

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

Judgment Reserved on September 02, 2015

Judgment delivered on: September 04, 2015.

+ 1. W.P.(CRL) 1548/2015

SEEMA ROY

..... Petitioner

Through: Mr. Sushil Kumar Jain, Advocate.

versus

STATE (GOVT OF NCT DELHI) & ANR

..... Respondent

Through: Mr. Rahul Mehra, Standing Counsel (Crl.) with Mr. Jamal Akhtar & Mr. Amrit Singh, Advocates.

Insp. Ved Prakash, PS. H. Nizamuddin, ACP R.K. Rathee, Ins. Dig Vijay Singh, PS Mehrauli, Insp. Som Nath, PS Vasant Vihar, ACP Jasbir Singh, SHO Sunil Kr., PS Govind Puri.

Ms. Aparna Bhat & Ms. Tanima Kishore, Advs. for R-3.

Ms. Aayushi Gupta, Adv. for Mr. Raman Duggal, Standing Counsel for GNCTD for Labour Department.

Ms. Vaidehi Subramani, Chairperson, CWC, Kalkaji.

Mr. Rajender Dhar, Addl. Labour Commissioner.

+ 2. W.P.(CRL) 1805/2015

JAYAKUMAR NAT & ANR

..... Petitioners

Through: Mr. Ashok Agarwal with Mr. Anuj
Kapoor, Advocates.

versus

STATE OF NCT OF DELHI & ANR

..... Respondents

Through Mr. Sanjay Lao, ASC (Crl.) with
Insp. Anant Kumar PS Safdarjung
Enclave.
Ms. Jyoti Aggarwal, Adv.,
President, Light Life Freedom,
NGO.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE P.S. TEJI

JUDGMENT

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KAILASH GAMBHIR, J.

1. By way of this order we propose to dispose of these two Writ Petitions.
2. The case in hand is a shocking revelation of how poor is the functioning of the Child Welfare Committees constituted under Section 29 of the Juvenile Justice (Care and Protection of Children) Act, 2000, the Labour Department and the Delhi Police are. This petition was preferred by one Seema Roy under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure to seek order or direction in the nature of Habeas Corpus to direct the respondents to produce her minor son Suraj aged about 12 years before this Court and to hand over his custody to the petitioner. This child Suraj

was in the custody and care of respondent No.3 Butterflies, which is an NGO duly recognised under Juvenile Justice (Care and Protection of Children) Act, 2000. As per this NGO, they received an information on the child helpline about Suraj working at the welding shop being run by one Mr. Kuldeep Singh. The sequence of events that followed after it was brought to their notice that the child labourer, Suraj, being a victim of child labour, as delineated by the NGO in their affidavit can be reproduced as under:-

1. That in the present case, Suraj, i.e. the child in concern, was a victim of child labour and as per the order passed by Child Welfare Committee was being kept at the Resilience Centre of Butterflies. The sequence of events is detailed hereinbelow:

(i) On 12.6.2015, at 12.25 AM, a call was received by Butterflies Childline (1098), from a concerned caller. The call was attended by Mr. Niraj (Child Protection Assistant) and the case was numbered as Butt/9667. The CCC reported that there are four to five children who are working at Vishwakarma Tempo Repairing Centre, Govindpuri Transit Camp. As per the caller, these children had been working there since six months and they worked from 9 a.m to 8 p.m every day for which they used to get Rs 400 per month.

(ii) On 13.6.2015, Butterflies Staff member, Mr. Sarjeet Kumar (Child Protection Assistant) went to B/375, Vishwakarma Tempo Station, Govindpuri Transit camp for spot verification. He found that two children were working at the spot.

(iii) On 16.6.2015, the above information was provided to the concerned Deputy Labour Commissioner, District-South. A true copy of the said letter dated 16.6.2015 sent by Butterflies to the Deputy Labour Commissioner, alongwith a copy with receipt

*acknowledgment is annexed herewith and marked as **Annexure R/3-3.***

(iv) However, no action was taken by the Labour Department in this regard and the matter remained pending with them.

*(v) Thereafter, on 8.7.2015, Mr Sarjeet Kumar visited the concerned Labour Department and gave a reminder letter to the Department regarding taking action with respect to the child labour case. The Assistant Labour Commissioner received the said letter and orally assured that he will take up the matter with the Labour Inspection Officer (LIO) Rajesh Kumar. A true copy of this letter dated 8.7.2015, alongwith a copy of the letter with acknowledgment of receipt is annexed herewith and marked as **Annexure R/3-4.***

(vi) On the same day, Mr. Sarjeet Kumar spoke to LIO Rajesh Kumar regarding the present case. LIO Rajesh Kumar stated that a raid will be conducted at Govindpuri area on 14.7.2015. LIO Rajesh further requested Mr. Sarjeet Kumar to contact Police Station Govindpuri as well as the DLC regarding the said raid, as there could be a delay in the matter from their end.

