

(2012) 03 MAD CK 0040

In the Madras High Court

Case No : Writ Petition (MD) No's. 8355 and 12572 of 2011 and M.P. (MD) No. 1 of 2011

M. Veersamy

APPELLANT

Vs

State of Tamilnadu and others

RESPONDENT

Date of Decision : 07-03-2012

Acts Referred:

Commission for Protection of Child Rights Act, 2005 — Section 10, 13, 14, 15, 15(3)
Criminal Procedure Code, 1973 (CrPC) — Section 161(3), 327
Penal Code, 1860 (IPC) — Section 34, 354, 377, 506, 506(i)
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(xi)

Citation : (2012) 3 CTC 641 : (2012) 1 LW(Cri) 554

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : U. Nirmala Rani in both writ petitions, for the Appellant; M. Govindan, Spl.G.P. for R1 to R4, R6, R9 in W.P.(MD) No. 8355 of 2011 and for R1 to R6 in WP(MD) No. 12572 of 2011, Mr. S. Xavier Rajini for R-5 in WP(MD) No. 8355 of 2011 and for R-7 in WP(MD) No. 12572 of 2011, Mrs. J. Anandhavalli for R-7 in WP(MD) No. 8355 of 2011 and for R-8 in WP(MD) No. 12572 of 2011, Mr. K. Samidurai for R-8 in WP(MD) No. 8355 of 2011 and R-9 in WP(MD) No. 12572 of 2011 and Mr. Prabhu Rajadurai for R-10 in WP(MD) No. 8355 of 2011, for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—PROLOGUE:

Child Sexual Abuse happens because the system of silence around the act perpetuates it.

Child Sexual Abuse represses children; the repression of children is unlikely to create a flourishing society, economically, emotionally, equally or spiritually

["Bitter Chocolate" - Child Sexual Abuse in India by Pinki Virani - Penguin Books - 2000]

Indian Scenario:

1.1. In order to examine the incidence of sexual abuse among child respondents, the questionnaire was administered to 12,447 children belonging

to the five different categories including children in family environment, children in schools, children in institutions, children at work and street

children. The study looked into four severe forms and five other forms of sexual abuse.

Out of the total child respondents, 53.22% reported having faced one or more forms of sexual abuse that included severe and other forms. Among

them 52.94% were boys and 47.06% girls. The age wise distribution of children reporting sexual abuse in one or more forms showed that though

the abuse started at the age of 5 years, it gained momentum 10 years onward, peaking at 12 to 15 years and then starting to decline. This means

that children in the teenage years are most vulnerable. [Sexual Abuse of Children : (para 6.2)]

1.2. Out of the total child respondents, 20.90% were subjected to severe forms of sexual abuse that included sexual assault, making the child

fondle private parts, making the child exhibit private body parts and being photographed in the nude. Out of these 57.30% were boys and 42.70%

were girls. Over one fifth of these children faced more than three forms of sexual abuse. Amongst these sexually abused children, 39.58% were in

the age group of 5-12 years, 35.59% in the age group of 15-18 years and 24.83% in the age group of 13-14 years. [Severe forms of sexual

abuse :(para 6.2.1)]

1.3. From the data available, an analysis of severe forms of sexual abuse arranged age-wise revealed that sexual abuse crossed the 5% mark from

the age of 10 years, peaked at 15 years and by the time the child reached 18 years, went below the 5% mark. 73% of the total incidence of child

sexual abuse was reported among children between 11 and 18 years of age. Therefore the pre-adolescent to the adolescent child seems to be

most at risk. It is also disturbing to note that children between 6 and 10 years also face severe forms of sexual abuse.

[Study on Child Abuse: India 2007: Ministry of Women and Child Development,

Government of India : Pages 74, 75 and 76]

It is with this backdrop, we must proceed to hear the case.

2. Cries of Child Victims :

2.1. An unfortunate parent of a girl child studying 7th standard in the Government High School at Podumbu, a village near Madurai, is before this court in these two writ petitions. Both writ petitions raise a question of serious concern regarding a rampant child sex abuse allegedly done by a

person who is no other than the Headmaster of the School necessitating corrective actions to be taken by this Court.

2.2. In the first writ petition, the petitioner sought for a direction to the Superintendent of Police, Madurai, the third respondent herein, to constitute

a special investigation team led by a gender sensitive police officer preferably a female officer and to transfer the investigation in Crime No.

331/2011 from the Station House Officer, Koodalnagar Police Station, Madurai for effective investigation and to adhere to the guidelines

prescribed by the Supreme Court in Delhi Domestic Working Women's Forum Vs. Union of India and Sakshi Vs. Union of India and also to

direct the District Collector, Madurai to take necessary steps to restore confidence among girl students of the Government High School,

Podhumbu by involving the Child Welfare Committee.

