

ITEM NO.5 Court 6 (Video Conferencing)

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SMW (CIVIL) No(s). 4/2020

IN RE

CONTAGION OF COVID 19 VIRUS IN CHILDREN
PROTECTION HOMES

(IA No. 64373/2021 - APPROPRIATE ORDERS/DIRECTIONS)

Date : 27-07-2021 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE L. NAGESWARA RAO
HON'BLE MR. JUSTICE ANIRUDDHA BOSE

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UPON hearing the counsel the Court made the following
O R D E R

Directions were issued to the State Governments/Union Territories on 07.06.2021 regarding the identification of children who have become orphans or lost a parent after March, 2020 either due to COVID-19 or otherwise and upload the data on the

'Bal Swaraj' Portal on the website of the National Commission for Protection of Child Rights (NCPCR) without any delay. Further directions regarding the identification of the affected children and the steps to be taken by the concerned authorities have been given by the said order.

The learned Amicus Curiae focused on two issues during the hearing. The first relates to the identification of the children who have become orphans or lost a parent after March, 2020 and steps taken for their welfare and rehabilitation and the second pertains to their education. The learned Amicus Curiae submitted a note, along with which a brief summary of the responses of the State Governments/Union Territories has also been filed.

From the information provided by the State Governments in response to the Order dated 7.6.2021, the learned Amicus Curiae submitted that it is not clear as to whether the benefits that were promised by the State Governments/Union Territories have been given to all the orphans who have been identified. After going through the information provided by the State Governments/Union Territories, the learned Amicus Curiae stated that the majority of the orphans have been produced before the Child Welfare Committees (CWC). The immediate concern is finding out ways and means of identification of all such

orphans and ensuring that the benefits of the schemes announced by the State Governments/Union Territories reach the identified orphans at the earliest. For the purpose of accurate and comprehensive identification of orphans, the learned Amicus Curiae suggested involvement of other agencies, at the grassroots level, which could immediately report to the CWC on securing information about deaths resulting in children becoming orphans.

Mr. K.M. Natraj, learned Additional Solicitor General appearing for the NCPCR, took us through the affidavit filed on 26.07.2021 in which the latest statistics of children who have become orphans, who have lost one parent or who have been abandoned by their parents have been provided by the State Governments/Union Territories. He submitted that the reported number of orphans in some States like Jammu and Kashmir, Punjab and West Bengal appear to be unrealistic. The information that has been uploaded on the 'Bal Swaraj' Portal of the NCPCR by almost all the States is incomplete as there is registration of 75,320 children on the Portal, but information upto stage-5 has been given only in respect of 1,126 children. He stated that there are as many as 34 schemes announced by the Central Government, the State Governments and the Union Territories, the benefits of which can be monitored

by NCPCR only after the information required upto stage-5 has been uploaded by the District Magistrates. He submitted that the NCPCR has the power to direct the State Governments/Union Territories to implement the schemes.

Mr. Suhaan Mukerji, learned counsel appearing for the State of West Bengal, contended that information was collected with respect to children who have become orphans on account of the death of their parents due to COVID-19 and data has been uploaded accordingly. A perusal of the order passed by this Court on 07.06.2021 shows that information of all the children who have become orphans or who have lost either parent after March, 2020 on account of COVID-19 or otherwise was required to be uploaded. It was made clear in the said order that information is not restricted only to deaths due to COVID-19. The District Magistrates in the State of West Bengal are directed to collect necessary information relating to the children who have become orphans or lost either parent after March, 2020 and upload the same on the 'Bal Swaraj' Portal of the NCPCR at the earliest.

The Secretary, Department of Women & Child Development and Social Welfare, West Bengal is directed to file an affidavit giving particulars of the steps taken as directed above.

Ms. Jaspreet Gogia, learned counsel appearing for the State of Punjab, submitted that the figures given by the State Government pertaining to the children who have become orphans is correct. The District Magistrates in the State of Punjab are advised to continue the process of identification of the children who have become orphans or lost a parent after March, 2020 and upload the information on the Portal of the NCPCR without any delay. The District Magistrates in the State of Jammu & Kashmir are also directed to pursue their efforts in identification of orphans or children who have lost a parent after March, 2020, as directed by this Court herein as well as by order dated 07.06.2021, and upload this information on the Portal of the NCPCR at the earliest.

