SHEELA BARSE

v.

UNION OF INDIA & ORS.

AUGUST 29, 1988

[RANGANATH MISRA AND M.N. VENKATACHALIAH, JJ.]

Constitution of India, Art 32—Public Interest Litigation—Withdrawal of Petition by petitioner-in-person not allowed—No litigant can be permitted to impose any condition for his participation in the proceedings—Petitioner may be allowed to withdraw himself from the proceedings—Information relating to the case gathered by the petitioner during pendency of the proceedings—Petitioner not entitled to use such information after withdrawal/deletion of his name from the case.

Contempt of Courts Act, 1971—Sec. 2(c)—Delay in final disposal of public interest litigation—Criticism of—High lighting public accountability of courts—Whether contempt of court.

The petitioner had filed a Writ Petition (Criminal) No. 1451 of 1985 in the Supreme Court praying that the respondents-States be directed: (a) to release all children detained in the jails in the respondent-States; (b) to furnish complete information respecting all children detained in the States and the circumstances and the legal facts of such detention and the number of available juvenile courts and children homes; (c) to appoint district judges of the districts to visit jails, sub-jails and lock-ups to identify and release children in such illegal detention; (d) to requisition immediately necessary buildings and provide infrastructure and make immediate interim arrangements for 'places of housing' of children facing trial before juvenile courts. The petition also sought directions to the respective States, Legal Aid Boards, District Legal Aid Committees through the appointment of 'duty-counsel' to ensure protection of the rights of the children etc.

The said petition was treated as a public interest litigation and in regard to most of the areas covered by the aforesaid prayers, orders were made from time to time by this Court.

However, being dissatisfied with the progress of the case, the petitioner preferred a Misc. Petition for leave to withdraw the main

A public interest litigation on the grounds: (1) that the Supreme Court has become "dysfunctional" in relation to, and in the context of, the gravity of the violations of the rights of children and the urgency of the requisite remedial steps and that though the proceedings were listed for final disposal in the month of November, 1986 however, owing to unjustified adjournments obtained by the respondents and owing further, B to the functional deficiencies of the procedure of this court the proceedings have not yet been finally disposed of; (2) that the Court has not been able to exact prompt compliance with its own orders and directions, issued from time to time, from the respondents; (3) that the applicant is disabled from conducting proceedings with "dignity" as certain happenings in Court had the effect of casting and tended to cast a slur on her integrity and dignity: and (4) that the proceedings were C brought as a "voluntary action" and that applicant is entitled to sustain her right to be the "petitioner-in-person" in a public interest litigation and that the proceedings cannot be proceeded with after delinking her from the proceedings.

D Dismissing the criminal miscellaneous petition,

HELD: (1) The permission to withdraw the main petition is refused and it is directed that the applicant be deleted from the array of parties in this proceeding. The proceedings shall now be proceeded with a direction to the Supreme Court Legal Aid Committee to prosecute the E petition together with the aid and assistance of such persons or agencies as the Court may permit or direct from time to time. [667B-C]

1(ii) The order dated 5.8.1986 and 13.8.1986 forbidding the applicant from using the information collected by her during her visits to jails and other custodial institutions cannot be modified during the F pendency of the proceedings as the information was gathered for purposes of the case and pursuant to the directions of this Court. [667D]

2(i) The "rights" of those who bring the action on behalf of the others must necessarily be subordinate to the "interests" of those for whose benefit the action is brought. [652C]

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2(ii) In a public interest litigation, unlike traditional dispute-resolution-mechanism, there is no determination or adjudication of individual rights. While in the ordinary conventional adjudications the party-structure is merely bi-polar and the controversy pertains to the determination of the legal-consequences of past events and the remedy H is essentially linked to and limited by the logic of the array of the

parties, in a public interest action the proceedings cut across and transcend these traditional forms and inhibitions. The compulsions for the judicial innovation of the technique of a public interest action is the constitutional promise of a social and economic transformation to usher-in an egalitarian social-order and a welfare-State; Effective solutions to the problems peculiar to this transformation are not available in the traditional-judicial-system. The proceedings in a public interest litigation are, therefore, intended to vindicate and effectuate the public interest by prevention of violation of the rights, constitutional or statutory, of sizeable segments of the society, which owing to poverty, ignorance, social and economic disadvantages cannot themselves assert—and quite often not even aware of—those rights. The technique of public interest litigation serves to provide an effective remedy to enforce these group-rights and interests. In order that these public causes are brought before the courts, the procedural techniques judicially innovated specially for the public interest action recognises the concomitant need to lower the locus-standi-thresholds so as to enable public-minded citizens or social-action-groups to act as conduits between these classes of persons of inherence and the forum for the assertion and enforcement of their rights. The dispute is not comparable to one between private-parties with the result there is no recognition of the status of a Dominus-Litis for any individual or group of individuals to determine the course of destination of the proceedings, except to the extent recognised and permitted by the court. [651E-H; 652A-C]

2(iii) What corresponds to the stage of final disposal in an ordinary litigation is only a stage in the proceedings. There is no formal, declared termination of the proceedings. The lowering of locus-standi-threshold does not involve the recognition or creation of any vested—rights on the part of those who initiate the proceedings, analogus to Dominus-Litis. [652H; 653A]

3. Unduly harsh and coercive measures against the states and the authorities might themselves become counter-productive. In the matter of affirmative-action the willing cooperation of the authorities must, as far as possible, be explored. If the proceedings are allowed to be diverted at every stage into punitive-proceedings for non-compliance, the main concern and purposes of the proceedings might tend to be over-shadowed by its incidental ramifications. The coercive action would, of course, have to be initiated if persuasion fails. [660C-D]

