

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.07.2016

Delivered on : 11.08.2016

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.15264 of 2015

and

M.P.No.1 of 2015 and WMP.No.21754 of 2015

The Destitute Charitable Trust
Rep by its Managing Trustee,
P.Russel Raj .. Petitioner

Vs.

The Chairman,
Child Welfare Committee,
Chengalpattu-603 002. .. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for all the concerned records pertaining to the passing of the order dated 19.05.2015 in proceedings No.Lr-No.137/2015 on the file of the respondent and quash the same.

For Petitioner : Mr.G.Justin,

For Respondent : Mrs.Shaikh Mehrunisa

O R D E R

The petitioner trust, aggrieved by the order of the respondent dated 19.05.2015, in and by which, it was directed to surrender all the nine abandoned children before them with relevant documents on 04.06.2015, has filed this writ petition.

2. The Managing Trustee of the petitioner Trust has sworn to the affidavit in support of the writ petition stating among other things that the Trust came to be established as per the Trust Deed dated 23.06.2006 and at present, ten girl children are being cared and maintained by them. The petitioner Trust submitted a representation dated 24.07.2006 to the District Collector of Kancheepuram District praying for recognition of the Trust as per the provisions of the various Acts governing the State and was directed by the District Social Welfare

Officer, Kancheepuram District, to run the institution for a period of one year, vide order dated 01.08.2006 and it was indicated that after the expiry of one year, the request would be considered for registration of the institution as per the provisions of The Orphanages and Other Charitable Homes (Supervision & Control) Act, 1960 [Central Act 10 of 1960] [in short "Orphanages Act, 1960].

3. The Deputy Director, Child Welfare In-Charge of Directorate of Social Welfare, Chepauk, Chennai-5, has also granted conditional registration for six months, vide order dated 01.06.2011, commencing from 01.06.2011 to 30.11.2011, subject to the condition that the institution shall be run in accordance with the provisions of Juvenile Justice (Care and Protection of Children Act), 2000 as amended in 2006 [in short "JJ Act"] and Rules framed thereunder. The petitioner has also submitted an application under Section 34(3) of the JJ Act for registration and it is still pending with the Government. It is the specific case of the petitioner that it has complied with all the procedural formalities for grant of registration and despite that, harassment is meted out by calling upon the petitioner institution to produce the children admitted in their home and accordingly, one girl baby, namely R.Jessica, aged about 4½ years, was directed to be produced and thereafter, the said child was handed over to Holy Apostles Convent, St.Thomas Mount, Chennai, subject to the condition that after completion of child attaining five years, she will be handed over to the petitioner Trust and after the said girl child attained five years, request was made to keep the said child in the care and custody of the petitioner institution. However it was rejected and now the custody of the child was entrusted to SOS, East Tambaram, Chennai-59.

4. The petitioner also made a complaint stating that since the child R.Jessica was emotionally attached and she is kept separately, she is not taking food properly and exhibiting her eagerness to come back and join other inmates of the home run by the petitioner Trust. It is also stated by the petitioner that the Collector of Kancheepuram District made a positive recommendation, vide letter dated 18.02.2015 to the District Social Welfare Officer, Kancheepuram to appoint the Managing Trustee of the petitioner Trust as a Fit Person and since no response is forthcoming, filed W.P.No.12233 of 2015, praying for a direction to appoint a Fit Person and it is still pending and however, the respondent bent upon to close the institution and despite that, has issued the impugned order and therefore, the petitioner is constrained to file this writ petition, challenging the said order.

5. Mr.G.Justin, learned counsel appearing for the petitioner would submit that despite the order of the District Social Welfare Officer, Kancheepuram dated 01.08.2006, granting permission to run the petitioner Home for a period of one year, the impugned order calling upon the petitioner Trust to surrender all the nine children, is per se illegal and the Visitors Entry Register maintained as per Rule 66 of the Juvenile Justice (Care and Protection of Children) Rules, 2000 also substantiate the fact that there are no defects found in the petitioner institution and therefore, prays for quashment of the impugned order.

