

ITEM NO.12

COURT NO.1

SECTION XVI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No.34251/2017

(Arising out of impugned final judgment and order dated 29-08-2017 in WP No. 22537/2017 passed by the High Court at Calcutta)

NATIONAL COMMISSION FOR PROTECTION OF
CHILD RIGHTS & ORS.

Petitioner(s)

VERSUS

RAJESH KUMAR & ORS.

Respondent(s)

(With appln.(s) for exemption from filing c/c of the impugned judgment, exemption from filing O.T. and permission to file additional documents)

Date : 04-01-2018 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

For Petitioner(s) Mr. Tushar Mehta, ASG
Ms. Anindita Pujari, AOR
Ms. Kavita Bhardwaj, Adv.
Ms. Deepanwita Priyanka, Adv.
Ms. Harsha Garg, Adv.

For Respondent(s)

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

Heard Mr. Tushar Mehta, learned Additional Solicitor General for the Union of India appearing on behalf of the petitioner, National Commission for Protection of Child Rights and others.

The assail in this special leave petition is to the order dated 29th August, 2017, passed by the learned Single Judge of the High Court of Calcutta in W.P. No.22537 (W) of 2017, which was moved by the Additional Director General of Police, CID, State of West Bengal. It was contended before the High Court that the writ petitioner had received summons dated 20th July, 2017, from the National Commission of Protection of Child Rights and replied thereto informing that the West Bengal State Commission for Protection of Child Rights had been informed with regard to such incidents and the said Commission had already taken cognizance of the matter and, therefore, the jurisdiction of the National Commission is barred under Section 13(2) of the Commissions for Protection of Child Rights Act, 2005 (for short, 'the Act').

The High Court, *prima facie*, accepting the said contention opined that the matter was required to be debated and, accordingly, issued notice and directed the National Commission to file an affidavit and further not to proceed with the matter.

It is submitted by Mr. Mehta, learned Additional Solicitor General that if Section 13(2) along with Rule 17 of the National Commissions for Protection of Child Rights Rules, 2006 (for brevity, 'the 2006 Rules') are read conjointly, the power of the National Commission cannot be curtailed.

Section 13 of the Act that occurs in Chapter III deals with functions and powers of the Commission. It reads as follows:-

"13. Functions of Commission.- (1) The Commission shall perform all or any of the following functions, namely:-

(a) examine and review the safeguards provided by or under any law for the time being in force for the protection of child rights and recommend measures for their effective implementation;

(b) present to the Central Government, annually and at such other intervals, as the Commission may deem fit, reports upon the working of those safeguards;

(c) inquire into violation of child rights and recommend initiation of proceedings in such cases;

(d) examine all factors that inhibit the enjoyment of rights of children affected by terrorism, communal violence, riots, natural disaster, domestic violence, HIV/AIDS, trafficking, maltreatment, torture and exploitation, pornography and prostitution and recommend appropriate remedial measures;

(e) look into the matters relating to children in need of special care and protection including children in distress, marginalized and disadvantaged children, children in conflict with law, 7 juveniles, children without family and children of prisoners and recommend appropriate remedial measures;

(f) study treaties and other international instruments and undertake periodical review of existing policies, programmes and other activities on child rights and make recommendations for their effective implementation in the best interest of children;

(g) undertake and promote research in the field of child rights;

(h) spread child rights literacy among various sections of the society and promote awareness of the safeguards available for protection of these rights through publications, the media, seminars and other available means;

(i) inspect or cause to be inspected any juvenile custodial home, or any other place of residence or institution meant for children, under the control of the Central Government or any State Government or any other authority, including any institution run by a social organisation; where

children are detained or lodged for the purpose of treatment, reformation or protection and take up with these authorities for remedial action, if found necessary;

(j) inquire into complaints and take suo motu notice of matters relating to,—

(i) deprivation and violation of child rights;

(ii) non-implementation of laws providing for protection and development of children;

(iii) non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships to and ensuring welfare of the children and to provide relief to such children, or take up the issues arising out of such matters with appropriate authorities; and

(k) such other functions as it may consider necessary for the promotion of child rights and any other matter incidental to the above functions.”

Sub-section (2) of Section 13 of the Act on which the High Court has placed reliance upon, is as follows:-

“13(2). The commission shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force.”