*(vii) On 13.7.2015, Mr. Sarjeet Kumar went to Police Station, Govindpuri. The duty officer stated that assistance will be provided for conducting the raid on the next day. A true and translated copy of the letter dated 13.7.2015 handed over by Mr. Sarjeet Kumar to the Duty Officer, Police station, Govindpuri is annexed herewith and marked as **Annexure R/3-5.***

(viii) On 14.7.2015, a team consisting of Mr. Sarjeet (Butterflies Childline), Ms. Malika (Butterflies Childline), Mr. Usmaan (Butterflies Childline) LIO Rajesh Kumar, SI Manjit, and two constables conducted the rescue operation at three spots. The first spot was Maharaja Agrason Marg, Giri Nagar, Govindpuri near Rooplal Parathe Wali Rehari. But no

children were found here. The second spot was B/375, Transit camp, Govindpuri. Here the concerned child - Suraj was rescued. After this the rescue team went to the third spot Rz/ 528, Shehzad Muslim Hotel, Gali no 24, Tughlakabad Extension. Here a child named Md. Shazid was found making rotis. He was also rescued. His custody however was handed over to his parents by CWC, Kalkaji on the same date by appropriate order. A true and translated copy of the Rescue Report prepared by the Butterflies is annexed herewith and marked as **Annexure R/3-6**.

(ix) LIO Rajesh Kumar spoke to both the rescued children and took their statement and the Police Officer documented the details about the rescue in their Daily Dairy.

(x) On the same day, a medical examination of Suraj was conducted at All India Institute of Medical Science, wherein it has been noted by the examining Doctor that the child Suraj has welding injuries. A true copy of this report is annexed herewith and marked as **Annexure R/3-7**.

(xi) On 15.7.2015, Suraj was produced before Child Welfare Committee, Kalkaji by the Childline team member, Mr. Sarjeet Kumar. The child in his statement in front of CWC stated that he has been working at Govindpuri Transit Camp since three months for 10 hours everyday. He also said that he gets Rs 400 per month. CWC directed the IO, SI Manjeet, Police Station Govindpuri to take necessary action and submit a report. The custody of the child was directed to be with Butterflies. The case was then directed to be listed on 24.7.2015 before the concerned CWC, which was CWC, Lajpat Nagar as the Resilience Centre of Butterflies falls within the jurisdiction of CWC, Lajpat Nagar. A true copy of the order dated 15.7.2015 passed by Child Welfare Committee, Kalkaji is annexed herewith and marked

*as **Annexure R/3-8**. It was in compliance with this order that Suraj was brought to the Butterflies Home.*

(xii) That it is always not necessary that Butterflies be given custody of the child in all cases where the Childline Team of Butterflies is involved. There is a separate Childline Team of Butterflies which participates in rescuing children and there is a separate Resilience Centre where children may given shelter if so directed by the Child Welfare Committee.

*(xiii) On 17.7.2014, Mr. Pramod Kumar (Childline Team Member) submitted an Interaction Report on the basis of his interaction with Suraj. During the interaction the child reiterated that he has been working since 3 months at a welding garage. He told Mr. Parmod Kumar that he worked from 10 a.m to 9 p.m and got Rs 400 per month. A true and translated copy of this interaction report is annexed herewith and marked as **Annexure R/3-9***

*(xiv) On 24.7.2015, Mr. Kishan (Child Protection Assistant, Butterflies) produced the child Suraj in front of CWC Lajpat Nagar along with the progress report. CWC, Lajpat Nagar directed SHO PS Govindpuri, South East to carry out legal proceedings in this case and present the Action taken report at CWC on 8.8.2015. After considering the facts and circumstances of the case, CWC Lajpat Nagar directed Butterflies to produce the child before them again on 7.8.2015 alongwith a progress report in the case. A true copy of the order dated 24.7.2015 passed by CWC, Lajpat Nagar is annexed herewith and marked as **Annexure R/3-10***

(xv) Butterflies has been acting as per the orders of CWC and is bound by the provisions of law to keep the child in their safe custody. That an order for restoration to family, if any, can be passed only by the Child Welfare Committee as per the power bestowed upon then under Section 39(3) of Juvenile Justice (Care and Protection of Children) Act, 2000.

(xvi) That as per the orders passed by CWC, Suraj continued to remain in custody of Butterflies Home.

(xvii) That on 28.7.2015 at about 9 PM, a call was received at Butterflies Shelter Home from PS Govindpuri SI Sunil Kumar. He informed that a case as been registered by the employer of the child and the child be produced before the Court next day. However, the caller was unable to provide any case number or details of the order passed by the Court. Butterflies staff member informed that as the child is in their custody as per the CWC order, they are not authorized to release him unless there is an order passed by an appropriate authority. In absence of any such order or case details being furnished by the SI to Butterflies, the Organization was not in a position to produce the child. As they were misinformed that the case has been registered by the employer of the child, child's safety was the prime concern of Butterflies.

(xviii) That the custody of the child was handed over to Butterflies by Child Welfare Committee as per the provisions of Juvenile Justice (Care and Protection of Children) Act, 2000. Butterflies was thus responsible for the safety and welfare of the child and was not in a position to produce the child without receiving any information regarding the case filed or any order passed by this Hon'ble Court.

