

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CIVIL WRIT PETITION NO. 9810 OF 2019

RESERVED ON: MAY 22, 2019

DATE OF DECISION: JULY 4, 2019

Arya Anathalaya and anotherPetitioners

Versus

State of Punjab and anotherRespondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.Rajiv Kataria, Advocate for the petitioners.

Mr.Sahil Sharma, Deputy Advocate General, Punjab.

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TEJINDER SINGH DHINDSA, J.

CM No.7578 of 2019

Application is allowed as prayed for. The accompanying affidavit of Dr.Satnam Kaur, Manager, Arya Anathalaya, Ferozepur Cantt./petitioner No.2 along with Annexures P18 and P19 is taken on record.

Main Petition

2. The Arya Anathalaya Pratinidhi Sabha is a registered Society under the Societies Registration Act, 1860. Such Society manages Arya Anathalaya i.e. an Anathalaya at Ferozepur Cantt.

3. Challenge in the instant petition is to the letter dated 8.1.2019, Annexure P13, issued by the Chairperson of the Child Welfare Committee, Ferozepur and in terms of which, directions have been issued that all the inmates of the petitioner-

Organization and who are residents of the State of Jharkhand be handed over to the concerned Child Welfare Committee of Jharkhand and compliance of such directive be made within a period of one week.

4. As per pleadings on record, petitioner No.1 - Arya Anathalaya was established way back in the year 1877 for the purpose of admitting and taking care of the children who had either lost their parents or had nobody to take care of them. The Anathalaya is stated to provide the basic needs of food, clothes and shelter for the homeless children. There are separate hostels for boys and girls in the Anathalaya. The Anathalaya is stated to be running without any aid and help from the Government and the entire expenses are borne by the DAV College Managing Committee as well as through donations received from various quarters including ex-inmates and who have now established themselves in the journey of their life. It has been averred that not only orphans but even children who are destitute or where the parents of the children cannot afford to care of their children are admitted in the Anathalaya. Complete responsibility as regards education is undertaken and education is imparted in the different DAV Institutions free of cost. Insofar as girls are concerned, on completion of their studies, an attempt is made to search for an appropriate match and even their marriages are solemnized. It has further been averred that the Anathalaya has been established and running on a piece of land of 25 acres given to the Society on perpetual lease by the Cantonment Board, Ferozepur. For the present, there are 20 employees engaged by

the Anathalaya and there are 104 children i.e. 60 boys and 44 girls who are all from the State of Jharkhand. The Anathalaya has been given the requisite certification by the Income Tax Authority and whereby any donation to the Institute stands exempted under Section 80-G of the Income Tax Act, 1962.

5. Learned counsel representing the petitioners would submit that the impugned directive has been issued solely on the basis that children belonging to some other State cannot be kept in the Anathalaya being run in the State of Punjab. It is argued that the Anathalaya has been functioning since long without any complaint and the impugned letter dated 8.1.2019, Annexure P13, has been issued against the principles of natural justice and without even serving any advance notice upon the Anathalaya. It is further contended that the Anathalaya is duly registered under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter to be referred to "2015 Act") and there has been no violation of any provision of the Act. Learned counsel urges that there was no condition incorporated either in the certificate granted to the Anathalaya at the stage of registration nor is there any provision under the 2015 Act that the inmates who are to be kept and looked after in the Anathalaya should belong to Ferozepur District alone and not from any other District/part of the country. The action, as per counsel, is grossly unfair and unjust and is also violative of Article 14 of the Constitution of India.

6. On the previous date of hearing, a complete copy of the writ paper book had been handed over to learned State

counsel to complete instructions. State counsel was further directed to make available for perusal of this Court the original proceedings of the Child Welfare Committee, Ferozepur and which had led to the passing of the impugned directive at Annexure P13. In the meanwhile, it was ordered that operation of Annexure P13 would be kept in abeyance.

7. In compliance of the directions issued by this Court, the original proceedings/record of the Child Welfare Committee, Ferozepur was produced and with the able assistance of Mr.Sahil Sharma, Deputy Advocate General, the same has been perused.

