

(2018) 05 RAJ CK 0213

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2721, 2722 of 2018

Emmanuel Orphanage Society @APPELLANT@Hash State of Rajasthan & Ors.

Date of Decision : 09-05-2018

Acts Referred:

Juvenile Justice (Care and Protection of Children) Act, 2015 — Section 41, 41(9), 42, 54, 92, 93, 94, 95, 96, 97, 107
Constitution of India, 1950 — Article 15, 39E, 39F, 45, 47

Citation : (2018) 05 RAJ CK 0213

Hon'ble Judges : SANJEEV PRAKASH SHARMA, J

Bench : Single Bench

Advocate : Inderbir Singh Alag, Dinesh Pardasani, P.S. Sharma, R.D. Rastogi, Anand Sharma, C.S. Sinha

Final Decision : Dismissed

Judgement

1. The question which is required to be dealt in the present case is the manner in which the Juvenile Justice (Care and Protection of Children) Act

2015 (hereinafter referred to as "the Act of 2015") shall be applied to the petitioner societies and the institutions run by them.

2. While the petitioners have assailed action of the respondents in having seized their premises and having conducted investigation of their record and

also of other societies being under overall control of the petitioner-Society, and have questioned the action of confiscation of their record from their

Head Office as well as of demanding details which the petitioners stated to be not relevant for the purpose of the Act of 2015, the respondents have

supported their action.

3. Petitioner-Emmanuel Orphanage Society and their other petitioner societies, who have jointly filed the present writ petitions, claim to have been

carrying out various activities of running schools and hostels. They admit to have

been running orphanages and children homes in the past. It is also their case that they had earlier applied under the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as "the Act of 2000") for registration as children home and also under the new Act of 2015 but the respondents have not registered their children home and ultimately they decided to resolve to close down children home and orphanage vide resolution dated 13.02.2016 and conveyed the decision to the Authorities on 20.06.2016 whereupon taking into consideration the decision of the petitioner, the pending application of the petitioner was rejected on 11.07.2016. It is their case that all the children who were in their children home were taken back by their respective parents and there was no child in the children home. It is also submitted that the said activity of children home thereafter was taken by another society namely Jeevan Asha Girls Samiti and the petitioners had no connection to the said Samiti.

In spite of the aforesaid, the respondents have conducted a raid in the premises owned by the petitioners' societies and have taken away the entire record from their head office and have also threatened the responsible officers of their hostels and have demanded several documents from the petitioners vide their letter dated 17.01.2018 which relates to the minutes of meeting of Governing Body, their audited balance sheet and certain other information which were not required to be disclosed to the respondents.

4. Thus, it is submitted that the respondents have acted beyond the powers available to it under the Act of 2015 and the seizure of their documents and their office could not have been done by the respondent-Child Welfare Committee.

5. It is also submitted that action taken by the respondent was for an extraneous purpose to obtain documents in relation to a litigation which is pending before this Court taken up by them regarding the wrongful cancellation of the registration of the petitioner-Societies wherein this Court as well as Division Bench and the Apex Court have granted interim protection. It is stated that review petitions in terms of the directions issued by the Division Bench relating to the said cases are pending before this Court. It is stated that the basic aim of conducting the investigation was not to further the provisions of the Act of 2015 but otherwise as noted above.

6. Learned Senior Counsel for the petitioner submits that the Act of 2015

provides for inspection to be conducted of institutions registered under the said Act as per Section 54. Once the petitioner-institution was not registered in terms of Section 41, there was no occasion for the respondents to have conducted an inspection. More so, when the petitioner-institution had specifically informed that they had stopped the running of orphanages and children homes in June 2016 itself.Â

It is further submitted that the inspection as envisaged under Section 54 of the Act of 2015 could not mean an investigation and seizure. Had the respondents given notices, the petitioners would have allowed the respondents to conduct an inspection, however, the manner in which the respondents have conducted investigation amounts to a raid which is carried out in relation to an act which is presumed contrary to the provisions. Thus the submission is that the respondents with a prejudice and for extraneous purpose conducted a raid in the head office of the petitioners and have taken away all its documents, have also seized the premises and it is therefore being prayed to make available all the documents to set aside the seizure of their office and allow the petitioners to function peacefully.