In the instant case, the Court's orders dated 15.4.86, 12.7.86, 5.8.86, 13.8.86 and 21.11.86, show that certain important and far-

A reaching actions were initiated and appropriate directions were issued to the States and authorities concerned. The first ground, therefore, does not justify the withdrawal of this public interest litigation. If the Court acknowledges any such status of a Dominus-Litis to a person who brings a public interest litigation, it will render the proceedings in public interest litigations vulnerable to and susceptible of a new dimension B which might, in conceivable cases, be used by persons for personal-ends resulting in prejudice to the public-weal. [653F-G; 662H; 663A-B]

4(i) The concept of public accountability of the judicial system is, indeed, a matter of vital public-concern for debate and evaluation at a different plane. But, for that reason courts of law, in their actual day-to-day judicial work, cannot allow the incantations and professions of C these principles to enable parties to judicial-adjudications to constitute themselves the overseers of the judicial performance and accountability in the individual-case in which they are immediately concerned and permit temselves comments and criticism of the judicial-work in the particular case. [661F, G-H; 662A]

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4(ii) While comments and criticisms of judicial-functioning, on matters of principle, are healthy aids for introspection and improvement, the criticism of the functioning of the Court in the course of and in relation to a particular proceeding by the parties to it borders on a conduct intended or tending to impair the dignity, authority and the E functional-disposition of the court. It is, therefore, thought important to maintain respect and dignity of the courts and its officers whose task is to uphold and enforce the law because without such respect, public faith in the administration of justice would be undermined and the law itself would fall into disrespect. [662B-C]

F 4(iii) This is not to deny the broader right to criticise the systemic inadequacies in the larger public interest. It is the privileged right of the Indian citizen to believe what he considers to be true and to speak-out his mind, though not, perhaps, always with the best of testes; and speak perhaps, with greater courage then care for exactitude. Judiciary is not exempt from such criticism. Judicial institutions are, and should be G made, of stronger stuff intended to endure and thrive even in such hardy climate. [662F-G]

In the instant case, there is no justification to the resort to this freedom and privilege to criticise the proceedings during their pendency by persons who are parties and participants therein. [662G-H]

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5(i) Even the humblest citizen of the land, irrespective of his station in life, is entitled to present his case with dignity and is entitled to be heard with courtesy and sympathy, Courts are meant for, and are sustained by, the people and no litigant can be allowed to be looked upon as a supplicant or an importuner. [663C-D] A

5(ii) The parties who seek justice at the hands of the court are neither its subordinates or subsidiaries. But the notion of an equal participation, in its practical applications, presents difficulties and cannot be stretched to the point where the court could share the responsibility, and the powers that go with it, of regulating the proceedings of the court with any of the parties before it. In the existing system, the parties who seek recourse to courts have to submit themselves to the jurisdiction and discipline of the court. Their conduct, in relation to the proceedings, is liable to be regulated by the court. This is not a matter of expression or assertion of any superiority but is merely a necessity and a functional-imperative. [666B-C] B C

In the instant case, keeping in view the facts and circumstances of the case, the second ground of withdrawal is wholly insubstantial and proceeds on what appear to be certain subjective susceptibilities of the applicant which, to the extent they are irreconcilable with the discipline of the court, cannot be countenanced. [666D] D

6(i) The contention, that applicant is entitled to sustain her right to be the "petitioner-in-person" in a public interest litigation and that the proceedings cannot be proceeded with after de-linking her from the proceedings cannot be accepted. Any recognition of any such vested right in the persons who initiate such proceedings is to introduce a new and potentially harmful element in the judicial administration of this form of public law remedy. That apart, what is implicit in the assertion of the applicant is the appropriation to herself of the right and wisdom to determine the course the proceedings are to or should take and its pattern. This cannot be recognised. [666E-G] E F

6(ii) No litigant can be permitted to stipulate conditions with the court for the continuance of his or her participation. [667A] G

7. The initiation of a public interest litigation or proceedings for issue of a writ of Habeas Corpus on the basis of letters reflects and symbolises the Court's anxiety to relax the rigour of formal pleadings. However, in proceedings which are already initiated and are pending it would be inappropriate for a party to the proceedings to address letters H

directly to the Judges. What is sought to be brought to the notice of the Court should, as far as possible, be filed in the Registry for being placed before the appropriate bench or submitted in the open court. There might be extra-ordinary circumstances when a party is compelled to resort to the expedience of a letter or a telegram. Even in such a case, it would be appropriate to address them to the Registry to be placed before the appropriate bench. The difficulties arising out of such direct-communications are too obvious to require any elaborate discussion. [664E-G]

ORIGINAL JURISDICTION: Criminal Misc. Petition No. 3128 of 1988.

IN

Writ Petition (Criminal) No. 1451 of 1985.

(Under Article 32 of the Constitution of India.)

Petitioner-in-person.

P.A. Chaudhary, S.B. Bhasme, V.C. Mahajan, Tapash Ray, Swaraj Kausal, Probir Choudhary, K. Ram Kumar, K. Ram Mohan, K.R. Nambiar, A.S. Bhasme, C.V.S. Rao, Girish Chandra, Kailash Vasdev, J.R. Dass, D.K. Sinha, A.V. Rangam, T.V. Ratna, A. Subba Rao, Ranjan Mukherji, D.N. Mukherjee, R.S. Sodhi, T. Sharma, M. Veerappa, A.S. Nambiar, P.K. Manohar, Mrs. H. Wahi, Dalveer Bhandari, Mahabir Singh, P.R. Ramasesh, A.K. Sanghi, Ms. Kamini Jaiswal, D.K. Sinha, J.R. Das, Ms. A. Subhashini, R.B. Misra, S.K. Bhattarcharya, Mrs. Urmila Kapoor, and Ms. S. Janani for the Respondents.

