

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CRL.) No.102 of 2007

Re. Exploitation of Children in
Orphanages in the State of Tamil Nadu ...Petitioner(s)

Versus

Union of India & Ors. ...Respondent(s)

O R D E R

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, 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 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.

.....J.
[Surinder Singh Nijjar]

.....J.
[Fakkir Mohamed Ibrahim Kalifulla]

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 : EXPLOITATION OF CHILDREN IN ORPHANAGES
IN THE STATE OF TAMILNADU

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(With appln(s) for directions and exemption from filing O.T. and c/delay in
filing affidavit and office report)

Date: 16/12/2013 This Petition was called on for orders today.

CORAM :

HON'BLE MR. JUSTICE SURINDER SINGH NIJJAR

HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA

For Parties (s)

Ms. Aparna Bhat, Adv. (A.C.)

Mr. P. Ramesh Kumar, Adv.

Mrs. D. Bharathi Reddy, Adv.-on-record

Mr. Abhijit Sengupta, Adv.-on-record

State of Bihar

Mr. Gopal Singh, Adv.-on-record

Mr. Manish Kumar, Adv.

State of Tripura Mr. Gopal Singh, Adv.-on-record

Mr. Rituraj Biswas, Adv.

Mr. Sanjay R. Hegde, Adv.-on-record

Mr. Naresh K. Sharma, Adv.-on-record

State of Chhattisgarh

Mr. Dharmendra Kumar Sinha, Adv.-on-record

...2/-

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State of Mizoram Mr. Pragyan P. Sharma, Adv.

Mr. Heshu Kayina, Adv.

Mr. P.V. Yogeswaran, Adv.-on-record

Mr. Paras Kuhad, ASG

Ms. Sunita Sharma, Adv.

Mr. P.L. Nigam, Adv.

Ms. Swati Vijaywargiya, Adv.

Mr. B.K. Prasad, Adv.

Mr. B.V. Balram Das, Adv.

Mr. D.L. Chidananda, Adv.

Mr. A. Deb Kumar, Adv.

Ms. Sushma Suri, Adv.

For NCPCR Ms. Indira Jaising, ASG
Ms. Sonakshi Malhan, Adv.
Mr. Mr. Ashok K. Srivastava, Adv.

For NCT of Delhi Mr. Paras Kuhad, ASG
Ms. Asha G. Nair, Adv.
Mr. Shadman Ali, Adv.
Ms. Gunwant Dara, Adv.
Mr. S. Wasim A. Qadri, Adv.
Mr. Zaid Ali, Adv.
Mr. D.S. Mahra, Adv.

Mrs. Anil Katiyar, Adv.-on-record

Mr. S.N. Terdal, Adv.-on-record

State of Manipur Mr. Sapam Biswajit Meitei, Adv.
Mr. Khwairakpam Nobin Singh, Adv.-on-record

State of U.P. Mr. Irshad Ahmad, AAG
Mr. Ameet Singh, Adv.
Mr. Mukul Singh, Adv.
Ms. Pragati Neekhara, Adv.-on-record
Mr. Samar Vijay Singh, Adv.

...3/-

:3:

State of Rajasthan Dr. Manish Singhvi, AAG,
Mr. Amit Lubhaya, Adv.
Ms. Pragati Neekhara, Adv.-on-record

State of H.P. Mr. Suryanarayana Singh, Adv.
Ms. Pragati Neekhara, Adv.-on-record

Ms. Hemantika Wahi, Adv.-on-record

Mr. Anuvrat Sharma, Adv.-on-record

State of Assam Ms. Krishna Sarma, AAG
Mr. Riku Sarma, Adv.
Mr. Navnit Kumar, Adv.
For M/s Corporate Law Group, Adv.-on-record

Mr. S. Thananjayan, Adv.-on-record

State of Arun. Pra. Mr. Anil Shrivastav, Adv.-on-record.
Mr. Rituraj Biswas, Adv.

Govt. of Puducherry Mr. C.S. Rajan, Sr. Adv.
Mr. V.G. Pragasa, Adv.-on-record
Mr. S.J. Aristotle, Adv.
Mr. Prabu Ramasubramanian, Adv.

