

ITEM NO.23

COURT NO.15

SECTION PIL-W

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

Miscellaneous Application No. 530/2022 in W.P.(C) No. 56/2004

[Arising out of impugned final judgment and order dated 09-12-2015
in W.P.(C) No. No. 56/2004 passed by the Supreme Court of India]

PRAJWALA

Petitioner(s)

VERSUS

UNION OF INDIA .

Respondent(s)

(FOR ADMISSION and IA No.38089/2022-EXEMPTION FROM FILING AFFIDAVIT
and IA No.38087/2022-CLARIFICATION/DIRECTION)

Date : 12-11-2024 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE PANKAJ MITHAL

For Petitioner(s) Ms. Aparna Bhat, Sr. Adv.
Ms. Rajkumari Banju, AOR
Ms. Karishma Maria, Adv.

For Respondent(s) Ms. Aishwarya Bhati, ASG
Mr. R. Balasubramanian, Sr. Adv.
Ms. Ruchi Kohli, Sr. Adv.
Ms. Chitrangdha Rastravara, Adv.
Mr. S.A. Haseebm, Adv.
Ms. Sagun Thakur, Adv.
Mr. Arvind Kumar Sharma, Adv.
Mr. Ranjan Mukherjee, AOR

Mr. R. Ayyam Perumal, AOR

M/S. Arputham Aruna And Co, AOR

Mr. T. V. Ratnam, AOR

Mr. Sunil Fernandes, AOR

Mr. Naresh K. Sharma, AOR

Mr. T. V. George, AOR

Ms. Kamini Jaiswal, AOR
Mr. P. V. Yogeswaran, AOR
Ms. Hemantika Wahi, AOR
Ms. Sumita Hazarika, AOR
Mrs. Anil Katiyar, AOR
Mr. Jatinder Kumar Bhatia, AOR
Mr. Arun K. Sinha, AOR
Mr. Rajesh Srivastava, AOR
Mr. Gaurav Verma, Adv.
Ms. A. Subhashini, AOR
M/S. Corporate Law Group, AOR
Mr. Purushottam Sharma Tripathi, AOR
Mr. Amit, Adv.
Mr. Ravi Chandra Prakash, Adv.
Ms. Vani Vyas, Adv.
Mr. Prakhar Singh, Adv.
Mr. Sanjay Jain, AOR
Ms. K. Enatoli Sema, AOR
Ms. Limayinla Jamir, Adv.
Mr. Amit Kumar Singh, Adv.
Ms. Chubalemla Chang, Adv.
Mr. Prang Newmai, Adv.
Ms. Ruby Singh Ahuja, AOR
Mr. V. N. Raghupathy, AOR
Mr. Gopal Prasad, AOR
Mrs. B. Sunita Rao, AOR
Mr. Anil Shrivastav, AOR
Mr. Jogy Scaria, AOR
Mr. Mukesh K. Giri, AOR

Ms. G. Indira, AOR

Mrs. D. Bharathi Reddy, AOR

Mr. Sabarish Subramanian, AOR

**Mr. Yashvardhan, Adv.
Mr. Apoorv Shukla, AOR**

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

1 This Miscellaneous Application has been filed by the original petitioner of Writ Petition (Civil) No. 56 of 2004 that came to be disposed of by this Court vide order dated 9th December, 2015 in the following terms :

“1. Heard the learned counsel.

2. We have gone through the affidavit dated 16th November, 2015 filed on behalf the Ministry of Women & Child Development, Government of India.

3. It has been submitted in the said affidavit that the Ministry of Home Affairs shall set up the “Organized Crime Investigative Agency” (OCIA). We hope that before 30th September, 2016, OCIA shall be set up and also hope that it is made functional before 1st December, 2016 looking to the importance of the issue before us.

4. We also record the fact, as mentioned in the Office Memorandum dated 16th November, 2015, that the Ministry of Women & Child Development has taken a policy decision to constitute a Committee under chairmanship of the Secretary, Ministry of Women & Child Development, Government of India, for preparing a comprehensive legislation dealing with the subject of trafficking.

5. The afore-stated Committee is to work on the following terms and reference :

- To study the various Acts/Legislations under the purview of different Ministries/ Departments relating to various aspects of trafficking.
- To consider the gaps in the existing legislation, from the point of view of prevention, pre-rescue, rescue, post-rescue and rehabilitation aspects.

- To strengthen victim protection protocol so as to ensure that victims are treated as victims not as offenders.
- To draft a comprehensive legislative framework covering all aspects of trafficking, as may be considered necessary.
- To provide for adequate shelter homes for the rescued victims.
- To prepare a comprehensive policy for law enforcing agencies, including for lady police officers for handling the victims of trafficking.

6. We are sure that the Committee shall do the needful at an early date so that appropriate law can be enacted on the subject. We hope that the Committee shall prepare and submit its report preferably in six months.

7. In view of the above development in the matter, this petition does not survive. The writ petition is, accordingly disposed of.

8. We record our appreciation for Prajwala and Dr. Sunitha Krishnan for bringing such an important and humanitarian issue to our notice and for able assistance rendered by learned Senior Counsel Mr. Dushyant Dave and Ms. Indu Malhotra, learned Additional Solicitor General Mr. N.K. Kaul and learned Advocate Ms. Aparna Bhat, National Legal Services Authority and other learned advocates in the process of disposing of this case relating to social problems.