The Order of the Court was delivered by

VENKATACHALIAH, J. This Miscellaneous Petition for leave to withdraw the main public interest litigation is filed under circumstances which can only be characterised as somewhat unfortunate. The main petition is brought to highlight the gross violations of the constitutional and statutory rights of a large number of children in the country who are suffering custodial restraints in various parts of the country and for the protection and enforcement of their rights.

It might clear some possible misconceptions if it is clarified what this order is not about. The applicant is not, by the force of this order,

denied the right or the opportunity of instituting any public interest litigation nor is the right of a public-minded citizen to bring an action for the enforcement of fundamental rights of a disabled segment of the citizenry disputed. The question agitated relates, on the contrary, to the aspect whether a public-minded person who brings such an action is entitled, *as of right,* to withdraw the proceedings from the court. Applicant asserts that this Court cannot refuse leave for withdrawal. The proceedings, it is contended, are the result of a "voluntary action of a citizen" and that, as a corollary, the proceedings cannot be continued except with applicant's participation. The applicant relies on what she calls "a citizen's right to be a petitioner-in-person in a public interest litigation". As stemming from this premise, applicant contends that not only that leave for withdrawal cannot be refused but also that the main petition cannot be continued by any other citizen or organisation.

2. No elaborate arguments are, indeed, necessary to decide a question such as this; but out of deference to the applicant's submission that the propositions she propounds in this behalf be considered by the court, we proceed to do so.

3. Applicant, on certain perceptions and assessment of her own, both as to the effectiveness and utility of the continuance of the proceedings as well as the manner of their conduct in and by this court, which according to her, has not been conducive either to their efficacy or to her participation therein with "dignity" seeks leave to withdraw the main petition itself. Figuratively, this is a 'walk-out' of the court. The prayer, if granted, would frustrate the important issues the main petition has served to high-light in the matter of the status and enforcement of the laws enacted for the protection and welfare of the children in the country. The proceedings espouse the cause of a large number of suffering children who, on account of the traditional inertia against reform, the bureaucratic and official apathy, insensitivity to and lack of human consideration for the lot of the suffering children and the lack of proper perceptions of the values and idealogy of the legislation concerning children even on the part of law enforcing agencies, are being denied the protection of their constitutional and statutory rights.

4. It is not necessary to go into all the averments in the present application. The board reasons on which the applicant has persuaded herself to make this somewhat extraordinary request are recognisable in three areas:

A The first is that this court has become "dysfunctional" in relation to, and in the context of, the gravity of the violations of the rights of children and the urgency of the requisite remedial steps and that though the proceedings were listed for final disposal in the month of November, 1986, however, owing to unjustified adjournments obtained by the respondents and owing further, to the functional
B deficiencies of the procedure of this court the proceedings have not yet been finally disposed of. It is also averred that the court has not been able to exact prompt complainance with its own orders and directions, issued from time to time, from the respondents.

The second area is that the applicant is disabled from conductive
C proceedings with "dignity" as certain happenings in court had the effect of casting and tended to cast a slur on her integrity and dignity.

The third—this pertains to the claim that no body else can go on with this litigation—is that the proceedings were initiated as a result of the voluntary action on the part of a citizen and that that citizen is
D entitled to withdraw them. The applicant claims that she as representing "other conscientious citizens, social workers and activists is duty bound to sustain the citizen's right to be petitioners-in-person" and that, therefore, the petition cannot be continued against the wishes and without the participation of the applicant.

E 5. The applicant's stand on these points are put across, according to the learned counsel for respondents, in over assertive tone of great severity but of questionable propriety. But we should not allow ourselves to be influenced by this. The applicant's references to the manner of conduct of the proceedings are certainly unflattering to the Court. But the concern of this Court for and its achievements in the
F field of public interest litigation are open to the public-assessment; and the assessments even of those immersed in an individual experience and where objectivity might, episodically, be clouded should also serve some purpose—of introspection. Though the language employed in relation to the Court is not conspicuous for its moderation, we may yet examine objectively the justifiability, if any, for such strong ex-
G pressions of remonstrance.

6. In regard to the first area, applicant's grievance had better be set out from her own application:

> "The petitioner submits that with such an over-
H whelming confirmation and reconfirmation of the fact of

imprisonment of children by the State, the GOI, hundreds of DJs as also the reaffirmation of Hussainara Khatoon in one of the orders in this petition by this Court, were sound grounds for delivering final judgment in this case in November, 1986." A

"The then Chief justice of India who was presiding Judge of the Bench ..... fixed 9.12.1986 as the date for delivering final judgment, and 2.12.1986 for confirming that date." B

"The petitioner states that she obeyed the Court's order and arranged the Court's hundreds of files. But the CJ absented himself from the Court for 3 days to attend an International Judges' meet he had initiated and convened." C

"The petitioner states that on 13.12.1986, an hour and half after opening of the Court, the then CJ informed the petitioner that he would not be in Court that afternoon hence there can be no final hearing as scheduled. The petitioner understands that the CJ had to inaugurate some chambers and the date had been fixed in advance." D