(xix) That on 28.7.2015, Mr. Sarjeet Kumar spoke to SI Sunil Kumar again regarding the matter and he was informed that the Hon'ble High Court has sent a notice to Police Station Govindpuri. Mr. Sarjeet Kumar told SI Sunil Kumar to inform Child Welfare Committee regarding the said court order and once CWC permits, Butterflies will produce the child. Mr. Sarjeet Kumar was asked to speak to the SHO regarding this. When Mr. Sarjeet spoke to the SHO Sunil, the latter stated that he has got information regarding the court order via telephone and are not in possession of any written order from the Hon'ble

Court. Mr. Sarjeet informed the SHO that as per the provisions of law, Butterflies is not in a position to release the child from their custody unless there is an order passed by the Child Welfare Committee or the Hon'ble High Court.

(xx) In view of these circumstances, Butterflies immediately contacted Ms. Renu Malhotra (Member, CWC Lajpat Nagar) and informed her about the matter. Ms. Renu said that in absence of any order, the child cannot be presented before the Hon'ble High Court and that she will discuss the case with the other members and get back to Mr. Sarjeet.

(xxi) On 29.7.2015, at 11:59 AM, SHO Sunil called Butterflies resilience centre and spoke to Mr. Kishan and said that he had explained earlier as well that the child has to be produced before the Hon'ble High court. Mr. Kishan informed him that they as per the provisions of law, Butterflies can present the child only upon an order being passed by the High Court or Child Welfare Committee in that regard. The SHO spoke very rudely and even abused the staff member of Butterflies and threatened them to produce the child. However, in absence of any information or explanation about the case, and without any order having been passed by the Court, Butterflies was not in a position or authorised to present the child.

(xxii) Child Welfare Committee was also informed about this incident.

(xxiii) At 1:10 p.m on 29.7.2015, SHO Sunil PS Govindpuri alongwith SI Sunil Kumar came to Butterflies office. They were carrying an order passed by this Hon'ble Court directing the child to be produced before the Court at 2.30 PM that day.

(xxiv) In compliance of the said order, Mr. Kishan and Mohd. Usmaan went to the High Court along with Suraj and his custody was handed over to his mother by this Hon'ble Court.

(xxv) That Child Welfare Committee was apprised of these facts by Butterflies on 1.8.2015 and Butterflies was directed by Child Welfare Committee to conduct a Home Enquiry in the present case.

(xxvi) That on 7.8.2015, a Home Enquiry was conducted by Butterflies team and upon talking to the mother of the child, she admitted that Suraj was alcoholic and that is why she had decided to withdraw Suraj from school and sent him to work in a welding shop so that he could be engaged in work and not be influenced by wrong practices. During this visit, the employer of Suraj, Mr. Kuljit Singh and his wife abused and misbehaved with the Butterflies Team and started hurling abuses at them.

*(xxvii) That Butterflies team also saw that Suraj had started working at the welding shop again and when he saw the Team coming, he ran away from there. A true copy of the said Home Enquiry Report is annexed herewith and marked as **Annexure R/3-11**".*

3. The said child was produced before the Court by the NGO Butterflies on 29th July, 2015. The Court had an interaction with the child and he truthfully disclosed before us that he was drawing a salary of Rs. 400 per month from his employer Mr. Kuldeep Singh. He further disclosed that he was working as a helper and used to leave his home at 10 a.m. and return back by 9.00 p.m. When enquired from the police as to whether they have taken any action against the said employer in terms of provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 and the Child Labour (Prohibition and Regulation), Act, 1986.

4. To our surprise, the answer was in negative. The police failed to take any action against Mr. Kuldeep Singh. The petitioner present in Court informed the Court that she had been running from pillar to post to meet her child but she was not allowed to meet her child. The mother

also tried to explain that it was not a case of child labour rather the child had gone to play along with his friends at the open space in front of the workshop of Mr. Kuldeep Singh. This child was produced by the NGO before CWC Kalkaji on 15th July, 2015 and his statement was recorded by CWC Kalkaji. The child had admitted the fact that he was working at Vishwakarma Tempo Repairing Centre, Govindpuri Transit Camp for the last 3 months for about ten hours a day and draw a monthly salary of Rs.400. The CWC Kalkaji handed over the custody of the said child to the NGO as a temporary shelter. The CWC Kalkaji directed the concerned IO to carry out the legal proceedings in the matter. On 24th July, 2015, child Suraj was produced before CWC, Lajpat Nagar and CWC directed the concerned IO to take necessary action as per law and for recording the statement of the child before the concerned SDM. The CWC, Lajpat Nagar also directed the police to collect the age proof of the child from the school and produce the same on 7th August, 2015. On 31st July, 2015, the statement of the child Suraj was recorded by the SDM. Since no steps were taken by the police to register the FIR against the said employer, therefore, a direction was given to the concerned Joint Commissioner of Police to file his affidavit after holding a detailed inquiry as to why the local police failed to timely register the FIR and the reasons for not arresting the said employer. The Court also directed notice to the Labour Department as the Labour Department plays a pivotal role in the scheme of things for carrying out the rescue operation of such child victims. The Court also directed both the Child Welfare Committees to produce their respective records for perusal. Pursuant to these directions on 3rd August, 2015 a case FIR No. 1024/2015 was registered against

