
(2012) 04 AHC CK 0213
In the Allahabad High Court
Case No : Criminal M. (P.I.L.) W.P. No. 4207 of 2012
In Re: Government Children's Home

Date of Decision : 30-04-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Juvenile Justice Act, 1986 — Section 35
Penal Code, 1860 (IPC) — Section 376(2)(c), 376(2)(f)

Citation : (2012) 2 ACR 2281

Hon'ble Judges : Ashok Srivastava, J; Amar Saran, J

Bench : Division Bench

Advocate : Manju R. Chauhan, Sanjeev Singh, Awadhesh Rai, D.K. Singh, K.K. Ray, Rashmi Tripathi, S.K. Garg and Sudhir Dixit, for the Appellant; Usha Kirna and A.G.A., for the Respondent

Judgement

Amar Saran and Ashok Srivastava, JJ.—Shri G. P. Sharma, Inspector General (Crime). U.P., Lucknow, Shri Nitin Bansal, the Chief Development Officer, Allahabad. Shri Ashok Kumar Mishra, Chief Probation Officer, U. P., Lucknow, Ms Praveena, Additional City Magistrate-II, Allahabad. Ms. Nitika Dube, District Backward Class Welfare Officer, Allahabad, Smt. Arti Vyas. Member Children Welfare Committee. Allahabad, Shri P. S. Chauhan, Circle Officer, IVth, Allahabad and Shri Vinod Kumar Singh, Station Officer. Shivkuti, Allahabad are present. Ms. Usha Kiran and Shri Vimlendu Tripathi, learned Additional Government Advocates, Mrs. Manju R Chauhan, Shri Sanjeev Singh, learned amicus curiae, Ms. Amrita Rai, representing the U. P. State Legal Services Authority, U. P., Lucknow and Sri S. K. Rai learned standing counsel for the Union of India are also present. Shri S. K. Rai has handed over a Gazette of India notification issued by the Ministry of Women and Child Development dated 24.6.2011. published in the Gazette on 27.6.2011 containing the Adoption related Guidelines, and also a copy of the Integrated Child Protection Scheme (I.C.P.S.). which are taken on record.

2. Shri Vimlendu Tripathi, learned Additional Government Advocate has handed over a fax message received from the office of the Inspector General (Crime), U.

P. that Suresh Kumar, son of Roshan Lal, who was involved in rape of 8 girls aged 10 years and below between 9.1.1999 and 24.11.2005 in the Government Children Home (Infant), Rampur has been arrested on 28.4.2012 after the report was lodged by Shri Kishunk Tripathi, the in-charge Government Children Home (Shishu) on 25.4.2012 on the basis of which a case was registered at Case Crime No. 1166 of 2012 under Sections 376(2)(c), 376(2)(f) I.P.C. The said faxed message is taken on record.

3. We must express our anguish at the fact that in such a case which relates to rapes of 8 or more girls below 10 years of age which took place between 1999 and 2004 at the Rampur Bal Shishu Grih, (although this Class IV employee Suresh Kumar was finally dismissed from service in June, 2011), but no first information report was even lodged in the case so far. If it were not for this Court's intervention (vide its order dated 16.4.2012) directing that criminal proceedings be initiated against this miscreant employee, this offender would still be at large in society. Little wonder, as observed in the last order, that is was because of such delayed action, non-action and inadequate measures, and absence of criminal proceedings against such offenders in the past, that other similar criminally minded employees have not been deterred from committing such heinous crimes, which have recurred from time to time.

4. We would like to be informed about the names of the officials responsible for failing to lodge the F.I.R. for initiating criminal proceedings against the miscreant, Suresh Kumar earlier.

5. We also direct that the investigation and the trial of this accused Suresh Kumar be completed very swiftly, with due regard to the legal requirement of having the statements of the victims u/s 161, Cr. P.C. recorded as far as possible by lady officers. The evidence of the victims also be recorded in Court during trial in camera, and the names, photographs or any other material which would reveal the identity of the victims be not made public. This Court will take a very serious view if the last direction is breached.

