

RE. EXPLOITATION OF CHILDREN IN ORPHANAGES IN THE STATE OF TAMIL NADU A

v.

UNION OF INDIA & ORS.
(Writ Petition (Crl.) No.102 of 2007)

DECEMBER 16, 2013 B

**[SURINDER SINGH NIJJAR AND FAKKIR MOHAMED
IBRAHIM KALIFULLA, JJ.]**

Child Welfare – Directions passed by the Supreme Court – To all the States and Union Territories – To implement protective provisions contained in Protection of Rights of Children from Sexual Offences Act, 2012 – Rights of Children to Free and Compulsory Education Act, 2009 and the Commission for Protection of Child Rights Act – The Court had also directed the States and Union Territories to establish protection institutions/implementation institutions, with necessary Rules and Regulations, and to file an affidavit indicating the time frame within which State Commission for the protection of children would be established – Writ petition indicating non-compliance of the directions – Held: It is the bounden duty of the States u/Arts. 21, 21A, 23, 24, 45 and 51A(k) of the Constitution to create and maintain a protective and healthy environment for children – There is little or no progress in compliance of the directions – Some of the States have not constituted the State Commissions, and some of the States which have established the Commission, have not completely constituted the same by either not appointing Chairman or Members – Hence further directions are issued to ensure that exploitation of children in all spheres of life is brought to an end with utmost expedition – Chief Secretaries of all the States are directed to file affidavits disclosing full details with regard to the implementation of the obligations specified under the above-mentioned three Acts – Protection of Child from Sexual Offences Act, 2012 – Right of Children to Free and Compulsory Education Act, 2009 – Commission C
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A *for Protection of Child Rights Act, 2005 – Constitution of India, 1950 – Arts. 21, 21A, 23, 24, 45 and 51A(k)*

CRIMINAL ORIGINAL JURISDICTION : Writ Petition (Crl.)
No.102 of 2007.

B Under Article 32 of the Constitution of India.

A. Mariarputham, AG, Paras Kuhad, Indira Jaising, ASGs,
C.S. Rajan, Irshad Ahmad, Dr, Manish Singhvi, Krishna Sarma,
Ajay Bansal, Manjit Singh, AAGs, Aparna Bhatt (AC), P.
Ramesh Kumar, D. Bharathi Reddy, Abhijit Sengupta, Gopal
C Singh, Manish Kumar, Rituraj Biswas, Sanjay R. Hegde, Naresh
K. Sharma, Dharmendra Kumar Sinha, Pragyan P. Sharma,
Heshu Kayina, P.V. Yogeswaran, Sunita Sharma, P.L. Nigam,
Swati Vijaywargiya, B.K. Prasad, B.V. Balram Das, D.L.
D Chidananda, A. Deb Kumar, Sushma Suri, Sonakshi Malhan,
Ashok K. Srivastava, Asha G. Nair, Shadman Ali, Gunwant
D Dara, S. Wasim A. Qadri, Zaid Ali, D.S. Mahra, Anil Katiyar,
S.N. Terdal, Sapam Biswajit Meitei, Khwairakpam Nobin
Singh, Ameet Singh, Mukul Singh, Pragati Neekhra, Samar
Vijay Singh, Amit Lubhaya, Suryanarayana Singh, Hemantika
Wahi, Anuvrat Sharma, Riku Sarma, Navnit Kumar (for M/s
Corporate Law Group), S. Thananjayan, Anil Shrivastav, V.G.
E Pragasam, S.J. Aristotle, Prabu Ramasubramanian, Jayesh
Gaurav, Gopal Prasad, Balaji Srinivasan, Ranjan Mukherjee,
S.C Ghosh, S. Bhowmick, R.P. Yadav, Kuldip Singh, Devendra
Singh, Jasleen Chahal, Pardaman Singh, Rajeev Kumar,
Gaurav Yadav, Bina Madhavan, Jatinder Kumar Bhatia, Mukesh
F Verma, C.D. Singh, Sunny Choudhary, Dr. Abhishek Atrey,
Ashutosh Kr. Sharma, Ashok Panigrahi, Santosh Kumar, Aruna
Mathur, Yusuf (for Arputham Aruna & Co.), A. Subhashini, M.
Yogesh Kanna, A. Santha Kumaran Vanita Chandrakant Giri,
Vivekta Singh, Anil Antil, Tarjit Singh (for Kamal Mohan Gupta),
K. Enatoli Sema, Amit Kumar Singh, D. Mahesh Babu, Aditya
G Jain, Balasubramaniam, K.V. Jagdishvaran, G. Indira,
Abhishek Kumar, Pandey, Aniruddha P. Mayee, Charudatta
Mahindarkar, Lagnesh Mishra, V.N. Raghupathy, Anip
Sachthey, Mohit Paul for the appearing parties.

H The following Order of the Court was delivered

O R D E R

1. We have heard very lengthy submissions from the Amicus Curie Ms. Aparna Bhat, Ms. Indira Jaising, ASG, Mr. Paras Kuhad, ASG.