6. The Writ Petition was entertained on 21.05.2015 and interim stay of the impugned proceedings was granted and it was extended until further orders. The respondent had filed WMP.No.21754 of 2016 for vacating the interim order and in the affidavit filed in support of the said petition it is averred among other things that the Child Welfare Committee has conducted an inspection on 17.05.2014 at the petitioner institute, wherein it was found that ten minor girl children were found and out of them, one girl was aged below 5 years and keeping the custody of child below 5 years is per se illegal and despite periodical communication from the District Administration exhorting all the children homes not to keep any child below 5 years on their rolls, the petitioner institution has kept a child below 5 years, violating the JJ Act and Rules framed thereunder with impunity and therefore, the minor girl R.Jessica, who was aged below 5 years, was taken out of the custody of the petitioner and was handed over to Holy Apostles Baby's convent, St.Thomas Mount, Chennai till the completion of 5 years and after completion of 5 years, she was sent to SOS Children home, East Tambaram, Chennai-59 for the reason that the petitioner cannot admit any child and also denied the fact that the said Child feels lonely and she is not keeping good health. It is further stated by the respondent that as per JJ Act, abandoned children should be surrendered to the Child Welfare Committee for their rehabilitation as it is the sole responsibility of the Child Welfare Committee, being the custodian of the child rights in their jurisdiction, to deliberate and decide about the future of the abandoned children in their jurisdiction under Section 31 of the JJ Act as amended in the year 2006 and by virtue of the interim order granted by this Court, it is still keeping the custody of nine children.

7. The Child Welfare Committee and the District Social Welfare Officer, Kanchipuram District has received a telephonic information and conducted surprise inspection on 20.06.2015 in the premises bearing Door No.40, Bethel House, Jaiwanthpuram occupied by the father-in-law and mother-in-law of the Managing Trustee of the petitioner Trust, who were aged about 78 years and 60 years respectively and in their custody, three minor

children, namely Siny, Jenithal and Siniya were there and so also one more minor girl, namely Princy aged about 2 ¼ years and all of them were rescued by the Selaiyur Police and sent to licenced agency and in this regard, a complaint was also lodged before the District Social Welfare Officer, which resulted in registration of a case in Crime No.1924/2015 under Sections 341, 363, 368 r/w. Section 34 IPC by the Selaiyur Police Station, Kancheepuram District, in which the deponent of the affidavit and his wife were also arrayed as accused. The respondent also pointed out that there are quite few defects existing in the children home run by the petitioner Trust and unless the defects pointed out are complied with and get registered under the provisions of JJ Act and Rules framed thereunder, it is not entitled to keep the custody of minor children in their home and therefore, prays for vacating the interim order.

8. Mrs. Shaikh Mehrunisa, learned counsel appearing for the respondent had invited the attention of this Court to the various provisions of the JJ Act and Rules framed thereunder and would vehemently contend that admittedly, the children home run by the petitioner Trust is an unregistered one and in utter violation of statutory regulations, girl children aged below 5 years are in their custody, especially three minor girl children in the custody of the father-in-law and mother-in-law of the Managing Trustee of the petitioner Trust without any authority whatsoever and they were rescued and handed over to a competent agency to take care of them and in the facts and circumstances of the case, it is very dangerous to keep the minor girl children in the custody of the petitioner Trust. It is also contended by the learned counsel appearing for the respondent that curiously no male children were taken care of and maintained by the petitioner Trust and therefore, prays for vacating the interim order and dismissal of the writ petition with exemplary costs.

9. In response to the said submission, the learned counsel appearing for the petitioner has drawn the attention of this Court to the judgment in Seva Chakkara Samajam v. The Chairman, Child Welfare Committee [2012 (6) CTC 625], wherein it has been held that the Child Welfare Committee lacks jurisdiction to pass any order in respect of child which did not come within the purview of Section 2(d) or 2(k) of the JJ Act and in the light of the order dated 15.06.2015 made in W.P.No.16818 of 2015, wherein this Court, pending orders on the application for registration, has directed the concerned Home not to keep custody of the children, prayed that till the registration formalities are completed, the children home run by the petitioner Trust to keep the nine girl children under their custody.

10. This Court paid its best attention and anxious consideration to the rival submissions and also perused the materials placed before it.