The grievance is that the final disposal of the main petition was not expeditiously done. In a public interest litigation, unlike traditional dispute-resolution-mechanism, there is no determination or adjudication of individual rights. While in the ordinary conventional adjudications the party-structure is merely bi-polar and the controversy pertains to the determination of the legal-consequences of past events and the remedy is essentially linked to and limited by the logic of the array of the parties, in a public interest action the proceedings cut across and transcend these traditional forms and inhibitions. The compulsions for the judicial innovation of the technique of a public interest action is the constitutional promise of a social and economic transformation to usher-in an egalitarian social-order and a welfare-State. Effective solutions to the problems peculiar to this transformation are not available in the traditional-judicial-system. The proceedings in a public interest litigation are, therefore, intended to vindicate and effectuate the public interest by prevention of violation of the rights, constitutional or statutory, of sizeable segments of the society, which owing to poverty, ignorance, social and economic disadvantages cannot themselves assert—and quite often not even aware of—those rights. The technique of public interest litigation serves to provide an effective E F G H

A remedy to enforce these group-rights and interests. In order that these public-causes are brought before the Courts, the procedural techniques judicially innovated specially for the of public interest action recognises the concomitant need to lower the Locus-standi-thresholds so as to enable public-minded citizens or social-action-groups to act as conduits between these classes of persons of inherence and the forum B for the assertion and enforcement of their rights. The dispute is not comparable to one between private-parties with the result there is no recognition of the status of a Dominus-Litis for any individual or group of individuals to determine the course or destination of the proceedings, except to the extent recognised and permitted by the Court. The "rights" of those who bring the action on behalf of the others must necessarily by subordinate to the "interests" of those for whose benefit C the action is brought. The grievance in a public interest action, generally speaking, is about the content and conduct of governmental-action in relation to the constitutional or statutory rights of segments of society and in certain circumstances the conduct of governmental-policies. Necessarily, both the party structure and the matters in con- D troversy are sprawling and amorphous, to be defined and adjusted or re-adjusted as the case may be, ad-hoc, according as the exigencies of the emerging situations. The proceedings do not partake of predetermined private law litigation models but are exogeneously determined by variations of the theme.

E Again, the relief to be granted looks to the future and is, generally, corrective rather than compensatory which, sometimes, it also is. The pattern of relief need not necessarily be derived logically from the rights asserted or found. More importantly, the court is not merely a passive, disinterested umpire or onlooker, but has a more dynamic and positive role with the responsibility for the organisation of the pro- F ceedings, moulding of the relief and—this is important—also supervising the implementation thereof. The Court is entitled to, and often does seek the assistance of expert-panels, Commissioners, Advisory-committees, Amici etc. This wide range of the responsibilities necessarily implies correspondingly higher measure of control over the parties, the subject-matter and the procedure. Indeed as the relief is G positive and implies affirmative-action the decision are not "one-shot" determinations but have on-going implications. Remedy is both imposed, negotiated or quasi-negotiated.

Therefore, what corresponds to the stage of final disposal in an ordinary litigation is only a stage in the proceedings. There is no for- H mal, declared termination of the proceedings. The lowering of locus-

standi-threshold does not involve the recognition or creation of any vested—rights on the part of those who initiate the proceedings, analogus to Dominus-Litis. A

7. The theme, implicit in the applicants hyper-articulated grievance, is that this Court has not shown adequate concern for justice in this case. Is this justified? The record of the proceedings show that even by November, 1986, directions of far-reaching effect had been issued and very significant exercises had been initiated. The grievance, in the ultimate analysis, is really in the area of non-compliance by the several States and its authorities with the orders and directions issued by the Court from time to time in the proceedings. B

In order to appreciate the position, perhaps, it would be relevant to refer to the prayers made in the main petition and the orders passed from time to time even prior to a month of November, 1986. The prayer in the main petition was that this Court should pass order directing the Respondent-States: (a) to release all children detained in the jails in the respondent States; (b) to furnish complete information respecting all children detained in the States and the circumstances and the legal facts of such detention and the number of available juvenile courts and children homes; (c) to appoint district judges of the districts to visit jails, sub-jails and lock-ups to identify and release children in such illegal detention; (d) to requisition immediately necessary buildings and provide infrastructure and make immediate interim arrangements for "places of housing" of children facing trial before juvenile courts. The petition also seeks directions to the respective States, Legal Aid Boards, District Legal Aid Committees through the appointment of 'duty-counsel' to ensure protection of the rights of the children etc. C D E F

8. In regard to most of the areas covered by these prayers, orders were made from time to time by this Court. The Court's orders dated 15.4.1986, 12.7.1986, 5.8.1986, 13.8.1986, 21.11.1986, show that certain important and far-reaching actions were initiated and appropriate directions were issued to the States and authorities concerned. The following are some of the excerpts of the orders made by this Court: G

> "This Writ Petition discloses a disturbing state of affairs with regard to children below the age of 15 years in jail. It is an elementary requirement of any civilised society and it has been so provided in various statutes concerning H

A children that children should not be confined in jail because incarceration in jail has a dehumanising effect and it is harmful to the growth and development of children ....."

"..... We would, therefore, direct the District Judges in
B the country to nominate the Chief Judicial Magistrate or any other judicial magistrate to visit the District Jail and sub Jail in his District for the purpose of ascertaining how many children below the age of 16 years are confined in jail, what are the offences in respect of which they are charged, how many of them have been in detention—
C Whether in the same jail or previously in any other jail before being brought to the jail in question, whether they have been produced before the children's court and if so, when and how many times and whether any legal assistance is provided to them.

D Each district Judge will give utmost priority to this direction ....."

".... We would also direct the State Legal Aid & Advise Board in each State or any other Legal Aid Organisation existing in the State concerned, to send two lawyers to each
E jail within the State once in a week for the purpose of providing legal assistance to children below the age of 16 years who are confined in jails. If there are any other persons confined in jails who are there merely because they are suffering from some handicap (physical or otherwise) they should be released immediately and placed in
F appropriate home or place where they can receive suitable medical assistance or other educational training."

