

IN THE SUPREME COURT OF INDIA
ORIGINAL CRIMINAL JURISDICTION

I.A. NO. _____ OF 2020

IN

WRIT PETITION (CRL.) NO. 102 OF 2007

IN THE MATTER OF:

In Re: Exploitation of Children in
Orphanages in State of Tamil Nadu

...PETITIONER

VERSUS

Union of India & Ors.

...RESPONDENTS

APPLICATION FOR DIRECTIONS ON BEHALF OF THE
AMICUS CURIAE

TO

THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS LORDSHIP'S COMPANION JUSTICES OF THE
HON'BLE SUPREME COURT OF INDIA

THE HUMBLE APPLICATION
OF THE ABOVE NAMED
AMICUS CURIAE

MOST RESPECTFULLY SHOWETH:

1. That the present Writ Petition was disposed of by this Hon'ble Court vide order dated 05.12.2018. However, the said order granted liberty to the Amicus Curiae herein to make an appropriate application if required. Pursuant to this, the present Writ Petition was revived through I.A. No. 24585 of 2020 filed by the Amicus Curiae herein in February 2020 and is pending before this Hon'ble Court with

respect to the issue of minors being detained and tortured in police stations in Uttar Pradesh and Delhi.

2. That vide order dated 05.12.2018 in the present Petition, the Union of India was to undertake to prepare a report on the basis of data collected with respect to the management of institutions and the rights of children. The said report was to serve as a plan or vision document for the immediate future. The relevant portion of the order dated 05.12.2018 is quoted hereunder:

“It appears that the Union of India has made efforts to collect data on its own through the Ministry of Women and Child Development. It has also been able to collect data from the National Commission for Protection of Child Rights as well as from the Childline.

We have been given to understand that the data collected is voluminous.

It is stated by the Joint Secretary that the analysis of the data is being carried out under her supervision with the assistance of officers of the Ministry of Women and Child Development as well as professional help from the National Institute of Public Cooperation and Child Development (NIPCCD).

It is expected that the data analysis will highlight some gaps in the data collection as well as in certain aspects of the management of institutions and the rights of children. Once these gaps are identified, professional help will be taken from the stake-holders which include civil society. Wherever necessary, inter-ministerial discussions will also take place so that these gaps can be filled up keeping the interest of the children in mind.

It is stated that after the analysis of the data and the gap analysis is concluded, a report will be prepared which can serve as a plan or vision document for the immediate future.

The suggestions given by learned amicus curiae may be taken into consideration during the analysis of the data and also during the gap analysis.

The submission of the learned amicus curiae is that data analysis may keep in mind Section 55 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

It is further stated that the idea is to have regular reports coming in and to institutionalize the process so that this exercise can be carried out year after year keeping the interest of the children in mind. She also says that a resource centre that is contemplated is already a part of NIPCCD and is approved under the Child Protection Service and that resource centre will be strengthened in due course of time.

In view of the above, the writ petition stands disposed of.

Liberty is granted to learned amicus curiae to revive the matter after the report is made available to her, if necessary.”

A true and correct copy of the order dated 05.12.2018 passed by this Hon'ble Court in W.P. (Crl.) No. 102 of 2007 is marked and annexed hereto as **ANNEXURE A-1 (Page No. __12_ to __17_)**.

3. That to the knowledge of the Amicus Curiae, the Respondents herein have not fully complied with the said direction in the order dated 05.12.2018 passed by this Hon'ble Court even though more than 18 months have passed since the direction to take into account the data available and prepare a roadmap was passed.
4. That in the meanwhile, children are reported to have been treated poorly bordering on severe abuse in many Child Care Institutions (“CCIs”) across the country. I.A. No. 24585 of 2020 filed by the Amicus herein is pending before this Hon'ble Court with respect to the issue of minors being detained and tortured in police stations in Uttar Pradesh and Delhi. It is submitted that vide order dated 10.01.2020, while hearing the

