

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7968 OF 2019
(@SPECIAL LEAVE PETITION (CIVIL) NO. 34251 OF 2017)

NATIONAL COMMISSION
FOR PROTECTION OF CHILD
RIGHTS & ORS.

...APPELLANT(S)

Versus

DR. RAJESH KUMAR & ORS.

...RESPONDENT(S)

J U D G M E N T

Deepak Gupta, J.

1. It's so sad! We start with a lament because institutions set up to protect children have virtually forsaken them in a fight over their so called jurisdictions.

2. India is a signatory to the United Nations Convention on the Rights of the Child, 1989 which makes it obligatory upon the

signatory States to take all necessary steps to protect the rights of the children as set out in the Convention. The Government of India enacted the Juvenile Justice (Care and Protection of Children) Act, 2000. This was repealed by the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as 'the JJ Act').

3. It was felt expedient to enact a law constituting special commissions to protect the rights of children. Parliament enacted the Commissions for Protection of Child Rights Act, 2005 (hereinafter referred to as 'the CPCR Act'). The CPCR Act envisages the constitution of a National Commission for Protection of Child Rights (hereinafter referred to as 'NCPCR/National Commission') under Section 3 and the State Commissions for Protection of Child Rights (hereinafter referred to as 'State Commissions') under Section 17. We shall deal with their respective functions and powers at a later stage but there can be no manner of doubt that these two Commissions – one at the National level and the other at the State level – are expected to function in a spirit of cooperation. We expect such Commissions to consult, discuss and cooperate with each other

while exercising their powers and fulfilling the duties enjoined upon them by the CPCR Act. These two institutions are in the nature of siblings. The goal which they both set out to achieve is the same, viz., protecting children from all sorts of abuse, exploitation etc. We see no reason why there should be any disharmony and lack of coordination between these two institutions. This non-cooperation and lack of coordination can only occur when the persons manning the institutions put their own interests over the interest of the children. It is only when those in-charge of such commissions give themselves so much importance that they forget that they are the creation of statute, the only purpose of which is to protect children.

4. This case is a classic example where in the fight between the State Commission and the National Commission the children have been, all but forgotten. We are sorry that this Court has to spend its time resolving such disputes. This Court as well as the two major parties litigating before us definitely have better things to do.

5. From the material on record, it appears that news reports were published some time in February, 2017 indicating that a

child-care institution based in Jalpaiguri in West Bengal had indulged in large scale trafficking of children. The NCPCR took cognizance of these reports on 03.03.2017 and two members of the NCPCR went to Jalpaiguri on 07.03.2017. They requested the State officials to provide them some information which, according to the NCPCR, was not provided. They finally summoned the Additional Director General of Police (ADGP), Criminal Investigation Department (CID), West Bengal (Respondent no.1 herein) to appear before the NCPCR. This gentleman, instead of appearing before the NCPCR, chose to file a writ petition challenging the jurisdiction of the NCPCR to summon him. The High Court, by the impugned order dated 29.08.2017, stayed the direction of the NCPCR mainly on the ground that since the State Commission had taken cognizance of the matter on 24.02.2017, the NCPCR had prima facie no jurisdiction.

6. Section 13 of the CPC Act deals with the functions and powers of the National Commission. Section 24 of the CPC Act vests the same functions and powers in the State Commissions. Section 13 of the CPC Act therefore defines the functions and

powers of both the NCPCR and the State Commissions. It reads as follows :-

“13. Functions of Commission.- (1) The Commission shall perform all or any of the following functions, namely:-

(a) examine and review the safeguards provided by or under any law for the time being in force for the protection of child rights and recommend measures for their effective implementation;

(b) present to the Central Government, annually and at such other intervals, as the Commission may deem fit, reports upon the working of those safeguards;

(c) inquire into violation of child rights and recommend initiation of proceedings in such cases;

(d) examine all factors that inhibit the enjoyment of rights of children affected by terrorism, communal violence, riots, natural disaster, domestic violence, HIV/AIDS, trafficking, maltreatment, torture and exploitation, pornography and prostitution and recommend appropriate remedial measures;

(e) look into the matters relating to children in need of special care and protection including children in distress, marginalized and disadvantaged children, children in conflict with law, juveniles, children without family and children of prisoners and recommend appropriate remedial measures;

(f) study treaties and other international instruments and undertake periodical review of existing policies, programmes and other activities on child rights and make recommendations for their effective implementation in the best interest of children;

(g) undertake and promote research in the field of child rights;

(h) spread child rights literacy among various sections of the society and promote awareness of the safeguards available for protection of these rights through publications, the media, seminars and other available means;

(i) inspect or cause to be inspected any juvenile custodial home, or any other place of residence or institution meant for children, under the control of the Central Government or any

State Government or any other authority, including any institution run by a social organisation; where children are detained or lodged for the purpose of treatment, reformation or protection and take up with these authorities for remedial action, if found necessary;

(j) inquire into complaints and take *suo motu* notice of matters relating to,-

- (i) deprivation and violation of child rights;
- (ii) non-implementation of laws providing for protection and development of children;
- (iii) non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships to and ensuring welfare of the children and to provide relief to such children,

or take up the issues arising out of such matters with appropriate authorities; and

(k) such other functions as it may consider necessary for the promotion of child rights and any other matter incidental to the above functions.