6. The Chief Development Officer, Allahabad has handed over a report, which is also taken on record. This report mentions that the District Magistrate has decided to have surprise inspections every 15 days through the Women's Welfare Department and in that context two teams have been constituted, one headed by the City Magistrate, Allahabad and the other headed by Additional City Magistrate-I, Allahabad which are also to consist of police officers, psychologists and pediatricians.

7. These committees are in addition to the High Level Committee to be called the "inspection, evaluation and advisory committee" constituted pursuant to the Government order dated 9.4.2012 issued by the Principal Secretary, Women and Child Development, Lucknow which is to be headed by the A.D.M. (Finance and Revenue), Additional S.P./C.O. V, the Deputy Chief Medical Officer, District Probation Officer, Smt. Arti Vyas, member C.W.C. and Smt. Padma Singh, who

are private members, to monitor the conditions in the Observation Home (Boys), Khuldabad, Government Women's Shelter Home, Khuldabad, Government Children Home (Girls), Allahabad and Government Children Home (Infant), Shivkuti, Allahabad.

8. We would also like to be informed by the State Government about the status of progress in setting up of the "Inspection, Evaluation and Advisory Committees with representation from N.G.Os./social workers as directed by the Government's G.O. and Principal Secretary's circular dated 9.4.2012 in all concerned U. P. districts.

9. As per the D.M.s. directives the L.I.U. has also been directed to collect intelligence information against these Homes to check any exploitation of the inmates. The entry of male employees has been prohibited into homes for girls, women and infants. Complaint boxes are to be provided in all the homes. An advisory and grievance cell has been constituted for monitoring issues of health, entertainment, education, food and treatment of employees towards inmates, and for addressing the problems and grievances of the children. The Superintendent has been directed to reside in the Homes. A register has also been kept at the gate of the Homes. The Superintendent and the employees of the institutions have been restrained from using the items of the institutions. The work of the employees has been demarcated. The food prepared for the inmates would be tested for quality and taste. The Superintendent has to sign the register regarding the food consumed. No workers or inmates can smoke or take intoxicant material in the Homes.

However, this Court is interested in implementation of these directions as by mere issuance of directions, necessary improvement in the running of the Homes cannot be brought about

10. We would like to have a further compliance report from the D.M. Allahabad on affidavit as to the extent the measures proposed to be taken have been implemented.

11. We have also been informed that the charge-sheets are being prepared and the investigations are on the verge of conclusion in all the Allahabad matters against the accused. We hope and trust that the charge-sheets will be submitted at the earliest and thereafter the case is committed and tried in the shortest period of time so that a strong message goes out that this Court will show zero tolerance for such grave acts of rape with minors and similar misconduct in future.

12. On the question regarding the state of progress of the inquiry proceedings against the staff, who have recently been suspended, and the direction of this Court in its earlier order to conclude the inquiry proceedings in 2 months we may mention that we have not received a very satisfactory answer regarding the query and the likely time of the completion of the inquiry. We have learnt that some of the employees who were earlier suspended after their misconduct came

to light, were often re-instated on account of delays in concluding the inquiry proceedings or other such technical grounds and thereafter re-instated with full or part wages, without the departmental inquiries reaching their logical conclusions, and thus the suspension period only became a kind of paid holiday.

13. It may be noted that even so far as the accused Suresh Kumar, who has committed the criminal acts at the Rampur Children Home (Infant) with a large number of girls was concerned, the inquiry could only be concluded after six years. In the meantime the accused had got himself reinstated on account of delay in the conduct of the inquiry proceedings, even though the errant employee was himself responsible for the delay by moving repeated applications expressing no-confidence against each of the probation officers who were directed to inquire into his case.

14. We, therefore, direct that a senior officer such as the Director, Mahila Kalyan, U. P. appears and files a compliance affidavit on the next hearing informing this Court as to the measures that are being taken for ensuring successful completion of the inquiries within two months and the progress of the inquiries up to that stage. He should also inform this Court whether the State Government is considering issuing an order that in cases such as the present involving sexual misconduct with minor girl children, and cover-ups of such misconducts, the inquiries will be directed to be completed within a specific lime frame of about two months.