Rule 17 of the 2006 Rules, which has been framed under Section 35 of the Act, is extracted below:-

“17. Functions of the Commission.—The Commission shall, in addition to the functions assigned to it under clauses (a) to (j) of sub-section (1) of section 13, perform the following functions, namely:—

(a) analyze existing law, policy and practice to assess compliance with Convention on the Rights of the Child, undertake inquiries and

produce reports on any aspect of policy or practice affecting children and comment on proposed new legislation from a child rights perspective;

(b) present to the Central Government annually and at such other intervals as the Commission may deem fit, reports upon the working of those safeguards;

(c) undertake formal investigations where concern has been expressed either by children themselves or by concerned person on their behalf;

(d) ensure that the work of the Commission is directly informed by the views of children in order to reflect their priorities and perspectives;

(e) promote, respect and serious consideration of the views of children in its work and in that of all Government Departments and Organisations dealing with child;

(f) produce and disseminate information about child rights;

(g) compile and analyze data on children;

(h) promote the incorporation of child rights into the school curriculum, teachers training and training of personnel dealing with children."

The argument before this Court is that the Rule 17 (which is exclusive to the National Commission) has been framed keeping in view the language employed under clauses (a) to (j) of sub-section (1) of Section 13 of the Act. Be that as it may, the issue relates to trafficking of children. Submission of the learned Additional Solicitor General is that in the State of West Bengal, there has been trafficking of orphans and the children are being sold.

As the issue pertains to trafficking of children, which has a vital national concern and recognizes no boundary, we think it appropriate to entertain the special

leave petition.

In this context, we may recapitulate the famous line i.e. "the child is the father of man".

This Court in Voluntary Health Association of Punjab vs. Union of India and Others (2013) 14 SCC 1 had reproduced a part of the poem written by Mamie Gene Cole in M.C. Mehta vs. State of Tamil Nadu (1996) 6 SCC 756, which reads thus:-

"I am the child.
All the world waits for my coming.
All the earth watches with interest to see what I shall become.
Civilization hangs in the balance,
For what I am, the world of tomorrow will be.
I am the child.
You hold in your hand my destiny.
You determine, largely, whether I shall succeed or fail.
Give me, I pray you, these things that make for happiness.
Train me, I beg you, that I may be a blessing to the world."

The purpose of highlighting the said part is that this Court was absolutely conscious in M.C. Mehta vs. State of Tamil Nadu that the children should not be compelled to work in factories, which are a source of danger. That being the position, when the children are sold, nothing can be more disastrous than this. This is a situation which cannot be allowed to prevail. A right of a child in a society is sacred, for the future of the country depends upon the character and the destiny of the child and the State has a great role in that regard. It is in the realm of protection.

In view of the aforesaid, it is necessary to have a comprehensive view of the entire country pertaining to running of orphanages, the mode and method of adoption, the care given and the treatment meted out to the children. For the said purpose, it is necessary that all the States shall be added as respondents in the matter. Mr. Mehta undertakes to file an amended cause title arraying all the States as respondents within three days hence. The States shall be added as respondents through the Chief Secretaries. After the States are arrayed as respondents, the Registry is directed to send notices by e-mail. That apart, Ms. Anindita Pujari, learned counsel assisting Mr. Tushar Mehta shall serve notice on the concerned Standing Counsel of all the States.

In this context, we may also look at certain aspects pertaining to protection of human rights as envisaged under the Protection of Human Rights Act, 1993 (for short, 'the 1993 Act'). Section 2(1)(d) defines "human rights", which is as follows:-

"2(1)(d) "human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India."

The language employed in the aforesaid dictionary clause, seems to us to include the dignity of the individual and in that compartment dignity of a child deserves to be covered. A child cannot be bartered away at the whim and fancy or selfishness of the person In-charge of orphanages. The person concerned may be liable for violation of human rights. It is worth noting here that Section 30 of the 1993 Act deals with Human Rights Courts. The said provision is as follows:-

"30. Human Rights Courts.- for the purpose of providing speedy trial of offences arising out of violation of human rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district a Court of Session to be a Human Rights Court to try the said offences:-

Provided that nothing in this section shall apply if-

(a) a Court of Session is already specified as a special court; or

(b) a special court is already constituted, for such offences under any other law for the time being in force.

Section 31 deals with special public prosecutor. It is as under:-

"31. Special Public Prosecutor.- For every Human Rights Court, the State Government shall, by notification, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court."

According to us, it is the mandate of the statute to establish Human Rights Courts and to appoint Special Public Prosecutors. In that regard, we would like the responses of all the States.

Issue notice, fixing a returnable date within two weeks hence.

There shall be stay of the impugned order and further proceedings before the High Court of Calcutta in W.P. No.22537 (W) of 2017.

Let the matter be listed on 22nd January, 2018. It shall be taken up at 2.00 p.m.

(Chetan Kumar)
Court Master

(H.S. Parasher)
Assistant Registrar