

ITEM NO.1 Court 7 (Video Conferencing) SECTION PIL-W

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

SMW (C) NO.4 OF 2020

IN RE
CONTAGION OF COVID 19 VIRUS IN CHILDREN PROTECTION HOMES

(MR GAURAV AGRAWAL, ADVOCATE (A.C)
(IA No. 64373/2021 - APPROPRIATE ORDERS/DIRECTIONS)

Date : 07-06-2021 This matter was called on for hearing today.

CORAM :

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

By Courts Motion
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FOR NCPCR

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Ms. Neha Rai, Adv.

Union of India

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State of
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Ms. Shobha Gupta, Adv.
Ms. Medha Garg, Adv.

Ms. Astha Sharma, AOR
Ms. Uttara Babbar, AOR
M/S. Knc, AOR
Mr. Ajay Pal, AOR
Mr. Gopal Singh, AOR

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

By an order dated 01.06.2021, this Court permitted the learned Amicus Curiae to have a dialogue with Nodal Officers to be appointed by the State Governments to ascertain the information relating to the implementation of the schemes announced by the Union of India and the State Governments/Union Territories favouring orphans and Children in Need of Care and Protection (CNCs). Further, the Amicus Curiae was authorized to interact with the Nodal officers for finding out the modalities adopted by the State Governments to provide succour to the affected children. The learned Amicus Curiae identified the states of Telangana, Tamil Nadu, Kerala, Karnataka, Gujarat, Rajasthan, Uttar Pradesh, Maharashtra, Bihar and Jharkhand initially for the purpose of obtaining relevant information to be furnished to this Court.

Ms. Aishwarya Bhati, learned ASG undertook

to provide the details of the scheme that was announced by the Prime Minister of India on 29.05.2021. On behalf of the Union of India, an Action Taken Report has been filed. The learned ASG sought further time to furnish the modalities for the implementation of the scheme announced by the Prime Minister of India on 29.05.2021. The Union of India is granted four weeks' time from today to file an affidavit setting out the details of the scheme dated 29.05.2021 and the manner of its implementation.

Mr. Gaurav Agrawal, learned Amicus Curiae submitted a note in which he has referred to six stages for alleviation of the forlorn children who have lost both parents or a single parent. He suggested that identification of children who have become orphans or have lost one of their parents during this pandemic does not brook any delay. Immediate relief should follow the identification of such children without any delay. Thereafter, the Child Welfare Committees (CWC) should conduct inquiries and pass suitable orders expeditiously which have to be implemented without any delay. Monitoring of children by CWC and the District Child Protection Officer (DCPO) should be conducted on a periodical basis. Suitable steps should be taken by CWC's to ensure that the benefits announced by the Central Government/State Governments should reach the children.

IDENTIFICATION OF CHILDREN :

The information provided by the State Governments/Union Territories on the 'Bal Swaraj' Portal upto 05.06.2021 shows that there are 30,071 children who have become orphans or have lost one parent or abandoned. The break-up given in the affidavit filed by the National Commission for Protection of Child Rights (NCPCR) is that there are 3,621 orphans, 26,176 children who have lost one parent and 274 children who have been abandoned. The State-wise data that is given in the affidavit filed by NCPCR shows that NCT of Delhi and the State of West Bengal have not uploaded the correct information.

Mr. Chirag M. Shroff, learned counsel appearing for the NCT of Delhi submitted that there was some difficulty in collecting data to be uploaded on the NCPCR portal. He submitted that a decision was taken recently to depute government officers at the grassroot level to take immediate steps to gather the information which will be updated on the NCPCR portal. Further, the basic needs of children who become orphans or have lost one parent shall be attended to apart from steps being taken as provided in the Juvenile Justice Act, 2015.

The learned counsel for the State of West Bengal submitted that the data could not be uploaded

in view of some confusion about the six stages that are mentioned in the web portal of NCPCR. It was made clear in the order dated 01.06.2021 that it is not necessary for the states to provide information relating to all the six stages at present and that it would be sufficient if the data pertaining to the first two stages are uploaded on the portal. The State of West Bengal is directed to take steps to identify the children who have become orphans or lost one parent after March, 2020 immediately and upload the data on the NCPCR website.

The learned Amicus Curiae submitted that the figures given by the State of Tamil Nadu does not appear to be correct as in several districts not even one child is produced before the CWC. The only information provided by the State of Tamil Nadu is in respect of those children who have lost both parents or single parent due to Covid-19. The direction given by this Court is to upload information on the website of the NCPCR pertaining to all children who have become orphans or lost one of their parents after March, 2020 either due to Covid-19 or otherwise.

