

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

PUBLIC INTEREST LITIGATION NO. 84 OF 2013

Forum for Fairness in Education An NGO,
through its Authorized Person
Shri Raghu S. Chari. .. Petitioner

Vs

Union of India and Others. .. Respondents

—
Mr. Siddharth Murarka a/w. Mr. Vinay Kanodia i/b.
M/s. Law Chambers of Siddharth Murarka, Advocate for
the Petitioner.

Mr. Dhanesh R. Shah, Advocate for Respondent No.1 —
UOI.

Mr. B. B. Sharma, AGP for Respondent Nos.2 and 3 —
State.

CORAM : A.S. OKA & P.D. NAIK, JJ
DATED : APRIL 28 & 29 & MAY 2, 2016

ORAL JUDGMENT : (PER A.S.OKA,J.)

1 The submissions were heard on the last
date. We will have to make a brief reference to
the controversy in this Public Interest Litigation.
Essentially, this PIL has been filed by the
Petitioner inviting attention of the Court to the
fact that the provisions of the Commissions for
Protection of Child Rights Act, 2005 (for short "the

said Act") are not being implemented in its true letter and spirit in the State of Maharashtra. The first contention is about failure of the State Government to constitute a State Commission for Protection of Child Rights (for short "State Commission") in accordance with Section 17 of the said Act. The second contention is that there is a non-compliance with the provisions of the Sub-section (1) of Section 4 of the Right to Information Act, 2005 (for short "the said Act of 2005") by the State Commission as well as the National Commission established under the said Act. The third point which is canvassed by the learned counsel appearing for the Petitioner is regarding remuneration/salary payable to the Chairperson and members of the State Commission. It is also pointed out the manner in which the present Secretary of the State Commission is passing orders. The fourth contention is regarding creation of helpline for children and the last contention urged is about the appointment of Public Prosecutors having special knowledge in the subject. We have also heard learned counsel appearing for the Government of India as well as the learned AGP for the State. We have perused the

affidavit filed on record by Shri Jamsing Bijesing Girase, the District Woman and Child Development Officer on behalf of the State Government.

2 Before we deal with the submissions, it will be necessary to make a reference to the relevant provisions of the said Act and the scheme of the said Act. The Act has been enacted to provide for the constitution of a National Commission and the State Commissions for Protection of Child Rights and establishment of the Children's Courts for providing speedy trial of offences against children or of violation of child rights. The provisions of the said Act are based on the Convention on the Rights of the Child (CRC) dated 11th December 1992. As per the CRC, it was incumbent upon the signatory States to take all necessary actions to protect the children's rights which are set out in the said Convention. The Central Government adopted a National Charter for Children in the year 2003. The Statement of Objects and Reasons of the said Act notes very important fact that the India has the largest child population in the world.

3 The definition of the "child rights" incorporated in Clause (b) of Section (2) of the said Act is very wide. Clause (b) reads thus:

"2(b) "child rights" includes the children's rights adopted in the United Nations convention on the Rights of the Child on the 20th November 1989 and ratified by the Government of India on the 11th December, 1992".

4 Chapter II in the said Act deals with the National Commission for protection of child rights, constitution of the National Commission and other ancillary provisions. It also provides for procedure for transaction of business by the National Commission. Chapter III deals with functions and powers of the Commission. Section 3 provides for constitution of the National Commission. Section 17 of Chapter IV provides for constitution of State Commission. Various provisions are made regarding appointment of Chairperson and other members as well as salary and allowances payable to them. Chapter V deals with establishment of Children's Courts and Section 26 thereof provides for appointment of the Special Public Prosecutor for the purposes of

conducting cases before the Children's Courts.

5 Before we deal with the constitution of a State Commission, it will be necessary to make a reference to the functions and powers of the State Commission. Section 24 provides that the provisions of Sub-section (1) of Sections 13 and Sections 14 and 15 which are applicable to the National Commission are also applicable to a State Commission. Sub-section (1) of Section 13 of the said Act reads thus:

"13(1) The Commission shall perform all or any of the following functions, namely:-

- (a) examine and review the safeguards provided by or under any law for the time being in force for the protection of child rights and recommend measures for their effective implementation; .
- (b) present to the Central Government, annually and at such other intervals, as the Commission may deem fit, reports upon the working of those safeguards;
- (c) inquire into violation of child rights and recommend initiation of proceedings in such cases;
- (d) examine all factors that inhibit the enjoyment of rights of children

affected by terrorism, communal violence, riots, natural disaster, domestic violence, HIV/AIDS, trafficking, maltreatment, torture and exploitation, pornography and prostitution and recommend appropriate remedial measures; .

