

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/WRIT PETITION (PIL) (WRIT PETITION (PIL)) NO. 149 of 2021**

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BACHPAN BACHAO ANDOLAN & ANR.

Versus

STATE OF GUJARAT & ORS.

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Appearance:

MR. PRAYAG SHARMA, ADV. WITH MR. HARI BRAHMBHATT, ADV. WITH
MR DHAVAL M BAROT, ADV. (2723) for the Applicant(s) No. 1,2

MR. UTKARSH SHARMA, ASSISTANT GOVERNMENT PLEADER for the
Opponent(s) No. 1,2,5

NOTICE SERVED for the Opponent(s) No. 4

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CORAM: **HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE
SUNITA AGARWAL**

and

HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 20/09/2024

ORAL ORDER

(PER : HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL)

In the present petition, filed in the nature of Public Interest Litigation, the petitioner is seeking for a direction to take effective steps towards implementation of the order and direction of the Apex Court in **Writ Petition (C) No. 473 of 2005 titled as Sampurna Behura vs. Union of India and others** for strict and effective implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015 and the Protection of Children from Sexual Offences Act, 2012 as also the Commissions for Protection of Child Rights Act, 2005.

2. Amongst the various issues raised in the writ petition, vide order dated 18.01.2024, we required the response of the Member Secretary, Women and Child Development Department, Gandhinagar on three issues. The first issue was of constitution of all Committees, Child Care Institutions including Constitution of the State Commissions for protection of Child Rights under Sections 17 and 18 of the Protection of Child Rights Act, 2005. The second issue was with regard no social audit as required to be made in terms of Rule 64 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 for utilisation of the funds given to the States and Union Territories under the Integrated Child Protection Scheme emphasising the decision of the Apex Court in Writ Petition (Criminal) No.102 of 2007. The third issue is with regard to formulation of a Child Protection Policy based on the policy of 'zero-tolerance to violence against the children' as per Protection of Children from Sexual Offences Rules, 2020.

3. We may note that expressing unhappiness to the affidavit filed in response to the order dated 18.01.2024, vide order dated

4.4.2024, we required the Secretary, Women and Child Development Department to file his/her person affidavit replying to the issues raised in the order dated 18.01.2024.

4. When the matter was taken up today, it was pointed out by the learned counsel appearing for the petitioner that none of the issues raised by this Court in the order dated 18.01.2024 have been properly answered in the affidavit of the Secretary, Woman and Child Development Department, Sachivalaya, Gandhinagar dated 16.04.2024.

5. Mr. Utkarsh Sharma, the learned Assistant Government Pleader, appearing for the respondent State, however, seeks to rebut the submissions of the learned counsel for the petitioner by pressing the affidavit of the Secretary, Women and Child Development Department (Secy, WCDD) before us.

6. Having gone through the said affidavit, we may record that in various paragraphs of the affidavit, the Secretary seeks to refer the main objectives and responsibilities of the Women and Child

Development Department in the State of Gujarat. Integrated Child Development Services Scheme being run in the State to upgrade the health and nutrition level of the children in the State, Constitution of the State Commission for Protection of Child Rights as per the Child Rights Act, 2005 which was working upto the year 2020 and the duties of the Commission being performed by the Collector of the concerned District.

7. The Secretary in his affidavit has further given details of Child Welfare Committees, Juvenile Justice Board and the position of District Child Protection Units. Parawise reply to the writ petition has also been given in the affidavit to submit with regard to the requirement of framing of the State policy under Rule 3(5) of the POCSO Rules.

8. It is admitted by the Secretary that the State Commission for Protection of Child Rights, as per Section 17 of the Child Rights Act, 2005 is not in existence since after 27.04.2020. From the statement made in paragraph No.6 of the affidavit of the Secretary, Women and Child Welfare Department, apathy on the part of the

State Government in constitution of an important body namely the State Commissions for Protection of Child Rights is writ large on the face of the record. As per the statement made in paragraph No.6, the Commission came into existence on 28.09.2012 and the appointment of Chairman and Members was made from time to time. However, the tenure of the Members appointed on 27.04.2017 came to an end on 27.04.2020. Whereas for the last two years, i.e. since after January, 2022 after completion of the tenure of the Chairman of the Commission, the Commission is not in existence.

