
(2016) 02 JH CK 0068
In the Jharkhand High Court
Case No : W.P (PIL) No. 5406 of 2013

Jago Foundation

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 10-02-2016

Acts Referred:

Citation : (2016) 3 JBCJ 425 : (2016) 2 JCR 578 : (2016) 2 JLJR 121

Hon'ble Judges : Virender Singh, C.J. and Shree Chandrashekhar, J.

Bench : Division Bench

Advocate : A.K. Agarwal Advocate, for the Appellant; Rajesh Kumar, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

1. Initially, the writ petition was filed for a direction upon the respondent-State of Jharkhand to appoint a full-time Child Marriage Prohibition Officer under Section 16(1) of the Prohibition of Child Marriage Act, 2006 and for a direction for framing Rules under Section 19 of the Act. During the pendency of the writ petition, the State Government issued notification dated 11.06.2007 designating the Block Development Officer in each Block as the Child Marriage Prohibition Officer and, vide notification dated 23.04.2015, the Jharkhand Child Marriage Prohibition Rules, 2015 have also been notified.

2. Mr. A.K. Agarwal, the learned counsel for the petitioner-Jago Foundation submits that in view of the incognizable steps taken by the State Government for effective implementation of the Prohibition of Child Marriage Act, 2006, detail guidelines may be issued by the Court. Referring to the counter affidavit dated 20.08.2014 filed on behalf of the respondent-State Government, the learned counsel for the petitioner points out that except, organising a State Level Consultation on 06.09.2012, the respondent-State has not taken any step in the matter and, in fact, even the details of the aforesaid State Level Consultation have not been brought on record. It is stated that in the last five years, hundreds of child marriages in violation of the prohibition under the 2006 Act have been

performed in the State of Jharkhand however, unmindful of their statutory duty the respondents have not taken proper and effective step in the matter.

3. Without delving deep in the history, we notice that amongst Hindus, child marriage was prevalent in abundance and such marriage was even recognised as valid. The ill-effect of the child marriage was noticed even during the colonial period and there was no mechanism to discourage child marriages. The Child Marriage Restrain Act, 1929 was enacted to restrain child marriages and to carry forward the reformist movement for eradicating the evil of child marriage. However, over a period it was felt that the provisions of 1929 Act should be made more effective and to effectively prevent the evil practise of child marriages in the country, stringent punishment should be provided. The National Commission for Women in its annual report for the year 1995-96 recommended that the Government should appoint the Child Marriage Prevention Officers immediately. The Commission also recommended that, (i) the punishment provided under the Act should be more stringent; (ii) marriages performed in contravention of the Act should be made void; and (iii) the offences under the Act should be made cognisable. The National Human Rights Commission also undertook a comprehensive review of the existing Act and made recommendations for comprehensive amendment in its annual report 2001-02. Accepting the recommendations and after consulting the State Governments and the Union Territories' Administrations, the Central Government repealed the 1929 Act and enacted the Prohibition of Child Marriage Act, 2006.

4. Rule 4 of the "Jharkhand Child Marriage Prohibition Rules, 2015" provides that awareness through different media and incentive for active role played by the members of civil society, PRI and socially concerned citizen are few steps which have to be taken. Rule 4(3) provides that the District Magistrate may pass an order under sub-section (5) of Section 13 of the Act directing all or any police station to keep vigil at religious and public places. The rule also enjoins the District Magistrate to take appropriate action to check and prevent the solemnization of child marriages especially, during special occasions when mass child marriages are solemnized.

5. A report prepared by the United Nations Population Fund (UNPF) discloses that in child marriage the Jharkhand is among the top three States in the country. According to Annual Health Survey of 2010-11, Jharkhand is only behind Bihar and Rajasthan where 51.8% girls below 18 years were married. The National Family and Health Survey-III Report of 2005-06 indicates that 63.2% women in Jharkhand got married before 18 years; the percentage however, fell to 55.7% in 2007-08 Survey-III report.

6. In the aforesaid facts, considering the indifferent response of the respondents-authorities, we hereby issue the following directions:

(i) State Government shall appoint Child Prohibition Officer for each District for entrusting him with the duties and liabilities under Jharkhand Child Marriage

Prohibition Rules, 2015;

(ii) Child Welfare Committee constituted under Section 27 of the Juvenile Justice (Care & Protection of Child) Act, 2015 for every District shall coordinate with Child Marriage Prohibition Officer for effective implementation of the Prohibition of Child Marriage Act, 2006 and for protecting the best interest of the child;

(iii) A complete mechanism shall be evolved by District Magistrates of each District of the State for entertaining the complaints and action thereon in terms of Jharkhand Child Marriage Prohibition Rules, 2015;

(iv) District Magistrate shall pass necessary directions under Sub Section (5) of Section 13 to all the Police Stations falling within his jurisdiction to keep vision at religious and public places and also to take appropriate action to check and prevent the solemnization of child marriages, especially during special occasions when mass child marriages are solemnized;

(v) Keeping in view the sensitivity of the issue, District Magistrate, in terms of Rule 4 of Jharkhand Child Marriage Prohibition Rules, 2015 shall ensure that awareness through different media is made in this regard involving members of civil society/PRI and socially concerned citizen by calling them and providing incentive for their active role in bringing the matter to the concerned authority;

(vi) Jharkhand State Legal Services Authority (for short "JHALSA") shall also step in and ensure that it reaches out to the masses by organising awareness camps at different levels involving District Legal Services Authority (DLSA), Taluk Legal Services Authority (TLSA) and the District Administration.

7. Registry is directed to supply a copy of the order to the Member Secretary, JHALSA for perusal by Hon''ble the Executive Chairperson of JHALSA. A copy of the order shall also be communicated to the Chief Secretary of the State for its compliance.

8. Disposed of.