2.3. When the writ petition came up on 27.7.2011, this court on finding that the Headmaster of the school was placed under suspension, had

directed the Chief Educational Officer, Madurai to be added as sixth respondent in the writ petition. Three other persons along with the Chief

Educational Officer also got impleaded including the Director of Social Welfare, Chennai. Notice was directed to be taken by the learned Special

Government Pleader for respondents 1 to 4 and the newly added sixth respondent. Private notice was permitted to the fifth respondent who is

none other than the Headmaster of the School, who was placed under suspension. It was also observed that the question of transfer of

investigation will take place only after getting a report from the Child Welfare Committee, Madurai. Thereafter, it was directed that the learned

Special Government Pleader should hand over the material papers to the Child Welfare Committee for further action. One Ms. Maria Glory,

Inspector of Police, Thirumangalam police station, specially designated by the

Superintendent of Police for assisting the investigation, was also directed to assist the Committee. The Committee will also be assisted by Ms. U. Nirmala Rani, who was also the counsel for the petitioner, to form part of the fact finding committee which went into the issue at the first instance. The committee was also directed to take the assistance of a Child Psychologist so as to ensure that the children are not exposed to any forms of trauma. The committee was also directed to file a report to this court on or before 5.8.2011. The Home Secretary, Government of Tamil Nadu was also directed to file a report as to whether a State Commission in terms of the Commission for Protection of Child Rights Act (Central Act 4/06) has been constituted. The first respondent was also directed to file a counter affidavit.

2.4. When the matter came up on 05.08.2011, the report of the Child Welfare Committee was received by the court in a sealed cover. Thereafter the matter was adjourned to 10.8.2011. On that day, the fifth respondent Headmaster through his counsel sought for time to file a counter affidavit. On 07.09.2011, it was informed to this court that one Suryakala, Inspector of Police, All Women Police Station, Samayanallur was in-charge of the investigation and the fifth respondent Headmaster had surrendered before the criminal court. The court had also permitted police custody of a person for a day. The officer in-charge was directed to independently investigate and to take all necessary assistance including a child Psychologist if necessary.

3. Call for Compensation to victims :

3.1. Even during the pendency of these proceedings, the very same parent filed the second writ petition seeking for a direction to grant compensation of Rs. 2 lakhs to the writ petitioner's daughter who was the victim of child sex abuse perpetrated by the Headmaster of the School and for implementing the constitutional safeguards and guidelines by the Apex Court for speedy trial, victim protection, legal assistance and also the guidelines for conducting trial in Crime No. 331/2011 without causing any embarrassing to the victim children.

3.2. That writ petition was admitted on 04.11.2011. Subsequently, it was adjourned for filing counter. On 07.12.2011, Mr. M. Govindan, learned Special Government Pleader took notice for respondents 1 to 5 and Mr. Xavier

Rajini took notice for the Headmaster, who was arraigned as 7th respondent in the writ petition. The matter was directed to be posted along with the previous writ petition, i.e., W.P.(MD) No. 8355 of 2011. In view of the same, both writ petitions were directed to be heard together.

3.3. On 02.12.2011, this court found that the affidavit filed by the Investigating Officer was not satisfactory and enough concern was not shown for the orders passed by this court. On finding no final report has been filed by the Station Investigating Officer, this court had granted an interim stay for further investigation. The official respondents were also directed to file a counter affidavit. The Chief Educational Officer, Madurai was also directed to file a counter affidavit. Subsequently, the matter was called on 10.12.2011 and thereafter adjourned to 12.12.2011. On that day, the Investigating Officer appointed by the Superintendent of Police was present. She also produced the case files, which were directed to be kept under a sealed cover by the Deputy Registrar (Judicial) under his custody and the matter was directed to be called on 16.12.2011 for orders. On 16.12.2011, the matter was heard at length. One U. Vasuki, the General Secretary of All India Democratic Women Association filed an impleading petition in M.P.(MD) No. 4 of 2011 seeking permission of the court to implead herself in the writ petition. That was also ordered by this court on 16.12.2011.

4. Abuses in abundance :

4.1. The petitioner's wife V. Deepa filed a complaint with the Inspector of Police, Koodalnagar Police Station on 13.7.2011 alleging that her daughter studying in 7th standard (name is not furnished here in view of sensitive nature of the case) and other girl children were sexually abused by the Headmaster of the school. He used to touch their breast and asking the girl children to hold his penis. He used to take pictures in his camera and undressed the children privately. The children who protested were threatened by him by stating that he will fail them in the examinations. Many a times, he had inflicted corporal punishment leading to blood injuries. Because of this, her daughter was afraid to go to school. During the night time, she was blabbering in her sleep and also had not taken her food properly. One relative of the Headmaster by name Amali Rosi and a teacher by name Shanmuga Kumarasamy were also helping him (arraigned as R7 and R8

in the writ petition). Therefore, appropriate action was sought for.

4.2. Similar complaints were sent by other parents including Panchu, W/o N. Chinnaveeran, North Street, Podumbu, Hemalatha, W/o.

Mahendran, Podumbu village, M. Kalavathy, Chellamanai Street, Podumbu and Makkachi, North Street, Podumbu. Apart from these parents,

one S.K. Ponnuthai, the District Secretary of All India Democratic Women's Association (AIDWA), Madurai Rural District also gave a complaint

on the same day. She came to know that there were instances where the children passed out, married and went away from the village revealed

about them being subjected to such treatments in the past. The Woman Sub Inspector of Police, Koodalpudur Police Station filed an FIR in FIR

No. 331 of 2011 against the Headmaster Arockiasamy and teachers Amalirosi and Shanmuga Kumarasamy of the same High School. The

complaint given by one Panchu, W/o. Chinnaveeran was registered under Sections 354, 506(i) of IPC read with Section 4 of the Harassment of

Women Act.