9. As per sub-section(2) of Section 17 of the Commissions for Protection of Child Rights Act, 2005, the State Commission consists of :-

- (a) a Chairperson, who is a person of eminence and has done outstanding work for promoting the welfare of Children; and
- (b) six Members, out of which at least two shall be women, from the fields prescribed in Clauses (i) to (vi);

10. The Chairman and six Members are to be appointed by the

State Government from amongst the persons of eminence, ability, integrity, standing and experience in the fields mentioned therein.

11. The present petition has been filed in the year 2021 raising the issues of non-implementation of the provisions of the aforesaid three statutory provisions in the State of Gujarat. The response filed by the Secretary, Woman and Child Development Department to our order dated 18.01.2024 reflects apathy on the part of the officers of the State Government. Once the Commission is not in existence, there is no question of Social Audit, which is the work of the Commission.

12. The functions and powers of the State Commissions relating to inquiries etc. as aligned in Section 13 of the Child Rights Act, 2005 relating to the National Commission for Protection of Child Rights, shall apply to the State Commission in view of Section 24 of the Child Rights Act, 2005, and accordingly the State Commission shall have similar enabling provisions in the matter of functions and powers of the Commission relating to inquiries etc.. Section 23 of the Act, 2005 requires the State Commission to submit annual report to the State Government and may at any time submit special

reports on any matter which, in its opinion, is of such urgency or importance and cannot be deferred till submission of the annual report. The reports of the State Commission are to be laid before each House of State Legislature alongwith a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendations.

13. The functions of the Commission aligned in Section 13 are of great importance, as the State Commission is empowered to examine and review the safeguards provided under any law and recommend measures for their effective implementation; inquire into violation of Child Rights and recommend initiation of proceedings in such cases; examine all facts that inhibit the enjoyment of rights of children affected by violence against them and recommend proper remedial measures. In the matters relating to children in need of special Care and protection, including children in distress, marginalized and disadvantaged children, children in conflict with law, juveniles, children without family and children of prisoners and recommend appropriate remedial measures; undertake and

promote research in the field of child rights; spread child rights literacy among various sections of the society and promote awareness of the safeguards available for protection of these rights through publications, the media, seminars and other available means. A very important task assigned to the Commission is of investigation of any juvenile custodial home or any place of residence or institution meant for children, under the control of the Central Government or any State Government or any other authority, including any institution run by a social organisation; where children are detained or lodged for the purpose of treatment, reformation or protection and take up with these authorities for remedial action, if found necessary. The Commission is required to inquire into the complaints and take *suo motu* notice of the matter relating to :-

- “(i) deprivation and violation of child rights;
- (ii) non-implementation of laws providing for protection and development of children;
- (iii) non-compliance of policy decision, guidelines or instructions aimed at mitigating hardships to and ensuring welfare of the children and to provide relief to such children, or take up the issues arising out of such matters with

appropriate authorities.”

14. The powers relating to inquiries made by the Commission in any matter referred to in clause(j) of sub-section(1) of Section 13 of the Act, 2005, has been provided in Section 14 of the Act, 2005. Under sub-section(2) of Section 14, the Commission has power to forward any case to the Magistrate having jurisdiction to try the same, which shall be heard as a complaint against the accused, as if the case been forwarded to him under Section 346 of the Code of Criminal Procedure. The Commission which exercises the powers of the Civil Court in making inquiry and can proceed on the complaint to forward the same to the Magistrate to proceed as a criminal complaint, as per the statement made in paragraph No. ‘7’ of the affidavit of the Secretary, Woman and Child Development Department, is working by forwarding the complaints to the Collectors for the District for taking appropriate action.

15. We take a strong exception to the statement made in paragraph No. ‘7’ of the affidavit of the Secretary, Women and Child Development Department stating that the administrative duties of the Commission are being discharged as on date. In our

considered opinion, this is a reckless statement made by the Secretary, who is in-charge of the Department of Women and Child Development of the State of Gujarat, being in complete ignorance of the importance of functions and powers of the Commissioner under Section 13 of the Child Rights Act, 2005. A vague response has been submitted by the Secretary, Women and Child Development Department in paragraph Nos. '6' and '7' of his affidavit about the requirement of Section 17 of the Child Rights Act, 2005 of Constitution of the State Commissions for the Protection of Child Rights.

