

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 30th OF OCTOBER, 2023

WRIT PETITION No. 23718 of 2023

BETWEEN:-

1. DIGVIJAY SINGH S/O MUKAAM SINGH, AGED ABOUT 49 YEARS, OCCUPATION: FARMER TOWN JOBAT DIST. ALIRAJPUR (MADHYA PRADESH)

2. KARAN SINGH S/O ANTARSINGH, AGED ABOUT 20 YEARS, OCCUPATION: LABOUR GRAM GHATBORI DIST. DHAR (MADHYA PRADESH)

3. RAKESH S/O CHENSINGH, AGED ABOUT 26 YEARS, OCCUPATION: FARMAR GRAM HOLI FALIA BALDMONG POST ULBAD, DIST. ALIRAJPUR (MADHYA PRADESH)

4. JOGDI W/O HAMIR, AGED ABOUT 63 YEARS, OCCUPATION: FARMAR GRAM KHANDALARAO, DIST. ALIRAJPUR (MADHYA PRADESH)

5. HARSINGH S/O ANN SINGH, AGED ABOUT 65 YEARS, OCCUPATION: FARMAR GRAM AAMBUA, DIST. ALIRAJPUR (MADHYA PRADESH)

6. KAILASH S/O DUKKA, AGED ABOUT 48 YEARS, OCCUPATION: FARMAR TOWN JOBAT, DIST. ALIRAJPUR (MADHYA PRADESH)

7. ANTIM S/O YASHWANT, AGED ABOUT 65 YEARS, OCCUPATION: FARMAR GRAM AAMKHUT, DIST. ALIRAJPUR (MADHYA PRADESH)

PRADESH)

8. DUNGER SINGH S/O J S CHOUHAN, AGED ABOUT 49 YEARS, OCCUPATION: FARMAR TOWN JOBAT, DIST. ALIRAJPUR (MADHYA PRADESH)

9. SUNDERI W/O HARSINGH, AGED ABOUT 48 YEARS, OCCUPATION: FARMAR GRAM HARDASPUR DIT. ALIRAJPUR (MADHYA PRADESH)

.....PETITIONERS

(SHRI RAJESH JOSHI, LEARNED COUNSEL FOR THE PETITIONERS).

AND

1. THE STATE OF MADHYA PRADESH DEPARTMENT OF WOMEN AND CHILD DEVELOPMENT THROUGH PRINCIPAL SECRETARY VIJAYARAJE VATSALYA BHAWAN 28 ARERA HILLS BHOPAL (MADHYA PRADESH)

2. PRESIDENT, COMMISSION FOR PROTECTION OF CHILD RIGHT / BAL SARKSHAN AYOJ 59 THIRD FLOOR NARMADA BHAWAN, ARERA HILLS, BHOPAL (MADHYA PRADESH)

3. DISTRICT COLLECTOR ALIRAJPUR-AMBUA ROAD, ALIRAJPUR (MADHYA PRADESH)

4. MEMBER NYAY PITH BAL KALYAN SAMITI ALIRAJPUR (MADHYA PRADESH)

5. SUPERINTENDENT JIVAN JYOTI BALIK-AGRAH SHRAM COLONY RAU, DIST. INDORE (MADHYA PRADESH)

6. SUPERINTENDENT MAA ANANTA ABHYATE BALGRAH, MANDAV DIST. DHAR (MADHYA PRADESH)

.....RESPONDENTS

(SHRI KOUSTUBH PATHAK, LEARNED GOVT. ADVOCATE APPEARING ON BEHALF OF ADVOCATE GENERAL).