(2) The Commission shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force.”

7. A perusal of Section 13 makes it amply clear that the National Commission and the State Commissions have been clothed with identical powers and functions. The Commissions have been constituted with a view to not only protect the rights of children but also to suggest ways and means of enhancing the rights of children and ensuring that laws made for the protection of children are effectively implemented. These commissions exercise extremely important powers. They must function only

for the protection and betterment of children. These commissions cannot become sources of power, self-aggrandisement or means of obtaining the trappings of power like official cars, bungalows etc. The people who are appointed to such commissions must in a true sense be friends of the children, willing to spend their time and energy to help children rather than pushing their own personal or political interest.

8. Amongst many others, the main functions and powers which a commission is required to perform are examining and reviewing the legal provisions enacted for protection of children so that they are effectively implemented; inquire into cases of violation of rights of children and recommend the initiation of proceedings in such cases; examining the factors which inhibit the enjoyment of rights by children in circumstances mentioned in Section 13(d) and recommend remedial measures; taking a deeper look into matters relating to children in need of care and protection, children in distress, children belonging to marginalised and disadvantaged sections, children in conflict of law, children without family or children of prisoners; to study various international instruments, treaties and policies, undertake

research in the field of child rights, spread awareness about child rights; increase child literacy etc. Section 13(1)(i) empowers the commission to itself inspect or cause to be inspected any juvenile custodial home or any other place of residence or institution meant for children whether such institution is run by the State Government or the Central Government or any other authority and includes institutions run by social organisations which, in our opinion, would include NGOs also. The Commissions can take up all other necessary functions and are required to present to the Central Government/State Government, as the case may be, reports in these regards.

9. In the present case, we are mainly concerned with the functions of the Commission referred to in clause (j) of sub-section (1) of Section 13 of the CPCRA Act, which empowers the commissions to inquire into complaints or even take *suo motu* notice of matters relating to deprivation and violation of child rights, non-implementation of laws providing for protection and development of children, non-compliance of policies and guidelines framed for the purpose of ameliorating and protecting the conditions of children etc. There can be no manner of doubt

that giving children in adoption without following the prescribed procedure or guidelines would definitely be a matter which could be inquired into both by the NCPCR or the State Commission.

10. We are, in this case, mainly concerned with Section 13(2) of the CPC Act, which states that the National Commission shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force.

11. The following three questions arise for decision in this case:

- (i) Whether the matter in hand was pending before the West Bengal Commission for Protection of Child Rights before the NCPCR took cognizance on 03.03.2017 and started inquiry on 07.03.2017?
- (ii) Whether Section 13 (2) of the CPC Act places the two Commissions (the NCPCR and the State Commissions) in water-tight compartments where they oust the jurisdiction of each other?
- (iii) Whether in a case which has inter-State or international ramifications the jurisdiction, if any, of the NCPCR can be ousted?

12. We may clarify that we have used the term 'jurisdiction' because it has been used by the parties. However, the proper word should not be 'jurisdiction' but the 'functions and powers' to be exercised by the respective Commissions. In our view if we do not refer to the 'jurisdictions' and deal with the 'functions and powers' of the Commissions then matters become much simpler. There is no ouster of jurisdiction like in the case of courts. The purpose of Section 13(2) is to ensure that one Commission carries out the inquiry. The language of the CPCRA Act is clear that if the State Commission or any other Commission constituted under law has started an inquiry under Section 14 then the National Commission should stay its hands in the matter. Both the Commissions have similar powers and functions. The jurisdiction of the State Commissions is limited to the State for which such Commission is constituted whereas the National Commission has jurisdiction all over the country and can inquire into any matter in any State. We have no doubt in our mind that both the Commissions are expected to function in a spirit of comity and in concert with each other and not as adversaries. The main issue which arises in this case is whether the West Bengal Commission for Protection of Child Rights

(WBCPCR) had actually started the inquiry into the matter before the NCPCR started its inquiry.

13. Section 13(1)(c) empowers the State Commissions to inquire into the violation of child rights. In Advanced Law Lexicon¹ the word 'inquire' has been defined as follows:

"Inquire. To seek knowledge by putting a question; to ask; to make investigation or inquisition."

