

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Appellate/Revisional/Civil Jurisdiction

Present:

The Hon'ble Mr. Arun Mishra, Chief Justice
And
The Hon'ble Mr. Justice Joymalya Bagchi

W.P. 7058 (W) of 2012

Commonwealth Human Rights Initiative

Versus

State of West Bengal

For the petitioner: Ms. Madhurima Dhanuka.

For the State: Mr. Asoke Kumar Banerjee,
Mr. Tapan Kumar Mukherjee-III,
Mr. Bikash Kumar Mukherjee,
Mr. Nilotpal Chatterjee.

Heard & Judgment on: January 11, 2013.

The Court.

This *letter petition* was registered as *public interest litigation* on the basis of a complaint made on behalf of the Commonwealth Human Rights Initiative. In the complaint, a prayer has been made for constitution of a committee in terms of paragraph 9(ii) of the letter petition to visit the various correctional homes throughout the State of West Bengal so as to identify the actual number of inmates, who may be the juveniles, being held by the regular prison authorities instead of the Juvenile Justice Board and to systematically verify and prepare a detailed report of the prisoners, whose age has not been properly verified and who appear to be

or likely to be less than 18 years of age, and to submit the report to the court within two months and/or within such time, as the court may direct.

Another prayer has been made in the complaint for issuance of a direction for effective implementation of the guidelines issued by the National Legal Services Authority in accordance with the directions passed by the Hon'ble Supreme Court.

It is submitted on behalf of the complainant that certain juveniles are being kept in the correctional homes meant for the adult.

The Deputy Inspector General (Administration) of Correctional Services, West Bengal, has submitted the relevant papers in connection with the letter petition as also the Principal Secretary to the Government of West Bengal, Home (police) Department, has submitted a report in compliance with the direction issued by this court on May 4, 2012 and May 11, 2012.

An affidavit in opposition to the letter petition has been filed on behalf of the State of West Bengal from which it appears that the Inspector General (Correctional Services), West Bengal, has submitted a report dated May 17, 2012 wherein it was reported that only four (4) inmates less than 18 years of age still languished in Balurghat District Correctional Home and all other inmates stood released on bail or released and/or produced before the concerned Juvenile Justice Board or transferred to different Observation Homes. In respect of the said four inmates, it was reported that they were produced before the court of the learned Chief Judicial Magistrate at Dakshin Dinajpur on May 16, 2012 and an order has been passed by the learned Chief Judicial Magistrate to the effect to conduct ossification tests of the said inmates and now they have been removed from correctional homes meant for adults. It was further reported that strict compliance of the provisions of Juvenile Justice (Care & Protection of Children) Act, 2000 would be maintained henceforth in the State. A direction in this regard has duly been issued to the Director General & Inspector General of Police, West Bengal, as also to the Commissioner of Police, Kolkata to instruct all concerned to strictly follow the provisions as contained in Section 7 and 7A of the said Act of 2000. The copy of the direction issued by the Joint Secretary to the Government of West Bengal, as aforesaid, has been annexed to the affidavit as Annexure R-II.

In a case being Writ Petition (Civil) No. 473 of 2005 (Sampurna Behrua vs. Union of India & ors.), the Hon'ble Supreme Court passed an order on October 12, 2011 to the following effect :-

“The Home Departments and the Director Generals of Police of the States/Union Territories will ensure that at least one police officer in every police station with aptitude is given appropriate training and orientation and designated as Juvenile or Child Welfare Officer, who will handle the juvenile or child in coordination with the police as provided under sub-section (2) of Section 63 of the Act. The required training will be provided by the District Legal Services Authorities under the guidance of the State Legal Services Authorities and Secretary, National Legal Services Authorities will issue appropriate guidelines to the State Legal Services Authorities for training and orientation of police officers, who are designated as the Juvenile or Child Welfare Officers. The training and orientation may be done in phases over a period of six months to one year in every State and Union Territory.

The Home Departments and the Director Generals of Police of the States/Union Territories will also ensure that Special Juvenile Police Unit comprising of all police officers designated as Juvenile or Child Welfare Officer be created in every district and city to coordinate and to upgrade the police treatment to juveniles and the children as provided in sub-section (3) of Section 63 of the Act.”

