

---

**(2008) 03 AHC CK 0195**  
**In the Allahabad High Court**

Vishnu Dayal Sharma

APPELLANT

Vs

State of Uttar Pradesh and Jitendra @ Pradeep

RESPONDENT

---

**Date of Decision :** 28-03-2008

**Acts Referred:**

Commission for Protection of Child Rights Act, 2005 — Section 17  
Constitution of India, 1950 — Article 21A  
Juvenile Justice Act, 1986 — Section 3

**Citation :** (2008) 03 AHC CK 0195

**Hon'ble Judges :** Shiv Shanker, J; Amar Saran, J

**Bench :** Division Bench

**Final Decision :** Disposed Of

---

## Judgement

Amar Saran and Shiv Shanker, JJ.—Heard learned Counsel for the petitioner, learned AGA, Sri A.K. Sand, Assistant Solicitor General of India, Sri. K.C. Sinha; the intervenors Sri Jagriti Singh, advocate, Sister Sheeba Jose, Mr. Sanjeev Singh and Sri Pankaj Naqvi as well as Sri DK Singh, Joint Registrar, High Court, Allahabad.

By an order of the Hon'ble the Chief Justice dated 14.12.2008 this cash has been tied up to the Bench presided over by one of us (Amar Saran, J.).

2. Sri A.K. Sand, learned AGA, filed a counter affidavit on behalf of DGP, UP, which mentions that out of a total number of 5612 children, who are reported to be missing for the last 6 years, out of whom 3641 children were reported to be missing in the year 2006 and 1971 children who were missing for the 5 years preceding the year 2006. In our last order of 16.11.2007 we had noted that 4712 children had been] rescued and only 900 children remained to be rescued in this period. This figure of 900 children consisted of 326 children out of 3641 children who are reposed missing in the year 2006 and 574 out of 1971 children, who were missing for the last 5 years. Now for a period of 4 months, from 1.10.2007 to 31.1.2008, 56 children who went missing in the year 2006 have been recovered and only 270 children for the said year remained to be traced

out. This figure of 270 children consists of 198 male and 72 female children who are yet to be recovered. For the years 2000 - 2005 out 1971 missing children, 574 children were to be traced out, in the said period of 1.10.2007 to 31.1.2008, 120 children have been recovered and now 454 children (which consists of 337 male and 117 female children) remain to be traced out. Therefore, for the period of 6 years, from 2000 to 2006, out of 5612 missing children, now 4888, have been recovered and 724 still remain to be traced out. This is a considerable achievement of the police and other concerned departments and the concerned parties should be lauded for their efforts. We hope that by the next date of listing, a substantial number of the remaining 724 children who are missing from 2000 to 2006 are also traced out and compliance report in this connection is filed in this court.

However, to complete the monitoring process by this Court in this regard, it is important to obtain similar figures of the children who went missing in the year 2007 and thereafter and 2008 upto the present date. The report of the said missing children should be in the similar format as the earlier reports relating to the periods 2000-06 containing the gender and age wise disaggregated break-up and the number of children who have been recovered and the remaining children who are still to be recovered. We hope that the said details will be furnished by the DGP, UP, by the next date of listing.

The affidavit also contains an annexure detailing information relating to publication of information about the missing children in daily newspapers in different zones and details of telecasts about the missing children in various television channels as directed by this Court on 16.11.2007. We now desire that a similar report of publication of information relating to missing children in newspapers and TV telecasts be furnished for the subsequent period by the next date of listing.

3. Sri Sand also drew our attention to an affidavit filed on behalf of the Principal Secretary, Labour, UP Govt., which has detailed the number of children (78548 child labourers) who have been identified at different places in UP during the period 1997 to January, 2008, in pursuance of the direction of the Apex Court in Writ Petition No. 465 of 1986: MC Mehta v. State of Tamil Nadu. 37350 child labourers were found working in hazardous occupations. It is claimed that out of the aforesaid 78548 child labourers, 63999 child labourers were educationally but 10810 child labourers could not be rehabilitated for various reasons. The reasons have not been spelt out, and we would like the Principal Secretary, Labour, UP, to give the reasons category wise on the next date of listing, as spelling out the reasons would help the department as well as this Court for reaching a conclusion as to why it becomes imperative for some children to remain engaged in child labour, (some of these reasons could be starvation and hunger in the family due to unemployment or due to the death of adult earning members, or non-existent, poor quality or harsh and oppressive schooling which are some of the push factors inducing a child to leave home or go missing and

sometimes he/she becomes a victim of child traffickers). What steps, if at all, could be taken for disengaging them from child labour and sending them to schools and otherwise rehabilitating them.