Kuldeep Singh, owner of the Welding shop under Section 3/14, Child Labour (Prohibition and Regulation Act), 1986 read with Section 23/26 of the Juvenile Justice (Care and Protection of Children) Act, 2000. In compliance of the said directions, Joint Commissioner of Police has filed his affidavit and along with his affidavit he has annexed Standard Operating Procedure (as short 'SOP'). This SOP was laid down by Department of Women and Child Development, Govt. of NCT of Delhi in compliance with the various provisions ensued in Juvenile Justice (Care and Protection of Children) Act, 2000 and rules framed thereunder for safeguarding the best interest of the child including restoration of the children back to their families, transferring of children to their native states/countries as well as placing the children for long-term care in a child care institution. In his affidavit, the Joint Commissioner of Police admitted the delay on the part of the police in registering an FIR and in coordinating with the CWC and on account of this failure, a show cause notice was issued to the IO and separate explanation has been called from the SHO for the lapses on the part of the police.

5. Mr. Rahul Mehra apprised the Court that copy of this SOP has been forwarded to all the concerned departments involved in the process. To our surprise, when we inquired from the Chairman of Child Welfare Committee, Lajpat Nagar namely Mr. Jas Ram Kaim as to whether he is aware of this SOP issued by Women and Child Development, his reply was that he had recently joined on 2nd July, 2015 and he is not aware of any such SOP nor has he been given any kind of training to know as to how the cases of such children are to be dealt with. To examine the role of the Labour Department, the Court directed the personal presence of

Mr. M.K. Gaur, who is the Deputy Labour Commissioner of South district at the relevant time and Mr. Kamal Malhotra his successor in interest. We also directed the personal presence of Mr. Rajender Dhar, Addl. Labour Commissioner to assist in this matter. On the next date, Mr. Rajender Dhar, Addl. Labour Commissioner apprised the Court that a complaint from Butterfly NGO was received by the Deputy Labour Commissioner, South District, Pushpa Bhawan on 16th June, 2015 and the same was marked to Mr. Rajesh Kumar, Inspecting Officer by Mr. Amardeep, Assistant Labour Commissioner. Mr. Dhar further stated that no action was taken on account of the fact that the Inspecting Officer remained busy in performing various other duties due to which there was a delay on his part in attending the said complaint. Mr. Dhar also further explained that a reminder dated 8th July, 2015 was received by the same office and it was again marked to Mr. Rajesh Kumar, Inspecting Officer and thereafter necessary steps were taken in terms of the guidelines laid down by this Court in the case of '***Court on its own Motion vs. Govt. of NCT of Delhi W.P(C) 9767/2009.***' The officer further explained that a raid was conducted at the premises of the employer with the assistance of the police. While explaining the delay on the part of the Labour Department in taking the necessary steps as per the judgment of the Division Bench dated 15th July, 2009, Mr. Rajender Dhar submitted that the Inspecting Officers and Assistant Labour Commissioners are always over-burdened in dealing with number of Statutes under various Labour Laws and thus is facing acute shortage of staff in the Labour Department.

6. Mr. M.K. Gaur, Deputy Labour Commissioner apprised that presently there are only two inspectors in a district whereas in the year

1980, the department used to have nine inspectors in one district. He, thus, submitted that such kind of delays take place only because of the shortfall of the staff and without any mala fide intentions. The relevant file has been produced by Mr. Rajesh Kumar, Inspecting Officer and we are shocked to notice that the file has not been maintained as is usually maintained in government departments as does not even contain a noting sheet. Mr. Gaur, also took a stand that the said complaint dated 12th July, 2015 was not within his knowledge and he came to know about this case only when the raid was organized to rescue the child on 14th July, 2015. When the Court was perusing the reminder dated 8th July, 2015 sent by the said NGO, it was found that the same had the details of at least 8 cases of child labourers and none of the departments were in a position to apprise the Court about the actions taken in these 8 cases. Fresh direction was given to the Labour Department and the concerned Deputy Commissioner of Police to apprise the Court with regard to status of all the 8 cases. In compliance of the said direction, fresh affidavit has been filed by Mr. Rajender Dhar, Additional Labour Commissioner and separate affidavits by DCP/South-East District. Mr. Rajender Dhar, Additional Labour Commissioner in his affidavit while explaining the status of all the 8 cases of child labourers as were informed by the NGO Butterflies vide their communication dated 8th July, 2015, has not explained much except expressing the helplessness of the Labour Department, Govt. of NCT of Delhi in timely implementing out the directions given by the Division Bench of this Court in W.P.(C) 9767/2009 in the case of *Court on its own Motion (supra)* dated 15th July, 2009 and the SOP dated 8th May, 2015 issued by Department of

Women and Child Development, Govt. of NCT of Delhi. No proper explanation has been given for the delay in the rescue of the two children as late as on 14th July, 2015 when an information to this effect was received by the office of Deputy Labour Commissioner (South) District on 16th June, 2015. With regard to other cases forming part of the letter dated 8th July, 2015, the position is no different as except in one case where issue of jurisdiction has been raised as the case pertained to PS Vasant Vihar thus not fall within the jurisdiction of District (South) while in the other seven cases, the Department has come into action after filing of the present petition and pursuant to certain directions given by this Court. The position is no different with regard to the other actions as are mandated under the Juvenile Justice (Care and Protection of Children) Act, 2000, and the directions passed by the Apex Court and this Court through various judgments. Even to recover the wages of Master Suraj and Rs. 20,000/- from Mr. Kuldeep Singh towards the rehabilitation fund for the benefit of the child, the machinery renewed laws and came into action much later in time during the pendency of the present petition. The officer has also explained that Department of Labour is overburdened to discharge multifarious functions under various labour laws and due to highly inadequate manpower both in terms of officers and lower staff, complaints pertaining to child labourers, get inadvertently delayed at the first instance. The officer has also explained that there have been occasions when despite meticulous planning, the rescue operation could not be conducted because help of police personnel was not made available on the last minute.

