ITEM NO.32 COURT NO.1 SECTION PIL

S U P R E M E C O U R T O F I N D I A RECORD OF PROCEEDINGS

WRIT PETITION (CIVIL) NO.75 OF 2012

BACHPAN BACHAO ANDOLAN Petitioner(s)
VERSUS
UNION OF INDIA & ORS. Respondent(s)

(With appln(s) for exemption from filing O.T., exemption from personal appearance, permission to file additional documents and office report) With Contempt Petition (C) No.186/2013 in Writ Petition (C) No.75/2012
Date: 10/05/2013
These Matters were called on for hearing today.

CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE S.A. BOBDE

For Petitioner(s) Mr. H.S. Phoolka, Sr. Adv. , Mr. Bhuwan R., Adv., Mr. Jagjit Singh Chhabra, Adv. Mr. Anand Kumar,Adv., Mr. Gursimranjit Singh,Adv.
For Respondent(s) Mr. Gopal Singh, Adv. Bihar: Mr. Chandan Kumar,Adv. For Tripura: Mr. Gopal Singh,Adv. Mr. Ritu Raj Biswas,Adv.
For Union of India: Mr. A.S. Chandhiok,ASG. Mr. T.A. Khan,Adv. Mr. S. Senthil Kumar,Adv. Mr. B. Krishna Prasad,Adv.
For Mizoram: Mr. K.N. Madhusoodhanan,Adv. Mr. T.G. Narayanan Nair,Adv. For Sikkim: Mr. A. Mariarputham,AG. Ms. Aruna Mathur,Adv. Mr. Yusuf Khan,Adv. M/s. Arputham, Aruna & Co.,Advs.
For Pudduchery: Mr. V.G. Pragasam,Adv. Mr. S.J. Aristotle,Adv. Mr. Prabu Ramasubramanian, Adv.
For Manipur: Mr. Khwairakpam Nobin Singh,Adv.
For Haryana: Mr. Manjit Singh,AAG. Mr. Tarjit Singh,Adv. Mr. Anil Antil,Adv. Mr. Kamal Mohan Gupta,Adv.
For Himachal Pradesh: Mr. Suryanarayana Singh,AAG. Ms. Pragati Neekhra,Adv.
For Assam: Mr. Navnit Kumar,Adv. for M/s. Corporate Law Group,Advs.
For NALSA: Ms. Anitha Shenoy,Adv. Ms. Vishruti Vijay,Adv. Ms. Neha Singh,Adv.
For NHRC: Ms. Shobha,Adv. Ms. Jyoti Rana,Adv. Mr. Vaijayant Paliwal,Adv.

For Punjab: Mr. Ajay Bansal,AAG. Mr. Devendra Singh,Adv. Mr. Kuldip Singh,Adv. Mr. Pardaman Singh,Adv. Mr. Rajiv Kumar,Adv. Mr. Gaurav Yadav,Adv.

For Chhattisgarh: Mr. Atul Jha,Adv. Mr. Sandeep Jha,Adv. Mr. Dharmendra Kumar Sinha,Adv.

For Rajasthan: Dr. Manish Singhvi,AAG. Mr. Amit Lubhaya,Adv. Ms. Pragati Neekhra,Adv. Mr. G.N. Reddy,Adv. Mr. Siddharth Luthra,ASG. Mr. S.W.A. Qadri,Adv. Mr. Shailender Saini,Adv. Ms. Rashmi Malhotra,Adv. Ms. Sunita Sharma,Adv. Mr. D.S. Mahra,Adv. Ms. Supriya Juneja,Adv. Mr. Irshad Ahmad,Adv. ...3/-

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For Maharashtra: Ms. Asha Gopalan Nair,Adv. Mr. Abhishek Kumar Pandey,Adv. Mr. V.N. Raghupathy,Adv.

For Respondent No.29: Ms. Rachana Srivastava,Adv.Mr. Utkarsh Sharma,Adv.

For Arunachal Pradesh: Mr. Anil Shrivastav,Adv.

For Nagaland: Ms. K. Enatoli Sema,Adv. Mr. Amit Kumar Singh,Adv. Mr. Balaji Srinivasan,Adv.

For Tamil Nadu: Mr. Subramonium Prasad,AAG. Mr. B. Balaji,Adv. Mr. R. Rakesh Sharma,Adv. Mr. T. Mouli Mahendran,Adv. Mr. Pratap Venugopal,Adv. Mr. P.K. Jha,Adv. Mr. Gaurav Nair,Adv. Mr. Debarshi Bhuyan,Adv. for M/s. K.J. John & Co.,Advs. Mr. Ramesh Babu M.R.,adv.

For Uttar Pradesh: Ms. Pragati Neekhra,Adv. Mr. Upendra Mishra,Adv. Mr. Sunil Fernandes,Adv. Ms. Hemantika Wahi,Adv.

For Odisha: Mr. Radha Shyam Jena,Adv. Mr. Siddharth Panda,Adv. Ms. Priyabrat Sahu,Adv.

