

**HON'BLE THE CHIEF JUSTICE
THOTTATHIL B. RADHAKRISHNAN**

AND

HON'BLE SRI JUSTICE S.V. BHATT

TAKEN-UP P.I.L. No.138 OF 2015

ORDER (ORAL): (Per Hon'ble The Chief Justice Thottathil B. Radhakrishnan)

This Taken-up Public Interest Litigation relates to matters touching the unfortunate state of affairs of the care and protection of children through empowered streams of governance.

2. We have heard Sri D. Prakash Reddy, learned Senior Counsel as *amicus curiae*, on different aspects touching the spectrum of Juvenile Justice Management in India in the light of the judicial precedents touching the subject. We have also heard Sri K. Lakshman, learned Assistant Solicitor General, learned Advocates General for the State of Telangana and the State of Andhra Pradesh.

3. Having regard to the nature of the facts and circumstances of the case, the Telangana State Legal Services Authority and the Andhra Pradesh State Legal Services Authority, are hereby *suo motu* impleaded in this Taken-up Public Interest Litigation. Sri Jukanti Anil Kumar, learned Standing Counsel for Legal Services Authority for both States, takes notice and appears for them.

4. The various challenges that the children face relate to areas of labour, trafficking and other aspects where they become victims. The

level of emotional trauma has necessarily to be addressed. This Public Interest Litigation was taken on board on the basis of a representation made by Dr. Sunitha Krishnan, Secretary, *Prajwala* on 02.01.2015 to this Court highlighting the different guidelines and contents of the judgment of the Supreme Court in **M.C. Mehta vs. State of Tamil Nadu**¹ and various statutory and other materials which are binding on the Governments that triggered the jurisdiction of this Court under Article 226 read with Article 21 and other enabling provisions of the Constitution of India which focus on the fundamental rights of the children.

5. In this taken-up (*suo motu*) Public Interest Litigation, the following reliefs were formulated for consideration of this Court:-

“ issue an order, direction or a writ, more particularly one in the nature of writ of Mandamus to call for the records from the respondents herein relating to serious concerns regarding rescue of child labour, trafficking and a series of rescue of children from exploitative conditions including the traditional bangle manufacturing industry, famous for its unique “Lac bangle”, under “Operation Smile” of Union of India especially in the State of Telangana and the State of Andhra Pradesh without any prior preparation of post-rescue requirements i.e., prior planning for accommodation, health care, restoration of protocol etc., and the concerned may be:

1. directed to establish a Judicial Committee or the Juvenile Justice Committee of the High Court with special invitees among child rights activists who have prior experience in working on labor trafficking issues to monitor

¹ (1996) 6 SCC 756

the entire rehabilitation and restoration plan for the children rescued in the operation and to bring together all stakeholders including Department of Labour, Police, Department of Women & Child and Child Welfare Committee and ensure a concerted multi-convergent plan minimizing the level of trauma of each rescued child;

2. directed to cancel the licenses of all the establishments/factories/manufacturing units with the premises sealed, attached and confiscation of property;

3. directed to initiate proceedings for immediate recovery of fine from the employer @ Rs.20,000/- for a Child under the Supreme Court Guidelines in MC Mehta vs. State of Tamil Nadu ((1996) 6 SCC 756) and credit the amount to the Rehabilitation cum Welfare Society of Child Labour in the native district of the child for his/her socio-economic and educational rehabilitation as guided by Ministry of Home affairs and to initiate proceedings for the recovery of the back wages of the child as per the Minimum Wages Act 1948;

4. directed to introduce a certification programme for the bangle industry such as- 'Lacmark' – child labour free bangle' on the lines with "rugmark (for Carpet Industry)" and the Labour Commissioner in collaboration with Department of Women and Child organize intensive campaigns in the community promoting Lacmark Bangles-child labour free bangles; and

5. directed to follow the rescue protocol prepared by UNODC-MHA for any future operation.

and to pass such other order or further orders as this Hon'ble Court may deem fit and proper in the circumstance of the case."