7. Coming to the role of the police in this entire process to rescue the

children as have been assigned to them in terms of the judgment of this Court in the case of '*Court on its own Motion (supra)*' and the SOP issued by Women and Child Development, the picture is quite disturbing and in fact to the level of unnerving us.

8. Mr. R.S. Krishnia, Joint Commissioner of Police, South East District in his affidavit has admitted the fact that there has been a delay of a period of 18 days in the registration of an FIR. He further states that on perusal of the daily dairy of the concerned police station it is not reflected that preliminary inquiry was carried out in this case. While giving this explanation, he has also made an attempt to cover up the lapses on the part of the SHO/IO who were stated to be under inadvertent belief that CWC was seized of the matter and by virtue of the judgment of the Hon'ble Supreme Court in the case of *Lalita Kumari v. Govt. of Uttar Pradesh & Ors. (2014) 2 SCC 1*, the cases in which an inquiry is conducted, six weeks time has been granted for registration of the cases. In last para of his affidavit, the officer has apprised the Court that due to the delay in the registration of FIR by IO and failure to coordinate steps under SOP with CWC and failure on the part of the SHO to monitor the case, a show cause notice was issued to the IO and explanation was sought for the above mentioned lapse from the SHO as well.

9. Talking about the role of CWC Kalkaji and Lajpat Nagar involved in the present cases, the situation is more dismal and pathetic as the Chairpersons manning these CWCs appeared to be totally ignorant about their role and the manner in which they are to discharge their duties in terms of relevant provisions under various statutes, governing the child

rights and also the directions given by the Apex Court and this Court in its various judgments and that of SOP issued by Women and Child Development. Moreover, no proper files are being maintained by these committees, in fact, they appear to be the main culprits in both the cases which were brought before the Court.

10. We are appalled to find that these committees are also adjourning the matters of these rescued children as a matter of routine. It was too shocking to find that when for the first time the case of rescued child Suraj came up before CWC Kalkaji, it adjourned the same for a few days for placing the matter before CWC Lajpat Nagar due to lack of its jurisdiction. Again to our surprise, no efforts were made either by the CWC Kalkaji and CWC Lajpat Nagar to restore the custody of the child to the mother who had been running from pillar to post to meet her child and to know about his well being. Is this the way these stakeholders are functioning in the discharge of their assigned duties under various statutes in terms of the directions given by the Apex Court in the case of '*Bachpan Bachao Andolan vs. Union of India & Ors. 2015(2) Scale 227* and *Court on its own motion (supra)*. In fact all these officers who failed to carry out the directives given by the Division Bench of this Court in the case of *Court on its own motion (supra)* have committed contempt of Court orders.

11. After having gone through the action plan for abolition of child labourers in Delhi issued by National Commissioner for Child Rights which, in fact, forms part of the said judgment in the case of *Court on its Motion (supra)*, we find that almost every conceivable aspect has been taken care of in the action plan. Likewise the Department of Women and

Child Development, Govt. of NCT of Delhi has also issued comprehensive and generic guidelines which they have referred to as the Standard Operating Procedure (SOP) for Child Welfare Committees with respect to found children housed run in Government and NGO run child care institutions. In the presence of all this, we ask ourselves, do we really need to give any further direction to all these stakeholders and if so, then what will be the fate of fresh directions, when these stakeholders are adhering to these guidelines more in breach than in compliance. In the said Action Plan for abolition of child labour in Delhi formulated for strict enforcement and implementation of Child Labour (Prohibition & Regulation) Act (CLPRA), 1986 and other related legislations after the Court passed a detailed order dated 24th September, 2008, issued in the W.P. (CrI.) 2069/2005, W.P. (C) 4125/2007 and W.P.(C) 4161/2008 noticing that the constitutional mandate and statutory provisions with regard to children were not being vigorously implemented and there was a lack of coordination between various Departments/authorities of the Govt. of NCT of Delhi (GNCTD) as well as with other States from where children are brought to work in Delhi, a committee was constituted by the National Commission for Protection of Child Rights (NCPCR) vide OM dated 3.10.2008. The action plan now provides a detailed procedure to be adopted at the pre-rescue and post-rescue stage. The pre-rescue plan deals with as to how information is to be collected, verified and the composition of the rescue team as well as what sort of training is to be imparted in advance to the members of the rescue team. It also provides a detailed procedure for interim care and protection of the children rescued which includes providing immediate medical examination of the

