

(3/4)
ITEM NO.2

COURT NO.11

SECTION PIL

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

WRIT PETITION (CRL.) NO. 102 OF 2007

RE:EXPLOI.OF CHILN.INJ ORPH.IN ST.OF T.N

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(With appln(s) for directions and exemption from filing O.T. and office report)

Date: 07/02/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SURINDER SINGH NIJJAR
HON'BLE MR. JUSTICE M.Y. EQBAL

For Petitioner(s) Ms. Aparna Bhat,Adv. (A.C.)
Mr. P. Ramesh Kumar,Adv.

For Respondent(s) Ms. Indira Jaisingh,ASG
Mr. Ashok K. Srivasitiava,Adv.
Ms. Supriya Jain,Adv.

Mr. H.P. Raval,ASG
Ms. Rashmi Malhotra,Adv.
Mr. B.V. Balram Das,Adv.
Mr. Anirudh Sharma,Adv.
Mr. B.K. Prasad,Adv.
for Mrs. Anil Katiyar,Adv.

Dr. Manish Singhvi,AAG,Raj.
Mr. Amit Lubhaya,Adv.
Mr. Irshad Ahmad,Adv.

Mr. S. Wasim A. Qadri,Adv.
Ms. Satya Siddiqui,Adv.
Mr. A. Deb Kumar,Adv.
Ms. Sunita Sharma,Adv.
Mr. S.S. Rawat,Adv.
Mr. D.S. Mahra,Adv.
Ms. Sushma Suri,Adv.
Ms. Asha G. Nair,Adv.
Ms. Gargi Khanna,Adv.
Mr. B.K. Prasad,Adv.
Mr. D.S. Mahra,Adv.

Mr. Avijit Bhattacharjee,Adv.
Mr. Chanchal Ganguli,Adv.
Ms. Soumi Kundu,Adv.

Mr. Gopal Singh,Adv.

Mr. Manish Kumar, Adv.
Mr. Chandan Kumar, Adv.

Mr. Gopal Singh, Adv.
Mr. Rituraj Biswas, Adv.

Mr. D. Mahesh Babu, Adv.
Mr. Mayur R. Shah, Adv.
Ms. Suchitra Hrangkhawl, Adv.
Mr. Amjid Maqbool, Adv.

Mr. Atul Jha, Adv.
Mr. Sandeep Jha, Adv.
Mr. Dharmendra Kumar Sinha, Adv.

Mrs. Aruna Mathur, Adv.
Mr. Yusuf Khan, Adv.
For M/s. Arputham Aruna & Co., Advs.

Mr. Pragyan P. Sharma, Adv.
Mr. Hishu Kayina, Adv.
Mr. P.V. Yogeswaran, Adv.

Mr. Sunil Fernandes, Adv.
Ms. Ashtha Sharma, Adv.
Ms. Venika Tomar, Adv.
Ms. Insha Mir, Adv.

Mr. B. Balaji, Adv.
Mr. Rakesh Sharma, Adv.
Mr. Krishnamurthy, Adv.
For Mr. S. Thananjayan, Adv.

Ms. Hemantika Wahni, Adv.
Ms. Shubhada Deshpande, Adv.

Mr. Riku Sarma, Adv.
Mr. Naunit Kumar, Adv.
For M/S. Corporate Law Group, Advs.

Ms. K. Enatoli Sema, Adv.
Mr. Amit Kumar Singh, Adv.
Ms. Nimshim Washun, Adv.

Mr. Anil Shrivastav, Adv.
Mr. Rituraj Biswas, Adv.

Mr. C.S. Rajan, Sr. Adv.
Mr. V.G. Pragasam, Adv.
Mr. S.J. Aristotle, Adv.
Mr. Prabu Ramasubramanian, Adv.

Mr. Jayesh Gaurav, Adv.
Mr. Gopal Prasad, Adv.

Ms. Shefali Malhotra, Adv.
Mr. Balaji Srinivasan, Adv.

Mr. Ranjan Mukherjee, Adv.
Mr. S.C. Ghosh, Adv.
Mr. S. Bhowmick, Adv.
Mr. R.P. Yadav, Adv.

Mr. Ajay Bansal, AAG, Pb.
Mr. Gaurav Yadav, Adv.
Mr. Parduman Singh, Adv.
Mr. Mohit Mudgil, Adv.