4. Likewise, it is mentioned in paragraph 8 of the affidavit that 5378 families out of 29143 identified families whose children were engaged in hazardous occupations, have accepted rehabilitation assistance but 5721 families have refused rehabilitations. We would like to receive further information from the labour department as to the different categories of reasons why the 5721 said families, have refused, rehabilitation. It is further mentioned that 2727 prosecutions were launched, by the department before 12.10.1996. The prosecutions were increased to 8251 upto January, 2008 but out of the total number of 10978 cases, 3328 cases were decided and only in 416 cases, i.e. only in 12 percent of the cases, convictions were secured under the Child Labour (Prohibition and Regulation) Act, 1986. This is an alarmingly low level of conviction and again we would like to receive information from the department as to the reasons why there has been such a poor level of convictions in the cases relating to the employment of child labourers. The pendency level of 7650 in child labour cases upto January, 2008, is also very high and we would like the labour department to move applications in the concerned courts for expeditious disposal of these cases, and we direct the concerned courts to make every effort to decide such case very expeditiously, as engaging a child in child labour, when he ought to be studying in schools and improving his life prospects and also turning into valuable assets for the future of our nation is imperative and unless we can ensure that all children are in school and not engaged in child labour, or in any other wasteful or exploitative conditions, our Constitutional mandate for ensuring that all children between 6 and 14 years are in school shall remain an empty dream. It is also unfortunate that out Rs. 34.19 crore, which were to be recovered on the 7921 recovery certificates issued in pursuance of the orders of the Apex Court in M.C. Mehta's case (supra), only Rs. 1.26 crore have been recovered from the concerned defaulters. The affidavit further mentions the setting up of 1551 special schools under the National Child Labour Project (NCLP) in 38 districts in UP where 75207 children, who were engaged in hazardous occupations, are studying. The remaining identified child labourers are enrolled in the primary schools of the State Government. Some scholarships, reading materials, which they need etc. are provided under the NCLP and Indus Child Labour Project Schools (ICLPS), UP. There is also a scheme under the 11th Five-Year Plan in 10 UP districts for a conditional cash transfer scheme for providing cash incentives of Rs. 46,000/- for disabled, unemployed landless parents to enable their children to complete for education upto class V. In my view, the important thing is that the benefits intended for the child labourers under the NCLP and ICLPS should actually reach the children who have been rescued from the hazardous child labour and there should be no corruption and diversion of these grants. Furthermore, the quality of schooling in these schools should be of good standard and effectively monitored by the parents and other authorities

that the parents feel that there is benefit in sending the child to school, rather than permitting him to be engaged in and employment. Unless these checks on corruptions are imposed and there are quality controls with regard to the standard of teaching and teacher attendance, all these efforts under the Plan will remain only on paper and funds will be diverted to wrong hands and areas. It is further mentioned that in 70 districts in UP the Child Labour Elimination district-committees have been constituted under the chairmanship of the District Margate, and in the first meeting of the State Monitoring Committee (Child Labour Elimination and Rehabilitation) on 27.12.2007 under the chairmanship of the Principal Secretary, Labour, various directions for implementation of the schemes and directions of the Apex Court were issued. We hope, there is a follow-up and monitoring to ensure that the directions are implemented. On the next date of listing, the copy of the directions as well as the follow-up measures and status report of compliance should be furnished to this Court.