In the context in which the word 'inquire' occurs in Section 13(1)(j), it obviously means something more than just making a request for information. It envisages the Commission playing an active role in ascertaining the facts relating to the three circumstances dealt with in this provision. It is more than just sending a letter. It is more akin to a preliminary inquiry and if such inquiry indicates that the rights of the children have been violated or the laws have not been implemented or the policy decisions or guidelines have been violated then the Commission must also suggest remedial measures. This power to inquire under Section 13(1)(j) will also have to be read with the power under Section 13(1)(c) which includes the power to inquire into the violation of child rights and recommend initiation of

¹ 3rd Edition, 2005, P. Ramanatha Aiyar, Pg. 2358

proceedings in such cases. Reading these two clauses together it is obvious to us that 'inquire' is not making note on the file but something more. We are dealing with children who cannot complain. The Commissions are meant to protect children who have no voice. It is these Commissions who have to give voice and feelings to the distress calls of children. The Commission can, thereafter, take action by itself if permitted under law or can recommend initiation of proceedings in accordance with law.

14. It would be apposite to refer to Sections 14 and 15 of the CPC Act which apply both to the National Commission and the State Commissions. The same read as follows:-

“14. Powers relating to inquiries. - (1). The Commission shall, while inquiring into any matter referred to in clause (j) of sub-section (1) of section 13 have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 (5 of 1908) and, in particular, in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath;
 - (b) discovery and production of any document;
 - (c) receiving evidence on affidavits;
 - (d) requisitioning any public record or copy thereof from any court or office; and
 - (e) issuing commissions for the examination of witnesses or documents.
- (2) The Commission shall have the power to forward any case to a Magistrate having jurisdiction to try the same and

the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under section 346 of the Code of Criminal Procedure, 1973 (2 of 1974).”

“15. Steps after inquiry.-The Commission may take any of the following steps upon the completion of an inquiry held under this Act, namely:-

- (i) where the inquiry discloses, the Commission of violation of child rights of a serious nature or contravention of provisions of any law for the time being in force, it may recommend to the concerned Government or authority the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons;
- (ii) approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;
- (iii) recommend to the concerned Government or authority for the grant of such interim relief to the victim or the members of his family as the Commission may consider necessary.”

15. Any Commission, while conducting an inquiry under Section 13(1)(j) has been given wide powers akin to that of a civil court and has a right to forward any case to a magistrate and the magistrate is required to deal with such case forwarded to him as if the case has been forwarded to him under Section 346 of the Code of Criminal Procedure, 1973. The follow up action which a Commission can take is also clearly set out in Section 15 of the CPC Act which empowers the Commission to make recommendations to the concerned Government or authority for

initiation of proceedings including prosecution or such other action as the Commission may deem fit. This is a recommendatory power but normally we would expect that the Government would accept the recommendation of the Commission in this regard. The second power given to the Commission is to approach the Supreme Court or the High Court for an appropriate writ, order or direction. The Commission can also recommend the grant of interim relief to a victim under Section 15(iii) of the CPCMR Act. The aforesaid provisions which set out the powers relating to inquiries and steps to be taken thereafter clearly indicate that the inquiry contemplated is more than only gathering of information, and is more in the nature of an investigation or inquisition.

16. In the present case, the dispute is who started inquiry first – whether it was the WBCPCR or the National Commission. As far as the National Commission is concerned, there is no dispute that it started its inquiry on 07.03.2017 when its members visited Jalpaiguri to inquire into the matter. The stand of the National Commission is that they were, for the first time, informed on 24.07.2017 that the State Commission has taken

cognizance and is inquiring into the matter even though they had written various letters to the various officials including the District Magistrate and the police officials in this regard. From the list of dates filed by the WBCPCR, it appears that on 12.07.2016 the Director, Child Rights and Trafficking, West Bengal (for short 'the Director, CRT') wrote to the District Magistrate, Jalpaiguri seeking a report on the illegal child trafficking there. An inquiry team was formed by the District Magistrate, Jalpaiguri on 09.12.2016 and a report was sent to the Director, CRT on 11.01.2017. Thereafter, the Director, CRT passed an order that the Specialised Adoption Agency (for short 'the SAA'), Jalpaiguri is not functioning as per the provisions of Adoption Guidelines, 2015 and the JJ Act and 15 children from the SAA Jalpaiguri, run by the North Bengal Peoples' Development Centre (for short 'the NBPDC') were transferred to other institutions. On 17.01.2017, the Central Adoption Resource Authority (for short 'the CARA') filed a complaint with the CID, West Bengal. On 22.01.2017, a report appeared in local newspaper about this child trafficking racket. On 15.02.2017, a team was constituted by the CID, West Bengal to investigate the complaint made by the CARA. On 16.02.2017, a team of CID,

West Bengal went to Jalpaiguri. On 17.02.2017, a letter was allegedly sent by the Chairperson of the WBCPCR to the District Magistrate, Jalpaiguri, informing that the State Commission had taken cognizance of the report published in the daily newspaper on 22.01.2017. On 19.02.2017, a formal First Information Report (FIR) was registered in the matter. The report dated 11.01.2017, referred to above, was sent to the WBCPCR on 24.02.2017. Thereafter, news items again appeared on 26.02.2017 and two women officials of the concerned adoption centre were arrested. Admittedly, NCPCR took note of this instance on 03.03.2017 and on 07.03.2017 two members of the NCPCR visited Jalpaiguri to conduct an inquiry.

