
(2003) 04 PAT CK 0075
In the Patna High Court
Case No : C.W.J.C. No. 1740 of 2003

Shashank Shekhar

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 16-04-2003

Acts Referred:

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 68

Citation : (2003) 2 BLJR 1143

Hon'ble Judges : Ravi S. Dhavan, C.J.; R.N. Prasad, J

Bench : Division Bench

Advocate : P.K. Shahi, SC, CG, Party in person, for the Appellant; A.N. Singh, SC 8, for the Respondent

Judgement

Ravi S. Dhavan C.J. and R.N. Prasad, J.—Nothing worth the name has been done by the State Government to implement the Juvenile Justices Act, 2000, which is a re-enacted Act. Even the Rules which were contemplated under the 1986 Act were not framed by the State of Bihar all through the 14 years of the life of the 1986 Act. Section 68 of the 2000 Act, obliged the State of Bihar to frame the Rules. Nothing has been done under the new Act either.

2. Learned Counsel on behalf of the State has been instructed to State that files apparently are shuttling between the Social Welfare Department, Law Department and the Advocate General's Secretariat. This will not work the Act. Much more has to be done to place the machinery under this Act. If the State Government only reads the Statement of Objects and Reasons on the content of planning to make this Act functional, then, it will be well advised to see the Statement of Objects reproduced below:

"An Act to consolidate and amend the law relating to juveniles in conflicts with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through

various institutions established under this enactment,"

3. The statement of objects and reasons of the 1986 Act are also relevant. They read :

"A review of the working of the existing Children Acts would indicate that much greater attention is required to be given to children who may be found in situations of social maladjustment, delinquency or neglect. The justice system as available for adults is not considered suitable for being applied to juvenile. It is also necessary that a uniform juvenile justice system should be available throughout the country which should make adequate provision for dealing with all aspects in the changing social, cultural and economic situation in the country. There is also need for larger involvement of informal systems and community based welfare agencies in the care, protection, treatment, development and rehabilitation of such juveniles."

4. The content of the subject on which rules have to be framed under the 2000 Act, are given in Section 68 :

"Power to make rules.--(1) The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely :

(i) the term of office of the members of the Board and the manner in which such member may resign under Sub-section (4) of Section 4;

(ii) the time of the meetings of the Board and the rules of procedure in regard to the transaction of business at its meeting under Sub-section (1) of Section 5;

(iii) the management of observation homes including the standards and various types of services to be provided by them and the circumstances in which and the manner in which, the certification of the observation home may be granted or withdrawn and such other matters as are referred to in Section 8;

(iv) the management of special homes including the standards and various types of services to be provided by them and the circumstances in which and manner in which, the certification of the special home may be granted or withdrawn and such other matters as are referred to in Section 9;

(v) persons by whom any juvenile in conflict with law may be produced before the Board and the manner of sending such juvenile to an observation home under Sub-section (2) of Section 10;

(vi) matters relating to removal of disqualifications attaching to conviction of a juvenile u/s 19;

(vii) the qualifications of the Chairperson and members and the tenure for which they may be appointed under Sub-section (3) of Section 29;

(viii) the time of the meetings of the Committee and the rules of procedure in regard to the transaction of business at its meeting under Sub-section (1) of Section 30;

(ix) the manner of making the report to the police and to the Committee and the manner of sending and entrusting the child to children's home pending the inquiry under Sub-section (2) of Section 32;

(x) the management of children's homes including the standards and nature of services to be provided by them and the manner in which certification of a children's home or recognition to a voluntary organisation may be granted or withdrawn under Sub-section (2) of Section 34;

(xi) appointment of inspection committees for children's homes, their tenure and purposes for which inspection committees may be appointed and such other matters as are referred to in Section 35;

(xii) facilities to be provided by the shelter homes under Sub-section (3) of Section 37;

(xiii) for carrying out the scheme of foster care programme of children under Sub-section (3) of Section 42;

(xiv) for carrying out various schemes of sponsorship of children under Sub-section (2) of Section 43;

(xv) matters relating to after-care organisation u/s 44;

(xvi) for ensuring effective linkages between various agencies for facilitating rehabilitation and social integration of the child u/s 45;

(xvii) the purposes and the manner in which the fund shall be administered under Sub-section (3) of Section 61;

(xviii) any other matter which is required to be or may be prescribed.

(3) Every rule made by a State Government under this Act shall be laid, as soon as may be after it is made, before the Legislature of that State."

5. The Government of India was obliged to replace the 1986 Act and enact the Juvenile Justice (Care and Protection of Children) Act, 2000, after the General Assembly of the United Nations adopted the convention on the rights of the child on 20 November, 1989. The convention on the rights of the child emphasised social integration of the child victim, to the extent possible, without resorting to judicial proceedings. These are aspects on human rights calling for application from the State particularly to address itself to the child. To provide a machinery to work under the Act of 2000 is to facilitate and aid rights of the Child. The State of Bihar is avoiding human rights problems particularly in the matter relating to this Act.

6. Put up after two weeks in the supplementary list.