For Meghalaya: Mr. Ranjan Mukherjee,Adv. Mr. S.C. Ghosh,Adv. Mr. S. Bhowmick,Adv. Mr. R.P. Yadav,Adv.

For Madhya Pradesh: Ms. Vibha Datta Makhija,Adv. Ms. Arghi Agnihotri,Adv.

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For West Bengal: Mr. Chanchal Kumar Ganguli,Adv. Mr. Avijit Bhattacharjee,Adv. Ms. Soumi Kundu,Adv.

For Andhra Pradesh: Mr. D. Mahesh Babu,Adv. Ms. Suchitra Hrangkhawl,Adv. Mr. Amjid Maqbool,Adv. Mr. Amit K. Nain,Adv.

UPON hearing counsel the Court made the following

O R D E R

The contempt proceedings, which have been initiated by the petitioner, are dropped.

Let this matter be listed again after three months.

[T.I. Rajput] [Juginder Kaur]

Deputy Registrar Assistant Registrar

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO.75 OF 2012

Bachpan Bachao Andolan ...Petitioner(s)

Versus

Union of India & Ors. ...Respondent(s)

With Contempt Petition (C) No.186/2013 in Writ Petition (C) No.75/2012

O R D E R

This matter has been listed pursuant to the directions given on 26th April, 2013, when the contempt petition filed in the writ petition by the petitioner, complaining of the manner in which a complaint made regarding a missing child was sought to be handled by the concerned police station, was being considered. It has also come up on account of the other directions which had been given for implementing the various provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, as amended in 2006 [`Juvenile Act', for short].

On 17th January, 2013, when this matter came up for consideration, we had given an interim direction that in case a complaint with regard to any missing children was made in a police station, the same should be reduced into a First Information Report and appropriate steps should be taken to see that follow up investigation was taken up immediately thereafter. An element of doubt has been raised on behalf of the State of Madhya Pradesh regarding the recording of First Information Report relating to a missing child, having regard to the provisions of Section 154 of the Code of Criminal Procedure, 1973 [`Cr.P.C.', for short], which relates to information in cognizable cases.

We do not, however, see any difficulty in the orders, which we have already passed. We make it clear that, in case of every missing child reported, there will be an initial presumption of either abduction or trafficking, unless, in the investigation, the same is proved otherwise. Accordingly, whenever any complaint is filed before the police authorities regarding a missing child, the same must be entertained under Section 154 Cr.P.C.

However, even in respect of complaints made otherwise with regard to a child, which may come within the scope of Section 155 Cr.P.C., upon making an entry in the Book to be maintained for the purposes of Section 155 Cr.P.C., and after referring the information to the Magistrate concerned, continue with the inquiry into the complaint. The Magistrate, upon receipt of the information recorded under Section 155 Cr.P.C., shall proceed, in the meantime, to take appropriate action under sub-section (2), especially, if the complaint relates to a child and, in particular, a girl child.

On the last occasion, when the matter was taken up, we were informed by some of the States that the directions, which we had given in our Order dated 17th January, 2013, had been duly implemented and affidavits to that effect have also been filed. Some of the information given therein is seriously objected by Mr. H.S. Phoolka, learned counsel appearing for the petitioner. In any event, even if the figures shown are incorrect, in order to rectify the situation, we are inclined to accept the suggestion made by Ms. Shobha, learned advocate, appearing for the National Human Rights Commission, that each police station should have, at least, one Police Officer, especially instructed and trained and designated as a Juvenile Welfare Officer in terms of Section 63 of the Juvenile Act.

We are also inclined to accept the suggestion that there should be, in shifts, a Special Juvenile Officer on duty in the police station to ensure that the directions contained in this Order are duly implemented.

To add a further safeguard, we also direct the National Legal Services Authority, which is being represented by its Member Secretary through Ms. Anitha Shenoy, learned advocate, that the para-legal volunteers, who have been recruited by the Legal Services Authorities, should be utilized, so that there is, at least, one para-legal volunteer, in shifts, in the police station to keep a watch over the manner in which the complaints regarding missing children and other offences against children, are dealt with.

Ms. Shobha, learned counsel, has also made another useful suggestion regarding a computerized programme, which would create a network between the Central Child Protection Unit as the Head of the Organization and all State Child Protection Units, District Child Protection Units, City Child Protection Units, Block Level Child Protection Units, all Special Juvenile Police Units, all Police stations, all

Juvenile Justice Boards and all Child Welfare Committees. The said suggestion should be seriously taken up and explored by the National Legal Services Authority with the Ministry of Women and Child Development. Once introduced, the website link should also be made known to the public at large.

The State Legal Services Authorities should also work out a network of NGOs, whose services could also be availed of at all levels for the purpose of tracing and re-integrating missing children with their families which, in fact, should be the prime object, when a missing child is recovered.