7. Per contra, learned Senior Counsel Shri R.D. Rastogi and learned Additional Advocate General Shri G.S. Gill appear for the Committee and State

have asserted in their reply that they have a power to conduct its inspection even of an institution which may not be registered in terms of Section

41(9) of the Act of 2015. It is submitted that if it is found that any institution is housing children in need of care and protection and children in

conformity with law, and such an institution is not registered, penalty can be imposed under Section 42, on such institution which may be in the nature

of fine or punishment of imprisonment of one year or both. It is stated that the petitioners have not come out with clean hands.Â

8. In order to demonstrate the aforesaid, the respondents have stated that the conduct of the petitioners of having resolved for closing orphanages and

children home was a mere farce and an eyewash. It is submitted that if the statements of the respondents is accepted, it would be seen that while on

13.02.2016, they had resolved to close the orphanages and children home while thereafter on 15.02.2016 application has been moved to the office of

the Children Welfare Committee seeking registration. Another application was moved on 05.05.2016 for registration, thus the respondentsâ?? stand

of having closed their institution is not found to be correct.

9. Moreover when the Apex Court directed the Authorities in Rajasthan to take action in terms of the provisions of Act of 2015, it was revealed to the respondents that on the official website of the petitioner, as in 2018, respondents were stated to be carrying out activities of children home and orphanages. Accordingly, they were required to be registered under the Act but they had deliberately and with a view to come out of the particulars rigors of the Act of 2015 moved an application on 20.06.2016 representing to have taken a decision to close the activities of child home and orphanage. In the circumstances, it became imperative for the respondents to determine whether the petitioners were housing children in need of care and protection and whether the children were being provided and taken care of in tune with the provisions of the Act of 2015.

10. The respondents have pointed out that the Supreme Court in the case of Re: Exploitation of Children in Orphanages in the State of Tamil Nadu

Versus Union of India & Ors. (Writ Petition (Criminal) No.102/2007) passed following directions on 5th May, 2017 which reads as under:-

â??62. In view of the above discussion, the following directions are issued:

1. The definition of the expression â??child in need of care and protectionâ? under Section 2(14) of the JJ Act should not be interpreted as an exhaustive definition. The definition is illustrative and the benefits envisaged for children in need of care and protection should beÂ extended to all such children in fact requiring State care and protection. 2. The Union Government and the governments of the States and Union Territories must ensure that the process of registration of all child care institutions is completed positively by 31st December, 2017 with the entire data being confirmed and validated. The information should be available with all the concerned officials. The registration process should also include a data base of all children in need of care and protection which should be updated every month. While maintaining the database, issues of confidentiality and privacy must be kept in mind by the concerned authorities. 3. The Union Government and the governments of the States and Union Territories are directed to enforce the minimum standards of care as required by and in terms of the JJ Act and the Model Rules positively on or before 31st December, 2017.

4. The governments of the States and Union Territories should draw up plans for

full and proper utilization of grants (along with expenditure statements) given by the Union Government under the Integrated Child Protection Scheme. Returning the grants as unspent or casual utilization of the grants will not ensure anybody's benefit and is effectively wasteful expenditure.

5. It is imperative that the Union Government and the governments of the States and Union Territories must concentrate on rehabilitation and social reintegration of children in need of care and protection. There are several schemes of the Government of India including skill development, vocational training etc which must be taken advantage of keeping in mind the need to rehabilitate such children.

6. The governments of the States and Union Territories are directed to set up Inspection Committees as required by the JJ Act and the Model Rules to conduct regular inspections of child care institutions and to prepare reports of such inspections so that the living conditions of children in these institutions undergo positive changes. These Inspection Committees should be constituted on or before 31st July, 2017 and they should conduct the first inspection of the child care institutions in their jurisdiction and submit a report to the concerned government of the States and Union Territories on or before 31st December, 2017.

14. While there may be some other issues specifically concerning children in need of care and protection we leave these issues open for consideration and grant liberty to the learned Amicus to move an appropriate application in this regard including any application for modification or clarification of the directions given above.

15. The Union of India is directed to communicate our directions to the concerned Ministry or Department of each State and Union Territory for implementation and to collate necessary information regarding the implementation of these directions with the assistance of the National Commission for the Protection of Child Rights and the State Commission for the Protection of Child Rights. A status report in this regard should be filed in this Court on or before 15th January, 2018. The Registry will list this case immediately thereafter.

11. In view of the said directions, an amicus curiae was appointed for examining

whether the compliance of directions was being made by all the States and Union Territories and whether the process of registration of child care institutions had been completed by 31st December, 2017. Entire data was required to be confirmed and validated. However, as it was revealed from the website that the petitioners were carrying out activity of child care homes and had not been registered under the Act of 2015 the team was sent to the institution for investigating and to find out the truth.

