SPEED POST

No. 3028/MS/WRIT/2016

D.NO.441/2003/SC/PIL (W)

All Communications should be addressed to the Registrar, Supreme Court by designation, NOT by name

SUPREME COURT
INDIA
NEW DELHI

Dated: 16th November, 2016

From: Assistant Registrar PIL (Writ)

To :

1. The Chief Secretary
   State of Andhra Pradesh,
   Secretariat, Hyderabad
   Andhra Pradesh

2. The Chief Secretary
   State of Arunachal Pradesh,
   Secretariat, Itanagar
   Arunachal Pradesh

3. The Chief Secretary
   State of Assam,
   Secretariat, Gauwhati
   Assam

4. The Chief Secretary
   State of Bihar,
   Secretariat, Patna
   Bihar

5. The Chief Secretary
   State of Chhattisgarh,
   Secretariat Raipur,
   Chhattisgarh

6. The Chief Secretary
   State of Goa
   Secretariat, Panaji
   Goa

7. The Chief Secretary
   State of Gujarat,
   Secretariat, Gandhinagar
   Gujarat

कोर्ट केस/तत्काल

IMPORTANT COURT CASE

25-11-2016
(रवीन्द्र दत्त पालीवाल)
विशेष सचिव एवं
स्टाफ आफीसर, मुख्य सचिव
उत्तर प्रदेश शासन।

(कमलेश कुमार)
निजी सचिव,
सचिव, नगर विकास विभाग
उत्तर प्रदेश शासन

संख्या 1764/कोर्टकेस/एस.एन.वी./2016

8. The Chief Secretary
State of Haryana,
Secretariat, Chandigarh,
Haryana

9. The Chief Secretary
State of Himachal Pradesh,
Secretariat, Shimla
Himachal Pradesh

10. The Chief Secretary
State of Jammu & Kashmir,
Secretariat, Srinagar
Jammu & Kashmir

11. The Chief Secretary
State of Jharkhand,
Secretariat, Ranchi
Jharkhand

12. The Chief Secretary
State of Karnataka,
Secretariat, Bangalore
Karnataka

13. The Chief Secretary
State of Kerala,
Secretariat, Trivandrum
Kerala

14. The Chief Secretary
State of Madhya Pradesh,
Secretariat, Bhopal,
Madhya Pradesh

15. The Chief Secretary
State of Maharashtra,
Secretariat, Mantralaya,
Mumbai, Maharashtra

16. The Chief Secretary
State of Manipur
Secretariat, Imphal
Manipur

17. The Chief Secretary
State of Meghalaya,
Secretariat, Shillong
Meghalaya

18. The Chief Secretary
State of Mizoram,
Secretariat, Aizawl
Mizoram

19. The Chief Secretary
State of Nagaland,
Secretariat, Kohima
Nagaland

20. The Chief Secretary
State of Odisha,
Secretariat, Bhubaneshwar
Odisha

21. The Chief Secretary
State of Punjab,
Secretariat,
Chandigarh

22. The Chief Secretary
State of Rajasthan,
Secretariat, Jaipur,
Rajasthan

23. The Chief Secretary
State of Sikkim,
Secretariat, Gangtok
Sikkim

24. The Chief Secretary
State of Tamil Nadu,
Secretariat, Chennai,
Tamil Nadu

25. The Chief Secretary
State of Telengana
Secretariat, Hyderabad
Telangana

26. The Chief Secretary
State of Tripura,
Secretariat, Agartala
Tripura

27. The Chief Secretary
State of Uttrakhand (Uttaranchal)
Secretariat, Dehradun
Uttarakhand

28. The Chief Secretary
State of Uttar Pradesh
Secretariat, Lucknow
Uttar Pradesh

29. The Chief Secretary
State of West Bengal,
Secretariat, Kolkata,
West Bengal

30. The Chief Secretary
Union Territory of Andaman & Nicobar,
Secretariat, Port Blair

31. The Chief Secretary
Union Territory of Chandigarh,
Secretariat, Chandigarh-160001

32. The Chief Secretary
Union Territory of Dadra & Nagar Haveli
Secretariat, Silvassa

33. The Chief Secretary
Union Territory of Daman & Diu,
Secretariat, Moti

34. The Chief Secretary
Union Territory of N.C.T. of Delhi
Secretariat, I P Estate
New Delhi

35. The Chief Secretary
Union Territory of Lakshadweep,
Secretariat, Kavaratti - 682555

36. The Chief Secretary
Union Territory of Puducherry
Secretariat, Puducherry – 605001

37. The Member Secretary
National Legal Services Authority (NALSA)
12/11, Jam Nagar House
Shahjahan Road, New Delhi – 110011