- (e) look into the matters relating to children in need of special care and protection including children in distress, marginalised and disadvantaged children in conflict with law, juveniles, children without family and children of prisoners and recommend appropriate remedial measures;
- (f) study treaties and other international instruments and undertake periodical review of existing policies, programmes and other activities on child rights and make recommendations for their effective implementation in the best interest of children;
- (g) undertake and promote research in the field of child rights;
- (h) spread child rights literacy among various sections of the society and promote awareness of the safeguards available for protection of these rights through publications, the media, seminars and other available means;
- (i) inspect or cause to be inspected any juvenile custodial home, or any other place of residence or institution meant for children, under the control of the Central Government or any State Government or any other authority, including any institution run by a social organisation; where children are

detained or lodged for the purpose of treatment, reformation or protection and take up with these authorities for remedial action, if found necessary;

(j) inquire into complaints and *suo motu* notice of matters relating to,-

(i) deprivation and violation of child rights;

(ii) non-implementation of laws providing for protection and development of children;

(iii) non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships to and ensuring welfare of the children and to provide relief to such children;

or take up the issues arising out of such matters with appropriate authorities; and

(k) such other functions as it may consider necessary for the promotion of child rights and any other matter incidental to the above functions."

6 Thus, very important functions have been assigned to the State Commission. The State Commission also exercises important power of inquiring into the complaints and taking *suo motu* notice of matters regarding deprivation and violation of child rights, non-implementation of

laws providing for protection and development of children and non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships to and ensuring welfare of the children. Sub-section (2) of Section 13 provides that the National Commission shall not inquire into any matter which is pending before a State Commission. Sub-section (2) also shows that an important role is expected to be played by the State Commission as the National Commission is powerless to deal with any matter in respect of inquiry which is pending before the State Commission.

7 As far as the powers of the State Commission are concerned, in the affidavit of Shri Jamsing Bijesing Girase filed on behalf of the State Government, it is contended that the said Commission is conducting various activities under sections 13 and 14 of the said Act as well as sections 31 and 32 of the Right to Education Act, 2009. Now, it will be necessary to consider the first issue regarding constitution of the State Commission. In the said affidavit in reply, it is contended that the term of the Chairman and the Members of the State Commission

of Maharashtra expired on 2nd December 2011 and that the State Government initiated process to appoint the Chairman and members of the Commission. Unfortunately, till today, the said process has not been completed. The stand taken in the affidavit in reply is that the Principal Secretary of the Women and Child Development Department has been appointed as In-charge Chairman to carry on day to day business of the Commission with the help of the Secretary till the appointment of the regular Chairman and Members is made.

8 Sub-section (2) of section 17 defines the constitution of the State Commission. Sub-section (2) of section 17 reads thus:

“(2) The State Commission shall consist of the following Members, namely:-

(a) A Chairperson who is a person of eminence and has done outstanding work for promoting the welfare of children; and

(b) six Members out of which at least two shall be women, from the following fields, to be appointed by the State Government from

amongst persons of eminence, ability, integrity, standing and experience in, -

(i) education;

(ii) child health, care, welfare or child development;

(iii) juvenile justice or care of neglected or marginalized children or children with disabilities;

(iv) elimination of child labour or children in distress; child psychology or sociology; and

(v) laws relating to children."

9 It provides that the Chairperson has to be a person of eminence who has done outstanding work for the welfare of children. The Commission consists of six other Members who are to be appointed from the persons of eminence, ability, integrity, standing and experience in education, child health, juvenile justice and child psychology or sociology and the laws relating to the children. It is unfortunate that from 2nd December 2011 till today, the State Government could not constitute the State Commission which exercises important powers not only under the said Act but under other Acts

including section 44 of the Protection of Children from Sexual Offences Act, 2012. There is one more aspect of the matter. The learned counsel for the petitioner pointed out that the Secretary is passing orders on behalf of the State Commission. By way of illustration, he has placed on record the orders passed by the Secretary in Case 24/2011-2012. There are other orders placed on record. The Secretary is purporting to exercise of the powers of the State Commission. The Secretary is appointed under sub-section (1) of section 21 and the responsibility of the Secretary has been specified in sub-section (2). Rule 5 of the Rules framed under the said Act prescribe powers and the duties of the Secretary. On plain reading of the Rule 5 of the said Rules of 2010, it is obvious that the Secretary cannot exercise powers of the State Commission. The said fact will have to be brought to the notice of the Secretary of the State Commission.

