

(2023) 04 CAL CK 0016
In the Calcutta High Court
Case No : WPA (P) No. 9, 13 Of 2020

Arijit Adhikary.

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 04-04-2023

Acts Referred:

West Bengal Juvenile Justice (Care and Protection of Children) Rules, 2017 — Rule 8, 8(1), 8(2), 64B(1), 64D(1), 81(1), 81(10)

Citation : (2023) 04 CAL CK 0016

Hon'ble Judges : T. S. Sivagnanam, J;Hiranmay Bhattacharyya, J

Bench : Division Bench

Advocate : Debasish Banerjee, Rakesh Jana, S. N. Mookherjee, Anirban Ray, Tapan Kumar Mukherjee, Debdooti Dutta, Siddhartha Lahiri, Saikat Banerjee

Judgement

1. There are two writ petitions; one filed by a public interest litigant, Arijit Adhikary and the other is a suo motu writ petition entertained by this Court.
2. The matter concerns the unnatural death of a teenager in the Mallarpur Police Station, District – Birbhum. Various orders have been passed from time to time and affidavits have been filed by the Assistant Director of the National Commission for Protection of Child Rights, Chairperson, West Bengal Commission for Protection of Child Rights and the Principal Magistrate, Juvenile Justice Board, Birbhum. Apart from that, a factual report has also been submitted by the Additional Chief Secretary to the Government of West Bengal, Home and Hill Affairs Department. On going through the reports and the factual matrix, we find that there is a sorry state of affairs in which a young boy of 15 years died in police custody.
3. There are two aspects, which are being pointed out in both the writ petitions. Firstly, as to how the police officers have to be sensitised and what are the directions, which need to be issued to them. The second aspect is with regard to the payment of compensation to the family of the victim boy. We take up the second issue first.

4. The affidavit filed on behalf of the National Commission for Protection of Child Rights gives an indication as to how the monetary relief has to be computed in cases of death in police custody. The NHRC in October, 2021 has made certain recommendations regarding monetary relief to various nature of incidents and with regard to custodial death (police). The amount of compensation recommended is Rs.6 lakhs.

5. The learned Advocate General has submitted that the policemen, who were stationed in the said police station as well as the volunteers have been proceeded against and disciplinary action had been initiated against the police officers and order of punishment has also been issued. But, however, it appears that the order of punishment is stoppage of annual increment for a period of one year, which, in our opinion, was thoroughly inadequate considering the gravity of the charge.

6. The father of the victim boy is said to have been offered a temporary job in a panchayat and the family is living below the poverty line. Thus, considering all the aspects, we are of the view that a sum of Rs.15 lakhs shall be paid as compensation to the family of the victim boy. This amount has been quantified by us by taking note of various factors including the fact that the recommendation of NHRC recommending Rs.6 lakhs monetary relief for custodial death (police) was in the year 2021 and compensation is being ordered by this Court in 2023.

7. Thus, we direct the Government of West Bengal to pay a sum of Rs.15 lakhs to the family of the victim boy within a period of 15 days from the date of receipt of the server copy of this judgment and order.

8. The other aspect of the matter is as to what directions are required to be issued to sensitize the police authorities so that such incidents should not recur. We find that the prayer sought for in WPA(P) 9 of 2020 are just and proper and the directions sought for are to be granted as such.

9. The learned advocate for the said writ petitioner has brought to the notice of this Court the relevant rules framed by the State Government viz. the West Bengal Juvenile Justice (Care and Protection of Children) Rules, 2017 (for brevity 'said Rules'). Rule 8 in Chapter-III of the said Rules deals with the procedure in relation to children in conflict with law. The said Rule clearly enumerates as to what steps are to be taken and what should not be done when a child is apprehended on the alleged ground that he or she is in conflict with law. In terms of sub-rule (1) of rule 8, no first information report shall be registered except where a heinous offence is alleged to have been committed by the child, when such offence is alleged to have been committed jointly with adults. In all other matters, the Special Juvenile Police Unit or a Child Welfare Officer shall record the information regarding the offence alleged to have been committed by the child in the general daily diary followed by a social background report of the child and the circumstances under which the child was apprehended, wherever

applicable and forward it to the Board before the first hearing. The proviso under rule 8 (1) states that the power to apprehend shall only be exercised with regard to heinous offences, unless it is in the best interest of the child. For all other cases involving petty and serious offences and cases where apprehending the child is not necessary in the interest of the child, the police or Special Juvenile Police Unit or Child Welfare Police Officer shall forward the information regarding the nature of offence alleged to be committed by the child along with his social background report to the Board and intimate the parents or guardians of the child as to when the child is to be produced before the Board for first hearing. A police officer of SJPU preferably not below the rank of Sub-Inspector should apprehend the child. In case of a female child, a male police officer needs to be accompanied by a woman.

