

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

SUO MOTO PUBLIC INTEREST LITIGATION NO. 2 OF 2020

The Registrar (Judicial),
High Court of Judicature of Bombay,
Bench at Aurangabad.

....Petitioner

Versus

The Secretary, Ministry of Women
& Child Development, Government of
India, New Delhi and others.

....Respondents

Mr.Akshay Kulkarni, Advocate (Amicus Curiae).

Mr.S.B. Yawalkar, Addl. G.P. for respondent nos.6 to 7, 12 to 14, 17, 21 and 27/ State.

Mr.A.G. Talhar, Assistant SGI for respondent Nos.1 to 5.

Ms.Pradnya S. Talekar, Advocate for respondent Nos.18 to 20.

Mr.S.E. Siddiqui, Advocate for the respondent No.20.

Mr.G.K. Kshirsagar, Advocate for respondent Nos.22 and 26.

Mrs.A.V. Gondhalekar h/f P.V. Gondhalekar, Advocate for respondent Nos.8, 9 and 10.

**CORAM : DIPANKAR DATTA, C.J. &
RAVINDRA V. GHUGE, J.**

DATED : JULY 07, 2022.

PER COURT (Ravindra V. Ghuge, J.):

1. The President, District Legal Services Authority, Jalna, submitted a special report dated 04.03.2020 pursuant to his visit to the Shishu Vihar Gruha and Bal Sudhar Gruha

Observation Home at Jalna on 09.01.2020, to the learned Guardian Judge of Judicial District Jalna. On the instructions of the learned Guardian Judge, the report dated 04.03.2020 was placed before the learned Senior-most Judge at Aurangabad vide submission dated 16.03.2020 tendered by the learned Registrar (Judicial).

2. In pursuance to the above, the present Suo Moto PIL No.2/2020 was registered and an Amicus Curiae was appointed to file a PIL petition, vide order dated 20.07.2020.

3. This PIL petition was considered by this Court and several orders were passed over a period of time. As a consequence of such orders, the licences to the Bal Sudhar Gruha/ respondent No.19 and Shishu Vihar Gruha/ respondent No.20 were not renewed. The order cancelling the licence of respondent No.19 was said to have been stayed by the Honourable Minister in an appeal preferred by it. However, by order dated 12.03.2021, this Court recorded that as no written order of stay was passed by the Honourable Minister, there was no interim relief in favour of respondent No.19.

4. This Court directed the State to take steps with regard to placing the inmates of respondent No.19 in proper care. The learned AGP was directed to inform the Court as regards the progress in the investigation with reference to FIR

Nos.577/2020 and 585/2020. The inmates residing in the Bal Sudhar Gruha/ respondent No.19 and the Shishu Vihar Gruha/ respondent No.20, were shifted to a different shelter home.

5. We are informed that pursuant to the orders of this Court, the learned AGP collected the data/ statistics as regards the state of affairs of all such institutions in the State wherein, the inmates in conflict with law were residing. We are informed that twelve volumes as regards such Bal Sudhar Gruha and Shishu Vihar Gruha in the State of Maharashtra, in view of the specific order dated 23.09.2021, are deposited in this Court.

4. Considering the above, we are of the view that certain directions would serve the purpose of registering the present Suo Moto PIL to ensure the maintenance, upkeep and improvement in the Bal Sudhar Gruha and Shishu Vihar Gruha. We have perused the directions issued by this Court below paragraph 63 (a to pp) in ***Rescue Sham vs. State of Maharashtra, 2017 (4) Bom. C.R. 100***, which read as under :-

- "63. Accordingly, we issue the following directions:
- (a) All interim directions issued from time to time in this Petition shall continue to operate as the final directions subject to modifications specifically made under the Judgment and Order;
 - (b) It is the legal and Constitutional obligation of the State Government to set up adequate number of MDC Homes in the State and provide them all the infrastructure and facilities as required by the said Act of 2015 and the