Various other suggestions have been made by Ms. Shobha in her written submission, regarding installation of computerized cameras, which can also be considered by all the concerned authorities. A similar response has been made on behalf of the National Legal Services Authority, and similar suggestions have been made. The details, as indicated in the response, can always be worked out in phases by the Juvenile Justice Boards and the Child Welfare Committees in consultation with the National Legal Services Authority, since each have a responsible role to play in the welfare of children, which, if the statistics given are to be believed, are difficult to accept. In fact, as has been pointed out by Mr. Phoolka, out of more than 3,000 children missing in 2011, only 517 First Information Reports had been lodged. The remaining children remain untraced and are mere slips of paper in the police stations.

One of the submissions, which has been made in the response filed by the NALSA, is with regard to the role of the police and the directions given by this Court, from time to time, in the case of Sampurna Behura vs. Union of India & Ors. [Writ Petition (C) No.473 of 2005]. Accordingly, in addition to what has been recorded, as far as the suggestions made on behalf of the National Human Rights Commission is concerned, we add that, as suggested on behalf of the NALSA, every found/ recovered child must be immediately photographed by the police for purposes of advertisement and to make people aware of the missing child. Photographs of the recovered child should be published on the website and through the newspapers and even on the T.V. so that the parents of the missing child could locate their missing child and recover him or her from the custody of the police. The Ministry of Home Affairs shall provide whatever additional support by way of costs that may be necessary for the purpose of installing such photographic material and equipment in the police stations.

Apart from the above, all the parties involved shall have due regard to the various directions given in Sampurna Behura's case [supra] where also provision has been made for a child to be sent to a Home and for taking photographs and publishing the same so that recovery could be effected as early as possible.

The other suggestion of NALSA is that a Standard Operating Procedure must be developed to handle the cases of missing children and to invoke appropriate provisions of law where trafficking, child labour, abduction, exploitation and similar issues are disclosed during investigation or after the recovery of the child, when the information suggests the commission of such offences. As part of the Standard Operating Procedure, a protocol should be established by the local police with the High Courts and also with the State Legal Services Authorities for monitoring the case of a missing child. In Delhi, such a protocol could be established with the help of the All India Legal Aid Cell on Child Rights, set up by NALSA, in association with the Delhi State Legal Services Authority, and the petitioner herein, Bachpan Bachao Andolan. In fact, the same could be treated as a nodal agency of the All India Legal Aid Cell on Child Rights. We have given directions in regard to the utilization of the para- legal volunteers, which is one of the suggestions made on behalf of the NALSA.

As has been pointed out by Mr. Phoolka, learned counsel appearing on behalf of the petitioner, an Office Memorandum was issued on 31st January, 2012, by the Ministry of Home Affairs, Government of India, by way of an advisory on missing children and the measures needed to prevent trafficking and for tracing of such children.

In the said Office Memorandum, a missing child has been defined as, *"a person below eighteen years of age, whose whereabouts are not known to the parents, legal guardians and any other person, who may be legally entrusted with the custody of the child, whatever may be the circumstances/causes of disappearance. The child will be considered missing and in need of care and protection within the meaning of the later part of the Juvenile Act, until located and/or his/her safety/well being is established.*"

In case a missing child is not recovered within four months from the date of filing of the First Information Report, the matter may be forwarded to the Anti-Human

Trafficking Unit in each State in order to enable the said Unit to take up more intensive investigation regarding the missing child. The Anti-Human Trafficking Unit shall file periodical status reports after every three months to keep the Legal Services Authorities updated.

It may also be noted that, in cases where First Information Reports have not been lodged at all and the child is still missing, an F.I.R.should be lodged within a month from the date of communication of this Order and further investigation may proceed on that basis.

Once a child is recovered, the police authorities shall carry out further investigation to see whether there is an involvement of any trafficking in the procedure by which the child went missing and if, on investigation, such links are found, the police shall take appropriate action thereupon.

The State authorities shall arrange for adequate Shelter Homes to be provided for missing children, who are recovered and do not have any place to go to. Such Shelter Homes or After-care Homes will have to be set up by the State Government concerned and funds to run the same will also have to be provided by the State Government together with proper infrastructure. Such Homes should be put in place within three months, at the latest.

Any private Home, being run for the purpose of sheltering children, shall not be entitled to receive a child, unless forwarded by the Child Welfare Committee and unless they comply with all the provisions of the Juvenile Justice Act, including registration.

Having regard to the order passed herein, the contempt proceedings, which have been initiated by the petitioner, are dropped.

In the event, all the States have not yet filed their status reports, the time for filing the same is extended till the next date.

We appreciate the efforts of the petitioner- organisation, Mr. H.S. Phoolka, learned counsel appearing on behalf of the petitioner, all the other counsel, who have appeared in this matter on behalf of the different Authorities, including NALSA and

the National Human Rights Commission, and we hope that such interest will continue to subsist hereafter. Let this matter be listed again after three months.

.....CJI. [ALTAMAS KABIR]

.....J. [VIKRAMAJIT SEN]

.....J. [S.A. BOBDE]

New Delhi, May 10, 2013. -tir-