11. The petitioner Trust is a registered Trust registered in document bearing No.2278/2006 on the file of the Sub-Registrar Office, Tambaram dated 23.06.2006. The petitioner submitted an application dated 01.08.2006 to the District Social Welfare Officer, Kancheepuram for registration of the children home and the said official, vide communication addressed to the Collector of Kancheepuram District dated 01.08.2006, informed that the institution came into being just now and after completion of one year, it will be registered under the provisions of Orphanages Act, 1960. The petitioner Trust was accorded conditional registration for six months from 01.06.2011 to 30.11.2011, vide proceedings of the Deputy Director (Child Welfare/in-charge) of the Directorate of Social Welfare, Chepauk, Chennai-600005 under the provisions of JJ Act and Rules framed thereunder subject to following conditions and it is relevant to extract the same:

- The Institution is subject to inspection by the inspection authorities under the Act/Rules and by the persons/officers authorized by the State Government/District Child Protection Society/Child Welfare Committee.
- Any admission/death/repatriation of the children in the institution and any discharge of children from the institution should be intimated to the concerned District Child Protection Officer and Child Welfare Committee.
- The institution should provide proper infra-structure facilities including sufficient accommodation to children.
- To ensure proper education, child rights and necessary safeguards from child abuses.
- To provide health facilities, toilet facilities and bathroom facilities.
- To ensure water and sanitation and also safe drinking water.
- Sufficient supervisory and sub-staff should be appointed as per the act.

- To maintain the kitchen in a hygienic manner.
- To follow daily menu chart and ensure both quality and quantity in diet.
- To arrange recreation and motivation activities.
- The institution should run 500 meters away from the seashore, as a preventive measure from natural calamities.
- The institution should remove all Thatched structure if any and replace them by non-flammable material.
- Required number of fire fighting equipment should be installed and personnel also should be trained in handling them.

The Institution is hereby instructed to get the following certificates from the concerned authority and submit the same to this Directorate before the expiry of conditional registration.

- Building license issued by Thasildar.

On submission of the above mentioned certificates, the above said institution will be provided with registration certificate for three years, under Section 34(3) of Juvenile Justice (Care and Protection of Children) Act 2000 as amended in 2006 and rules therein."

Certain defects were pointed out and according to the petitioner Trust, it had fully complied with all the procedural formalities.

12. As already pointed out, one of the girl child, namely R.Jessica, aged below 5 years, on production before the Child Welfare Committee, was ordered to be kept in a licenced agency. The petitioner mainly harp on the communication dated 18.02.2015 in Na.Ka.No.2028/A1/2014 sent by the District Social Welfare Officer, Kancheepuram to the Chairman of the Child Welfare Committee, Kancheepuram District wherein it has been stated that the children home run by the petitioner Trust are being maintained properly and imparting education and taking into consideration their future welfare and well being and that the District Collector has also accorded necessary permission, prayed for appropriate orders and despite that, the impugned order came to be passed.

13. In the interregnum, the Managing Trustee of the petitioner Trust has also moved the respondent to appoint a Fit Person and in this regard, the respondent, vide letter No.137/2015 dated 01.04.2015 prayed for certain clarification and also pointed out that the fact relating to abandonment and surrender of Children have not been disclosed and further pointed out that as per Section 27(1) of the JJ Act, any child in need of care and protection should be produced before the Child Welfare Committee within 24 hours and however, it has not been done by the petitioner Trust and so also the lodging of the First Information Report. The petitioner, in response to the said communication, has sent a reply dated 06.04.2015 stating that the defects pointed out were complied with and it is waiting for permanent registration under Section 34 of the JJ Act and willing to cooperate for registration of the home.

14. It is also relevant to quote certain provisions of the following Acts. 14.1. Orphanages and Other Charitable Homes (Supervision and Control) Act, 1960 [Central Act 10 of 1960] came into being to provide for the supervision and control of orphanages, homes for neglected women or children and other like institutions and for matters connected therewith. Chapter III of the said Act deals with Recognition of Homes and as per Section 13, after the commencement of the Act, no person shall maintain or conduct any home except under and in accordance with, the conditions of a certificate of recognition granted under this Act. Section 14 stipulates that every person desiring to maintain or conduct a home shall make an application for a certificate of recognition to the Board in such form and containing such particulars as may be prescribed; Provided that a person maintaining a home at the commencement of this Act shall be allowed a period of three months from such commencement to make an application for such certificate. Chapter IV of the said Act speaks about Management of Recognised Homes and as per Section 20, there shall be a Managing Committee in charge of the management of every recognised home and the members of the managing committee shall appoint a member thereof to be the manager of such home for the purpose of this Act.