[Vide order dated 15.4.1986]

"Meanwhile, there are a few matters which need our
G urgent directions. It seems that there are a number of children who are mentally or physically handicapped and there are also children who are abandoned or destitute and who have no one of take care of them. They are lodged in various jails in different states ....."

H ".... The State Governments must take care of these men-

tally or physically handicapped children and remove them to a Home where they can be properly looked after and so far as the mentally handicapped children are concerned, they can be given proper medical treatment and physically handicapped children may be given not only medical treatment but also vocational training to enable them to earn their livelihood. Those children who are abandoned or lost and are presently kept in jails must also be removed by the State Governments to appropriate places where they can be looked after and rehabilitated ...."

"..... We would also ask the Director General, All India Radio and the Director General, Doordarshan to give publicity requesting non-governmental social service organisations to offer their services for the purpose of accepting these children with a view to taking care of them and providing for their rehabilitation in accordance with a hand-out to be sent by the Registrar of this Court."

"There are two girls in the Julpaiguri District Jail who have been kept in that jail in "safe custody" One of them is Parbati Dass, aged 8, who has been detained in jail since 12.11.84 and the other is Sabita Sah, aged 10, who has been detained in jail since 20.8.85 ....."

"..... We would accordingly direct that Parbati Dass and Sabita Shah should be transferred immediately to the Home in Raiketpara as recommended by the District Judge, Jalpaiguri."

[Vide order dated 12.7.1986]

"This Court directed the District Judges in the country to nominate the Chief Judicial Magistrate or any other Judicial Magistrate to visit the District Jail and Sub-Jail in their districts for the purpose of ascertaining how many children below the age of 16 years are confined in jail, what are the offences in respect of which they are charged, how many of them have been in detention—whether in the same jail or previously in any other jail—before being brought to the jail in question, whether they have been produced before the children's court and, if so, when and how many times and whether any legal assistance is provided to them. The

Court also directed that each District Judge will give utmost priority to this direction and the Superintendent of each jail in the district will provide full assistance to the District Judge or the Chief Judicial Magistrate or the judicial magistrate, in this behalf who will be entitled to inspect the registers of the jail visited by him as also any other document/documents which he may want to inspect and will also interview the children if he finds it necessary to do so for the purpose of gathering the correct information in case of any doubt. The District Judge, Chief Judicial Magistrate or the Judicial Magistrate, as the case may be, will submit report to this court within 10 weeks from today ...."

.....

.....

"Six further weeks have passed beyond the time indicated in the order dated April 15, 1986, and even till this day analysis shows that several District Judges have not complied with the direction. This Court had intended that the reports of the District Judges would be sent to the Registry of this Court through the Registrars of the respective High Courts. This obviously meant that the Registrars of the High Courts were to ensure compliance. We are both concerned and surprised that a direction given by the apex Court has not been properly carried out by the District Judges who are an effective instrumentality in the hierarchy of the judicial system. Failure to submit the reports within the time set by the Court has required adjournment of the hearing of the writ petition on more than one occasion. We are equally surprised that the High Courts have remained aloof and indifferent and have never endeavoured to ensure submission of the reports by the District Judges within the time indicated in the order of this Court. We direct that every defaulting District Judge who has not yet submitted his report shall unfailingly comply with the direction and furnish the report by August 31, 1986, through his High Court and the Registrar of every High Court shall ensure that compliance with the present direction is made."

.....

.....

". . . . We are of the view that the petitioner should have access to information and should be permitted to visit jails, children's homes, remand homes, observation homes, borstal schools and all institutions connected with housing of delinquent or destitute children. We would like to point out that this is not an adversary litigation and the petitioner need not be looked upon as an adversary. She has in fact volunteered to do what the State should have done. We expect that each State would extend to her every assistance she needs during visit as aforesaid. We direct that the Union Government—respondent no. 1—shall deposit a sum of rupees ten thousand for the time being within two weeks in the Registry of this Court which the petitioner can withdraw to meet her expenses.

We would like to make it clear that the information which the petitioner collects by visiting the children's institutions in different States as indicated above is intended to be placed before this Court and utilised in this case and not intended for publication otherwise."

[Vide order dated 5th August, 1986]

"If a child is a national asset, it is the duty of the State to look after the child with a view to ensuring full development of its personality. That is why all statutes dealing with children provide that a child shall not be kept in jail. Even apart from this statutory prescription, it is elementary that a jail is hardly a place where a child should be kept. There can be no doubt that incarceration in jail would have the effect of dwarfing the development of the child, exposing him to beneful influences, coarsening his conscience and alienating him from the society. It is a matter of regret that despite statutory provisions and frequent exhortations by social scientists, there are still a large number of children in different jails in the country as is now evident from the reports of the survey made by the District Judges pursuant to our order dated 15th April, 1986. Even where children are accused of offences, they must not be kpet in jails. It is no answer on the part of the State to say that it has not got enough number of remand homes or observation homes or other places where children can be kept and that is why they are lodged in jails. It is also no answer on the part of

A the State to urge that the ward in the jail where the children are kept is separate from the ward in which the other prisoners are detained. It is the atmosphere of the jail which has a highly injurious effect on the mind of the child, estranging him from the society and breeding in him aversion bordering on hatred against a system which keeps him B in jail. We would therefore like once again to impress upon the State Governments that they must set up necessary remand homes and observation homes where children accused of an offence can be lodged pending investigation and trial. On no account should the children be kept in jail and if a State Government has not got sufficient accommodation in its remand homes or observation homes, the C children should be released on bail instead of being subjected to incarceration in jail."