10 As far as the process of constitution of the State Commission is concerned, a compilation documents tendered by the learned AGP shows that the process commenced in October 2015. However, as this

Court found that the notices inviting applications were published in the newspapers having no circulation, the State Commission has revoked the said process and has taken a decision to start a fresh process. The learned AGP stated that the State Government proposes to publish advertisements inviting applications for nomination to the post of the Chairman and the Members by publishing notices in daily Loksatta, Times of India and Sakal. In addition, notice will have to be published in daily Lokmat. We make it clear that the advertisements inviting applications will have to be published in all local editions in the State of the said newspapers and not only in local editions published from Mumbai.

11 Considering the fact that for a period of more than 5 years, a regularly constituted State Commission does not exist, the whole process appointment will have to be expedited by the State Government by taking steps for the appointment of the Selection Committee. The State will have to ensure that the Selection Committee in terms of section 18 of the said Act will be constituted

within a period of 15 days from the date on which public notice inviting applications is published in the aforesaid newspapers. We propose to grant time of six months from today to the State Government to constitute the State Commission in terms of section 17 of the said Act.

12 We have already made a reference to the qualifications of the Chairperson and the Members of the State Commission. The requirement is that they must be persons of eminence. Their functions and that their duties are important which we have already set out in earlier part. The learned counsel for the petitioner pointed out that as far as the National Commission is concerned, there are Rules framed under the title of the National Commission for Protection of Child Rights Rules, 2006. Our attention is invited to sub-rule 1 of Rule 7 which provides that the salary of the Chairperson shall be equivalent to the salary of the cabinet Secretary to the Government of India and every other member shall be paid salary equivalent to the salary of a Secretary of the Government of India. The learned counsel for the petitioner also

pointed out the amendment made to the said Rules 2006 in the year 2014. In this context, it will be necessary to make a reference to the Maharashtra State Commission for Protection of Child Rights Rules, 2010 framed by the State. Rule 4 provides for payment of monthly honorarium of Rs.5,000/- to the Chairperson and Rs.3,000/- to the Members of the State Commission. Thus, there is a vast difference between the honorarium payable to the Chairman and Members of the National Commission and their counterparts in the State Commission. The National Commission and the State Commission exercise virtually the same power and discharge same duties. Considering the fact that the State Commission exercises powers not only under the said Act but also various other statutes, It is obvious that the work of the Chairman and Members of the State Commission will be virtually a full time work. If the State Government expects the persons of eminence in various fields to work in the State Commission, it is obvious that very few persons of eminence as contemplated by sub-section (2) of Section 17 will come forward to apply. Considering the fact that the powers and the duties of the National Commission

and the State Commission are the same, the State Government will have to immediately consider of increasing the remuneration payable to the Chairman and the members of the State Commission. It is obvious that their remuneration will have to be only marginally less than the remuneration payable to the Chairperson and the members of the National Commission. Unless this is done, in all probability, the State Government may not be able to nominate very deserving persons. The State Government will have to take appropriate decision on this aspect within a period of one month from today. It will be ideal if the State Government takes the decision before the notice inviting the applications is published so that the candidates can be made aware of the revised remuneration payable to the said posts.

13 The next issue canvassed by the learned counsel appearing for the petitioner is of the compliance with Section 4 of the said Act of 2005 as regards the obligation of all the public authorities. He pointed out that as far as the said compliance is concerned, after perusing the website maintained by

the State Commission, he has noticed that most of the material data and details have not been placed on the said website in compliance with Section 4 of the said Act of 2005. In the written submission tendered by the learned counsel on record on the last date which are taken on record and marked "X2" for identification, he has set out in detailed the disclosures which are required to be made by the State Commission. He has pointed out that under 15 different heads, the compliances are required to be made on the website of the State Commission. He pointed out that certain undated orders signed by the Secretary of the State Commission have been uploaded on the website. He pointed out that on the website of the State Commission, there are as many as 7 pages containing details only of the Secretary of the State Commission.

14 We have perused Section 4 of the said Act of 2005. Public authority has been defined under Clause 8 of Section 2 of the said Act of 2005. In view of the said definitions, both the State and National Commissions are public authorities within the meaning of the said Act of 2005. The

obligations of all public authorities have been set out in Section 4 and in particular Sub-section (1) thereof the said Act of 2005. The State Commission will have to look in to the deficiencies pointed out by the petitioner in the brief note marked as "X2" and in fact, even the National Commission will have to also substantially comply with the requirements of Sub-section (1) of Section 4.

