

2023 LiveLaw (SC) 892

IN THE SUPREME COURT OF INDIA

S. RAVINDRA BHAT; J., ARAVIND KUMAR; J.

Writ Petition(s)(Civil) No(s).1156/2021; 09-10-2023

WE THE WOMEN OF INDIA *versus* UNION OF INDIA & ORS.

Protection of Children from Sexual Offences Act, 2023 – the State has the obligation to provide 'support persons' as per the POCSO Act to child victims of sexual offences and that the appointment of support persons cannot be made optional. The need for support persons should not be left to the discretion of the parents of the child victims. (Para 3)

Protection of Children from Sexual Offences Act, 2023 - There is a need for comprehensive guidelines regarding the engagement of support persons in child welfare cases. The guidelines, to be finalized within eight weeks, are expected to consider various factors, including the establishment of a uniform standard of education for support persons. The court discourages the prevalent practice of limiting support persons' engagements to a specific time frame and emphasizes the importance of providing reasonable remuneration for support persons. Additionally, the guidelines propose the creation of an All India Portal and the maintenance of a panel of NGOs and support persons. (Para 5)

For Petitioner(s) Ms. Shobha Gupta, AOR Mr. Aditya Ranjan, Adv. Ms. Tarjana Rai, Adv. Ms. Jessy Kurian, Adv. Mr. H.S. Phoolka, Sr. Adv. Mr. Jagjit Singh Chhabra, AOR Ms. Rachana Tyagi, Adv. Ms. Prabhsahay Kaur, Adv. Mr. Saksham Maheshwari, Adv. Ms. Shashi, Adv. Ms. Taruna Panwar, Adv. Ms. Shaivya Saluja, Adv. Ms. Surpreet Kaur, Adv.

For Respondent(s) Mr. Gurmeet Singh Makker, AOR Ms. Deepabali Dutta, Adv. Ms. Chinmayee Chandra, Adv. Mrs. Aishwarya Bhati, A.S.G. Ms. Shagun Thakur, Adv. Ms. Ameyavikrama Thanvi, Adv. Ms. Manisha Chava, Adv. Mr. Arvind Kumar Sharma, AOR Mr. Praveena Gautam, Adv. Mr. Bhuvan Kapoor, Adv. Mr. Aman Sharma, Adv. Ms. Ruchi Kohli, Adv. Mrs. Garima Prasad, Aag, Sr. Adv. Mr. Rohit K. Singh, AOR Mr. Pritam Bishwas, Adv. Mr. Vijay Kumar, Adv. Mr. Gaurav Agrawal, AOR Ms. Vanshaja Shukla, AOR Mr. Pradeep Misra, AOR Mr. Daleep Dhyani, Adv. Mr. Suraj Singh, Adv. Mr. Bhuwan Chandra, Adv. Mr. Manoj Kumar Sharma, Adv. Mr. Sahil Bhalaidwv state of upk, AOR Mr. Tushar Giri, Adv. Mr. Siddharth Anil Khanna, Adv. Mr. Abhimanyu Tewari, AOR Ms. Eliza Barr, Adv. Mr. Debojit Borkakati, AOR Mr. Abhinav Mukerji, AOR Mrs. Bihu Sharma, Adv. Ms. Pratishtha Vij, Adv. Mr. Mohit Prasad, Adv. Ms. Swati Ghildiyal, AOR Ms. Devyani Bhatt, Adv. Mr. Lokesh Sinhal, Sr. A.A.G. Dr. Monika Gusain, AOR Mr. D. L. Chidananda, AOR Mr. Nishe Rajen Shonker, AOR Mrs. Anu K Joy, Adv. Mr. Abraham Mathew, Adv. Mr. Alim Anvar, Adv. Mr. Aaditya Aniruddha Pande, AOR Mr. Siddharth Dharmadhikari, Adv. Mr. Sourav Singh, Adv. Mr. Aditya Krishna, Adv. Mr. Siddhesh Shirish Kotwal, Adv. Ms. Ana Upadhyay, Adv. Ms. Manya Hasija, Adv. Mr. Tejasvi Gupta, Adv. Mr. Pawan Upadhyay, Adv. Mr. Nirnimesh Dube, AOR Mr. Pukhrabam Ramesh Kumar, AOR Ms. K. Enatoli Sema, AOR Ms. Limayinla Jamir, Adv. Mr. Amit Kumar Singh, Adv. Ms. Chubalemla Chang, Adv. Mr. Prang Newmai, Adv. Mr. Ajay Pal, AOR Mr. Mayank Dahiya, Adv. Ms. Sugandh Rathor, Adv. Dr. Manish Singhvi, Sr. Adv. Mr. Sandeep Kumar Jha, AOR Ms. Shubhangi Agarwal, Adv. Mr. Sameer Abhyankar, AOR Ms. Nishi Sangtani, Adv. Ms. Vani Vandana Chhetri, Adv. Mr. Naman Jain, Adv. Mr. Amit Anand Tiwari, A.A.G. Mr. Sabarish Subramanian, AOR Ms. Devyani Gupta, Adv. Mr. Vishnu Unnikrishnan, Adv. Mr. C Kranti Kumar, Adv. Mr. Naman Dwivedi, Adv. Mr. Danish Saifi, Adv. Ms. Tanvi Anand, Adv. Mr. Sri Harsha Peechara, Adv. Mr. Duvvuri Subrahmanya Bhanu, Adv. Ms. Pallavi, Adv. Ms. Kriti Sinha, Adv. Mr. Rajiv Kumar Choudhry, AOR Mr. Shreekanth Neelappa Teral, AOR Mr. Aravindh S., AOR Mr. Abbas, Adv. Ms. K. Enatoli Sema, AOR Mr. Mahfooz Ahsan Nazki, AOR Dr. Joseph Aristotle S., AOR Mr. Gaurav Agrawal, AOR Mr. Abhinav Mukerji, AOR Mrs. Bihu Sharma, Adv. Mr. Mohit Prasad, Adv. Ms. Pratishtha Vij, Adv. Ms. Pritha Srikumar Iyer, AOR Ms. Diya Kapur, Adv. Ms. Nimisha Menon, Adv. Ms. Ragini Nagpal, Adv. Mr. Abhinav Sekhri, Adv. Ms. Saumya Sinha, Adv. Mrs. Swarupama Chaturvedi, AOR Ms. Saumya Kapoor, Adv. Ms. Katyari Anand, Adv. Mr. Aayush Shivam, Adv. Mr. Saravjeet Singh, Adv. Mr. S. Udaya Kumar Sagar, AOR Mr. Avijit Mani Tripathi, AOR Mr. Upendra Mishra, Adv. Mr. P.S. Negi, Adv. Mr. T.K. Nayak, Adv. Mr. Anup Rattan, Sr. AGMr. Rajiv Kumar Sinha, AOR Mr. Raj Kumar, Adv. Mr. Kapil Sahni, Adv.