Ms. Shobha Gupta, learned counsel appearing for 'We, the Women of India' (WWI), referred to Sections 31 and 32 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act) to submit that any child in need of care and protection shall be produced before the CWC within 24 hours. Reference was made to Sections 36, 37 and 38 of the JJ Act for the purpose of highlighting that inquiries conducted by the CWC are time-bound. Sections 106 and 107 were also relied upon by her for the purpose of indicating that there is a mechanism in place for

implementation of the provisions of the JJ Act. According to Section 106, every State Government is required to constitute a Child Protection Society for the State and a Child Protection Unit for every District for implementation of the JJ Act. Section 107 provides that at least one officer in every police station shall be designated as the Child Welfare Police Officer to exclusively deal with children. She also referred to Rule 8 of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 (the Rules) which deals with the pre-production action of Police and other agencies. Under Clause (8) of Rule 8, a panel of voluntary or non-governmental organizations is to be maintained by the State Governments for the purpose of assisting the Police or Special Juvenile Police Unit or the Child Welfare Police Officer in physical production of the child within 24 hours. She submitted that the mechanism provided in the JJ Act and the Rules has to be put in motion for the purpose of identification of orphans and their production before the CWC without any delay.

Ms. Aishwarya Bhati, learned Additional Solicitor General, referred to the PM Cares for Children Scheme, according to which a process for identification of children eligible for support was put in place. Under the Scheme, the District

Magistrates are directed to conduct a drive for identification of orphans, who have lost their parents or legal guardian due to COVID-19, with the assistance of Police, District Child Protection Units (DCPUs), Child line, civil society organizations. For implementation of the PM Cares for Children Scheme, Gram Panchayats, Anganwadi and ASHA Network were directed to be sensitized to report such children to the CWC.

Mr. Manish Kumar, learned counsel appearing for the State of Bihar, referred to Section 12(ii) of the Disaster Management Act, 2005 by which guidelines can be given by the National Authority for the minimum standards of relief to be provided to affected persons, with special provisions to be put in place for orphans and children in need. This issue shall be taken up at a later date.

Having considered the suggestions made by the learned Amicus Curiae and other counsel, we are of the view that identification of children who have lost both parents or either parent after March, 2020 does not brook any further delay. The District Magistrates are directed to issue necessary instructions to the District Child Protection Officers to take assistance of the Police, Child line, civil society organizations, Gram Panchayats, Anganwadi and ASHA Network for identification of such

children. This is in addition to the mechanism that is available in the JJ Act and the Rules. The District Magistrates are directed to continue uploading the information as and when received on the 'Bal Swaraj' Portal on the NCPCR website. They are further directed to provide the necessary information till stage-5 as it appears on the Portal so as to enable the NCPCR to monitor implementation of the schemes.

CWCs are directed to complete the inquiries within the time limit specified in the JJ Act and provide the required assistance and rehabilitation to the orphans.

All the State Governments and Union Territories are directed to file a status report before 23.08.2021, after serving a copy of the same on the learned Amicus Curiae, giving particulars of the number of children who have become orphans or have lost either parent after March, 2020, the number of children who have been produced before the CWCs and the particulars of the children who have been provided with the benefits of the schemes announced by the respective State Governments. The State Governments shall also provide information regarding the payment of an amount of Rs.2,000/- under the Integrated Child Protection Scheme to each of the eligible children.

The second concern voiced by the learned Amicus Curiae is regarding the education of the children who have been orphaned or who have lost either parent after March, 2020. Certain directions have been given by this Court on 07.06.2021 relating to the continuation of education of such children both in private schools and Government schools. The learned Amicus Curiae referred to the information provided by some States, particularly the State of Haryana where almost 40% of the orphaned children are studying in private schools. At the cost of repetition, we direct the State Governments to ensure that such orphans are permitted to continue in the same schools at least for this academic year, be they private schools or Government schools. If there are difficulties in the cases of students being permitted to continue their education in private schools, they may be accommodated under the provisions of the Right of Children to Free and Compulsory Education Act, 2009. In case, the children who have lost both of their parents or either parent after March, 2020 have dropped out of school, steps be taken by the State Governments for free admission of such students towards continuation of their education. The State Governments shall also furnish information on the number of such students studying in private and government schools and the mechanisms implemented to

permit them to continue studying in their respective schools. Status reports shall be filed by 23.08.2021.

List this matter on 26.08.2021.

(Geeta Ahuja)
Court Master

(Anand Prakash)
Court Master