8. Learned counsel for the parties have been heard at length.

9. There is no dispute that the petitioner-Anathalaya stands registered as a Children Home under Sections 41(1) and 41(6) of the 2015 Act w.e.f. 26.10.2018 for a period of five years vide Certificate of Registration dated 8.10.2018 issued by the Department of Social Security and Women & Child Development (Social Security Branch), Punjab, Annexure P10.

10. In order to examine the issue at hand, it would be imperative to have an overview of certain relevant provisions of the 2015 Act.

11. Section 2(19) defines, a “Children Home” as established or maintained in every District or group of Districts by the State Government either by itself or through a voluntary or non-governmental Organization and which is registered as such for the purposes specified in Section 50. Section 41 deals with registration of Child Care Institutions and mandates that all

institutions, whether run by a State Government or by voluntary or non-governmental organizations and which are meant either wholly or partially for housing children in need of care and protection or children in conflict with law shall be registered under the 2015 Act within a period of six months from the date of commencement of the Act, regardless of the fact whether such Institutions are receiving grants from Central Government or from the State Government or not. Under Section 41(2), at the time of registration, the State Government is to determine and to record the capacity, the purpose of the institution and shall register the institution as a Children's Home or open shelter or Specialized Adoption Agency or Observation Home or Special Home or place of safety as the case may be. Section 50 regulates the establishment of Children's Home in every District or group of Districts in a State at the hands of the State Government, either by itself or through voluntary or non-governmental organizations. Such Children's Homes are for the purpose of placement of children in need of care and protection, treatment, education, training, development and rehabilitation. Under Section 50(3), the State Government may, by rules, provide for the monitoring and management of Children's Homes. Section 27 mandates the State Government to constitute by way of notification for every District, one or more Child Welfare Committees for exercising the powers and to discharge the duties conferred on such Committees in relation to children in need of care and protection under the 2015 Act. The Child Welfare Committee under Section 27(2) is to consist of a Chairperson and four other members as the State

Government may think fit to appoint and of whom at least one shall be a woman and another an expert on the matters concerning children. Section 29 authorizes the Child Welfare Committee to dispose of the 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. Section 30 lays down the functions and responsibilities of the Child Welfare Committee and includes selecting registered institutions 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. Section 31 is contained in Chapter VI of the Act laying down the procedure in relation to children in need of care and protection. Under Section 31, any child in need of care and protection may be produced before the Child Welfare Committee and as per Section 36, upon production of a child, the Child Welfare Committee shall hold an inquiry in such manner as may be prescribed and thereafter may pass an order to send the child to the Children's Home or shelter home etc. Section 40 lays down that restoration of protection of a child shall be the prime objective of any Children's Home, Specialized Adoption Agency or open shelter. Section 95 regulates transfer of a child to the place of residence and envisages that if during enquiry it is found that a child hails from a place outside the jurisdiction, the Child Welfare Committee, if it is satisfied after due inquiry that it is in the best interest of the child, order the transfer of the child as soon as possible after due consultation with the Committee of the

child's home district. Likewise, Section 96 governs transfer of a child inter se Children's Homes or Special Homes across different parts of India.

12. In exercise of the powers conferred by the proviso to Section 110(1) of the 2015 Act, the Central Government has framed the Juvenile Justice (Care and Protection of Children) Model Rules, 2016. Rule 81 also relates to transfer of a child and envisages that if during the inquiry it is found that a child hails from a place outside the jurisdiction of the Board or the Committee, the Board or the Committee, as the case may be, shall order the transfer of the child and send a copy of such order stating the reasons for and circumstances of such transfer to the State Government and the District Child Protection Unit. Under Rule 81(3), the child concerned shall be escorted at Government expenses to the place or person as specified in the order and a travelling allowance on a per day basis shall be determined by the Board or the Committee which shall be paid by the District Child Protection Unit of the State which has transferred the child. Upon such transfer, the case file and records of the child shall be sent along with the child.

