A SUPREME COURT LEGAL AID COMMITTEE

v.

UNION OF INDIA & ORS.

MARCH 17, 1989

B [RANGANATH MISRA AND M.N VENKATACHALIAH, JJ.]

Juvenile Justice Act, 1986: Sections 2(e), 5, 9, 10, 11 and 62.

Juveniles detained in regular jails—Exact number—Determination of—Setting up of juvenile courts—Establishment of—Juveniles C *homes—Special homes—Observation homes—Framing of statutory rules—Directions of Supreme Court.*

Children—Need protective umbrella of society for better growth and development—Responsibility of society—Paramount obligation of D *those who are in charge of the governance of the country.*

Pursuant to the directions made by the Supreme Court, with a view to providing relief to delinquent children detained in jails, in 1986 the District Judges of the entire country supplied the particulars of under trial and convicted children found in regular jails within their E **jurisdiction. With the passage of time and the coming into force of the Juvenile Justice Act, 1986 it became necessary to get fresh detailed reports for updating the information.**

The Supreme Court issued directions and,

F **HELD: 1. Children require the protective umbrella of society for better growth and development as they are not in a position to claim their entitlement—to attention, growing up, food, education and the like. It is the responsibility of the society and is one of the paramount obligations of those who are in charge of governance of the country today to attend to the children to make them appropriate citizens of** G **tomorrow.** [64A-B]

2. Every District Judge is directed to report to this Court the figures as to the exact number of delinquent juveniles still detained in regular jails and whether juvenile courts, juvenile homes, special homes and observations homes as provied in the Juvenile Justice Act, 1986 H **have been established.** [62H; 63A]

2.1 A Senior Advocate of this Court is appointed as Commissioner to visit the jails in the three Districts of the State of Bihar, viz. Deogarh, Patna and Bhagalpur and collect the necessary particulars of juvenile delinquents housed in those jails and report to this Court. He shall be provided all facilities by the State Government and shall also be entitled to reimbursement of his expenses. [64H; 65A-B]

3. Section 62 of the Juvenile Justice Act, 1986 empowers the State Government to make rules to carry out the purposes of the Act. The scheme of the Act is such that it cannot be properly enforced unless appropriate rules are framed and brought into force. The District Judges while making their reports shall also indicate whether rules have been framed and whether such rules are already in force. Counsel for the respective States are directed to inform this Court by written Memorandum about the framing of rules and bringing them into force in the—respective States. If such rules have not been framed in any State, such State or States are directed to frame the same and bring them into force without any further delay. [63C-E]

4. For facilitating the monitoring of the implementation of the Juvenile Justice Act, 1986, a group of nominated advocates is entrusted with the work of making a draft Scheme and placing it before the Court for its consideration. [64D-E]

5. The Registry of this Court should have appropriate funds to meet the expenses from time to time. The Union of India is directed to deposit a sum of Rs.50,000 while each of the States of Bihar and West Bengal and Uttar Pradesh is directed to deposit a sum of Rs.15,000. [65B-C]

ORIGINAL JURISDICTION: Writ Petition (Criminal) No. 1451 of 1985.

(Under Article 32 of the Constitution of India.)

R.K. Jain and Yogeshwar Prasad, R.K. Khanna, R.K. Bhatt and Dalveer Bhandari for the Petitioner.

V.C. Mahajan, Tapas Ray, A.S. Nambiar, S.B. Bhasme, Kapil Sibal, R.B. Misra, A. Subhashini, Y.P. Rao, Ms. S. Janani, Ms. Urmila Kapur, D.K. Sinha, J.R. Dass, P.K. Manohar, Ms. S. Vasudevan, M. Veerappa, Uma Nath, R.K. Mehta, V. Krishnamurthy, A.S. Bhasme, K.R. Nambiar, B.D Sharma, Kailash Vasudev, D.N.

A Mukherjee, D. Goburdhan, Ms. Kamini Jaiswal, T. V.S.N. Chari, Mahabir Singh, Probir Chowdhry, M.N. Shroff, A. Subba Rao, R.S. Suri, G. Probhakar, K. Ram Kumar, S.K. Bhattacharya, L.R. Singh, A.K. Sanghi, C.V. Subba Rao, R. Venkataramani, Salman Khurshid, Gopal Singh, Mrs. Vimla Sinha and Mrs. H. Wahi for the Respondents.

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The following Order of the Court was delivered:

ORDER

This writ petition filed in 1985 has been heard on different occasions and several ordes and directions have been made from time C to time with a view to providing relief to delinquent children detained in jails. On August 29, 1988, this Court made an order (1988 4 SCC 226) wherein some such directions have been excerpted and it is not necessary to make any detailed reference to those directions now.

D In 1986 the District Judges of the entire country in response to the directions made by this Court supplied, *inter alia,* the particulars of under trial and convicted children found in regular jails within their respective jurisdiction. On the basis of the said reports it was found that in Assam, Bihar, Orissa, Punjab and West Bengal, the number of such children in regular jails was 64, 247, 60, 63 and 437 respectively. E There was no such child in any regular jail of Gujarat but in varying numbers not exceeding 30 to 35 they were found in other States. Thereafter some of the States have filed affidavits indicating release from custody or transfer of such children from jails and have stated that the position at present is very different and the number is either nil or negligible.