16. We are fail to understand as to how an officer holding the designation of Secretary, Women and Child Development Department, Government of Gujarat could submit such a vehement response to the Court. The further statement in paragraph No. '8' that annual reports were prepared by the Commission in the years 2020-21, 2021-22 and 2022-23 is merely an eye wash, inasmuch as, the Commission in its full form with one Chairman and six Members is not in existence since after 27.04.2020, i.e. for about approximately four years. While the Chairman, whose tenure has expired in the month of January, 2022, cannot be expected to

discharge the functions of the State Commission. Moreso, the Secretary himself is satisfied with the manner the complaints are being dealt with by the Collectors of the concerned Districts, which actually falls within the powers of the State Commission under Section 14 of the Child Rights Act, 2005.

17. This whole scenario depicts a very sorry state of affairs at the end of the State Government, where such an important Department of the State, namely Women and Child Development Department is in peril, as the Apex body contemplated under the Child Rights Act, 2005 is not in existence for about four years.

18. We may note that the Act, 2005 was enacted to provide for the constitution of the National Commission and State Commissions for Protection of Child Rights and Children's Courts providing speedy trial of offences against children or of violation of child rights and for the matters connected therewith or incidental thereto. The functions and powers of the State Commission as noted from Sections 13 and 14 of the Child Rights Act, 2005 manifest the requirement of Constitution of such an important body.

19. We must state that we are deeply saddened by the way we have received the response from the highest officer of the State, in-charge of the department of Women and Child Development Department in the State. If the Executives, who are in charge of implementation of the statues framed by the Legislature function in this manner, what would happen to the State institutions and how the State Government would function. In our considered opinion, this question requires a deeper scrutiny by the Portfolio Minister in-charge of the Department. We being the Constitutional Court cannot be expected to day-to-day monitor the functioning of the Executives of different State Departments and that too when the Executives are oblivious of their own duties and responsibilities and, moreover, have no respect for the Court of law.

20. On the issue of formulation of the Child Protection Policy, the answer of the Secretary is again cursory. Rule 3(5) of the Protection of Children from Sexual Offences Rules, 2020 requires the government to formulate Child Protection Policy to be adopted by all institutions, organizations or any agency working in the State on the principle of ‘zero-tolerance to violence against the children’. The response before us that a draft of the National Child Protection

Policy was prepared in the year 2018 and final version of the NCPP is awaited from the concerned Ministry of the Central Government, is no answer for not framing Child Protection Policy depending upon the peculiarity of the respective State, inasmuch as, the National Child Protection policy can only be a model guideline and the State is required to frame Child Protection Policy keeping in mind its specific requirement. The nature of cases and incidences of violation of child Rights would differ from State to State and there can be no denial by the State Government to formulate ‘zero-tolerance policy to violence against the children’ as per the requirement of Rule 3(4) of the Rules, 2020. From a reading of the said Rule, it is evident that the policy is aimed at protecting the rights of children and is to be shared to every institution in the State, in contact with children, including schools of the State. The response of the Secretary proves apathy of the officer and that he has no respect for the Court of law.

21. We, therefore, require that this matter shall be brought to the notice of the learned Advocate General of the State, who shall bring the issue before the concerned Portfolio Minister, who is in-charge of the Women and Child Development Department of the State of

Gujarat, regarding our strong exception to the manner in which the personal affidavit of the Secretary, Women and Child Welfare Department dated 16.04.2004 has been filed. We desist from making any further adverse observations about the inaction and response on the part of the concerned officer, with the hope and trust that remedial measures will be taken within the shortest possible time. A compliance report be submitted by the Chief Secretary of the State Government by the next date.

22. We also require the Member Secretary, GSLSA to submit a report about the proposed course of action taken by the Gujarat State Legal Services Authority as suggested in his report, such as to conduct integrated workshop of all stakeholders associated with the Juvenile Justice Rules, 2015 and the training programme for judicial officers and panel lawyers as per NALSA module.

Put up on 4.10.2024 at 12.30 p.m..

(SUNITA AGARWAL, CJ)

(PRANAV TRIVEDI,J)

C.M. JOSHI