13. Upon a broad overview of the provisions of the 2015 Act and Rules framed thereunder and as noticed hereinabove, it becomes apparent that the petitioner- Anathalaya which stands registered as a Children's Home would certainly fall within the control and supervision of the Child Welfare Committee, District Ferozepur for purposes of furtherance of the objective of 2015 Act. Even though State counsel has not been able to advert to

any provision under the 2015 Act and Rules framed thereunder which may be construed as a clear embargo with regard to admitting children in the petitioner- Anathalaya and who may be residents from outside the State of Punjab, yet it may be noticed from the documents placed on record at Annexures P18 and P19 that the Child Welfare Committee, Ferozepur had wanted to admit the children so as to provide them shelter, but the petitioner- Anathalaya has refused shelter on the premise that it is already full to its capacity at the moment. The Child Welfare Committee, Ferozepur has to exercise its jurisdiction as per provisions of the Act. If the petitioner- Anathalaya which is functioning from Ferozepur declines admission to the children who are in need, for the reasons that it already has utilized its capacity to the hilt by admitting inmates all from State of Jharkhand, no exception can possibly be taken to the decision of the Child Welfare Committee, Ferozepur in calling upon the petitioner- Anathalaya to send such inmates back to the Home Districts/States, but even such course of action can be adopted only after consultation with the concerned Child Welfare Committees in the home districts from where the inmates are currently lodged.

14. This Court finds that in the proceedings of a meeting for effective implementation of the 2015 Act held on 7.2.2019 under the chairmanship of the learned District and Sessions Judge, Ferozepur and which was attended by the Additional Deputy Commissioner, Ferozepur, Principal Magistrate, Juvenile Justice Board, Ferozepur, Superintendent of Police (D), Ferozepur, Chairman, Child Welfare Committee, Ferozepur as also the Child

Protection Officer (Institutional Care), Ferozepur, it had been resolved that the matter regarding repatriation of the children staying in the petitioner- Anathalaya would be taken up with the Child Welfare Committees of Jharkhand State and necessary action would then be taken as per provisions of the 2015 Act and the Committee had further resolved that the Child Welfare Committee, Ferozepur would take up the matter for repatriation through proper channel with the competent authority at Jharkhand to avoid any kind of inconvenience to any child currently lodged in the petitioner- Anathalaya.

15. Even Mr.Sahil Sharma, learned Deputy Advocate General, Punjab has very fairly made a statement that the impugned directive dated 8.1.2019, Annexure P13, would be put into operation in a phased manner and not with immediate effect and that too, with proper consultation and co-ordination with the concerned Child Welfare Committee of District Khunti and Ranchi in the State of Jharkhand.

16. Such statement made by learned State counsel is accepted.

17. The statement made on behalf of the State virtually redresses the grievance of the petitioner- Anathalaya, inasmuch as, in para 24 of the writ petition, it has been specifically averred that it has been compelled to approach this Court when the respondent-Authorities had refused to entertain the request of the petitioners that sufficient time of at least one year be given to shift the children/inmates to their home Districts in the State of Jharkhand. Similar is the stand contained in the communication

dated 5.3.2019, Annexure P15, from the Manager of the petitioner-Anathalaya and addressed to the Director, Social Security for Women and Child Development, Chandigarh stating therein that repatriation of 104 children cannot be made in haste and, accordingly, one year's time at the very least be afforded to put arrangements in order and the decision for repatriation of the children back to the State of Jharkhand be held back till 31.3.2020.

18. Such grievance and prayer stand redressed in terms of the stand taken on behalf of the State Government and as per statement duly recorded of Mr.Sahil Sharma, learned Deputy Advocate General, Punjab.

19. No further directions, as such, are required to be passed in the instant writ petition.

20. Writ petition is, accordingly, disposed of.

JULY 4, 2019
SRM

(TEJINDER SINGH DHINDSA)
JUDGE

Note:	<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
	<i>Whether Reportable:</i>	<i>Yes/No</i>