17. We had requested learned counsel appearing for the WBCPCR to provide the file of WBCPCR in relation to this matter, which was provided. After going through the file, all that we can say is that the file is not maintained like an official file. The papers were kept casually. Except for the noting sheet, the other papers were not tagged. The other papers were also not paginated. In such a file, there can be additions and alterations at any stage. We, therefore, cannot place too much reliance on

such a poorly maintained file and direct the WBCPCR to ensure that in future, files, especially of complaints, are maintained in a proper manner. According to the documents which form a part of this file, the WBCPCR took *suo motu* cognizance of the incident on 30.01.2017 on the basis of the newspapers report dated 22.01.2017. It was stated in the noting sheet that the matter be put up for appropriate action. Though this note is dated 30.01.2017 and was put up to the Chairperson, WBCPCR, it appears that the Chairperson wrote that she should be reminded after 10 days for follow up action. The file was again put up before the Chairperson on 13.02.2017. On 14.02.2017 it was ordered that the District Magistrate/District Children Protection Officer (DCPO) may be asked to submit a report. A draft letter was put up which was approved on 16.02.2017 and dispatched on 17.02.2017. The DCPO, Jalpaiguri sent the report through mail dated 24.02.2017. The matter was again placed before the Chairperson, who directed that the report be kept for records. The next noting on the file is of 15.03.2017. This note of 15.03.2017 has been put up with regard to the visit of the Chairperson and Secretary to Jalpaiguri on 10.03.2017 and 11.03.2017 to assist and monitor the situation after the recent

cases of child trafficking. Though, the visit is dated 10.03.2017 and 11.03.2017, the note is put up on 15.03.2017 and approved on the same date. We are unable to understand why the note for the visit was not put up prior to the visit. We have perused the report prepared by the Chairperson of the WBCPCR and find that the report is more in the nature of allegations against the members of the NCPCR. The report virtually does not deal with the issue related to trafficking of the children. We shall deal with this report at a later stage.

18. Even if we accept the record of the WBCPCR to be the gospel truth then also other than using the word 'takes suo-moto cognizance' on 30.01.2017, the WBCPCR had taken no steps to inquire into the matter, which is the mandate of Section 13(1)(j) of the PCR Act, till the visit of its Chairperson on 10.03.2017 and 11.03.2017. We make it clear that in every case a personal visit is not required but the manner in which this case has been dealt with leaves much to be desired. We see no reason why, if cognizance was taken on 30.01.2017, it was directed that the matter be placed for reminding the Chairperson to take follow up action after 10 days. These sort of matters brook no delay. Even

after the matter was put up, no attempts were made to hold an inquiry. All that was done was to order the District Magistrate/DCPO to submit a report. That report was filed on 24.02.2017 and it was ordered that the report be kept on record. It appears that it is only after the visit of the members of the NCPCR that the WBCPCR actually felt it necessary to itself visit Jalpaiguri and take stock of the situation.

19. As pointed above, as far as NCPCR is concerned, on 03.03.2017 a communication was sent by the NCPCR to the District Magistrate, Jalpaiguri wherein he was asked to give specific information with regard to the home in question. Thereafter, on 07.03.2017 two members of the NCPCR visited Jalpaiguri and even if the inquiry did not start on 03.03.2017, it definitely started on 07.03.2017. It found various deficiencies especially with regard to non-constitution of Child Welfare Committee (CWC) in New Jalpaiguri District from 23.08.2013-28.08.2015. It also found that *ad hoc* CWC was functioning which is against the provisions of law. Therefore, the NCPCR sent a letter on 16.03.2017 to the District Magistrate, Jalpaiguri seeking status of registration of homes, status of CWCs etc. On

23.03.2017, the NCPCR sent another letter to the District Magistrate specifically asking whether the WBCPCR had commenced an inquiry into the matter before the visit of the members of the NCPCR or after the initiation of the inquiry by the NCPCR. To this, no reply was given by the District Magistrate. Then, the NCPCR summoned the District Magistrate, Jalpaiguri on 12.04.2017 for personal appearance on 25.04.2017. The District Magistrate did not appear but sent some information vide communication dated 21.04.2017. However, in this communication also there is no reply to the specific query as to whether the WBCPCR had initiated an inquiry into the matter. The NCPCR also took no steps for almost two months. On 20.06.2017 the NCPCR sought the following information from the ADGP, CID, West Bengal (respondent no.1):-

- “1. In this case, sale of as many as about 17 children has been mentioned in this case, in which children were sold both in the country and abroad. Since this organization has come in existence, how many children have been adopted through this organization, provide list of those to the Commission.
2. In this case, children were given to Non-Resident Indian and foreign couples both, hence this case seems to be case of international trafficking. Record concerning as to how many children have been given to Non-resident and foreign couples be made available to the Commission.
3. According to newspaper, forged papers and papers of National Adoption Authority have been used in this crime

in forged manner. Copies of papers seized by CID, statement & list/copies of evidence be made available to the Commission.