Mr. Joseph Aristotle, learned counsel appearing for the State of Tamil Nadu stated that suitable directions shall be given to the concerned authorities to take steps for identification of the affected children by collecting information from

health officials/Panchayati Raj Institutions, police authorities and Non-Governmental Organisations (NGOs). The State of Tamil Nadu is directed to collect the details relating to those children who have become orphans or lost one parent and update the same on the portal of NCPCR.

IMMEDIATE RELIEF TO THE AFFECTED CHILDREN:

The learned Amicus Curiae has brought to our notice that according to the response on behalf of the District Child Protection Officers (DCPO) and other officials from the States of Telangana, Tamil Nadu and Jharkhand almost all the children who have become orphans or lost one parent need financial assistance. The learned Amicus Curiae has suggested that the DCPO should meet the child and the guardian immediately after receipt of information and ascertain the willingness of the guardian to take care of the child apart from making an assessment of the immediate needs of the child and the financial condition of the guardian. He emphasised the need for the DCPO to ensure that adequate provision is made for ration, food, medicines and clothing etc. for the child. He further submitted an amount of Rs.2,000/- per month should be released in favour of the child till CWC passes an order after due inquiry. The DCPO should provide his contact number and the name of the local

official who can be contacted by the guardian. There should be a follow-up with the child at least once a month to ascertain his/her well being. The learned Amicus Curiae stressed the need for the child being produced before the CWC in case DCPO is of the prima facie opinion that the guardian is not capable of taking care the child. Needless to say, that the CWC shall pass appropriate orders at the earliest. According to the Amicus Curiae, the CWC should open a case file of each child and secure all relevant information pertaining to the affected child. The CWC should ensure that various benefits announced by the Central Government and the State Governments/Union Territories reach the affected child. The financial benefit that was announced by Integrated Child Protection Scheme (ICPS) to the tune of Rs.2000/- per month per child has to be provided immediately by the DCPOs. There should be continuous monitoring regarding the welfare of the child by the District Child Protection Units (DCPUs) even after the financial order is passed by the CWC. This should be done periodically every three to six months.

After the identification of the children who have become orphans or lost one parent, prompt action has to be taken to provide the basic needs of the children. The DCPO should act swiftly to contact the

child on receipt of information about the loss of the parent/parents of the child. The DCPUs shall ensure that adequate provision is made for the ration, food, medicines, clothing etc. to the child. The State Governments have announced certain financial benefits to the affected children which have to be provided to them immediately. The DCPO should produce the child before CWC if he is not prima facie satisfied that the guardian is capable of taking care of the child. CWC is directed to take steps in accordance with the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act, 2015) and the Rules framed thereunder to conduct an inquiry. During the pendency of the inquiry, the CWC is directed to ensure that the basic needs of the child are taken care of.

EDUCATION OF THE CHILD:

The concern of the learned Amicus Curiae is that the affected children should not face a situation of discontinuance of their education. If the affected children are studying in Government schools they should be permitted to continue. In so far as the children who are studying in private schools, the State Governments/Union Territories should take steps and direct the continuance of the children in those schools at least for period of six months by which time some arrangement can be worked out. We accept

the suggestion made by the learned Amicus Curiae relating to the education of the affected children. The State Government/Union Territories should ensure that there is no break in the education of children who have become orphans or lost either one parent during the Pandemic.

The other issues that have been raised by the learned Amicus Curiae relating to the protection of property rights of the children, further education of the children including employment opportunities, special care to be taken in respect of the girl child will be taken up on the next date of hearing.

Mr.K.M.Nataraj, learned Additional Solicitor General appearing for the NCPCR submitted that the identification of affected children is a dynamic activity. The State Governments and the Union Territories should be asked to update the figures on the web portal of NCPCR promptly. He expressed his anguish about certain NGOs collecting funds in the names of the affected children. It has come to the notice of the NCPCR that the identity of the affected children is being disclosed in public announcements by certain unscrupulous agencies and individuals who are inviting interested persons to adopt the affected children. He submitted that it has been brought to the notice of the NCPCR that illegal adoptions contrary to the provisions of the Juvenile Justices

Act, 2015 ('JJ Act, 2015') are also resorted to, which should be prevented. He suggested that the District Legal Service Authorities should be associated with the Government officials to ameliorate the condition of the affected children.

