

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (C) NO. 558/2019

BACHPAN BACHAO ANDOLAN

Petitioner(s)

VERSUS

UNION OF INDIA & ANR.

Respondent(s)

O R D E R

The petitioner - Bachpan Bachao Andolan has preferred this writ petition as a public interest litigation seeking the following reliefs:

“(a) Pass an appropriate writ/order/direction in the nature of mandamus directing to the Respondents to notify the "Fixing Accountability of School Management towards Safety and Security of Children in School-Guidelines" prepared by the Department of School Education & Literacy, Ministry of Human Resource Development (MoHRD) in consultation with the National Commission for the Protection of Child Rights (NCPCR);

(b) Pass an appropriate writ/order/direction to the Respondents, declaring that the contents of the Draft Accountability Guidelines shall be mandatorily implemented and applied in all cases of hardships upon children who are in schools, both government and private. The schools, both government and private, need to protect their children from risk of natural disaster, health hazard, abuse, violence and accidents.

(c) Pass an appropriate writ/order/direction to the Respondents to implement the "Fixing Accountability of School Management towards Safety and Security of Children in School-Guidelines" which lays down the responsibilities of school management towards ensuring safety and security of children in schools, both government and private.

(d) For an appropriate action to the respondents to
Contd..

pass such other order or orders as deem fit in the facts and circumstances of the case.”

Learned counsel for the petitioner submitted that an application for amendment of the petition has been filed and the same may be allowed. There being no objection to the said application and having regard to the scope and ambit of this writ petition as well as the prayers sought for by the petitioner herein, the said application is allowed.

Learned counsel for the petitioner submitted that an amended memorandum of Writ Petition has been filed. The same is taken on record. The amended writ petition has also sought the following reliefs -

“(a) direct all the State and UT Governments to immediately and mandatorily notify the Guidelines on school safety and Security, 2021 issued by the Ministry of Education on 08.10.2021, in compliance of the order dated 17.04.2018, passed by this Hon’ble Court in the matter being W.P. (Crl.) 136/2017 and W. P. (Civil) 874/2017, within a defined timeline and submit their compliance reports;

(b) direct the Centre and State Government to further issue directions to schools across India, to take immediate action and enquire well-being of the child, during situations where children remain absent for more than 30 days or intermittently drop off School;

(c) issue directions to the National Commission for Protection of Child Rights (NCPCR) and State Commission for Protection of Child Rights (SCPCRs) across India for the effective implementation of the Guidelines; and further direct the NCPCR and SCPCR for a time bound monitoring of the Guidelines; and

Contd..

(d) pass such other or further order(s) as may be deemed fit and proper in the circumstances of the case."

During the course of submissions, learned counsel for the petitioner drew our attention to the guidelines which have been framed by Union of India/respondent No.1 and sought a direction to all the State Governments and Union Territories to notify the guidelines and to comply with the same.

Learned counsel for the Union of India/respondent No.1 submitted that the prayers sought for by the petitioner herein have been complied with substantially by the Union of India. It is for the State Governments to implement those guidelines and therefore, appropriate orders may be made in the writ petition.

Learned counsel for respondent No.2/National Commission for Protection of Child Rights (NCPCR), while adopting the said submission also submitted that suitable directions may be issued to the State Governments to comply with the said guidelines by notifying the same and NCPCR may also be empowered to monitor the implementation of the said guidelines.

In the circumstances, we take note of the fact that

Contd..

the guidelines have been notified by the Union of India. It is also submitted that the guidelines have been communicated to the respective State Governments and Union Territories for their implementation vide letter dated 01.10.2021 to all the Additional Chief Secretaries/Principal Secretaries/Secretary, Department of Education of all the States and Union Territories. A copy of said communication dated 01.10.2021 is reproduced herein for immediate reference:

"Government of India
Ministry of Education
Department of School
Education & Literacy
Shastri Bhavan
New Delhi 110 115

Santosh Kumar Yadav,
Joint Secretary,
Telephone No.011-23387781
E-mail : yadavsk.up@nic.in

D.O No.17-1/2020-IS-11

New Delhi Dated the
1st October, 2021

Respected Maám/Sir

Please find enclosed a copy of 'Guidelines on School Safety and Security', developed by this Department for fixing the accountability of School Management in the matter of Safety and Security of Children studying in Government, Government-aided and Private Schools, in pursuance of the order of Hon'ble Supreme Court in Writ Petition (Criminal) No.136/2017 and Writ Petition (Civil) No.874/2017; and in line with the provisions contained in the National Education Policy, 2020.