- aforesaid I.A., directions were given to the Union of India and the National Commission for Protection of Child Rights ("NCPCR") to submit reports to the Amicus Curiae in terms of the order dated 05.12.2018.
5. It is submitted that following this I.A. and orders passed by this Hon'ble Court therein, certain reports were shared by the. However, the analysis of the Union of India is still awaited.
 6. That the manner in which COVID-19 has spread in the concerned Shelter Home makes it clear that the directions passed by this Hon'ble Court in *Re: Contagion of COVID-19 Virus in Children Protection Homes* order dated 03.04.2020 [Suo Motu Writ Petition (Civil) No. 4 of 2020] with respect to the measures to be taken by Child Welfare Committees, Juvenile Justice Boards, CCIs and Governments have not been followed. A true and correct copy of order dated 03.04.2020 passed by this Hon'ble Court in *Re: Contagion of COVID-19 Virus in Children Protection Homes* [Suo Motu Writ Petition (Civil) No. 4 of 2020] is marked and annexed hereto as ANNEXURE A-2 (Page No. 18 to 32).
 7. That this Hon'ble Court vide order dated 11.06.2020 in *Re: Contagion of COVID-19 Virus in Children Protection Homes* had taken cognizance of a case of 35 children in a Protection Home in Royapuram, Chennai who had been infected with COVID-19. This Hon'ble Court had directed the Health and Family Welfare Department, Tamil Nadu and the Social Welfare Department to submit a report giving details of the reasons for the spread of COVID-19 in the Protection Home as well as the health of children in other Protection Homes in the State. Further, all State Governments were to ensure that information in relation to the care and protection of children in conflict with law be provided in a questionnaire by 30.06.2020 as prescribed by this Hon'ble Court. A true and correct copy of order dated 11.06.2020 passed by this Hon'ble Court in *Re: Contagion of COVID-19 Virus in Children Protection Homes* [Suo Motu Writ Petition (Civil) No. 4 of 2020] is marked and annexed hereto as ANNEXURE A-3 (Page No. 33 to 44).
 8. That in this time, there are reports of children in CCI being found COVID 19 positive. One such instance which has been taken note of by the National Human Rights

Commission ("NHRC") and is widely reported in the media is being referred to in the present application to draw the attention of this Hon'ble Court to the continuing state of deplorable treatment meted to children in CCIs. This particular instance arising out of a Shelter Home in Kanpur District, Uttar Pradesh is of grave concern and requires immediate attention and action by this Hon'ble Court.

9. That on 22.06.2020, as per the information available on the website of the National Human Rights Commission ("NHRC"), the NHRC issued a press release with regard to *suo motu* cognizance of media reports that 57 minor girls tested positive for COVID-19 at a state-run children's Shelter Home in Kanpur District, Uttar Pradesh. Furthermore, 5 of the girls were also found to be pregnant and 1 girl was HIV positive. The girls had been exhibiting COVID-19 symptoms for some time but the State Health Department had been informed only on 19.06.2020. The NHRC's press release also notes that the Kanpur District Magistrate has said that there were 7 pregnant girls living in the Shelter Home and that 5 of them had tested positive for COVID-19. A true and correct copy of press release titled "NHRC notice to the Chief Secretary and DGP, Uttar Pradesh over reports of 57 minor girls found COVID positive; 5 of them pregnant and one HIV positive at a State run Shelter Home in Kanpur" issued by the National Human Rights Commission on 22.06.2020 is marked and annexed hereto as ANNEXURE A-4 (Page No. 43 to 44).
10. That it is clear from the aforesaid incidents that even though children housed in CCIs may not have been COVID-19 positive when the first order dated 03.04.2020 was passed, there have been at least two instances where children were found positive subsequently. The spread of COVID-19 in CCIs is a grave danger due to the number of children who may be housed in such institutions. At this stage, while awaiting the report of NHRC with respect to the Shelter Home in Kanpur, it is important that adequate pre-emptive steps are taken to prevent further cases in CCIs.
11. That as per the directions issued by this Hon'ble Court in *Re: Contagion of COVID-19 Virus in Children Protection Homes* the following steps ought to have been taken:

- a. Conduct inquiries/inspections of CCIs with the health and safety of the children in mind.
- b. Circulation of information to all CCIs about how to deal with COVID-19.
- c. Preparation of plans by each CCI in consultation with the District Child Protection Unit for a situation where there is an outbreak of COVID-19 in the CCI.
- d. Budgetary allocation to be made to meet the costs that will likely arise as a result of ensuring that CCIs are able to prepare against COVID-19 including the provision of face masks, soap, disinfectants, etc.

Moreover, the concerned Shelter Home ought to have put the following preventive measures in place in order to prevent the spread of COVID-19:

- a. Screening of all persons entering the CCI and any person exhibiting COVID-19 symptoms to not be allowed inside.
- b. Adequate social distancing to be enforced within the CCI.
- c. All persons in the CCI to ensure regular hand washing and disinfection of various surfaces.

Most importantly, in case there is a suspected COVID-19 case inside a CCI, the CCI ought to have taken the following measures:

- a. Monitoring and identification of symptoms amongst the children and staff in the CCI.
- b. In case any child is found to exhibit common COVID-19 symptoms, doctor/nurse attached to the CCI must be informed and necessary action must be taken.

