

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/WRIT PETITION (PIL) NO. 149 of 2021****BACHPAN BACHAO ANDOLAN****Versus****STATE OF GUJARAT****Appearance:**

MR PRAGYAN SHARMA, MR HARI BRAHMBHATT, MS. SURABHI KATYAL
WITH MR DHAVAL M BAROT(2723) for the Applicant(s) No. 1,2
for the Opponent(s) No. 3

MR KM ANTANI, ASST.GOVERNMENT PLEADER for Opponent
No.1,2,5

NOTICE SERVED for the Opponent(s) No. 4

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

HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE

Date : 18/01/2024

ORAL ORDER

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

1. The instant petition in the nature of Public Interest Litigation has been filed 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**; strict and effective implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015 ('the Juvenile Justice Act, 2015' in short), the Protection of Children from Sexual

Offences Act, 2012 ('POCSO Act', in short) and the Commissions for Protection of Child Rights Act, 2005 ('the Protection of Child Rights Act, 2005' in short).

2. It is pointed out by Mr.Dhaval M. Barot, learned advocate appearing for the petitioners that the State Commission for Protection of Child Rights as per the mandate of Section 17 of the Protection of Child Rights Act, 2005 is not in existence for a period of about two years. The Chairman of the Commission had retired in the month of January, 2022. As per Section 17(2)(b), six members qualifying the criteria therein, have to be appointed by the State Government to complete the constitution of the Committee.

3. Mr.K.M.Antani, learned Assistant Government Pleader seeks to submit that some time may be provided to constitute the State Commission as per the mandate of Sections 17 and 18 of the Protection of the Child Rights Act, 2005. Noticing

the same, we direct the State Government to take necessary steps to fill up all the vacant posts of the members of the staff, to bring the State Commission in place and make it workable. It is further pointed out that the State Commission for Protection of Child Rights (constituted under Sections 17 and 18 of the Protection of Child Rights Act, 2005) is required to publish annual reports which significantly contribute to the goal of effective monitoring and execution of various laws including the Juvenile Justice Act, 2015 and the POCSO Act, 2012 besides the Protection of Child Rights Act, 2005. As the Commission is not in existence, monitoring for implementation of these statutes cannot be made.

4. The second issue raised by the learned counsel for the petitioners is about the constitution of Child Protection Society for the State and Child Protection Unit for every district. By placing Section 106 of the Juvenile Justice Act, 2015, it is pointed out that the

constitution of State Level Child Protection Society and District Level Child Protection Unit is necessary to oversee effective implementation of Juvenile Justice Act, 2015 including establishment and maintenance of Child Care Institutions (CCIs), so as to monitor that the conditions in such institutions are conducive to the well-being of children in all respects including the nutrition, education, medical benefits, skill development and general living conditions. It is pointed out that as per the information received by the petitioners, out of 462 sanctioned posts, currently 107 posts of officers of District Child Protection Units of the State of Gujarat are vacant. The said posts are to be filled up in a time-bound manner. We may also take note of the Rules 84 and 85 of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 ('the Model Rules, 2016' in short) wherein functions of State Child Protection Society and District Child Protection Unit have

been enumerated.

5. Thirdly, it was contended that it is the duty of the State Government to ensure that all posts in the Juvenile Justice Boards and Child Welfare Committees are filled up expeditiously in accordance with the Model Rules, 2016 or the Rules framed by the State Government, if any. Any delay in filling up the posts would adversely impact the children in need. It is further contended that the management of the Child Care Institution (CCI) is extremely important and the State Government is to ensure that all such institutions are registered so that the issue pertaining to missing children and child trafficking as also the children living in inhuman conditions can be addressed. It is contended that as per the RTI reply dated 12.10.2023 received from Gujarat State Child Protection Society, total 123 Child Care Institutions (CCIs) are existing out of which three are in the process of registration. Total 141 vacant posts in Child Care Institutions in the

State of Gujarat are existing.

6. Lastly, it was pointed out that the Apex Court in **Re: Exploitation of Children in Orphanages in the State of Tamil Nadu vs. Union of India and others [Writ Petition (Criminal) No.102 of 2007]** has emphasized requirement of social audit in terms of Rule 64 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 and the utilization of funds given to the States and Union Territories under the Integrated Child Protection Scheme. As per RTI reply dated 12.10.2023 received from Gujarat State Child Protection Society, no social audit has been done so far. The Apex Court in its order dated 14.08.2019 in **Sampurna Behura (supra)** had directed the Central Government to frame the National Child Protection Policy on prevention of offences against children. As per Rule 3(5) of the Protection of Children from Sexual Offences Rules, 2020, the respective Governments are required to formulate a child protection policy based on the

principle of 'zero tolerance to violence against children', which is to be adopted by institutions, organizations, or any other agency working with, or coming in contact with children. However, as per RTI reply dated 12.10.2023 received from the Gujarat State Child Protection Society, the implementation of the State Child Protection Policy by the Gujarat Government is currently under process. The contention, thus, is that all the above infirmities have to be removed by the State with utmost diligence so that the object and purpose of the Juvenile Justice (Care and Protection of Children) Act, 2015, the Protection of Children from Sexual Offences Act, 2012 and the Commissions for Protection of Child Rights Act, 2005 may be achieved to its fullest.

7. On these submissions, Mr.K.M.Antani, learned Assistant Government Pleader prays for and is granted time to file affidavit of the Member Secretary, Women and Child Development Department,

Gandhinagar by the next date fixed to bring before us the correct position with regard to effective implementation of the above noted statements for protection of children in the State of Gujarat. The Member Secretary, Gujarat State Legal Services Authority is also directed to make an inquiry at his own end, inasmuch as, in terms of the National Legal Services Authority (NALSA) guidelines for protection of children rights, the State Legal Services Authority of the concerned State is obliged to oversee the establishment and management of the Child Care Societies / Institutions in their respective States. This order be intimated to the Member Secretary, Gujarat State Legal Services Authority by the Registrar General, High Court, Ahmedabad, within 24 hours for compliance.

8. Let this matter be posted on 19.02.2024.

(SUNITA AGARWAL, CJ)

(ANIRUDDHA P. MAYEE, J.)

GAURAV J THAKER