2. These guidelines have been prepared by an expert
contd..

committee and through extensive consultation with all stakeholders. The State/UT Government, exercising its powers u/s 35(2) of the RTE Act, 2009, CrPC, 1973 and as per its mandate under Rule 93 of the Juvenile Justice Model Rules, 2016; shall notify these guidelines. The Guidelines are advisory in nature and States/UTs may incorporate additions/modifications to these guidelines, if deemed necessary, according to the State/UT specific requirements.

With regards,

Yours sincerely,

Enclosure : As above

(Santosh Kumar Yadav)

1. The Addl. Chief Secretary/Principal Secretary/
Secretary, Department of Education,
All States and UTs as per list attached.

2. Heads of all Autonomous Bodies of DoSEL"

Consequently, the State Governments as well as the Union Territories are expected to adopt the guidelines and to implement the same with suitable modifications as and when necessary. Since, the State Governments have not been arrayed as parties in this writ petition, the Registry of this Court is directed to send a copy of this order to all the Chief Secretaries of the respective State Governments as well as an equivalent officer of the Union Territories. Respondent No.2 to also coordinate with the respective State Governments and Union Territories for the purpose of monitoring the implementation of the Guidelines referred to above.

Contd..

For the purpose of monitoring, respondent No.2 is at liberty to seek Status Report/Action Taken Report from the respective States and Union Territories for the purpose of implementation of the guidelines.

It is needless to observe that in the event, respondent No.2 seeks Action Taken Report or Status Report with regard to the implementation of the Guidelines from the respective State Governments/Union Territories, it is expected that respondent No.2 shall respond to and the Action Taken Report/Status Report is submitted to respondent No.2 herein at the earliest.

The Writ Petition is disposed of in the aforesaid terms.

Pending application(s) including the application(s) for Intervention/Impleadment shall stand disposed of.

.....J.
(B.V. NAGARATHNA)

.....J.
(NONGMEIKAPAM KOTISWAR SINGH)

NEW DELHI;
SEPTEMBER 24, 2024

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO. 222/2020

The National Commission for Protection
of Children Rights

Petitioner(s)

VERSUS

State of Jharkhand & Ors.

Respondent(s)

O R D E R

The Petitioner-Commission (NCPCR) is constituted under the Commissions for Protection of Child Rights Act, 2005 for protection against violation of child rights and for matters connected therewith or incidental thereto.

Taking *suo moto* cognizance of a newspaper report dated 04.07.2018 alleging an instance of illegal child trade connected to an NGO in the State of Jharkhand, according to the Petitioner-Commission it wrote to Chief Secretary, Government of Jharkhand seeking a detailed report and status of action taken by the Government. In response, the Chief Secretary sent a report and outlined that an FIR had been lodged by Child Welfare Committee (CWC), Ranchi and that the matter was under investigation by CID, Government of Jharkhand. Material on record suggests that this specific case is registered at Sadar Anti Human Trafficking Unit P.S. as Case No.04/2018. Furthermore, Petitioner-Commission has averred that it sought reports of action of the concerned NGO from other states as

well but found their reports to be unsatisfactory.

Being dissatisfied with the alleged inaction and state of affairs, the Petitioner has preferred the instant writ petition seeking the following prayers::

- "a) issue a writ in the nature of Mandamus thereby directing a Supreme Court monitored time bound investigation of all such organizations in the State of Jharkhand to ensure protection of children;
- b) issue a writ in the nature of Mandamus thereby directing creation of Special Investigation Team in every State to investigate similar organisations to ensure that the Child rights violation are not happening in organisations located in other States;
- c) Issue a writ in the nature of Mandamus thereby directing the all States and Union territory to facilitate & cooperate with Child Welfare Committee so that they can work without hurdles;
- d) pass any such and further relief(s) or order(s) as may be deemed fit in light of above facts and circumstances."

We have heard learned senior counsel for the petitioner and perused the material on record.

The first prayer is for seeking a writ in the nature of Mandamus by the Supreme Court directing a Supreme Court monitored time bound investigation of all such organizations "in the State of Jharkhand to ensure protection of children". The second prayer is to issue a writ in the nature of Mandamus directing creation of a "Special Investigation Team" in every State to investigate "similar organisations" to ensure that the child rights violation are not happening in organisations located in other States. The third prayer is to issue a writ in

the nature of Mandamus directing the States and Union territory to facilitate and cooperate with Child Welfare Committee(s) so that they can work without hurdles and to pass any other relief(s).

Having heard learned senior counsel for the petitioner and bearing in mind the nature of reliefs sought, we find that the reliefs sought are, in the first place, vague and omnibus and therefore, can neither be entertained nor the said reliefs be considered. The writ petition is hence, liable to be dismissed.

Further, the NCPCR is a statutory body constituted under the provisions of the Commissions for Protection of Child Rights Act, 2005. Such a statutory body could not have filed the Writ Petition invoking Article 32 of the Constitution of India seeking the aforesaid prayers.