- c. Immediate quarantine within the CCI of any children showing COVID-19 symptoms. In case quarantine in the CCI is not possible, then arrangements should be made to quarantine in an outside facility/separate building.
12. That the fact that 5 of the girls are reportedly pregnant and 1 is HIV positive requires immediate registration of FIR and investigation by an external agency, if not already done, and reflects that despite two orders passed by this Hon'ble Court, there are serious lapses in the management of children's health in CCIs. The Government of Uttar Pradesh must put on record the steps that they have taken with respect to this since, as the NHRC press release notes, the Kanpur District Magistrate admits to the fact that 7 pregnant girls were living in the Shelter Home (5 of them had tested COVID-19 positive) and that they were already pregnant when they were brought to the Shelter Home on the directions of the Child Welfare Committee.
13. That it is submitted that the order dated 11.06.2020 passed by this Hon'ble Court in *Re: Contagion of COVID-19 Virus in Children Protection Homes* mandates the State to fill in details as per a format that was provided in the said order to enable better reporting.
14. That it is submitted that one of the key findings through the process of hearing of the present Petition was the lack of a centralised database to get live feed on the status of children placed in CCIs. The Union of India had been making submissions to this end that they are in the process of preparation of a centralised database that can be used and accessed by all the CCIs in the country. However, this has not been activated till date.
15. That it is not clear what is the mechanism put in place by the Respondents herein pursuant to the order dated 05.12.2018 in order to institutionalise the process of data collection of children in institutions and to ensure that regular reports are generated which contribute to the protection of the rights of children. In spite of this Hon'ble Court's order, it is apparent that there are grave deficiencies in the manner in which State institutions deal with the welfare of and the conditions under which children are kept.

16. That it is apparent that the rights of children housed in CCIs are currently in dire straits with the challenges posed by the pandemic and the bare minimum requirements for a good management protocol. It is further submitted that every CCI will have new children being referred to it by the concerned Child Welfare Committee and there needs to be special care taken to ensure that the children who are being placed are not COVID-19 positive and adequate steps are taken to ensure that they are suitably quarantined before they are allowed to access the CCIs with the other children.
17. That in these circumstances, while it is imperative that appropriate medical treatment and facilities be given to the minor girls who have reportedly tested positive for COVID-19 in the abovementioned Shelter Home in Kanpur District, Uttar Pradesh, it is important to take steps to prevent further cases. It is equally important that a daily data on the status of the health of the children must be made available to authorities at the State and Central level for better and urgent intervention should any more children report positive for COVID-19.
18. That management of COVID-19 requires knowledge on the part of authorities about the health conditions of children. In order to ensure that such lapses which result in the health of children being put at risk do not take place again, it is necessary that directions with regard to the following be passed:
- a. Issuance of an advisory to all Child Welfare Committees to ensure that children who are being newly admitted into any CCIs are suitably quarantined before allowing them to be placed in CCIs.
 - b. Provision of adequate safety kits, masks, PPEs, sanitisers, supply of water is made available in all CCIs as well as at the office of the Juvenile Justice Boards and Child Welfare Committees where these children are produced.
 - c. Production of children before Juvenile Justice Boards and Child Welfare Committees to be dispensed with unless absolutely necessary. Video conferencing and other means be explored for production of children where necessary.

d. The immediate activation of a centralised database of all children living in CCIs in accordance with the order dated 05.12.2018 passed by this Hon'ble Court in the present matter with daily reports on the children's health updated.

19. That the Union of India must also indicate the steps they have taken to comply with the directions issued on 05.12.2018 by this Hon'ble Court as well as indicate to this Hon'ble Court steps taken by them to initiate the process of activating a central data base that would enable information sharing about the conditions of children on a regular basis.

20. That the present Application is bona fide and is being filed in the interest of justice.

PRAYER

In the facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- A. Allow the present Application and direct that appropriate medical treatment and facilities be given to the minor girls who have reportedly tested positive for COVID-19 in the abovementioned Shelter Home in Kanpur District, Uttar Pradesh and report on their health condition on a regular basis;
- B. Direct the Union of India to issue an advisory to all Child Welfare Committees to ensure that children who are being newly admitted into any CCIs are suitably quarantined before allowing them to be placed in CCIs and the necessary resources for the same be allocated by the Union of India as an interim measure to meet the extraordinary requirements of the pandemic;
- C. Direct the Union of India to immediately identify Homes for the purposes of quarantining children who are COVID-19 positive and/or who are in need of being quarantined since their immediate history cannot be accessed and they may be asymptomatic carriers;
- D. Direct the Union of India to make testing mandatory before placing new children in the CCIs and then follow the necessary protocol;

- E. Direct the Union of India to call for a report from each State about the conditions of the children in the CCIs and their COVID-19 readiness including facilities for testing, quarantine and other facilities that are prescribed by the Ministry of Health for management of COVID-19 positive patients;
- F. Direct the Union of India to ensure that adequate safety kits, masks, PPEs, sanitisers, supply of water is made available in all the CCIs as well as at the office of the Juvenile Justice Boards and Child Welfare Committees where these children are produced;
- G. Direct the Respondents to substantiate the mechanisms put in place to ensure compliance of order dated 05.12.2018 passed by this Hon'ble Court in the present Petition including the activation of a centralised data base of children living in CCIs;
- H. Pass such other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS, THE AMICUS CURIAE AS IN DUTY BOUND SHALL EVER PRAY.

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