Central Rules. The State Government shall ascertain number of such Homes required in the State with the help of experts including the Maharashtra State Coordination Committee for Child Protection. An appropriate decision shall be taken by the State Government within a period of four months from today. Thereafter, the State Government shall take steps to establish requisite number of MDC Homes in the State as expeditiously as possible;

- (c) The State Government shall within a period of one month from today ensure that a Management Committee under Rule 55 of the Central Rules is constituted for every children's home in the state of Maharashtra;*
- (d) The Maharashtra State Co-ordination Committee for Child Protection constituted under the orders of this Court as well as Divisional Coordination Committees shall continue to exist and shall continue to discharge its duties as provided in various orders of this Court passed from time to time and in particular the order dated 29th March 2012. The State Co-ordination Committee shall also monitor compliance with all the directions issued under this Judgment and order as well as the interim directions/orders continued under this Judgment and Order. Even the Rehabilitation Committee constituted under the Orders of the Court shall continue to function and continue to discharge the duties specified in the order dated 29th March 2012;*
- (e) The vacancies caused of the members of all the non-statutory Committees constituted under the order of this Court on account of death or resignation or otherwise shall be immediately filled in by the State Government as per the recommendations of the State Co-ordination Committee. On the recommendation of the State- Coordination Committee, the State Government shall add or remove the Members of the aforesaid Committees. As observed in the Judgment, two members having expertise in finance and law respectively shall be added by the State Government to the State*

- Coordination Committee if a recommendation to that effect is made by the said Committee;*
- (f) If the State-Coordination Committee needs any further directions on any aspect, it is free to submit a report to the Registrar (Judicial-I) of this Court. On the receipt of report, the Registrar (Judicial-I) shall place the matter before the appropriate bench for issuing necessary directions;*
 - (g) The State Government shall pay adequate remuneration to the members of all the Committees constituted under the orders of the Court. They shall be paid travelling allowance for attending the meetings and for making visits to the Children's Homes. We are sure that the allowances shall be fixed considering the status of the members. Necessary order/GR shall be issued by the State Government within a period of two months from today;*
 - (h) The State Government shall immediately constitute a Utilization Committee for monitoring the utilisation of the compensation released to 35 children. While constituting a Utilization Committee, the State Government shall act in accordance with the suggestions of the learned Amicus Curiae incorporated in her letter dated 10th August 2016. The Committee shall be constituted comprising of the persons who are mentioned in the said letter dated 10th August 2016 within a period of one month from today. The Committee constituted shall ensure that compensation sanctioned to 35 children is properly utilized. The learned Amicus Curiae shall submit a copy of the chart containing the requirements of the Children submitted by her to this Court to the said Committee;*
 - (i) The concerned MDC Homes in which the said children are kept shall be bound by the recommendations of the Utilization Committee;*
 - (j) The State Government shall endeavour to exercise the Rule making power under Sub-Section (2) of Section 110 of the said Act of 2015 within a period of six months from today with a view to give complete effect to the*

said Act of 2015;

- (k) The State Government shall endeavour to create Juvenile Justice Fund in accordance with Section 105 of the said Act of 2015 within a period of nine months from today;*
- (l) The State Government shall establish State Child Protection Society and District Protection Units in accordance with Section 106 of the said Act of 2015 within a period of nine months from today;*
- (m) At present, the State Government is releasing grant the the Children's Homes in the sum of Rs.900/- per normal child per month and Rs.990/- for per child per month per mentally challenged child in addition to the administration grant of Rs.315/- per head per month. We hold that the payment of grant at the aforesaid rates is arbitrary which is violative of Articles 14 and 21 of the Constitution of India;*
- (n) By way of interim measure, till the Government takes a final decision on the issue of substantial increase in the grant, we direct the State Government to pay grant at the rate of Rs.2,000/- per head per month to the MDC Homes and the grant of Rs.1,500/- per head per month to the other Children's Homes. We also propose to direct the State Government to pay grant of Rs.500/- per head per month towards administration expenses. The grant shall be released with effect from 1st April 2017.*
- (o) The grants shall be released in terms of the Government Resolution dated 13th September 2014. Thus, 80% of the grants shall be released in first quarter of every Financial Year by way of advance;*
- (p) Appropriate decision on the substantially increasing the grant with retrospective effect shall be taken by the State Government within a period of three months from today after considering the recommendations of the State Coordination Committee. The revised grant shall be payable from 1st April 2017 or such earlier date as may be decided by the State Government;*
- (q) Unless the reasonable amount is fixed*

