

IN THE HIGH COURT OF ORISSA AT CUTTACK

**W.P.(C) No.33421 Of 2021
(Through hybrid mode)**

Salgadia Happy and Holy Home Society ***Petitioner***

Dr. Simanchalla Ranjit, Advocate

-versus-

State of Odisha and others ***Opposite Parties***

Mr. S.N. Das, ASC

CORAM: JUSTICE ARINDAM SINHA

**ORDER
01.08.2022**

**Order
No.**

6.

1. Dr. Ranjit, learned advocate appears on behalf of petitioner and submits, his client is a Non Government Organization (NGO). It runs hostel for children. He submits, impugned is communication dated 2nd September, 2021, by which Collector and District Magistrate, Dhenkanal wrongfully disallowed his client's prayer for handing over Good News India Dream Centre, Beltikiri, i.e., release the same, purportedly based on opinion expressed by Public Prosecutor, Dhenkanal. He submits, the Public Prosecutor could not establish that his client or the persons running the hostel were guilty of any offence. He relies on judgment dated 30th July, 2021 of Fast Track Special Court (POCSO) Dhenkanal in State of Orissa Vs. Faiz Raheman and

another, charged with offence under section 354A of IPC and section 12 of Protection of Children from Sexual Offences Act, 2012 read with section 42 of Juvenile Justice (Care and Protection of Children) Act, 2015. He submits, the Court found that inmates of the hostel were examined as prosecution witnesses but no material was extracted from their mouth to show that they were children in need of care and protection belonging to category of street children, orphan, abandoned and destitute children, working child, abused children or children who are victims of commercial, sexual exploitation and trafficking, children engaged in substance abuse and children in conflict with law. As such, there was no requirement of the centre to have obtained registration under section 41 of the 2015 Act. In the circumstances, the administration is illegally depriving petitioner, possession of its property.

2. By impugned communication dated 2nd September, 2021, opposite party no.5 said as follows.

“In inviting a reference to the subject cited above, I am directed to say that, Collector has been pleased to disallow your prayer for handed over the Good News India Dream Centre, Beltikiri in your favour as per the opinion expressed by Public Prosecutor, Dhenkanal.

This is for your information & necessary action.”

On query from Court Dr. Ranjit submits, impugned communication dated 2nd September, 2021 is the only writing issue by the administration.

3. On 22nd June, 2022, on behalf of State it was submitted that particulars of inmates in the hostel are large number of children, of both sexes, studying in classes 3 and 4. Illegal activities in respect of such children were reported as in the opinion of the Public Prosecutor, based on which the Collector refused to hand bank the hostel to petitioner. Paragraph-3 from order dated 22nd June, 2022 made that day is reproduced below.

“The Special Court has found on trial that the children do not come under the category specified in the 2015 Act. Question arises as to whether such children being inmates of a hostel, would require the hostel to obtain registration under the 2015 Act. Furthermore, the Public Prosecutor whether can give an opinion going against the judgment, in which the prosecution failed, for the Administration to rely on to hold on possession of the hostel. Also whether the Administration had taken possession of the hostel without due process of law is a question to be answered.”

4. Mr. Das, learned advocate, Additional Standing Counsel appears on behalf of State and in answer to queries of Court recorded in said order dated 22nd June, 2022, had earlier relied on judgment of the Supreme Court in **Exploitation of Children in Orphanages, In Re** reported in (2017) 7SCC 578, paragraphs 59, 64, 70 to 74 and 108. He submitted, as pointed out and recorded in said order dated 22nd June, 2022, large number of children of both sexes studying in classes 3 and 4 are inmates in the premises. He reiterated, illegal activities in respect of said children were reported in the opinion of the Public Prosecutor, based on which the Collector refused to hand back the hostel to petitioner.

5. In context of submissions made on behalf of State, paragraph 6 and 7 from order dated 6th July, 2022 are reproduced below.