IN THE MATTER OF:

WRIT PETITION (CIVIL) NOS. 55 & 572 OF 2003

(Under Article 32 of the Constitution of India)

E.R. Kumar & Anr. ... Petitioners

Versus

Union of India & Ors. ... Respondents

Sir,

I am directed to forward herewith for your information, compliance and necessary action a certified copy of the Order dated 11.11.2016 passed in the matter above -mentioned.

Please acknowledge receipt.

Yours faithfully,

17-11-16

Assistant Registrar

Encl. As above

NON-REPORTABLE

THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) No. 55 of 2003

E. R. KUMAR & ANR .... **Petitioner(s)**

Versus

UNION OF INDIA & ORS ....**Respondent(s)**

With

WRIT PETITION (CIVIL) No. 572 of 2003

DEEPAN BORA ... **Petitioner(s)**

Versus

UNION OF INDIA ....**Respondent(s)**

O R D E R

L. NAGESWARA RAO, J.

These two Writ Petitions concern the right to shelter of homeless persons in urban areas. These Writ Petitions were filed in the year 2003 but no effective orders could be passed till 2014 as all the States did not file their responses and status reports.

2. On 04.09.2014, Mr. Prashant Bhushan, Counsel for the Petitioners in Writ Petition No.572 of 2003, placed the "Scheme of Shelters for Urban Homeless", issued by the Government of India, Ministry of Housing and Urban Poverty Alleviation before this Court. The said Scheme refers to the National Urban Livelihoods Mission (NULM). The NULM was launched on 24.09.2013 to reduce the poverty and vulnerability of urban poor households by enabling them to access gainful self-employment and skilled wage employment opportunities through building strong grassroots level institutions for the poor which would result in an appreciable improvement in their livelihoods on a sustainable basis. The NULM Mission Document also states that providing shelters equipped with essential services to the urban homeless in a phased manner is a top priority. The location and design of shelters and the funding pattern of the Scheme of Shelters for Urban Homeless is discussed in detail in the Mission Documen The Operational Guidelines for the Scheme of Shelters Urban Homeless were issued in December, 2013 by

Ministry of Housing and Urban Poverty Alleviation. These guidelines provide the details of the norms and types of shelters and the facilities to be provided at the shelters. As per the Scheme, Government of India would fund 75 per cent of the cost of construction of the shelters and the remaining 25 per cent would be contributed by the States/UTs. In case of Special Category States, the Central Government would fund 90 per cent and the States would bear the remaining 10 per cent. The Urban Local Bodies were given the responsibility of monitoring and evaluation of the Scheme.

3. The States/UTs were directed to file affidavits regarding the status of implementation of the Scheme by an Order of this Court dated 04.09.2014. If the States did not fully implement the Scheme, they were directed to state the time frame during which they would do so. While directing the Ministry of Housing and Urban Poverty Alleviation to explore the ways and means of providing temporary shelters to the needy persons, this Court by an Order dated 13.11.2014 also directed the Government of India to

enquire from the Chief Secretaries or the Administrators of each State/UT about the status of implementation of the Scheme. On 12.12.2014, a direction was issued by this Court for a meeting of the Executive Committee to be held on or before 31.12.2014 to prepare a report of the activities of the Mission. The Chief Secretaries of the States were directed to constitute the Executive Committees in terms of the NULM Mission Document on or before 31.12.2014. A further direction was issued to review the existing temporary and permanent shelters to ensure that all facilities are available in those shelters. In those States/UTs where the number of shelters was inadequate, steps were directed to be taken to provide at least temporary shelters forthwith.

