

(2001) 12 BOM CK 0044

In the Bombay High Court

Case No : Writ Petition No. 1425 of 2001 with Chamber Summons No. 195 of 2001 and Notice of Motion No. 289 of 2001

Sangeeta Punekar

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 06-12-2001

Acts Referred:

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 2, 29
Womens and Childrens Institutions (Licensing) Act, 1956 — Section 3

Citation : (2002) 2 BomCR 468

Hon'ble Judges : S.A. Bobde, J;A.P. Shah, J

Bench : Division Bench

Advocate : Kavita Deshpande, instructed by M.P. Vashi, for Rev. S. Alfred, R.Z. Moray, instructed by and P.M. Havnur and A.N. Jakhadi, in Chamber Summons No. 195 of 2001, for the Appellant; S.K. Nair, A.G.P., for the Respondent

Judgement

1. This petition is filed by a social worker who was working on issues related to street children, sexual abuse of children and who is a member of Forum against Child Sexual Exploitation (fort short FACSE).
2. The petitioner has prayed, inter alia, for directions to the respondents State of Maharashtra in the Ministry of Home and Ministry of Women and Child Development, to ensure that institutions which purport to house young children are not allowed to function without the necessary licence under the Women's and Children's Institution (Licence) Act, 1956 and Juvenile Justice (Care and Protection of Children) Act, 2000.
3. The occasion for the petition is a series of sordid incidents where young girls housed in an institution called "Prem Sagar" situated in the compound of Redeemer Church Chawl, Babrekar Naga, Charkop, Kandivali (West), Mumbai 400 067 reported that they had been sexually abused by one Rev. Alfred who was the Director of the Institution. They reported that the said Rev. Alfred has actually attempted to rape some children. The children, who confided in a social

worker Goretty Xalco, lodged a complaint in record register of Prem Sagar. This information was learnt by the FACSE and its members. FACSE convened the meeting on 31st March, 2000 in order to ascertain the facts. It appears that Rev. Alfred's explanation was that the incident of the alleged abuse of the girl had taken place by accident whereas the social worker Goretty Xalco stated that she knew of another incident where Rev. Alfred had actually tried to rape a child and that children had revealed to her the details of the sexual abuse. Two girls who were placed by some N.G. Os at Prem Sagar, by name Radha and Renuka were shifted immediately to St. Catherine's Home in Andheri (West) to prevent further abuse. The group which investigated into the facts made certain demands on Prem Sagar to the effect that the institution should lodge F.I.R. against Rev. Alfred; that certain compensation should be given to two girls and that residential institutions run by it should be certified. They also demanded that Rev. Alfred should be removed from the premises of Prem Sagar in addition to be dismissed and that Prem Sagar publicly disassociate itself from him. It appears that Prem Sagar did not respond to any of the demands made by the group. On 2nd January, 2000 a lady member of the Managing Committee of Prem Sagar and another member's wife visited the girl and questioned her following which the girl attempted suicide. According to the petitioner much time was wasted by inaction on the part of the management and finding agency of Prem Sagar.

4. The petitioner approached the committee appointed by the State Government in view of the order passed by this Court in Writ Petition No. 1107 of 1996. This Court has directed the State of Maharashtra to appoint a Committee to look into such problems and to make appropriate recommendations to the State and the concerned home, with regard to children who are housed in such homes, on account of poverty and failure in examination, and those who have remained in the Homes for a length of time. The Committee learnt from FACSE that the said Rev. Alfred instead of being dealt with severely, was infact staying there and interacting with minor girls and continued to abuse them.

5. On 6th March, 2001, the committee visited Prem Sagar and took the details of the sexual abuse of minor girls. The report was prepared by the committee and handed over to the Joint Commissioner of Police (Crimes) stating that they had come across 3 incidents of girls residing in Prem Sagar who alleged that they were molested a year ago, by the former Director Rev. Alfred. Though the Director was stated to be dismissed he was in fact around and possibly continued to have access to the girls in home. The committee, therefore, requested for investigation into the matter.

6. Thereafter this Court on 29th June, 2001 passed an order of directing the Juvenile Welfare Board to submit a fact finding report in respect of happenings at Prem Niketan. The report was submitted to this Court. It was without any findings at all. As a result the matter had to be adjourned to a subsequent date on which the chairperson of the Juvenile Welfare Board, Mumbai gave "findings". The report found that though in an interview with the girls, the girls have stated

that the said Rev. Alfred had touched their breasts on several occasions and kissed them, there had been no rape. The findings state, strangely, that, therefore, there was no evidence of "sexual abuse" and there was only "physical abuse". It is unfortunate that the committee has found that the complaints are all "stereotyped" and seems to find fault with the fact that F.I.R. was lodged late. On reading the report it was clear to this Court that the Board seems to have been completely oblivious of the mandate to it by this Court and to the plight of the girls who are reported to have been sexually abused. It is in deed unfortunate to find from the report that what is emphasised is that "there was no rape". We find that there is a complete lack of sensitivity on the part of the Board to the conditions of the children, who were homeless and were at the mercy of the institution.