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This petition coming on for admission this day, the court passed the following:

ORDER

1] This petition has been filed by the petitioners under Article 226 of the Constitution of India, seeking the following reliefs:-

- “1. The respondents No.5 & 6 to be directed to release children immediately;*
- 2. Towards costs of this petition from the respondents to the petitioners.*
- 3. Any other relief, which this Hon'ble Court may deem fit in the facts and circumstances of the case in favour of the petitioner against the respondents.”*

2] The grievance of the petitioners are that they are the parents of the 16 children, who have been allegedly rescued by the respondent No.4/Child Welfare Committee, Alirajpur on the pretext that the hostel in which, the children were staying, were running in contravention of Sections 41 & 42 of the Juvenile Justice Care & Protection of Children Act, 2015 (hereinafter referred to the Act of 2015).

3] Counsel for the petitioners has submitted that Sections 41 & 42 of the Act of 2015 would not be applicable in the present case, as it is neither a case where the children were in need of care and protection, as per Sub-Section (14) of Section 2 of the Act 2015, neither the children are in conflict with law as provided under sub sections (13) & (14) of Section 2 of the Act, 2015. Thus, it is submitted that the respondents may be directed to release the children so that they can study from their hostel as all of them are school going children, and only because of the

arbitrariness of the respondents, they are being retained in the child care home, the facilities of which are also not at par with the hostel in which they were earlier residing as per wishes of their parents.

4] A short reply has been filed by the respondent/State; whereas the respondents No. 5-Superintendent, Jivan Jyoti Balikagrah Sharmik Colony Rau, District-Indore and respondent No.6-Superintendent, Maa Annanta Abhyate Balgarh, Mandav, District-Dhar, where the children have been kept, have not bothered to file their reply and to appear before this Court.

5] In the reply filed by the respondent/State, the action has been tried to be justified. However, along with the reply, there is no such document placed on record which would raise any doubt about the care with which the children were being treated in the hostel nor there is any statement of any children to suggest that they were ever mistreated. It is also found that there is no reply to the objection raised in the petition regarding the non applicability of Sections 41 & 42 of the Act of 2015; whereas, it is found that the children have been rescued by resorting to Sections 41 & 42 of the Act of 2015 alleging that the hostels were not being run under the aforesaid provisions of Sections 41 & 42 of the Act, 2015.

6] Counsel for the respondent/State has submitted that as per the instructions, they have already served the notice of this petition to the respondents No.5 & 6 by *humdast* model.

7] Heard. So far as the relevant provisions of the Act of 2015 are concerned, which are applicable in the present case, the same read as under:-

S.2 (13) “child in conflict with law” means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence;

S.2 (14) “child in need of care and protection” means a child—

(i) who is found without any home or settled place of abode and without any ostensible means of subsistence; or

(ii) who is found working in contravention of the provisions of this Act or] labour laws for the time being in force or is found begging, or living on the street; or

(iii) who resides with a person (whether a guardian of the child or not) and such person-

(a) has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child; or

(b) has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or

(c) has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or

(iv) who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or having parents or guardians unfit to take care, if found so by the Board or the Committee; or

(v) who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or

3[(vi) who does not have parents and no one is willing to take care of and protect or who is abandoned or surrendered;”;

(vii) who is missing or run away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed; or

(viii) who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or

(ix) who is found vulnerable and 4[has been or is being or is likely to be] inducted into drug abuse or trafficking; or

(x) who is being or is likely to be abused for unconscionable gains; or

(xi) who is victim of or affected by any armed conflict, civil unrest or natural calamity; or

(xii) who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnisation of such marriage;

S. 41 Registration of child care institutions.— (1) Notwithstanding anything contained in any other law for the time being in force, all institutions, whether run by a State Government or by voluntary or non-governmental organisations, which are meant, either wholly or partially, for housing children in need of care and protection or children in conflict with law, shall, be registered under this Act in such manner as may be prescribed [* * *] regardless of whether they are receiving grants from the Central Government or, as the case may be, the State Government or not:

Provided that the institutions having valid registration under the Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000) on the date of commencement of this Act shall be deemed to have been registered under this Act.

