

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) No. 6830 of 2007 & CM 14015/2007(impleadment)

Reserved on : 16th July, 2008
Date of decision: 3rd September, 2008

CHILD WELFARE COMMITTEE Petitioner
Through: Ms. Aparna Bhat, Advocate.

versus

GOVT. OF N.C.T. OF DELHI & ORS. Respondents
Through Ms. Mukta Gupta, Sr. Standing Counsel
for R-1/GNCT of Delhi.
Mr. V.K. Tandon, Advocate for R-2 & 3.
Mr. Rajat Wadhwa, Advocates for proposed
respondents/ Veena and Ram Lal in CM.14015/07.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE DR. JUSTICE S. MURALIDHAR

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in Digest? | Yes |

JUDGMENT

Dr. S. Muralidhar, J.

1. The genesis of this petition is a letter dated 12th September 2007 addressed to a learned Judge of this Court by Dr. Bharti Sharma, Chairperson, Child Welfare Committee (CWC), Nirmal Chhaya Complex, Jail Road, New Delhi. That letter was treated as a public interest litigation. In the said letter Dr. Sharma referred to the case concerning the illegal adoption of a male infant born on 13th August 2007 to a girl who was a rape victim as well as a minor. The case was first brought to light by the reporter of a television channel, CNN IBN. The minor girl was a domestic worker with a placement agency by the name of Adivasi Sewa Samiti, Shakurpur. According to the minor girl, the placement

agency sold her infant to a couple. Taking a cue from S.228A IPC, and with a view to protecting the identity of the girl, she will be referred to hereafter in this judgment as 'S'.

2. On 2nd September 2007 when the above facts were brought to the notice of the CWC by an NGO, 'PALNA', the CWC took cognizance of the case and instructed the SHO of Police Station Saraswati Vihar to admit the minor mother as well as her infant, both answering the definition of children in need of care and protection under the Juvenile Justice (Care and Protection of Children) Act, 2000 [JJ Act], to the Children's Home for Girls, Nirmal Chhaya under the care and protection of the CWC.

3. The police questioned 'S' at Shakurpur and recorded her statement in which she disclosed that she had been raped. She stated that she was a resident of Village Khujuriya Police Station Goyal Kira Distt : Pashmi Singhbhum Jharkhand. A regular FIR No. 925/2007 was registered and 'S' was medically examined. During the course of investigation one Preeti wife of Vinod was arrested. According to Preeti, 'S' had come to them when she was already pregnant. Though 'S' was not married she decided to retain the child with her whereas Preeti and her husband wanted to sell the child. They contacted one Santosh for this purpose. After a male infant was born to 'S' they handed him over to Santosh and informed 'S' that her child had been born dead. Santosh in turn sold the infant to one Veena for Rs. 23,000/- and the money was shared between Santosh, Preeti and Vinod. 'S' disclosed to the police that when she protested, Preeti, Vinod and Santosh confined her in their premises.

4. Thereafter the police recorded the statement of Veena who stated that she had four daughters and no son. Her mother had come into contact with Santosh. After some negotiations, Santosh sold the child to Veena for Rs. 23,000/-.

5. On 2nd September 2007, the 20-day old infant was produced before the concerned Duty Metropolitan Magistrate (MM) before whom an application was filed by Veena's husband for custody of the infant. By an order dated 3rd September 2007, the learned MM ordered that the infant be kept in the custody of Veena. Thereafter the infant was produced before the MM on 5th and 12th September 2007 during which the custody of the infant continued with Veena and her husband Ram Lal by the orders of the learned MM. Custody of the infant was finally handed over to Veena on 14th September 2007. It is stated that although the representatives of the CWC as well as the NGO ('PALNA') participated in the proceedings, the custody of the infant was not given to them.

6. In her letter to this Court, Dr. Bharti Sharma pointed out that the learned MM transferred the case of 'S' to the CWC on 10th September 2007. The CWC ordered another NGO, 'HAQ: Centre for Child Rights,' to provide legal aid to 'S'. In her letter dated 12th September, 2007 to this Court by Dr. Sharma pointed out that the adoption provisions under the JJ Act as well as the Central Adoption Resource Agency (CARA) Guidelines were "totally flouted" and that "what has transpired in this case is not just against the law (minor girl being sent to Women's home, baby being handed back to the persons who have 'bought' it illegally), but also not in the best interest of the children". Accordingly, Dr. Sharma urged this Court to take immediate cognizance and initiate necessary action.

