



NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 1180 of 2019

- Anita Yadav

---- Petitioner

Versus

1. State Of Chhattisgarh Through Its Home Secretary, Mantralaya, Naya Raipur District Raipur Chhattisgarh Pin 492002
2. Women And Child Development Department Through Secretary, Atal Nagar Nawa Raipur District Raipur Chhattisgarh
3. Child Welfare Committee Through The Chairperson, Nutan Colony, Bilaspur Chhattisgarh
4. District Child Protection Unit Through The DCPO, Women And Child Development Office, House No. C-6, Songanga Colony, District Bilaspur Chhattisgarh Pin 495001
5. Women And Child Development Through District Programme Officer, District : Bilaspur, Chhattisgarh
6. Superintendent Of Police, District Bilaspur Chhattisgarh
7. Collector, District Bilaspur Chhattisgarh
8. Thana Prabhari Police Station Sarkanda, District Bilaspur Chhattisgarh

---- Respondents

(Cause-title taken from Case Information System)

For Petitioner

: Ms Priyanka Shukla, Advocate

For Respondents/State

: Shri Satish Chandra Verma, Advocate
General along with Shri Chandresh
Shrivastava, Additional AG

Hon'ble Shri Justice Ramesh Sinha, Chief Justice

Hon'ble Smt Justice Rajani Dubey

Order on Board

Per Ramesh Sinha, Chief Justice

11.07.2023

Heard Ms Priyanka Shukla, learned counsel for petitioner. Also heard Shri Satish Chandra Verma, learned Advocate General along with Shri Chandresh Shrivastava, learned Additional AG, appearing for the State.

1. The present writ petition has been filed by the petitioner with the following reliefs:-



- "i) Issue a writ of mandamus or any other writ, order or direction in the nature of mandamus to Respondent no.1 to immediately order to institute an independent unbiased and fair Special Investigation Team (SIT) to investigate into the custodial death of NikhilYadav @ Maheshwar Yadav in Observation Home at Sarkanda, Bilaspur;
- ii) Pass an order directing the respondents to conduct disciplinary proceedings against the guilty staff of the Sarkanda Observation Home;
- iii) Direct Respondents to pay exemplary damages to the parents of deceased Nikhil Yadv @ Maheshwar Yadav in form of compensation as deemed fit by this Hon'ble Court;
- iv) Set guidelines for the manner in which the arrest and verification of age should be done in cases involving children in conflict with law;
- v) Any other order as this Hon'ble Court may deem fit and appropriate in the light of the facts and circumstances mentioned herein above."

2. Brief facts of the case are that son of the petitioner, namely Nikhil Yadav @ Maheshwar Yadav (hereafter, referred to as 'the deceased') died on 27.07.2019 under unnatural circumstances while he was in the Observation Home, Nutan Chowk, Sarkanda, Bilaspur. The deceased Juvenile was arrested on 19.07.2019 by the Police, PS-Sarkanda, Bilaspur in FIR-658 of 2019 under Section 457 and 380 of the IPC. He was presented before the learned Chief Judicial Magistrate, Bilaspur and was sent to Central Jail, Bilaspur. On an application moved by the Head Constable PS Sarkanda, Bilaspur, learned CJM, on the basis of Aadhar Card and School Certificate of the deceased, found him Juvenile, and immediately vide order dated 25.07.2019, transferred him to the Observation Home, Nutan Chowk, Sarkanda, Bilaspur on 26.07.2019. On the next day ie on 27.07.2019, deceased found hanging by a *gamcha* on the iron rod of ventilator of the room near the bathroom at 6.30 a.m.





Information was given to his parents about the said incident at 11 a.m. Parents of the deceased made a written complaint to the Superintendent of Police, Bilaspur on 07.08.2019 regarding the ill-treatment committed on the Juvenile inmates in the Observation Home. When no action was taken in the complaint, they filed another complaint to the Inspector General, Bilaspur Division, CG regarding unnatural death of the deceased.

3. Learned counsel for petitioner submits that respondent authorities violated the rules. In judicial enquiry, conducted by the learned Chief Judicial Magistrate, Bilaspur, it was opined that there was serious irregularities and illegality on the part of the Police authorities, jail authorities, Officers and employees of Observation home. All concerned authorities violated Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short, "JJ Act"). When the deceased was in the Observation Home in another case filed against him, he also complained to his parents that staff members use to abuse physically against juveniles. All guilty Officers and employees should be punished and a direction may be given to pay compensation to petitioner, as she lost her young son.

4. Learned Advocate General appearing for the State though strongly oppose the prayer of petitioner, but he fairly submits that as stated in the Judicial Enquiry Report, there are some irregularities in violation of JJ Act, in dealing with the deceased.



5. Heard learned counsel for the parties and perused the documents annexed with petition.

6. Learned CJM inquired the matter and submitted his report dated 25.05.2020. In Paragraph-16 he observed as under:

“16.xxxxxxxxxx नियम 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, किशोर न्याय (बालकों का देखरेख एवं संरक्षण) आदर्श नियम 2016 में अन्य मानदंड का भी उल्लेखित किया गया है, नियम 69 किशोर न्याय (बालकों का देखरेख एवं संरक्षण) आदर्श नियम 2016 में बालकों का संस्थागत प्रबंधन के संबंध में भी उल्लेख किया गया है किंतु बाल संप्रेक्षण गृह सरकण्डा बिलासपुर के संस्था प्रभारी एवं अन्य जिम्मेदार कर्मचारियों के द्वारा विधि के उल्लंघनकर्ता बालक/ मृतक निखिल यादव के संबंध में उक्त नियमानुसार अपने जिम्मेदारी का निर्वहन नहीं किया गया है। मृतक निखिल यादव को उक्त नियमानुसार अन्य विधि से संघर्षरत बालक के साथ विधि के उल्लंघनकर्ता बालक/ मृतक निखिल को मानदंड के अनुसार रखा जाना था, जो कि नहीं रखा गया है। साक्षियों के कथन एवं सी0सी0टी0वी0 फुटेज के अनुसार मृतक को बाथरूम के बगल में स्थित चेंजिंग रूम में जानबुझकर उपेक्षा पूर्वक रखा जाना दर्शित है। जिससे विधि के उल्लंघनकर्ता बालक/ निखिल यादव के चेंजिंग रूम में रात में अकेले रहने के कारण उसे आत्महत्या जैसे कृत्य को करने का अवसर मिला।

7. Above report transpires that deceased was kept alone in changing room without basic facilities, which is in violation of Rules of JJ Act. Hon'ble Apex Court while dealing with the issue, opined in case of **Ajab Singh and another Vs State of UP and others** reported in (2000) 3 SCC 521 as under:

“8.xxxxxxxx When such deaths occur, it is not only to the public at large that those holding custody are responsible; they are responsible also to the courts under whose orders they hold such custody.”



8. Taking into consideration the great harm done to petitioner by the Officers and respondent authorities, also in view of the opinion of Hon'ble Apex Court, we think that it is appropriate, in the circumstances, to order the State to pay to the petitioner compensation for the death of Juvenile Nikhil Yadav @ Maheshwar Yadav in Observation home, in the sum of Rs.1,00,000/- (Rupees one lakh only) within a period of six months from today.

9. It is also directed that respondent authorities to ensure compliance of Rules provided under JJ Act, and should take disciplinary proceedings against those found responsible for the death of the deceased and order accordingly.

10. The petition stands allowed to that extent only.

11. The State shall also pay the cost of writ petition.

Sd/-
(Rajani Dubey)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice