

(2011) 03 DEL CK 0556

Delhi High Court

Case No: Writ Petition (Criminal) 249 of 2009

Court on its Own Motion

APPELLANT

Vs

State

RESPONDENT

Date of Decision: March 16, 2011

Hon'ble Judges: Dipak Misra, C.J; Sanjiv Khanna, J

Bench: Division Bench

Advocate: H.S. Phoolka, Amicus Curiae, Kanwar Faisal and Anand Kumar, for the Appellant; Pawan Sharma, Standing Counsel and Laxmi Chauhan and Pashupati Sharma, Rajan Bhagat, DCP, Meera Bhatia, for GNCTD and Asha Menon, Member Secretary, DLSA, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. This Court on 19th January, 2011 had taken note of the report submitted by Ms. Asha Menon, learned Member Secretary, Delhi Legal Service Authority wherefrom it was evincible that 573 children had remained untraced. The said figure was disputed by Mr. H.S. Phoolka, learned amicus curiae. Today Mr. Phoolka has produced a chart about the missing children in various age groups. The said chart reads as follows:

"The update of statistics of children reported missing in the years 2006, 2007, 2008, 2009 and 2010, the progress made in the tracing of children during this period as on 1st March 2011 is as under:

Years	Missing		0 to 8 Years Traced		Yet to be traced	
	M	F	M	F	M	F
2006	668	473	651	463	17	10
						% age
						2%

2007	855	580	833	563	22	17	3%
2008	670	473	635	452	35	21	5%
2009	705	494	640	473	65	21	7%
2010	588	373	511	326	77	47	13%
8 to 12 Years							
Years	Missing		Traced		Yet to be traced		
	M	F	M	F	M	F	%
							age
2006	827	292	805	282	22	10	3%
2007	1016	370	986	350	30	20	4%
2008	774	286	735	266	39	20	6%
2009	693	196	622	177	71	19	10%
2010	620	183	446	151	174	32	26%
12 To 18 Years							
Year	Missing		Traced		Yet to be traced		
	M	F	M	F	M	F	%
							age
2006	1896	1667	1800	1589	96	78	5%
2007	2085	1964	1995	1844	90	120	5%
2008	1926	2139	1801	1943	125	196	8%
2009	1875	1983	1705	1742	170	241	11%
2010	1426	1901	1074	1383	352	518	26%

2. As directed on the earlier occasion, the Member Secretary and the Officer on Special Duty or any other officer/lawyer nominated by the Member Secretary were required to examine the children who have been traced. Today a status report has been filed by the Member Secretary. On a perusal of the report, it is evident that the officers of Delhi Legal Service Authority have examined 19 children who were produced by their relatives. The report states that the children who were produced were those who had run away from home on account of scolding by parents or fear on account of taking money or missing school or had left home for a party or to view a movie with friends without informing the parents. Two of them had eloped. A couple of children were immature and had followed a group of people for mela or wedding procession. One of the children disclosed that he had been accosted by the Chowkidar of a local school in the area of Gurudwara Bangal Sahib, under suspicious circumstances but no action was taken by the local school against the Chowkidar.

3. It is revealed from the report that though cases of running away or missing from home apparently seem innocuous, yet on interaction with the children it became vivid that the children and the parents require serious counseling post recovery. There were two cases in which the girls were withdrawn from schools which has been a traumatic experience for the young girls. In another case, the boy who had ran away, was sent to work as a sales boy at a saree store by his father after his name was struck off from the school records. The trauma experience by the mothers has been put forth in the report and the suggestion given is that serious professional counseling is needed. It is also stated that the children who had ran away from the homes after quarrelling with their parents or siblings required to be handled with care.

4. On a perusal of the report, it is further evident that the police is ill equipped to handle such post recovery counseling and, therefore, services of the special wing namely "Special Unit for Women and Children" should be availed. It is relevant to state here and as is demonstrable from the report that Bachpan Bachao Andolan, a non-governmental organization had brought parents of few missing children to the office of the Delhi Legal Service Authority and during interaction with the parents, all of them complained that the police was not treating them with courtesy and sensitivity and children of the said parents were missing for more than six months and in some cases it was found that the children were missing for more than two years. Though FI Rs have been lodged yet the same are not pursued with adequate sensitivity and information was only sought from parents who could not have really assist the investigation because of their poverty. The number of missing children as per report is as follows:

