
(2011) 05 RAJ CK 0027

In the Rajasthan High Court

Case No : Civil Writ Petitioner (PIL) No. 3359 of 2009

Shripal Jain

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 31-05-2011

Acts Referred:

Protection of Child Rights Act, 2005 — Section 17

Citation : (2012) 1 RLW 686

Hon'ble Judges : Arun Mishra, C.J.;Alok Sharma, J

Bench : Division Bench

Advocate : R.N. Mathur, with Rishi Sharma, for the Appellant; S.N. Kumawat, A.A.G. and Ms. Mumal Rajvi on behalf of S.S. Rathore, for the Respondent

Judgement

Alok Sharma, J.—Based on myriad news items referring to corporal punishment inflicted on the children attending school in Sojat (Pali), Jaipur, Bikaner, Jhalawar, Bhilwara, from time to time, this P.I.L. has been filed seeking inter alia a writ of mandamus or any other writ, order or direction to the State of Rajasthan to implement the Commission for Protection of Child Rights Act, 2005 (for short "the Act"). Apart from the main relief as detailed herein above, general directions have also been sought against the State to take immediate and effective action in conformity with the booklet (Schedule-B) "CHILD PROTECTION" issued by the Govt. of India and to issue a writ of mandamus or any other writ, order or direction to the State of Rajasthan to direct the teachers imparting education to the students in Govt. Schools not to impose corporal punishments upon the students. Certain other reliefs have also been sought. It is stated that the United Nations of General Assembly in its Summit of 1990 adopted a declaration of Survival, Protection and Development of Survival, Protection and Development of Children to which India is one of the signatories. The petitioner also has referred the booklet titled as "Child Protection" laying down guidelines for teachers.

2. On notices being served, the State of Rajasthan has filed a detailed reply

pointing out that the State Govt. has taken effective steps to enforce restrictions on corporal and mental punishment and harassment to the students by the teachers. A reference has been made to various instructions issued by the State Govt. from time to time such as on 21.8.1989, 8.5.1996, 20.11.97, 20.9.2007, 15.5.2008, copies of which have been annexed to the reply by the State. The State has very correctly pointed out that whenever reports with respect of any contravention of law and guidelines are brought to the notice of the competent authorities, requisite inquiries are made and action is taken. In support of its say, the State has referred to the action taken/advisory issued on specific cases of corporal punishments or harassment of children as on 19.1.2009, 31.1.2009, 8.4.2009, 8.6.2009, 7.7.2009, 15.2.2011 and 17.2.2011, and placed the said orders on record. The State has further submitted that the Act of 2005 has been made applicable and State Authorities are taking prompt action if any contravention by a teacher or any other employee of the school in committing an offence either mental or physical, on a child, is brought to the notice of the competent authority. It has been submitted that the Woman and Child Development Department of the State of Rajasthan, is responsible for ensuring protection of children under the Act of 2005 and that under the Notification dated 23.2.2010, the Rajasthan Commission for Protection of Child Rights as required under the Act of 2005 has been constituted and presently one Shri B.B. Mohanty, IAS is working as Chairman of the Commission.

3. Having heard learned counsel for the parties, we are of the view that the mechanism for the protection of the children in cases of specific abuse of child rights has been initiated as per law. No generic directions with regard to the manner of dealing with child abuse can be issued by this Court and in fact may not be required in the obtaining circumstances as legislation covers the field. No lacuna has been pointed out in the scheme of the Act. This Court has taken note of the proceedings taken from time to time by the authorities in cases of specific issues/complaints of contravention of the Act of 2005 and imposition of corporal-punishment.

4. The issue, however, with regard to the constitution of the State Commission for Protection of Child Rights under the Act of 2005 remains. The State in its reply to the petition has stated that Shri B.B. Mohanty, IAS is working as Chairman of the Commission u/s 17 of the Act, following the Notification dated 23.2.2010, wherein the Rajasthan Commission of Protection of Child Rights has been constituted.

5. Section 17 of the Act of 2005 makes it mandatory for the State Govt. to constitute a commission for Protection of Child Rights and to exercise the powers conferred upon the commission and to perform the functions assigned to it under Chapter IV of the Act of 2005.

6. Sub-section (2) of Section 17 provides that the Commission shall consist of the following members, namely:-

(a) a Chairperson who is a person of eminence and has done outstanding work for promoting the welfare of the children and

(b) six members, out of which at least two shall be women, from the following fields, to be appointed by the State Government from amongst persons of eminence, ability, integrity, standing and experience in,-

(i) education;

(ii) child health, care, welfare or child development;

(iii) juvenile justice or care of neglected or marginalized children or children with disabilities;

(iv) elimination of child labour or children in distress;

(v) child psychology or sociology; and

(vi) laws relating to children.

7. The reply of the State Govt. indicates that Shri B.B. Mohanty, IAS has been appointed as Chairman of the Commission, whereas clause (a) of sub-section (2) of Section 17 mandates that the Chairperson of the State Commission for Protection of Child Rights shall be a person of eminence who has done outstanding work for promoting the welfare of the children. There is no reference in the reply filed by State as to in what manner Shri B.B. Mohanty, IAS is a person who fits into the requirement of law that the Chairman of the State Commission for Protection of Child Rights be a person of eminence who has done outstanding work for promoting the welfare of children. Shri Mohanty is an IAS Officer of some substantial standing but there is nothing on record to satisfy he Court that he has the requisite background as mandated under clause (a) of sub-section (2) of Section 17 of the Act of 2005. Further nothing from the reply of the State Government indicates that as to who are/or shall be the six members of the State Commission out of which at least two are to be women from amongst persons of eminence, ability, integrity, standing and experience in either education, child health, care, welfare or child development, juvenile justice or care of neglected or marginalized children or children with disabilities, elimination of child labour or children in distress; child psychology or sociology and laws relating to children. Other four members are also required to have the requisite qualification, experience and skills as statutorily prescribed. The reply of the State is silent on the aforesaid aspects. We are, therefore, of the view that for proper implementation of the Act of 2005, the State Govt. should in full and complete compliance of Section 17 of the Act of 2005, appoint a Chairperson and six members to the State Commission under the Protection of Child Rights Act, 2005, within a period of six months such that the intent and object of the parliament in bringing child protection for advancing the best intents of children and evolving their capabilities to the optimum is fulfilled.

With the above observations, this PIL stands disposed of.