15. As per the communication of the District Social Welfare Officer, In-charge, Kancheepuram, addressed to the Collector of Kancheepuram dated 01.08.2006 in Na.Ka.No.115/AA/06, informed that the petitioner Trust is of recent origin and only after completion of one year, the Registration Certificate will be issued under Orphanages Act, 1960 and no material whatsoever has been placed before this Court to show that the petitioner Trust was registered under the Orphanages Act, 1960.

16. Juvenile Justice (Care and Protection of Children) Act, 2000 came to be framed with an object to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation and for matters connected therewith or incidental thereof. It is relevant to extract some of the provisions of the said Act:

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,

ia. 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;

2(e). "children's home" means an institution established by a State Government or by voluntary organization and certified by that Government under section 34;

2(f). "Committee" means a Child Welfare Committee constituted under section 29;

2(g). "competent authority" means in relation to children in need of care and protection a Committee and in relation to juveniles in conflict with law a Board;

S.29. Child Welfare Committee.-

1. The State Government may, within a period of one year from the date of commencement of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, by notification in the official gazette, constitute for every district, one or more, Child Welfare Committees for exercising the powers and discharge the duties conferred on such Committees in relation to child in need of care and protection under this Act.

2. The Committee shall consist of a Chairperson and four other members as the State Government may think fit to appoint, of whom at least one shall be a woman and another, an expert on matters concerning children.

3. The qualification of the Chairperson and the members, and the tenure for which they may be appointed shall be such as may be prescribed.

4. The appointment of any member of the Committee may be terminated, after holding inquiry, by the State Government, if -

i. he has been found guilty of misuse of power vested under this Act;

ii. he has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or he has not been granted full pardon in respect of such offence;

iii. he fails to attend the proceedings of the Committee for consecutive three months without any valid reason or he fails to attend less than three-fourth of the sittings in a year.

5. The Committee shall function as a Bench of Magistrates and shall have the powers conferred by the Code of Criminal Procedure, 1973 (2 of 1974) on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the first class.

S.34. Children's homes.-

1. The State Government may establish and maintain either by itself or in association with the voluntary organizations, children's homes, in every district or group of districts, as the case may be, for the reception of child in need of care and protection during the pendency of any inquiry and subsequently for their care, treatment, education, training, development and rehabilitation.

2. The State Government may, by rules made under this Act, provide for the management of children's homes including the standards and the nature of services to be provided by them, and the circumstances under which, and the manner in which, the certification of a children's home or recognition to a voluntary organization may be granted or withdrawn.

3. Without prejudice to anything contained in any other law for the time being in force, all

institutions, whether State Government run or those run by voluntary organisations for children in need of care and protection shall, within a period of six months from the date of commencement of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, be registered under this Act in such manner as may be prescribed.

S.35. Inspection.-

1. The State Government may appoint inspection committees for the children's homes (hereinafter referred to as the inspection committees) for the State, a district and city, as the case may be, for such period and for such purposes as may be prescribed.

2. The inspection committee of a State, district or of a city shall consist of such number of representatives from the State Government, Committee, voluntary organizations and such other medical experts and social workers as may be prescribed.

17. It is also relevant to extract some of the rules of the Juvenile Justice (Care & Protection of Children) Rules, 2007:

S.2(m) "recognised" means a person found fit by the competent authority or, an institution found fit by the State Government on the recommendation of the competent authority as per clauses (h) and (i) of Section 2 of the Act; or, recognition of an institution or agency or voluntary organization by the State Government to operate as a children's home, observation home and special home; or a shelter home, specialised adoption agency or after care organisation under sub-section (1) of section 37, sub-section (4) of section 41 and clause (a) of section 44 of the Act;

2(n) "registered" means all institutions or agencies or voluntary organisations providing residential care to children in need of care and protection registered under sub-section (3) of section 34;

25. Functions and Powers of the Committee.--

The Committee shall perform the following functions to achieve the objectives of the Act, namely:-

(a) take cognizance of and receive children produced before the Committee;

(b) decide on the matters brought before the Committee;

(c) reach out to such children in need of care and protection who are not in a position to be produced before the Committee, being in difficult circumstances, with support from the District Child Protection Unit or State Child Protection Unit or the State Government;

(d) conduct necessary inquiry on all issues relating to and affecting the safety and well being of the child;

(e) direct the Child Welfare Officers or Probation Officers or non-governmental organisations to conduct social inquiry and submit a report to the Committee;

(f) ensure necessary care and protection, including immediate shelter;