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". . . . It is absolutely essential, and this is something which we wish to impress upon the State Governments with all the earnestness at our command, that they must set up Juvenile Courts, one in each district, and there must be a special cadre of Magistrates who must be suitably trained E for dealing with cases against children. They may also do other criminal work, if the work of the Juvenile Court is not sufficient to engage them fully, but they must have proper and adequate training for dealing with cases against juveniles, because these cases require a different type of procedure and qualitatively a different kind of approach."

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"We would also direct that where a complaint is filed or first information report is lodged against a child below the age of 16 years for an offence punishable with imprisonment of not more than 7 years, the investigation shall be completed within a period of three months from the date of G filing of the complaint or lodging of the First Information Report and if the investigation is not completed within this time, the case against the child must be treated as closed. If within three months, the chargesheet is filed against the child in case of an offence punishable with imprisonment of not more than 7 years, the case must be tried and disposed

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of within a further period of 6 months at the outside and this period should be inclusive of the time taken up in committal proceedings, if any ....." A

".... We would direct every State Government to give effect to this principle or norm laid down by us in so far as any future cases are concerned, but so far as concerns pending cases relating to offences punishable with imprisonment of not more than 7 years, we would direct every State Government to complete the investigation within a period of 3 months from today if the investigation has not already resulted in filing of chargesheet and if a chargesheet has been filed, the trial shall be completed within a period of 6 months from today and if it is not, the prosecution shall be quashed." B C

[Vide order dated 13th August, 1986]

"In regard to Sub-Jails, no reports have been received in respect of such jails of 14 districts of Maharashtra. Though this matter was listed on 14.11.1986 for final disposal, an adjournment became imperative in view of the failure of compliance with the directions in the manner indicated above and the matter is adjourned till 2.12.1986. We direct the Registrars of the High Courts of the States in which the districts indicated above are located to ensure compliance with the previous directions by 30.11.1986. We hope and trust that special care will be taken to ensure compliance and this Court will not be forced to take any stringent action." D E F

[Vide order dated 21st Nov., 1986]

9. It is true that with the active and willing co-operation of the respective States, the progress made in the proceedings would have been far more substantial. It is also true that several of the States and the authorities have not, *prima facie*, realised the seriousness and the magnitude of the problem. Some states pleaded financial constraints in implementing the directions. G

The detention and mal-treatment of children in violation of the law is far too serious a matter to be looked at with any complacence, and unfortunately, a stage has now been reached where this Court H

A cannot be content with the expectation of compliance with its orders in these proceedings but would have to go further and exact it. The States have to be more honest about their obligations to the delinquent-children. Children misbehave because, perhaps, the society and the elders have,—may be—behaved worse. Society is becoming increasingly inhospitable to its weak. By ignoring the non-custodial alternaB tives prescribed by law and exposing the delinquent-child to the trauma of custodial-cruelty, the state and the society run the serious risk of losing the child to the criminal clan. This is no more a matter of concession to the child; but its constitutional and statutory right.

Even so, unduly harsh and coercive measures against the states and the authorities might themselves become counter-productive. In C the matter of affirmative-action the willing cooperation of the authorities must, as far as possible, be explored. If the proceedings are allowed to be diverted at every stage into punitive proceedings for non compliance, the main concern and purpose of the proceedings might tend to be over-shadowed by its incidental ramifications. The coercive D action would, of course, have to be initiated if persuasion fails. We are dealing with a large number of states and authorities. There are 32 respondents, 429 districts in which reports of the District Judges have been called for and nearly 400 of them have submitted their reports. There are innumerable jails, sub-jails, remand-homes, custodial-institutions etc. This court issued notice to the Home-Secretaries of E the States to file their reply by 15-7-1988 finally.

The applicant has complained that "the non-participation of counsel has assumed focal importance to the case" and has also aired a grievance about the "Court's overwhelming use of discretionary powers to accommodate every one except the petitioner". The point to F note is that learned counsel for the respondent-States and the applicant are not in the same position. The former were accountable to the Court to report compliance by their respective client-States with the directions issued by the Court. Learned counsel appeared to have sought extensions of time. Their request might or might not have been made with perfect justifications. Grant of their request does not G amount to discriminatory treatment meted out to the applicant who was not in any such position representing any party who was required to report compliance with the Court's directions. The two are not comparable positions. Indeed, in January 1988, the case appears to have been adjourned for about six weeks on grounds of ill-health of the applicant herself. While we understand the concern of the appli-H cant in regard to the delays occasioned, we are unable to appreciate

the unconcealed, cynical scorn the applicant has permitted to exhibit towards the process of this Court. Instead of sustaining and strengthening the process of this Court in what is clearly a sensitive and difficult task of some importance and magnitude, the applicant has chosen to give herself the role of a self-appointed invigilator and has made a generous use of that position by her barbed quips and trenchant comments against the court. By this, we think, she has done no service either to herself or to the cause she sought to serve. Scornful impatience can also wreck a mission.

The attitudes of the applicant is perhaps conditioned and influenced by her own perceptions of what she considers to be the real and larger-issues—apart from the immediate problems of the case—involved in the proceedings. Applicant says:

> ". . . . . Therefore, it is important to establish principles of accountability of the GOI, the States and the Judiciary."
>
> "In the last analysis both the dignity of the Court, the honour of the institution of judiciary and the effectiveness of judicial process are at stake."

