

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**PUBLIC INTEREST LITIGATION NO. 84 OF 2013
WITH
SHOW CAUSE NOTICE NO. 248 OF 2016**

Forum for Fairness in Education	}	Petitioner
versus		
Union of India and Ors.	}	Respondents

Mr. Vinay Kanodia with Mr. Devendra Tiwari
i/b. Law Chamber of Siddharth Murarka for
the petitioner.

Mr. Rui Rodrigues with Mr. D. P. Singh for
respondent no. 1 (UoI).

Ms. P. H. Kantharia, Government Pleader
with Ms. Jyoti Chavan, AGP for respondent
nos. 2 and 3 (State).

**CORAM: DIPANKAR DATTA, C. J. &
MADHAV J. JAMDAR, J.**

DATE: OCTOBER 13, 2022

P.C.:

1. A coordinate Bench of this Court, by its order dated 28/29th April & 2nd May 2016 (hereafter "the said order", for brevity), disposed of Public Interest Litigation No. 84 of 2013 with several directions. However, the PIL petition was directed to be listed on 8th July 2016 under the caption 'directions' for reporting compliance of such directions. It was also directed that the PIL petition will be listed for directions from time to time till all the directions are effectively complied with.

2. It has been brought to our notice that Public Interest Litigation (L) No. 3601 of 2022 (**Nitin Dalvi & anr. vs. State of Maharashtra and Ors.**) had been instituted before this Court voicing a grievance that the directions contained in the said order had not been complied with. In PIL Petition (L) No. 3601 of 2022, a reply affidavit on behalf of the State of Maharashtra was filed by the Principal Secretary, Women and Child Development Department, Mantralaya, Mumbai. The same appears to be a part of the records of this PIL petition.

3. We find from the said order that its main thrust was to secure appointment of the Chairperson and Members of the State Commission under the Commissions for Protection of Child Rights Act, 2005 (hereafter "the Child Rights Act", for short) by the State Government and also that the remuneration of the Chairperson and Members is suitably enhanced to bring it at par with the remuneration payable under the Central Rules to the Chairperson and Members of the National Commission for Protection of Child Rights.

4. We have also noted that there were other incidental directions requiring compliance with the provisions of section 26 of the Child Rights Act and section 4 of the Right to Information Act, 2005 (hereafter "the RTI Act", for short).

5. It is evident from notification dated 29th April 2022 of the Women and Child Development Department that a Chairperson and 6 (six) other Members thereof have been appointed. Our attention has been invited by Ms. Kantharia, learned Government Pleader for the State to an order dated 16th June 2022 passed by a coordinate Bench of this Court on PIL Petition (L) No. 3601 of 2022. Such order records that in

compliance with earlier orders passed on the said PIL petition, the Chairperson and other Members of the State Commission have duly been appointed and they have taken charge of their respective offices. Since the Commission is now functional, we are of the considered opinion that the primary concern expressed in this PIL petition has been duly addressed.

6. However, we cannot ignore the factual position that despite directions contained in the said order, the State Commission came to be appointed belatedly. In this context, one may bear in mind the direction contained in clause (ii) of paragraph 22 of the said order reading as follows: -

“(ii) The State Government shall commence the process of constitution of the State Commission on expiry of a period of one month from the date on which an authenticated copy of this judgment and order is produced in the appropriate Department of State Government. The State Government shall publish a notice inviting applications in four daily newspapers namely Times of India, Loksatta, Lokmat and Sakal in all its local additions published in the different parts of the State. The entire process of the constitution of the said State Commission shall be completed by the State Government within a period of six months from the date of publication of the notice.”

7. Although the Chairperson and the Members of the State Commission have been appointed, we direct the State Government to follow the direction contained in clause (ii) above in letter and spirit once the terms/tenures of the present Chairperson and Members come to an end. In future, the process shall be initiated much in advance to ensure that there is no vacancy in the office of the Chairperson and all the Members of the State Commission.