5. A third affidavit has been filed on behalf of the Principal Secretary, Women and Child Development, UP Govt. We are a little disappointed by this affidavit which simply mentions that on 16.11.2007 this Court directed that better particulars and status report on the time-frame when the noted institutions (i.e. Juvenile Justice Boards, Govt. Homes, which are required in all the districts) as per the provisions the Amended Juvenile Justice Act of 2006 would be constituted and also we called for the progress report of the constitution of Child Welfare Committees, which are required in every district as per the amended Section 3 of the Juvenile Justice Act, vide its 2006 amendment and also with regard to the constitution of the Homes in all the districts of UP for children who need care and protection. We also wanted to know the impediments, if any, in constituting these institutions and children homes. We must note with regret that apart from placing the copy of the orders dated 17.7.2007, 18.9.2007 and 16.11.2007 before Justice Y.R. Tripathi who has been engaged for selecting presidents in all the districts relating to the Child Welfare Committees, there has been little further compliance of our earlier orders. No information has been furnished when the said Commission for Protection of Child Rights as required u/s 17 of the Commission for Protection of the Child Rights Act, 2005, for U.P. is to be constituted. The affidavit is silent on all these aspects. In paragraph 3 of the affidavit, there is a reference to a letter dated 19.2.2008 sent by the Director, Women Welfare, to the Under Secretary, Women and Child Welfare, UP Govt. This letter only states that 3 photocopies of this Court's orders dated 17.7.2007, 18.9.2007 and 16.11.2007 were sent to Justice Y.R. Tripathi (retired), Chairman, Juvenile Justice Selection Committee Board, and the Court had sought certain particulars and that there were some financial implications in the order also. This letter which was drafted three days before the scheduled date of listing in pursuance of the order dated 16.11.07 and which only seemed an attempt to pass on the buck to Justice Y.R. Tripathi shows the utter non-seriousness with which this department is dealing with the serious issue of child welfare and how little regard it is showing for forwarding the pious mission with which this Court is

engaged in and where some departments such as the police are rendering effective and laudable support after the Court began to monitor this matter. We hope that by the next date of listing the departmental heads concerned will take more effective steps and furnish better particulars on the matters sought in the present and the last order dated 16.11.07. and other orders and it will not be incumbent upon this Court to summon the officials concerned and seek their explanations for their inaction and lack of concern relating to the issues involved.

6. It may be mentioned that Justice Y.R. Tripathi has himself submitted a detailed report dated 14.2.08 through the Registrar General, High Court, which mentions some of the lacunae and impediments in implementation of the Juvenile Justice Act and the other duties entrusted to him. If even a fraction of the sensitivity and concern about the issue was shown by the concerned department of what is shown by Justice Y.R. Tripathi, we would have a completely different response from them than what we have seen so far in the matter. We hope that Justice Y.R. Tripathi is being suitably compensated for his efforts and all his expenses are also being met expeditiously by the government. We would like a reply from the Principal Secretary Women and Child Development on the issues raised in the letter of Justice Tripathi on the next date of listing, the Registry may forward a copy of the letter to the department for their response. The copy of this order be also forwarded to Justice Y.R. Tripathi.

A fourth affidavit has been filed by Dy. SP of the State Crime Record Bureau, which mentions that a letter was issued by the AQDGP (Law and Order), UP on 30.1.2008 addressed to all the SSPs/SPs and SPs, Railways, whereby they were directed to utilise the departmental website [up.missingpersons.in](http://up.missingpersons.in) and directed that necessary posters and pamphlets be distributed at all railway stations, bus stand and other public places containing portraits and information about the missing persons/children.

7. We are happy to note that a High-Powered Committee was also constituted consisting of Dy. Director, Traffic, SP, State Crime Record Bureau, SP, Railway, Lucknow, SP (Crime), DGP (Headquarters) and SP (Headquarters), Allahabad, which met on 28th and 31st January, 2008, and has resolved that for a public display of news relating to the missing children, television sets connected with internet facilities be installed in each district at railway stations, bus stations and other important public places to be identified by the district police chief. On the public display system, photographs of missing children would be displayed by slide show, which will go on from 5 am to 11 pm daily, with the help of UP Electronics and for this purpose in UP 300 TV monitors are required in 70 districts. As we have mentioned in our earlier orders that other useful information relating to social issues, or about the identity or photographs of criminals or terrorists etc. could also be flashed of these public display systems to elicit the support of the general public in these matters, these systems will give multiple benefits.

