of Begging Act.

With reference to this office proposal vide F.30(555)/abolition/SD/DSW/2018 dated 31/08/2018. and subsequent reminder dated 07/01/2019 and 14/06/2019 about the subject cited above, I would like to remind you again that the existence of Beggar Home/Institution established under Bombay Prevention of Begging Act has come to end due to the judgment of Hon'ble Delhi High Court dated 08/08/2018 in WP(C) 10498/2009 and CM application 1837/2010.

Various post and Head of Accounts created for running of Beggars home ceased to exist from the date of Judgment. Hence incurrence of any expenditure on disbursement of salary and material supply etc. is violation of General Financial Rules and amounts to contempt of Hon'ble High Court order.

Action/Decision in this regard is still awaited from you.

Encl: - Copy of High Court Order dated 08/08/2018

(Krishan Kumar)
Dy. Director (SD)

To,
The Dy. Director (Admn.) - II, Department of Social Welfare, GNCT of Delhi,
GLNS Complex, Delhi Gate, New Delhi- 110002

No. F. 30(555)/Withdrawal/SD/DSW/2018/15595-15567 Dated: 18 SEP 2019

Copy for kind information to:

1. The Secretary (SW/DSW), Department of Social Welfare, Govt. of NCT of Delhi, GLNS Complex, Delhi Gate, New Delhi - 110002
2. The Director (SW), Department of Social Welfare, Govt. of NCT of Delhi, GLNS Complex, Delhi Gate, New Delhi - 110002
3. Dy. Controller(Account), Department of Social Welfare, Govt. of NCT of Delhi, GLNS Complex, Delhi Gate, New Delhi - 110002
4. Planning Officer, Department of Social Welfare, Govt. of NCT of Delhi, GLNS Complex, Delhi Gate, New Delhi - 110002
5. Sr. System Analyst, DSW (HQ) with the request to upload on website of the Department of Social Welfare.

Copy forwarded for implementation of Hon'ble High Court Delhi dated 08/08/2018 to:-

1. The DDO/HOO,HOIB,HMB, Beggar BH-I, BH-II, HADB, Lampur, Delhi
2. DDO/HOO, RCC, Kingsway Camp, Delhi
3. DDO/HOO, HMBD, Kingsway Camp, Delhi
4. DDO/HOO, Poor House, Kingsway Camp, Delhi
5. DDO/HOO, HLTB/HLAB, Tahirpur, Delhi
6. DDO/HOO, HADB, Nirmal Chhaya, Complex, Jail Road, Delhi
7. Pay & Account Officers concerned through the respective DDO/HOO.

(Krishan Kumar)
Dy. Director (SD)

\$~

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

%

Reserved on : 7th August, 2018
Date of decision : 8th August, 2018

+ **W.P.(C) 10498/2009 & CM APPL. 1837/2010**

HARSH MANDER & ANR. Petitioners
Through : Mr. Colin Gonsalves, Sr. Adv.
with Mr. Chaudhary Zia Ali
Kabir, Ms. Pragya P Singh &
Ms. Aditi Saxena, Advs.

versus

UOI & ORS. Respondentss
Through : Mr. Anil Soni, CGSC for UOI.
Mr. Gautam Narayan, ASC.
GNCTD with Ms. Mahamaya
Chatterjee, Adv.

+ **W.P.(C) 1630/2015**

KARNIKA SAWHNEY Petitioner
Through : Mr BB Sawhney, Sr. Adv. with
Ms. Indira Sawhney, Mr.
Vaibhav Mishra, Yogendar
Singh, Adv.

versus

UNION OF INDIA & ORS Respondents
Through : Ms. Monika Arora, Adv. with
Mr. Harsh Ahuja, Adv. for
UOI.
Mr. Gautam Narayan, ASC.
GNCTD with Ms. Mahamaya
Chatterjee, Adv.

39. We have before us another reason supporting our decision which is the futility of lodging and detaining beggars in beggars homes and the resultant wastage of public funds. We find that in *W.P.(Crl.) No1840/2006 Court on its own Motion v. Re Begging in Public* by an order dated 8th February, 2007, Shri V.P. Chaudhary, Sr. Advocate was appointed as *amicus curiae* to visit beggars home and submit a report. Shri Chaudhary has submitted a status report dated 3rd December, 2007 after visiting and inspecting three beggars homes at Nirmal Chaya, and reported thus:-

"I was informed that about 35 lakhs of rupees were being spent on these Homes every year. As compared to that investment, the benefit accruing from them to the society is rather negligible"

Conclusions

40. When, in the backdrop of the above discussion, we examine, holistically, the provisions of the Act, we find that, while most of the provisions contained therein directly deal with begging, treating it as an offence, or other provisions ancillary thereto, there are certain provisions which do not treat beggary *per se* as an offence and which therefore, may not be hit by the vice of unconstitutionality.

41. We are, therefore, spared the necessity of striking down the entire Act, wholesale. The provisions which treat beggary/ begging, as an offence, committed by the beggar, or are ancillary thereto, would be Sections 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29.

42. These provisions either treat begging as an offence committed by the beggar, or deal with ancillary issues such as powers of officers to deal with the said offence, the nature of enquiry to be conducted therein, punishments and penalties to be awarded for the offence, the institutions to which such "offenders" could be committed and procedures following the awarding of sentence for committing the said offence. These provisions, in our view, cannot sustain constitutional scrutiny and deserve, therefore, to be struck down.

43. The remaining provisions of the Act, which do not directly or indirectly criminalize begging, or relate to the "offence" of begging, such as Section 11 (*which deals with penalty for employing or causing persons to solicit or receive alms, causing persons or children to solicit or receive alms, or using such persons as exhibits*), Section 30 (*which deals with seizure and disposal of animals exposed or exhibited, for obtaining or extorting alms*), and other provisions which deal with the nature of offences under the Act, appeals, the power to frame rules and removal of difficulties, would not be required to be struck down and are, therefore, maintained.

Result

44. In the result, we declare Section Sections 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29 of the Bombay Prevention of Begging Act, 1959, as extended to Delhi, as unconstitutional and strike down the said provisions.

45. The inevitable sequitur to our decision would be that all prosecutions, under the Act against persons alleged to have committed

the offence of begging, would be liable to be struck down. The power to do so would, however, appropriately vest in the Courts seized of such prosecutions, and we, therefore, limit ourselves to observing that the fate of such prosecutions, if any, would have to abide by the present judgment, and our observations and findings contained herein.

46. The state is always at liberty to bring in alternative legislation to curb any racket of forced begging after undertaking an empirical examination on the sociological and economic aspects of the matter.

47. Before parting with the case, we are reminded of the words of *Krishna Iyer, J* in the pronouncement reported at *AIR 1981 SC 674 Gopalanachari v. State of Kerala* when he said that “...If men can be whisked away by the police and imprisoned for long months and the court can keep the cases pending without thought to the fact that an old man is lying in cellular confinement without hope of his case being disposed of, Article 21, read with Articles 14 and 19 of the Constitution, remain symbolic and scriptural rather than a shield against unjust deprivation. **Law is not a mascot but a defender of the faith. Surely, if law behaves lawlessly, social justice becomes a judicial hoax.**”

ACTING CHIEF JUSTICE

AUGUST 08, 2018/mk

C.HARI SHANKAR, J