5. Facts confirmed by the fact finding committee:

5.1. On coming to know about the widespread sexual abuse perpetrated in the school by the Headmaster, a fact finding team was constituted

comprising of the representatives of the women's organization, certain Non Governmental Organizations including a Medical Doctor, two

Advocates of the Madurai Bench of the Madras High Court. The committee was headed by Ms. U. Nirmala Rani, present counsel for the

petitioner. They had visited the village and submitted the report on 22.7.2011. The gist of the report was as follows:

5.2. Podhumbu is a small village coming under the Madurai West Taluk. It comprises of around 3000 families, most of them were poor agricultural

coolies. The village has got a co-education high school, in which around 500 children are studying. The school has got 4 male teachers and 6

female teachers. The Headmaster Arockiasamy was functioning in the school since 2009. The committee had visited the village on 18.7.2011 and

interviewed around 30 girl children and their parents. They also went to the dalit colony of the village. The girl children who passed out from the

school were also enquired by them. Apart from that, political leaders, AIDWA

representatives and woman self help groups were also interviewed.

5.3. The committee found that the said Arockiasamy was abusing the girl children for over three years. When some of the girl children were not

keeping well, they used to go to the rest room. The said Arockiasamy used to go inside the room and used to press their breast as if putting a

cross on them so as to get well soon. He used to call the girl children to his room for washing his tiffin box and used to make them to sit on his lap

after unzipping his pant's ply. He used to insert his hand inside the dress of the children in the name of forecasting their future. The girl children

were made to clean his room. He used to take pictures in his cell phone in different angles when they bend their bodies while at work. Further, he

used to bring the girl children to his room and give a bear hug. Likewise, they suffered innumerable abuses at the hands of the said Headmaster.

The committee noted the experiences faced by several children. Due to the sensitivity of the issue, they did not name the children in their report.

The committee also found that when children made complaints to other teachers, they casually stated that these incidents were reported to them

before and there was a long delay in making the complaints. They also added as teachers working under the headmaster, they could have hardly

done anything about it.

5.4. It was also found that when students complained to Amala Rose (who is none other than the niece of the Headmaster Arockiasamy), she told

then that they should adjust with the Headmaster. If they go and tell outside, their future will be spoiled. The fact finding committee found that

between 2009-2011, around 100 girl children were affected by the sexual abuses made by the headmaster. He had also taken their pictures in

wrong angles when the children cleaning the floor and doing Yoga. He also touched the inner part of the children. Unmindful of their age, he had

satisfied his lust by hugging them and by doing bizarre acts. Even in the presence of the other students, he had committed such acts. The children

who went to the rest room were also not spared by him. He threatened them that he would fail them in the examination and write adverse report in

the transfer certificate. Even a girl child who came along with her blind grand mother for school admission was sexually abused. Some girl children

unable to bear his abuses had left the school. Most of them were psychologically

affected by his conduct. Even some children were unable to understand the impact of his activities. The teacher Amala Rose, who was actively in connivance with Arockiasamy and the other teachers who were in the know of things, were unable to protect the children from the harassment done by the headmaster. The children have gone through untold miseries and their experiences were similar to that of a prison camp. One boy who was not good in study was kept as a helper by the Headmaster. He had also inflicted corporal punishments to the extent of breaking their hands.

5.5. The committee also recommended the arrest of the headmaster and also to investigate the matter under the supervision "of a Deputy

Superintendent of Police (woman). The children should be examined at their own houses and should not be brought to the police station. In order

to know their trauma and considering the sensitivity, an enquiry should take place. It should not be conducted like a regular criminal investigation.

When the investigation is on, one woman lawyer and a representative of a women's organization should be present. The State Government should

appoint a Special Public Prosecutor, who is a woman. The enquiry should be completed within six months. The identities of the victim children

should not be revealed to outside world. If necessary, the investigation should be conducted through video conferencing. Departmental actions

should also be taken against the Headmaster Arockiasamy and teacher Amali Rose. The investigation must inspire the confidence of the local

people and the girl children. All the teachers working in the school should be immediately transferred out of the school and new female teachers

should be appointed. The children who were affected by sexual abuses, must be suitably compensated and appropriate counseling should be given.

Apart from these, the committee also made general recommendations for future guidance. On the basis of the report, the first writ petition was filed

by a parent of a girl child as noted already.

6. Change of Investigation Agency sought:

6.1. In the second writ petition, the same petitioner has further stated that the Child Welfare Committee which is a statutory body has also probed

the very same incident and filed a report more or less supporting the findings of the fact finding team lead by U. Nirmala Rani. The investigation

was given to one Inspector of Police Ms. Maria Glory. The officers of the All women Police Station have also tampered the investigation. The said

Maria Glory was relieved of the investigation as she had insensitively handled the child witnesses. It has now been entrusted to an another

investigating officer. The victims and their parents were unable to withstand the hazards they faced in bringing out the incident. Therefore, the court

should monitor the case. The victim girl children must be given an appropriate assistance including financial assistance. The report of the Child

Welfare Committee must be given due importance. Apart from grant of compensation to the girl children who were abused by the headmaster,

necessary constitutional safeguards should be made.