10. Sub-rule (2) of rule 8 states that when a child alleged to be in conflict with law is apprehended by the police, the police officer concerned shall place the child under the charge of the Special Juvenile Police Unit or the Child Welfare Officer, who shall immediately inform:

(i) the parents or guardian of the child that the child has been apprehended along with the address of the Board where the child will be produced and the date and time when the parents or guardian need to be present before the Board;

(ii) The Probation Officer concerned, that the child has been apprehended so as to enable him to obtain information regarding social background of the child and other material circumstances likely to be of assistance to the Board for conducting the inquiry, and inform the parents/guardians to carry out self-identity proof

(iii) A Child Welfare Officer or a Case worker or a Para Legal Volunteer to accompany the Special Juvenile Police Unit or Child Welfare Police Officer while producing the child before the Board within twenty-four hours of his apprehension.

11. Sub-rule (3) is also a very important provision, which the police officers have to note. In terms of the said rule, the police officer apprehending a child alleged to be in conflict with law shall

(i) not send the child to a police lock-up instead can be kept at the child friendly corner of a police station and not delay the child being transferred to the Child Welfare Police Officer from the nearest police station. The police officer may under sub-section (2) of section 12 of the Act send the person apprehended to an observation home only for such period till he is produced before the Board i.e. within twenty-four hours of his being apprehended and appropriate orders are obtained as per rule 9 of these rules;

(ii) not hand-cuff, chain or otherwise fetter a child and shall not use any coercion or force on the child;

(iii) inform promptly and directly of the charges levelled against him to his parent

or guardian and if none are available, then to inform the child in a child friendly language and First Information Report is registered, copy of the same shall be made available to parents or guardians of child and the police report shall also be given to the parent or guardian free of cost.

(iv) arrange or provide appropriate medical assistance, assistance of interpreter or any other assistance which the child may require, as the case may be;

(v) not compel the child to confess his guilt and he shall be interviewed only at the Special Juvenile Police Unit or at a child-friendly premises or at a child friendly corner in the police station, which does not give the feel of a police station or of being under custodial interrogation. The parent or guardian, may be present during the interview of the child by the police;

(vi) not ask the child to sign any statement; and

(vii) inform the District Legal Services Authority immediately for providing free legal aid to the child;

12. In terms of sub-rule (4), the Child Welfare Officer shall be in plain clothes and not in uniform. In terms of sub-rule (5) the Child Welfare Police Officer shall record the social background of the child and circumstances of apprehending in every case of alleged involvement of the child in an offence without stigmatizing the child which shall be forwarded to the Board forthwith. In terms of sub-rule (6), all designated Child Welfare Police Officers, Women Police Stations Child Welfare Officers, Probation Officers, Para Legal Volunteers, District Legal Services Authorities etc. and registered voluntary and non-governmental organisations in a district, Principal Magistrate and members of the Board, members of Special Juvenile Justice Police Unit and Childline Services with contact details shall be prominently displayed in every police station.

13. In terms of sub-rule (7) when the child is released in a case where apprehending of the child is not warranted, the parents or guardians or a fit person in whose custody the child alleged to be in conflict with law is placed in the best interest of the child, shall furnish an undertaking on a non-judicial paper in Form 2 to ensure their presence on the dates during inquiry or proceedings before the Board.

14. In terms of sub-rule (8) The State Government shall maintain a panel of voluntary or non-governmental organisations or persons who are in a position to provide the services of probation, counselling, case work, interpreters and also associate with the Police or Special Juvenile Police Unit or the Child Welfare Police Officer, and have the requisite expertise to assist in physical production of the child before the Board within twenty-four hours and during pendency of the proceedings and the panel of such voluntary or non-governmental organisations or persons shall be forwarded to the Board.

15. In terms of sub-rule (9), the State Government shall provide funds for the police or Special Juvenile Police Unit or the Child Welfare Police Officer or Case

Worker or person through DCPU for the safety and protection of children and provision of food and basic amenities including travel cost and emergency medical care to the child apprehended or kept under their charge during the period such children are with them.

16. The other provisions of the Rules are also relevant, which we will not elaborate in this order. The reason for pointing out as to what are the procedures to be followed by the police in relation to the children in conflict with law, we have given a glimpse of pre-production action of the police and other agencies. It is the duty on the part of the State to sensitize all its police officers on their duties and responsibilities under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2017 and the West Bengal Juvenile Justice (Care and Protection of Children) Rules, 2017. The rules are in place but all that is required is to implement the rules and to sensitize the police officers about the duties, which they have to discharge while dealing with the children in conflict with law.