(g) ensure appropriate rehabilitation and restoration, including passing necessary directions to parents or guardians or fit persons or fit institutions in this regard, in addition to follow-up and coordination with District Child Protection Unit or State Adoption Resource Agency and other agencies;

(h) direct the Officer-in-charge of children's homes to receive children requiring shelter and care;

(i) document and maintain detailed case record along with a case summary of every case dealt by the Committee;

(j) provide a child-friendly environment for children;

(k) recommend 'fit institutions' to the State Government for the care and protection of children;

(l) declare 'fit persons';

(m) declare a child legally free for adoption;

(n) keep information about and take necessary follow-up action in respect of missing children in their jurisdiction;

(o) maintain liaison with the Board in respect of cases needing care and protection;

(p) visit each institution where children are sent for care and protection or adoption at least once in three months to review the condition of children in institutions, with support of the State Government and suggest necessary action;

(q) monitor associations and agencies within their jurisdiction that deal with children in order to check on the exploitation and abuse of children;

(r) co-ordinate with the Police, Labour Department and other agencies involved in the care and protection of children with the support of District Child Protection Unit or State Child Protection Unit or State Government;

(s) liaison and network with the corporate sector and non-governmental organisations for any of the above, including for social inquiry, restoration and rehabilitation, as and when required; and

(t) maintain a suggestion box to encourage inputs from children and adults alike and take necessary action.

69. Recognition of fit persons or fit institution.-

(1) Any individual who is willing temporarily to receive a juvenile or child in need of care, protection or treatment for a period as may be necessary, may be recognized by the competent authority as a fit person after due verification of their credentials and reputation.

(2) Any suitable place or institution, the manager of which is willing temporarily to receive a juvenile or child in need of care and protection for a period as may be necessary, may be recognized by the State Government as a fit institution on the recommendation of the competent authority.

(3) An institution recognized as a fit institutions shall,-

(a) meet the standards of care laid down in the Act and the rules made thereunder;

(b) have the capacity and willingness to meet the standards of care laid down in the Act and the rules;

(c) receive and provide basic services for care and protection of the juveniles and children;

(d) prevent subjection of juvenile or child to any form of cruelty or exploitation or neglect; and

(e) abide by the orders of the competent authority.

(4) A list of fit institutions approved by the State Government shall be kept in the office of the Board and the Committee.

(5) A fit institution with collateral branches may send the juvenile or child placed therein by an order of the competent authority to any of its branches after seeking permission from the competent authority.

(6) Before declaring any person as a fit person or recommending an institution as a fit institution, the competent authority shall hold due enquiry and only on being satisfied, recognition shall be given."

71.Registration under the Act.-

(1) All institutions and organisations running institutional or non-institutional care services for children in need of care and protection, whether run by the government or voluntary organization, shall get themselves registered under sub-section (3) of section 34 of the Act.

(2) All such institutions shall make an application together with a copy each of rules, bye-laws, memorandum of association, list of governing body, office bearers, balance sheet of past three years, statement of past record of social or public service provided by the institution or organization to the State Government, who shall after verifying that provisions made in the institution or organization for the care and protection of children, health, education, boarding and lodging facilities, if any, vocational facilities and scope of rehabilitation, may issue a registration certificate to such organization under sub-section (3) of section 34 of the Act and as per this rule."

18. The Deputy Director (Child Welfare/In-charge) of the Directorate of Social Welfare, Chepauk, Chennai-5, vide proceedings dated 01.06.2011 had granted conditional registration to the petitioner Trust for a period of six months from 01.06.2011 to 30.11.2011 under JJ Act subject to certain conditions and subsequently certain deficiencies were pointed out and though it is the claim of the petitioner Trust that it has complied with all the defects, the fact remains that it is yet to be registered.

19. The State of Tamil Nadu, in exercise of powers conferred by Section 68 of the JJ Act, 2000, had framed the Tamil Nadu Juvenile Justice (Care and Protection of Children) Rules, 2001 and it is relevant to extract the following rules:

"S.2(gb). "institution" means an observation home or a special home or a children's home or a shelter home set up, certified or recognised and registered under sections 8, 9, 34, sub-section (3) of section 34 and section 37 of the Act respectively.