7. Denial by defendants:

7.1. In the counter affidavit, dated Nil (September, 2011) filed by the first respondent State, with reference to formation of Child Welfare

Committee in terms of Commission for Protection of Child Right Act, 2005, it was averred in paragraphs 2 and 3 as follows:

2. It is submitted that regarding the direction of the Hon"ble High Court that is to file a report to Hon"ble High Court as to whether a State

Commission in terms of Commission for protection of Child Right Act 2005, has been constituted, it is humbly submitted that the subject matter for

constitution of State Commission in terms of Commission for Protection of Child Right Act 2005 is dealt by the Social Welfare and Nutritious

Meal Programme Department in the Government of Tamil Nadu and that department also has stated that the proposal to constitute State

Commission for Protection of Child Rights is under consideration of the Government in Social Welfare and Nutritious Meal Programme

Department.

3. In the above circumstances, it is reported that this Hon"ble Court may be pleased to not that the Government of Tamil Nadu is pursuing the

matter to constitute State Commission for protection of Child Rights under Child Right Act 2005.

7.2. In this case since serious allegations were made against the headmaster of the school Arockiasamy and teachers Amalirose and Shanmuga

Kumarasamy, counter affidavits have been filed by those two teachers. The 7th respondent Amalirose in her counter affidavit, dated 14.12.2011,

apart from denying the events, had stated that her parents, her husband, sister, brother, brother-in-law and sister-in-law are also working as

teachers in various schools. The problems faced by the students if they gave it in writing including their problem at home, are being attended to by

giving counselling to them. The allegations were made with motive. It is campaigned and engineered by a member of one political party. She has

been falsely implicated. She had also stated that she was transferred to an another school in M. Kallupatti which is 50 Kms away. In paragraph 8

she had stated that even if such incident had happened, she was not aware of any such incident and that no victim girl has ever approached her

seeking for help.

7.3. The 8th respondent Shanmuga Kumarasamy, an another teacher whose name was also figured in the FIR and who was also transferred from

the present station to Severakkottai Government High School, in his counter affidavit, dated 14.12.2011, had stated that he has been falsely

implicated. To his knowledge, no such incident had happened. Even assuming such incident had happened, he was not aware of the same.

7.4. Mr. S. Xavier Rajini, learned counsel appearing for Arockiasamy, who was the fifth respondent, sought time to file counter affidavit. This

Court impressed upon him that if any counter affidavit is filed by him, it was likely to be used against him in the criminal trial followed by the

criminal investigation. Therefore, it was for him to advise his client accordingly. Thereafter, the counsel for the petitioner made oral submissions

denying the incident and chose not to file any counter affidavit.

7.5. In the counter affidavit filed by the Chief Educational Officer, Madurai, dated 09.12.2011 after admitting various incidents that took place in

the Podhumbu village, he had stated that out of 261 students studying in the school, 107 are girl children and there was also local demonstration in

front of the school. One Gnanagowri, who was the District Elementary Educational Officer, was deputed to enquire into the incident. During the

enquiry made by her, she found prima facie evidence of misbehaviour against the headmaster. Thereafter, she sent a report dated 13.7.2011

finding that sexual misbehaviour of the headmaster was found true. The proceedings were forwarded to the Director of School Education. The

Director of School Education had placed the said Arockiasamy under suspension

under the relevant Government Rules. He was not available in the village, but the order was pasted on his door with the help of the Village Administrative Officer. The other departmental action has also been taken against the staff. The teachers Amali Rose and Shanmuga Kumararasamy were also transferred on 02.09.2011 to far away places, so that victim girl children will be assured that they will not be harassed. The school has got only newly appointed teachers who are taking classes to 6th to 10th standards. The girl students who were studying in the school at that time were also given counselling by the Doctors of the Government Rajaji Hospital, Madurai. Now, the girl students have come out of the bad incident and the newly appointed teachers are trying their best to bring the girl children to normal life.

7.6. In the counter affidavit filed by the Superintendent of Police, Madurai District Mr. Asra Garg, I.P.S., he had averred in paragraphs 2 and 3 as follows:

2. I submit that on 13.07.2011 the petitioner and some other parents of girl students studying in Higher Secondary School of Pothumbu picketed the road demanding action against the Head Master of this School Tr. Arockiasamy for alleged sexual harassment of girl children at around 11.30 hours. It is submitted that the neither the petitioner nor any other parent of affected children had not given any complaint before resorting to road picketing. Subsequently, after the issue came to my notice I instructed the concerned Station House Officer, Koodalpudur PS to look into the issue immediately. Hence a case in Koodalpudur PS. Cr. No. 331/2011 u/s 354, 506 IPC and 4 of Tamil Nadu Prohibition of Harassment of Women Act 1998 was registered on 13.07.2011 itself on the complaint of Tmt. Panju, W/o Chinnaveeran (mother of student Irulayee @Aarthu).

3. It is humbly submitted that whereas the allegation made in Paragraph VI of the affidavit that the petitioner and his associates met myself viz., 3rd respondent, Superintendent of Police, Madurai District and explained about the issue and that the 3rd respondent was apathetic and simply instructed them to meet the local DSP is not based on logic and is nothing but a creation of their own mind. If any petitioner comes to meet me, after listening to the problem I will always tell them to meet the concerned jurisdiction officers. However in this case since the issue seemed more

serious to me I referred them to meet the Dy. Supdt. Of Police and not to the Police Station. It is also humbly stated that Police bandobust was

provided as per the request of the victims to instill confidence among them. Moreover in this regard, Mrs. Maria Glory, Inspector of Police,

AWPS Thirumangalam being a lady officer was specially designated by me for investigating this case.