Mr. Kuldip Singh, Adv.
Mr. Manjit Singh, AAG, Har.
Mr. Tarjit Singh Chikkara, Adv.
Mr. Kamal Mohan Gupta, Adv.
Mr. M.P. Siddiqui, Adv.
Mr. Shaikh Chand Sahab, Adv.
For Mr. Kuldip Singh, Adv.
Mr. Jatinder Kumar Bhatia, Adv.
Mr. Mukkesh Verma, Adv.
Mr. Vikas Bansal, Adv.
Ms. Vibha Datta Makhija, Adv.
Mr. Suryanarayana Singh, AAG
Ms. Pragati Neekhra, Adv.
Mr. Naresh K. Sharma, Adv.
Ms. Pragati Neekhra, Adv.
Mr. Mukul Singh, Adv.
Mr. Khwairakpam Nobin Singh, Adv.
Mr. Sapam Biswajit Meitei, Adv.
Mrs. D. Bharathi Reddy, Adv.
Ms. Bina Madhavan, Adv.
Mr. V.N. Raghupathy, Adv.
Mr. Sanjay R. Hegde, Adv.
Mr. Milind Kumar, Adv.
Mr. C.D. Singh, Adv.
Mr. Anuvrat Sharma, Adv.
Mrs. A. Subhashini, Adv.

UPON hearing counsel the Court made the following

O R D E R

ANDHRA PRADESH:

Pursuant to our order dated 3rd January, 2013, the State of Andhra Pradesh has filed an affidavit in which it is stated that on 4.12.2012, the State Government have issued orders for constitution of the Commission for protection of child rights. A Selection Committee has also been constituted for making recommendations for selection and appointment of Chairperson and members of the Commission. With regard to the implementation of the Protection of Children from Sexual Offences Act, 2012, it is stated that the State Government is taking steps in consultation with the Chief Justice of the High Court to designate a Court of Sessions to be a Special Court for each district under Section 28(1) to try the offences under the Act, and for appointment of Special Public Prosecutor for implementation of the Protection of Children from Sexual Offences Act, 2012. With regard to the implementation of the Right of Children to Free and Compulsory Education Act, 2009, the constitution of Right to Education Protection Authority (REPA) is under the consideration of the

Government of Andhra Pradesh.

From the above, it is apparent that so far no tangible progress has been made in the State of Andhra Pradesh for protection and education of children under all the three Acts. We, therefore, direct the State of Andhra Pradesh to comply with the obligations under the aforesaid three Acts with regard to the setting up of protection institutions/implementation institutions, together with necessary rules and regulations, within a period of three months from the date of receipt of a certified copy of this order.

ARUNACHAL PRADESH:

No affidavit has been filed by the State of Arunachal Pradesh. However, Mr. Anil Shrivastav, learned counsel appearing for the State of Arunachal Pradesh submits, on instructions, that the State of Arunachal Pradesh is in the process of establishing the State Commission. He requests for a further period of six months for establishment of the State Commission. We are not inclined to accept the request made by the learned counsel. The Government of Arunachal Pradesh is directed to take necessary steps for complying with the mandatory obligations under the aforesaid three Acts, within three months from the date of receipt of a certified copy of this order.

UNION TERRITORY OF CHANDIGARH:

Union Territory of Chandigarh has filed an affidavit on 11.1.2013. It is stated in the affidavit that the Administrator of the Union Territory of Chandigarh has already approved the constitution of a Commission under the Commission for Protection of Child Rights Act, 2005. However, the Administrative approval from the Ministry of Women & Child Development is necessary before the Commission can be made functional.

Mr. Rawal, learned Additional Solicitor General points out to the letter by which the Union Territory of Chandigarh has been informed of the final decision taken by the Union of India. Since no further approval is required from the Union of India, we direct the Union Territory of Chandigarh to establish the Commission for protection of child rights, as directed by this Court on 3rd January, 2013, within a period of three months from the date of receipt of a certified copy of this order.

UNION TERRITORY OF PUDUCHERRY:

Union Territory of Puducherry has filed an affidavit in which it is stated that the Government of Puducherry has already initiated action to constitute the Commission as mandated under Section 17 of the Commission for Protection of Child Rights Act, 2005 and further necessary action for constitution of Commission can be taken only on the administrative approval being given by the Ministry of Home Affairs, Government of India. We, therefore, direct the Home Ministry, Government of India to consider the proposal submitted by the Union Territory of Puducherry on 20.4.2012 and to grant necessary approval within a period of four weeks from today.

The Union Territory of Puducherry is directed to complete the necessary formalities for setting up of the Commission, within a

period of three months from the date of receipt of a certified copy of this order.