children and how the investigation is to be conducted and charge-sheet etc. is to be prepared. In fact, with a view to ensure proper coordination amongst different agencies of Govt. of NCT of Delhi, the action plans define the exact role and responsibility of various departments/authorities, involved in the process. Referring to the 'Components of the Strategy for Unaccompanied Child Labourers (Migrants) in Delhi', we find that at the State Level, provisions have been made for forming a Steering Committee on Child Labour under the Chairpersonship of Chief Secretary along with other concerned Secretaries of Govt. of NCT of Delhi. The Steering Committee as per the action plan should interface on a quarterly basis with government officers of the source States and review the cases of child labour handled by the district level task forces in the previous quarter and also the cases pending at their level. The Steering Committee has been further given the responsibility to look into the operational difficulties in the implementation of the relevant laws relating to the child labourers as well as these action plans and to overcome the difficulties being faced by any of these stakeholders. The action plan further directs the Steering Committee to address the grievances of NGOs/activists/RWAs, etc. pertaining to child labour within a reasonable time. Then comes the role of the district level task force which will oversee and monitor all actions for identification, pre-rescue planning, rescue operation, interim care, prosecution of employers/violators under all relevant laws, including Bonded Labour System (Abolition) Act 1976, repatriation, rehabilitation/social reintegration and follow-up. The district level task force will be headed by the Deputy Commissioner of each district and in

fact the Deputy Labour Commissioner has been made the Convenor of district level task force. We are not here giving in detail the role which have been assigned to various stakeholders as it has already formed part of the order of the Division Bench of this Court in ***Court on its own Motion (Supra)***. Under the scheme of things, the Labour Department being the nodal department for rescue of child labour, shall coordinate with all other relevant departments to ensure that all arrangements are in place for the comfort of the rescued children including transportation to the temporary home, food and refreshments, protection and safety and training for the personnel of the homes/shelters. Being the nodal officer, the Deputy Labour Commissioner of each district will be responsible for prompt initiation of pre-rescue planning and necessary coordination with other concerned in this regard. If we come to clause 7.7.2 of the Action Plan meant for Delhi with regard to the duties assigned to Department of Labour, it clearly envisages a period of 24 hours for taking action in case large number of child labourers are found to be employed, by carrying out a raid through district child labour task force, after contacting the Deputy Labour Commissioner and police officers and in the case where the number of child labourers employed is small, then action should be taken to liberate them on the same day itself with the help of departmental colleagues and police. The Child Welfare Committee which is a competent authority under the Juvenile Justice (Care and Protection of Children) Act, 2000 is vested with the power to take any decision with regard to child including the decision to release the child as per the provisions of the Act. Under Section 31 of the Act, the Child Welfare Committee has the final authority to dispose of the cases for the care,

protection, treatment, development and rehabilitation of the children as well as to provide their basic needs and protection of human rights. Section 32 (1) of the Juvenile Justice (Care and Protection of Children), Act, 2000 provides that the rescued child shall be produced before the Committee without any loss of time but within a period of 24 hours including the time necessary for the journey. Section 39 of the Juvenile Justice (Care and Protection of Children), Act, 2000 deals with the aspect of restoration of the child and explanation to this section delineates and sets the precedents as to whom the child should be restored and in the said category, first are the parents of such a child. Relevant sections of the Juvenile Justice (Care and Protection of Children), Act, 2000 are reproduced hereunder:-

*“31. **Powers of Committee.**- (1) The Committee shall have the final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of the children as well as to provide for their basic needs and protection of human right .*

(2) Where a Committee has been constituted for any area, such Committee shall, notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, have the power to deal exclusively with all proceedings under this Act relating to children in need of care and protection.

*32 . **Production before Committee.**- (1) Any child in need of care and protection may be produced before the Committee by one of the following persons-*

- (i) any police officer or special juvenile police unit or a designated police officer;*
- (ii) any public servant;*

- (iii) *childline, a registered voluntary organisation or by such other voluntary organisation or an agency as may be recognised by the State Government;*
- (iv) *any social worker or a public spirited citizen authorised by the State Government; or*
- (v) *by the child himself.*

[Provided that the child shall be produced before the Committee without any loss of time but within a period of twenty-four hours excluding the time necessary for the journey.]

(2) *The State Government may make rules consistent with this Act to provide for the manner of making the report to the Committee and the manner of sending and entrusting the child to children's home pending the inquiry.*

39 . Restoration.- (1) *Restoration of and protection to a child shall be the prime objective of any children's home or the shelter home.*

(2) *The children's home or a shelter home, as the case may be, shall take such steps as are considered necessary for the restoration of and protection to a child deprived of his family environment temporarily or permanently where such child is under the care and protection of a children's home or a shelter home, as the case may be.*

(3) *The Committee shall have the powers to restore any child in need of care and protection to his parent, guardian, fit person or fit institution, as the case may be, and give them suitable directions.*

[Explanation.-For the purposes of this section "restoration of child" means restoration to-

- (a) *parents;*
- (b) *adopted parents;*
- (c) *foster parents;*
- (d) *guardian;*

- (e) *fit person;*
- (f) *fit institution.]*

We may also reproduce rule 27 of the Juvenile Justice (Care and Protection of Children), Act, 2000.

