

**\*IN THE HIGH COURT OF DELHI AT NEW DELHI**

**Date of decision: 21<sup>st</sup> March, 2012**

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**W.P.(C) 8889/2011**

**COURT ON ITS OWN MOTION**

..... Petitioner

Through: Mr. Rohan J. Alva for Mr. Anant K. Asthana, Adv.  
Ms. Anu Narula, Adv. in person as Intervener.  
Mr. Ajay Verma in person with Mr. Gaurav Bhattacharya, Adv. for Intervener.

versus

**DEPARTMENT OF WOMEN AND  
CHILD DEVELOPMENT**

..... Respondent

Through: Ms. Monika Garg, Adv. with Mr. B.K. Sahu, Registrar, NCPCR.  
Ms. Asha Menon, Member Secretary, DSLSA with Mr. Harish Dudani, OSD & Mr. Digvinay Singh, Project Officer, DSLSA.  
Ms. Shobhana Takiar, Adv. for Tihar Jail & Delhi Police.

**CORAM :-**

**HON'BLE THE ACTING CHIEF JUSTICE**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**J U D G M E N T**

**A.K.SIKRI, ACTING CHIEF JUSTICE**

1. We are informed, that the teams comprising of the members of National Commission for Protection of Child Rights (NCPCR) & Delhi Legal Services Authority (DLSA) along with certain volunteers had visited

Jail No.6 & 7 in Tihar Jail Complex; that adolescent under trials/prisoners are kept mostly in Jail No.7 though some are housed in Jail No.6 also where women prisoners are also lodged; these teams interacted and made enquiries in respect of 278 prisoners/under trials; after verification, these teams *prime facie* found more than 100 of the aforesaid 278 prisoners to be juveniles i.e. who were less than 18 years of age at the time of commission of offence. Ages of some of such prisoners were as low as 15-16 years.

2. This startling revelation clearly demonstrates that neither proper inquiry is being conducted by the Police at the time of arresting or by the Magistrates when such prisoners are produced before these Magistrates. Once it is found that such prisoners were juveniles, sending them to jail even for a day amounts to denial of their fundamental right and right to liberty.

3. We have also been shown the order dated 16<sup>th</sup> March, 2012 titled ***State v. Rahul*** in FIR No.269/2011 passed by the Juvenile Justice Board-1, Sewa Kutir Complex, Kingsway Camp, Delhi-110009 presided over by Ms. Anuradha Shukla Bhardwaj, Principal Magistrate. This order pertains to a child who was in the year 2009 declared a juvenile, 15 years of age by JJB itself. However when he was again arrested in the year 2011, inspite of aforesaid declaration/proof that he was a juvenile even in the year 2011, he was produced before the Magistrate and was sent to jail. Even though at the time of his arrest the police officer who arrested had suspicion about

his age and therefore he was taken to a hospital for examination of his age, but he could not get the report from the hospital about his age and in these circumstances the police officer produced that juvenile before the ordinary criminal court presided over by the Metropolitan Magistrate. This is in spite of the clear mandate of law that even in case of a suspicion the arrested prisoner is to be produced before the JJB. By the time his age was ascertained and the Magistrate ordered him to be sent to JJB, the said juvenile named Rahul had spent 1 month and 17 days in jail which could have been avoided with little precaution.

4. We intend to lay down comprehensive guidelines and policy and would like to issue directions to the various authorities as to how to deal with such cases. For this purpose the petitioner Mr. Asthana as well as the interveners namely International Bridges of Justice (India) Trust as well as Ms. Anu Narula, Advocate have already stated that they would be working on this aspect and would submit draft guidelines which should be followed while dealing with such matters. While that exercise is going on, certain immediate directions are required to be passed in this matter. We accordingly direct:-

- (i) Those inmates in jail about whom investigations were made by the teams of NCPCR /DLSA etc. and who are suspected to be juvenile as per initial investigations, shall be kept by the Supdt., Tihar Jail separately, insulated and segregated from all

other prisoners. They shall be produced in batches before the JJB. Further enquiry into the matter to conclusively determine their age shall be conducted by the JJB. Those who are ultimately found to be juvenile shall be shifted from the jail to observation home by the JJB.