Total FIRs received from 10.01.11 to 14.03.11

178

Number of traced	46
Number of untraced	125
Under Process	07
Total reports received (from Sep.09 to 14.03.2011)	2081
Total traced till date (from Sep. 09 to 14.03.2011)	1601
Total untraced 2009	121
Total untraced 2010-11	561
Total untraced as on 14.3.2011	682

5. As advised at present and keeping in view the tabular chart filed by Mr. Phoolka, learned amicus curiae and the chart which has been brought on record by the

Member Secretary, we proceed to issue following directions:

(a) The children as directed on earlier occasion shall be produced on regular basis before the Member Secretary or the Officer on Special Duty or any other officer nominated by the Member Secretary including the impaneled lawyer.

(b) The Member Secretary or the Officer on Special Duty or the nominated officer shall over-see the examination of young children and try to find out the cause for missing.

(c) The Secretary, Social Welfare Department in consultation with the Member Secretary DLSA and the Joint Commissioner of Police, the Nodal Officer for this purpose, shall constitute a Committee of counselors who shall counsel the parents so that they shall not aggravate the trauma suffered by the children after their recovery. (d) The Commissioner of Police shall issue instructions forthwith to the Investigating Officers, who shall keep the track of the parents so that at the relevant time they can be produced before the NALSA or any other authority, which shall be giving the direction on future occasion so that the real reason for "missing" children can be known and the problem can be adequately addressed.

(e) The Commissioner of Police shall select a team of the officers who can sensitize the ground level police officers to deal with this kind of cases so that they would show their requisite sensitivity to the problem in issue and not show any indifferent or unconcerned attitude either to the parents or to the children.

(f) The Secretary Education, GNCTD shall issue a circular to all the schools situated within the territory of Delhi that children facing this kind of problem, as it is not in their hands, are treated with utmost sensibility so that they do not abandon education. The circular must clearly stipulate that striking of names from the school is not a solution and efforts are to be made by the school authorities to call the parents to apprise the need for education in the 21st century and the parental duty and the facilities provided by the government for such imparting of education.

(g) No school without appropriate, adequate and substantial reason would strike the name of a student knowing fully well that the student is missing without prior approval of the Secretary, Department of Education, GNCTD because we have directed that a circular has to be issued protecting the interest of the children and also for parental guidance.

(h) The Nodal Officer shall see to it that the children belonging to various age groups and with different backgrounds shall be produced before the authorities of DLSA so that a comprehensive view can be projected before this Court. We are disposed to issue this direction as Mr. Phoolka, learned amicus curiae has submitted that there are gangs operating not only involved in trafficking of children but also in engaging the children as labourers without any payment and not allowing them any kind of freedom and the police is not carrying out proper investigation. The

Commissioner of Police shall constitute a task force for proper investigation whether the gangs, as alleged by Mr. Phoolka, are operating in the field. In the said task force, certain responsible officers shall be included as some kind of skepticism is expressed by Mr. Phoolka with regard to the indifference shown at the police station level.

(i) The Deputy Commissioner of Police shall over-see all investigations relating to missing children as it is stated before us that the children between the age of 3 to 8 are abducted and the sole purpose is trafficking.

(j) As far as the tabular chart given by Mr. Phoolka is concerned, the Commissioner of Police shall scrutinize the same and make an endeavour to engage more officers/officials so that the children are rescued. If a child, who is missing, is not rescued or found for a period of six months case should be handed over to the Anti Kidnapping Cell for effective investigation.

(k) The Commissioner of Police shall evolve a standard operating procedure especially meant for missing children when a report is received in the police station or in the Police Control Room about the missing children. The said policy shall be produced before this Court on the next date of hearing.

6. We have issued the aforesaid directions regard being had to the issue which really touches the basic fulcrum of a civilized society. It should be borne in mind that child is the internal hope for future. It does not matter from which background the child comes. A child is a child despite the background for all purposes and no apathy by anyone can even remotely be shown for such an attitude is not countenanced in a society where the rule of law prevails. That apart, it becomes the duty of the member of a civilized society to see that the children are treated with care and nurtured with real concern. The authorities, who are in the realm of aforesaid, should apprise themselves that the slightest neglect of a child today will cause immensurable catastrophe to the posterity in future and in the ultimate eventuality, there may be a national disaster.

Let the matter be listed on 25th May, 2011.

Dasti under signature of the Court Master.