

HIGH COURT OF JAMMU AND KASHMIR

AT JAMMU

WPIL No.23/2013

Date of Judgment: .04.2015

Parimoksh Seth, Advocate aged 31 years,
Son of Mr. Onkar Seth,
R/o H.No.5, Sector No.1-A Extension
Channi Himmat, Jammu.

Petitioner.

Vs.

1. State of Jammu and Kashmir,
Through Chief Secretary,
Civil Secretariat, Srinagar.
2. Principal Secretary to Government,
Home Department,
Civil Secretariat, Srinagar.
3. Director General of Police,
Jammu and Kashmir State,
Police Headquarters, Srinagar.
4. Secretary to Government,
Social Welfare Department,
Civil Secretariat, Srinagar.

Respondents

Coram:

**Hon'ble Mr. Justice N. Paul Vasanthakumar, Chief Justice,
Hon'ble Mr. Justice Dhiraj Singh Thakur, Judge,**

Appearing counsel:

For the Petitioner(s)	:	Mr. Ankesh Chandel, Advocate. Mr. Paras Gupta, Advocate.
For the Respondent(s)	:	Mr. Gagan Basotra, Sr.AAG.

i/	Whether to be reported in Press/Media	:	Yes
ii/	Whether to be reported in Digest/Journal	:	Yes

N. Paul Vasanthakumar, CJ

1. This Public Interest Litigation is filed by an advocate practicing in this Court, praying for issuance of writ of mandamus directing the respondents to implement the provisions of Beggary Act, 1960 and Prevention of Beggary Rules in the State of Jammu and Kashmir in their true perspective and spirit and stopping the menace of begging

especially organized begging in the State of Jammu and Kashmir.

2. In the affidavit filed in support of this petition the petitioner has stated that the State of Jammu and Kashmir enacted a legislation known as the J&K Prevention of Beggary Act, 1960 to prevent begging in the State and also for creating avenues for rehabilitation. The aforesaid legislation makes begging as an offence as per Section 3 of the Act and under Section 4 of the Act the police officers are authorized to arrest a person, indulging in begging, without warrants. Section 5 envisages for summary enquiry against the person found begging. The said Act provides for creation of beggar's home, public sick home and children home for such beggars and avenues for rehabilitation of beggars. According to the petitioner, even though the Act was enacted in the year 1960, the provisions of the Act have not been enforced, which is apparent as several persons are seen begging at traffic signals, at busy markets, tourist places, railway stations, bus stops and in front of the religious places. The respondents are under obligation to take steps for establishing beggar's home, children home, etc to prevent begging. The petitioner, before filing the writ petition, issued a notice and having not received any response the writ petition has been filed praying for direction to implement the said Act and Rules.

3. When the writ petition was posted for admission on 04.07.2013 notice was ordered and counsel for the State was asked to take notice and file status report within two weeks. Further time was asked for when the matter was posted on 13.11.2013 and time was granted upto 18.12.2013. On 18.12.2013 the respondents were directed to ensure implementation of Sections 3, 4 and 5 of the J&K Prevention of Beggary Act, 1960 and also to furnish list of cases registered and pending with status of those cases. On 06.03.2014, the Social Welfare Department filed objections stating that the said department is not the executing agency as the provisions of the Act have to be enforced and executed by the Home Department. The Social Welfare Department has also sent communications to the Home Department in the years 2010, 2011 and 2013 in that aspect. Considering the said stand, a further direction was issued holding that it is the duty of the Social Welfare Department to set up sick homes in the State, within the meaning of sub clause (b) of Section 2 of the Beggary Act, where beggars suffering from leprosy or other infectious or contagious diseases are to be kept. Clause 2(g) of Section 2 contemplates setting up of beggar's home, which are to be notified to be suitable for reception of beggars above the age of 14 years. Clause 2(h) of Section 2 of the Act contemplates setting up of children homes to receive children

begging below the age of 14 years who are not suffering from any infectious or contagious disease, as it is the duty of the social welfare department. The Director General of Police was also directed to conduct survey in the whole State to find out the beggars population classifying them in three categories i.e. (a) the beggars who are sick and suffering from contagious/infectious diseases, (b) beggars who are below the age of 14 and are not suffering from any such disease and (c) children who have been pushed to beggary below the age of 14 and do not suffer from any disease. The Director General of Police was also directed to collect the data from the Station House Officers of every police station about registration of FIRs of missing children and he was further directed to effectively enforce the provisions of the Act.