8. An amount totalling Rs. 16,79,28,000 has been estimated to be required for

this purpose. In case the concerned department in the State government consider? it difficult to release the amount sought, or it is of the opinion that this estimate is on the higher side, the Committee could consider ways and means for reducing the amount as far as possible, perhaps by recommending normal TV monitors instead of Plasma TV if that is considered feasible by the committee. That however is entirely a matter for the committee to consider as the Court is not an expert on these issues. So far as the recurrent expenditure was concerned, we think that part of it could be borne/recovered by permitting advertisements on the said public display systems. If they are considered feasible.

The intervenors Sister Sheeba Jose, Mr. Pankaj Naqvi and Sri Sanjeev Singh have filed an impleadment application dated 22.1.2008 which is taken on record wherein they have, inter alia, referred to the weakness in the distribution mid-day meals after making a sample survey in three tehsils of Allahabad, viz. Shankargarh, Soraon and Koraon. A copy of the said application should be forwarded to the District Magistrate, Allahabad, and to the concerned departments in the State government along with this order for their response on the findings and suggestions in the aforesaid impleadment application so that a response may be received regarding the same by the next date of listing and this Court may be in a position to pass appropriate directions.

Sri D.K. Singh, Joint Registrar, High Court, has produced two tables relating to 70 districts about the number of missing children where legal aid has been provided by counsel, the matter has been placed before the monitoring committee in its monthly meeting, the difficulties and problems encountered in the work, any additional suggestions and the number of children who have been recovered. We find that only a one-time response has been given. We would like the concerned district judges to send their responses every two months and the earlier information need not be repeated in the new proforma to be sent by the district judges but only the subsequent events and new cases where children have been recovered/returned by then may be mentioned, and the Registry can update the information in the Chart to be furnished to the Court.

9. As we have stated earlier, the Member-Secretary, Legal Services Authority, has not been engaged in the matter in a pro-active manner that we desired and has not effectively encouraged the district authorities to take up these problems of legal aid nor has he been interacting with them for meeting their difficulties; and financial constraints in running the Legal Aid Centres. We, therefore, direct that the Member-Secretary U.P. Legal Services Authority aforesaid be present on the next date of listing and show what effective measures he has now taken in pursuance of this order as well as the order dated 17.7.2007, which was quoted in Registrar General's earlier letter dated 18.9.2007. The Registrar's note dated 24.10.2007 has mentioned that the judgeships, namely, Agra, Firozabad and Lucknow have submitted considerably detailed reports mentioning the difficulties being faced by them in giving legal aid to the parents of the missing children to

come to lodge the report. The said reports may be placed before this Bench on next date.

10. One issue that has caused us considerable anguish is the non-response on behalf of the Principal Secretary, Primary Education, UP, to our specific observations and directions in the orders dated 17.7.2007, 18.9.2007 and 16.11.2007 for making the fundamental right to free and compulsory education to children upto 6 to 14 year, as directed by Article 21A of the Constitution of India and in the Apex Court cases of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., ; T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, and Ahad Brothers Vs. State of M.P. and Another, a reality.