15. So far as uploading of information regarding inmates and children in the homes are concerned, we are pleased to note that a website in the name of mahilakalyan. up.nic.in has been made in compliance of our order dated 14.2.2012 and particulars of most of the children in the various Government Homes have now been uploaded.

16. We, however, direct the Inspector General of Police, to train the special juvenile welfare officers and other concerned police personnel and officers to access the site when parents /guardians approach the police for tracing out their missing children.

17. However, so far as the Central Government is concerned, we are dissatisfied with the efforts made in developing a web site similar to the aforementioned State Government's web site so far. In this connection it may be noted that in the case of Vishnu Dayal Sharma v. State of U. P. and others, Criminal Misc. Writ Petition No. 15630 of 2006 : 2007 (1) ACR 322, dealing with missing children, this Court had noted as far back as on 22.3.2007 and thereafter again on 10.5.2007 that there was a commitment of the Central Government to develop the web site for tracking missing children by June, 2007. But no such web site has still been developed. The State Government on the other hand has developed two web sites, one for missing children run by the police department and the other, regarding the children/juveniles who are at the institutions, viz. the website Mahilakalyan. up.nic.in above-mentioned.

18. We are distressed to note that in the present affidavit of compliance filed by Shri Satish Kumar Rai, learned counsel for the Union of India on behalf of the Secretary, Ministry of Women and Child Development, Government of India the setting up of web portal is still being envisaged. Uploading of data will then require still more time.

19. We would now like the Secretary, Ministry of Women and Child Development, Government of India, New Delhi to file a personal affidavit concretely mentioning the period when the said web portal is likely to be set up. and how the information regarding missing children is to be uploaded therein, and how communication and linkage is proposed to be brought about with missing and found children in homes" web portals in other States and run by private organizations.

20. Affidavits of compliance of the Central Government and the State Government also mention that District Child Protection Unit/Society have been envisaged under the Integrated Child Protection Scheme (I.C.P.S.) and that the posts including that of the District Child Protection Officer have been envisaged for this purpose. Setting up of the District Child Protection Units which have been given important responsibilities for ensuring that all measures for child protection and rehabilitation are taken. The District Child Protection Societies and the District Child Protection Officers can also be held accountable if there is abuse or neglect of children in any manner.

21. On the next date we would like to be informed about the time period by which the District Child Protection Units are likely to be set up and the personnel to the District Child Protection Units / Societies will be appointed.

22. No information has been furnished in the present affidavit on behalf of the Principal Secretary, Women and Child Development, U. P. and other officials as to when the inspection committees for the Children's Homes, which are envisaged u/s 35 of the Juvenile Justice Act and Rule 63 of the Juvenile Justice Rules are likely to be set up. The said information regarding the time period for setting up the Inspection Committees u/s 35 of the Act should also be furnished on the next listing by the Principal Secretary, Women and Child Development, U. P.

23. So far as the issue of educational attainment by the children are concerned, we find that although some teachers under the B.S.A. have been appointed in the Homes, but the level of learning in the Homes is dismally low as the teachers appear to be only interested in drawing their salaries and are not at all interested in imparting education to the children.

We direct that the children would be tested for education attainment and in case average of education attainment is very poor, proper disciplinary action may be taken against the defaulting teachers.

So far as giving training by the N.G.O. Pratham is concerned, compliance report may also be submitted on the next listing.

24. There is also need for training of staff of the institutions and also to the juvenile police unit and the concerned police officer therein. We were informed that Unicef has also agreed to train the juvenile welfare officers in the concerned special police units.

We would like to be informed about the progress of the training of the said personal in the homes and to the police personnel.

25. As we are of the view that merely repatriating children to their home States is not enough, but it is also important that the children who are transferred to institutions in their home States are kept in proper institutions, and effective steps are taken for locating the parental homes of the children and for tracing out their parents.

We would also like to be informed as to what steps the Ministry of Women and Child Welfare Department and the National Commission for Child Right are taking for ensuring that the children who belong to other states, and are kept in institutions in the home States are properly looked after, after their repatriation to their home States and the efforts that are being made to trace out their home addresses, and their parents and for rehabilitating the children in their parental homes.