4. The Director General of Police filed a status report stating that the Jammu and Kashmir Beggary Act, 1960 is not applicable to most of the districts and the government have to consider extension of its applicability to all the districts wherever it is not extended and the Commissioner/Secretary to Government, Social Welfare Department and the Director General of Police were directed to comply with the earlier directions. Even though a report was filed the same having been found not in compliance of the earlier orders, further

compliance report was directed to be filed, pursuant to which some status reports were filed.

5. In the status report filed by respondent No.3, i.e. Director General of Police it is stated that all efforts were made for effective enforcement of the provisions of the Beggary Act and the Station House Officers were directed to ensure that the provisions of the Act are strictly enforced in their respective jurisdictions. It is further stated that on the basis of the feedback received from all the concerned district SPs/SSPs, 98 beggars in District Jammu were found, out of which 37 beggars are normal, 16 are sick, 2 are suffering from contagious/infectious disease i.e., T.B. and 43 are handicapped. Three are below the age of 14 years and are not suffering from any disease. As per the information received from SSP Reasi, there are some minor girls under the jurisdiction of Police Station, Katra, who are below the age of 14 years and are local and perform as “Kanjakas” and after their “kanjak pujans” some dakshina is given to them by the devotees and they cannot be treated as beggars. No children below the age of 14 years have been punished into beggary. The cases registered as per the report received from SSP Doda, Kishtwar, Ramban, Udhampur, Reasi, Kathua and Rajouri were also mentioned in the status report. The number of persons arrested has also been furnished.

6. In the status report filed by the Commissioner/Secretary to Government, Social Welfare Department, it has been stated that draft notification for extending the Act to whole of the State of Jammu and Kashmir has been prepared and sent to the Department of Law, Justice and Parliamentary Affairs for vetting. A meeting was convened in the Social Welfare Department on 09.05.2014 under the Chairmanship of Secretary, Social Welfare Department, which was attended by representatives of Home, Health and Medical Education Department and a number of decisions were taken in the said meeting. For implementing the said proposals/decisions taken, a sum of Rs.84.24 lacs in the first instance is required in the two capital cities of Srinagar and Jammu for hiring the buildings for beggar's home and children home. The department has taken up the matter with the Finance Department on 29.05.2014 and the concurrence of the Finance Department is awaited. The two provincial directors of the Social Welfare Department were directed to identify the land and prepare DPRs for construction of beggar's home and children home in two capital cities for accommodating at least 50 inmates on a minimum need basis. As and when the DPRs are received from the Directors of Social Welfare Department the same shall be vetted from the Joint Development Commissioner (Works) and thereafter a comprehensive proposal shall be submitted to the

Planning and Development Department and the Finance Department for providing funds.

7. Insofar as the construction to sick home is concerned, the Social Welfare Department has requested the Health and Medical Education Department to intimate whether they have the necessary infrastructure in place for housing of persons suffering from leprosy or other infectious/contagious disease. The whole process of construction of different kinds of home for the beggars is dependent on the details of the survey to be conducted by the Director General of Police and only on completion of the said survey the number of home, their intake capacity and location in the State will have to be determined.

8. In the light of the said decisions taken during the pendency of the writ petition and the process of implementing the Act and Rules having been initiated already, this writ petition is disposed of with directions to the respondents to complete the process already initiated in all respects within a period of six months from the date of the receipt of this order. It is made clear that financial constraint cannot be stated as reason to delay the project/decisions already taken. For effecting implementation of the Act and the Rules, construction of Beggar's home, children home and sick home are mandatory. A person found begging can be detained in sick home/children home/beggar's home, as the case may be, for a

period of not less than one year and not more than three years in the case of first offence as per Section 5(5) of the Act. If a person is convicted for the second time, he can be detained for not less than seven years as per Section 6 (2). For detaining the persons found begging on conviction the government must provide home failing which the Act and Rules will remain in paper without any scope to implement it. Hence a writ of mandamus is issued to construct adequate number of beggar's homes/children home/sick home within a period of six months from the date of receipt of copy of this order. It is also made clear that if the process initiated is not implemented within a period of six months, as directed above, it is well open to the petitioner to approach this Court for appropriate directions and in that event this Court will be constrained to take serious view against the officers responsible for the delay.

9. The petition is disposed of.

(Dhiraj Singh Thakur) (N. Paul Vasanthakumar)
Judge Chief Justice

Jammu,
.04.2015
Anil Raina, Secy