- (ii) Ms. Anu Narula, Advocate has also annexed, with her application, list of 19 such prisoners who according to her may be juveniles though their ages are shown as above 18; some of those may be in the list of the prisoners investigated by NCPCR /DLSA. Enquiry into their ages shall also be conducted in a similar manner.
- (iii) Teams of NCPCR /DLSA in a similar manner as aforesaid, shall visit Tihar Jail. Those who appear to be juvenile, procedure for ascertainment of their ages shall also be followed in a similar manner as aforesaid by producing them before the JJB. These teams, shall document the cases and forward the list to jail authorities as well as JJB
- (iv) The investigating officers, while making arrest shall reflect the age of the prisoner arrested in the Arrest Memo. It would be the duty of the Police Officer to ascertain the said age by making inquiry from the prisoner arrested if such prisoner is in possession of any age proof etc. In other cases if prisoner,

from appearance, appears to be juvenile and the police officer has belief that the prisoner is a juvenile, he shall be produced before the JJB instead of criminal court.

- (v) The police authorities shall introduce “Age Memo” on the line of “Arrest Memo” which was evolved by the Supreme Court in the case of *D.K. Basu v. State of West Bengal* 1996(9) SCALE 298. A concrete and well thought scheme in this behalf needs to be evolved by Special Juvenile Police Unit to address the concern. We direct Special Juvenile Police Unit to evolve such a scheme and place before us on the next date of hearing.
- (vi) As and when a young person is apprehended/arrested and he is produced before the Magistrate, it will be the duty of the Magistrate also to order ascertainment of age of such a person. The Magistrate shall, in all such cases, undertake this exercise wherefrom the young person from his/her looks appears to be below 18 years of age and also in all those cases where in the arrest memo age is stated to be 18-21 years. A preliminary enquiry in this behalf shall be undertaken of all these young persons whose age is stated to be up to 21 years on the lines of judgment of the Supreme Court in *Gopinath v. State of West Bengal* AIR 1984 SC 237.

5. In order dated 16<sup>th</sup> March, 2012 passed by the JJB in Rahul's case the JJB has made certain suggestions though at the same time it is stated that it is not competent to give any directions. After going through these suggestions, we are of the opinion that these suggestions are necessary to be followed and therefore we give hereunder following directions based on those suggestions.

In conducting the inquiry the:-

- I.O. shall ask the person if he has been a part of formal schooling at any point of time and if the child answers in affirmative the I.O. should verify the record of such school at the earliest.
- If the parents of the person are available, this inquiry should be made from them. The I.O. should ask the parents if they have got the date of birth of the child registered with the MCD or gram pradhan etc. as provided under law and taken the answers/documents on record.
- Where no such document is found immediately and the I.O. has reasonable grounds to believe that such document might be existing he shall produce such person before Board and should seek time for obtaining these documents.

- A preliminary inquiry can be made from the parents of such person about the time of their marriage and the details of how many children do the parents have and after how long of the marriage were these children born.
- In addition to above an inquiry of previous criminal involvement of the juvenile shall necessarily be made with the effort to find if there is any past declaration of juvenility. For this the police should also maintain data of declaration of juvenility.

The inquiry conducted in each case shall be recorded in writing and shall form a part on investigation report in each case where a child claims his age up to 21 years irrespective of whether he is found a juvenile or an adult.

- Special Juvenile Police Unit shall set up a mechanism in place for necessary coordination and assistance to police officer who may require such information.
- An advisory/circular/Standing Order, as may be appropriate, be prepared by the Special Juvenile Police Unit for the assistance of police officer/IOs/JWOs for the purpose of assistance on matters related to age inquiry. Such advisory/Circular/Standing Order shall also include

the procedure which needs to be followed by the IOs in cases of transfer of cases from adult courts to JJB and vice versa.

- In each case, where a public officer arrests a person as adult and later on such person turns out to be a juvenile, DCP concerned shall undertake an inquiry to satisfy him/her that a deliberate lapse was not committed.

6. In so far as Magistrates are concerned, in order to undertake their job properly in the manner suggested above, we are of the opinion that there should be a special course/training programme conducted by the Delhi Judicial Academy for these Magistrates. The programme shall be devised by the Delhi Judicial Academy in consultation with DLSA and the Delhi Judicial Academy shall start orientation programme on these lines within one month from today in batches.

7. In our order dated 8<sup>th</sup> February, 2012 we had taken note of the submission of learned counsel appearing for International Bridges of Justice (India) Trust to the fact that it had discovered that about 17 of the prisoners were stated to be below 18 years of age. The learned counsel for the Jail Authorities had taken time to verify those cases. The learned counsel for the Jail Authorities today submits that three prisoners were found to be juvenile who have since been sent to observation room; six

have already been released on bail and in respect of 8 remaining prisoners, report is awaited. She shall submit the report before the next date.

8. List for further proceedings on 2<sup>nd</sup> May, 2012.

**ACTING CHIEF JUSTICE**

**RAJIV SAHAI ENDLAW, J**

**MARCH 21 , 2012**

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