7.7. A copy of the order dated 28.08.2011 transferring the investigating officer and nominating one Suriyakala, Inspector of Police, AWPS,

Samayanallur, as in-charge of the investigation was also produced.

7.8. After the conclusion of the arguments, the learned counsel for the petitioner mentioned to this court that the SC/ST (Prevention of Atrocities)

Rules were amended by the Central Government and it was gazetted on 23.12.2011. The compensation in respect of Entry 11 is increased to Rs.

1,20,000/-.

8. Child Welfare Committee steps in :

8.1. The report submitted by the Child Welfare Committee, Madurai and Theni Districts was produced to this court pursuant to the interim order

passed by this Court. The committee found that the children were psychologically affected and they were tensed when they described the conduct

of the headmaster Arockiasamy. They were having the feeling of shame. Their self esteem was low. They were suffering from inferiority complex.

They were crying in silence. Many a time, in order to avoid others noticing, they were crying in the nights. Some children were suppressing their

sorrow as they did not have either of the parents. When they start for the school, the anxiety about what was going to happen to them that day is

writ large on then-faces. When Arockiasamy was misbehaving with them, they were also anxious as to any one else had noticed them. Most of the

time, they were found in self isolation not mixing up with other children. There was lack of concentration in their studies and fear of sharing these

events either in the school or in the house. They were also afraid that even if the parents came to know, they may stop them from attending the

school.

8.2. The committee also found that one girl who was suffering due to pressing of her breasts by Arockiasamy unable to tell her aunt and went

through untold sufferings. Their facial expressions and body language clearly

showed that they were subjected to sexual abuses and mental agony.

Even if they were ignorant due to tender age, it will affect them in their married life. It may be likely that in future the boys who had seen these acts

may indulge in such perverted acts. Some girl children belonged to poor SC community, either they had no parents or they were with single parent,

they alone were picked up by Arockiasamy to satisfy his lust.

8.3. The girl children also gave it in writing by stating that such incidents should not happen to any girl children. The teachers were also interviewed

by the committee. The committee found that there was long gap between the teachers and students. Some of the teachers have reacted militantly

which showed that these teachers continuance in the said school is not good for the mental health of the children. Even the Office Assistant should

also be removed and transferred to some other school. The teachers could not give satisfactory reply to the long standing complaints of the

students. The committee also made other recommendations for improving the school and to take preventive measures. This report of the Child

Welfare Committee was supported by the report submitted by the Psychologist attached to the Madurai Social Science College.

9. Tardy Investigation:

9.1. In this context, the investigation file produced by the police showed that already statements have been recorded from several girl children and

their parents u/s 161(3) of Cr.P.C. Subsequent to take over of investigation by the new Investigating Officer, only attempt was made to secure

Arockiasamy who moved this court for getting bail. His mobile phone was also seized and has been sent for forensic studies.

10. In the light of these backgrounds, it has to be seen whether the reliefs claimed by the petitioner can be granted by this Court?

11. Change of investigation Agency :

11.1. In this case, admittedly, number of school children belonged to SC community were sexually exploited by the headmaster of the school.

Admittedly, the complaints of the children and their parents were if found proved would attract Section 3(1)(xi) and (xii) of the SC and ST

(Prevention of Atrocities) Act, 1989. Therefore, in such circumstances, the investigation can be done by an officer not below the rank of the

Deputy Superintendent of Police. Therefore, necessarily the investigation has to

be done by an officer not below the rank of the Deputy

Superintendent of Police. In this case, it should be done by a woman police officer who is not below the rank of the Deputy Superintendent of Police.

11.2. In this context, it is necessary to refer to a judgment of the Supreme Court in State of Punjab Vs. Hardial Singh and Others, . In paragraphs 2 and 7, the Supreme Court had observed as follows:

2. The stand taken was that as per Rule 7 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 (in short "the Rules") framed under the Act, investigation had to be undertaken by an officer not below the rank of Deputy Superintendent of Police specially appointed by the State Government/Director General of Police/ Superintendent of Police after taking into account his experience, sense of ability and justice to perceive the implication of the case and investigate it along with right lines within the shortest possible time.

7. As is rightly contended by learned counsel for the appellant State the order is very confusing. Be that as it may the only question is whether investigation done by the police officer specifically authorised to do so in terms of Rule 7 is illegal qua the offences not relatable to any provision under the Act. Recently, the controversy of the present nature was decided by this Court in State of M.P. v. Chunnilall.

11.3. Though the Parliament has enacted the National Commission for Protection of Child Rights Act, 2005 (Act 4 of 2006), the State

Government is yet to form a full-fledged committed as informed to this court by the first respondent as referred to above. In the present case, such

commission if appointed is entitled to enquire into the violation of child right and to recommend initiation of proceedings in such cases and also

examine all the factors that inhibit the enjoyment of rights of children affected by various factors including exploitation, torture and to recommend

appropriate remedial measures. In view of the non functioning of the commission, no direction can be given.