2.j(b). "recognised" means a person found fit by the competent authority or, an institution found fit by the State Government on the recommendation of the competent authority as per clauses (i) or (h) of section 2 of the Act; or, recognition of an institution or agency or voluntary organization by the State Government to operate as a Children's Home, Observation Home, Special Home, a Shelter Home, a Place of Safety or a Protection Agency, Specialized Adoption Agency or After Care Organization under sub-sections (1) and (2) of Section 8, sub-sections (1) and (2) of section 9, sub-section (1) of section 34, sub-section (1) of section 37, sub-section (4) of section 41 and clause(a) of section 44 of the Act; or under sub-rule (6) of rule 8-C of these rules;

2.(jc) "registered" means all institutions or agencies or voluntary organizations providing residential care to children in need of care and protection registered under sub-section (3) of section 34 of the Act."

Chapter V of the said Rules speaks about Recognition and Certification of Institutions. Rule 55 speaks about recognition of fit institutions and fit person and Rule 56A deals with Registration of Institutions and it is relevant to extract the same:

56-A. Registration of institutions.-

1) Running and maintaining of institutions for children in need of care and protection or offering Non-Institutional care services such as Adoption, Foster Care, Sponsorship, Child Trafficking, Children of Sexual Workers, Begging Children, Child sexual workers, Children of Leprosy affected persons and any other chronic illness, HIV infected and affected Children, migrant children, children of Bonded Labours, Street and Working Children, Child Victims of manmade and Natural Disasters either by Governmentor by Voluntary Organisations or Trust or Religious Institutions or any such other Organisation shall be legally valid only if the Institution is registered to if it has not been certified or recognized by Government under section 34(3) of the Act. All institutions run by the Government shall also be registered under the Act. The Director of Social Defence shall be the authority to register such institutions functioning under various Departments except to institutions functioning under the Director of Social Welfare or State Commissioner for the Differently Abled.

(2) The Registration authority to register a Child Care Institution shall be the Director of Social Defence /Social Welfare / Rehabilitation of Differently abled on an application in Form XXX. The District Child Protection Unit or an authorized Officer of the Department of Social Defence /Social Welfare / Rehabilitation of the Differently abled shall recommend to issue formal orders of registration;

(3) (a) Eligibility conditions for a Non-Governmental Organisations to register under sub-section (3) of section 34 of the Act:-

(i) The Non-Governmental Organization shall be a registered body either under the Societies Registration Act or Trust Act or Company Act or any other law;

(ii) The Non-Governmental Organization shall have a governing body;

(iii) The Non-Governmental Organization shall not be a blacklisted organisation in any State or District for violation of Foreign Contribution Regulation Act condition or for misappropriation or mismanagement of

funds received either from Central or State Government or from any other sources;

(iv) The accounts of the Non-Governmental Organization shall be audited and IT return shall be submitted regularly;

(v) The minimum standards prescribed by Government from time to time shall be ensured;

(vi) The Non-Governmental Organization should have separate enclosures for boys and girls over and above the age of five years if they are housed within the same premises;

(vii) The Non-Governmental Organization shall have adequate water facilities including the safe drinking water;

(viii) The Non-Governmental Organization shall have to maintain the profile of every child and such child shall be ensured opportunities of communicating with his biological or extended families. Profile of child shall be made available for review by the Competent Authority or Officials of the Department of Social Defence / Government / District / State Child Protection Unit;

(ix) The Non-Governmental Organization shall be subjected for evaluation and inspection by the Directorate of Social Welfare / Social Defence / Rehabilitation for the Differently abled / any other designated authority.

(b) (i) Admission and discharge of children in registered Institutions shall be entered into a register;

(ii) No Organisation either Government or Non-Governmental Organization / Individual shall keep found or abandoned children in the Institution without informing the respective Child Welfare Committee. If any organisation or individual or a group of people indulge in such activities, the children shall be removed from their custody and criminal action shall be initiated for illegal custody of the children as per law. When the institution admits children directly brought by biological parent / guardian it shall take a written request along with the proof of address;

(iii) Every such registered Institution shall furnish a list of children being maintained to the District

Child Protection Unit. Such report shall be furnished once in six months;

(iv) Annual report on the admission and discharge of children shall be furnished to the District Child Protection Unit for data formation;

(c) Registration shall be given initially for a period of one year and if the services are found satisfactory it may be extended for five years;

(d) The conditions prescribed in clauses (a)(v) to (ix) and (b) and (c) shall apply to a registered Government Institutions also.