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With the lapse of two years' time since such reporting was done there is every likelihood of a change in that position. Even otherwise, in the intervening period the Juvenile Justice Act, 53 of 1986, (hereinafter referred to as the 'Act') has come into force in the whole of the country excepting the State of Jammu & Kashmir with effect G from 2.10.1987. The Act provides for setting up of juvenile homes, special homes and observation homes by the State Governments. Chapter IV provides for dealing with delinquent juveniles. In this back-drop it is necessary to get fresh detailed reports from the District Judges and update the figures as to the exact number of delinquent juveniles, as defined in s. 2(a) of the Act, still detained in regular jails. H At the same time it is necessary that a report as to whether juvenile

courts as required under s. 5 of the Act have been set up and juvenile homes, special homes and observation homes have been established as required by ss. 9, 10, and 11 should be obtained. Every District Judge is, therefore, directed by this order to report within 4 weeks from today to the Registry of this Court through the Registrar of the appropriate High Court as to the exact position obtaining on 28.2.1989 in regard to the particulars indicated above. We would like to place on record that on the earlier occasion response to directions by this Court had taken more than six months; repetitive adjournments had become necessary and compliance was effected by indicating coercive steps. We hope and trust there would be no repetition.

Section 62 of the Act empowers the State Governments to make rules to carry out the purposes of the Act. The scheme of the Act is such that it cannot be properly enforced unless apropriate rules are framed and brought into force. Counsel appearing before us for the different States are not in a position to make a definite statement that the States they represent have framed rules and brought them into force. We, therefore, direct that the District Judges while making their reports shall also indicate whether rules have been framed and whether such rules are already in force. Counsel appearing before us are also directed to inform the Registry by written memorandum about the framing of rules and bringing them into force in the respective States. If such rules have not been framed in any State, by this order we direct such State or States to frame the same on or before 7th of April, 1989 and to bring them into force without any further delay thereafter.

Section 2(h) defines 'juvenile' to mean:

> "a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years."

Official reports indicate that 35 to 40 per cent of the total population of the country would be covered by the definition. As such about 30 crores of young boys and girls come within the purview of the Act. There can be no two opinions that these children of today are the citizens of tomorrow's India and the country's future would necessarily depend upon their proper hygiene—physical and mental. The problem is, therefore, gigantic; at the same time, there is demand for immediate attention. Several counsel appearing before us have told us and we agree with their submissions that unless the importance of the matter is properly perceived and the response is adequate both in

A regard to sufficiency of actions and immediacy of attention, the purpose of the Act cannot be fulfilled. Children require the protective umbrella of society for better growth and development as they are not in a position to claim their entitlement—to attention, growing up, food, education and the like. It is the responsibility of the society and is one of the paramount obligations of those who are in charge of B governance of the country today to attend to the children to make them appropriate citizens of tomorrow.

We are of the view that in the setting indicated the matter perhaps requires overseeing by the Court. For coordination between the Union Government and the State Government and between authorities within the State, at the initial stage and it would be in the C interest of children that the matter is obverseen by this Court and when the machinery is properly geared the responsibility of overseeing may be entrusted to the respective High Courts.

With a view to working out the modality and to make overseeing D convenient, it is necessary that a scheme should be evolved. Counsel appearing before us have suggested that a group of advocates should be entrusted with the work of making a draft scheme and place it before the Court for its consideration. We accordingly nominate Messrs V.C. Mahajan, Yogeshwar Prasad, R.K. Jain, Tapas Roy and Mukul Mudgal who are advocates appearing for some of the States to E draw up a scheme and file it in the Registry of the Court by 7th April, 1989.

As we pointed out earlier from the reports it has been found that the number of children in regular jails were the highest in West Bengal and Bihar. Mr. Tapas Roy representing the State of West Bengal relies F upon an affidavit filed before this Court to contend that the position has substantially changed subsequent to the reports and at present perhaps the number of children in regular jails is either nil or very small. He has personally undertaken to collect the particulars and furnish the same by way of the memorandum to the Registry on or before 7th of April, 1989. So far as the State of Bihar is concerned, Mr. G Goburdhan is not in a position to make any statement. From the analysis prepared based upon the report of the District Judges, it appears that there were 27 children in the District Jail of Deogarh, about 13 in the jails at Patna and 17 in the jails at Bhagalpur. We are of the view that Mr. A.S. Mambiar, Sr. Advocate of this Court should be appointed as Commissioner to visit these jails in the three districts of H Bihar and collect the necessary particulars of juvenile delinquents

housed in those jails and report to this Court on or before 7th of April, 1989. He shall be provided all facilities by the State Government and its officers as may be deemed reasonable and necessary for implementing this direction. He shall also be entitled to reimbursement of his expenses. A

It becomes necessary that the Registry should have appropriate funds to meet the expenses from time to time. We, therefore, direct that the Union of India shall deposit a sum of Rs.50,000 while each of the States of Bihar and West Bengal and Uttar Pradesh is directed to deposit a sum of Rs.15,000. Such deposits shall be made on or before 15th of April, 1989. The expenses have of course to be met by all the States but in due course an order directing other States to pay to the fund and final apportionment, if necessary, shall be ordered. B C

Notice be issued to the learned Attorney General to appear and assist the Court in this proceeding.

The directions indicated above must be worked out within the time frame as we are fixing the case for further hearing at 2.00 P.M. on 24th of April, 1989. D

T.N.A.