

ITEM NO.3

COURT NO.3

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

IA 105821/2018 in Writ Petition(s)(Civil) No(s). 406/2013

RE-INHUMAN CONDITIONS IN 1382 PRISONS

(ONLY I.A. NO. 105821/2018 is LISTED)

Date : 12-09-2018 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE DEEPAK GUPTA

Mr. Gaurav Agrawal, Adv. (A.C.)

For Petitioner(s) By Post

For Respondent(s) Mr. A.N.S. Nadkarni, ASG
UOI Ms. Binu Tamta, Adv.
Mr. R.M. Bajaj, Adv.
Mr. R. Bala, Adv.
Ms. Aarti Sharma, Adv.
Ms. Sushma Suri, AOR
Ms. Sushma Manchanda, Adv.
Mr. M.K. Maroria, Adv.
Ms. Suhasini Sen, Adv.
Mr. B.V. Balaram Das, Adv.
Mr. G.S. Makker, Adv.

NALSA Mr. Sunil Chauhan, Project Officer
Ms. Anitha Shenoy, Adv.
Ms. Srishti Agnihotri, Adv.
Ms. Remya Raj, Adv.

Assam Mr. Tushar Mehta, Sr. Adv.
Mr. Shuvodeep Roy, Adv.
Mr. Rajat Nair, Adv.
Mr. Somnath Banerjee, Adv.

IA 105821/18 Ms. Uttara Babbar, Adv.
Ms. Bhavana Duhoon, Adv.
Mr. Udayan Verma, Adv.

UPON hearing the counsel the Court made the following
O R D E R

In response to IA No.105821/2018 and the Note given by learned *amicus curiae*, responses have been filed by the Union of India through the Ministry of Home Affairs as well as by the State of Assam.

As far as the Union of India is concerned, it is stated that guidelines are in process for keeping "foreign nationals" in detention centres.

Learned Additional Solicitor General (Mr. ANS Nadkarni) says that manual for detention centres will be prepared. He says that he will take instructions in this regard.

In any event, we are of the view that since "foreign nationals" are in detention, the manual should be prepared at the earliest so that everything is put in order.

It is further stated that an amount of Rs.46.51 crores has been sanctioned to be given to the State of Assam for construction of a detention centre.

It is further stated that a communication was sent as far back as on 10th September, 2014 to all the State Governments for setting up of detention centres/holding centres/camps for restricting the movement of illegal immigrants/foreign nationals awaiting deportation/repatriation after completion of sentence due to non-confirmation of nationality.

We are not at all surprised that not a single State has set up detention centre/holding centre/camp. Unfortunately, this includes the State of Assam also which has a very large number of illegal immigrants/foreign nationals.

Be that as it may, we expect the State of Assam, particularly to expedite the construction of detention centre since the amount of Rs.46.51 crores has been sanctioned by the Union of India.

The State of Assam has also filed a response. With regard to detention centres, it is stated that land has been earmarked for the construction of a detention centre in Goalpara itself.

We expect the State of Assam to ensure that the construction is carried out at the earliest.

One of the issues raised by learned *amicus curiae* is with regard to separation of family members of the declared foreign nationals/detenues.

It appears that if a child is below six years of age, then he is kept with the mother. If the child is above six years of age and if the child is female then she is kept with the mother but if the child is male, he is kept with the father. In our opinion, separating the families does not serve any purpose at all. On the contrary, it is detrimental to family life.

In response to this submission, the State of Assam has stated on affidavit that necessary arrangements can

be made to accommodate the family members of declared foreign nationals/detenues in the same jail subject to available accommodation.

It is further stated that the proposal for transfer of the families of five males declared as foreign nationals/detenues to Central Jail, Tezpur from District Jail, Kokrajhar as desired by the declared foreign nationals/detenues is under process and the IG (Prisons), Assam has reported recently that they can be accommodated in Central Jail Tezpur along with their male family members. Necessary order for transfer of them shall be issued shortly.

We expect the State of Assam to look into this matter very urgently.

Learned *amicus curiae* has pointed out that firewood is being used for cooking for as many as 400 people at a time.

There is absolutely no reason why gas cylinders cannot be provided for cooking purpose. The State of Assam should look into it and should also look into other facilities mentioned by the Ministry of Home Affairs in its letter dated 9/10th September, 2014.

We expect the State of Assam to act with some degree of promptitude in this regard since it pertains to Article 21 of the Constitution which is applicable to everybody - citizen and non-citizen.

We have also requested learned Additional Solicitor General (Mr. Tushar Mehta) to explore the possibility of converting the earlier jail premises in Guwahati into a detention centre. He says that he will get back to us and take instructions in this regard and whether earlier jail facilities are used for any other purpose.

List the application on 20th September, 2018.

(SANJAY KUMAR-I)
AR-CUM-PS

(KAILASH CHANDER)
ASSISTANT REGISTRAR