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

+ **W.P.(CRL).249/2016**

ANIL TIWARI

..... Petitioner

Through : Mr. Shashank Shekhar, Advocate

versus

DELHI POLICE THROUGH
COMMISSIONER OF POLICE

..... Respondent

Through : Mr. Rahul Mehra, Standing Counsel with
Mr. Amrit Singh, Advocate for the State
along with SI Karan Pal Singh, P.S.
Anand Parvat.

Mr. Rajinder Dhawan, Advocate for Sri
Guru Ram Rai Udasin Ashram, Aram
Bagh.

Mr. Puneet Bhatnagar, Advocate for Arya
Kanya Gurukul.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER
09.05.2016

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1. 13 years old daughter of the petitioner went missing on 10.10.2015 which led to the filing of the present writ petition under Article 226 of the Constitution of India seeking a writ of *habeas corpus*. A prayer was sought to produce the kidnapped child. On the same date, a complaint was made which led to registration of an FIR No.0715/2015 under Section 363 of the Indian Penal Code.

2. This writ petition was taken up for hearing on 27.01.2016 when the missing girl was produced in Court from Arya Kanya Gurukul, Rajender Nagar by the concerned IO. Since we learnt that the girl remained with Sri Guru Ram Rai Udasin Ashram between the period 10.10.2015 to 17.11.2015 and thereafter with Arya Kanya Gurukul between the period 17.11.2015 to 24.01.2016 and, during this period, neither of the two institutions deemed it appropriate to inform the police about the girl staying in their institution, we deemed it appropriate to issue notice to both these institutions.
3. We are informed that pursuant to a newspaper advertisement regarding the missing child which appeared on 24.01.2016, Arya Kanya Gurukul informed Sri Guru Ram Rai Udasin Ashram, who contacted the police. The child was then produced before the CWC on 24.01.2016 from where the child was sent to Katyayani Balika Ashram as directed by CWC on 25.01.2016. CWC then fixed the date on 29.01.2016 for production of the parents and submission of a social investigation report.
4. We find that there has been a serious lapse on the part of the Sri Guru Ram Rai Udasin Ashram where the child remained between the period 10.10.2015 to 17.11.2015. There has also been a serious lapse on the part of Arya Kanya Gurukul where the child remained between the period 17.11.2015 to 24.01.2016. We also find that the CWC acted in a highly insensitive manner when the child was produced before them on 25.01.2016 and it was brought to their knowledge that the parents of the child had filed a missing complaint on the same date when she went missing which resulted in registration of an FIR No.715/2015 on 10.10.2015.
5. Mr. Rajinder Dhawan, learned counsel appearing for Sri Guru Ram Rai Udasin Ashram submits that the child was, in fact, rescued by them. The child had informed them that her parents had died in a fire in the hut and

she was residing with her uncle and aunt, who were maltreating her. It is also stated that they found injuries on the body of the child.

6. Assuming that this was the explanation rendered by the child, in our view, the minimum Sri Guru Ram Rai Udasin Ashram could have done was to bring it to the notice of the police that a 13 years old child had been rescued by them, even if they were not aware of the provisions under the Juvenile Justice Act and the role of the CWC. Mr. Dhawan submits that the lapse was not intentional, but Sri Guru Ram Rai Udasin Ashram accepted the story of the child on face value. The office bearers of Sri Guru Ram Rai Udasin Ashram are cautioned that in future if any child wanders in their institution at any time of the day or at night, they must immediately inform the police and in this case the child was with them for more than a month.
7. A somewhat similar explanation has been rendered by the learned counsel for Arya Kanya Gurukul where the child was studying between 15.11.2015 to 24.01.2016. Counsel submits that the child was referred by Sri Guru Ram Rai Udasin Ashram and the child had filled up an admission form in her own handwriting stating that her parents were not alive. In our view, this institution should have also brought it to the notice of the police that they were admitting a child who claims that she has no parents and they were unable to identify her previous background.
8. We are little surprised at the role of the CWC. Based on a newspaper clipping, Sri Guru Ram Rai Udasin Ashram realised that the child who had wandered in their institution to whom they had provided food and shelter, was actually a missing child and they immediately informed the police. The child was then produced before the CWC for the first time on 24.01.2016. Upon being informed about recovery, on 24.01.2016 itself they put the child with Katyayani Balika Ashram and the child was then produced before the CWC on 25.01.2016. CWC adjourned the proceedings

to 29.01.2016 with a view to seek a report from the IO and for production of parents. Statement of the child was recorded on 25.01.2016 under Section 164 of the Code of Criminal Procedure, wherein she stated that she was staying with her uncle and aunt (*chacha-chachi*) the persons who belonged to her village and had turned her out of their house and were also discriminating between her and their own children and wanted to marry her off to some boy.

9. What is not understandable is that once the child was recovered, why was the child not handed over to her parents. Although the explanation rendered by the Police is that the child did not want to go back to her parents but we are not satisfied by this explanation.
10. The CWC knowing that an FIR was already registered by the police did not inform the parents, but from 24.01.2016 prolonged the torture of the parents of the child and in an insensitive and unmindful manner put the child in Katyayani Balika Ashram and fixed the date for 29.01.2016 for production of the parents. The CWC should have ensured presence of the parents on the same day instead of fixing the matter after four days.
11. We record our displeasure in the manner in which the CWC has handled this matter. The committee members of Sri Guru Ram Rai Udasin Ashram and Arya Kanya Gurukul shall ensure in future if any child is admitted in their institutions, they must inform the police forthwith. The CWC shall ensure that in case any child is produced before them, they must ensure that the parents of the child are immediately informed that the child is in their care and custody if for strong reasons, the custody of the child cannot be handed over to the parents. Any lapse in future shall be viewed strictly.
12. The petition stands disposed of accordingly.

13. A copy of the order be sent to CWC, Commissioner of Police and to the Delhi Government to enable them to ensure compliance by giving necessary publicity.
14. Dasti to counsel for the parties.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

MAY 09, 2016 pst