17. We trust and hope that the State Government takes steps in terms of the directions passed in these writ petitions in its right spirit and issue appropriate guidelines giving wide publicity and ensure that all police stations carry the necessary information as mandated under the Act and the Rules, conduct periodic sensitisation programmes to all police officers irrespective of whether they man a special police team or a woman police station.

18. At this juncture, it will be beneficial to refer to certain paragraphs of the affidavit filed by the Principal Magistrate, Juvenile Justice Board, Birbhum wherein the relevant provisions of the Act have been set out:

S.3(vi) Principles of Safety – The primary responsibility of care, nurture and protection of the child shall be of the biological family or adoptive or foster parents, as the case may be.

S. 7(2): A child in conflict with law may be produced before an individual member of the Board, when the Board is not in session. S.10(1): As soon as a child alleged to be in conflict with law is apprehended by the police, such child shall be placed under the charge of special juvenile police unit or the designated child welfare police officer, who shall produce the child before the Board without any loss of time but within a period of twenty-four hours of apprehending the child excluding the time necessary for the journey, from the place where such child was apprehended.

Provided that in no case, a child alleged to be in conflict with law shall be placed in a police lockup or lodged in a jail.

And for the purpose of an effective and appropriate adjudication of the present suo motu proceeding and I also rely upon the following provisions of the Juvenile Justice (Care and Protection) Rules, 2017:

Rule 64B(1) of West Bengal Juvenile Justice (Care and Protection) Rules, 2017: There are only three types of stay at child care institutions for a CCL. Those are:

- a) Protective Stay
- b) Overnight Protective Stay; &
- c) Rehabilitation Stays.

Rule 64D (1): The purpose of the stay is to provide shelter to the child and prevent his being kept overnight at the police station or at any other unsuitable place by providing an alternative.

Rule 81(1): The State Government shall constitute a Special Juvenile Police Unit in each district and city to coordinate all functions of police related to children.

Rule 81(10): The Special Juvenile Police unit shall have a list of :

(a) the Board and the Child Welfare Committee in its due jurisdiction, their place of sitting, hours of sitting, names and contact details of the Principal Magistrate and the members of the Board, names and contact details of Chairperson and members of the Committee and the procedures to be followed before the Board and the Committee; and

(b) contact details of the Child Care Institutions and fit facilities in its due jurisdiction.

19. The above statutory provisions are also to be taken note of by the concerned authorities while conducting sensitization programme for the police officers as to how they should discharge their duties while dealing with the children in conflict with law.

20. The above directions shall be taken note of by the appropriate authority of the State Government and effective procedures be put in place and the State Government can also formulate a Standard Operating Procedure (SOP) as a guidance note to all the police officers while dealing with the children in conflict with law.

21. The above directions shall be complied with as expeditiously as possible but preferably within a period of three months from the date of receipt of the server copy of this judgment and order.

22. The Registrar (L & OM) is directed to communicate a copy of this judgment and order to the following authorities including the Commissioner of Police, Kolkata.

a. State of West Bengal, service through the Chief Secretary to the Government of West Bengal, office at "Nabanna", 13th Floor, HRBC Building, 325, Sarat Chatterjee Road, Mandirtala, Shibpur, Howrah, West Bengal 711102. Email:cs-westbengal@nic.in

b. Additional Chief Secretary to the Government of West Bengal, Home and Hill Affairs, "Nabanna", 13th Floor, HRBC Building, 325, Sarat Chatterjee Road, Mandirtala, Shibpur, Howrah, West Bengal 711102.

Email:wb.secyhome@gmail.com

c. Principal Secretary, Department of Women and Child Development and Social Welfare, Bikash Bhavan, Salt Lake, Kolkata – 700091.

d. Director General and Inspector General of Police, West Bengal Police, "Nabanna", HRBC Building, 325, Sarat Chatterjee Road, Mandirtala, Shibpur, Howrah, West Bengal 711102. Email:virendradgpwb@gmail.com.

e. Superintendent of Police, Birbhum, Birbhum – 731102, West Bengal, email:spbirbhum@policewb.gov.in

f. District Magistrate, Birbhum, "Administrative Building", Suri Main Road, Birbhum – 733101, West Bengal. Email:dm-bir@nic.in

g. Officer in charge, Mollarpur Police Station, Birbhum District Police, Mallarpur, West Bengal 731216."

23. There shall be no order as to costs.

24. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.