

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 5365/2012

KHUSHBOO JAIN

..... Petitioner

Through: Counsel for the petitioner.

versus

MINISTRY OF RAILWAYS,

UNION OF INDIA AND ORS

..... Respondents

Through: Mr Nitin Saliya for Mr Najmi Waziri, Standing Counsel, GNCTD
Mr Rajeeve Mehra, ASG with Mr Kunal Kahol, Adv. for UOI
Mr Aagney Sail, Adv for NCPCR.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V.K. JAIN

O R D E R

13.02.2013

1. Concerned with the plight of the children, who arrive and stay at Railway Stations, the petitioner has made the following prayers in this petition:-

a) Pass an order directing respondents to establish and run open shelters on the line of Mukhtangan for providing protection and support for children (separate for boys and girls) arriving and staying at the railway stations;

b) Pass an order directing respondents to implement NCPCR recommendations on safeguarding the rights of children at railway stations;

c) Pass an order direction Respondent No. 1 to constitute and operationalize Special Juvenile Police Units in RPF and GRP Police Stations in order to upgrade police treatment of children at railway stations and to appoint Juvenile Welfare Officers at all the Police stations located at the railway stations in Delhi;

d) Pass an order directing Respondents to establish and run (i) Child Assistance Booths and (ii) Child Protection Committees at all the Railway Stations, as provided in the NCPCR Recommendations;

e) Pass a direction to Respondents to arrange for training and sensitization of Railway Police, railway Staff and all other service providers (i.e. hawkers, coolies, ticket collectors, vendors, cleaners etc.) at the Railway station on child

protection issues at the railway stations;

f) Pass a direction to Respondent No. 1 to make public announcements, advertisements through hoardings, stickers, posters etc. about child protection mechanisms at the railway stations and in the trains;

g) Pass a direction to Respondent No. 4 NCPCR to make an annual audit of implementation of its recommendations and orders as may be passed by Hon ble Court, along with its recommendations(s);

h) Pass a direction to Respondent No. 1 to record the information (name, age, photograph, parents names, place of domicile, date of arrival, name of railway station, etc.) of children arriving and staying at railway stations through child assistance booths and to share this data with missing child bureau of Police

2. In a short affidavit filed in response to the writ petition, respondent No.1, Ministry of Railways, has stated that a mechanism is already in place with respect to destitute children rescued at Railway Stations by RPF, GRP and railway staff. According to respondent No. 1, such children are handed over to the parents or to the NGO for rehabilitation. It is further stated that in the current year as many as 2615 run away children were rescued by RPF and handed over to NGO/parents. It is further stated that whenever any destitute child is located at a railway station, he/she is counselled and efforts are made to restore him/her to parents or hand over him/her to rehabilitation centres. It is also stated that posters/ hoardings will be pasted at conspicuous places and on the railway platforms about the existing child protection mechanism.

3. The learned counsel for the petitioner submits that since the Juvenile Justice (Care and Protection of Children) Act, 2000 contains extensive provisions for dealing with children in need of care and protection which would include the children who arrive and stay on Railway Stations, the respondents are mandated, by law, to deal with such children only in accordance with the aforesaid Act.

4. Section 2(d) of the aforesaid Act defines child in need of care and protection to mean a child

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

(ia) who is found begging, or who is either a street child or a working child,
(ii) who resides with a person (whether a guardian of the child or not) and such person-(a) has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out, or (b) has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person,

(iii) who is mentally or physically challenged or ill children or children suffering from terminal diseases or incurable diseases having no one to support or look after,

(iv) who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child,

(v) who does not have parent and no one is willing to take care of or whose parents have abandoned [or surrendered] him or who is missing and run away child and whose parents cannot be found after reasonable inquiry,

(vi) who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts,

(vii) who is found vulnerable and is likely to be inducted into drug abuse or trafficking,

(viii) who is being or is likely to be abused for unconscionable gains,

(ix) who is victim of any armed conflict, civil commotion or natural calamity.

It would thus be seen that the children to which this petition relates would be covered under the expression, child in need of care and protection given in the Act.

