

R.D. UPADHYAY

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v.

STATE OF ANDHRA PRADESH AND ORS.

NOVEMBER 29, 2000

[DR. A.S. ANAND, C.J., M. JAGANNADHA RAO AND
V.N. KHARE, JJ.]

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Undertrial Prisoner—Lunatic—Languishing in jail in West Bengal Since 1962—Medical aid—State failing to provide—Compensation—Report submitted by Chief Judicial Magistrate indicating that medical treatment provided after High Court intervened—Superintendent, Jail did not submit even medical reports of physical and mental state of prisoner from 1964 to 1995—A.C.C.M. made no efforts to take any action—Even after Supreme Court pointed out existing state of affairs, there has been no fixing of accountability—Supreme Court showing its anguish—Held, there has been complete violation of statutory provisions contained in Prisons Act, Code of Criminal Procedure and Indian Lunacy Act—Courts can award reasonable compensation to express court's condemnation of tortious act committed by State—Since the detenu has no known relatives, and he has been accommodated in the Home maintained by Missionaries of Charity (Brothers) at Kancharapara, an institution which cares for sick and dying destitutes free of cost, a sum of Rs. 2 lacs would be paid by State Government to the said institution as an interim measure—Amicus Curaie and counsel for State Government would file a submission/suggestion note for assistance of court to issue necessary guidelines and directions regarding detenus like the present one.

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CIVIL ORIGINAL JURISDICTION

I.A. No. 4

IN

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Writ Petition (C) No. 559 of 1994.

Under Article 32 of the Constitution of India.

Altaf Ahmad, Additional Solicitor General, Kapil Sibal (AC) (NP), Ranjit

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- A Kumar, P.P. Malhotra, Taps Ray, Ms. Binu Tamta, S.W.A. Qadri, Ashok K. Shrivastava, Ms. Sushma Suri, A.K. Sharma, B.K. Parsad, B.V. Balramdas, D.S.Mahra, Bipul Kumar, H.K. Puri, S.K.Puri, Rajesh Shrivastava, Ujjwal Banerjee, B.B. Singh, N.K. Sharma, Ranjan Mukerjee, Kailash Vasdev, R.Rahim, B.S. Chahar, for Ashok Mathur, Gopal Singh, Anil Srivastava, Uma Nath Singh, V.G. Pragasam, G. Prakash, Ms. Beena Prakash, Jyotish A.P., Jayshree Anand, Addl. Advocate General for State of Punjab, G. Sivabalamurgan, Rajiv Kumar Sharma, R.S. Suri, Sushil Kr. Jain, Addl. Advocate General for state of Rajasthan, A. Mishra, A.P. Dhamija, R.B. Misra, Ms. Sangeeta Sharma, Ms. A. Subhashini, Ms. H. Wahi, Amitesh Lal, S.V. Deshpande, G. Prabhakar (NP), Ms. Rani Jethmaiani, J.S. Attri, K.B. Rohtagi, K.S. Bhati, Prem Malhotra, K. K. Rai (N.P), R.S. Jena, K.H. Nobin Singh, Ms. Kamini Jaiswal, Mahabir Singh, S.R. Sharma, K. Ram Kumar, B.Sridhar, K. Kiran and N.Ganpathy, for the appearing parties.

The following Order of the Court was delivered :

- D We have heard Mr. Ranjit Kumar, learned Senior counsel appearing as Amicus, assisted by Ms. Binu Tamta, learned counsel and Mr. Tapas Ray, learned Senior Counsel appearing for the state of West Bengal, assisted by Mr. H K Puri, learned counsel.
- E In our order dated 16th December, 1999, we had traced the history of confinement of Ajoy Ghosh. From the report, submitted by the Chief Judicial Magistrate, dated 15th January, 2000, it clearly emerges that between the period 1964 and 1995, learned court of A.C.M.M. made no efforts to take any action in the case of the unfortunate lunatic undertrial prisoner Ajoy Ghosh languishing in jail since 1962. Even medical treatment was provided to him only after the High Court intervened. The A.C.M.M. as well as the Jail authorities had taken no action in that behalf. The Superintendent Presidency Jail, Calcutta even later on took no action to send medical reports of the physical and mental state of Ajoy Ghosh from 1964 to 1983 and thereafter till 1995. There may be many like Ajoy Ghosh languishing in West Bengal or other jails of the country. There has been a complete violation of the statutory provisions contained in the Prisons Act, 1990; the Code of Criminal Procedure; and the Indian Lunacy Act, 1912 in dealing with the case of Ajoy Ghosh. We are anguished. The authorities are required to act according to law but the law has been unfortunately respected in its breach. There has been no fixing of accountability even after this Court pointed out the existence of the sad state of affairs concerning Ajoy Ghosh. We shall revert to this aspect while
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finally disposing of this application. A

We have suggested to learned Amicus as well as to the learned counsel appearing for the State of West Bengal to file a submission/suggestion note for assistance of the Court to issue such guide-lines and directions as may be necessary for ensuring that the detenus like Ajoy Ghosh do not suffer in the manner in which Ajoy Ghosh has suffered. B

For the time being, we find that Ajoy Ghosh, under the directions of this Court, has been accommodated in the Home maintained by Missionaries of Charity (Brothers) at Kancharapara. The letter from the Regional Superior, Br. Prem Anand M.C. of Missionaries of Charity dated 12th February, 2000 shows that they would take care of Ajoy Ghosh and their services would be completely free and that the State Government need not pay for his expenses. It is also noticed from that letter that Missionaries of Charity care for the poorest of the poor, the sick and dying destitutes irrespective of religion, cast, creed and colour, free of cost and they depend upon donations from generous persons. C

We could have directed some interim compensation to be paid to Ajoy Ghosh but considering his present state of mental and physical health, that would not be of any avail. He has no known relatives either. We are conscious of the fact that money award can be calculated only to make good financial loss. It is not an award for the sufferings already undergone which are incapable of calculation in terms of money. Money compensation may be awarded so that something tangible may be procured to replace something of the like nature which has been destroyed or lost. Money award cannot, however, renew a physical frame that has been battered and shattered due to callous attitude of others. All that the courts can do in such cases is to award such sums of money, which may appear to be giving of some reasonable compensation, assessed with moderation, to express court's condemnation of the tortious act committed by the State. D

As an interim measure, we direct that a sum of Rs. two lacs shall be paid by the State of West Bengal to the Missionaries of Charity (Brothers), Howrah, by way of donation. E

We make it clear that our direction is not to hurt the sentiments of the Missionaries of Charity expressed in their letter but in appreciation of it and this payment is not being made by way of expenses for taking care of Ajoy Ghosh but only with a view to assist the Missionaries of Charity to carry on with the good work that they are doing. Let the donation by the State be made F

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A within six weeks and this Court informed about it.

We adjourn this matter by seven weeks, during which period a submission/suggestion note may be filed.

R.P.

I.A. is pending.