by substantially increasing the grant admissible as per the Government Resolution dated 13th September 2013, the Non-Government Organizations will find it impossible to run the Children's Homes and especially the MDC Homes and, therefore, the State Government is under an obligation to take a policy decision of increasing the grant substantially.

- (r) The direction issued on 9th December 2012 to forthwith enhance the security cover provided for the children in MDC Home at Mankhurd shall be implemented within a period of two months from today, if not already implemented;*
- (s) If the children housed in the other MDC Homes are victims of the offence or witnesses, apart from providing necessary security cover to every such MDC Homes, the State Government shall ensure that necessary protection is granted to the children who are either victims of the offences or who are witnesses in terms of the protection granted to the victims and/or witnesses as per the prevailing policy;*
- (t) The children who are permitted to attend the formal/ regular schools shall be also given necessary protection and security which will ensure that they visit the schools and come back after the school activities are over;*
- (u) The Child Protection Policy and Code of Conduct for the staff of MDC Homes, for teachers and staff of special schools for dealing with the children with disabilities framed under the orders of this Court shall continue to operate. It will be open for the State Government to periodically review the same;*
- (v) The directions issued under the orders dated 16th September 2010 and 16th April 2014 for medical examination of the children in the MDC Homes meant for mentally deficient children shall continue to operate;*
- (w) The concerned District Child Welfare Officers shall ensure that the children are medically examined by a team of experts including a*

Physician, Mental Health Expert, Psychologist/Psychiatrist (if any) and in case of a female inmate, a Gynecologist. Medical examination shall be conducted at least twice a year;

- (x) The Niramaya Health Insurance Scheme shall be extended to all the mentally challenged and disabled children in all the MDC Homes in the State whether aided or non-aided. The State Government shall take necessary steps in this behalf by taking up the matter with the Chairperson of the National Trust. This direction shall be implemented within a period of three months from today. Needless to add that the premium shall be payable by the State Government;*
- (y) The State Government shall ensure that entire machinery as indicated in Paragraph 55 above under the Juvenile Justice (Care and Protection of Children) Act, 2015 is set up and the provisions thereof are implemented in its true letter and spirit in the entire State;*
- (z) However, as directed earlier, the Rule making power under sub-Sections (1) and (2) of Section 110 shall be exercised within a period of six months from today. The State Government shall file an affidavit within a period of two months from today indicating an outer limit within which the rules shall be framed;*
- (aa) In view of Sub-section (2) of Section 111 of the said Act of 2015, the directions issued by this Court from time to time for implementation of the said Act of 2000 will continue to operate till the entire framework under the said Act of 2015 is established by the State Government;*
- (bb) The directions issued under the order dated 5th February 2011 to ensure that the resource persons at the vocational training centers run by the Government of Maharashtra regularly visit the Homes for mentally challenged children to provide all necessary services like speech therapy and vocational training to the inmates shall continue to operate;*