26. We are also not very satisfied with the steps taken for improving and expediting the process of intra country and inter-country adoption. We have noted in our earlier order that only 17 children had been adopted even though as per the counter-affidavit dated 23.4.2012 filed on behalf of the Principal Secretary, Women and Child Development. Government of U. P., the Director, Mahila Kalyan, U. P., Lucknow and the Chief Probation Officer as many as 858 persons have applied for adoption in the five Infants Adoption Units at Lucknow, Allahabad, Agra, Mathura and Rampur on 15.4.2012. On the said date only 553 children were entered in these institutions. 238 children were shown as free from adoption by Child Welfare Committees (C.W.Cs.), 226 children in foster care and 66 children were not declared free from adoption by the C.W.C. In the case of 84 children, on account of delay In adoption process. registrations have been withdrawn by prospective adoptive parents. Out of this, again the highest number was of Allahabad, where 66 persons withdrew application for adoption which again goes to show how poorly the placement agency for adoptions in Allahabad, ie., the Shivkuti Bal Shishu Grih, Allahabad, was operating.

In the meantime, after completing 10 years. 38 boys out of which again 32 were from Allahabad had to be transferred to the Homes meant for older children above 10 years in age.

27. So far as girls are concerned, out of 121 such girls, after completing 10 years, such girls had to be transferred to the Children Homes (Girls) out of which. 64 such girls were from Mathura and 31 from Allahabad and 19 from Lucknow, which clearly suggests that honest and sincere efforts are not being made for giving children in adoption.

28. In the visits to the Children Homes for above 10 year olds at Varanasi. and Lucknow and the Children's homes (for Girls) at Allahabad, by one of us. (Hon'ble Amar Saran, J)., we have noted the dismal living condition and the all pervading sense of sorrow, gloom and disillusionment amidst the inmates, as if they have nothing to look forward to. The dearth of learning, and the want of care and attention, even though the said Homes at Varanasi, (where there were 36 staff members for 40 children), with similar figures in Lucknow as well, reveal no inadequacy of staff, but the fault seems to lie in the poor commitment to the welfare of the helpless children by the staff and other officials. This is in marked contrast to some good institutions being run by missionaries and others, which are run by just a handful of persons (and also some rare Government institutions which have dedicated superintendents and staff, and monitoring by good C.W.Cs. and civil society friends) where children appear satisfied and well looked after.

29. It is mentioned in paragraph 7 of the affidavit of compliance filed on behalf of the Secretary. Ministry of Women and Child Development, Government of India, that the Guidelines Governing Adoption of Children, 2011 have been notified in the Gazette on 27.6.2011 by the Central Government to streamline the inter and intra country adoption procedures, and which substitute the earlier guidelines. Delays have been reported at the level of the Child Welfare Committees and during completion of the legal process.

30. It was also pointed out that there is lack of inter-agency coordination, consequently some adoption placement agencies have excessive children and few applicants and vice versa. The Integrated Child Protection Scheme provides for setting up of State Adoption Resource Agency (S.A.R.A.) in every State to coordinate adoption related matters at the State level. State Adoption Resource Agency has been constituted in U. P. For bringing about transparency in the adoption system, the Child Adoption Resource Information and Guidance System (C.A.R.I.N.G.S.) an e-governance initiative on adoption was launched by the Central Government in February, 2010. This web based management and monitoring system provides a transparent and friendly adoption procedure. More than 250 adoption agencies are registered on C.A.R.I.N.G.S. however in the State of U. P., only one agency is registered so far.

31. The Guidelines provide for giving first priority to wait listed parents who are prepared to adopt disadvantaged children. Foreign prospective parents are often readier than Indian parents in adopting girl children or even disadvantaged children. We think that similar priority could also be given to wait listed parents who are prepared to adopt children over 2 years or even over 10 years in age. We would also like to be informed about the steps being taken for speeding up the process of adoption by issuing appropriate circulars to the C.W.Cs. to promptly issue certificates of freedom for adoption, within two months for children below 2 years and 4 months for children above 4 months. The District Courts hearing adoption matters thereafter are also being directed to decide adoption cases on priority basis.

There should be greater use of the schemes for sponsoring children by well to do persons and of giving children in foster care, who could eventually be adopted.