State of Jharkhand Mr. Jayesh Gaurav, Adv.
Mr. Gopal Prasad, Adv.-on-record

Mr. Balaji Srinivasan, Adv.-on-record

State of Meghalaya Mr. Ranjan Mukherjee, Adv.-on-record
Mr. S.C. Ghosh, Adv.
Mr. S. Bhowmick, Adv.
Mr. R.P. Yadav, Adv.

State of Punjab Mr. Ajay Bansal, AAG, Pb.

Mr. Kuldip Singh, Adv.-on-record
Mr. Devendra Singh, Adv.
Ms. Jasleen Chahal, Adv.
Mr. Pardaman Singh, Adv.
Mr. Rajeev Kumar, Adv.
Mr. Gaurav Yadav, Adv.

...4/-

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State of Kerala

Ms. Bina Madhavan, Adv.-on-record

Mr. Jatinder Kumar Bhatia, Adv.
Mr. Mukesh Verma, Adv.

State of M.P.

Mr. C.D. Singh, Adv.
Mr. Sunny Choudhary, Adv.

State of Uttarakhand

Dr. Abhishek Atrey, Adv.-on-record
Mr. Ashutosh Kr. Sharma, Adv.

State of Orissa

Mr. Ashok Panigrahi, Adv.-on-record
Mr. Santosh Kumar, Adv.

State of Sikkim

Mr. A. Mariarputham, Adv. Gen.
Mrs. Aruna Mathur, Adv.
Mr. Yusuf, Adv.
For M/s. Arputham Aruna & Co., Adv.
Ms. A. Subhashini, Adv.-on-record

State of T.N.

Mr. M. Yogesh Kanna, Adv.-on-record
Mr. A. Santha Kumaran, Adv.
Ms. Vanita Chandrakant Giri, Adv.

State of Haryana

Mr. Manjit Singh, AAG, Har.
Ms. Vivekta Singh, Adv.
Mr. Anil Antil, Adv.
Mr. Tarjit Singh, Adv.
for Mr. Kamal Mohan Gupta, Adv.

State of Nagaland

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

State of A.P.

Mr. D. Mahesh Babu, Adv.
Mr. Aditya Jain, Adv.

Andaman & Nicobar
Administration

Mr. Balasubramaniam, Adv.
Mr. K.V. Jagdishvaran, Adv.
Ms. G. Indira, Adv.

...5/-

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State of Maharashtra

Ms. Asha G. Nair, adv.-on-record

Mr. Abhishek Kumar Pandey, Adv.

U.T. Chandigarh Mr. Jatinder Kumar Bhatia, Adv.

State of Chhattisgarh Mr. Aniruddha P. Mayee, Adv.
Mr. Charudatta Mahindarkar, Adv.

State of Karnataka Mr. Lagnesh Mishra, Adv.
Mr. V.N. Raghupathy, Adv.

State of West Bengal Mr. Anip Sachthey, Adv.
Mr. Mohit Paul, Adv.

UPON hearing counsel the Court made the following
O R D E R

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 :

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- 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?

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- 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 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?

It is further directed that in the unlikely event of there being a non-compliance of any part of

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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.

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.

The matter is adjourned by eight weeks.

(VINOD LAKHINA)	(INDU BALA KAPUR)
COURT MASTER	COURT MASTER

(SIGNED REPORTABLE ORDER IS PLACED ON THE FILE)

ANNEXURE

OFFENCES ACT, 2012		THE PROTECTION OF CHILDREN FROM SEXUAL	
S.	Obligation of	Current	Detailed reasons for failure including Recei
ved			
No	the States	Status of	date
by		Implementati	which
the		on (Carried	imple
mentati		out/not	on wo
uld		carried out)	stand
		with details	carri
ed out		as to the	
		date of	

		order			
			(a)	(b)	(c)
			(d)		
			Steps taken	Circumstances	Person who
			on which		Dates
			Towards	which rendered	was respon-
			matter was		the
			Implementa-	implementation	sible for
			monitored by		
			tion	impossible	implemen-
			Chief Secretary		
			tation	towards	
			ensuring imple-		
			mentaton		
1.	Constitution of				
	Special Court				
	(section 28)				
2.	Appointment of				
	Special Public				
	Prosecutor				
	(section 32)				
3.	Framing of				
	Guidelines for				
	use of NGOs,				
	experts etc. to				
	be associated				
	with the				
	pre-trial &				
	trial stage to				
	assist the child				
	(section 39)				
4.	Public Awareness				
	about the Act &				
	any Periodic				

