

ITEM NO.4

COURT NO.1

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

Writ Petition (Civil) No.767/2014

PANKAJ SINHA

Petitioner

VERSUS

UNION OF INDIA & ORS.

Respondents

WITH

W.P.(C) No. 1151/2017 (PIL-W)
(FOR ADMISSION)

Date : 05-07-2018 This matter was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

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(In WP(C)1151/17)

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In WP(C)767/2014

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For PLR Chambers & Co., Adv.

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

W.P. (C) No. 767/2014

Heard Mr. Colin Gonsalves, learned senior counsel appearing for the petitioner and Mr. Maninder Singh and Ms. Pinky Anand, learned Additional Solicitor Generals of India.

Hearing concluded.

Orders reserved.

Learned counsel for the parties shall file their written notes of submissions by 12.7.2018.

W.P.(C) No.1151/2017

The present writ petition, preferred under Article 32 of the Constitution of India, seeks that a number of legislations, enumerated in Annexure P-1, be declared as unconstitutional being violative of Articles 14, 19(1)(d), 19(1)(g) and 21 of the Constitution of India. It is submitted by Mr.Raju Ramachandran, learned senior counsel appearing for the petitioner that all the statutes that have been sought to be declared as unconstitutional

relate to the stigma attached to leprosy patients. He has drawn our attention to the 256th Report of the Law Commission. The said Report has been submitted on the basis of the initiative taken by the Union of India, titled "Legal Enactments Simplification and Streamlining". The Law Commission referred to the provisions of the Lepers Act and adverted to the Second Interim Report No.249 where it is mentioned that India is a member of the UN General Assembly which unanimously passed a resolution on the elimination of discrimination against persons affected by leprosy and their family members. It has been further put forth in the Report that the Lepers Act, as mentioned in the Second Interim Report of the Law Commission, was against the spirit of the Resolution and, therefore, required immediate repeal in consultation with the States. In paragraphs 2.2.1 to 2.2.3, there has been a reference to the facts and myths surrounding leprosy. We think it appropriate to reproduce the said paragraphs:

"2.2.1 There are several myths and distortions surrounding Leprosy that are sought to be clarified in this Chapter. Such myths consider Leprosy as a hereditary and infectious disease that is caused due to impure blood and poverty. Many also believe that the infection of Leprosy spreads through food and water and is difficult to detect. However, all such beliefs are not based on evidence and therefore without merit.

2.2.2 Leprosy is not a hereditary disease and is not caused due to impure blood or poverty, but due to the causative agent Mycobacterium Leprae as mentioned above. Further, even though Leprosy is a chronic infectious disease, it is neither difficult to diagnose nor hard to treat. The main consideration for an effective Leprosy treatment is early detection and regularity in treatment.

2.2.3 All persons are not susceptible to Leprosy, although insanitary conditions, malnutrition and lack of

personal hygiene may increase the chances of getting infected by the Leprosy bacillus or a host of other diseases and infections caused on account of such conditions. Further, Leprosy is not a fatal disease, even though on account of the stigma and discrimination, it may cause permanent psychological and social damage to the victims."

In paragraph 2.4.2., it has been mentioned that leprosy is a completely curable disease. We think it relevant to reproduce paragraph 2.4.2. which is to the following effect:

"2.4.2 Although Leprosy is the cause of irreversible disabilities, with advances in science and technology in the field of Leprosy treatment during the last three decades, it is now a completely curable disease that can be rendered non-infectious in the initial stages of the treatment itself. The treatment that has made it possible to cure Leprosy is the process of Multi-Drug Therapy ("MDT"), which was first recommended by the WHO in early 1980s after over 40 years of research and testing. Under MDT, powerful drugs such as Rifampicin, Clofazimine and others in combination with Dapsone, are administered to the affected person to effectively fight the Leprosy bacillus. Over the past two decades, more than 15 million Persons affected by Leprosy are said to have been cured under MDT."

Eventually, after analysing various aspects, the Law Commission recommended as follows:

"7.13 This statute should be titled as the "Elimination of Discrimination against Persons affected by Leprosy Bill, 2015". This stand-alone law, apart from comprehensively covering the repeal/modification of the specified statutes, shall contain principles of non-discrimination and equal protection before law. These principles shall specify that (1) No person, or public or private establishment shall discriminate against any person affected by Leprosy, or members of his family on any ground in relation to their affliction of Leprosy, or their disability, physical attributes or any other form of their association with Leprosy; and (2) All persons affected by Leprosy and members of their family shall be entitled to the recognition, enjoyment and exercise, on an equal basis, of all human rights including freedoms guaranteed by the Constitution of India. Further, the law shall also contain enabling provisions regarding

affirmative action and repeal and amend discriminatory provisions listed above.

7.14 A model Bill is provided in the Annexure for the consideration of the Government of India. The Law Commission of India believes that the fact that India is home to the most number of Persons affected by Leprosy in the world is a matter of deep shame. Further, despite clear scientific evidence and pioneering social efforts, the stigma associated with leprosy still continues unabated. The proposed Bill is an important step in eliminating the social discrimination faced by such persons, a necessary precursor to their reintegration into society. As a humane society that believes in human rights for all, especially its poorest, the Law Commission believes that the Bill should be converted into a law as expeditiously as possible by the Government of India."