32. We would like an explanation from the State Government why placement and other adoption agencies in the State have not been registered with C.A.R.I.N.G.S. and the period in which all the agencies will be registered with C.A.R.I.N.G.S. What steps are being made to ensure that all the data regarding persons who are seeking adoption and the children who are available for adoption is put up on website of C.A.R.I.N.G.S. and also maintained in proper registers so that records of applications for adoption become transparent, and corruption is checked, and there can be proper rationalization and interagency coordination.

33. Whether any steps are being taken for also giving children over 2 years or even over 10 years for adoption.

In a visit by one of us, (Amar Saran, J.) to the Children's home in Varanasi and Lucknow we have found many children disclosing mobile numbers of their relations and contacts, but nothing was being done to repatriate them and the C.W.Cs. were simply passing routine orders for detaining the children in the institution until further orders, causing the child to lose the possibility of contact with his parent/guardian. This complacency in sending children back home has been admitted in paragraph 10 of the affidavit of compliance filed on behalf of the Principal Secretary, Women and Child Development and the Chief Probation Officer, wherein it is mentioned that even after the addresses of guardians/fathers of 337 children were located, they were still languishing in the Homes. In the case of 67 children, information had even been sent to the police authority to provide District Juvenile Police for the escort of the respective child to his/her parents, but there was no response from the District Police Authority. This shows the insensitivity of the authorities and the police to the plight of this unfortunate children who were separated from their parents.

The Inspector General of Police (Crime), who is present here is directed to ensure that police help is readily and swiftly available whenever demand for the same is made in future and to submit compliance report on the next listing.

34. It is stated by Shri S. K. Rai. learned counsel for the Government of India that funds have been earmarked by the Central Government for Implementing the schemes mentioned under the Integrated Child Protection Scheme inter alia for establishment and maintenance of Homes for various types of children with quality of care as prescribed in the Model Rules under the Act, Specialized Adoption Agencies for adoption of children into loving families and open shelters for community based services for children on the streets and also for providing financial support for statutory structures such as Child Welfare Committees and Juvenile Justice Boards and dedicated service delivery structures at the State and District levels, namely State Child Protection Societies (S.C.P.S.), District Child Protection Unit/Society and State Adoption Resource Agency who are to work

exclusively on child protection issues.

We would like to be informed by both the State and the Central Governments on the next date about the steps and time line that would be followed for implementing the provisions of the Integrated Child Protection Scheme, and the schedule for release of the necessary funds for this purpose.

List this case on 21.5.2012 for submission of further compliance affidavits.

On the said date, we would like the presence of an official higher than the Chief Probation Officer, such as the Director, Mahila Kalyan to be present on behalf of the Principal Secretary, Women and Child Development, as the Chief Probation Officer Was not in a position to acquaint this Court on queries relating to some policy and other important matters raised by this Court. The D.I.G. training who is the officer representing the nodal officer, viz. the I.G. (training) should also attend the Court on the said date.

We would also like A.C.M.-III, Allahabad or some other senior official representing the district administration, in case the C.D.O. is not available, and the Investigating Officer and his supervising Circle Officer to appear on the said date.

We would also like a Senior Official representing the Secretary, Women and Child Development, Government of India and the Registrar, National Commission for Protection of Child Rights, New Delhi or another equally senior officer of the Commission to also be present on the next hearing.

This order applies to both the connected Crl. W.P. (P.I.L.) No. 20737 of 2011, In the Matter of Children in the Government Children's Home, Varanasi and Crl. W.P. (P.I.L. No. 4207 of 2012, Re : In the Matter of Government Children's Home, Shivkuti, Allahabad.

Let copies of this order be forwarded/handed over within a week to the counsel for the State and Central Government, Legal Services Authority, U. P., interveners, D. M., and S.S.P., Allahabad, Principal Secretary (Women and, Child Development) /Director Mahila Kalyan/Chief Probation Officer, U.P., I.G. (Crime), U. P., Secretary, Women and Child Development, Government of India, Registrar, National Commission for Protection of Child Rights, Mrs. Arti Vyas. all District Judges for compliance.