11.4. The Supreme Court in Baby Manji Yamada Vs. Union of India (UOI) and Another, referred to the power of the commission and in paragraphs 7 and 17, it had observed as follows:

7. We need not go into the locus standi of Respondent 3 and/or whether bona

fides are involved or not. It is to be noted that the Commissions for Protection of Child Rights Act, 2005 (hereinafter for short "the Act") has been enacted for the constitution of a National Commission and the State Commissions for protection of child rights and children's courts for providing speedy trial of offences against children or of violation of child rights and for matters connected therewith or incidental thereto. Section 13 which appears in Chapter III of the Act is of considerable importance. The same reads as follows:

13. Functions of Commission.--(1) The Commission shall perform all or any of the following functions, namely:

(a) and (b) omitted

(c) inquire into violation of child rights and recommend initiation of proceedings in such cases;

(d) examine all factors that inhibit the enjoyment of rights of children affected by terrorism, communal violence, riots, natural disaster, domestic

violence, HIV/AIDS, trafficking, maltreatment, torture and exploitation, pornography and prostitution and recommend appropriate remedial measures;

17. In the present case, if any action is to be taken that has to be taken by the Commission. It has a right to inquire into complaints and even to

take suo motu notice of matters relating to: (i) deprivation and violation of child rights, (ii) non-implementation of laws providing for protection and

development of children, and (iii) non-compliance with policy decisions, guidelines or instructions aimed at mitigating hardships to and ensuring

welfare of the children and to provide relief to such children, or take up the issues arising out of such matters with the appropriate authorities.

12. Protection of Child Victims :

12.1. Regarding the claim that the children should not be harassed again and again and appropriate directions should be given to the court in

following the mode of enquiry.

12.2. In this case admittedly most of the children affected by the act of the headmaster Arockiasamy were all minor and it requires certain

sensitivity. The sensitivity by which the enquiry is to be conducted is set out by the Supreme Court in Sakshi Vs. Union of India (UOI) and Others,

. In paragraphs 32 and 34, it was observed as follows:

32. The mere sight of the accused may induce an element of extreme fear in the mind of the victim or the witnesses or can put them in a state of

shock. In such a situation he or she may not be able to give full details of the incident which may result in miscarriage of justice. Therefore, a screen

or some such arrangement can be made where the victim or witnesses do not have to undergo the trauma of seeing the body or the face of the

accused. Often the questions put in cross-examination are purposely designed to embarrass or confuse the victims of rape and child abuse. The

object is that out of the feeling of shame or embarrassment, the victim may not speak out or give details of certain acts committed by the accused.

It will, therefore, be better if the questions to be put by the accused in cross-examination are given in writing to the presiding officer of the court,

who may put the same to the victim or witnesses in a language which is not embarrassing. There can hardly be any objection to the other

suggestion given by the petitioner that whenever a child or victim of rape is required to give testimony, sufficient breaks should be given as and

when required. The provisions of sub-section (2) of Section 327 CrPC should also apply in inquiry or trial of offences under Sections 354 and 377

IPC. 34. The writ petition is accordingly disposed of with the following directions:

(1) The provisions of sub-section (2) of Section 327 CrPC shall, in addition to the offences mentioned in the sub-section, also apply in inquiry or

trial of offences under Sections 354 and 377 IPC.

(2) In holding trial of child sex abuse or rape:

(i) a screen or some such arrangements may be made where the victim or witnesses (who may be equally vulnerable like the victim) do not see the

body or face of the accused;

(ii) the questions put in cross-examination on behalf of the accused, insofar as they relate directly to the incident, should be given in writing to the

presiding officer of the court who may put them to the victim or witnesses in a language which is clear and is not embarrassing;

(iii) the victim of child abuse or rape, while giving testimony in court, should be allowed sufficient breaks as and when required.

These directions are in addition to those given in State of Punjab v. Gurmit Singh 16.

12.3. The Supreme Court in Delhi Domestic Working Women's Forum Vs. Union of India (UOI) and Others, had observed as follows:

16. On this aspect of the matter we can usefully refer to the following passage from The Oxford Handbook of Criminology (1994 Edn.) at pages

1237-38 as to the position in England:

Compensation payable by the offender was introduced in the Criminal Justice Act, 1972 which gave the Courts powers to make an ancillary order

for compensation in addition to the main penalty in cases where "injury, loss, or damage" had resulted. The Criminal Justice Act, 1982 made it

possible for the first time to make a compensation order as the sole penalty. It also required that in cases where fines and compensation orders

were given together, the payment of compensation should take priority over the fine. These developments signified a major shift in penological

thinking, reflecting the growing importance attached to restitution and reparation over the more narrowly retributive aims of conventional

punishment. The Criminal Justice Act, 1988 furthered this shift. It required courts to consider the making of a compensation order in every case of

death, injury, loss or damage and, where such an order was not given, impose a duty on the court to give reasons for not doing so. It also

extended the range of injuries eligible for compensation. These new requirements mean that if the court fails to make a compensation order it must

furnish reasons. Where reasons are given, the victim may apply for these to be subject to judicial review....

The 1991 Criminal Justice Act contains a number of provisions which directly or indirectly encourage an even greater role for compensation.