UNION TERRITORIES OF ANDAMAN & NICOBAR, DAMAN & DIU, DADRA & NAGARHAVELI AND LAKSHADEEP:

Union Territories of Andaman & Nicobar, Daman & Diu, Dadra & Nagarhaveli and Lakshadeep shall also abide by the aforesaid directions issued to the Union Territory of Puducherry and all the Union Territories shall ensure that the Commission for protection of children are finally set up within a period of three months from the date of receipt of a certified copy of this order.

GUJARAT:

In the affidavit filed by the State of Gujarat it is stated that with regard to the guaranteeing the right of all children in the age group of 6 to 14 to free and compulsory education, the provisions of the Act have been implemented vide Notification dated 1.4.2010. On 28.9.2012, a Notification was issued constituting the Commission for protection of child rights.

Apart from the notification, there is no indication in the affidavit that the Commission is functioning. Therefore, we direct the State of Gujarat to ensure that all necessary procedural formalities are completed and the Commission is made functional within a period of three months from the date of receipt of a certified copy of this order.

HARYANA:

Mr. Manjit Singh, Additional Advocate General appearing for the State of Haryana seeks permission to file the affidavit in Court today. The prayer is accepted. The affidavit is taken on record.

Perused the affidavit. Mr. Manjit Singh points out that in paragraph 2, it is stated that under Section 17 of the Commissions for Protection of Child Rights Act, 2005, the State Commission has been duly constituted on 28th December, 2012. Subsequently thereto, by notification dated 15.1.2013, the Chairman and two members of the Commission have also been appointed.

Learned Additional Advocate General further submits that necessary rules were framed in June 2011. Ms. Indira Jaisingh, learned Additional Solicitor General points out that the rules referred to by Mr. Manjit Singh are not the rules framed under the Right of Children to Free and Compulsory Education Act, 2009. In fact, these are the rules framed under the Right to Education Act. We, therefore, direct the State of Haryana to frame the necessary rules under the Right of Children to Free and Compulsory Education Act, 2009 for setting up of the State Commission under the Commissions for Protection of Child Rights Act, 2005. Let necessary action be taken by the State of Haryana within a period of three months from the date of receipt of a certified copy of this order.

HIMACHAL PRADESH:

The State of Himachal Pradesh has neither filed any affidavit nor any information is forthcoming as to whether the Commission has actually been set up. In view of the above, we have no option but to direct the State of Himachal Pradesh to ensure that the Commission is set up in accordance with the directions issued by this Court on 3.1.2013, within a period of three months from the date of receipt of a certified copy of this order.

KERALA:

Perused the affidavit which indicates that expeditious steps are being taken to constitute the Commission by selection of the Chairman and members and an advertisement to that effect has already been issued and last date for receipt of the application is fixed as 15.2.2013. We direct the State of Kerala to complete the entire process for setting up of the Commission in terms of our order dated 3.1.2013 and to ensure that it is made functional, within a period of three months from the date of receipt of a certified copy of this order.

MEGHALAYA:

In the affidavit filed by the State of Meghalaya it is stated with regard to the guaranteeing the right of children to free and compulsory education in the age group of 6 to 14, necessary rules have already been framed by Notification dated 1.8.2011 in terms of Section 38 of the Right of Children to Free and Compulsory Education Act, 2009. With regard to the constitution of the State Commission for protection of child rights, the fund requirement has been projected in the Twelfth Five Year Plan. Further, the draft rules for the State Commission have been framed in consultation with the National Law School, Bangalore. However, it appears that the commission has still not been set up. We direct the State of Meghalaya to take necessary action within a period of three months from the date of receipt of a certified copy of this order.

MIZORAM:

In the affidavit filed by the State of Mizoram it is stated that the Government has already initiated a proposal for setting up of National Commission for protection of child rights. The draft rules have been submitted to the State Cabinet for approval. As soon as the draft rules are approved, the Commission shall be set up under Section 17 of the Commissions for Protection of Child Rights Act, 2005. It is stated that the entire procedure for composition of the Commission and to make the same operational, shall be completed within a period of six months. Although an assurance is given by the State of Mizoram that the Commission will be made operational at the earliest, we deem it appropriate to direct the Government of Mizoram to ensure that the Commission is made functional within a period of three months from the date of receipt of a certified copy of this order.