- (cc) *As directed earlier, the State Government shall scrupulously implement the provisions of Section 41 of the said Act of 2015 read with Section 42 thereof;*
- (dd) *The District Legal Services Committees and Taluka Legal Services Committees shall extend necessary cooperation and assistance to Children's Homes in their respective Jurisdictions;*
- (ee) *A copy of this Judgment and Order shall be forwarded to the Secretary of the Maharashtra State Legal Services Authority who shall communicate the aforesaid directions to all the District and Taluka Legal Services Authority;*
- (ff) *The directions issued under the order dated 11th March 2011 to nominate Judicial Officers for visiting MDC Homes will continue to operate. Inspection shall be carried out by Judicial Officers so nominated once in every six months. Reports shall be forwarded to the State Level Co-ordination Committee to enable it to take up the matter with appropriate authorities;*
- (gg) *A contingency fund of Rs.5,000/- in cash shall be placed at the disposal of each MDC Homes which can be used for expenditure incurred in case of medical emergency;*
- (hh) *The State Government shall consider of revising the said amount periodically and preferably after every two years;*
- (ii) *The Child Welfare Committees under Section 27 of the said Act of 2015 shall be constituted in all Districts. The State Government shall ensure that vacancies to the posts of Chairperson and members shall be filled in immediately. The State Government shall start process of making appointments at least six months before the term of the members of the Committees is likely to expire. All the necessary infrastructure such as a decent office, adequate staff, furniture, computers, printers, etc. shall be provided to all the Child Welfare Committees;*
- (jj) *In case of mentally deficient children in MDC Homes who complete the age of 18 years,*

- necessary steps shall be taken in terms this judgment and order so that the said children can be accommodated in proper homes run by the Non-Governmental Organizations;*
- (kk) The "Chunauti Rehabilitation Model" shall be replicated in all MDC Homes in the State. This direction shall be complied with within a period of three months from today;*
 - (ll) As directed under the orders passed by this Court, the benefit of Sarva Shikshan Abhiyan shall be extended to the children in MDC Homes;*
 - (mm) We direct the State Government to pay a sum of Rs.1,25,000/- (Rupees One Lakh Twenty Five Thousand) to Dr. Asha Bajpai, the learned Amicus Curiae within a period of two months from today. It will be open for her to use the said amount for the social activities undertaken by herself or by Tata Institute of Social Sciences;*
 - (nn) The Petition is disposed of with the aforesaid directions;*
 - (oo) It will be appropriate if, for reporting compliance, this Petition is placed before the same bench or at least to a bench to which one of us is a party. Necessary directions in this behalf shall be obtained by the Registrar (Judicial-I) from the Hon'ble the Chief Justice on the administrative side;*
 - (pp) For reporting compliance, firstly the Petition shall be listed on 30th June 2017 at 11.00 a.m. Compliance affidavit shall be filed by the State Government on or before 27th June 2017."*

5. In pursuance to the direction at clause 63 (ff) reproduced above, we find that the shortcomings are in plenty and the mismanagement of such homes is writ large. The present PIL is a pointer towards the shortcomings and which further indicates that the directions of this Court set out in ***Rescue Sham (supra)*** are not being scrupulously followed.

6. As such, in pursuance to the directions at clause 63 (ff), the Judicial Officers nominated for visiting such homes, would make unscheduled (surprise) visits to such homes at least once in three months in the light of Rules 82 and 83 of the Maharashtra Juvenile Justice (Care and Protection of Children) Rules, 2002. Such visit reports would set out, in details, the overall condition of such homes, care and facilities extended to the inmates and would also point out the deficiencies. Such reports would be submitted to the learned Principal District Judge of the said district, who, in turn, would forward the same to the Child Welfare Committee for remedial action. The Child Welfare Committee shall submit a compliance report within one month to the learned Principal District Judge.

7. In view of the above, this PIL is disposed of to the extent of this aspect of the matter.

8. Insofar as the criminal investigation is concerned, considering the Civil Application No.9707/2022, we deem it appropriate to convert this PIL into a Suo Moto Criminal PIL and the Civil Application be converted into a Criminal Application and direct the registry to place the same before the learned Division Bench assigned with criminal PILs, within two weeks from today.