8. Insofar as increase in remuneration of the Chairperson and Members are concerned, Ms. Kantharia has drawn our attention to paragraph 3 of the reply affidavit filed in PIL Petition (L) No. 3601 of 2022. It is stated therein that by issuing Government Resolution dated 1st August 2016, the State Government has increased the remuneration of the Chairperson and the Members of the State Commission. Although it has not been specifically stated in such reply affidavit that the increase is at par with the remuneration that is payable to the Chairperson and Members of the National Commission, Ms. Kantharia has invited our attention to the order dated 8th August 2016 passed on this PIL petition. In paragraph 2 of such order, the coordinate Bench has recorded that though belatedly, the State Government had complied with the direction contained in the said order regarding enhancement in the remuneration payable to the Chairperson and Members of the State Commission.

9. Regarding appointment of Special Public Prosecutors, being the mandate of section 26 of the Child Rights Act, the said reply affidavit pleads that by notification dated 2nd August 2016 issued by the Law and Judiciary Department, Government of Maharashtra, Special Public Prosecutors were appointed in terms of such statutory provision. Our attention has further been drawn to a notification dated 29th June 2022 issued by the Home Department, Government of Maharashtra. In terms of such notification, the Assistant Directors, Public Prosecutors and Additional Public Prosecutors working at the Sessions Court in the various districts in the State of Maharashtra have been appointed as Special Public

Prosecutors for Children's Courts specified under section 25 of the Child Rights Act.

10. We are satisfied that the direction for appointment of Special Public Prosecutors also stands duly complied with.

11. What remains is the direction to comply with the provisions contained in section 4 of the RTI Act. Although it has been contended by Mr. Kanodia, learned advocate for the petitioner, that the provisions of section 4 of the RTI Act have not been complied with, we are not impressed. The documents annexed to the chart/submissions filed by him would make it clear that the provisions of section 4 of the RTI Act have been substantially complied with by disseminating information on the website of the State Commission. In this regard, we may refer to paragraph 5 of the reply affidavit filed by the State in PIL Petition (L) No. 3601 of 2022, which reads thus: -

"5. In Compliance of directions at Sr. No. III, directions are issued to the State Commission to substantially comply with the requirements of Sec. 4(1) of the Right to information Act, within a period of two months. Accordingly necessary changes were made in the Commission website and relevant information as per the provisions of Sec. 4(1) of the Right to Information Act is available on the Commissions website. Moreover, in order to entrust the work of development and maintenance of the Commissions website through Government agency, Vide letter dated 10/08/2020 the Chief Officer, National Informatics Centre, Mantralaya, Mumbai was requested to appoint a Nodal Officer for said work."

12. Even otherwise, the marginal heading of section 4 is "obligation of public authorities". The terms of the said provision, read in between the lines, would make it clear that

it would be desirable that each public authority disseminates as much information as possible on its website so as to ensure that minimum applications are filed under section 6 of the RTI Act for obtaining information. We have also looked at section 20 of the RTI Act which provides for penalties to be imposed on Public Information Officers for their failure to accept an application for information or to provide information as prayed for or to destroy evidence relating to information, etc. There is no provision engrafted in section 20 that for any failure on the part of a public authority to disseminate information in the manner and on the points as required by section 4, the same would expose such public authority to imposition of penalty under section 20 of the RTI Act. We, therefore, have to read section 4 of the RTI Act as a directory provision. And, that is exactly why, the said order required substantial compliance of section 4. While considering compliance of the directions contained in the said order, we cannot substitute substantial compliance by total compliance.

13. Nonetheless, we are satisfied having regard to the materials on record that the provisions of section 4 of the RTI Act have been substantially complied with.

14. Before parting, we record the contention of Mr. Kanodia that in making appointments of the Chairperson and the Members of the State Commission, the State has not followed the statutory provisions.

15. The said order required the State Government to make the State Commission functional by appointing a Chairperson and other Members. As has been noted above, the said direction has been complied with. Whether or not the

Chairperson or Members have been appointed in accordance with law or whether they fulfill the eligibility criteria as required by the provisions of the Child Rights Act are issues which are beyond the scope of compliance as directed to be effected in terms of the said order. We, therefore, refuse to examine this aspect. It shall, however, be open to the petitioner to explore its remedy in accordance with law if, in making appointments of the Chairperson or any of the Members of the State Commission, statutory provisions have been violated. Liberty in this behalf is preserved.

16. With the aforesaid observations, the proceedings stand closed and the show cause notice stands discharged/disposed of.

SALUNKE
J V

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by SALUNKE J V
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(MADHAV J. JAMDAR, J.)

(CHIEF JUSTICE)