15 Now coming back to the provisions of the said Act, Section 25 provides for the establishment of Children's Court. The object of Section 25 appears to be to ensure that there is a speedy trial of offences against the children as well as of violation of child rights. Section 26 provides for appointments of special public prosecutors for the purpose of conducting cases before the Children's Court. We must note here that appointing special public prosecutors under Section 26 is not an empty formality. The State Government has appointed existing public prosecutors as special public prosecutors. The object of Section 26 appears to be to ensure that only those members of the bar who are conversant with the laws regarding rights of the

children and who will be able to discharge their duties taking into consideration the objects of the said Act should be appointed as the special public prosecutors under section 26.

16 The State Government will have to consider the question whether women members of the bar should be given priority when it comes to the appointment of the special public prosecutors under section 26. Our attention is invited in the affidavit of the State Government and in particular Exhibit-D to the said affidavit which is the notification dated 30th July, 2009 specifying that all the public prosecutors/additional public prosecutors appointed under Section 24(3) of the Code of Criminal Procedure, 1973 shall be the Special Public Prosecutors for conducting cases before the Children's Court. Appointment of special public prosecutor under section 26 requires application of mind. Appropriate authority of the State Government before nominating any public prosecutor or any member of the Bar as a special public prosecutor under section 26 will have to ascertain whether the person sought to be appointed as a special public

prosecutor will be capable of discharging duties as a special public prosecutor considering the objects of the said Act. The State Government has to ensure that the members of the Bar who are capable of discharging the duties as a special public prosecutor are appointed under Section 26. Therefore, the State Government will have to reconsider the notification dated 30th July, 2009 in the light of the observations made by us and the State Government will have to take proper steps for appointment of proper Special public prosecutors considering the scheme of the said Act and especially Section 26 of the said Act. The State Government will have to also ensure that regular training is imparted to those persons who are appointed as the special public prosecutors under Section 26 of the said Act.

17 The other issue is regarding creation of awareness and creating helpline to assist the children. The learned counsel appearing for the petitioner has relied upon United Nations Convention on the Rights to Child 1989 and in particular Article 42 thereof. Apart from creating awareness

as contemplated by the said convention, it will be appropriate if the State Government as well as Central Government provide for giving adequate publicity not only to the provisions of the said Act, but also to the provisions of various enactments dealing with violation of the rights of children. Both the Governments will have to give adequate publicity to the rights of the children which are spelt out from various provisions including the provisions of the said Act as well as remedies available in case of violation rights of children and machinery created by the State Government as well as the Central Government under the said Act as well as other enactments.

18 Apart from giving wide publicity as stated above, a grievance redressal mechanism will have to be set up by the State Government for entertaining grievances regarding the violation of rights of the children. The children who are the victims of the violation may not be in a position to make any complaint. Therefore, as far as the State Government is concerned, it will have to create grievance redressal mechanism for receiving grievances

regarding violation of rights of children. The mechanism will provide for receiving the complaints in traditional form i.e. in form of writing as well as receiving complaints on dedicated toll free number as well as on dedicated websites. Provision shall be also made for receiving complaints by using media like Whats app application. The grievance redressal mechanism must also provide for entertaining anonymous complaints as regards major or gross violation of rights of the children so that the informant may not become the victim himself. The learned counsel appearing for the petitioner relied upon order passed by this Court in the said PIL No.125 of 2010. While giving publicity as directed above, the State Government will have to consider the directions issued by this Court in the said PIL. A wide publicity will have to be also given to the availability of the grievance redressal mechanism.

19 As stated earlier, till the State Commission is properly constituted, the State Government will have to ensure that the Secretary remains within bounds especially in the light of the

fact that the Secretary cannot perform duties and functions of the State Commission and his duties are confined to what is provided under Section 21 as well as the relevant Rules. So long as the State Commission is not constituted in terms of the directions issued by this Court, only the Chairperson will have to exercise the powers vested in the State Commission and to perform duties vested to the State Commission.

20 Lastly, our attention is invited to Sub-section (1) of Section 19 of the said Act which provides that the term of office of the Chairperson and other members is for a period of three years from the date of assumption of the office. As pointed out in the earlier part of the judgment, for the last more than five years, a validly constituted State Commission is not in existence. The process of constitution of State Commission by its very nature involves a lengthy procedure. Therefore, process of selection of new Chairperson and members of the State Commission will have to be commenced at least nine months before the date of expiry of their respective tenures so that there is no time gap

between the expiry of the term of the Chairperson and the Members of the State Commission and the constitution of new State Commission.

