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2025 SCC OnLine SC 576

In the Supreme Court of India

(Before B.V. Nagarathna and Prasanna B. Varale, JJ.)

Maatr Sparsh an Initiative by Avyaan Foundation ... Petitioner;

Versus

Union of India and Others ... Respondents.

Writ Petition (Civil) No. 950/2022

Decided on February 19, 2025

Advocates who appeared in this case :

Mr. Animesh Rastogi, Adv., Ms. Neha Rastogi, Adv., Mr. Abhimanue Shrestha, AOR, For Petitioner(s)

Ms. Aishwarya Bhati, ASG (Not present), Mr. K.M. Nataraj, A.S.G. (Not present), Sharath Nambiar, Adv., Sanjay Kumar Tyagi, Adv., Sridhar Potaraju, Adv., Shivika Mehra, Adv., Ms. B.L.N. Shivani, Adv., Dr. N. Visakamurthy, AOR, Mr. Manish Kumar, AOR, Mr. Divyansh Mishra, Adv., For Respondent(s)

ORDER

The petitioner herein, which is a non-Governmental organization, has filed this writ petition in public interest seeking the following reliefs:

"a. Issue a Writ, Order, or Direction in the nature of Mandamus to all Respondents to act and construct feeding rooms and child care rooms etc. or any other facilities related to infants and mothers at public places;

b. Issue a Writ, Order, or Direction in the nature of Mandamus to all Respondents to ensure that the fundamental right of nursing mother and infants are protected;

c. Pass such other orders as may be deemed fit in the facts and circumstances of this case."

2. We have heard learned counsel for the petitioner and learned counsel appearing for the respondent no. 1/Union of India. Notice to respondent nos. 2 to 36 has not been issued in the matter.

Facts of the case:

3. According to the petitioner, it is an NGO formed with a view to setting up feeding rooms, child care rooms and crèche at public places with the help of Government and public support. That one of its Directors, namely Advocate Neha Rastogi, realized the impediments faced by nursing mothers when she gave birth to a child. Her impediment was that she was afraid to go out in public because of the

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lack of facilities for feeding her child at public places and there was a sore need for breast-feeding rooms and child-care in all public places.

Petitioner's Submissions:

4. Learned counsel for the petitioner highlighted the importance of early child-care and mother's milk for a child, and submitted that depriving any child of mother's milk due to lack of basic facilities at public places infringes the fundamental right of a child and the mother. Learned counsel further submitted that in today's scenario, where women are equally participating in the growth of the nation and are stepping outside their homes in large numbers, it is imperative that child-care facilities are available in the public spaces and premises. He submitted that it was not their case that the governments have not done anything in this regard; they highlighted different provisions of law which require setting up of crèche facilities. However, the submission was that no concrete steps have been taken by them to provide such basic facilities at public places, and that nursing a child in an environment which is conducive to a mother's dignity and privacy is a fundamental right. Learned counsel prayed that specific guidelines and/or directions may be issued in respect of construction of baby feeding rooms and child-care rooms at public places throughout the country.

5. The learned counsel brought to our notice an earlier writ petition filed by the director of the petitioner NGO before the Delhi High Court titled *Master Avyaan Rastogi through Guardian Neha Rastogi* v. *Union of India*, WP (C) No. 7356 of 2018. In that proceeding, the Union of India had informed the High Court that it considered feeding rooms and child -care rooms as essential services and that it had written a letter dated 27.08.2018 to all States and Union Territories requesting them to set up feeding rooms and child-care rooms for women and children. The Delhi High Court, vide order dated 06.11.2019, disposed of the petition directing the respondents therein to maintain the feeding rooms which have been made operational so far and it noted that it expects more such feeding rooms/changing rooms to be made operational.

6. During the course of submission, learned counsel for respondent no. 1/Union of India, with reference to their affidavit, drew our attention to communication dated 27.02.2024 issued by the Secretary, Ministry of Women and Child Development, Government of India to the Chief Secretary/Administrator of all States/Union Territories, *inter alia,* in the context of the relief(s) sought for by the petitioner herein. It was submitted that the State Governments/Union Territories would have to comply with the advisory in the form of recommendation issued by the Central Government having regard to Articles 14 and 15(3) of the Constitution of India.

7. Learned counsel for the petitioner submitted that if the State

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Governments/Union Territories comply with the advisory issued on 27.02.2024, the purpose of filing this writ petition would be fulfilled.

8. Learned counsel for respondent no. 1/Union of India further submitted that a direction may be issued in this regard to the State Governments/Union Territories.