Accordingly, the Director General and Inspector General of Police, West Bengal, as also the Commissioner of Police, Kolkata, have been informed to take appropriate action in compliance. Copies of the references dated November 22, 2011 and December 22, 2011 issued by the Deputy Secretary, Government of West Bengal, Home (Police) Department, have been annexed to the affidavit as Annexure R-III and R-IV.

It was submitted in the affidavit filed by the State that the communications in reply had duly been received from the Superintendents of Police of the districts of Bankura, Hooghly, Purulia, Dakshin Dinajpur, Burdwan, Nadia, Darjeeling, Birbhum, Malda, Jalpaiguri, Murshidabad, North 24-Paraganas, Cooch Behar and Howrah Rural District as well as of the Government of Railway Police, (Sealdah and Kharagpur). The Superintendents of Police of the districts concerned as also of the Government Railway Police, stated in their communications in reply that one police officer in every police station has been designated as Juvenile or Child Welfare Officer, who would handle the juvenile or child in coordination with the police as provided under sub-section (2) of Section 63 of the said Act of 2000. It has further been stated that the officers, who have been designated as Juvenile or Child Welfare Officer, are imparting phase wise training and orientation in the District Legal Services Authority under the guidance of the State Legal Services Authority in

terms of the direction issued by this court. The copies of the communications in reply have been annexed to the affidavit as Annexure R-V.

The Commissioner of Police, Kolkata, in his communication in reply, has stated that apart from frequent training, sensitization programmes are also organized for the benefit of the Child Welfare Officers and such trainings are also attended by the members of the Juvenile Justice Board. It has further been stated that as per Section 63(3) of the said Act of 2000, the Women Grievance Cell of Detective Department, Kolkata Police, has been identified as the Special Juvenile Police Unit. The communication in reply of the Commissioner of Police, Kolkata, has been made annexure being Annexure R-VI to the affidavit.

From the affidavit used on behalf of the State, it appears that the issue of payment of compensation to the victims kept open for being considered the same at the time of determination of wrongful detention of the victims and the Home Department shall take appropriate steps against the police officers related with wrongful detention of juveniles after causing case to case verification under the existing disciplinary rules.

On September 12, 2011, the National Legal Services Authority has issued certain directions on the State Legal Services Authorities for immediate action in terms of the order passed by the Hon'ble Supreme Court in Sampurna Behrua (supra). For this purpose, the following steps are suggested to be taken:

- (i) The State Legal Services Authority may direct the District Legal Services Authority of the Capital District to establish Legal Aid Centre (s) in the Juvenile Justice Board (s) working the capital city.**
- (ii) The aforesaid DLSA may be directed to prepare a list of young panel lawyers for such Legal Aid Centre. The panel lawyers may be selected from young and competent lawyers, preferably women lawyers, who are willing to work the entire day in a child-friendly manner in compliance with the spirit and object of the Juvenile Justice (Care and Protection of Children) Act, 2000 and Juvenile Justice Rules, 2007. The same set of lawyers may be made available for legal aid in the CWCs and in the different Homes established under the Act, whenever necessary.**
- (iii) Arrangements may be made by the DLSA concerned to organize a training camp for the aforesaid panel lawyers on the juvenile jurisprudence, focusing on the philosophy behind the UN Convention on the Rights of the Child 1989 and the provisions in Juvenile Justice (Care and**

Protection of Children) Act, 2000 with a special emphasis on the principles enunciated in Chapter-II, Rule 3 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (Central Rules).

