

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

WRIT PETITION (CIVIL) NO(s). 473 OF 2005

SAMPURNA BEHRUA

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(With appln(s) for exemption from filing O.T. and interim directions and office report)

Date: 03/01/2007 This Petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.K. THAKKER

For Petitioner(s)

Ms. Colin Gonsalves, Sr.Adv.

Ms. Anubha Rastogi, Adv.

Ms. Jyoti Mendiratta,Adv.

For Respondent(s)

Mr. B. Datta, A.S.G.

Ms. Rajni Ohri, Adv.

Ms. Anit aSahani, Adv.

Mr. Milind Kumar, Adv.

Mr. Aruneshwar Gupta,Adv.

Mr. Kuldip Singh, Adv.

Mr. R.K. Pandey, Adv.

Mr. Sanjay Katyal, Adv.

Mr. Arun K. Sinha, Adv.

Mr. Nishakant Pandey, Adv.

Mr. Gopal Singh, Adv.

Mr. Rituraj Biswas, Adv.

Mr. Nishakant Pandey, Adv.

Mr. Gopal Singh, Adv.

Ms. Hemantika Wahi, Adv.

Ms. Pinky Behera, Adv.

Mr. Naveen Sharma, Adv.

Mr. B.S. Banthia, Adv.

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Mr. Khwairakpam Nobin Singh, Adv.

Mr. S. Biswajit Meitei, Adv.

Mr. David Rao, Adv.

Mr. Radha Shyam Jena, Adv.

Mr. Sanjay R. Hegde, Adv.

Mr. Anil K. Mishra, Adv.

Mr. Vikrant Yadav, Adv.

Mr. Sashidhar, Adv.

Mr. A.S. Rawat, AAG.

Mr. Jatinder Kumar Bhatia, Adv.

Mr. V.N. Shukla, Adv.

Mr. Anuvrat Sharma, Adv.

UPON hearing counsel the Court made the following

O R D E R

This petition has been filed seeking issue of appropriate directions

to the Central Government as also to the Chief Secretaries and Directors

Generals of Police and other authorities of the respondent States to

forthwith implement the Juvenile Justice (Care and Protection of Children)

Act, 2000 (for short, the Act) in its true letter and spirit. The petition

highlights some of the provisions of the Act which have not been

implemented despite number of years having elapsed in the process.

It deserves to be noticed at the very outset that it was more than 20

years ago that this Court, concerned with the plight of the children,

development of their personality and the appalling conditions in jails, issued

various directions. Even in the year 1986, this Court expressed regret that

despite statutory provisions and frequent exhortations by social scientists,

large number of children are lodged in number of jails. It was observed that

even if children are accused of offences, they must not be kept in jails.

Rejecting the argument that there are not enough number of homes or observation homes or other places where children can be kept is the reason

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why they are lodged in jails, in Sheela Barse Vs. Union of India {(1988) 4

SCC 226], this Court reiterated the earlier decision dated 13th August, 1986

reported in (1986) 3 SCC 632. The Government were again impressed upon

to set up the necessary mechanism, i.e., remand homes, observation homes

etc. for lodging children. It was, inter alia, directed that in each district

there should be one juvenile court. Other directions of far reaching impact

so as to preserve, promote and help in development of the personality of the

children, a national asset, were issued.

The Central Legislation, namely, the Act was enacted which

received the assent of the President of India more than six years ago i.e. on

30th December, 2000. It was enacted with a view to consolidate and amend

the law relating to juveniles, inter alia, providing for proper care, protection

and treatment by catering to the development needs of the children and

adopting a child-friendly approach in the matter.

In the writ petition, details have been given showing that in a very

few number of the districts in most of the respondent-States, the requisite

committees/boards have been constituted. In short, the grievance is that the

provisions of the Act remain to be implemented in most of the States in true

letter and spirit. The petitions sets out the details as to the number of

welfare committees and juvenile boards etc. that have been set up in a very

few of the districts in the States. It is also averred that according to the

study, the special juvenile home for boys at Hoshiyarpur and observation

home for boys at Faridkot in Punjab is analogous to a prison where

uniformed and armed policemen guard the home. It is stated that in

Maharashtra, in the observation home at Beed, the children are kept

confined to a cell and are only allowed to relieve themselves in the cell for

which they are provided with plastic bottle. In the homes at Mujaffurpur

and Darbhanga in Bihar the children cook their own food and clean their

utensils as no cook has been appointed and in case they do not cook they

have no other option but to starve. It is also mentioned that the homes have

only one toilet with snakes loitering around. Further, the Mujaffurpur

home does not have electricity for last six months. It is stated that this is an

absolute violation of their right to live with dignity under Article 21 of the

Constitution and other statutory rights under the Act.