9. In this regard, it is relevant here to discuss the importance of breast-feeding for a child and the rights of nursing mothers. Breast-feeding is an integral component of a child's right to life, survival, and development to the highest attainable standard of health. It is an integral part of a woman's reproductive process and is essential for the health and well-being of both mother and the child. Experts recommend that children be exclusively breast-fed for the first six months of their life and from the age of six months, children should commence consuming safe and adequate complementary foods while continuing to be breast-fed for up to two years of age or beyond. This view is also supported by Section 5(a) of the National Food Security Act, 2013.

10. Further, the health of infants cannot be viewed in isolation. Rather, it has to be seen as being linked with the status of women and their roles as mothers and as contributors to social and economic development of the nation. As the right of a child to be breast-fed is inextricably linked with the mother, she also has the right to breast-feed her child. Consequently, this means that the State has the obligation to ensure adequate facilities and environment to facilitate mothers to breast-feed their children. Such a right and the obligation emanate from Article 21 of the Constitution of India and the foundational principle of ‘the best interest of the child’ as enshrined in international law as well as the Juvenile Justice (Care and Protection of Children) Act, 2015.

11. Further, Article 39(f) of the Constitution of India requires the State to direct its policy towards the healthy development of children. It provides thus:

> “39. Certain principles of policy to be followed by the State. The State shall, in particular, direct its policy towards securing -
>
> * * *
>
> (f) *that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity* and that childhood and youth are protected against exploitation and against moral and material abandonment.”

12. The State also has a duty to raise the level of nutrition and the standard of living of its people. In this regard, Article 47 of the Constitution of India provides as follows:

> *“47. Duty of the State to raise the level of nutrition and the*

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standard of living and to improve public health.

The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health."

13. At the international level, Article 25(2) of the Universal Declaration of Human Rights provides as follows:

"Article 25

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection."

14. The Joint Statement dated 17.11.2016 by the UN Special Rapporteurs on the Right to Food, Right to Health, the Working Group on Discrimination against Women in law and in practice, and the Committee on the Rights of the Child in support of increased efforts to promote, support and protect breast-feeding, highlight that breast-feeding helps infants and young children thrive and survive; that it is safe, clean, and contains anti-bodies which help protect against many illnesses. It notes that, if breast-feeding is increased to near universal levels, it could save more than 8,20,000 lives every year. It raises concern over stigmatization regarding breast-feeding in public places and at workplaces as it exposed women to unnecessary stress, pressure or intimidation. As regards the obligation of States, it noted as follows:

"We remind States of their obligations under relevant international human rights treaties to provide all necessary support and protection to mothers and their infants and young children to facilitate optimal feeding practices. States should take all necessary measures to protect, promote, and support breast-feeding, and end the inappropriate promotion of breast-milk substitutes and other foods intended for infants and young children up to the age of 3 years.

* * *

States should prevent and protect from discrimination, including exclusion from public space, linked to breast-feeding. In addition, States should ensure that women can benefit from adequate maternity protection in the workplace, including through the promotion of policies that support nursing mothers."

15. Additionally, it is worthwhile to reproduce relevant portions of the United Nations Convention on the Rights of the Child ("UNCRC") as follows:

"Article 3

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1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, *the best interests of the child shall be a primary consideration*.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

* * *

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, *the right to know and be cared for by his or her parents.*

* * *

Article 24

1. States Parties recognize the *right of the child to the enjoyment of the highest attainable standard of health* and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

* * *

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, *the advantages of breast-feeding*, hygiene and environmental sanitation and the prevention of accidents;

* * *"

16. It would not be wrong at this instance to remind the citizens of this nation of their duty to "renounce practices derogatory to the dignity of women", as enshrined in Article 51A(e) of the Constitution of India. Over and above the duty of the State to facilitate the exercise of

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the right of nursing mothers to breast-feed their children, the citizens must ensure that the practice of breast-feeding in public places and at workplaces is not stigmatized.

17. We are conscious of the fact that we have not issued notices to the respondents/State Governments/Union Territories. However, we are satisfied that a communication has been addressed by the Secretary, Ministry of Women and Child Development, Government of India dated 27.02.2024 incorporating, *inter alia,* the prayer(s) sought for by the petitioner herein. For ease of reference, the said communication is extracted as under-