We are afraid, the references to judicial-accountability, having regard to the specific-context in which they are made in the context, really mean no more than that the proceedings are to be conducted in conformity with the standards of promptitude and dispatch of which the applicant chooses to constitute herself the judge, to sit in judgment over the alleged short-comings in that behalf. The concept of public accountability of the judicial system is, indeed, a matter of vital public-concern for debate and evaluation at a different plane. All social and political institutions are under massive challenges and pressures of reassessment of their relevance and utility. Judicial institutions are no exception. The justification for all public institutions are related to and limited by their social relevance, professional competence and ability to promote the common-weal. There is no denying that a debate is necessary and, perhaps, is overdue.

But, for that reason courts of law, in their actual day-to-day judicial work, cannot allow the incantations and professions of these principles to enable parties to judicial-adjudications to constitute themselves the overseers of the judicial performance and accountability in the individual-case in which they are immediately concerned and

A permit themselves comments and criticism of the judicial-work in the particular case. The application and its annexures are replete with statements intended to demostrate the inefficacy of the proceedings before this Court, disclosing a cynical distrust of its utility and effectiveness. Indeed, while comments and criticisms of judicial-functioning, on matters of principle, are healthy aids for introspection and B improvement, the criticism of the functioning of the Court in the course of and in relation to a particular proceeding by the parties to it borders on a conduct intended or tending to impair the dignity, authority and the functional-disposition of the court.

10. The attitude "we call respect for law" says a learned author C "is a complex one". It "may consist for example, in the belief that the law is democratic and fair and that it contributes to social progress or that it protects individual rights. They may include pride that the law of one's country is by and large enlightened and progressive, satisfaction that one lives under the protection of an adequate legal system, respect or even admiration for institutions or persons involved in D creating or administering the law and for symbols of the law ....." [See "The Authority of Law" by Joseph Raz, 1979 Edn. page 251]. It is, therefore, thought important to maintain respect and dignity of the Courts and its officers whose task is to uphold and enforce the law because without such respect public faith in the administration of justice would be undermined and the law itself would fall into dis- E respect. What excites general dissatisfaction with the judicial determinations of the Court also indisposes the minds of litigants to obey them shaking men's allegiance to law. "Laws are not made by Legislatures alone, but by the law abiding as well; the Statute ceases to embody a law (except in a formal sense) in the degree that it is widely disregarded."

F

11. This is not to deny the broader right to criticise the systemic inadequacies in the larger public interest. It is the privileged right of the Indian citizen to believe what he considers to be true and to speak-out his mind, though not, perhaps, always with the best of tastes; and speak perhaps, with greater courage than care for exactitude. G Judiciary is not exempt from such criticism. Judicial institutions are, and should be made, of stronger stuff intended to endure and thrive even in such hardy climate. But we find no justification to the resort to this freedom and privilege to criticise the proceedings during their pendency by persons who are parties and participants therein.

H 12. The first ground, therefore, does not justify the withdrawal

of this public interest litigation. If we acknowledge any such status of a Dominus-Litis to a person who brings a public interest litigation, we will render the proceedings in public interest litigations vulnerable to and susceptible of a new dimension which might, in conceivable cases, be used by person for personal-ends resulting in prejudice to the public-weal. A

B

13. The second ground for withdrawal is no better. The ground is that the applicant, in view of what transpired in the two immediately preceding dates of hearing of the case, is unable to prosecute the proceedings with "dignity" and that, therefore, the applicant is entitled to withdraw the proceedings. There is, and can be, no disagreement with the principles that even the humblest citizen of the land, irrespective of his station in life, is entitled to present his case with dignity and is entitled to be heard with courtesy and sympathy. Courts are meant for, and are sustained by, the people and no litigant can be allowed to be looked upon as a supplicant or an importuner. It is, unfortunate that the applicant claims that there was any shortcoming in this behalf in her case. We regret that there should at all have been any occasion for this. Let us see whether there is any real justification for this. C D

At one of the hearings of the case, the Court had occasion to point out to the applicant who was not present in Court at the commencement of the hearing and who sought to interrupt the submissions of Shri Bhasme, learned Senior Counsel, who was on his legs, that she having been absent at the commencement of the proceedings could not interrupt the proceedings. It is the practice of courts that when parties-in-person or even learned counsel who were not initially present but seek to participate in the proceedings, a formal submission is made to the court in that behalf. This is nothing more than a matter of courtesy and decorum. As the applicant straight away sought to interrupt the learned counsel who was on his legs, she was told of the impropriety. Her re-action to this as set out in the application is this: E F

> "The petitioner states that she arrived in Court just 40 seconds after her case was called." G

> "The petitioner states that Mr. Bhasme Counsel for Maharashtra, had just started his argument that as the counsel for Maharashtra, he found himself with papers of Himachal Pradesh. He said that in the absence of correct documents not being available to him, and the Home H

A Secretary, they be allowed an adjournment of 12 weeks."

"The petitioner states and submits that she had a right to reply to Mr. Bhasme's outlandish argument. The petitioner states and submits that she come to the Court as a responsible citizen at her personal cost. She is not a paid
B professional ....."

The question was not of the right of the applicant to make such submissions as she considers appropriate but one of the manner of its exercise. But the applicant does not seem to appreciate this. Indeed she did exercise her right and made a strong criticism of Sri Bhasme's
C submissions.