(4) (a) The registration for running and maintaining of a Child Care Institution or for offering non-institutional services for children in need of care and protection shall be withdrawn for any lapse, malfunction, misuse of funds, failure to ensure the personal safety and security of children or for any other action which hampers the best interest of child including keeping child without intimation to Competent Authority and the District Child Protection Unit as provided for in sub-rule(3);

(b) Withdrawal of registration shall be ordered by the concerned registration authority on the recommendation of the District Child Protection Unit / District Level Advisory Board or any

other designated authority;

(c) The District Child Protection Unit either upon the complaint received or on observation made by itself or by the direction of the District Advisory Board on the evaluation or inspection report of the Department of Social Defence / Social Welfare / Rehabilitation for Differently abled / any other designated authority on the report of fact findings by any authorized body shall constitute a Committee of Enquiry in consultation with the Director of Social Defence / Social Welfare/ Rehabilitation for Differently abled / any other designated authority and the District Collector to go into the complaints. The Committee shall issue notice to the Institution to fix hearing, review the written reply and submit the findings to the District Child Protection Unit, which shall issue final show-cause notice to file reply within fifteen days, from the date of receipt of the notice. On receipt of reply or if no reply is received within the

time stipulated, the District Child Protection Unit shall recommend to the Director of Social Defence/ Social Welfare/ Rehabilitation for Differently abled for cancellation of Registration. The State Government shall be the Appellate Authority in the matter;

(d) Upon closure of the Institution the children shall be immediately removed from the Institution and produced before the Competent Authority for appropriate action including transfer to a suitable Institution;

(e) If any Chief Executive of an organization is found guilty on any complaints and if he is an office bearer in any organization or if he himself establishes any other organization, such organization will not be considered for registration;

(f) Registration of an Institution shall not entitle an Institution for Grant-in-aid. However for the maintenance of children sent by the Child Welfare Committee the Institution may apply to the Government for sanction of Grant-in-aid.";

Therefore, JJ Act, 2000 which came to be amended in the year 2006, Rules framed thereunder as well as the Tamil Nadu Juvenile Justice (Care and Protection of Children) Rules, 2001 mandates the registration of the institution as well as provides certain norms for appointment of Fit Person.

20. The Juvenile Justice (Care and Protection of Children) Act, 2015 came to be passed pendency of this writ petition in order to expedient to re-enact the JJ Act, 2000 to make comprehensive provisions for children alleged and found to be in conflict with law and children in need of care and protection, taking into consideration the standards prescribed in the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), the Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption (1993), and other related international instruments and it is relevant to extract the following sections of the said Act:

"S.29.Powers of Committee.-

(1) The Committee shall have the authority to dispose of cases for the care, protection, treatment, development and rehabilitation of children in need of care and protection, as well as to provide for their basic needs and protection.

(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.

S.30. The functions and responsibilities of the Committee shall include-

(i) taking cognizance of and receiving the children produced before it;

(ii) conducting inquiry on all issues relating to and affecting the safety and well-being of the children under this Act;

(iii) directing the Child Welfare Officers or probation officers or District Child Protection Unit or non-governmental organisations to conduct social investigation and submit a report before the Committee;

(iv) conducting inquiry for declaring fit persons for care of children in need of care and protection;

(v) directing placement of a child in foster care;

(vi) ensuring care, protection, appropriate rehabilitation or restoration of children in need of care and protection, based on the child's individual care plan and passing necessary directions to parents or guardians or fit persons or children's homes or fit facility in this regard;

(vii) selecting registered institution for placement of each child requiring institutional support, based on the child's age, gender, disability and needs and keeping in mind the available capacity of the institution;

(viii) conducting at least two inspection visits per month of residential facilities for children in need of care and protection and recommending action for improvement in quality of services to the District Child Protection Unit and the State Government;

(ix) certifying the execution of the surrender deed by the parents and ensuring that they are given time to reconsider their decision as well as making all efforts to keep the family together;

(x) ensuring that all efforts are made for restoration of abandoned or lost children to their families following due process, as may be prescribed;

(xi) declaration of orphan, abandoned and surrendered child as legally free for adoption after due inquiry;

(xii) taking suo motu cognizance of cases and reaching out to children in need of care and protection, who are not produced before the Committee, provided that such decision is taken by at least three members;

(xiii) taking action for rehabilitation of sexually abused children who are reported as children in need of care and protection to the Committee by Special Juvenile Police Unit or local police, as the case may be, under the Protection of Children from Sexual Offences Act, 2012;

(xiv) dealing with cases referred by the Board under sub-section (2) of section 17;

(xv) co-ordinate with the police, labour department and other agencies involved in the care and protection of children with support of the District Child Protection Unit or the State Government;

(xvi) in case of a complaint of abuse of a child in any child care institution, the Committee shall conduct an inquiry and give directions to the police or the District Child Protection Unit or labour department or child-line services, as the case may be;

(xvii) accessing appropriate legal services for children;

(xviii) such other functions and responsibilities, as may be prescribed."