13. Directions to Investigating Officer:

Therefore, the investigating officer must keep these directives in mind and also to make appropriate application before the court which may likely

to try such case. Even the court to which final report is filed also must have enough sensitivity in examine the children. The Investigating Officer

need not all over again record the statements already recorded u/s 161(3) and file an appropriate final report after completing the other formalities

with the existing statements recorded plus additional investigation done by her as expeditiously as possible. The court also should not allow the

children to be brought again and again and also to prevent the accused or the

counsel from cross examine them directly and has to provide safeguards as set out in paragraph 34 of the Sakshi's case (cited supra).

14. Appointment of a Special Public Prosecutor:

14.1. It must be noted that Section 26 of the Commissions for Protection of Child Rights Act, 2005 enables the State Government to specify a

public prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for

the purpose of conducting cases in the court. Therefore, the State is hereby directed to appoint a Special Public Prosecutor who is a woman and

who has 7 years of standing in the High Court and who is also sensitive to such issues.

14.2. It is necessary to refer to Section 26 of the Commissions for Protection of Child Rights Act, 2005, which reads as follows:

26. Special Public Prosecutor.-For every Children's Court, the State Government shall, by notification, specify a Public Prosecutor or appoint an

advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting

cases in that Court.

15. Compensation for the victims :

15.1. In the present case, number of children who were affected belonged to SC community and they are entitled to compensation even before

any trial is completed based upon the report given by the fact finding team and Child Welfare Committee referred to above as well as the opinion

of the Psychologist who examined the children. As to the quantum of compensation, sufficient guidelines are available in the SC and ST (Prevention of Atrocities) Rules found u/s 21 read with Rule 12(4) and Annexure-I.

15.2. It is necessary to refer to those provisions:

21. Duty of Government to ensure effective implementation of the Act.--(1) Subject to such rules as the Central Government may make in this

behalf, the State Government shall take such measures as may be necessary for the effective implementation of this Act.

(2) In particular, and without prejudice to the generality of the foregoing provisions, such measures may include,--

(i) the provision for adequate facilities, including legal aid, to the persons

subjected to atrocities to enable them to avail themselves of justice;

(ii) omitted

(iii) the provision for the economic and social rehabilitation of the victims of the atrocities;

(iv) to (vii) omitted

(3) The Central Government shall take such steps as may be necessary to co-ordinate the measures taken by the State Government under sub-section (1).

15.3. Rule 12(4) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 and Annexure-I reads as follows:

12. Measures to be taken by the District Administration.-

(4) The District Magistrate or the Sub-Divisional Magistrate or any other Executive Magistrate shall make arrangements for providing immediate relief in cash or in kind or both to the victims of atrocity, their family members and dependents according to the scale as in the Schedule annexed to these rules (Annexure I read with Annexure II). Such immediate relief shall also include food, water, clothing, shelter, medical aid, transport facilities and other essential items necessary for human beings.

ANNEXURE I

SCHEDULE

[See rule 12(4)]

NORMS FOR RELIEF AMOUNT

Sl. No.	Name of offence	Minimum amount of relief
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1 to 10	omitted	
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11	Outraging the modesty of a woman [section 3(1)(xi)]	Rs. 50,000/- to each victim of the
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12	Sexual exploitation of a women [section 3(1)(xii)]	offence. 50% of the amount may be paid after medical examination and remaining 50% at
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the conclusion of
the trial.

15.4. The compensation has been prescribed for Outraging the modesty of a woman u/s 3(1)(xi) and for sexual exploitation of a women u/s 3(1)

(xii). Though under 1995 rules, it had prescribed only Rs. 50,000/- in case of the offence and that 50% is to be paid after medical examination and

the remaining 50% will be after completion of the trial by the respective District Magistrate or Sub Divisional Magistrate. In the present case it is

the District Collector, Madurai is directed to award the compensation to each of the children, fortunately, after conclusion of the proceedings, it is

brought to the notice of this court that the Central Government has amended the annexure and enhanced the compensation to Rs. 1,20,000/- to

each victim.

15.5. The amendment made to the annexure by way of Gazette notification, dated 23.12.2011 reads as follows :

SCHEDULE

ANNEXURE-I

[See rule 12(4)]

NORMS FOR RELIEF AMOUNT

Sl. No. Name of offence Minimum amount of
relief

1 to 10 omitted

11 Outraging the Rs. 1,20,000/-to

modesty of a each victim of the

woman [section offence. 50% of the

3(1)(xi)] amount may be paid

12 Sexual exploitation after medical

of a women examination and

[section 3(1)(xii)] remaining 50% at the

conclusion of the

trial.

15.6. The Annexure providing that out of the total compensation, balance

amount of 50% of the compensation to be paid after the trial need not hold up the District Collector from releasing the entire compensation at one stroke. Since in this case, the basis of the compensation can be based upon the reports of the facts finding team and the Child Welfare Committee. Hence this court under the peculiar circumstances of this case has directed the District Collector to release the full compensation without waiting further outcome of the criminal trial. Further Section 15(iii) of the Commissions for Protection of Child Rights Act, 2005 do not contemplate any splitting up of the amounts of compensation to be paid by two installments.

16.1. In the present case, the statements have been recorded both by the fact finding team as well as by the Child Welfare committee and also

Section 161(3) statements have been recorded by the then Investigating Officer. These reports can form the basis for the grant of compensation.

