

(2009) 08 SIK CK 0002
In the Sikkim High Court

Sonam Palden Bhutia

APPELLANT

Vs

The State of Sikkim and Others

RESPONDENT

Date of Decision : 28-08-2009

Acts Referred:

Citation : (2010) CriLJ 491 : (2010) 2 Crimes 278

Hon'ble Judges : Aftab H. Saikia, C.J;A.P. Subba, J

Bench : Division Bench

Judgement

Aftab H. Saikia, C.J.—Heard Ms. (Dr.) Doma T. Bhutia, learned Counsel for the petitioner in this Public Interest Litigation (for short, "PIL"). Also heard Mr. J. B. Pradhan, learned Additional Advocate General, Sikkim with Mr. Karma Thinlay and Mr. S. K. Chettri, learned State Counsel appearing for the State of Sikkim/ Official respondents.

2. This PIL registers the grievances of total non-implementation of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as "the Act") and the Rules framed thereunder by the Government of Sikkim namely, the Sikkim Juvenile Justice (Care and Protection of Children) Rules, 2002 (hereinafter referred to as the Rules").

3. The basic contentions of the petitioner are that, for instance, although the Juvenile Justice Board (for short, "the Board") have been constituted, no full-time Magistrate has been appointed for the purpose till date. Even the requirement of having two social workers has not yet been fulfilled. Advancing another instance it is alleged that the Magistrates who are appointed to preside over the Board have not given the independent and separate charge and they have been made to work only on the basis of additional charge of the Board while they are performing their regular and substantial duties as Magistrates in their respective Courts.

4. It is also complained that Section 63 of the Act has not been complied with as till date Special Juvenile Police Unit in every District has not been constituted.

5. Dr. Bhutia, learned Counsel appearing for the petitioner, has strongly submitted that though the Act came into force with effect from 1-4-2001 vide Government of India Official Gazette publication on 28-2-2001, no proper, adequate and appropriate steps have been taken by the Government of Sikkim so as to implement the provisions of the Act in letter and spirit and accordingly in this context, according to her, as has been reflected on the face of the petition itself, the petitioner has sought the reliefs by making the following prayers:

A. That the Hon"ble Court may be pleased to issue a Writ of Mandamus, or any other appropriate writ, order or direction in nature of Mandamus, for proper implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000 and the Sikkim Juvenile Justice (Care and Protection of Children) Rules, 2002 by:

(i) Directing the Respondent to constitute a proper J. J. Board with full time Magistrate and two social workers, one of whom at least is a woman envisaged by the Act and Rules and ensure continued constitution of the same;

(ii) Directing the Respondents No. 1 to 3 at least to have J. J. Board members in all four districts of the State of Sikkim.

(iii) Directing that the Magistrate appointed to the Board shall not be given joint charge of any other Court and that the above State Respondents shall provide all facilities necessary for the same;

(iv) Directing the Respondents S1. No. 1 to 3 to establish Juvenile Observation home with proper infrastructure with basic amenities, having enough space to meet the minimum standard of accommodation as laid down in the state rules and to carry the inquiry of the Board etc.

(v) Directing the Respondent Nos. 1,3 and 4 to establish Special Juvenile Police Unit in every Police Station and to designate "Juvenile Welfare Officer", should be under the control of it and shall be exclusively dealing with the investigation in the case of Juvenile in conflict with law.

(vi) Directing that the Board should work regularly in all the working days of the calender year in all the four districts.

(vii) Directing that all such facilities be provided and all necessary steps be taken to facilitate conclusion of inquiries within the 4 month period envisaged by the Act;

6. Rejecting the contentions and averments made in this writ petition and the arguments so advanced by Dr. Bhutia, the learned Counsel for the petitioner, Mr. Pradhan, the learned Additional Advocate General, Sikkim, has, strongly relying upon the averments and statements made in the affidavit filed on behalf of the State of Sikkim including those relevant documents and papers appended thereto, submitted that almost all the grievances and the prayers made in this PIL have already been taken care of and more necessary steps have also been

taken to implement the provisions of the Act in toto.

7. We have given our anxious consideration to the comprehensive submissions and arguments advanced on behalf of the parties and also have meticulously perused and scanned the entire materials which have been made available on record.

8. A conjoint reading of the prayers made in this PIL as already quoted above and the averments and statements supported by the relevant documents made in the counter-affidavit filed by the State would go to show that most of the prayers namely prayers No. (i), (ii), (iii) and (iv) have already been implemented and the same is evident from the averments made in paragraphs 3, 4, 5, 6, 7, 8 and 9 to the Government affidavit with the supportive relevant documents appended thereto. For the sake of convenience, those paragraphs are reproduced hereinbelow:

3. With regard to the constitution of proper Juvenile Justice Board with full time Magistrate and two social workers one of whom should at least be a women, it is respectfully submitted that the Government vide notification No. 13/SJE/W, dated 18-2-2005 has constituted the Juvenile Justice Board with one lady member. A copy of the said notification is annexed hereto and marked as Annexure R-1.

It is further submitted that for the districts of North, South and West Juvenile Justice Board has been constituted vide Notification No. 1/SW, dated 2-4-2007. A copy of the said notification is annexed hereto and marked as Annexure R-2.