21 Though we propose to dispose of this PIL by issuing directions as indicated above, we propose to direct that the PIL shall be listed from time to time for reporting compliance by the respondents with the directions issued by this Court.

22 Hence, we dispose of the petition by passing the following order:

:: O R D E R ::

- (i) We direct the State Government to immediately reconsider the issue of the remuneration payable to the Chairperson and Members of the State Commission under the Commissions for Protection of Child Rights Act, 2005. The State Government shall consider of substantially enhancing the remuneration which is provided in Rule 4 of the

Maharashtra State Commission for Protection of Child Rights Rules, 2010. Endeavour shall be made to fix the remuneration of the Chairperson and Members consistent with the remuneration payable under the Central Rules to the Chairperson and Members of the National Commission. The State Government shall take appropriate decision on this aspect within a period of one month from the date on which an authenticated copy of this judgment and order or operative part thereof is produced in the office of the concerned department of the State Government;

- (ii) The State Government shall commence the process of constitution of the State Commission on expiry of a period of one month from the date on which an authenticated copy of this judgment and order is produced in the appropriate Department of State Government. The State Government shall publish a notice

inviting applications in four daily newspapers namely Times of India, Loksatta, Lokmat and Sakal in all its local additions published in the different parts of the State. The entire process of the constitution of the said State Commission shall be completed by the State Government within a period of six months from the date of publication of the notice;

- (iii) Though the time provided under Sub-section (1) of Section 4 of the Right to Information Act of 2005 to make compliance has already expired, we direct both the State Commission as well as the National Commission under the said Act to substantially comply with the requirements of Sub-section (1) of Section 4 of the said Act of 2005 within a period of two months from the date on which an authenticated copy of this judgment and order is produced by the petitioner in the offices of the

Secretaries of the said Commissions.

While making substantial compliance, the State Commission as well as the National Commission shall take into consideration what is set out in pages 4 and 5 of the written note submitted by the learned counsel appearing for the petitioner which is marked "**x2**" for identification;

- (iv) Within a period of two weeks from the date on which an authenticated copy of this judgment and order is produced in the office of the Secretary of the Women and Child Development Department of the State Government, necessary direction be issued to the Secretary of the State Commission inviting his attention to the role played by him under the said Act of 2005 as well as the Rules framed thereunder. Needless to add that till the State Commission is constituted in terms of the directions issued by this Court, the functions and duties of the State Commission shall be exercised by the officer holding the charge of the

post of the Chairperson;

- (v) The State Government shall take proper steps for appointment of the Special Public Prosecutors in terms of Section 26 of the said Act in the light of the observations made by this Court as expeditiously as possible and in any event within a period of three months on the date on which an authenticated copy of this judgment and order is produced by the petitioner with the Law and Judiciary Department of the State. We direct the State Government to ensure that proper facilities for giving regular training to the Special Public Prosecutors appointed under Section 26 of the said Act are made available. If necessary, the State Government may consider of approaching the Maharashtra Judicial Academy with a request to provide regular training to the Special Public Prosecutors;

- (vi) We direct the Central/State Governments to take steps for creation of awareness

about the provisions of the said Act as well as all other enactments relating to rights of the children and about the remedies available under the said enactments and the machinery which is available under the said enactments. Adequate publicity shall be given not only on media both electric and printed, but also by use of radio channels such as FM channels, by preparation of documentary films etc. The State Government shall come out with a scheme as regards giving publicity in terms of the United Nations Convention on the Right of the Child, 1989 as well as in terms of what we have discussed above. The State Government shall immediately take steps for giving necessary publicity and for creating grievance redressal mechanism. The details of the steps taken shall be placed on record within a period of two month from today;

(vii) For creating helpline and grievance

redressal mechanism, we grant two months time to the State Government from today to take appropriate steps;

(viii) Wherever we have granted time of two months to make compliance, we direct the respondents to file compliance affidavits on or before 4th July, 2016;

(ix) Though the petition is disposed of with the above directions, for reporting compliance with the directions, the petition shall be listed on 8th July, 2016 under the caption of "Directions". Thereafter, the petition will be kept for directions from time to time till all the directions issued under the judgment and order are effectively complied with;

(x) All concerned to act upon an authenticated copy of the operative part of this judgment and order.