12. Learned counsel for the State Shri G.S. Gill, AAG has taken this Court to the documents which were searched and found in the office of the

respondents and has asserted that the petitioners activities cannot be said to be clean and the manner in which the functioning was found in the

premises shows that while petitioners have stated that they have closed down the activity, some children were shifted in other hostel with a new name

i.e. Jeevan Asha Girls Hostel. The control and funding is being done by the petitioner-Societies when the computers were sought to be searched, the

petitioners tried to erase several documents but the respondents have been able to recover the same.Â The password for the computers in the Head

Office was not disclosed and now only the head office premise has been sealed with the help of local Police so that the material may be recovered

from the hard disk of the computers and data relevant to the children be also found. It is also stated that the petitioner have put staff assistance and

Police help was taken out for carrying out the investigation and it has been found that the children from other States than Rajasthan namely, Assam,

Jharkhand, Tripura and Bihar who are from backward classes and belonging mainly to Schedule Caste and Schedule Tribe of the said States, have

been brought and there is also chances of child trafficking being conducted. It is also stated that there is no proper care and the children complained of

being beaten and harassed and forceful conversion of religion. One child death in unknown circumstance has been reported in the institution, however

the petitioners did not inform the Police about his death and there are also allegations of wrongful funding activity in the institutions.Â A report to this

effect has also been submitted to the amicus curiae of the Supreme Court which was placed o record.

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housing children in need of care and protection and children in conformity with law, and such an institution is not registered, penalty can be imposed under Section 42, on such institution which may be in the nature of fine or punishment of imprisonment of one year or both. It is stated that the petitioners have not come out with clean hands.Â

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Police help was taken out for carrying out the investigation and it has been found that the children from other States than Rajasthan namely, Assam,

Jharkhand, Tripura and Bihar who are from backward classes and belonging mainly to Schedule Caste and Schedule Tribe of the said States, have been brought and there is also chances of child trafficking being conducted. It is also stated that there is no proper care and the children complained of being beaten and harassed and forceful conversion of religion. One child death in unknown circumstance has been reported in the institution, however the petitioners did not inform the Police about his death and there are also allegations of wrongful funding activity in the institutions. A report to this effect has also been submitted to the amicus curiae of the Supreme Court which was placed on record.

13. Having heard all the counsels, at length and having noted their submissions as above, this Court finds that the provisions of the Act of 2015 shows

that the same has been enacted with the aim to augment the directive principles of the State already enshrined under Article 39 E & F and under

Article 45 and 47 of the Constitution of India. In terms of Article 15 of the Constitution, the Act has been enacted to special provisions for the

children. It is for protection of children from being abused physically and mentally, to provide them with adequate facilities and to ensure the quality of

care and rehabilitation. It is also to curb illegal activities and exploitation in the hands of institutions which do not conform to the provisions of the Act.

Penal provisions have also been provided. It also takes into its ambit, the children who have been defined in various ways as per the Act of 2015 to

mean child in conflict with law and child in need of care and protection.

As held by the Supreme Court, the definition of child in need of care and protection is not exhaustive but is only inclusive thus viewed, all children

below the age of 18 years would be those who need care and protection. It would thus include all hostels where children are residing as orphans in

care or have been brought for the purpose of providing care and protection or those who are residing for seeking education. In other words, therefore,

any institutions or society or organization having premises where there is a child living in hostel or where there are children who have not completed 18

years of age, would fall within the ambit of child in need of care and protection and such hostels whether being run independently or by any society or

by any school shall be required to be necessarily registered with the CWC of that particular District,

They are required to be in conformity with the provisions of the Act of 2015 and if any of such institute is found to be carrying out activities in violation

of the provisions of the Act of 2015, such institute, authority, society or school or for that matter any other managing committee would be held liable in

terms of Section 42 of the Act of 2015, which reads as under:-

42. Penalty for non-registration of child care institutions-Any person, or persons, in-charge of an institution housing children in need of care and

protection and children in conflict with law, who fails to comply with the provisions of sub-section (1) of section 41, shall be punished with

imprisonment which may extend to one year or a fine of not less than one lakh rupees or both:

Provided that every thirty days delay in applying for registration shall be considered as a separate offence.

14. Having said so, in the present facts as noted above, it is apparent that the CWC has only taken steps towards conducting a complete inspection

within meaning of Section 54 of the Act of 2015. Section 41 (9) provides as under:-

41. Registration of child care institutions:(9) Notwithstanding anything contained in any other law for the time being in force, the inspection

committee appointed under section 54, shall have the powers to inspect any institution housing children, even if not registered under this Act to

determine whether such institution is housing children in need of care and protection.

Thus any institution who is found to be running children home which may be in any name can be inspected in terms of Section 54.

15. The submissions of learned Senior Counsel for the petitioners that the provision only speaks of inspection and not investigation is though attractive

but deserves to be rejected. Inspection as envisaged under Section 54 of the Act of 2015 would necessary include investigation as a prerequisite.