4. It is also submitted that the Government in accordance with Section 16 (sic-29) of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006 has been pleased to constitute Child Welfare Committee in other three districts of Sikkim viz., North, South and West Districts. A copy of the notification bearing No. 2/SW, dated 16-1-2007 constituting such Child Welfare Committee is annexed hereto and marked as Annexure R-3.

It is submitted that Child Welfare Committee had already been constituted for the district of East vide notification No. 2/SJE/ W, dated 11-8-2005. A copy of the said notification is annexed hereto and marked as Annexure R-4.

5. It is submitted that the respondents in accordance with Section 63 of the Juvenile Justice (Care and Protection of Children) Act, 2000 and under Rule 49(2) of the Sikkim Juvenile Justice (Care and Protection of Children) Rules, 2002 has appointed the Court Inspector in each district to be the Juvenile Police Officer for their said respective district. A copy of the notification No. 11/ HOME/2006, dated 9-2-2006 appointing such Juvenile police officer is annexed hereto and marked as Annexure R-5.

6. It is submitted that the State Government in accordance with Section 9 of the Juvenile Justice (Care and Protection of Children) Act, 2000 has established a Juvenile Observation Home at Gangtok by taking on rent a private R. C. C. building. It is submitted that the design of the building has been suitably

modified so as to comply with the specification of Juvenile Justice Act. The said building consists of three floors with total area measuring about 3685.18 sq. ft. The said home has boys dormitory measuring about 749 sq. ft., girls dormitory measuring about 186.25 sq. ft., segregation room measuring about 172 sq. ft., classroom/workshop measuring about 119 sq. ft. and open space on the terrace which is to be utilised for recreational activities and vocation training. It is submitted that all rooms are specifically ventilated and are bright and airy.

7. It is submitted that the medical care of the juvenile are also taken care of in accordance with Rule 10 of Juvenile Justice (Care and Protection of Children) Rule, 2002 periodical weekly visits are being carried out by the Medical Specialist-cum-Psychiatrist. Doctor/Medical assistance are also available on emergency calls as the main Government Hospital of the State viz., Sir Thuthop Namgyal Memorial Hospital is not very far from the Juvenile Observation Home.

8. It is submitted that the Government in accordance with Sub-section (1) of Section 35 of the Juvenile Justice (Care and Protection of Children) Act, 2000 has also constituted the inspection committee vide notification No. 9/SJE/W, dated 11-10-2004. A copy of the said notification is annexed hereto and marked as Annexure R-6.

9. It is humbly submitted that the State Government in accordance with Section 62, of the Juvenile Justice (Care and Protection of Children) Act, 2000 has also constituted the State Advisory Board vide notification No. 6/SJE/W, dated 29-9-2004. A copy of the Gazetted notification is annexed hereto and marked as Annexure R-7.

9. Insofar as prayer No. (v) is concerned which relates to implementation of Section 63 of the Act, Mr. Pradhan has placed on record today itself before this Court a Notification issued by Government of Sikkim on 27-6-2007 through the Principal Secretary, Home, notifying that the State Government has designated in every police station the senior-most lady officer and in her absence the senior-most NCO/constable as Juvenile or Child Welfare Officer for the purpose of the Act. However, it has been fairly submitted by Mr. Pradhan that Special Juvenile Public Unit as contemplated u/s 63 of the Act has not yet been constituted till date and according to him, the Government is ready to constitute a Special Juvenile Police Unit also so as to comply and implement the provisions of Section 63 of the Act. However, such exercise may require some reasonable time, preferably at least four months as some special and appropriate training and oreintation of the officers are required to be conducted. A copy of the Notification dated 27-6-2007 be kept herewith to form the part of the records.

10. As regards prayers No. (vi) and (vii), Mr. Pradhan, the learned Additional Advocate General, has submitted that in the State of Sikkim there are no sufficient cases under the Act in comparison to other States and keeping in view the low pendency of the cases, for the time being, regular working days in the four Districts with the full time Magistrates would not be justified and as and

when work-load would increase, the appointment of full time Magistrates with the regular working days will be considered.

11. We have carefully gone through the entire records so placed by the learned Counsel for the parties as well as the records which have been placed on requisition from the Registry. A close perusal of the same would go to reveal that in all the four Districts of Sikkim, presently there are only 23 pending cases in total under this Act, the break up of which would show that in East and West Districts there are 6 and 2 cases pending respectively and wherein in South and West (sic) Districts pendency position is 4 and 11 cases respectively.

12. In consideration of above facts and circumstances and also upon hearing the learned Counsel for the parties, we close this PIL with the direction that the respondents shall constitute Special Juvenile Police Unit as envisaged u/s 63 of the Act at an earliest possible date preferably within a period of four months, from today for proper implementation of the said provision of the Act.

13. We also direct all the official respondents to take necessary steps for total, proper and adequate implementation of all other relevant provisions of the Act that have yet to be taken up by the Government of Sikkim without further delay so as to provide juveniles and children in the State of Sikkim proper care and protection 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 as envisaged in the preamble of the Act itself.

14. In view of what has been stated above, discussed and observed, this PIL stands disposed of. However, there shall be no order as to costs.