2. It has been brought to our notice that inspite of the emphatic directions that have been issued by this court on 3rd January, 2013 directing all the States and the Union Territories to implement the protective provisions contained in the Protection of Rights of Children from Sexual Offences Act, 2012, the Right of Children to Free and Compulsory Education Act, 2009 and the Commission for Protection of Child Rights Act, 2005, many States and Union Territories have not complied with the same. By order dated 3rd January, 2013, we had also directed the States to file an affidavit indicating the time frame within which the State Commission for the protection of children would be established. By a subsequent order dated 7th February, 2013, further directions were issued to all the States and the Union Territories to comply with the obligations under the aforesaid three Acts, with regard to the establishment of protection institutions/implementation institutions, together with necessary Rules and Regulations. The aforesaid order was to be complied with within a period of three months from the date of receipt of the certified copy of the order. Sadly, we have to notice that inspite of the concern shown not only by this Court but also by the learned counsel appearing for the parties, little or no progress has been made in this regard. Although the affidavits have been filed indicating that the State Commissions have been established yet we find that such establishment is only on paper. In many States, Chairman of the Commission has not been appointed and in some other States even Members have not been appointed. This apart, necessary rules and regulations have also not been framed. This, in our opinion, would be sufficient justification for this Court to take a serious view and initiate appropriate proceedings for contempt of court against the defaulting States and the Union Territories.

3. Given the lackadaisical manner in which the States and the Union Territories have responded to the concern shown by

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A this Court in relation to the wholly unacceptable situation
prevailing and to stamp out any further exploitation of children,
it has become necessary to re-emphasize that it is the bounden
B duty of the States under Articles 21, 21A, 23, 24, 45 and 51A
(k) to create and maintain a protective and healthy environment
and subsequently become mature and responsible citizen of
this country. We have been pained to notice the utterly callous
attitude adopted by the States as well as the Union Territories.
We, therefore, have no option at this stage but to issue some
C further mandatory directions to ensure that the exploitation of
the children in all spheres of life is brought to an end with utmost
expedition.

4. We may notice at this stage that pursuant to our earlier
directions Tripura, Dadar and Nagar Haveli, Lakshwadeep,
D Chandigarh, Andaman and Nicobar, Pondicherry and Daman
and Diu have still not constituted State Commissions under
Section 17 of the Commission for Protection of Child Rights
Act, 2005. Some of the States which have established the
State Commissions for the protection of children but have not
completely constituted the same by either not appointing a
Chairperson or Members are as under:

E Andhra Pradesh : The Commission exists only on paper
as no Chairman/Member has been appointed.

Chattisgarh is partially constituted as only Chairman has
been appointed and the members have not been appointed.

F Gujarat : Although Chairman has been appointed yet no
member or Secretary of the Commission has been appointed.

Haryana : The situation is exactly the same as Gujarat, i.e.
neither any Member nor Secretary has been appointed
G although the Chairman has been selected and appointed.

Himachal Pradesh: Only a Member Secretary has been
appointed. No Chairperson or Member has been appointed.

Kerala - Again only a Secretary has been appointed but
there is no Chairperson or Member appointed.

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**RE. EXPLOITATION OF CHILDREN IN ORPHANAGES IN THE 1091
STATE OF TAMIL NADU v. UNION OF INDIA**

Tamil Nadu has appointed a Chairperson but no Member has been appointed. A

Nagaland – Nothing has been done, i.e. no Chairperson or Member has been appointed.

Similarly in U.P., nothing has been done as neither the Chairperson nor any Member has been appointed. B

5. This inaction of the States is in the teeth of the directions issued by this Court on 3rd January, 2013 and 7th February, 2013. We make it clear that this Court had taken notice of the exploitation of children and the deplorable conditions of children in various orphanages on the basis of the letter received, way back in the year 2007. Surely, the States and the Union Territories must realize that they have to operate under the Constitution and have to be duty bound to act in accordance with the provisions of the Constitution. Furthermore, each and every field which concerns the welfare and the protection of the children is covered by relevant legislation. The three prominent Acts have already been listed hereinabove. C
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6. Keeping in view the aforesaid attitude of the States and the Union Territories, we direct that the Chief Secretaries of all the States to which notices have been issued in this matter shall file an affidavit within a period of eight weeks from the date of this order disclosing full details with regard to the implementation of the obligations specified under the three Acts. The affidavit shall contain all the relevant information with regard to the following : E
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- a. Whether the State Commissions have been set up under Section 17 of the Commissions for Protection of Child Rights Act, 2005? F
- b. Whether the appointment of the Chairperson and six Members has been made indicating the names of such Chairpersons and members? G
- c. Whether Rules have been framed by the State Governments under the said Act?
- d. Whether the said Commissions are functional and if not what are the constraints. The appointment and H

A the remuneration structure of the Chairperson, Members and supports staff including Member Secretary of the State Commissions?