Article 32 is a vital provision of Part III of the Constitution which deals with fundamental rights and is a fundamental right by itself. This Court can issue directions or orders or writs including writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-warranto, Certiorari, whichever may be appropriate for the enforcement of any right conferred by Part III. Citizens are entitled to appropriate relief under the provisions of Article 32, whenever there is a violation of any fundamental right. No doubt, when there is a violation of the fundamental rights, public interest litigation is also preferred by and on behalf of the citizens by public spirited persons which are also termed as social action litigation.

However, we find it strange that a statutory body, such as the petitioner in the instant case is invoking Article 32 of the Constitution for seeking the aforesaid reliefs. When Article 32 is meant for citizens to enforce their fundamental rights, the said Article cannot be the basis to file a Writ Petition by statutory authorities against a State/Union Territory for seeking directions in aid of discharging its functions under the statute. The said Article also cannot be the basis for statutory bodies or authorities to seek enforcement of "fundamental rights" against private citizens. The same is incongruous and not in accordance with what is envisaged under the Constitution.

Before parting with this writ petition, we however observe that under the provisions of the Commissions for Protection of Child Rights Act, 2005, the NCPCR as well as the State Commissions are empowered to carry out their functions in terms of Section 13; conduct enquiries in terms of Section 14 and take steps thereafter in terms of Section 15.

In the circumstances, we do not think that such vague and omnibus prayers could have been sought for by the petitioner-NCPCR herein in the present Writ Petition. Hence, the same is dismissed.

However, it is needless to observe that petitioner herein is empowered under the aforesaid Act to take steps for the protection of children in accordance with law.

.....J.
(B.V. NAGARATHNA)

.....J.
(NONGMEIKAPAM KOTISWAR SINGH)

NEW DELHI;
SEPTEMBER 24, 2024

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGSWRIT PETITION(S)(CIVIL) NO(S). 558/2019

BACHPAN BACHAO ANDOLAN

Petitioner(s)

VERSUS

UNION OF INDIA & ANR.

Respondent(s)

(IA No. 202183/2022 - AMENDMENT OF THE PETITION
IA No. 29522/2023 - INTERVENTION/IMPLEADMENT
IA No. 165099/2022 - INTERVENTION/IMPLEADMENT)

WITH

W.P.(C) No. 222/2020 (X)

(IA No. 15704/2020 - EXEMPTION FROM FILING O.T.)

Date : 24-09-2024 These matters were called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE B.V. NAGARATHNA

HON'BLE MR. JUSTICE NONGMEIKAPAM KOTISWAR SINGH

For Petitioner(s) Mr. Jagjit Singh Chhabra, AOR
Ms. Taruna Panwar, Adv.
Mr. Aditya Goel, Adv.
Mr. Abhaid Parikh , AOR

For Respondent(s) Ms. Tulika Mukherjee, AOR

Mr. Amrish Kumar, AOR
Mr. Bijender Chahar, A.S.G.
Ms. Swarupama Chaturvedi, Adv.
Mr. Bhuvan Kapoor, Adv.
Mr. Digvijay Dam, Adv.Mr. Abhimanyu Tewari, AOR
Ms. Eliza Bar, Adv.Ms. Swarupama Chaturvedi, Sr. Adv.
Mr. Abhaid Parikh, AOR
Ms. Katyayani Anand, Adv.
Ms. Saumya Singh, Adv.
Mr. Aayush Shivam, Adv.
Ms. Kavita Chaturvedi, Adv.

Mr. Manish Kumar, AOR

Mr. Sachin Patil, AOR

contd..

- 2 -

Mr. H.S. Phoolka, Sr. Adv.
Mr. Jagjit Singh Chhabra, AOR
Mr. Bhuwan Ribhu, Adv.
Ms. Rachna Tyagi, Adv.
Mr. Saksham Maheshwari, Adv.
Ms. Shashi, Adv.

Mr. Anjani Kumar Mishra, AOR
Mrs. Hardeep Kaur Mishra, Adv.
Mr. Praveen Mishra, Adv.
Dr. Ravi Abhilash, Adv.

UPON hearing the counsel the Court made the following

O R D E R

W.P. (C) No. 558/2019

Application for amendment of petition is allowed and amended memorandum of Writ petition is taken on record.

The Writ Petition is disposed of in terms of the signed order.

Pending application(s) including the application(s) for Intervention/Impleadment shall stand disposed of.

W.P.(C) No. 222/2020

De-tag from W.P. (C) No. 558/2019.

The Writ Petition is dismissed in terms of the signed order.

Pending application(s) shall stand disposed of.

(NEETU SACHDEVA)
ASTT. REGISTRAR-cum-PS

(DIVYA BABBAR)
COURT MASTER (NSH)

(SIGNED ORDERS ARE PLACED ON THE FILE)