This Court is refrained itself from putting the names of the girl children in this order. It is for the District Collector to cull out the names from these

reports and grant the compensation of Rs. 1,20,000/-(Rupees one lakh twenty thousand only) to each of the victim girls and in case of minors, to

their parents after getting sufficient acknowledgment. He need not wait for the trial process to be completed, since all the reports unanimously

found that the victim were all children. In this case, apart from the SC girl children, there were also non SC girl children and they are not be

discriminated in the matter of compensation.

16.2. Fortunately, the Commission for protection of Child Right Act, 2005 anticipated such acts and Section 15(3) enables the Commission makes

recommendation for grant of interim relief to victims or their families as the commission may consider. It is necessary to extract Sections 13 and 24

of the Act, 2005, which reads as follows:

13. Functions of Commission.- (1) The Commission shall perform all or any of the following functions, namely :-

(a) and (b) omitted

(c) inquire into violation of child rights and recommend initiation of proceedings in such cases;

(d) examine all factors that inhibit the enjoyment of rights of children affected by terrorism, communal violence, riots, natural disaster, domestic

violence, HIV/AIDS, trafficking, maltreatment, torture and exploitation, pornography and prostitution and recommend appropriate remedial measures;

24. Application of certain provisions relating to National Commission for Protection of Child Rights to State Commissions.- The provisions of sections 7, 8, 9, 10, sub-section (1) of section 13 and sections 14 and 15 shall apply to a State Commission and shall have effect, subject to the following modifications, namely:-

(a) references to ""Commission"" shall be construed as references to ""State Commission""; (b) references to ""Central Government"" shall be construed as references to ""State Government""; and

(c) references to ""Member-Secretary"" shall be construed as references to ""Secretary"". ""(Emphasis added)

Since the commission is not functioning, this court is inclined to utilize the said provision for extending the benefit of compensation to non SC girl

children also at the same rate of compensation as there need not be any discrimination in the matter of compensation.

16.3. Therefore, the District Collector, Madurai is hereby directed to identify the number of girls from out of the three reports, i.e., fact finding

team report headed by Ms. U. Nirmal Rani, Advocate of the Madurai Bench of Madras High Court, Madurai, the report given by the Child

Welfare Committee, Madurai and Theni Districts and also Section 161(3) statements given by the children and their parents to the then

Investigating Officer and prepare the initially report of those names. There may be other children who have not come forward to make a complaint.

In such case, if any complaint is made directly to the District Collector, even those complaints can be entertained by him and award compensation

after finding the veracity of the complaints and if there is any prima facie case, not only the District Collector should grant compensation, but also

refer those complaints for further investigation by the Investigating Officer. The second respondent District Collector is further directed to comply

with the order passed by this court regarding the grant of compensation within a period of eight weeks from the date of receipt of copy of this

order and to personally take care of the matter of compensation and also identify the correct child victims and their parents.

16.4. Further the teachers who were transferred by the order of the CEO and higher officers, shall not be brought back to the Podhumbu school.

The Headmaster Arockiasamy, (fifth respondent in WP(MD) No. 8355 of 2011 and 7th respondent in WP(MD) No. 12572 of 2011) shall

continue to be kept under suspension until the outcome of the criminal trial. The Police shall not allow him to enter into Podhumbu village till a final report is filed before the appropriate criminal court.

17. Monitoring of the case :

17.1. Though the counsel for the petitioner urged this court should continue to monitor the case, this court finding such process is difficult and it

may likely to hamper the course of trial, directed the Superintendent of Police, Madurai Rural Mr. Asra Garg, IPS to be present in the court. The

said Officer had showed utmost sensitivity to the issue and had agreed that he will abide by directions issued by this court. Therefore, the

Superintendent of Police Mr. Asra Garg, IPS is issued with the following directions.

17.2. He must nominate an officer not below the rank of the Deputy Superintendent of Police (a woman officer) to take over the investigation and

proceed to file a final report as early as possible. In any event within two months from the date of receipt of copy of this order.

17.3. He shall personally monitor the progress of the case by calling for fortnightly reports from the Investigating Officer and to give necessary

advise accordingly for the smooth progress of the investigation.

17.4. He should ensure that the victims are not harassed during the course of the trial and must insist the investigating officer, the Special Public

Prosecutor to adhere to the guidelines issued by the Supreme Court and also if necessary file an appropriate application before the trial judge for

concluding the trial as per the guidelines issued by the Supreme Court referred to above.

17.5. He should recommend to the State Government the name of the Special Public Prosecutor to be appointed in this case as noted in para 15

of this order.

18. Both writ petitions are allowed to the extent indicated above. The miscellaneous petition stands closed. The parties are allowed to bear their

own costs.

19. It is made clear that the conclusions reached here are only for the purpose of carrying out a fair trial and to ensure the guidelines prescribed by the Supreme Court are strictly adhered to by all concerned. The acceptance of the reports made by the fact finding team and the Child Welfare Committee is to make a prima facie case for ordering compensation to the victims. But these conclusions will not affect a fair trial and the trial court will not be influenced by these findings and will decide the matters as and when it is seized of the same on the basis of the records produced before it. Before parting with the case, this court places on record the valuable assistance rendered by Ms. U. Nirmala Rani, Advocate for effective adjudication of the case. The excellent service rendered by Mr. Asra Garg, IPS, Superintendent of Police, Madurai for his readiness to comply with the directions and also to monitor the case continuously until it reaches its conclusion, is highly appreciated.