> "D.O. No. 02/4/2024-Mission Shakti
>
> 27th February, 2024
>
> Dear Secretary,
>
> I am writing to underscore the need to create Gender Friendly Spaces in public places that is of paramount importance for ensuring the well-being and taking good care of the needs of working women within and outside the office premises. This becomes incumbent as the country aspires to become a developed nation by the year we celebrate 100 years of India's Independence in 2047, that is not possible unless increased and meaningful participation of women in the workforce is ensured.
>
> 2. I would like to highlight here that due to a slew of measures taken by the Government in the past 5 years, the Female Labour Force Participation Rate in India has increased from 23.3% to 37.0%. The World Bank estimates that even if half of the women in India can join the workforce, the country can potentially boost its economic growth by 1.5 percentage points, thus raising India's GDP to 9 percent per year. To achieve this, the barriers to women's workforce participation have to be addressed sooner than later.
>
> 3. To continue the existing efforts of the Government of India through adoption of a comprehensive whole of government approach, such as the Palna Scheme (Anganwadi-cum-Creches), providing free day care and creche facilities for working women in urban areas, the recent joint advisory issued by Ministry of Women and Child Development with Ministry of Labour and Employment and also another advisory with Ministry of Road Transport and Highways to employers for promoting women's workforce participation as well as expansive legislative frameworks such as the POSH Act, 2013, the Ministry seeks your support in creating gender-friendly spaces in workplaces of Ministries/Departments along with their affiliated institutions, PSUs and infrastructure to promote women's workforce

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participation. An indicative list of activities is outlined below:

i. The installation of Sanitary Pad vending machines and incinerators in washrooms addresses the fundamental menstrual hygiene needs of female employees.

ii. Allocating space for feeding rooms, restrooms and yoga rooms. These facilities cater to the physical and mental health needs of female employees that will also ensure compliance of the provisions of the Maternity Benefit (Amendment) Act, 2017. This Act mandates support for women during their post-delivery period.

iii. Incorporating at least one creche facilities in every public building having 50 or more female employees to support working mothers, promoting gender equality and facilitating the retention and advancement of talented female professionals.

4. This may entail expenditure and many people may not find it of that much importance, but investing in these essential facilities will certainly have a long-lasting impact on the well-being and productivity of females engaged in the workforce. By creating a supportive and inclusive workplace, we not only comply with legal standards but also encourage women's full and meaningful participation, contributing significantly to the growth and success of the country. Similarly, in case of bus-stations, schools, colleges and universities, places of worship, etc. provision should be made for sanitary pad vending machines, feeding rooms etc. at all conspicuous locations depending on the footfall of women and girls.

5. I shall be grateful if you could kindly take necessary steps in earnest and formulate a time-bound action plan to implement all these far-reaching measures in your Departments and other offices in the run up to next International Women's Day on 8th March, 2024. It would be appreciable if some measures, e.g., installation of sanitary napkin vending machines are done immediately.

6. I would be happy to know the action taken by you in this regard and would be delighted if you could share some good practices if they have already been implemented in your Departments or other Offices.

With regards,

Yours sincerely

(Indevar Pandey)

Chief Secretary/Administrator of all States/UTs."

18. On a perusal of the same, we find that the advice for setting up

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of the aforesaid facilities at public places is for the purpose of ensuring privacy and comfort of nursing mothers, who have infants, and for the benefit of infants. The above, if acted upon by the State Governments/Union Territories, would go a long way in facilitating nursing mothers and infants so that their privacy is ensured at the time of feeding the infants.

19. We find that the said advisory which has been issued by the Central Government is in accordance with the fundamental rights enshrined under Articles 14 and 15(3) of the Constitution of India. We therefore, direct respondent no. 1/Union of India to incorporate the aforesaid advisory in the form of a reminder communication to the Chief Secretary/Administrator of all State Governments/Union Territories along with a copy of this order so that the States/Union Territories would comply with the aforesaid advisory issued, which would facilitate women, who are nursing infants particularly in public places.

20. We observe that in the existing public places as far as practicable, the States/Union Territories should ensure that the aforesaid directions are given effect to.

21. Insofar as the public buildings which are at the stage of planning and construction, it may ensure that sufficient space is reserved for the purposes, referred to above, in the form of child-care/nursing rooms.

22. In addition, the Union of India may issue further advisories to the State Governments/Union Territories to communicate to all the Public Sector Undertakings through the Chief Secretaries/Secretary, Department of Women and Child Welfare, to set apart separate rooms/accommodation for child care/feeding & nursing of infants by mothers. If such advisories are issued by the Union of India to the State Governments/Union Territories, we are confident that the same will be construed in the spirit of Articles 14 and 15 (3) of the Constitution of India and in the light of right to privacy of nursing mothers and for welfare of the infants.

23. Respondent No. 1/Union of India shall comply with the aforesaid direction(s) within a period of two weeks from the date of receipt of this order.

The Writ Petition is disposed of in the aforesaid terms.

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