7. On 6th September 2007, the statement of the 'S' was recorded under Section 164 CrPC by the learned MM. On 13th October 2007, Vinod was arrested. During the further questioning, 'S' disclosed that she had been raped by one Manmohan who was the driver working with Vijay and Sulekha with whom she was placed as a domestic worker. Manmohan was arrested. The DNA finger printing test proved that Manmohan and 'S' were the biological parents of the infant.

8. The letter sent by Dr. Bharti Sharma to this Court was registered as Writ Petition (Civil) No. 6830 of 2007. After notice was directed to issue to the respondents on 19th September 2007, a detailed order was passed by this Court on 21st November. Since it is a fairly comprehensive order containing several directions, it is reproduced in full hereunder:

“W.P. (C) No.6830/2007

1. Our attention is drawn to Section 41 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as, the Act). The said provision deals with the manner and mode of the process of rehabilitation and adoption of the children who are orphan and abandoned.

2. The child herein was allegedly given on adoption by Ms.Preeti and Mr.Vinod through one, Ms.Santosh by selling the new born baby for a consideration of Rs.23,000/-. A case being FIR No.925/2007 is registered at police station Saraswati Vihar, under Sections 342/376/506/363/367/34 IPC. The police must investigate the aforesaid offence and bring the said investigation to a logical end. The action taken report shall be filed by the police in respect of the stage of the investigation positively before the next date.

3. So far as the alleged adoption is concerned, we feel that such adoption should be in terms of and after following the procedure under Sections 40 and 41 of the Act. The said procedure has not been followed in the present case. The alleged adoption cannot be accepted as the same is not in accordance with the Act. In this connection, we may refer to the provisions of Section 29 onwards of the Act. The said provisions give wide power to the Child Welfare Committee which has been entrusted with the responsibility and duty for providing care, protection, treatment, development and rehabilitation of the children. So far as Delhi is concerned, a Committee has already been constituted, which is functional as of today.

4. The Chairperson of Child Welfare Committee, Dr. Bharti Sharma is present in the Court. She is also represented through her counsel who states that there was a direction of the Child Welfare Committee for production of the mother and the child before them so as to enable the Committee to give effect to the provisions and requirements of the Act. In this connection, we may refer to Section 2(d) of the Juvenile Justice Act 2000 as amended in 2006 which defines “child in need of care and protection” as under:-

“Section 2(d) “child in need of care and protection” means a child.”

(i) who is found without any home or settled place or abode and without any ostensible means of subsistence,

[(i-a) who is found begging, or who is either a street child or a working child,]

(ii) who resides with a person (whether a guardian of the child or not) and such person”

(a) has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out, or

(b) has killed, abused or neglected some other child or

children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person,

(iii) who is mentally or physically challenged or ill children or children suffering from terminal diseases or incurable diseases having no one to support or look after,

(iv) who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child,

(v) who does not have parent and no one is willing to take care of or whose parents have abandoned [or surrendered] him or who is missing and run away child and whose parents cannot be found after reasonable inquiry,

(vi) who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts,

(vii) who is found vulnerable and is likely to be inducted into drug abuse or trafficking,

(viii) who is being or is likely to be abused for unconscionable gains,

(ix) who is victim of any armed conflict, civil commotion or natural calamity;

5. The child in question would definitely come within the ambit of the “child in need of care and protection” and if that be so, then the Child Welfare Committee, which is a statutory authority, will have jurisdiction and power to pass such orders as deemed fit and proper for giving effect to the provisions of Act, which is a welfare legislation. One may also refer to the Judgement of the Supreme Court in *Pratap Singh versus State of Jharkhand*, reported in (2005) 3 SCC 551 wherein the Court while dealing with the question

of the purpose and object of the Juvenile Justice Act, 1986 and the Act, noted as under:

“10. Thus, the whole object of the Act is to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles. It is a beneficial legislation aimed at making available the benefit of the Act to the neglected or delinquent juveniles. It is settled law that the interpretation of the statute of beneficial legislation must be to advance the cause of legislation for the benefit of whom it is made and not to frustrate the intendment of the legislation.”