(2) At the time of registration under this section, the State Government 2[shall, after considering the recommendations of the District Magistrate, determine] and record the capacity and purpose of the institution and shall register the institution as a Children's Home or

open shelter or Specialised Adoption Agency or observation home or special home or place of safety, as the case may be.

(3) On receipt of application for registration under sub-section (1), from an existing or new institution housing children in need of care and protection or children in conflict with law, the State Government may grant provisional registration, within one month from the date of receipt of application, for a maximum period of six months, in order to bring such institution under the purview of this Act, and shall determine the capacity of the Home which shall be mentioned in the registration certificate:

Provided that if the said institution does not fulfil the prescribed criteria for registration, within the period specified in sub-section (1), the provisional registration shall stand cancelled and the provisions of sub-section (5) shall apply.

(4) If the State Government does not issue a provisional registration certificate within one month from the date of application, the proof of receipt of application for registration shall be treated as provisional registration to run an institution for a maximum period of six months.

(5) If the application for registration is not disposed of within six months by any officer or officers of any State Government, it shall be regarded as dereliction of duty on their part by their higher controlling authority and appropriate departmental proceedings shall be initiated.

(6) The period of registration of an institution shall be five years, and it shall be subject to renewal in every five years.

(7) The State Government may, after following the procedure as may be prescribed, cancel or withhold registration, as the case may be, of such institutions which fail to provide rehabilitation and reintegration services as specified in Section 53 and till such time that the registration of an institution is renewed or granted, the State Government shall manage the institution.

(8) Any child care institution registered under this section shall be duty bound to admit children, subject to the capacity of the institution, as directed by the Committee, whether they are receiving grants from the Central Government or, as the case may be, the State

Government or not.

(9) Notwithstanding anything contained in any other law for the time being in force, the inspection committee appointed under Section 54, shall have the powers to inspect any institution housing children, even if not registered under this Act to determine whether such institution is housing children in need of care and protection.

42. Penalty for non-registration of child care institutions.— Any person, or persons, in-charge of an institution housing children in need of care and protection and children in conflict with law, who fails to comply with the provisions of sub-section (1) of Section 41, shall be punished with imprisonment which may extend to one year or a fine of not less than one lakh rupees or both:

Provided that every thirty days delay in applying for registration shall be considered as a separate offence.

8] A perusal of the aforesaid provisions clearly reveals that they are meant for the children and institutions prescribed under Sections 41 & 42 of the Act, and thus, are in respect of the children who are either *in conflict with law* or the children who *are in need of care and protection*. Similarly, the provisions of Section 2 (13) and (14) are also not applicable in the present case as none of the ingredients of both the sub-sections are present in the impugned order Annexure P/1.

9] On the contrary, the respondents have also placed on record the Social Investigation Report which is conducted under Section 36 (2) of the Act of 2015, and there is absolutely no allegation against any person that the children were mistreated in the hostel. In such fact and circumstances of the case, this Court is inclined to allow the present petition and is of the considered opinion that the provisions of Sections 41 and 42 of the Act of 2015 cannot be invoked in the facts and circumstances of the case and the children were unnecessarily being

harassed by the respondents No.4, 5 & 6 and, it appears that they have acted in excess of their powers prescribed under the Act of 2015, they are also directed to act cautiously in future, and any lapse on their part shall make them personally liable for their acts.

10] Counsel for the petitioners has also submitted that most of the children have received notices from their respective school regarding their absence from the school, and it might be possible that they may not be allowed to appear as regular students because of the action of the respondents. In such circumstances, necessary direction may be issued to the District Magistrate of Alirajpur.

11] Prayer appears reasonable, and in such circumstances, the District Magistrate of Alirajpur is also directed to ensure that none of the children who have been kept in childcare home should suffer only because of the improper action of the respondent Nos. 4, 5 & 6 and no coercive action is taken against them by their respective school.

12] Accordingly, the petition stands **allowed**. The respondents are directed to release the children to their respective parents after due verification within a week's time.

(SUBODH ABHYANKAR)
JUDGE