Inspection requires the Committee to examine the records, to visit the site, to record statements of children and also to seize any undisclosed

obnoxious/offensive material which may be found at the premises. Police help for the said purpose can also be taken. A look at the Act of 2015 shows

that the Section 107 provides for Child Welfare Police Officer and a Special Juvenile Police Unit to be constituted for the said purpose. However, if

the same has not been formed yet, it would not any manner stop the authorities conducting inspection to take help from the regular police force and

the Act does not preclude the help to be taken from local Police till the formation of the said force under Section 107.

Following Sections of the Act of 2015 provided as under:-

Section 92 requires Placement of a child suffering from disease requiring prolonged medical treatment in an approved place. Section 93 requires

Transfer of a child who is mentally ill or addicted to alcohol or other drugs. Section 94 requires Presumption and determination of age. Section 95

requires Transfer of a child to place of residence. Section 96 requires Transfer of child between Children's Homes, or special homes or fit facility

or fit person in different parts of India. Section 97 which requires Release of a child from an institution.

16. This for implementation of aforesaid provision report can be obtained by the Committee either by conducting an investigation within 7 days or by

sending a team to the said institutions. In view thereof, the said submission of learned senior counsel for the petitioner does not hold water and is

therefore rejected. From the record as placed in the petition, this Court finds that the petitioners have indulged in the activity of keeping children in

hostels without registration with the CWC and seem to be still carrying out activities relating to children home, unauthorizedly in another name.

In view of the report submitted by the respondent No.3, it is essential that immediate steps be taken for taking over and transferring of the children

found in the hostels of the petitionersociety premises, to another children home and the said children are provided immediately with complete security,

facility and care. Till the petitioners do not confirm to the provisions of the Act and make available the facilities in terms of the Act of 2015, the

petitioners shall be disallowed to carry on any kind of activity relating to children in their premises.

17. In view of the interpretation as taken above, this Court does not find any reason to interfere with the actions undertaken by the CWC.Â The

CWC is now directed to take decision expeditiously on the investigation which they have conducted and on the basis submit the final inspection report

and provide hearing to petitioner and further a decision may be taken as regards the appropriate action as envisaged under the Act of 2015.Â The

petitioners would be also entitled to move application in terms of Section 41 afresh. 18. However, this would not in any manner come in way for the aforesaid action which CWC may decide to undertake against the petitioners-societies.

19. Till the CWC reaches to a final conclusion, the petitioners's office premises shall not be opened. Petitioners are expected to extend full cooperation. The decision in this regard be taken at the earliest within a period of 15 days henceforth. Whereafter other documents which are unrelated to the children home may be returned to the petitioners-Societies

20. With the aforesaid observations the writ petitions are dismissed. A copy of this order be placed separately in the connected writ petition

No.2722/2018.

13. Having heard all the counsels, at length and having noted their submissions as above, this Court finds that the provisions of the Act of 2015 shows

that the same has been enacted with the aim to augment the directive principles of the State already enshrined under Article 39 E & F and under

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16. This for implementation of aforesaid provision report can be obtained by the Committee either by conducting an investigation within 7 days or by

sending a team to the said institutions. In view thereof, the said submission of learned senior counsel for the petitioner does not hold water and is

therefore rejected. From the record as placed in the petition, this Court finds that the petitioners have indulged in the activity of keeping children in

hostels without registration with the CWC and seem to be still carrying out activities relating to children home, unauthorizedly in another name.

In view of the report submitted by the respondent No.3, it is essential that immediate steps be taken for taking over and transferring of the children

found in the hostels of the petitionersociety premises, to another children home and the said children are provided immediately with complete security,

facility and care. Till the petitioners do not confirm to the provisions of the Act and make available the facilities in terms of the Act of 2015, the

petitioners shall be disallowed to carry on any kind of activity relating to children in their premises.

17. In view of the interpretation as taken above, this Court does not find any reason to interfere with the actions undertaken by the CWC.Â The

CWC is now directed to take decision expeditiously on the investigation which they have conducted and on the basis submit the final inspection report

and provide hearing to petitioner and further a decision may be taken as regards the appropriate action as envisaged under the Act of 2015.Â The

petitioners would be also entitled to move application in terms of Section 41 afresh. 18. However, this would not in any manner come in way for the

aforesaid action which CWC may decide to undertake against the petitioners-societies.

19. Till the CWC reaches to a final conclusion, the petitioners's office premises shall not be opened. Petitioners are expected to extend full

cooperation. The decision in this regard be taken at the earliest within a period of 15 days henceforth. Whereafter other documents which are

unrelated to the children home may be returned to the petitioners-Societies

20. With the aforesaid observations the writ petitions are dismissed. A copy of this order be placed separately in the connected writ petition

No.2722/2018.