
(2003) 08 GUJ CK 0041

In the Gujarat High Court

Case No : Special Civil Application No. 10770 of 2003

Lok Adhikar Sangh

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 13-08-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 39

Citation : (2003) 3 GLR 2046

Hon'ble Judges : J.N. Bhatt, Acting C.J.; A.L. Dave, J

Bench : Division Bench

Advocate : A.J. Yagnik, for the Appellant; Harsha Devani, A.G.P. for Respondent Nos. 1 to 4 and D.N. Patel, Standing Counsel, for the Respondent

Judgement

J. N. Bhatt, Acting C.J.

1. Rule, service of which is waived by learned A.G.P. Ms. Harsha Devani for respondent Nos. 1 to 4 whereas, learned Senior Standing Counsel Mr. D.N. Patel waives service for respondent No. 5.

2. The petitioner, by invocation of provisions of Article 226 of the Constitution of India, has sought direction from this Court that respondent No. 1 be directed to frame rules under the Juvenile Justice (Care and Protection of Children) Act, 2000 and bring them into operation, as expeditiously as possible.

3. The Juvenile Justice Act, 1986 (LIII of 1986) is designed and provided for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles. It also provides the mechanism for adjudication of certain matters relating to and disposition of delinquent juveniles. It cannot be gainsaid that the legislative mechanism and statutory provisions in the Act as well as subsequently in the Juvenile Justice (Care and Protection of Children) Act, 2000 unambiguously indicate that much greater attention and welfare measures are required to be taken for the children who are found in situations of social maladjustment, neglected or delinquency. Obviously, the regular and traditional

justice delivery system cannot be said to be fully adequate and suitable for being applied to the juveniles. The realm of juvenile justice has many dimensions and dynamics which are required separate serious care and consideration for that purposes, it is necessary to have uniform juvenile justice system throughout the country which should make adequate provision for dealing with all aspects in this changing social, cultural and economic situation in the country. Equally true is the fact that larger involvement of informal systems and community-based welfare agencies are necessary for the care, protection, treatment, development and rehabilitation and proliferations of the interest of such juveniles. It is in this context, the Parliament in its wisdom has enacted two important legislations : (1) Juvenile Justice Act, 1986, and (2) Juvenile Justice (Care and Protection of Children) Act, 2000.

4. The Juvenile Justice Act has 63 Sections and it is divided into seven Chapters. Section 68 of the Juvenile Justice (Care and Protection of Children) Act, 2000 authorises the State Government to make rules so that objectives and the welfare measures provided for the juveniles could be carried out. The Department of Social Justice and Empowerment has also prepared model rules. However, the contention of the petitioner is that the State of Gujarat has not so far framed Rules u/s 68 of the Juvenile Justice (Care and Protection of Children) Act, 2000. Therefore, by invocation of provisions of Article 226 of the Constitution of India, directions from this Court are sought against the State of Gujarat. There is no dispute about the fact that so far the respondent No. 1 has not finalised the Rules. Draft rules under the Juvenile Justice (Care and Protection of Children) Act, 2000 have been published in exercise of powers conferred by Section 68 of this Act, but they are not finalised. It is in this context, the petitioner has sought directions against the respondent No. 1-State of Gujarat before this Court by filing this petition under Article 226.

5. The respondent No. 5-Union of India has already framed model Juvenile Justice (Care and Protection of Children) Rules, 2001 and which have been brought into force. There is no dispute about the fact that the model rules, which have been framed by the respondent No. 5-Union of India, would be applicable until the new rules are framed by the State Government. In this way, at present the model rules of Juvenile Justice (Care and Protection of Children) Act, 2000 are in force in the State of Gujarat. However, the State of Gujarat has not finalised such rules of its own and has so far not brought into operation. The contention of the petitioner cannot be easily brushed aside that the model standing rules prepared by the Union of India, do not fulfil the regional and geographical requirements. It undoubtedly has left those juveniles and children who are being governed under the new Act and are in State custody to face several difficulties depriving them of certain specific rights conferred upon them by the new Act.

6. Surprisingly, the draft rules are already prepared by the State of Gujarat in the year, 2001 and it is stated by the respondent No. 1 that a draft of the

proposed rules has already been published u/s 23 of the General Clause Act, 1897 for information with a view to inviting objections and suggestions from the concerned individuals and institutions. The draft Rules under Juvenile Justice (Care and Protection of Children) Act, 2000 are also placed on record of this petition. The respondent No. 1-State of Gujarat has, despite inviting for public objections and suggestions such draft rules as early as in 1997 has yet not finalised and put into force and it is in this context, seeking of directions by the petitioner is quite just and appreciable.

7. We are also tempted to refer here that the Hon''ble Apex Court has made pertinent observations in Supreme Court Legal Aid Committee Vs. Union of India (UOI) and Others, . The relevant observations in Para 4 of the judgment of the Hon''ble Supreme Court may be reproduced so as to highlight and bring home the issue involved in this petition.

"4. Section 62 of the Act empowers the State Governments to make rules to carry out the purposes of the Act. The Scheme of the Act is such that it cannot be properly enforced unless appropriate rules are framed and brought into force. Counsels appearing before us for the different States are not in a position to make a definite statement that the States they represent have framed rules and brought them into force. We, therefore, direct that the District Judges while making their reports shall also indicate whether rules have been framed and whether such rules are already in force. Counsels appearing before us are also directed to inform the Registry by written memorandum about the framing of rules and bringing them into force in the respective States. If such rules have not been framed in any State, by this order, we direct such State or States to frame the same on or before 7th April, 1989 and to bring them into force without any further delay thereafter."

In our opinion, bearing in mind the design and desideratum of the provisions of Juvenile Justice Act, 1986 as well as Juvenile Justice (Care and Protection of Children) Act, 2000 and the directions contained in the decision of the Hon''ble Supreme Court in Supreme Court Legal Aid Committee (supra) and for the larger interest of Juveniles and for their utmost welfare and better treatment, the statutory obligation on the part of the respondent-State of Gujarat, to frame the rules to carry out the purposes of such provisions are quite justified, and we therefore, direct the respondent No. 1-State of Gujarat to seriously take up the issue of making rules for welfare of juveniles as statutorily obliged as expeditiously as possible and preferably not later than the end of November, 2003. We hope and trust that the benign and benevolent, serious and sensitive issue of dispensation of juvenile justice will be taken up seriously, more so when in a State like Gujarat, where series of calamities, natural and man-made, have contributed to the emergence of expeditious redress to the large number of juveniles, who becomes victims in the recent past and the same shall not be a cry in the wilderness.

8. Before parting, we may place on record that learned A.G.P. Ms, Devani, while

appearing for respondents Nos. 1 to 4 has stated with candour before us that the concerned authorities shall take appropriate expeditious action.

9. This petition accordingly shall stand partly succeeded. Rule is made absolute to the aforesaid extent only.

10. The petitioner's attempt in bringing this petition for early implementation of the statutory provisions of getting juvenile justice rules prepared and published and enforces is also really appreciable.