6. The direction and order passed by the Metropolitan Magistrate, Rohini Courts, unfortunately ignores and fails to take into consideration the provisions and object of the Act. The Factual averments made in the application filed by the Child Welfare Committee and the Police required deeper consideration and analysis keeping in mind the provisions of the Act. The role of the Child Welfare Committee with respect to the process of adoption is very clear from the plain reading of Section 41 of the Act, which reads as under:

“41. Adoption:- (1) The primary responsibility for providing care and protection to children shall be that of his family.

[(2) Adoption shall be resorted to for the rehabilitation of the children who are orphan, abandoned or surrendered through such mechanism as may be prescribed.

(3) In keeping with the provisions of the various guidelines for adoption issued from time to time, by the State Government, or the Central Adoption Resource Agency and notified by the Central Government, children may be given in adoption by a court after satisfying itself regarding the investigations having been carried out, as are required for giving such children in adoption.

(4) The State Government shall recognise one or more of its institutions or voluntary organisations in each district as specialised adoption agencies in such manner as may be prescribed for the placement of orphan, abandoned or surrendered children for adoption in accordance with the guidelines notified under sub-section (3) :

Provided that the children's homes and the institutions run by the State Government or a voluntary organisation for children in need of care and protection, who are orphan, abandoned or surrendered, shall ensure that these children are declared free for adoption by the Committee and all such cases shall be referred to the adoption agency in that district for placement of such children in adoption in accordance with the guidelines notified under sub-section (3).]

(5) No child shall be offered for adoption

(a) until two members of the Committee declare the child legally free for placement in the case of abandoned children,

(b) till the two months period for reconsideration by the parent is over in the case of surrendered children, and

(c) without his consent in the case of a child who can understand and express his consent.

[(6) The court may allow a child to be given in adoption:

(a) to a person irrespective of marital status; or

(b) to parents to adopt a child of same sex irrespective of the number of living biological sons or daughters; or

(c) to childless couples.]”

7. This is very unfortunate that a Metropolitan Magistrate who is vested with certain responsibilities has passed such an order.

8. The child is present in Court and we direct that the custody of the child be immediately handed over to the Child Welfare Committee who shall take care and provide for the child concerned, until we pass further orders in this regard.

9. The natural mother and the child are to live together under the supervision of the Child Welfare Committee.

10. The custody and possession of the child has been handed over to Dr. Bharti Sharma, Chairperson, Child Welfare Committee today in the Court.

11. The Child Welfare Committee shall also carry

out enquiry in terms of the provisions of the Act and shall submit a report to this Court before the next date. The natural mother shall also be present in the Court on the next date.

12. This order shall be given effect to immediately and copy of this order be sent to the concerned Metropolitan Magistrate, wherever she is posted. Copy of this order will also be sent to the Chief Metropolitan Magistrate for being circulated.

Renotify on 12th December, 2007.”

9. What is important is that from 21st November 2007 onwards the custody of the infant was given to the CWC under whose protection ‘S’ already was. In the further order dated 12th December 2007, this Court noted that the infant was in the custody of ‘S’. The Court allowed time to ‘S’ to take a decision as regards the custody or adoption of the infant.

10. On 5th March 2008, the following order came to be passed by the Court:

“Pursuant to our order, the Child Welfare Committee, who was given custody of the mother and the child, is looking after the welfare of both the mother and the child at the present moment. Counsel appearing for the Child Welfare Committee, however, states before us that the mother wants to give the child in adoption. Our attention is also drawn to Section 41 of the Juvenile Justice (Care and Protection of Children) Act, 2000. There is already one applicant for custody of the child contending, inter alia, that they are interested in taking the boy in adoption in the family as there is no male child in the family. There is some complaint against the said applicant also.

