

**(2019) 02 J&K CK 0041**

**In the Jammu And Kashmir High Court**

**Case No :** Public Interest Litigation (PIL) No.09 Of 2013, 09 Of 2015 & Public Interest Litigation (PIL) No.25 Of 2018

Court On Its Own Motion

APPELLANT

Vs

State Of Jammu & Kashmir & Ors

RESPONDENT

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**Date of Decision :** 15-02-2019

**Acts Referred:**

**Citation :** (2019) 02 J&K CK 0041

**Hon'ble Judges :** Gita Mittal, CJ;Sanjeev Kumar, J

**Bench :** Division Bench

**Advocate :** B. A. Bashir, Omais Kawoosa, Feroz Ahmad Sheikh, G. J. Bala, N. A. Beigh

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## **Judgement**

1. In the instant PIL which relates to the working of the J&K Juvenile Justice (Care and Protection of Children) Act, 2013, the record of the case discloses an absolutely unacceptable state of affairs. The order passed by this Court on 28th August 2017 directed the respondents to ensure provision of the requisite facilities to all Child Care Institutes under the said enactment. The repeated directions thereafter as well as several reports which have been placed before us by Justice Hasnain Masoodi, Chairperson of the Selection-cum-Oversight Committee, (SCOC) has placed the deficiencies in Juvenile Justice Boards, Child Welfare Committees, DCPU and other institutions under the law.

2. The compliance reports dated 14.02.2019 filed by State Mission Director and 15.02.2019 filed by Director General Social Welfare Department, Kashmir is taken on record. Perusal of the same would reveal that there is non-compliance of all the orders passed by us.

3. Significant among the deficiencies is the lack of essential staff. Despite repeated requests from the Chairperson of SCOC and the order of the court, while posts are created, the authorities have not moved a single step towards filling up the vacancies. As a result, the institutions under the Juvenile Justice Act would be unable to discharge the statutory mandate. It needs to be borne in

mind that the Juvenile Justice enactment in fact only reiterates the Constitutional mandate regarding the care and protection of children.

4. We are informed by Mr. Feroz Ahmad Sheikh, learned Dy. AG. that he has received the compliance report in terms of our order dated 21st December 2018 only yesterday. The same is handed over in court and taken on record. Perusal thereof would show that it encloses the letter which was sent six months ago on 20 th August 2018 by the Director General of Social Welfare Department to the Secretary of the same department.

5. We find from the order sheet that substantial indulgence has been shown to the respondents. Even our order dated 21st December 2018 has not been complied with and no status report regarding compliance of the directions has been filed.

6. It is submitted by Mr. Feroz Ahmad Sheikh, learned Dy. AG. that forty positions which are lying vacant in ICPS have been advertised. Advertisement is merely commencement of a recruitment process. Such a situation, with no end in sight, cannot be countenanced. It would appear that such a situation subsists because the entire responsibility relating to the children has been vested upon the Department of Social Welfare which appears to be overworked and lacking the capacity to address the imperative needs of children of the State.

7. We are not willing to simply go on adjourning this matter while the Child Care Institutions in the State are completely un-operational and unable to serve the purpose for which they have been created. It is also not possible for us to ignore the life of the children of the State who would be suffering in the meantime.

8. We were inclined to take a serious view of the non-compliance of the various directions today. However, the same would not achieve the intended purpose of ensuring the welfare of the children. We, therefore, give a very last chance to the respondents to ensure that the directions made by us and the statutory mandate is forthwith complied with. The respondents shall ensure that the requisite staff is provided to all the Child Care Institutions within a period of eight weeks from today.

9. We are informed that the Ministry of Women and Child Development of the Government of India has revised its scheme and is transferring funds for implementation of ICPS directly to the SCPS. Let this aspect be examined by the State Government and a view taken so that there is no delay in transfer of funds.

10. In case, there is difficulty or delay in effecting the recruitment of staff by the State Government, the respondents may explore the possibility of delegating the same to the SCOS for selection of the positions and making recommendations to the State Government for consideration and appointment, especially of such positions as the District Child Protection Officer; Programme Officer; Probationary Officer; Welfare Officer.

11. All District Development Commissioners shall ensure cooperation with the

SCOC and constituents under the Act in establishing VLCPCs and DLCPS to ensure implementation of the law at the grass root level.

12. The State Government shall also examine the need of the State Commission for Protection of Child Rights.

13. We shall also be informed about the administration/management of the Rotary Inner Wheel Circle Home Channi Ram meant for specially-abled children by the State Government.

14. In case the above directions are not complied with and a status report filed within eight weeks from today, the Secretary, Social Welfare Department of the State Government and Mission Director, ICPS shall remain present in the Court.

15. List on 14.05.2019.

16. Copy of this order be supplied to learned counsel for the parties under the seal and signatures of Bench Secretary.