4. List of all the detained/arrested people in this case, copy of First Information Report, copies of all the investigation reports be provided to the Commission. Copy of the statement of detained people.
5. From the year 2013 to 2015 Child Welfare Committee had not been constituted in District Jalpaiguri, in place thereof, Ad hoc Committee had been working. The following-mentioned papers/documents relating to this Committee be made available to the Commission:-
 - i. Copy of order for constituting ad hoc committee.
 - ii. People included in the ad hoc committee, list of those with their names, posts/designations be made available to the Commission.
 - iii. Minutes of the meetings convened by ad hoc Committee during its tenure.
 - iv. Decisions about how many children were taken by Ad hoc Committee, copies of all the case files concerning with all those.

If any charge sheet has been filed in court, then copy thereof.”

20. On the same day i.e. 20.06.2017, the District Magistrate, Jalpaiguri, was also directed by the NCPCR to give information pertaining to the constitution of *ad hoc* committee and members of the *ad hoc* committee. That very day another communication was sent by the NCPCR to the Department of Women & Child Development, West Bengal, to initiate an inquiry into the matter and inform the NCPCR about the report of the Government. According to the NCPCR, no response was received from any of

the authorities. Thereafter, another reminder was sent on 13.07.2017. Left with no option, on 20.07.2017, summons were issued to the ADGP, CID, West Bengal to appear before the NCPCR in person on 25.07.2017 along with relevant documents. A communication was also sent to the Chief Secretary, West Bengal on 22.07.2017 asking for information. The ADGP, CID, West Bengal by letter/fax on 24.07.2017 informed the NCPCR that since WBCPCR has already proceeded with the matter, the NCPCR should stay its hand in the present matter. Meanwhile on 21.07.2017, a report was sent by the CID, West Bengal supplying some information but most of the information was not sent. Thereafter, the NCPCR issued summons to the ADGP, CID, West Bengal on 14.08.2017 to appear before the NCPCR on 29.08.2017. The ADGP, CID, West Bengal challenged these summons by filing a writ petition in the Calcutta High Court. The Advocate General of the State appeared for Dr. Rajesh Kumar, ADGP, CID, West Bengal. The High Court vide impugned order, prima facie, came to the conclusion that since the WBCPCR had taken cognizance of the matter on 24.02.2017, the NCPCR is denuded of its jurisdiction over the subject. The High Court, accordingly, stayed the summons.

21. We are constrained to observe that in this clash of egos between the State Commission (WBCPCR) and the National Commission (NCPCR), for this entire period, other than the police taking action, nothing was done on the administrative side to set matters right.

22. The police have acted, a case has been filed, accused have been arrested and we are told that most of the children have been reunited with their parents. We are purposely not commenting on the criminal aspects of the matter. We refrain from doing so because any comment from us may affect the trial of the accused who are entitled to a fair and free trial. In fact, since criminal proceedings in respect to the illegal adoptions had already started, no inquiry could actually be conducted by either of the two Commissions with respect to the same. However, the National Commission was definitely entitled to inquire as to why proper CWCs had not been constituted and under what orders were ad hoc CWCs functioning. The Commissions can also inquire into the factual aspects which led to the trafficking of the children, though not the actual crime itself. In fact, we are of the view that such inquiries are necessary so that such events do not

occur in the future. In case, the CWCs had been properly constituted may be this unfortunate situation would not have arisen.

23. Though we are of the view that an inquiry into the alleged illegal adoption could not be conducted because a criminal case had already been registered, at the same time, we cannot shut our eyes to the manner in which both the State Commission (WBCPCR), the National Commission (NCPCR) and the senior officials of the State CID have dealt with the matter. We have already commented on the lack of alacrity on the part of the WBCPCR which purportedly took cognizance of the matter on 30.01.2017 but no effective steps were taken to inquire into the matter till 10.03.2017 except calling for a report. The members of the NCPCR visited Jalpaiguri on 07.03.2017 and have recorded the statement of CWC members. According to the statements so recorded, one of the accused, who was Secretary of the NBPDC which was running the concerned SAA, prayed for certificates for 20 children to be declared legally fit for adoption whom they placed before Prospective Adoptive Parents (PAPs) without Legally Fit for Adoption (LFA) Certificates from CWC, Jalpaiguri.

According to the statements, the members of the CWC were shocked that the legal procedure had not been followed. According to these members, they complained to the various officials but they were compelled to give certificates that the children were legally fit for adoption. In the absence of the parties who have made the statements, we would not like to make any further comment except to state that if any member of a CWC can be compelled or pressurized to give such a certificate then that member has no business of ever being appointed as member of CWC or in any capacity in a child rights institution.