6. It is noteworthy that this Public Interest Litigation was registered *suo motu* in 2015 contemporaneous with the passing of the Juvenile Justice (Care and Protection of Children) Act, 2015;

hereinafter referred as 'the 2015 Act'. The forerunner of that legislation was the Juvenile Justice (Care and Protection of Children) Act, 2000; hereinafter referred as 'the 2000 Act', which was the Act 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 developmental 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 thereto. In making that enactment, inspiration was drawn from the several provisions of the Constitution of India including clause (3) of Article 15, clauses (e) and (f) of Articles 39, Articles 45 and 47, which imposed on the State a primary responsibility of ensuring that all the needs of children are met and that their basic human rights are fully protected as well as the Convention on the Rights of the Child on 20th November, 1989, which had prescribed a set of standards to be adhered to by all State parties in securing the best interests of the child and had emphasized social reintegration of child victims, to the extent possible, without resorting to judicial proceedings. Since the said Convention on the Rights of the Child was ratified by the Government of India, India was obliged to effectuate with the directions of that Convention and the provisions set forth therein. It was found expedient to re-enact the existing law relating to juveniles bearing in mind 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) and all other relevant international instruments. Such requirements cohesively led to making of the 2000 Act. However, in spite of amendments to the 2000 Act in the year 2006 and 2011, several issues, such as increasing incidents of abuse of children in institutions, inadequate facilities, quality of care and rehabilitation measures in Homes, delays in adoption due to faulty and incomplete processing, lack of clarity regarding roles, responsibilities and accountability of institutions, sale of children for adoption purposes, etc., had cropped up. Further, increasing cases of crimes committed by children in the age group of 16-18 years made it evident that the provisions of the 2000 Act were ill-equipped to tackle child offenders in that age group. Numerous changes were required in the 2000 Act, to address the above mentioned issues, it was proposed to repeal the 2000 Act and re-enact a comprehensive legislation. Thus, the 2015 Act was brought to ensure proper care, protection, development, treatment and social re-integration of children in difficult circumstance by adopting a child-friendly approaching keeping in view the best interest of the child. The 2015 Act was enacted to consolidate and amend the law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in the adjudication and disposal of matters

in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established, hereinunder and for matters connected therewith or incidental thereto. Such legislative action also was carried having regard to the aforenoted Conventions and Rules, as well as the Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption (1993), and other related international instruments.

7. Hearing the learned *amicus curiae* on the different aspects touching the provisions of the 2015 Act and its predecessor 2000 Act, it is noticed that by now, the Hon'ble Supreme Court has dealt with various aspects relating to the effectualisation of the provisions of Juvenile Justice (Care and Protection of Children) regime of laws and principles governing exercise of different administrative and judicial jurisdictions. Their Lordships decided an application under Article 32 of the Constitution of India and laid down the law touching different aspects of the matter and also issued different directions through judgment dated 09.02.2018 in **Sampurna Behura vs. Union of India**² adverting to and considering different aspects relevant in the context. The said judgment elaborately delineates the conclusions and directions, which read as follows:

“Since the involvement of the State Governments and the Union Territories is critical to child rights and the effective implementation of the JJ Act, it would be appropriate if each High Court and the Juvenile Justice Committee of each High

² (2018) 4 SCC 433

Court continues its proactive role in the welfare of children in their State. To make the involvement and process more meaningful, we request the Chief Justice of every High Court to register proceedings on its own motion for the effective implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015 so that road-blocks if any, encountered by statutory authorities and the Juvenile Justice Committee of the High Court are meaningfully addressed after hearing the concerned governmental authorities. A copy of this judgment and order should be sent by the Secretary General of this Court to the Registrar General of each High Court for being placed before the Chief Justice of every High Court for initiating suo motu proceedings.