The annexure contains a draft Bill, namely, Eliminating Discrimination Against Persons Affected by Leprosy (EDPAL) Bill, 2015. The Law Commission recommended the repeal of the Lepers Act and other laws, which create any kind of stigma, disability or discrimination against persons suffering from leprosy. Despite the recommendations made by the Law Commission, it is submitted by Mr.Raju Ramachandran, learned senior counsel for the petitioner, no steps have been taken to repeal those obsolete laws, except for the Lepers Act which has been repealed.

Mr.K.K.Venugopal, learned Attorney General for India submitted that leprosy is curable by Multi-Drug Therapy. However, it requires people to be aware that the disease after administration of the first dosage ceases to be contagious and there is no fear of being infected. It is, therefore, his suggestion that there should be wide-spread awareness among people so that those suffering from leprosy are mainstreamed. However, he would submit that there is a two-Judge Bench decision rendered in

Dhirendra Pandua vs. State of Orissa and others, (2008) 17 SCC 311 where it has been held that Sections 16(1)(iv) and 17(1)(b) of the Orissa Municipal Act, 1950 which prescribe disabilities upon a person suffering from leprosy are not violative of Article 14 of the Constitution. However, it is worth noting that the learned Judges have taken note of the progress made in the field of science and technology. In paragraphs 29 and 30 of the said judgment, it is observed:

"29. It is true that now with aggressive medication a patient may be fully cured of the disease, yet the Legislature in its wisdom has thought it fit to retain such provisions in the statute in order to eliminate the danger of its being transmitted to other people from the person affected by the disease. Having regard to these circumstances, we are convinced that the said classification does bear a reasonable and just relation with the object sought to be achieved by the statute in question and cannot be said to be unreasonable or arbitrary. Accordingly, we hold that Sections 16(1)(iv) and 17 (1)(b) of the Act are not violative of **Article 14** of the Constitution.

30. Before parting with this case, we deem it appropriate to point out that having regard to the changed concept and knowledge gained about the disease of leprosy, on the recommendation of the Working Group on Eradication of Leprosy, appointed by the Government of India, many State Governments and Union Territories have repealed the antiquated Lepers Act, 1898 and subsequent similar **State Acts**, providing for the segregation and medical treatment of pauper lepers suffering from infectious type of disease. Therefore, keeping in view the present thinking and researches carried on leprosy as also on tuberculosis, and with professional input, the Legislature may seriously consider whether it is still necessary to retain such provisions in the statutes."

Moreover, this Court in Pankaj Sinha vs. Union of India & ors., by its order dated 28.11.2014, has taken note of the fact that even though leprosy, as on today, is curable yet it remains as a fact that those suffering from it are subject to stigma. This is

compounded by the apathy shown by the concerned authorities.

We will in due course deal with the constitutional validity of the laws and the steps taken for repeal by the Union of India and the State Governments. There can be no doubt that a person suffering from leprosy has the right to live with human dignity. His/her status in society cannot be bereft of humanness. Needless to emphasise, there is no reason to discriminate against such persons in any vocation or profession, or for that matter, in the exercise of any civic rights or entitlements under the Constitution or law. It has to be understood that treating persons suffering from leprosy in a stigmatic manner denudes them of humanness.

In view of the aforesaid, there has to be social awakening. Due to the advancement of science in the last four decades, the disease has become curable. Members of society must acknowledge and accept that people suffering from leprosy must be treated with equality. Therefore, we proceed to issue the following directions:

- (i) The Union of India and the Department of Health and other concerned Departments shall carry out awareness campaigns at various levels so that people come to know about the curability of the disease and of its not being contagious.
- (ii) Some responsible authorities, at least two, shall be exclusively nominated for the said duty.
- (iii) There should be specific programmes on All India Radio and Doordarshan, both at the Central and the State level, as also on the regional channels, for educating

people about the fact that leprosy is not a communicable disease and not to treat any person suffering from that disease with any kind of stigma or discrimination.

(iv) The programmes shall be shown on Doordarshan, both on the national and the regional channels, to the extent feasible on prime time so that the people can see them.

(v) Hospitals should not decline to treat such patients suffering from leprosy for administering the first dosage and thereafter provide treatment if they suffer from any other disease. It has to be remembered that a person has a right to avail the treatment in the government hospitals.

(vi) The awareness campaign must cover all areas from urban areas to the panchayat level so that there will be a concrete and holistic approach with regard to awareness.

(vii) The Union of India and the States shall take steps to rehabilitate persons suffering from leprosy to bring them in the main-stream. It should be the primary duty of the State to see that this category of persons does not suffer from any kind of stigma.

(viii) We would commend to the Union of India and the State Governments to apprise us about the steps taken with regard to the repeal of the provisions where leprosy has been treated as a stigmatic disability. A report of compliance shall be filed by the Union of India as well as all the States.

The order passed today shall be communicated to the Chief Secretaries of the States and the Lieutenant Governors of Union Territories by E-mail and by speed post for due compliance.

Let the matter be listed on 20.08.2018.

(Chetan Kumar)
AR-cum-PS

(H.S.Parasher)
Assistant Registrar