	Training		
	imparted to the		
	officers of the		
	Govt. etc.		
	(section 43)		

THE RIGHT OF CHILDREN TO FREE & COMPULSORY EDUCATION ACT, 2009				
S.N d date	Obligation of the States ntatio stand out	Current Status of Implementation (Carried out/not carried out) with details as to the date of order	Detailed reasons for failure including	Receive by whic impleme n would carried
		(a)	(b)	(c)
		(d)		

			Steps taken	Circumstances	Person who	Dates
			on which			
			Towards	which rendered	was respon-	the
			matter was			
			Implementa-	implementation	sible for	
			monitored by			
			tion	impossible	implemen-	
			Chief Secretary			
			tation	towards		
			ensuring imple-			
			mentaton			
1.	Constitution					
	of State					
	Commissions					
	for					
	Protection					
	of Child					
	Rights					
	(section 31					
	r/w Rule 27)					
2.	Appointment					
	of State					
	Advisory					
	Council					
	(section 34)					
3.	Rules made					
	for carrying					
	out the					
	provisions					
	of the Act					
	(section 38)					

THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000						
S.No	Obligation	Current Status	Detailed reasons for failure including			Recei
ved	of the	of				date
by	States	Implementation				which
the		(Carried				imple
mentati		out/not carried				on wo
uld		out) with				stand
ed out		details as to				carri
		the date of				
		order				
		(a)	(b)	(c)		
		(d)				
		Steps taken	Circumstances	Person who	Dates on	
		which				
		Towards	which rendered	was respon-	the	
		matter was				
		Implementa-	implementation	sible for		
		monitored by				
		tion	impossible	implemen-		
		Chief Secretary				
		tation	towards			
		ensuring imple-				
		mentaton				
1.	Constituti					
	on of					
	Juvenile					
	Justice					
	Board					
	(section					

	4)			
2.	Establishm			
	ent of			
	Observatio			
	n Homes			
	(section			
	8)			
3.	Establishm			
	ent of			
	Special			
	Homes - If			
	any,			
	details.			
	(section			
	9)			
4.	Constituti			
	on of			
	child			
	Welfare			
	Committee			
	(section			
	29)			
5.	Establishm			
	ent of			
	Children's			
	Homes			
	(section			
	34)			
6.	Appiontmen			
	t of			
	Inspection			

	Committee		
	- If any,		
	details		
	(section		
	35)		
7.	Recognition		
	n of		
	Shelter		
	Homes - If		
	any,		
	details		
	(section		
	37)		
8.	Creation		
	of Fund		
	for the		
	welfare of		
	juveniles		
	(section		
	61)		

THE COMMISSION FOR PROTECTION OF CHILD RIGHTS ACT, 2005

S.No received by the State Government and the District Commissioner	Obligation of the States	Current Status of Implementation (Carried out/not carried out) with details as to the date of order	Detailed reasons for failure including				Rec dat whi imp tio sta car out
			(a)	(b)	(c)	(d)	
			Steps taken which Towards matter was Implementa- monitored by tion Chief Secretary tation ensuring imple- mentaton	Circumstances which rendered implementation impossible towards	Person who was respon- sible for implemen-	Dates on the	
1.	Constitution of State Commission for Protection of Child Rights (section 17)						
2.	Appointment of Chairperson and other members (section 18)						

3.	Appointment of				
	Secretary &				
	other officers				
	for carrying				
	out the				
	functions of				
	the State				
	Commission				
	(section 21(1)				
4.	Annual &				
	Special				
	Reports				
	submitted by				
	State				
	Commission to				
	the State. If				
	any, details				
	(section				
	23(1))				
5.	Constitution				
	of Children's				
	Court (section				
	25)				
6.	Appointment of				
	Special Public				
	Prosecutor				
	(section 26)				
7.	Grants by the				
	State				
	Government to				
	the State				
	Commission. If				
	any, details				

	(section 28(1)		
8.	Rules made to		
	carry out the		
	provisions of		
	the Act		
	(Section		
	36(1).		