24. We, however, find that in the report of the Chairperson, WBCPCR she herself mentioned that they had visited the home and inspected the premises but nothing more is written as to the manner in which the children were trafficked. Rest of the report deals with alleged misconduct of the members of the NCPCR when they visited the home at Korak. It is alleged that the Superintendent of the Home complained that the NCPCR team had brought entire media including the television media inside the centre and despite protest of the Superintendent, the media was brought inside the home. Again, the Chairperson mentions

that the District Magistrate also complained that the team of the NCPCR had brought media everywhere and had insulted everyone. However, we did not find anything of this sort mentioned in the communication sent by the District Magistrate. Be that as it may, we find that the report of the Chairperson WBCPCR does not deal at all with the issue of child trafficking.

25. We would like to make it clear that when arguments were taking place the report of the Chairperson, WBCPCR was not brought to our knowledge and we only saw it in the file. Therefore, we cannot rely on the report of the Chairperson, WBCPCR especially since we have not given the NCPCR a right to rebut what is stated in this report. However, even if all aspects are not correct but only one aspect of taking the media inside the home is correct, we have to express our displeasure with the same. We would like to make it clear that no person(s), including members of the Commissions whether it be the National Commission or the State Commission, are permitted to take media with them when they visit any of the homes set up under the JJ Act or under any other law. The privacy of the children is of the highest importance. In this fight between two bodies, the

children cannot be made subject matter of a media war. We sincerely hope that nothing like this will happen in future.

26. Coming to the role of the National Commission, we somehow feel that the National Commission was also more interested in settling scores with the State Commission or with the officials of the State Government rather than ameliorating the plight of the children. On 03.03.2017, the following information was asked by the NCPCR from the District Magistrate:-

- “1. Whether this Home was registered? Copy of the registration of the organization, list of officers and employees of the organization be provided to the Commission.
2. Whether this Home had been registered from Central Adoption Authority? Whatever papers relating to registration in CARA are available, be made available to the Commission.
3. Whether this organization had been working as District Adoption Authority? Papers relating to registration in the Women & Child Development Department, West Bengal be made available to the Commission.
4. If this organization has been run under section 41 Juvenile Justice (Care & Protection of Children) Act, 2015 registered Specific Adoption Agency recognized by Central Adoption Resources Authority, State Adoption Resources Tribunal, concerning papers be made available to the Commission.
5. In this case, sale of as many as about 17 children has been mentioned in this case, in which children were sold both in the country⁸ and abroad. Since this organization has come in existence, how many children have been adopted through this organization, provide list of those to the Commission.

6. In this case, children were given to Non-Resident Indian and foreign couples both, hence this case seems to be case of international trafficking. Record concerning as to how many children have been given to Non-resident and foreign couples be made available to the Commission.
7. According to newspaper, forged papers and papers of National Adoption Authority have been used in this crime in forged manner. Copies of papers seized by CID, statement & list/copies of evidence be made available to the Commission.
8. List of all the detained/arrested people in this case, copy of First Information Report, copies of all the investigation reports be provided to the Commission.
9. How many children were sent by Child Welfare Committee (CWC) to the organization, how many times CWC visited organization during the past five years and whatever other proceedings have been initiated relating to the organization, copies of those be made available to the Commission.
10. Reports of all the inspections conducted by the District Administration in the above-said organization in the past three years, and copy of report of inspections conducted at the time of registration of organization be made available to the Commission.
11. Make available list of adoption organization or organizations/institutions concerning with welfare of children (CCI) whether registered/unregistered in Jalpaiguri be made available to the Commission.
12. If any other organization/institutions have remained involved in illegal acts and cases would have been registered against them, list of those be made available to the Commission.
13. Because limits of District Jalpaiguri are attached with international limits of Nepal and Bangladesh, therefore, list of cases of trafficking registered in the district and list of complaints registered about missing children etc. from District. also be made available to the Commission.”

27. In our opinion, the District Magistrate should have given the requisite information to all the aforesaid questions except Question Nos. 7 and 8 because these related to copies of papers seized by the CID and list of all detained people in the case. The Commissions under the CPCR Act have no jurisdiction to monitor criminal cases. Their jurisdiction does not extend to monitoring the law and order which is a State subject.

28. Thereafter, on 16.03.2017 the following information was also asked for by the NCPCR from the District Magistrate:

“14. From the year 2013 to 2015 Child Welfare Committee had not been constituted in District Jalpaiguri, in place thereof, Ad hoc Committee had been working. The following-mentioned papers/documents relating to this Committee be made available to the Commission: -

- i. Copy of order for constituting ad hoc committee.
- ii. People included in the ad hoc committee, list of those with their names, posts/designations be made available to the Commission.
- iii. Minutes of the meetings convened by ad hoc Committee during its tenure.
- iv. Decisions about how many children were taken by Ad hoc Committee, copies of all the case files concerning with all those.

