
(2020) 07 DEL CK 0194

In the Delhi High Court

Case No : Civil Writ Petition No. 4361 Of 2020, Civil Miscellaneous No. 15699 Of 2020

Bachpan Bachao Andolan

APPELLANT

Vs

GNCTD And Ors

RESPONDENT

Date of Decision : 28-07-2020

Acts Referred:

Indian Penal Code, 1860 — Section 370, 374
Code Of Criminal Procedure, 1973 — Section 164

Citation : (2020) 07 DEL CK 0194

Hon'ble Judges : Dhirubhai Naranbhai Patel, CJ; Prateek Jalan, J

Bench : Division Bench

Advocate : Prabhsahay Kaur, Shilpa Dewan, Sameer Vashishth, Urvi Kapoor

Final Decision : Allowed

Judgement

D. N. Patel, CJ

Proceedings in the matter have been conducted through video conferencing.

1. This public interest litigation has been preferred with the following prayers:-

I. Issue an appropriate writ, order or direction directing that Statements under Section 164, Cr.P.C of 'children in need of care and

protection' are recorded by Ld. Metropolitan Magistrates over Video Conferencing, and further that the children are not to be physically

taken to Court premises for the said purpose;

II. Issue an appropriate writ, order or direction directing the Respondent Nos. 1 and 2 that all proceedings by different authorities under

Juvenile Justice (Care and Protection of Children) Act, 2015 be held by audio-visual means / Video Conferencing to keep 'children in

need of care and protection' safe from contracting the COVID-19 infection;

III. Issue an appropriate writ, order or direction directing the Respondents that no authority dealing with 'children in need of care and

protection' will pass an order requiring a child in need of care and protection to physically be taken out of the Children's Home/Child Care

Institution where he is housed, till his/her repatriation in accordance with law;

IV. Issue an appropriate writ, order or direction directing the Respondent No.1 to take measures and propose a mechanism ensuring that a

rescued child is tested for COVID-19 at the earliest on his/her rescue, preferably before the Child is sent to a Children's Home/Child Care

Institution;

V. Alternatively, issue an appropriate writ, order or direction directing the Respondent No.1 to make arrangements for COVID-19 testing of

rescued children to be done at the Children's Home/CCI and not by physically taking the child to a Govt. Hospital;

VI. Issue an appropriate writ, order or direction directing the Respondent No.2/5 to add Section 370/374 in FIR No.0278 dated 10.07.2020

at PS Gandhi Nagar in accordance with the SDM's order dated 9.07.2020;

VI. Issue an appropriate writ, order or direction directing the Respondent No.5 to not take the 5 child labour rescued in the raid on

9.07.2020 and currently housed at the Petitioner's Home, Mukti Ashram to Karkardooma Courts for recording of statements;

VII. Issue an appropriate writ, order or direction directing that the directions passed herein are also applicable mutatis mutandis for

Children in Conflict with law housed in Observation Homes/Special Homes/Place of Safety;

VII. Pass any such other further orders as may be deemed fit and proper in the facts and circumstances of the case.â??

2. At the outset, Ms. Prabhsahay Kaur, learned counsel appearing for the petitioner sought permission to withdraw the prayer seeking directions upon

respondents No.2 and 5 to add Section 370/374 in FIR No.0278 dated 10th July, 2020 registered at PS Gandhi Nagar in accordance with the SDM's

order dated 9th July, 2020 is concerned, with liberty to the petitioner to avail such other remedies as available to it in law. The permission sought is

granted.

3. The petitioner has established a Child Care Institution, under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015,

named Mukti Ashram. The circumstances which have led to the filing of the present petition arise out of a rescue operation carried out in July, 2020,

wherein ten minors who were working as child labour were rescued and brought to Mukti Ashram. The contention of the petitioner is that the children

were compelled to leave Mukti Ashram and physically attend the Court of the Metropolitan Magistrate for recording of their statements under Section

164 of the Code of Criminal Procedure, 1973 (â??the Codeâ??), and for giving samples for Covid-19 testing. The contention of the petitioner is that, in

the present circumstances of the Covid-19 pandemic, the respondents are required to lay down procedures for recording of the childrenâ??s

statements and their medical testing, which does not require them to leave the institution, or at least, to attend at crowded public places.

4. We have heard Ms. Prabhsahay Kaur, learned counsel for the petitioner, and Mr. Sameer Vashishth, learned Additional Standing Counsel for the

respondents. Ms. Kaur has also assisted us by suggesting some measures which can be put in place. Mr. Vashishth, upon instructions from all the

respondents, submits that the respondents do not have any objection to the suggestions advanced by Ms. Kaur.

5. Having heard the learned counsel for the parties at length and looking to the facts and circumstances of the case, we are also of the view that the

interest of children who require care and protection necessitates that their exposure to crowded environments be avoided in the prevailing

circumstances of the Covid-19 pandemic. In fact, as far as possible, they should not be required to leave the premises of the Child Care Institution in

which they are housed.

6. In view of the aforesaid, we deem it appropriate to direct as follows:

(a) Statements under Section 164 of the Code of Criminal Procedure, 1973 of children in need of care and protection can be recorded by the learned

Metropolitan Magistrate over video conferencing or if the learned Metropolitan Magistrate deems it necessary, he/ she can visit the concerned

observation homes/Child Care Institutions where such children are housed, for recording the statement in person. It is assured by the learned counsel

appearing for the respondents that the respondents shall co-operate in recording

of statement under Section 164 of the Code at homes/Child Care

Institutions where necessary or via video conferencing. All necessary infrastructure and facilities shall be provided by the concerned authorities at the Homes/Child Care Institutions as well as in the Courts for recording of statements of children in need of care and protection under Section 164 of the Code.

(b) We are informed that proceedings before the Child Welfare Committees and other bodies where the children are required to participate, are already being conducted by video-conference. We direct that this process should be continued, and the requirement of taking the child out of the home/ Child Care Institution should be avoided as far as possible.

(c) Needless to state that, Covid-19 tests will also be carried out by the State authorities for the children in need of care and protection who are staying at different homes/Child Care Institutions under the Juvenile Justice (Care and Protection of Children) Act, 2015. The sample shall be collected for this purpose either at the home/Child Care Institution or at the office of the Sub-Divisional Magistrate of the area. The authorities will ensure that all precautions for the welfare of the child are taken, and that the sample is expeditiously collected, so that the child can return to the home/ institution.

7. With these observations, this writ petition is hereby allowed to the aforesaid extent.

8. C.M.No.15699/2020 (seeking stay) also stands disposed of.