- (iv) Even if there is no infrastructural facility available in the JJB premises, the panel lawyers may be directed to attend the JJB proceedings throughout the day on the days when the JJBs sit, depending on the volume of work. The number of panel lawyers to be deputed on a particular day may be regulated by the DLSA and they may be sent to the JJB on turn basis. However, a lawyer entrusted with a case may be directed to handle it till its disposal.**
- (v) The list of panel lawyers containing their names, addresses and contact numbers may be communicated to the Principal Magistrates and the Members of the JJBs and such a list may be exhibited at a prominent place in the JJB (painted on a board or on a flex board) premises.**
- (vi) A special request may be made to the Principal Magistrates and the Members of the JJBs to avail of the services of the panel lawyers and not to leave the children in conflict with law to the mercy and exploitation by others.**
- (vii) The principal Magistrates and the Members of the JJB may be requested to inform all children in conflict with law about the availability of free legal aid and about the list of panel lawyers displayed as above.**
- (viii) Honorarium at a special rate may be fixed by the State Legal Services Authority for those panel lawyers who attend the JJBs for the entire day.**
- (ix) The panel lawyers may, for the time being, be permitted to use the existing infrastructural facilities available in the District Legal Services Authority.**
- (x) A monthly statistical report on the Legal Aid given to children shall be submitted to the State Legal Services Authority who shall include the same in the statistics sent to NALSA.**
- (xi) The guidelines to be supplied to the panel lawyers are annexed to this communication. Copies of the same may be arranged to be given to each panel lawyer and acknowledgement of receipt of the same may be obtained from them.**

In the communication dated September 12, 2011, as above, it has been mentioned that the State Legal Services Authorities have to direct the District Legal Services Authorities to establish legal aid centres in the Juvenile Justice Board working in the capital city. A panel of child-friendly lawyers is to be prepared in compliance with the spirit and object of the said Act of 2000 and Rules, 2007. The District Legal Services Authority is to organise training camps for the purpose as specified in direction no. (iii), as mentioned above.

The members of the Juvenile Justice Board were requested to inform all the children in conflict with law about the availability of free legal aid and about the list of panel lawyers. The direction was also issued in respect of the honorarium, etc. for the panel lawyers. A monthly statistical report on the legal aid given to children was also directed to be submitted to the State Legal Services Authority, who, in turn, shall include the same in the statistics sent to National Legal Services Authority.

We have heard Ms. Madhurima Dhanuka, learned advocate appearing on behalf of the complainant; Mr. Asoke Kumar Banerjee, learned Government Pleader as also Mr. Debasish Roy, learned Public Prosecutor.

The State authorities have already taken steps, which is apparent from their affidavit in opposition. However, in response to the communications issued by the Deputy Secretary to the Government of West Bengal being Annexures R-III and R-IV, some of the districts in the State have reported their compliance. The districts, which have not complied with the directions passed by the Supreme Court as yet, let their case be taken up by the State Government and compliance of the directives contained in Annexures R-III and R-IV passed by the Hon'ble Supreme Court be also ensured by the State authorities within a period of two months from date.

The State authorities shall also ensure that in the districts, where the police officers have not been designated as Juvenile or Child Welfare Officer, who would handle the juvenile or child in coordination with the police as provided under sub-section (2) of Section 63 of the said Act of 2000. Let such designation be made within two months.

The District Legal Services Authorities are directed to ensure the compliance of the directives issued by the Hon'ble Supreme Court. The State Legal Services Authority is requested to ensure compliance of the directives issued by the National Legal Services Authority, as has been quoted above, made through the District Legal Services Authorities within the time stipulated, as above, and to file a report to that effect before this court.

We request the State Legal Services Authority to ensure compliance of the order passed by the Hon'ble Supreme Court.

Let frequent training and sensitization programmes be organized for the benefit of the Child Welfare Officers and the members of the Juvenile Justice Board, since, in fact, such programmes are required to be organized

from time to time to sensitized the police and the concerned authorities about the spirit of the said Act of 2000.

We direct the State authorities to ensure compliance of the directives issued by the Hon'ble Supreme Court in time to time in the pending case of Sampurna Behrua (supra).

The letter petition is allowed in the manner indicated above.

The parties are directed to bear their respective costs.

Office is directed to communicate this order to the State Legal Services Authority, District Legal Services Authorities as well as to the Juvenile Justice Boards.

Let xerox plain copy of this order duly countersigned by the Assistant Registrar (Court) be made available to the learned advocate appearing for the complainant as also to the learned Government Pleader and learned Public Prosecutor for securing compliance of this order.

(Joymalya Bagchi, J.)

(Arun Mishra, Chief Justice)