14. The court also had occasion to point out to the applicant the impropriety of addressing communications to Judges by postal letters in regard to the pending cases or on matters bearing on them. The re-action of the applicant which has been set out in strong assertions is,
D again, that she is entitled to address such communications and in para 7(b) of her written submissions relies on the position, *inter alia*, that letters to the Courts have been the basis of many public interest litigations; that applicant was not a private litigant and got no benefit from the letters she wrote, that Judges were themselves inviting the citizens to write to the Court etc. What this argument over-looks is that the
E initiation of a public interest litigation or proceedings for issue of a writ of Habeas Corpus on the basis of letters reflects and symbolises the Court's anxiety to relax the rigour of formal pleadings. However, in proceedings which are already initiated and are pending it would be inappropriate for a party to the proceedings to address letters directly to the Judges. What is sought to be brought to the notice of the Court
F should, as far as possible, be filed in the Registry for being placed before the appropriate bench or submitted in the open court. There might be extra-ordinary circumstances when a party is compelled to resort to the expedience of a letter or a telegram. Even in such a case, it would be appropriate to address them to the Registry to be placed before the appropriate bench. The difficulties arising out of such
G direct-communications are too obvious to require any elaborate discussion. The opposite parties would not have had the benefit of the information contained in the communication. Sometimes, even the other Judges on the Bench would not know. The authenticity and even the delivery of the communication may be disputed. It is only proper that Judges who have to decide the case should not be drawn into such
H controversies. That apart the office would not be able to check the

papers and process them for appropriate judicial notice. Judicial tradition considers, for good reason, such practice undesirable. Applicant, however, has, and is entitled to, her own views in the matter. We regret our inability to accept them.

Another instance referred to by the applicant as impairing her 'dignity' arose in the context of the court pointing out to the applicant the impropriety of her resorting to the press to air her grievances against the proceedings in court and of making what the Court considered, a factually inaccurate statement.

Indeed on the subsequent date of hearing, the Court had pointed out to the applicant of her misunderstanding of what she stated to the press and that the "warning" which the applicant thought was administered to her and made a public complaint about, was not directed towards her but was attributed by her erroneously to herself. This clarification should have been sufficient. But the clarification of the Court, apparently, did not re-assure her. Referring to it she says:

> "On 27.08.88, the Court explained that the warning "we will put you on the dock, if you utter another word", was addressed to the counsel for Maharashtra while I was warned that I was in contempt of Court for writing a letter to the Court. *Well, as I perceived it them both the threats were held out to me because I was on my legs at that time.*"

Frankly, we are unable to unravel the purpose of this predisposition to and determination on her part to misunderstand. We shall leave it at that.

15. Applicant has her own notions of the relationship between the Court and the parties. She asserts:

> ". . . . . While the litigants have entitlements the Court has decision making powers. However, the Court's special powers do not make it more equal, nor do they make the Court the fountain-head of justice. The citizen-petitioner coming to court on behalf of fellow citizens whose rights are violated by the State is certainly an equal participant and not a subsidiary of the institution."

> ". . . . . Institutions are made by the conduct and the quality of work and output of the persons who man it. My

application No. 3128/88 records the conduct of persons who man it. This record is not a slur on the institution of the judiciary but a critique perhaps, of a dysfunctional institution."

It is true that the parties who seek justice at the hands of the Court are neither its subordinates or subsidiaries. But the notion of an equal participation, in its practical applications, presents difficulties and cannot be stretched to the point where the court could share the responsibility, and the powers that go with it, of regulating the proceedings of the court with any of the parties before it. In the existing system, the parties who seek recourse to courts have to submit themselves to the jurisdiction and discipline of the Court. Their conduct, in relation to the proceedings, is liable to be regulated by the Court. This is not a matter of expression or assertion of any superiority but is merely a necessity and a functional-imperative.

The second ground on which withdrawal is sought is, therefore, wholly insubstantial and proceeds on what appear to be certain subjective susceptibilities of the applicant which, to the extent they are irreconcilable with the discipline of the Court, cannot be countenanced.

16. The third ground is that the proceedings are brought as a "voluntary action" and that applicant is entitled to sustain her right to be the "petitioner-in-person" in a public interest litigation and that the proceedings cannot be proceeded with after de-linking her from the proceedings. This again proceeds on certain fallacies as to the rights of a person who brings a public interest litigation. Any recognition of any such vested right in the persons who initiate such proceedings is to introduce a new and potentially harmful element in the judicial administration of this form of public law remedy. That apart, what is implicit in the assertion of the applicant is the appropriation to herself of the right and wisdom to determine the course the proceedings are to or should take and its pattern. This cannot be recognised. In the present proceedings the Court has already gone through and has initiated an elaborate exercise as indicated in the orders excerpted earlier. The petition cannot be permitted to be abandoned at this stage. Only a private litigant can abandon his claims.

Though the main prayer is one for the withdrawal of the petition, in the written submissions, however, the applicant seems to strike a different note and seeks to participate in the proceeding subject to

certain conditions. No litigant can be permitted to stipulate conditions with the Court for the continuance of his or her participation. A

There is, thus, no substance in any of the grounds.

17. Now at the end of the day, the order that commends itself as appropriate, having regard to all in the circumstances of the case, is to refuse permission for the withdrawal of the petition, and to direct that the applicant be deleted from the array of parties in this proceeding. The proceedings shall now be proceeded with a direction to the Supreme Court Legal Aid Committee to prosecute the petition together with the aid and assistance of such persons or agencies as the Court may permit or direct from time to time. B C

18. The other prayer in the application is for modification of the order dated 5.8.1986 and 13.8.1986 forbidding the applicant from using the information collected by her during her visits to jails and other custodial institutions pursuant to the Court's order in 1986. This permission cannot be granted during the pendency of the proceedings as the information was gathered for purposes of the case and pursuant to the directions of this Court. D

19. In the result, the Criminal Miscellaneous Petition is dismissed; but the name of the Supreme Court Legal Aid Committee shall be substituted in place of that of the applicant. There will be no order as to costs. E

M.L.A. Petition dismissed.