B e. The Chief Secretaries of the States in their affidavits to also indicate whether Special Courts have been designated under Section 28 of the Protection of Children from Sexual Offences Act, 2012?

f. Whether Special Public Prosecutors have been appointed under Section 32 of the said Act?

C g. Whether Rules have been framed under the Right to Education Act, 2009?

h. Whether all Institutions run by the State Governments or by Voluntary Organisations for Children in need care and protection have been registered under the provisions of Section 34 of the Juvenile Justice (Care and Protection of Children) Act, 2000, read with Rule 71 of the said Act?

D Whether any unregistered institutions for children in need of care and protection are being run and if so have they been shut down or taken over by the State Governments?

E 7. It is further directed that in the unlikely event of there being a non-compliance of any part of the directions issued by this Court, an officer of the rank of Principal Secretary of State Government shall remain present in person in the Court to clarify the issues with respect to the failure to implement the directions of the Court. If for any reason, the affidavit, as directed for, is not filed by the Chief Secretary before the next date of hearing, then also, the officer of the rank referred above shall remain present in person to explain the reasons for the State's failure to submit the affidavit.

F 8. The concerned State Governments shall also submit the required information in the format annexed hereto as part of the affidavit to be filed by them.

G Kalpana K. Tripathy

Directions issued.

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ANNEXURE**THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012**

S.No	Obligation of the States	Current Status of Implementation (Carried out/not carried out) with details as to the date of order	Detailed reasons for failure including				Received date by which the implementation would stand carried out
			(a) Steps taken Towards Implementation	(b) Circumstances which rendered implementation impossible	(c) Person who was responsible for implementation	(d) Dates on which the matter was monitored by Chief Secretary towards ensuring implementation	
1.	Constitution of Special Court (section 28)						
2.	Appointment of Special Public Prosecutor (section 32)						
3.	Framing of Guidelines for use of NGOs, experts etc. to be associated						

THE RIGHT OF CHILDREN TO FREE & COMPULSORY EDUCATION ACT, 2009

S.No	Obligation of the States	Current Status of Implementation (Carried out/not carried out) with details as to the date of order	Detailed reasons for failure including				Received date by which the implementation stand would be carried out
			(a)	(b)	(c)	(d)	
			Steps taken Towards Implementation	Circumstances which rendered implementation impossible	Person who was responsible for implementation	Dates on which the matter was monitored by Chief Secretary towards ensuring implementation	
1.	Constitution of State Commissions for Protection of Child Rights (section 31 r/w Rule 27)						
2.	Appointment of State Advisory Council (section 34)						
3.	Rules made for carrying out the provisions of the Act (section 38)						

THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000

**RE. EXPLOITATION OF CHILDREN IN ORPHANAGES IN THE 1095
STATE OF TAMIL NADU v. UNION OF INDIA**

S.No	Obligation of the States	Current Status of Implementation (Carried out/not carried out) with details as to the date of order	Detailed reasons for failure including				Received date by which the implementation would stand carried out
			(a) Steps taken Towards Implementation	(b) Circumstances which rendered implementation impossible	(c) Person who was responsible for implementation	(d) Dates on which the matter was monitored by Chief Secretary towards ensuring implementation	
1.	Constitution of Juvenile Justice Board (section 4)						
2.	Establishment of Observation Homes (section 8)						

3.	Establishment of Special Homes - If any, details. (section 9)			
4.	Constitution of child Welfare Committee (section 29)			
5.	Establishment of Children's Homes (section 34)			
6.	Appointment of inspection Committee - If any, details (section 35)			
7.	Recognition of Shelter Homes - If any, details (section 37)			
8.	Creation of Fund for the welfare of juveniles (section 61)			

THE COMMISSION FOR PROTECTION OF CHILD RIGHTS ACT, 2005

RE. EXPLOITATION OF CHILDREN IN ORPHANAGES IN THE 1097
STATE OF TAMIL NADU V. UNION OF INDIA

S.No	Obligation of the States	Current Status of Implementation (Carried out/not carried out) with details as to the date of order	Detailed reasons for failure including				Received date by which the implementation would stand carried out
			(a) Steps taken Towards Implementation	(b) Circumstances which rendered implementation impossible	(c) Person who was responsible for implementation	(d) Dates on which the matter was monitored by Chief Secretary towards ensuring implementation	
1.	Constitution of State Commission for Protection of Child Rights (section 17)						

2.	Appointment of Chairperson and other members (section 18)			
3.	Appointment of Secretary & other officers for carrying out the functions of the State Commission (section 21(1))			
4.	Annual & Special Reports submitted by State Commission to the State. If any, details (section 23(1))			
5.	Constitution of Children's Court (section 25)			
6.	Appointment of Special Prosecutor (section 26)			
7.	Grants by the State Government to the State Commission. If any, details (section 28(1))			
8.	Rules made to carry out the provisions of the Act (Section 36(1)).			