Be that as it may, without going into the merits of the claims and

counter claims in respect of custody of the child, we direct the Juvenile Justice Board No.1 to examine the matter as to who could be given the adoption/custody of the child and to whom the mother is desirous of giving the child in adoption, keeping in mind the welfare of the child. All the parties, who are interested in the issue, may appear before the Juvenile Justice Board No.1 on 27th March, 2008, when a further date in the matter will be given by the Board for making necessary inquiries. However, before giving custody of the child, a report shall be submitted to this Court by the concerned Board so that this Court can look into the issue of the welfare of the child and the Juvenile Justice Board would abide by the orders of this Court. It shall also be open to the Juvenile Justice Board to examine all persons, including the natural mother of the child.

Renotify on 30th April, 2008.

Copy of the order be sent to the Juvenile Justice Board No.1.”

11. Pursuant to the above order, a detailed report has been submitted to this Court by the Juvenile Justice Board-I Delhi (JJB), presided over by Ms. Illa Rawat, Principal Magistrate. Enclosed with the report are the statements of persons examined by the JJB, the proceedings of the CWC and other relevant documents. The JJB has examined the statements made before it and the relevant records and concluded that ‘S’ in all probability did not freely consent to her child being given away in adoption. The JJB has observed as under:

“Though ‘S’ made a statement before Ld. MM, Rohini Court on 02.09.2007, 03.09.2007, 05.09.2007 and 12.09.2007 and in her statement U/s 164 Cr.P.C. before concerned Court that she wanted to give her child to Veena, ‘S’ has explained the circumstances in which she had so consented when she was examined by this Board on 07.05.2008. In this context she has explained that she was unable to lactate as she was not having milk to feed the infant and

came to know that the place she was staying housed other small children for whom there was provision for milk. It is possible that the helpless minor girl, who was not aware of her rights or the fact that she and her child were entitled to be provided shelter, food and clothing by the state run institutions, which would enable her to keep her child with her, probably out of helplessness and exasperation exercised the only option that she thought was available to her i.e.: to allow her child to remain with Veena and Ram Lal in a hope that there he at least would get shelter and food.”

12. Further the JJB concluded that the payment made by Veena in the sum of Rs.23,000/- for taking the neglected child in adoption was violative of Section 9(5) and Section 17 of the Hindu Adoption & Maintenance Act, 1956 which prohibits any person from receiving any payment in consideration of adoption of any person or making or giving or agreeing to make or to give to any person, any payment or reward that is prohibited by that provision. The JJB also noted that the act of giving away of the infant in adoption was in the teeth of the guidelines laid down by the Supreme Court in *Laxmi Kant Pandey v. Union of India (1984) 2 SCC 244* and in particular its observations in para 17 which read as under:

“We were told that there are instances where large amounts are demanded by so-called social or child welfare agencies or individuals in consideration of giving a child in adoption and often this is done under the label of maintenance charges and medical expenses supposed to have been incurred for the child. This is a pernicious practice which is really nothing short of trafficking in children and it is absolutely necessary to put an end to it by introducing adequate safeguards.”

13. Referring to the provisions of Section 41 of the JJ Act and Rule 33(4) of WP(C) No. 6830/2007

the Juvenile Justice (Care and Protection of Children) Rules 2007 [JJ Rules], the JJB pointed out that even if this were to be considered to be a case of a 'surrendered child,' "without the concerned parent/parents having been counseled and/or being informed of possibility of retaining the child, the surrender cannot be taken to be voluntary nor does it go with the legislative spirit." In addition, reference has been made to guideline 1.1.3(iv)(f) which reads as under:

"In case of a child born out of wedlock, the mother herself and none else can surrender the child. If she is a minor, the signature of an accompanying relative will be obtained on the surrender document."

14. The CWC got 'S' examined by Dr. Achal Bhagat, Director, Saarthak who was also a Senior Consultant Psychiatrist and Psychotherapist at the Apollo Hospital and Ms. Bharti Tiwari, Assistant Director, Saarthak and Consultant, Clinical Psychologist. The said report has been enclosed with the status report filed before this Court by the CWC on 12th December 2007. In the said report, it has been observed as under:

" 'S' is in a dilemma about her future. She wants to bring up the child. She also feels that for the present the best place for her is with her family. She is not sure how her other siblings will behave with her and the child. She said that she loves the baby and now wants to bring up the child and not give him for adoption....."