I.A.Nos.3 to 5 of 2015 (For impleadment):

9. A statement has been made on behalf of the Union of India that if any suggestion is made by anybody including the applicants to the Ministry of Home Affairs, the same will be looked into.

11. In view of the above statement made on behalf of the Union of India, I.A.Nos.3 to 5 of 2015 are disposed of.”

- 2 This application was last heard sometime in the year 2022. It has come up for hearing today almost after a period of more than two years.
- 3 We have heard Ms Aparna Bhat, the senior learned counsel appearing for the applicant/original petitioner and Ms. Aishwarya Bhati, the learned Additional

Solicitor General appearing for the Union of India.

- 4 It is not in dispute that a statement was made on behalf of the Union of India on oath in the form of an affidavit that the Ministry of Home Affairs would set up the “Organized Crime Investigative Agency” (OCIA) to take care of the victims of sex trafficking.
- 5 This Court, in its order referred to above, had expressed hope that before 30 September 2016, the OCIA is set up and it had also expressed further hope that it would be made functional before 1st December, 2016 having regard to the importance of the issue. This court also recorded in its order referred to above that a policy decision had been taken by the Ministry of Women and Child Development to constitute a Committee under the Chairmanship of the Secretary, Ministry of Women and Child Development, Government of India for preparing a comprehensive legislation dealing with the subject of sex trafficking. The terms of the reference were also looked into and have been made a part of the order passed by this Court.
- 6 It was pointed out to us that the Union of India, on second thought, dropped the idea of setting up the OCIA. Instead, it thought fit to amend the NIA Act by introducing two provisions in it.
- 7 We are also informed that later the Parliament thought fit to introduce a Bill to enact a new Act, namely, the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018.
- 8 We take notice of the fact that the amendment in the NIA Act in the form of insertion of two provisions has been undertaken. However, the 2018 legislation which was proposed, although passed in Lok Sabha yet could not be passed in

the Rajya Sabha as the Parliament got dissolved. The Bill was re-drafted as the Trafficking of Persons (Protection, Care and Rehabilitation) Bill, 2021 and published for the purpose of inviting suggestions. Thereafter, the said Bill, incorporating the suggestions and comments as received, was re-introduced afresh for Cabinet approval. Since then, there has been no legislative progress on this matter.

- 9 *Prima Facie*, it could be said that as on date, no compliance or effect worth the name has been given to the order passed by this Court dated 9th December, 2015 and the issues raised by the petitioner still remains to be considered.
- 10 Ms. Aishwarya Bhati, the learned Additional Solicitor General submitted that some further time may be granted to enable her to seek further instructions in the matter and file a fresh affidavit in details highlighting as to what steps the Union intends to take as regards the subject matter of this litigation.
- 11 We may only say that the issues involved in this litigation are highly sensitive and important. They relate to the protection that needs to be afforded to the victims of sex trafficking. Human and sex trafficking are crimes that dehumanizes the victim and violates the victim's right to life, freedom and personal security. Vulnerable sections of society, especially women and children are disproportionately affected in such crimes.
- 12 The victims of such crimes are often mistreated by their traffickers and have to endure physical and mental forms of violence that are inflicted upon them. They stand at a greater risk of sustaining several life-threatening injuries, and contracting infections and illnesses, including sexually transmitted diseases. Additionally, the mental health consequences can range from anxiety disorders,

Post Traumatic Stress Disorder (PTSD), depression and substance abuse as well. A majority of such victims may require continuous access to doctors and other mental health professionals who can tend to their specific needs. Alienation and ostracism by the larger society is also inherently associated with such crimes. Individuals who are trafficked are often abruptly alienated from their immediate family and other social groups due to the attribution of sentiments like guilt and shame on the victims. This has the unfortunate consequence of them being further isolated, secluded and withdrawn from society. The crime is also of such nature that it seriously hampers the pursuit of further education and learning. Once the victims stop going to schools or colleges, it is all the more difficult to reintroduce them into the formal education system and equip them with advanced education which is quintessential for their right to live freely. Victims might also need support in order to get job opportunities and secure their means of livelihood.

- 13 The aforesaid would tantamount to only a fraction of the issues associated with the crime of sex trafficking. However, it clearly highlights that while the prevention of trafficking of persons, along with the prosecution and punishment of the offenders who commit such heinous crimes are important, yet it is equally important that legislative mechanisms focus on providing care, protection and rehabilitation to the victims of trafficking. This must be done by creating a larger legal, economic and social environment that secures the well-being of the victims. It is the need of the hour to adopt a human rights and rehabilitative approach to such crimes.
- 14 There exists a legislative vacuum as regards the establishment of a comprehensive rehabilitation framework for victims of sex trafficking, which

needs to be urgently considered by the Union and it is their responsibility to take earnest and prompt measures to address the same.

- 15 We grant three weeks' time to the Union to file a further reply in this regard. We request Ms Bhati to serve a copy of the fresh affidavit that may be filed well in advance to the learned counsel appearing for the petitioner.
- 16 It was also pointed out in the last by the learned counsel appearing for the petitioner that there has been a phenomenal increase in cyber enabled sex trafficking. The Union shall also look into this aspect and suggest what steps can be taken in this regard.
- 17 List the matter on 10 December 2024.

(GULSHAN KUMAR ARORA)
AR-CUM-PS

(POOJA SHARMA)
COURT MASTER