15. During the course of inquiry, it was given to understand that office of the District Children Protection Office (DCPO) which is available in the premises of the Collectorate itself, was sealed and case has been registered against few people. Particulars of all those and the following-mentioned information relating to those are desired:-

- i. People who were appointed in DCPO Office in the past 10 years.
- ii. Order for all the appointments.
- iii. List of all the people appointed.”

29. In our opinion, the aforesaid information could have also been provided by the District Magistrate but, for reasons best known to her, this information was not provided promptly. On 23.03.2017, the NCPCR sent a letter to the District Magistrate, Jalpaiguri in which the District Magistrate was specifically asked to answer the following query:-

1. Whether West Bengal State Commission for Protection of Rights of Children have commenced any inquiry in the above-said case as to your level before approaching of Commission or after commencing inquiry by the National Commission for Protection of Rights of Children? If so, then please provide details thereof.

From the record it appears that no answer was sent by the District Magistrate to this query. Therefore, the NCPCR was justified in further proceeding with the matter because it was neither informed by District Magistrate or the WBCPCR that the WBCPCR had already started inquiry into the matter. It was only after summons were issued to the District Magistrate on 12.04.2017 that she sent some documents. However, with regard to a large number of documents, it was stated that since the concerned DCPO has been arrested and the documents were

in her custody, the requisite papers were not traceable. With regard to some of the documents it was mentioned that the CID, West Bengal may be contacted because those documents are with the police in connection with the criminal case.

30. It was thereafter that a communication was sent on 20.06.2017 to Dr. Rajesh Kumar (IPS), ADGP, CID, West Bengal by the NCPCR. This was the first letter sent to a police official. In this letter, certain information quoted hereinabove was called for. Dr. Rajesh Kumar, ADGP, CID, West Bengal did not provide the aforesaid information and thereafter on 13.07.2017 a reminder was sent to him. Similar reminder was sent to the District Magistrate also. Thereafter, on 20.07.2017 summons were issued to Dr. Rajesh Kumar. As mentioned earlier, Dr. Rajesh Kumar sent a letter/fax on 24.07.2017 mentioning that the WBCPCR had taken cognizance of the matter and, therefore, the NCPCR is barred from taking up the inquiry. Reply was sent on 24.07.2017 informing him that if he did not appear before the National Commission, action against him will be taken under Section 166A of the Indian Penal Code, 1860. Thereafter, Dr. Rajesh Kumar sent a detailed reply challenging the authority of

the National Commission to summon him and also taking exception to the language used in the letter. We fail to understand why this police official took such a step. We may mention that he has not been served despite various attempts by this Court. It appears to us that he does not want to appear before us on one pretext or the other. We are constrained to observe that from a perusal of the documents on record it is apparent that he did not cooperate with the National Commission. The answer given by the State CID to the NCPCR is that the documents are lying with the Court. We are sure that a senior IPS official of the level of Dr. Rajesh Kumar must be aware that copies of all documents are also kept by the police before filing them in Court. Why could these documents not be provided to the National Commission? At least those documents that had nothing to do with the criminal aspect of the case but dealt with formation of the *ad hoc* committees and the absence of a properly constituted CWC could have been provided.

31. With regard to the letter dated 03.03.2017, we have already indicated that all the information except that relating to question nos. 7 and 8 should have been provided by the District

Magistrate. In fact, even with regard to question nos. 7 and 8, even if the copies of the papers seized and copies of the statements recorded were not to be provided, there was no problem in providing the list of the detained persons and copy of the FIR. As far as the second letter dated 16.03.2017 is concerned, again we find no reason why the information could not be provided. But since the District Magistrate had responded that some of the information was not available as it was handed over to the State CID, we would have expected that the ADGP, CID, West Bengal should have provided the necessary information to the NCPCR except that which related only to the investigation of the criminal case. In our view, neither the National Commission nor the State Commission had jurisdiction to investigate the criminal matter and they cannot ask for copies of the statements recorded by the investigating authorities. That can only be a matter between the prosecution and the accused.

32. Having said so, we are clearly of the view that Dr. Rajesh Kumar was obviously not cooperating with the NCPCR for reasons best known to him. In our view, the State Commission had not started any inquiry into the illegal setting up of CWCs or

the alleged ad hoc CWC being constituted in violation of the laws. We see no reason why Dr. Rajesh Kumar has not responded to the letter of the NCPCR clearly providing the information indicated above. His reply that the documents had been filed in court is obviously an evasive answer. We are constrained to make observations against Dr. Rajesh Kumar even though he is not present before us because we have no doubt in our mind that he is evading accepting notices sent from this Court.