"If 'S' were to remain in Delhi, it is important that the court or the child welfare committee give directions for her to be trained to be able to economically and psycho-socially independent. It is recommended that

she be placed in an environment which is safe, non-judgmental and helps to bring up her child. If such an environment is not possible and she has to be sent home, given the reluctance of her father to support the child, other care arrangements, including adoption should be considered for 'S's child."

15. After taking note of the above report, the JJB has concluded as under:

“ 'S' fully understands her responsibility towards her child and is ready to take necessary steps to ensure that her child is brought up in an atmosphere of love and affection."

16. We appreciate the effort taken by the JJB and accept its report. It is a comprehensive report containing certain useful suggestions. *Inter alia* it has been suggested that in the background of the provisions contained in Article 15(3) read with Articles 24 and 39(e) and (f) of the Constitution, as explained by the Supreme Court, it is obligatory for the State to provide for the infant so that he can be brought up in a congenial manner without being deprived of the love, care and affection of his natural mother who wishes to retain him.

17. This Court in its proceedings dated 29th May 2008 noticed that 'S' was at present in the Nirmal Chhaya Complex (Children's Home for Girls) and that according to the Chairperson of the CWC she may be given further vocational training. The girl's parents have apparently expressed their unwillingness to support girl and therefore the option of her returning, with her child to Jharkhand, is ruled out. This Court desired that the CWC should ascertain the wishes of 'S', as to what she would want to do so that she could support herself. It also directed the Government of National Capital Territory of Delhi (GNCTD)

to consider providing employment to the girl. The Court was informed that 'S' is no longer a minor and can be suitably employed.

18. At the hearing on 16th July 2008, this Court was informed by Ms. Mukta Gupta, the learned Senior Standing Counsel appearing for the GNCTD that the GNCTD is willing to give employment to 'S' as House Aunty in a state run institution for care for which a fixed honorarium is paid. Although the minimum qualification for the said post is 8th Class pass, the GNCTD is prepared to consider relaxing that requirement in the special facts and circumstances of the case. The Court also ascertained the wishes of 'S'. She was willing to take up an employment with a state run institution.

19. In view of the statement made by the GNCTD and the willingness expressed by 'S', we direct that the GNCTD will employ 'S' as House Aunty and arrange for her stay in the institution to which she will be attached along with her child by relaxing the educational qualification. This should be done within a period of four weeks from today. We further direct that all possible assistance will be extended to 'S' by the GNCTD to enable her to pursue her education and for being trained in any vocational skills of her choice. The GNCTD will also ensure that her infant child is provided free education till he completes the age of fourteen and even thereafter if he chooses to continue. We would request the CWC to continue to monitor the progress and welfare of both the girl and the infant. It would be open to the girl and her child, as well as the CWC to approach this Court for any directions they may require in connection with this case.

20. This case brings to light the poignant plight of several child domestic workers who are taken in by placement agencies, and in turn are placed in many households in this city. These young children come from far away places in the country and, as in this case, belong largely to the disadvantaged sections of the society. The employment of such children for work is driven essentially by poverty which compels poor parents to part with their children for money. Despite the notification under the Child Labour (Prohibition & Regulation) Act, 1986 [‘CLPRA’] issued by the Central Government prohibiting employment of children in domestic households it is not uncommon to find in our immediate environs little girls employed as carers of babies and toddlers. They work for long hours on arduous tasks unsuited to their tender age. All this is, no doubt, illegal but it would be too simplistic to consider this to be a merely legal issue. It needs no reiteration that the JJ Act has itself been made in terms of Article 15 (3), Article 39(e) and (f), Articles 45 and 47 as well as the International Convention on the Rights of the Child (CRC) which has been ratified by India. The preamble to the JJ At makes express reference to these provisions as well as to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules), the United Nations Rules for the Protection of Juvenile Deprived of their Liberty (1990). The need to strictly enforce all these provisions is even more urgent and it would hardly suffice to be sanguine that the mere enactment of the Act would itself bring about the transformation in the lives of destitute children. Apart from awareness of legal provisions, the State would have to be constantly reminded of its obligations under the Constitution to create circumstances conducive to the healthy development and care of children in their homes. The GNCTD and the Delhi Police will also pay attention to the need for sensitizing concerned Station

Housing Officers (SHOs) in cases arising under the JJ Act so that the applications made by the prosecution before the JJB or MM, are not mechanically drawn up as was perhaps done in this matter.

