

SUPREME COURT OF INDIA

Re. Exploitation of Children in Orphanages in the State of Tamil Nadu

Vs.

Union of India & Ors.

W.P.(Crl.)No.102 of 2007

(Surinder Singh Nijjar and Fakkir Mohamed Kalifulla,JJ.)

16.12.2013

ORDER

Surinder Singh Nijjar, J.

1. We have heard very lengthy submissions from the Amicus Curie Ms. Aparna Bhat, Ms. Indira Jaising, ASG, Mr. Paras Kuhad, ASG.

2. It has been brought to our notice that in spite of the emphatic directions that have been issued by this court on 3rd January, 2013 directing all the States and the Union Territories to implement the protective provisions contained in the Protection of Rights of Children from Sexual Offences Act, 2012, the Right of Children to Free and Compulsory Education Act, 2009 and the Commission for Protection of Child Rights Act, 2005, many States and Union Territories have not complied with the same. By order dated 3rd January, 2013, we had also directed the States to file an affidavit indicating the time frame within which the State Commission for the protection of children would be established. By a subsequent order dated 7th February, 2013, further directions were issued to all the States and the Union Territories to comply with the obligations under the aforesaid three Acts, with regard to the establishment of protection institutions/implementation institutions, together with necessary Rules and Regulations. The aforesaid order was to be complied with within a period of three months from the date of receipt of the certified copy of the order. Sadly, we have to notice that inspite of the concern shown not only by this Court but also by the learned counsel appearing for the parties, little or no progress has been made in this regard. Although the affidavits have been filed indicating that the State Commissions have been established yet we find that such establishment is only on paper. In many States, Chairman of the Commission has not been appointed and in some

other States even Members have not been appointed. This apart, necessary rules and regulations have also not been framed. This, in our opinion, would be sufficient justification for this Court to take a serious view and initiate appropriate proceedings for contempt of court against the defaulting States and the Union Territories.

3. Given the lackadaisical manner in which the States and the Union Territories have responded to the concern shown by this Court in relation to the wholly unacceptable situation prevailing and to stamp out any further exploitation of children, it has become necessary to re-emphasize that it is the bounden duty of the States under Articles 21, 21A, 23, 24, 45 and 51A (k) to create and maintain a protective and healthy environment in which children who are the future of this country can bloom and subsequently become mature and responsible citizen of this country. We have been pained to notice the utterly callous attitude adopted by the States as well as the Union Territories. We, therefore, have no option at this stage but to issue some further mandatory directions to ensure that the exploitation of the children in all spheres of life is brought to an end with utmost expedition.

4. We may notice at this stage that pursuant to our earlier directions Tripura, Dadar and Nagar Haveli, Lakshwadeep, Chandigarh, Andaman and Nicobar, Pondicherry and Daman and Diu have still not constituted State Commissions under Section 17 of the Commission for Protection of Child Rights Act, 2005. Some of the States which have established the State Commissions for the protection of children but have not completely constituted the same by either not appointing a Chairperson or Members are as under:

Andhra Pradesh: The Commission exists only on paper as no Chairman/Member has been appointed.

Chattisgarh is partially constituted as only Chairman has been appointed and the members have not been appointed.

Gujarat : Although Chairman has been appointed yet no member or Secretary of the Commission has been appointed.

Haryana : The situation is exactly the same as Gujarat, i.e. neither any Member nor Secretary has been appointed although the Chairman has been selected and appointed.

Himachal Pradesh: Only a Member Secretary has been appointed. No Chairperson or Member has been appointed.

Kerala - Again only a Secretary has been appointed but there is no Chairperson or Member appointed.

Tamil Nadu has appointed a Chairperson but no Member has been appointed.

Nagaland – Nothing has been done, i.e. no Chairperson or Member has been appointed.

Similarly in U.P., nothing has been done as neither the Chairperson nor any Member has been appointed.

5. This inaction of the States is in the teeth of the directions issued by this Court on 3rd January, 2013 and 7th February, 2013. We make it clear that this Court had taken notice of the exploitation of children and the deplorable conditions of children in various orphanages on the basis of the letter received, way back in the year 2007. Surely, the States and the Union Territories must realize that they have to operate under the Constitution and have to be duty bound to act in accordance with the provisions of the Constitution. Furthermore, each and every field which concerns the welfare and the protection of the children is covered by relevant legislation. The three prominent Acts have already been listed hereinabove.

6. Keeping in view the aforesaid attitude of the States and the Union Territories, we direct that the Chief Secretaries of all the States to which notices have been issued in this matter shall file an affidavit within a period of eight weeks from the date of this order disclosing full details with regard to the implementation of the obligations specified under the three Acts. The affidavit shall contain all the relevant information with regard to the following:

“a. Whether the State Commissions have been set up under Section 17 of the Commissions for Protection of Child Rights Act, 2005?

b. Whether the appointment of the Chairperson and six Members has been made indicating the names of such Chairpersons and members?

c. Whether Rules have been framed by the State Governments under the said Act?

d. Whether the said Commissions are functional and if not what are the constraints. The appointment and the remuneration structure of the Chairperson, Members and supports staff including Member Secretary of the State Commissions?

e. The Chief Secretaries of the States in their affidavits to also indicate whether Special Courts have been designated under Section 28 of the Protection of Children from Sexual Offences Act, 2012?

f. Whether Special Public Prosecutors have been appointed under Section 32 of the said Act?

g. Whether Rules have been framed under the Right to Education Act, 2009?

h. Whether all Institutions run by the State Governments or by Voluntary Organizations for Children in need care and protection have been registered under the provisions of Section 34 of the Juvenile Justice (Care and Protection of Children) Act, 2000, read with Rule 71 of the said Act?

i. Whether any unregistered institutions for children in need of care and protection are being run and if so have they been shut down or taken over by the State Governments?”

7. It is further directed that in the unlikely event of there being a non-compliance of any part of the directions issued by this Court, an officer of the rank of Principal Secretary of State Government shall remain present in person in the Court to clarify the issues with respect to the failure to implement the directions of the Court. If for any reason, the affidavit, as directed for, is not filed by the Chief Secretary before the next date of hearing, then also, the officer of the rank referred above shall remain present in person to explain the reasons for the State's failure to submit the affidavit.

8. The concerned State Governments shall also submit the required information in the format annexed hereto as part of the affidavit to be filed by them.