

Re. Exploitation of Children in Orphanages in the State of Tamil Nadu Vs Union of India (UOI) and Others

Court: Supreme Court of India

Date of Decision: Dec. 16, 2013

Acts Referred: Commission for Protection of Child Rights Act, 2005 " Section 17

Juvenile Justice (Care and Protection of Children) Act, 2000 " Section 34

Juvenile Justice (Care and Protection of Children) Rules, 2007 " Rule 71<

Citation: (2014) 1 CCR 378 : (2014) 1 JT 168 : (2013) 15 SCALE 430 : (2014) 2 SCC 180 : (2014) 3 SCJ 32 : (2014) 2 SCT 609

Hon'ble Judges: Surinder Singh Nijjar, J; Fakkir Mohamed Ibrahim Kalifulla, J

Bench: Division Bench

Advocate: A. Mariarputham, AG, Paras Kuhad, Indira Jaising, ASGs, C.S. Rajan, Irshad Ahmad, Manish Singhvi, Krishna Sharma, Ajay Bansal, Manjit Singh, AAGs, Aparna Bhat, P. Ramesh Kumar, D. Bharathi Reddy, Abhijit Sengupta, Gopal Singh, Manish Kumar, Rituraj Biswas, Sanjay R. Hedge, Naresh K. Sharma, Dharmendra Kumar Sinha, Pragyan P. Sharma, Heshu Kayina, P.V. Yogeswaran, Sunita Sharma, P.L. Nigam, Swati Vijaywargiya, B.K. Prasad, B.V. Balram Das, D.L. Chidananda, A. Deb Kumar, Sushma Suri, Sonakshi Malhan, Ashok K. Srivastava, Asha G. Nair, Shadman Ali, Gunwant Dara, S. Wasim A. Qadri, Zaid Ali, D.S. Mahra, Anil Katiyar, S.N. Terdal, Sapam Biswajit Meitei, Khwairakpam Nobin Singh, Ameet Singh, Mukul Singh, Pragati Neekhara, Samara Vijay Singh, Amit Lubhaya, Suryanarayana Singh, Hamantika Wahi, Anuvrat Sharma, Riku Sharma and Navnit Kumar, for M/s Corporate Law Group, S. Thananjayan, Anil Shrivastav, V.G. Pragasam, S.J. Aristotle, Prabu Ramasubramanian, Jayesh Gaurav, Gopal Prasad, Balaji Srinivasan, Ranjan Mukherjee, S.C. Ghosh, S. Bhowmick, R.P. Yadav, Kuldip Singh, Devendra Singh, Jasleen Chahal, Pardaman Singh, Rajeev Kumar, Gaurav Yadav, Bina Madhavan, Jatinder Kumar Bhatia, Mukesh Verma, C.D. Singh, Sunny Choudhary, Abhishek Atrey, Ashutosh Kr. Sharma, Ashok Panigrahi, Santosh Kumar, Aruna Mathur and Yusuf, for M/s. Arputham Aruna and Co., A. Subhashini, M. Yogesh Kanna, A. Santha Kumaran, Vanita Chandrakant Giri, Vivekta Singh, Anil Antil and Tarjit Singh, for Kamal Mohan Gupta, K. Enatoli Sema, Amit Kumar Singh, D. Mahesh Babu, Aditya Jain, Balasubramaniam, K.V. Jagdishvaran, G. Indira, Abhishek Kumar Pandey, Aniruddha P. Mayee, Charudatta Mahindarkar, Lagnesh Mishra, V.N. Raghupathy, Anip Sachthey and Mohit Paul, for the Appellant;

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

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 inspite 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, Lakshadweep, Chandigarh, Andaman and

Nicobar, Pondicherry and Daman and Diu have still not constituted State Commissions u/s 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.

Chhattisgarh 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 u/s 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 u/s 28 of the Protection of

Children from Sexual Offences Act, 2012?

f. Whether Special Public Prosecutors have been appointed u/s 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 Organisations 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.

ANNEXURE

THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

THE RIGHT OF CHILDREN TO FREE & COMPULSORY EDUCATION ACT, 2009

THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000

THE COMMISSION FOR PROTECTION OF CHILD RIGHTS ACT, 2005