“Rule 27. Production of a Child before the Committee.—

(1) A child in need of care and protection shall be produced before the Committee within twenty-four hours, excluding journey time, by one of the following persons-

- (a) any police officer or Special Juvenile Police Unit or a designated police officer;*
- (b) any public servant;*
- (c) childline, a registered voluntary organization or by such other voluntary organization or an agency as may be recognized by the State Government;*
- (d) social worker;*
- (e) any public spirited citizen; or*
- (f) by the child himself.*

(2) In case of a child under two years of age, who is medically unfit, the person or the organization shall send a written report along with the photograph of the child to the Committee within twenty-four hours and produce the child before the Committee as soon as the child is medically fit along with a medical certificate to that effect.

(3) The Committee can suo motu take cognizance of cases brought to their notice and reach out to a child in need of care and protection where necessary and the District or the State Child Protection Unit or the State Government shall provide necessary support and assistance to the Committee for carrying out such functions.

(4) In case the Committee is not sitting, the child may be produced before the single member of the Committee as per the provisions laid down under the sub-section (2) of

section 30 of the Act for being placed in safe custody of parent or guardian or fit person or fit institutions, as the case may be, till such time that the child can be produced before the Committee.

(5) In case the single member is also not accessible, or that the hours are odd, the child shall be taken by an non-governmental organisation or Childline or Police to an appropriate institution for children registered under the Act with all the necessary documents, and placed in such institution till the time of production before the Committee.

(6) The concerned institution shall inform the Chairperson or a member of the Committee about such child and produce the child before the Committee within twenty four hours and in such cases, it may not be necessary for the person who brings a child in need of care and protection to an institution to be present at the time of production of the child before the Committee.

(7) Whoever produces a child before the Committee shall submit a report on the circumstances under which the child came to their notice and efforts made by them on informing the police and the missing persons squad and in cases where a recognized voluntary organization or any police personnel produce a child before the Committee, they shall also submit a report on the efforts made by them for tracing the family of the child.

(8) Any general medical or gynecological examination of children shall not be a pre-requisite for production of the child before the Committee or admission in an institution.

(9) The Committee shall facilitate the filing of a police complaint and First Information Report in cases of missing children as well as matters of violence, exploitation and abuse of children and arrange for required legal aid through the Legal Officer in the District Child Protection Unit or District or State Legal Aid Services Authority or voluntary organisations.

(10) Each Committee shall send quarterly information about children in need of care and protection received by

them to the District or State Child Protection Unit or State Government.

(11) Children shall be provided a child-friendly environment during the proceedings of the Committee.

(12) The Committee shall have an empanelled list of lawyers, social workers and mental health expert who may assist the Committee in dealing with cases of abused children and who may also interface with the Public Prosecutor or Assistant Public Prosecutor to facilitate legal services to the abused children, when the cases relating to such children are taken up in regular criminal courts.

(13) Every possible effort shall be made to trace the family with support from the District Child Protection Unit, and assistance of recognized voluntary organizations, childline or police may also be taken.

(14) The Committee shall send the child to the designated place of safety, with age and gender appropriate facilities, pending inquiry and in such eventuality, the District Child Protection Unit or State Child Protection Unit or State Government shall provide transport or make necessary budgetary allocations for such expenses based on the actual fare.

(15) The child may be escorted by the police officer or representative of the voluntary organization or by any other arrangement as considered appropriate by the Committee with support from the District Child Protection Unit and in case of a girl child, a female escort shall accompany the child.

(16) A list of all recognized child care institutions along with their capacity and appropriate facilities as prescribed under section 34 of the Act, a list of all child related resource services and a list of contact details of all Child Welfare Committees across the country shall be provided to the Committee by the District Child Protection Unit or State Government.

(17) The Committee may, while making an order in Form VIII placing a child under the care of a parent, guardian

or fit person pending inquiry or at the time of restoration, as the case may be, direct such parent, guardian or fit person to enter into an undertaking in Form IX.

(18) Whenever the Committee orders a child to be kept in an institution, it shall forward to the Officer-in-charge of such institution a copy of the order of short term placement pending inquiry, in Form X with particulars of the home and parents or guardian and previous record.

(19) Whenever the Committee orders a child to be kept in a fit institution as part of restoration under clause (f) of sub- section (3) of section 39 of the Act, it shall forward a copy of its order of restoration in Form XI to the Officer-in-charge of such institution.

(20) The child shall be placed in an institution closest to where his parents or guardians belong as far as possible, unless the child has been subjected to abuse or exploitation by parents or guardians”

12. Thus, it is the prime objective of any children home or the shelter home to take immediate steps as are considered necessary for the restoration of the child to his parent, guardian or the other designated persons as the case may be after giving suitable directions. The SOP issued by Women and Child Development also provides the detailed guidelines as to how such kind of children are to be rescued and restored and what are the defined duties of the various stakeholders involved in the process. It also lays emphasis on first finding out the family members of the child and to undertake all efforts to trace out the family members of the persons from whose custody the child was prior to his rescue. It further exemplifies the procedure as to how the child is to be dealt with after he is produced before the Committee.