11. In this connection we are again quoting the directions contained in our Order dated 16.11.2007:

By an order dated 17.7.07 we had emphasized the need for ensuring implementation of the fundamental right to free and compulsory education for children in the ages of 6 to 14 years, as directed by Article 21A (vide 86th Amendment Act, 2002) and the decisions of the Apex Court in the cases of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., approved in the eleven judge decision in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, and the seven judge decision in Ahad Brothers Vs. State of M.P. and Another, and the need for providing mid day meals as stressed by the Apex Court in PUCL v. Union of India (2007) 1 SCC 728 as food in school would also be a deterrent to a child leaving home to meet his food needs which are often not fulfilled in his impoverished home. We had further stressed that once the fundamental right to free and compulsory education was implemented it could be inferred that any child who was out of school was either's neglected or abused child, or a trafficked child or a child engaged in prohibited child labour. On the previous date, i.e. on 18.9.07 in compliance with our aforesaid directions an affidavit had been filed by the Secretary, U.P. Basic Education Board mentioning the progress made for enforcing the fundamental right for closing gender gaps and for making the "Sarva Shiksha Abhiyan" applicable in the whole of U.P. by 2010 under the eighth, five year plan; the number of primary/Upper primary schools that were established; additional class room\$ constructed; shiksha mitras appointed; and other measures taken for girl's education; provision of uniforms etc. However in the last order dated 18.9.07 we had noted that the Annual State of Education (ASER) Report indicated that 5.9% children of the eligible age are out of school which is apparently inconsistent with the Sarva Shiksha Abhiyan's figures of school attendance and we had therefore called for an estimate of the number of out of school children as per the ASER report and how the variance in the numbers was to be reconciled. We had also alluded to the low quality of learning in Parashadiya and other government schools and the surveys conducted, by various^ organisations on these aspects and the steps needed for improving

quality of teaching and for enhancing teacher attendance. On the last occasion Principal Secretary Primary Education U.P. had sought one month's time for filing the latest household survey reports of the out of school children. On the last date, 18.9.2007 we had also sought information from the Principal Secretary Education about the steps taken or planned for making School head masters, teachers, Gram Pradhans and Panchayat Adhikarjs or Others answerable by issuing suitable Government Orders if children of the eligible age, of 6-14 years are found out of school in violation of Article 21A of the Constitution, We regret to note that no affidavit has been submitted today, although two months have elapsed since our last order dated 18.9.07. Let the details sought by this Court be submitted by the concerned Secretary by the next date of listing.

Again no information has been furnished about the feasibility Of earmarking a budget for preparing photo identity cards as suggested by our orders dated 17.7.07 and 18.9.07 and for taking assistance of Principal Secretary Finance or from the other sources such as Sarva Siksha Adbhiyan as that would prove a useful tool for locating a missing child, as many indigent parents do not possess photographs of their small children. It would also be an effective record for authorities and others to verify whether the child was attending school as claimed.

11. On the next date of listing, we would like some senior official to be sent by the Principal Secretary, Primary Education, UP, to give us a satisfactory compliance report on the aforesaid directions relating to the discrepancy in figures of school attendance between Pratham's ASER report (which estimates the proportion of out of school children at 5.9% and the figures of the Sarva Shiksha Abhiyan; the steps taken for improving the quality of teaching and teacher attendance in the Parashadiya and government schools; furnishing promised copy of the latest house hold survey of number of out of school children; whether any G.O.s have been issued and steps taken for making Gram Pradhans. School head masters. Panchayat adhikaris. and others answerable for ensuring that every child aged 6 to 14 is in school; the feasibility of earmarking a budget for preparing photo identity cards. In the event of \$ failure in producing a satisfactory compliance report, to these directions this Court may have no option but to summon the Principal Secretary himself on the subsequent date of listing and hear him personally in the matter.

12. We also request the the Assistant Solicitor General of India, Sri K.C. Sinha, to inform this Court as to what steps are being taken by the Government of India for making the Offences Against the Children Bill, 2006, an Act and the likely period when the same is expected to be enacted. Secondly, we would like to be informed by the Central Government about the status if any of an Act which b to be promulgated for giving teeth to the newly introduced fundamental light to free and compulsory education for children of 6 to 14 year-group guaranteed by Article 21A of the Constitution. Thirdly we wish to be informed about the steps that are being taken for giving financial assistance for preparing identity cards

for all children in schools and the source and the time likely for release of the fund from the Sarva Shiksha Abhiyan or other heads for preparing these identity cards which contain photographs of the children.

The Registry may send a copy of this order to all the concerned, officials/officers and District Judges as mentioned above Copy of this order be furnished to the learned AGA, Sri A.K. Sand, the learned Assistant Solicitor General of India and the intervenors within a week.

List on 16.5.2008 for further orders. On that date the names of the intervenors Sister Sheeba Jose, Pankaj Naqvi, Sanjeev Singh and Jagriti Singh be also shown in the cause list.