7. This Court fortunately had a copy of another report based on the investigation and findings of two social workers viz. Ms. Kalindi Majumdar and Asha Bajpai. It appears from the report that the girls have reported "sexual abuse" to the social workers and in fact the report states that several girls have run away from the institutions because they were afraid of being abused. All the girls appear to have pointed out that the said Rev. Alfred appears to have exploited his position as Director fully only to please himself.

8. We make it clear that all we have stated about the "sexual abuses" in the institution is culled out from the statements made by the girls in the institution to the social workers and the committee and is not an expression of the view of this Court as to what actually transpired or as to the guilt of Rev. Alfred or anyone else. That will be decided by an appropriate Court.

9. We find that such incidents become possible and easy because of lack of any control or supervision on such institutions. Mr. More, the learned Counsel for the petitioner, has relied on a provision of Juvenile Justice (Care and Protection of Children) Act, 2000 enacted by the Parliament to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection. Though we have directed the closure of two institutions in question from which reports of "sexual abuses" have originated, we find that it is necessary to ensure the observance of the licencing procedure prescribed by Women's and Children's Institution (Licensing) Act, 1956.

10. As regards the Juvenile Welfare Board which submitted the fact finding report referred to above, we were informed by the learned A.G.P. that the Board is constituted under the old Act i.e. Juvenile Justice Act, 1986 which has since been repealed. It is obvious from the report that the Board constituted under the old Act comprises of lay persons who seem to have no idea about their responsibility under the Act. The respondent State of Maharashtra has apparently not taken note of the passage of Juvenile Justice (Care and Protection of Children) Act, 2000. In any case it have not yet appointed the committee or the Board contemplated under the Act. It has not taken any action under the Act to constitute various bodies such as Juvenile Justice Board and Child Welfare

Committee.

11. Section 2(g) of the Act defines Competent Authority. It reads as under:

"2(g): "competent authority" means in relation to children in need of care and protection a Committee and in relation to Juveniles in conflict with law a Board."

Thus, the Act contemplates (i) a committee constituted u/s 29 for children in need of care and protection and (ii) a Board in relation to Juvenile in conflict with law.

12. The committee contemplated by section 29 comprises of a Chairperson and four other members as the State Government may think fit to appoint, of whom at least one shall be a women and another, an expert on matters concerning children. It is the State Government which has the power to prescribe the qualifications for such persons. These steps need to be taken urgently.

13. As regards the Board contemplated by section 4 of the Act for dealing with Juvenile in conflict with law. The composition is as follows:

Under sub-section (2) the Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of the First Class and two social workers of whom at least one shall be a women. The Bench is conferred with powers under the provisions of the Code of Criminal Procedure, 1973. We are of the view that the Board needs to be constituted with equal urgency.

14. The learned A.G.P. has, after obtaining specific instructions from the Home Department, stated that the Law and Judiciary Department has already written to the Registrar of the High Court inviting a proposal of the Magistrates to be appointed on the Juvenile Justice Board. He has further stated as follows:

a) The appointment of the social workers on the Board shall be done by the Government in consultation with the State Level Monitoring Committee appointed by this Court in Writ Petition No. 1107 of 1996 under the Chairmanship of Justice Hosbet Suresh (Retd.)

b) The appointment of the child welfare committee members contemplated by section 29 of the Act shall be done by the Government in consultation with the State Level Monitoring Committee headed by Justice Hosbet Suresh (Retd.).

c) Government is in the process of formulating the Rules under the Juvenile Justice (Care and Protection of Children) Act, 2000 and the document is expected to notify within 8 to 10 weeks.

d) That a procedure will be established in the police department whereby the allegations pertaining to sexual abuse of the children will be directly referred to the Social Service Wing of the police which is already in existence.

We accept the above contentions made on behalf of the State.

15. In the circumstances, we direct the respondent State Government to

constitute the Juvenile Justice Board under the Act within a period of 8 weeks from today and the State Government shall undertake the process of formulating the rules and bringing them into force under the Act within 12 weeks from today. Thereafter it shall make necessary appointment of the committee as per section 29 within a period of 8 weeks.

16. The non-judicial members of the Board and the members of the Committee shall be appointed by the Government in accordance with the State Level Monitoring Committee headed by Justice H. Suresh (Retd.) appointed in Writ Petition No. 1107 of 1997.

16A. The respondent State Government is further directed to give due publicity through the print and electronic media calling upon all the institutions which house women and children to obtain the licence under the Women's and Children's Institution (Licensing) Act, 1956 within a period of 3 months of the publication of the advertisement.

17. Thereafter the State Government shall carry out a survey of institutions which house women and children to see whether they have obtained appropriate licence. Where it is found that the institutions are functioning without a licence they shall take immediate steps to close down the institutions.

18. In the result the petition is disposed of with the above directions. Chamber summons is made absolute.

Parties to act on an ordinary copy of this order duly authenticated as true copy by the Associate of this Court.