13. Ms. Aparna Bhat, counsel who had appeared for the NGO Butterflies has submitted suggestions as to how there could be an

improvement in the implementation of the various directions given by the Court in the judgments cited above. As per her, issue of accountability for implementing the action plan remains to be appraised and the same can be achieved only through the disciplinary action against the delinquent officers wherever they failed to fulfil their assigned responsibilities. Counsel also suggested that the major penalty action be taken against the delinquent officers in the event of more than two failures on their part. In the other case of W.P.(C) 1805/2015 which was a disposed of case vide order dated 21st August, 2015, Mr. Ashok Aggarwal, counsel representing the petitioner has also given detailed suggestions and remedies to address the issues. Counsel while expressing her anguish submitted that most of these rescued children are virtually abducted and detained without taking any care to assure access to their parents and guardians. Counsel also submitted that when their parents or guardians are capable and willing to take care of them then where does an occasion to give custody of the children to the NGOs or 'shelter homes' arise. Counsel also submitted that the provisions of the Juvenile Justice (Care and Protection of Children), Act, 2000 and the directives issued by the Apex Court and this Court are however being implemented in a manner to punish the rescued children and their parents and guardians as well.

14. In the light of what could be noticed by us in these two cases one thing is amply clear that neither of these authorities/stakeholders are discharging their duties and functions as are assigned to them strictly in terms of the action plan forming part of Division Bench judgment of this Court in ***Court on its own motion (supra)*** and nor are they following the SOP issued by the Women and Child Development. In fact they are

being violated more in breach than in compliance. We do not want to give any further directions as in our view almost every aspect has been taken care of in the 'Action Plan' and the said SOP. But then the question arises, if everything is in place, then what problem is coming in the implementation of the same. Ms. Aparna Bhat, Advocate appears to be right that no accountability has been fixed for any lapse or inaction committed by any of the officer of the stakeholders for not carrying out his duties in accordance with the laid down guidelines and directives. It was also a matter of shock when we came to know that Chairperson of CWC, Lajpat Nagar was totally ignorant of the said action plan and of the SOP issued by Women and Child Development. While the other Chairperson, CWC Kalkaji equally failed to carry on her duties in terms of the said directives. Even the proper files are not being maintained by these bodies what to talk of anything else.

15. In the words of Kailash Satyarthi, a Nobel peace prize winner and crusader of child rights: *"it is a shame that India has the highest number of child labourers in the world."* He further stated that rehabilitation of children must be an integral part of the law itself and children who are free from labour should be entitled to rehabilitation programmes by the Government. He further suggested that the best rehabilitation is re-integration with the family that includes some economic incentive to the parent so that they can earn their livelihood and education can be provided to the children in their hometown. To our consternation and dismay if the capital of the country, which is endowed with better infrastructure and other backups fails to take effective steps in its drive to rescue the children and doesn't succeed in properly rehabilitating them in

terms of the directives given by the Hon'ble Apex Court and the guidelines issued by the SOP then we fail to fathom what would be the providence or fate of other states/ districts of the country where good infrastructural facilities and manpower are scant and not adequate. The Additional Labour Commissioner of Labour Department has expressed his anxiety apropos the dearth of staff in the Labour Department but this again is to be addressed by the Government and not by the Court.

16. In the above circumstances, we deem it appropriate to give the following directions:

- a) The Chief Secretary of Govt. of NCT of Delhi is directed to convene an urgent meeting of all the stakeholders to have a complete review of the functioning of all the bodies who are involved in the process and to ascertain the exact reasons as to why they have failed to carry out the said directives.
- b) He is also directed to lay down the guidelines issuing necessary directives for fixing the responsibility of the officers so as to make them accountable if there arises any lapse or inaction without there being sufficient or cogent reasons for the same.
- c) We also direct him to have proper orientation programmes of all the Chairpersons of CWCs in various districts and of all the stakeholders so that they know their exact duties and functions and their roles as defined under various statutes and other directives.
- d) We further direct the Chief Secretary to incorporate all the previous directives and the fresh directives to be issued in the

form of a booklet and every department and the officer concerned should mandatorily possess such a booklet, in a bid to prevent any such officer from pleading ignorance of his own duties.

e) We also impress upon the Govt. of NCT of Delhi to come out with a proper scheme to address the issue of rehabilitation of these rescued children by providing some kind of economic help so that the parents or guardians do not force them to work as child labourers again to meet with their basic needs and to supplement their income for their basic survival.

f) We further direct that a meeting in this regard should take place within a period of one month and subsequently, within a period of three months fresh directives shall be issued on the above lines by the Chief Secretary. The Chief Secretary may take into consideration some of the suggestions given by the Advocates, copy of which has already been handed over to Mr. Rahul Mehra, Standing Counsel appearing for the State, so as to ensure that there is no delay in the restoration of the rescued children to their parents/ guardians until and unless it is not in the best interest of the safety of the child which is a paramount concern.

17. We appreciate the valuable assistance rendered by Mr. Rahul Mehra, Standing Counsel, Mr. Sanjay Lao, ASC (CrI.) and Ms.

Aparna Bhat, Advocate appearing for the NGO.

18. Accordingly, both the Writ Petitions are disposed of.

19. It is ordered accordingly.

(KAILASH GAMBHIR)
JUDGE

(P.S. TEJI)
JUDGE

September 04, 2015
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