Section 32 deals with mandatory reporting regarding a child found separated from guardian and Section 37 speaks about orders passed regarding a child in need of care and protection.

21. Admittedly, even according to the petitioner, children in their custody were abandoned and in the light of the said fact, the judgment relied on by the learned counsel appearing for the petitioner in *Seva Chakkara Samajam v. The Chairman, Child Welfare Committee* [2012 (6) CTC 625] has no application for the reason that the children concerned were handed over to the concerned institution by the parents themselves and the concerned institution was also having valid registration under Section 34(3) of the JJ Act. However, in the case on hand, as already pointed out, the petitioner institution is neither registered under Orphanages Act, 1960 nor registered under JJ

Act, 2000 as amended in the year 2006 and under the new JJ Act, 2015 and according to them, their application for registration is still pending.

22. Insofar as the reliance placed by the learned counsel appearing for the petitioner on the order dated 15.06.2015 made in W.P.No.16818 of 2015, the facts of that case would disclose that Inspection Committee was appointed and since it was under obligation to inspect the premises and give a report for the purpose of renewal, this Court had granted interim direction and also made it clear that it shall not admit any new inmates and continues to maintain the institution in a good and sound condition in the welfare of the children.

23. In the case on hand, the concerned authorities has pointed out certain defects and despite the claim made by the petitioner institution that it has complied with all the defects, the fact remains that inspection is yet to be done as to the compliance of defects and as on today, the children home maintained by them lacks registration under Section 34 of the JJ Act as amended in the year 2006 and in the absence of any Rules, it cannot be allowed to run such an institution. The respondent/Child Welfare Committee, in the light of the powers, duties and responsibilities vested with them in Chapter III of the JJ Act, is entitled to insist for production of child below it, conduct enquiry and also inspection of the premises. At the time of inspection by the respondent on 17.05.2014, one child aged about 5 years and was handed over to a recognized agency and it was further found that the father-in-law and mother-in-law of the Managing Trustee of the petitioner Trust, wherein the custody of 3 minor children and they were also sent to recognized homes. As rightly contended by the learned counsel appearing for the respondent that once abandoned child/children is/are found, duty is cast upon the petitioner Trust to inform the concerned authority constituted under the JJ Act, but they failed to do so and they have maintained only girl children and thereby creating an impression that no boy child is abandoned.

24. In the considered opinion of the Court, the conditional registration granted to the petitioner Trust expired on 30.11.2011 and beyond that it is not having valid registration and as such, it cannot run children homes. The petitioner Trust is under statutory mandate to run children home only in the event of having valid registration and it should be subsisting and in the case on hand, it lacks essential requirement mandated under the above said legal formalities. The powers exercised

by the respondent also cannot be put to challenge by the petitioner Trust as it has exercised powers only under the provisions of JJ Act, 2000 as amended in the year 2006 and Rules framed thereunder as well as JJ Rules 2001 and hence, the impugned order/proceedings cannot be faulted with.

25. In the light of the reasons assigned above, this Writ Petition deserves dismissal and accordingly, it is dismissed. The respondent/Child Welfare Committee, Chengalpattu, is directed to take necessary and expedient steps to secure the custody of the children admitted in the children home run by the petitioner Trust forthwith and admit them in registered and recognized homes and periodically monitor and see to that they are groomed properly and come up in their life, to have a glittering career. No costs. Interim order granted in M.P.No.1 of 2015 is vacated and accordingly M.P.No.1 of 2015 is dismissed and consequently, WMP.No.21754 of 2015 is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

jvm

To

The Chairman,
Child Welfare Committee,
Chengalpattu-603 002.

+lcc to M/S.G.Justin, Advocate Sr.46080
+lcc to M/S.Shaikh Mehrunisha, Advocate Sr.45850

ctk[col]
srg 12/08/2016

W.P.No.15264 of 2015