“6. In impugned communication the Collector has not called the premises a child care institute. The Fast Track Special Court by judgment dated 30th July, 2021 found that children, who are inmates of the centre, do not answer the descriptions or meaning given in section 2(14). There is no other category of children mentioned in the judgment. As aforesaid the writ petition discloses only impugned communication so there is no question of any other category being mentioned by the State.

7. Opposite party no.4 may, for the purpose of their allegation that some children are covered by the Act, inspect records of petitioner, upon notice requiring

*petitioner to furnish particulars of parents and guardians of such children. This must be done on a working day upon 48 hours prior notice. Said opposite party, upon discovery, will inform this Court by additional affidavit to be filed on adjourned date, upon advance copy served, the number of children, who according to the office are of a particular category as must be covered by the Act pursuant to **Exploitation of Children in Orphanages** (supra). Said opposite party is on notice that there is nothing on record to show that the premises is either an orphanage or a child care institute.”*

6. State filed additional affidavit dated 26th July, 2022 and thereafter the writ petition has again come up for hearing.

7. Today Mr. Das is unable to point out from the additional affidavit, any instance regarding application of the Act of 2015 to the property, requiring registration.

8. The Supreme Court in **Exploitation of Children in Orphanages** (supra) declared, inter alia, even though child in need of care and protection is defined in section 2(14), Juvenile Justice (Care and Protection of Children) Act, 2015, the definition does not specifically include some categories of children. Said Court went on to say, it would be unfortunate, if certain categories of children are left out of the definition, even though they need as much care and protection as categories of children specifically enlisted in the

definition. The Court, by the judgment, gave several directions including that the definition of expression 'child in need of care and protection' under section 2(14) should not be interpreted as an exhaustive definition. The definition is illustrative and the benefits should be extended to all such children requiring State care and protection. Further direction was for the Governments to set up inspection committees for conducting regular inspection of child care institutions.

9. Section 41 requires registration to be obtained in respect of a child care institution. It appears from materials disclosed in the writ petition that petitioner has been referring to the premises as a hostel. Dr. Ranjit submits, inmates of the hostel include college going students. All those, whose parents and guardians find it convenient to avail of hostel services, have kept their children there. Records are maintained and his client has provided particulars of all the parents and guardians in respect of each and every inmate of the hostel.

10. State has miserably failed to demonstrate authority for seizing the property known as Good News India Dream Centre, Beltikiri. The additional affidavit filed does not mention particulars of any child requiring care under the 2015 Act. Paragraphs-7 to 9 from the affidavit are extracted and reproduced below.

“7. That, the deponent humbly submits that as per the list dated 16.07.2022 of the Secretary, GNIDC, Beltikiri, 29(twenty nine) female students were staying there (out of which 10 nos. of female students were under the age group of 10), whereas as per the report prepared by the Child Welfare Committee, Dhenkanal in the year 2018-19 communicated by the District Child Protection Officer (DCPO), Dhenkanal (under Annexure-G/4), there were 47 (forty seven) female students as on the date of occurrence (out of which 23 nos of students were the age group of 10).

8. That, on being questioned about the family background of those children, it was stated that the parents/guardians of the inmates belongs to the poorer section of the society as mostly their parents were daily wage earners who had no scope for other financial resources to provide maintenance or support them in prosecuting their studies.

9. That, the Deponent sincerely believes that the children residing there at the relevant point of time needed state care and protection.”

11. It is clear from averments made in the additional affidavit that the children talked about therein were, or atleast some of them, examined as prosecution witnesses but no material was extracted from their mouth to show that they were children in need of care and protection belonging to category of street children, orphan, abandoned and destitute children, working children, abused children or children

who are victims of commercial, sexual exploitation and trafficking as found by the First Tract Special Court (POCSO) on judgment dated 30th July, 2021. The affidavit does not disclose particulars of any child outside of that as being inmates of the center, at present.

12. Impugned communication dated 2nd September, 2021 is set aside and quashed. Within two weeks of communication, State must hand over the center to petitioner or its duly authorized representative in that behalf.

13. The writ petition is disposed of.

(Arindam Sinha)
Judge

Sks