Ms. Shobha Gupta, learned counsel appearing in IA Nos.66075 and 66077 of 2021 filed on behalf of the 'We the Women of India' stated that there are several advertisements in the public domain inviting people to adopt orphans. Such posts have been found on social media as well. She submitted that most of them are fake and in any event no adoption is permissible without involvement of Central Adoption Resource Authority (CARA). She stressed the need for immediate action to be taken by the State Governments and Union Territories to stop the circulation of such posts in the social media and stringent action should be taken against those who are responsible for such posts. Relying upon Section 108 of the JJ Act, 2015, Ms. Shobha Gupta submitted that wide publicity should be given to the schemes in operation which would favour the affected children. Unless the beneficiaries are aware of the schemes floated by the Union of India and the State Governments/Union Territories, they would not be in a position to approach the authorities. She supported the learned Amicus Curiae that the affected children should be permitted to

continue their education in the same schools in which they were studying prior to the death of the parent/parents.

We share the concern of the learned Additional Solicitor General and Ms. Shobha Gupta about the illegal adoption of affected children. The State Governments/Union Territories are directed to prevent any NGO from collecting funds in the names of the affected children by disclosing their identity and inviting interested persons to adopt them. No adoption of affected children should be permitted contrary to the provisions of the JJ Act, 2015. Invitation to persons for adoption of orphans is contrary to law as no adoption of a child can be permitted without the involvement of CARA. Stringent action shall be taken by the State Governments/Union Territories against agencies/individuals who are responsible for indulging in this illegal activity.

Section 108 of the JJ Act, 2015 provides that the Central Government and the State Governments/Union Territories should take measures to ensure that the provisions of the JJ Act, 2015 are given wide publicity through media including Television, Radio and print media at regular intervals so as to make the general public, children and their parents or guardians aware of such provisions. It is true that the majority of the populace are not aware

of their rights and entitlement to several benefits that are announced by the Governments. The State Governments/Union Territories are directed to give wide publicity not only to the provisions of the JJ Act, 2015 but also to the several schemes that have been announced by the Central Government and the State Governments/Union Territories benefiting the children who have become orphans and children in need of care and protection.

For the present, this Court is concerned with the implementation of the schemes that are in place to meet the essential needs of the affected children forthwith. There is a need for continuous monitoring of the implementation of the schemes in favour of the affected children. Special Juvenile Police Unit in each district and city shall be constituted as provided in Section 107 of the JJ Act, 2015. That apart, DCPO should take the assistance of the the District Legal Service Authorities for coordinating the implementation of the schemes in favour of the affected children. If DCPO finds it difficult to monitor the welfare of the affected children, he should involve the government servants at the grass root level in the task of attending to the desolate children.

In view of the aforementioned, following directions are issued:

- (1) The State Governments/Union Territories are directed to continue identifying the children who have become orphans or lost a parent after March, 2020 either due to Covid-19 or otherwise and provide the data on the website of the NCPCR without any delay. The identification of the affected children can be done through Childline (1098), health officials, Panchayati Raj Institutions, police authorities, NGOs etc.
- (2) The DCPU is directed to contact the affected child and his guardian immediately on receipt of information about the death of the parent/parents. Assessment shall be made about the suitability and willingness of the guardian to take care of the child. The DCPU should ensure that adequate provisions are made for ration, food, medicine, clothing etc. for the affected child. Financial assistance to which the disconsolate child is entitled to under the prevailing schemes by the Central Government and the State Governments/Union Territories should be provided without any delay.
- (3) The DCPO should furnish his phone number and the name and phone number of the local official who can be contacted by the guardian and the child. There should be a regular follow up by the concerned authorities with the child at least once

in a month.

- (4) If the DCPO is of the prima facie opinion that the guardian is not suitable to take care of the child, he should produce the child before the CWC immediately.
- (5) CWC should provide for the essential needs of the child during the pendency of the inquiry without fail. The inquiry should be completed expeditiously. CWC shall ensure that all financial benefits to which the child is entitled are provided without any delay.
- (6) The State Governments/Union Territories are directed to make provisions for continuance of education of the children both in Government as well as in private schools.
- (7) The State Governments/Union Territories are directed to take action against those NGOs/individuals who are indulging in illegal adoptions.
- (8) Wide publicity should be given to the provisions of the JJ Act, 2015 and the prevailing schemes of the Union of India and the State Governments/Union Territories which would benefit the affected children.
- (9) DPCO shall take the assistance of government servants at the Gram Panchayat level to monitor

the welfare of the disconsolate children who are devastated by the catastrophe of losing their parent/parents.

All other issues shall be taken up on the next date of hearing.

List on 27.07.2021.

In the meanwhile, learned Amicus Curiae shall contact the nodal officers to be appointed by the States of Andhra Pradesh, Odisha, West Bengal, Assam, Uttarakhand, NCT of Delhi, Punjab, Haryana, Himachal Pradesh and UT of Jammu and Kashmir to obtain the information relating to the welfare of the children who are in a dolorous state due to loss of their parent/parents and submit a report.

(GEETA AHUJA)
COURT MASTER

(B.PARVATHI)
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(ANAND PRAKASH)
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