Finally, we request and urge the Chief Justice of each High Court to seriously consider establishing child friendly courts and vulnerable witness courts in each district. Inquiries under the JJ Act and trials under other statutes such as the Protection of Children from Sexual Offences Act, 2012, the Prohibition of Child Marriage Act, 2006, trials for sexual offences under the Indian Penal Code and other similar laws require to be conducted with a high degree of sensitivity, care and empathy for the victim. It is often said that the experience in our courts of a juvenile accused of an offence or the victim of a sexual offence is traumatic. We need to have some compassion towards them – even juveniles in conflict with law, since they are entitled to the presumption of innocence - and establishing child friendly courts and vulnerable witness courts is perhaps one manner in which the justice delivery system can respond to ease their pain and suffering. Another advantage of such child friendly courts and vulnerable witness courts is that they can be used for trials in which adult women are victims of sexual offences since they too are often traumatized by the not so friendly setting and environment in our courts.”

8. In the light of the aforesaid judgment, it is the duty of all the establishments of governance and other establishments of social security audit and outreach through legal aid to ensure that the directions issued by the Hon'ble Supreme Court through the aforesaid judgment are carried forward and operated, with a regular performance audit mechanism in place.

9. Therefore, all authorities, which fall within the directions of the Hon'ble Supreme Court, which are referred to above and are operating within the jurisdiction of the State of Telangana and all such authorities in the State of Andhra Pradesh, are hereby directed to comply, in letter and spirit, the directions issued by the Hon'ble Supreme Court and provide quarterly reports of all such activities to the concerned State Legal Services Authority, 'SLSA', for short. The Government and authorities falling within the State of Telangana will do so by furnishing such report to the Telangana SLSA and the Government and authorities falling within the State of Andhra Pradesh will do so by furnishing such report to the Andhra Pradesh SLSA. Those Legal Services Authorities will audit the performance so reported on the basis of the yardsticks and indicators provided for the purpose through the verdict in **Sampurna Behura** (supra) and the directions issued therein. Upon completion of such audit of the performance by adherence to and compliance of the directions contained in **Sampurna Behura** (supra), the Member Secretary of the SLSA concerned shall place such report on quarterly basis before the

Juvenile Justice Committee of the High Court concerned with the approval of the Executive Chairman of the SLSA concerned. This will enable the Juvenile Justice Committee of the High Court concerned to evaluate the performance in compliance of the directions of the Hon'ble Supreme Court.

10. It is hereby ordered that any further orders, directions, clarifications and further instructions as may be issued by the Juvenile Justice Committee of the High Court concerned shall be treated as directions in furtherance of the contents of this order and all such directions shall also be given effect to within such time limit as is required by the Juvenile Justice Committee of the High Court, as if they are orders and directions in furtherance of the contents of this order.

11. Continuous monitoring as afore-directed shall be ensured by the State Governments and other authorities submitting quarterly reports to the SLSA concerned on or before the last working day of March, June, September and December of every year without fail, unless such time limit is extended by the High Court concerned on application by the State or other institution, which is in default, specifically setting out the reasons for such delay. It will be open to the Juvenile Justice Committee of the High Court concerned to inform the appropriate High Court on the judicial side, if and when further directions are required or for any order to the requisite agencies in terms of the directions of the Hon'ble Supreme Court, as quoted above.

12. It is further directed that after receipt of the first set of reports by the end of March, 2019, the SLSA concerned will do the needful to have further proceedings initiated by the High Court concerned in terms of what is stated in paragraph 94.16 among the directions in **Sampurna Behura** (supra).

13. The State of Telangana and the State of Andhra Pradesh are directed to fill up all posts under the State Commissions for Protection of Child Rights of those two States without fail within a period of two (2) months from today. Adequate staff shall also be provided to those statutory bodies within a period of three (3) months from today to enable those statutory bodies to function effectively and meaningfully for the benefit of the children.

14. The Taken-up Public Interest Litigation is ordered accordingly.
No order as to costs.

As a sequel, miscellaneous petitions, if any pending, stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

S.V. BHATT, J

November 20, 2018

Note: LR copy be marked.
(By order)
MRR/PLN