33. Police officials should realise that when the Commissions constituted under the CPCR Act ask for some relevant information, they must respectfully reply to the same and not rake up the dispute of so-called 'jurisdiction'. Even the police officials must realise that these Commissions have been constituted for the welfare of the children. Even assuming that the WBCPCR had started an inquiry, we see no reason why Dr. Rajesh Kumar could not have provided the information to the NCPCR. It was not for him to question the jurisdiction of the NCPCR. If any official is asked for information by any of the Commissions, he is duty bound to reply to the letters of the Commission. One Commission may raise the issue that since it

is seized of the matter and is inquiring into it, the National Commission should not start another inquiry, but it is not for the officials to raise such an issue. Whether an inquiry has actually been initiated or not cannot be decided by an official. This has to be decided either by the Commission or by a Court of law. Therefore, in our view, Dr. Rajesh Kumar would have been better advised to furnish information to the NCPCR rather than challenging the jurisdiction of the NCPCR.

34. Having held so, we are clearly of the view that even the language of the letters sent by the NCPCR to Dr. Rajesh Kumar was unnecessarily harsh. We are not repeating the contents of the letters but, according to us, when a Commission asks for information, the letter should be formulated like a request and not like an order. Even if there is non-compliance of such request, the Commission should send another letter in stronger terms directing the official to provide the requisite information. But there is no need to threaten officials with arrest. This should only be done as a last resort.

35. We may also note that though the National Commission showed a lot of urgency till the matter went up to the Calcutta

High Court, after the matter came to this Court, for almost 2 years virtually nothing was done and we were orally informed that due to lack of translation of documents from Bengali to Hindi/English, the inquiry could not be completed. We are of the view that if the NCPCR decides to inquire into a matter then it must procure the services of a translator to get the documents translated from the regional languages. It cannot, on the one hand, take over the inquiry even if the State Commission has not started the inquiry and, on the other hand, rely upon the authorities of the State to provide the translation. We are sure that there are enough universities and colleges in Delhi where Bengali is taught and if the National Commission really wanted to complete the inquiry, the documents could have been got translated.

36. As far as the questions framed by us in Para 12 of this judgment are concerned, we answer Question No.1 by holding that in the facts of the present case, the WBCPCR had not started an inquiry till 07.03.2017. As far as Question No. 2 is concerned, we are of the view that there is no question of ouster of jurisdiction of any Commission. The only constraint placed by

Section 13(2) is that if the State Commission has already started an inquiry, the National Commission should naturally refrain from inquiring into the matter. This, however, does not mean that the National Commission cannot go into the other larger questions which may have led to the specific incidents of violation of child rights which need to be inquired into. With regard to Question No.3 we hold that even a State Commission has the power to inquire into those matters which fall within its purview and even if the illegality is such that it has inter-State or international ramifications, e.g. a child is being illegally sent for adoption abroad. Here again, we are of the view that if the State Commission in such a case asks for assistance from the National Commission or some other State Commission where the child may have been illegally trafficked, the National Commission or the other State Commission(s) should cooperate with the Commission inquiring into the matter.

37. As clearly held by us above, both the Commissions have to work for the best interest of the children in a spirit of cooperation. Unfortunately, in this case, there has been no cooperation rather mudslinging at each other. We would like to

reiterate and re-emphasise that there are no jurisdictional issues involved.

38. In view of the above, we are clearly of the view that Dr. Rajesh Kumar should have furnished the information which appears to now have been furnished by the State authorities. If such information has not been furnished, the present incumbent holding the post of ADGP, CID, West Bengal is directed to furnish the information to the National Commission as well as to Juvenile Justice Committee of the High Court of Calcutta within 15 days from the date of receipt of certified copy of this judgment. The counsel for the State of West Bengal shall inform the present Additional Director General of Police, Criminal Investigation Department, West Bengal of these directions.

39. As is evident from the facts narrated above, both the State Commission (WBCPCR) and the National Commission have been woefully lax in the matter. Hence we direct that other than the issues which form part of the criminal case, all other matters relating to the issue in hand and larger issues of appointment of CWCs and heads of CWCs, not only as far as this case is concerned, but also for the entire State of West Bengal, should be

monitored by the High Court of Calcutta, preferably by a bench headed by the Chairperson of the Juvenile Justice Committee of the High Court of Calcutta in a public interest litigation. In furtherance of these directions, we direct the Registry of this Court to send a copy of this judgment to the Registrar General of the Calcutta High Court, who shall place the same before the Hon'ble Chief Justice of the High Court for constitution of an appropriate Bench. We request the Bench so constituted to deal with the matter as per the urgency involved and if required, to establish a fool proof mechanism so that such occurrences do not take place in future.

40. This appeal is partly disposed of in the aforesaid terms in so far as the disputes inter se the NCPCR and WBCPCR are concerned. We, however, make it clear that the issue of setting up of human rights courts and appointment of special public prosecutors for such human rights courts shall be dealt with in this appeal as well as in the Writ Petition (C) No.819 of 2019. All pending application(s) related to the dispute between the NCPCR and the Dr. Rajesh Kumar, ADGP, CID, West Bengal (respondent no.1) & WBCPCR, shall stand(s) disposed of accordingly.

.....**J.**
(Deepak Gupta)

.....**J.**
(Aniruddha Bose)

New Delhi
January 13, 2020