4. When these matters were listed on 13.02.2015, this Court was informed that Executive Committees were constituted in 27 States/UTs for the purpose of permanent shelters in 790 towns/cities. The learned Additional Solicitor General representing the Union of India submitted that monitoring of the permanent housing structures would

be done on a regular basis by calling for Monthly Progress Reports from the States/UTs in terms of the Scheme. The Union of India was directed to submit a status report before the next date fixed for hearing i.e. 24.04.2015.

5. On 24.04.2015, an affidavit was handed over in Court on behalf of the Union of India. This Court examined the said affidavit and the final status report relied upon in the affidavit filed earlier on 20.02.2015. It was stated by the Union of India that an amount of around Rs.1,000 crores was made available to the States/UTs as on 31.01.2015 under the NULM. This Court referred to the non-utilization of funds by the States of Maharashtra, Uttar Pradesh, Assam and Kerala. This Court observed that there was no monitoring or evaluation of the progress of work and utilization of the huge amount of money that was released to the State Governments. The Ministry was directed to file an affidavit giving an account of the expenditure incurred and also the audit that was conducted for the funds that were released.

6. These Writ Petitions were listed on 07.08.2015 when was made clear that their scope was only with reference t shelters for urban homeless. The Union of India sought time to file details of the implementation of the Scheme along with the relevant documents.

7. Thereafter, the matter was again listed on 30.10.2015. It was submitted by the Union of India that there are seven components in NULM and the amount of Rs.1,000 crores released to the States/UTs as on 31.01.2015 was not exclusively for providing shelters. The Union of India was directed to file an affidavit indicating the amount of money allocated by the State Governments and Union Territories for providing shelters. It was recorded in the order dated 30.10.2015 that only 75 shelters were completed out of the proposed 440 and that 19 States/UTs have not sanctioned any proposals for urban homeless shelters. As this Court was not satisfied with the progress that was made, an affidavit was also directed to be filed with regard to funding of the State Level and City Level Committees and

particulars of the progress made in setting up shelters in a tabular form.

8. After examining the matter again on 04.12.2015, this Court was not satisfied with the steps taken for implementation of the Scheme of Shelters for Urban Homeless. The Secretary, Ministry of Urban Development, Government of India was directed to be present in Court to explain as to why the progress regarding the implementation of Scheme was tardy. This Court wanted to know why regular meetings of the Governing Council and the Executive Council were not being held. The particulars of the expenditure incurred in respect of the Scheme of Shelters for Urban Homeless was also sought.

9. The Writ Petitions were listed again for hearing on 08.03.2016. The Union of India relied upon an additional affidavit filed pursuant to the Order dated 04.12.2015 in which details of the amount sanctioned/spent for setting up of homeless shelters in different States were given. It was also claimed by Union of India that the Scheme was being effectively implemented. The veracity of the said statement

was disputed by the Petitioners. This Court directed the Member Secretary, National Legal Services Authority (NALSA) to verify the correctness of the claim of Union of India regarding the actual implementation of the Scheme. NALSA was directed to take the assistance of the State Legal Services Authorities and to submit a report to this Court within 8 weeks. The State Legal Services Authorities were directed to coordinate with the concerned departments in the States for identification and verification of the progress made regarding the shelters.

10. The report submitted by NALSA has been placed before us. It is stated in the report that on a physical verification, the State Legal Services Authorities found that some shelters are being run by the State Governments, Municipal Corporations and other agencies. In some States, shelter homes are being run in rented premises as the construction of the shelter homes is not completed. The particulars of the number of sanctioned shelters in each State have been given. The number of urban shelters that were constructed and operational is also mentioned in the

report. A perusal of the statement provided by NALSA would show that the facility of shelter homes in the majority of States is insufficient.

11. It was stated in the affidavit filed by the Union of India on 04.01.2016 that the actual implementation of the NULM is done by the State Governments through the State Urban Livelihood Missions at the State level and by the concerned Urban Local Bodies at the City Level. It was further stated that the funds for the operation and management of the shelters were released to the Urban Local Bodies after the construction was completed and that for an effective monitoring of the Scheme, committees have been constituted at the National/State Levels. It was also stated that funds were released to the States only after submission of audit report and utilization certificates for the funds released earlier in accordance with guidelines laid down in General Financial Rules, 2005. According to the Union of India, funds were released only after the audit reports and utilization certificates were examined by the internal financial division of the Ministry in each case. Periodical

review of the progress made for providing shelters is being made by the Ministry. It was also stated in the said affidavit dated 04.01.2016 that only 653 shelters were sanctioned by the States/UTs out of total 1340 shelters planned under NULM. Steady progress was reported by the States/UTs regarding the sanction of projects under the Scheme as per the said affidavit.

