
(2011) 08 JH CK 0038

In the Jharkhand High Court

Case No : Writ Petition (PIL) No. 139 of 2011

Bachpan Bachao Andolan

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 16-08-2011

Acts Referred:

Child Rights Act, 2005 — Section 17

Citation : (2011) 08 JH CK 0038

Hon'ble Judges : Prakash Tatia, Acting C.J.;Jaya Roy, J

Bench : Division Bench

Judgement

1 This Public Interest Litigation has been filed by the writ Petitioner seeking directions for the Respondent-State to adopt the scheme/ action plan framed by the National Commission for Protection of Child Rights with necessary and appropriate modifications as applicable to the State of Jharkhand and to constitute a State Commission for Protection of Child Rights as per the provisions contained in "The Commission for Protection of Child Rights Act 2005" and to constitute Child welfare Committees, children's homes, shelter homes and to implement the provisions contained in the Juvenile Justice (Care and Protection of Children) Act, 2000. The Petitioner's endeavor is for rehabilitation of all children and other victims of trafficking who have been rescued from other States and repatriated back to the State of Jharkhand.

2. Learned Counsel for the Petitioner drew our attention to the order dated 14th July 2009 passed by the Delhi High Court in W.P (C) No. 9767 of 2009 (Court on its Own Motion v. Government of NCT of Delhi), wherein, the Delhi High Court noticed the earlier decision of the Hon'ble Supreme Court delivered in case of M.C. Mehta Vs. State of Tamil Nadu and others, wherein several directions were issued by the Hon'ble Supreme Court and one of the important directions was to direct an employer to pay a compensation of Rs. 20,000/-for having employed a child below the age of 14 years in hazardous work in contravention of Child Labour (Prohibition & Regulation) Act, 1986 and the appropriate Government

was also directed to contribute a grant/deposit of Rs. 5,000/-for each such child employed in hazardous jobs. The said sum of Rs. 25,000/-was to be deposited in a fund to be known as Child Labour Rehabilitation -cum-Welfare Fund and the income from such corpus was to be used for rehabilitation of the rescued child.

3. Learned Counsel for the Petitioner also submitted that for taking care of the child/ children is not only a statutory duty under any Act but is a Constitutional mandate and therefore, several laws have been enacted to safeguard the life of children.

4. We have also noticed that the National Legal Services Authority (NALSA) also declared this year as "the year of Rights of the Child".

5. We need not to go in details of all the enactments for protection of the rights of children because of plain and simple reason that without help of any statutory provision, we are of the considered opinion that the children are the future of not only any country but of the entire world in this era of globalization. World's (Children's) future is not safe because of the illegal and unknown activities of the vested interest of the persons and the rights of children are required to be not only protected but also are required to be made available to the children by all means including all the citizens as well as by the State at all level including at the level of the Central as well as by the State and down to the level of even Panchayat.

6. Though it is known to everybody but we may again observe that the laws themselves do not act, unless they are followed and observed by all and more so, it is the State's duty to implement the laws. Therefore, the law, the Commission for Protection of Child Rights Act 2005, was created in the year 2005, ipso facto, cannot give the benefit to a single child unless there is will of persons to implement the said law. The said Act of 2005 was enacted by Government of India after participating in the United Nation General Assembly Meet held in 1990 which adopted a declaration on survival, protection and development of children and India who by it's own treated the children as good, also acceded to the Convention on the Right of the Child (CRC) on 11th December 1992 and as per the Act of 2005, itself, the CRC is an international treaty that makes it incumbent upon signatory States to take all necessary steps to protect children's rights enumerated in the Convention and it appears from the Act of 2005 itself that, to ensure the protection of rights of children, one of the initiatives taken by the Government was for adoption of National Charter for Children 2003. Even the United Nation General Assembly Special Session on children was held in the month of May 2002 adopted an Outcome Document titled "A World Fit for Children" containing the goals, objectives, strategies and activities to be undertaken by the members of the countries for the current decade. It appears that by taking note of all these events, the Act of 2005 was enacted. The United Nation General Assembly for children was held in the month of 2002 and the words "A World Fit for Children" was the object and for creation of the World Fit for Children time prescribed was current decade and that decade

will end in the month of May 2012. In the month of August 2011 the Petitioner is seeking direction for the State of Jharkhand to constitute the Commission for protection of Child Rights as provided u/s 17 of the Act of 2005, for which, it is submitted by the learned Advocate General for the State that the State is making its own efforts by taking into account the problems with respect to the Rights of Children in the light of the State's own peculiarity.

7. Learned Advocate General submitted that the State is conscious of the problem and also sensitive and in full agreement with the opinion expressed in all the Conferences referred to above and in furtherance to that, the State has constituted Child Welfare Committees in 24 districts in Jharkhand. However, presently out of 24, 17 Committees are functional. It is also submitted that two children homes are operational in the State of Jharkhand, one in the East Singhbhum at Jamshedpur (for boys) and second in the district of Deoghar (for girls). Under Integrated Child Contribution Scheme, the Government of India has approved to run Children Home in the district of Bokaro also and two more children homes and two shelter homes have been approved by the Government of India to be started in the financial year 2012-13. The provisions contained in Juvenile Justice Act 2005 has already been incorporated in ICPS itself for implementation. It is also pointed out that the State is also conscious of the fact that there may be cases of women and girls of remote and rural areas of Jharkhand who are being trafficked to metro and big cities under the garb of providing good employment, opportunity, marriage etc., and most of them ultimately back to prostitution and subjected to sexual abuse and other activities and, therefore, the Government of Jharkhand has initiated many programmes to prevent, restore and rehabilitate the trafficking affected adolescent girls and women, for whom, two homes have been established in Delhi and Ranchi for rehabilitation of rescued girls. In these homes, temporarily the rescued girls and womens can be allowed to stay before sending them to their parental home and Toll Free Helpline has been established in Ranchi and Delhi.

8. The contention of the State clearly indicates that the need of protection of child rights is not disputed by the State and rightly has not been disputed.

9. However, we are only concerned that the State, particularly, the welfare Department of the State should not only agree for protection of rights of child but must act in protecting the rights of child. Therefore, we would like to know from the State as to what steps have been taken by the State to find out whether it is right time for the State to establish and constitute the State Commission for protection of child rights so as to not to log behind to all others who are working in the field of protecting the child rights. The State for taking a positive stand may need sometime, therefore, we grant the State sufficient time upto 10th October 2011, so that the State may come to the conclusion whether it is the right time to constitute the Commission as required u/s 17 of the Act 2005. We make it clear that we are giving sufficient long time which may not be treated to be a time given only for passing the time but we want sincere efforts,

therefore, we are giving longer time without unnecessarily calling the State to give interim reply and show it's action.

Put up this case on 10th October 2011.