Section 4 of the Act provides for constitution of Juvenile Justice

Board, Section 8 for observation homes, Section 9 for special homes and

Section 37 provides for shelter homes. Section 62 requires the Central,

State, District and City Advisory Boards to be set up and Section 62A

mandatorily requires every State Government to constitute a Child

Protection Unit in the State and such units for every district so as to take up

matters relating to children in need of care and protection and juveniles in

conflict with law with a view to ensure implementation of the Act including

the establishment and maintenance of homes, notification of competent

authorities in relation to these children and their rehabilitation and co-

ordination with various official and non-official agencies concerned.

We may note that some of the aforesaid provisions were amended by

Act 33 of 2006 with effect from 22nd August, 2006. By the amendment,

certain outer time frame has been fixed for constitution of some of the

boards, homes etc. It is also true that the time allowable by those

amendments is still not over. At the same time, it is to be kept in mind that

the right of development and right of dignity are guaranteed to children

under Article 21 of the Constitution. In Sheela Barse's case (supra) this

Court only reiterated the rights of the children. Those rights received

statutory recognition by enactment of a consolidated Act in 2000. They

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further received statutory recognition by fixation of an outer time limit for

placing in position the mechanisms under the various provisions of the Act.

It does not necessarily mean that the States or the authorities must wait till

the end to constitute the boards/homes and other required places for

children till the time is over. Furthermore, the question is not only of the

sanction but to see to it that the provisions are implemented in letter and

spirit. The Act requires the Central Government to effectively and properly

monitor the state of affairs in the State Governments. The counter affidavit

filed by the Union of India notices that the Act is aimed to enable increased

accessibility and faster relief to a juvenile or the Committees and Homes in

each district or group of districts. Though the affidavit filed in October,

2006 refers to the establishment of committees and homes in a group of

districts but it has to be borne in mind that the term 'group of districts'

stands deleted from the Act by the amendment Act in 2006 above referred.

The affidavit realises the speedy implementation of the provisions of the Act.

Though reference is made in the counter affidavit to a letter dated 22nd

February, 2001 written to all the Chief Secretaries of all State Governments

intimating about the actions required to be taken, it does appear that there

is acute need to ensure the implementation effectively.

In the counter affidavit, it is further stated that it is for the

concerned respondent-State Governments to comment on the issues of non-

implementation of the Act. The approach of the ministry, namely, Ministry

of Women and Child Development, Government of India, in this matter has

to be different as is evident from the new section inserted by amendment Act

2006, namely, Section 62A, which is referred to above. We do not know

whether the Central Government has constituted the Advisory Board as

required by Section 62 of the Act and, if so constituted, what steps have been

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taken by the Board till date.

In short, we wish to make it clear that it is not only the enactment

of laws but the implementation thereof in letter and spirit which is

absolutely necessary having regard to the provisions of the Act and Article

21 of the Constitution in relation to the children.

Under these circumstances, we direct the Chief Secretaries of the

respondent States to file detailed affidavits stating as to what steps have

already been taken in this regard; what Boards/Committees/Homes are

already in position; in how many districts they are working; how many

children are there in those Homes or Boards; what are the steps to be taken

for establishing the remaining Boards/Homes and also for implementing the

various provisions of the Act in true letter and spirit. The affidavits shall be

filed by the Chief Secretaries within four weeks of the receipt of a copy of

this order.

Likewise, we direct the Central Government to file a detailed

affidavit of the Secretary of the aforesaid Ministry in terms of what is noted

above within a period of four weeks from today. The affidavit would

disclose in detail the manner in which the Ministry has monitored the

implementation of the Act by the State Governments.

List the petition after six weeks.

(N. Annapurna)

Court Master

(V.P. Tyagi)

Asstt. Registrar