21. What is stark about this case is that the young mother when she gave birth to her child was herself a child in need of care and protection in terms of the JJ Act. While this case has served to highlight the urgent need for the State put in place corrective measures and ensure that such instances are prevented, there are probably many more such children whose stories are unable to be narrated in the media and before the courts and other authorities. The vulnerability of girl children employed as child carers and maids in domestic settings and the need to ensure their safety from exploitation and violence can never be overemphasized. This Court would urge the GNCTD to create greater awareness of the provisions of the JJ Act and the CLPRA both through the print and electronic media and in particular in schools and residential colonies, through the resident welfare associations. The monitoring of the functioning of placement agencies would have to be undertaken on a far more rigorous scale to ensure that minors are not allowed to be employed and placed in domestic households. We would suggest to the GNCTD to seek the involvement of the Child Rights Commission at the Central and State levels in formulating scheme and programmes in the area.

22. While commending the efforts of the CWC as well as the JJB, this Court would also like to remind the learned MMs exercising powers under the JJ Act to be far more vigilant and cautious before making orders placing young children in the custody of unrelated adults without examining the ramifications of such orders. In particular this Court would like to reiterate the directions

already issued in its detailed order dated 21st November, 2007, which has been reproduced in full hereinabove. In addition, this Court would like to draw attention to the mandatory nature of Rule 77(3) of the JJ rules which requires that “In case of a child in need of care and protection and produced as a victim of a crime before a Magistrate not empowered under the Act, such Magistrate shall transfer the matter concerning care and protection, rehabilitation and restoration of the child to the appropriate Committee.” Therefore, the presentation or transfer of the case by the Magistrate to the CWC or the JJB at the earliest possible stage is of utmost importance. The judicial officer should immediately transfer the case without going into details of claims and counter claims, to the JJB and/or the CWC which are specialized bodies constituted under a special Act meant for care and protection, rehabilitation and restoration of the child in need of care and protection.

23. Before parting with the case, this Court would like to make an observation as regards providing legal services and legal aid to children under the JJ Act and CLPRA. Despite each child being mandatorily entitled to free legal aid under Section 12 of the Legal Services Authorities Act, 1987 and there being a specific provision in the form of Rule 14 of the JJ Rules very often the CWC and JJB are having to resort to the services of NGOs. While the efforts made by the NGOs in this case, i.e., both ‘PALNA’ & ‘HAQ’ are indeed commendable and deserve unreserved appreciation, it is essential that both the District Legal Services Committees as well as the Delhi State Legal Services Authority, on a priority basis, constitute a special panel of advocates with the requisite degree of sensitivity to such cases to handle on a daily basis in the proceedings in the JJB as well as CWC. They should be available round the clock on call and a complete

list of names with their telephone and mobile numbers should be made available to these authorities for that purpose. This court would add that the payment for rendering such services should be commensurate with the expertise and standing of such advocates so that their continued assistance at all times is available to the JJB and the CWC. The panel should be constantly reviewed after getting a feedback.

24. The Court would also like to place its appreciation of the assistance rendered to this Court by Ms. Aparna Bhat, the learned Advocate appearing for the CWC and Ms. Mukta Gupta, the learned Senior Standing Counsel for the GNCTD. The television channel CNN IBN also deserves appreciation for bringing the case to light and triggering the judicial exercise.

25. The writ petition and application stand disposed of with the above directions. Copies of this order be sent within a week to the CWC, the JJB-I, Delhi, the Secretary, Department of Social Welfare, GNCTD, and the Secretaries of both the District Legal Services Committee, Room No. 1, Patiala House Courts, New Delhi and the Delhi State Legal Services Authority.

S. MURALIDHAR, J.

CHIEF JUSTICE

3rd September, 2008
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