5. Section 29 of the Act mandates the State Government to constitute one or more Child Welfare Committees for exercising the powers and discharging the duties conferred on such Committees in relation to children in need of care and protection . As provided in Section 31(1), the Committee shall have the final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of the children as well as to provide for their basic needs and protection of human rights.

Where a Committee has been constituted for any area, such Committee shall, notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in the Act, have the power to deal exclusively with all proceedings under the Act relating to children in need of care and protection.

6. Section 32(1) provides that any child in need of care and protection may be produced before the Committee by one of the following persons:-

(i) any police officer or special juvenile police unit or a designated police officer;

(ii) any public servant;

(iii) childline, a registered voluntary organisation or by such other voluntary organisation or an agency as may be recognised by the State Government;

(iv) any social worker or a public spirited citizen; or

(v) by the child himself:

Provided that the child shall be produced before the Committee without any loss of time but within a period of twenty-four hours excluding the time necessary for

the journey.

(2) The State Government may make rules consistent with this Act to provide for the manner of making the report to the Committee and the manner of sending and entrusting the child to children's home pending the inquiry.

Any official of RPF, GRP or local police can, therefore, produce any child arriving and staying at a Railway Station before the aforesaid Committee. Since Railway employees are also public servants, any of them can also produce such a child before the aforesaid Committee.

7. As provided in Rule 27(4) of the aforesaid Rule in case the Committee is not sitting, the child may be produced before the single member of the Committee as per the provisions of Section 30(2) of the Act for being placed in safe custody of parent or guardian or fit person or fit institutions, as the case may be, till such time that the child can be produced before the Committee. As provided in sub-Rule(5) of the aforesaid Rule, in case the single member is also not accessible, or the hours are odd, the child shall be taken by a non-governmental organisation or Childline or Police to an appropriate institution for children registered under the Act with all the necessary documents, and placed in such institution till the time of production before the Committee. As provided in sub-Rule(6) of the aforesaid Rule, the concerned institution shall inform the Chairperson or a member of the Committee about such child and produce the child before the Committee within twenty four hours and in such cases, it may not be necessary for the person who brings a child in need of care and protection to an institution to be present at the time of production of the child before the Committee.

8. Section 33(1) of the Act provides that holding an inquiry by the Committee which may also send the child to the children's home for speedy inquiry by a social worker or child welfare officer. Section 39(3) of the Act provides that the Committee shall have the powers to restore any child in need of care and protection to his parents, adopted parents, foster parents, guardian or fit institution and give them suitable directions. The functions and powers of the Committee have been prescribed in Rule 25 of the Juvenile Justice (Care and Protection of Children) Act, 2000, which reads as under:-

25. Functions and Powers of the Committee. The Committee shall perform the following functions to achieve the objectives of the Act, namely:-

- (a) take cognizance of and receive children produced before the Committee;
- (b) decide on the matters brought before the Committee;
- (c) reach out to such children in need of care and protection who are not in a position to be produced before the Committee, being in difficult circumstances, with support from the District Child Protection Unit or State Child Protection Unit or the State Government;

- (d) conduct necessary inquiry on all issues relating to and affecting the safety and well being of the child;
- (e) direct the Child Welfare Officers or Probation Officers or non-governmental organisations to conduct social inquiry and submit a report to the Committee;
- (f) ensure necessary care and protection, including immediate shelter;
- (g) ensure appropriate rehabilitation and restoration, including passing necessary directions to parents or guardians or fit persons or fit institutions in this regard, in addition to follow-up and coordination with District Child Protection Unit or State Adoption Resource Agency and other agencies;
- (h) direct the Officer-in-charge of children s homes to receive children requiring shelter and care;
- (i) document and maintain detailed case record along with a case summary of every case dealt by the Committee;
- (j) provide a child-friendly environment for children;
- (k) recommend fit institutions to the State Government for the care and protection of children;
- (l) declare fit persons ;
- (m) declare a child legally free for adoption;
- (n) keep information about and take necessary follow-up action in respect of missing children in their jurisdiction;
- (o) maintain liaison with the Board in respect of cases needing care and protection;
- (p) visit each institution where children are sent for care and protection or adoption at least once in three months to review the condition of children in institutions, with support of the State Government and suggest necessary action;
- (q) monitor associations and agencies within their jurisdiction that deal with children in order to check on the exploitation and abuse of children;
- (r) co-ordinate with the Police, Labour Department and other agencies involved in the care and protection of children with the support of District Child Protection Unit or State Child Protection Unit or State Government;
- (s) liaison and network with the corporate sector and non-governmental organisations for any of the above, including for social inquiry, restoration and rehabilitation, as and when required; and
- (t) maintain a suggestion box to encourage inputs from children and adults alike and take necessary action.