12. Annexure-A filed along with the said affidavit shows that an amount of Rs. 2185.50 crores was made available to the States/UTs and the total expenditure reported by the States is Rs. 1222.90 crores. The NALSA report does not provide a clear picture of the progress made in the matter of providing shelters in the States/UTs. The report is based on the information provided by the States to the State Legal Services Authorities. The details of the amounts allocated by the State Governments for providing shelters and the actual amount spent for the shelters is also not apparent from the report. What is clear, however, is that the laudable objective with which the National Urban Livelihood Mission and the Scheme for Shelters for Urban Homeless

were introduced is not achieved due to ineffective implementation.

13. In spite of several directions issued by us, the infrastructure for the shelter homes has not been achieved. Union of India has been constantly claiming steady progress but the NALSA report suggests to the contrary. Providing the requisite infrastructure is only the first step. Thereafter the other facilities have to be provided and proper maintenance of the shelter homes has to be ensured. The mission of NULM remains a distant dream even after the lapse of a long period.

14. A careful consideration of the submissions of the parties and the material on record discloses that the destitute in urban areas continue to suffer without shelters. The Union of India has formulated a Scheme and released huge amounts of money to the State Governments. The State Governments are responsible for the implementation of the Scheme. The reasons for non utilization of funds for the welfare scheme are not forthcoming.

15. In spite of the availability of funds and a clear mechanism through which to disburse them, we see an extremely unsatisfactory state of affairs on the ground. This is despite our continuous monitoring of the matter. Yet another winter approaches and enough has not been done for protection of many homeless in our towns/cities. For the aforementioned reasons, we direct as follows:

(i) A Committee is constituted which will have Mr. Justice Kailash Gambhir, retired Judge, High Court of Delhi as its Chairman with an officer of the Joint Secretary cadre from the Ministry of Housing & Urban Poverty Alleviation to be deputed by the Union of India and an officer, serving or retired, from the Delhi Judicial Service to be nominated by the Chief Justice of the High Court of Delhi in consultation with the Chairperson of the Committee as Members. The last mentioned shall be the Member Secretary of the Committee.

(ii) The Ministry of Housing and Urban Poverty Alleviation shall be the Nodal Ministry to provide all logistical support to the Committee.

(iii) The Chairman of the Committee shall be entitled to all such emoluments/perquisites and facilities as are admissible to any retired Judge, when holding a post retirement assignment like Chairperson of

the State Consumer Commissions except residential accommodation. The Committee may not require any regular office space but should there be any such requirement it may take up the matter with the relevant authority.

(iv) The Committee shall cause physical verification of the available shelters for urban homeless in each State/UT.

(v) The Committee shall also verify whether the shelters are in compliance of the operational guidelines for the Scheme of Shelters for Urban Homeless under the National Urban Livelihoods Mission (NULM).

(vi) The Committee shall inquire into the reasons for the slow progress in the setting up of shelter homes by the States/UTs.

(vii) The Committee shall further inquire about the non-utilization and/or diversion/misutilization of the funds allocated for the Scheme for providing shelters to the urban homeless.

(viii) The Committee shall issue suitable recommendations to the State Governments to ensure that at least temporary shelters are provided for the homeless in the urban areas to protect them during the winter season. The State Governments shall ensure compliance with the recommendations along the time frame indicated

by the Committee. Any non implementation shall be drawn to the attention of this Court.

(ix) The Committee is directed to submit its report within a period of four months.

List these Writ Petitions after four months.

.....CJI
[T. S. THAKUR]

.....J
[Dr. D. Y. CHANDRACHUD]

.....J
[L. NAGESWARA RAO]

New Delhi,
November 11, 2016

SEALED IN MY PRESENCE