NAGALAND:

A request is made by the learned counsel appearing for the State of Nagaland for granting three months' time to set up the State Commission for protection of child rights and implementing the provisions of the Act by the agencies, as directed by our order dated 3.1.2013. We accept the request made by the learned counsel and direct that necessary action be taken within a period of three months from the date of receipt of a certified copy of this order.

TAMIL NADU:

In the affidavit filed by the State of Tamil Nadu, it is stated that the Right of Children to Free and Compulsory Education Act, 2009 has already been implemented by Notification dated 1.4.2010. The State Commission for protection of child rights has been constituted by Notification dated 28.9.2012. Thereafter, the Chairman has assumed the office on 18.1.2013. However, we have no information as to whether necessary rules and regulations for its implementation have been framed. We therefore direct the State of Tamil Nadu to complete all formalities within a period of three months from the date of receipt of a certified copy of this order and to ensure that the Commission is made functional to its full capacity.

TRIPURA:

Learned counsel appearing for the State of Tripura submits that the Commission is yet to be constituted. We direct the State of Tripura to take necessary action and constitute the Commission as indicated in our order dated 3.1.2013, within a period of three months from the date of receipt of a certified copy of this order.

UTTAR PRADESH:

The State of Uttar Pradesh has also not constituted the Commission as directed by this Court in its order dated 3.1.2013. We direct the State of Uttar Pradesh to take necessary steps within a period of three months from the date of receipt of a certified copy of this order and to ensure that the Commission is made functional within that period.

WEST BENGAL:

Mr. Avijit Bhattacharjee, learned counsel appearing for the State of West Bengal submits that the Commission has already been constituted and even necessary rules have been framed. He will file the necessary affidavit, together with Annexures, within a period of three weeks. Let the affidavit be filed within three weeks.

Ms. Indira Jaisingh, learned Additional Solicitor General and Ms. Aparna Bhat, learned amicus curiae have together submitted before us that the main reason for issuing various orders by this Court is to ensure that the provisions for protection of child rights as well as provisions for proper facilities to children in education as also health, are implemented. It is but obvious that the rights of children can be secured adequately only if the monitoring and controlling provisions contained in the three Acts, namely, the Commissions for Protection of Child Rights Act, 2005, the Right of Children to Free and Compulsory Education Act, 2009 and the Protection of Children from Sexual Offences Act, 2012 read with the Juvenile Justice (Care and Protection of Children) Act, 2000, are fully implemented.

This Court has issued a series of directions to ensure compliance and implementation of the aforesaid Acts. We have earlier, part of this order, directed all the States to ensure that the regulatory and monitoring bodies under these Acts are constituted and made functional within a period of three months from the date of receipt of a certified copy of this order.

In addition to above, it is necessary that the States provide further detailed information with regard to the measures adopted and the action taken with regard to improving the conditions of children in various shelter homes etc. around the country, to eliminate trafficking of children under the garb of education and other promises, like employment etc.

We are informed that in all States, children homes have been set up by the State as also by the non-Government Organizations. We are also informed that some individuals have also been permitted to open such homes. Therefore, it is necessary that each State conducts a detailed survey with regard to Government/NGO/privately run and controlled children homes and find out as to how many Children's homes/Fit Institution/Observation homes/Shelter homes/Special homes are working in their respective States.

All these institutions are required to be registered under various provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000. Let a status report be submitted by all the States indicating as to whether any of such institutions are unregistered. In case of unregistered institutions, the status report should also indicate as to what protective measures have been taken by the State Government or the local authority within which such institutions are located, to prevent any abuse of the inmates of these institutions. This indeed is a very serious concern. We, therefore, direct all the States to take utmost care in preparation of the status report.

The States shall also indicate the measures which have been taken for implementation of the scheme under the Right of Children to Free and Compulsory Education Act, 2009 as also the measures which have been taken to eradicate trafficking of children. Under the Protection of Children from Sexual Offences Act, 2012, the States are required to set up Special Courts. The status report shall also indicate as to what measures have been taken by the States for setting up of Special Courts. In case the Special Courts have been set up, the status report shall indicate the number of such Special Courts established. In the event, Special Courts have not been established, the status report should indicate the maximum time limit within which such Courts will be established. The status report shall also indicate the capacity of the children homes, separately for boys and girls, and it shall also indicate as to whether the standard with regard to the

nutrition and hygiene are being maintained.

Let these affidavits be filed within a period of four weeks from today and the matter be listed after six weeks.

(A.S. BISHT)
COURT MASTER

(INDU BALA KAPUR)
COURT MASTER