9. Rule 39 of the aforesaid Rule provides for setting up of children's home by the State Government itself or in association with voluntary organizations, whereas Rule 30 provides for State Government supporting creation of shelter homes or of shelter homes or drop-in- centres through the voluntary organizations. The Act and Rules thus contain extensive provisions to ensure safety, care and rehabilitation of such children.

10. In view of the above, we dispose of the writ petition with the following directions:-

(1) As soon as a child is found sitting at a Railway Station, RPF, GRP/Station Master shall try to obtain name, address and other particulars of his parents/guardian/relatives from the child, the concerned Station Master shall make announcement on the public address system of the railway station with respect to the child found there and inform the local police station/police post as well as the parents/guardian/relatives of the child about his/her being found at the Railway Station. A copy of such intimation shall forthwith be sent to the Police Station in jurisdiction of which the parents/ guardian/ relative of the child live, with a request to locate the parents/guardian/relatives of the child and inform him/her about the child having been found at the Railway Station.

(2) the children who arrive and stay at Railway Stations shall be produced by RPF, GRP or Railway employees before the Child Welfare Committee constituted under the aforesaid Act, at the earliest possible and in any case within 24 hours of such a child being found at a Railway station.

(3) the address and telephone numbers of the Committee shall be prominently displayed on the Railway Station, so as to enable the parents/guardian/ relative of the child to approach the Committee alongwith the information that the children who arrive and stay at the Railway Station, are produced before the Committee.

(4) every Station Superintendent/Station Master shall maintain a register in which he shall record the particulars including name, parents name, age and address of the children who arrive and stay at his Railway Station. He shall also get such a child photographed and place his photograph in the aforesaid Register, against his name, so that his/her parents are able to identify and locate him/her without any difficulty.

(5) Till the child is produced before the Committee in terms of this order, he shall remain in safe custody of the RPF, GRP/Station Masters and shall be given adequate care and attention including meals.

(6) If a child arriving and staying at a Railway Station is a girl, till the time she is produced before the Committee in terms of this order, she shall be kept in the safe custody of a responsible female member of RPF, GRP/Railways.

(7) Every Station Master shall provide appropriate separate space for male and female children arriving and staying at his railway station, till they are produced before the Committee in terms of this order.

(8) if the Child Welfare Committee is not sitting, the child shall be produced before the single member of the Committee in terms of Rule 27(4) of The Juvenile Justice (Care and Protection of Children) Rules, 2007 and in case the single member is also not accessible or the child is found at odd hours, he/she shall be dealt with in terms of Rule 27 of the aforesaid Rules till the time of

production before the Committee.

(9) the articles, if any, found with the child shall be kept in safe custody of the Station Master after preparing inventory of such articles and those articles shall be forwarded to the Committee along with the child. A copy of the inventory shall be placed in the register to be maintained in terms of this direction, against the name of child in question.

(10) The whole of the information in respect of such children, including their photographs, to the extent publication of such particulars and/or photographs is not prohibited under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 or any other law for the time being in force, along with information relating to his/her being produced before the Child Welfare Committee, shall be made available on the website of Indian Railways, in a searchable format, so that the parents/guardian of such children are able to identify them and seek their custody.

(11) The respondents shall give wide publicity in leading English and vernacular newspapers, with respect to the availability of the information, on the website of Indian Railways, in respect of such children, in terms of this order.

The writ petition stands disposed of in terms of these directions.

CHIEF JUSTICE

V.K. JAIN, J

FEBRUARY 13, 2013