ORDER

W.P.(C) No. 427/2022

1. The National Commission for Protection of Child Rights (NCPCR) has, filed suggested guidelines outlining the steps taken by it. The Court by its previous judgment dated 18th August, 2023 had required the Principal Secretary to the Department of Women and Child Welfare (hereafter “DWCW”), in the State of U.P. to convene a meeting and review the facts, take action, and frame rules/ guidelines with regard to various aspects which are outlined as follows: -

“i. Assess capabilities in the state with respect to the support persons ecosystem for the selection, appointment, need for special rules/guidelines/Standard

Operating Procedure in regard to their appointment/empanelment, training, career advancement and terms and conditions of employment;

ii. To achieve the purpose in (i) above, require the presence of the Chairperson, of the State Commission for the Protection of Child Rights (SCPCR), Secretary, State Legal Service Authority, senior-most President of a JJB and senior-most Chairperson of a CWC in the state, and a representative from the State Commission for Women; iii. Prior to this meeting, details may be called from each District Child Protection Unit (DCPU), as to the list of support persons maintained by it as per Rule 5(1) – which is to include the names of persons or organisations working in the field of child rights or child protection, officials of children’s homes or shelter homes having custody of children, and other eligible persons employed by the DCPU [as prescribed under Rule 5(6)]; iv. After due consultations, frame such rules, or guidelines, as are necessary, relating to the educational qualifications and/or training required of a support person [over and above the stipulation in Rule 5(6)], and parameters to identify the *eligible* institutions or NGOs in the state, which can be accredited to depute qualified support persons, and consequently be added to the District Child Protection Unit (DCPU) directory as contemplated in Rule 5(1);

v. Ensure that the DCPU or CWC, as the State authorities may deem fit, is tasked with conducting periodic training for all support persons in the DCPU directory to impart knowledge not only on the Act, Rules, and the legal and court procedures involved in prosecuting a POCSO case, but also more fundamentally on communicating and assisting the children of various ages and backgrounds, with the sensitivity it the role demands;

vi. In the guidelines framed, ensure that a reporting mechanism through appropriate formats are prepared, to enable the support persons to send monthly reports as per Rule 4(12) to the concerned CWC, which should then be compiled and sent to the SCPCR, and the state government;

vii. Prepare a framework, in the form of a Standard Operating Procedure (SOP) to ensure proper implementation of Rule 12 of the POCSO Rules, 2020, for reporting by the respective CWCs on the specific heads of information collected by them, on monthly basis. This shall include the number of cases, where support persons have been engaged in trials and inquiries throughout the state. The information should also reflect whether they were from the DCPU directory, or with external help from an NGO. Such list shall be reviewed on monthly basis by the SCPCR;

viii. The SOP prepared, and guidelines framed, are to be communicated to all JJBs and CWCs within a week of its preparation;

ix. Lastly, it is important to acknowledge that support persons who are independent trained professionals, would need to take up tasks which require intensive interactions in

often, hostile environments, and consequently deserve to be paid adequate remuneration. Therefore, though the Rules state that such personnel should be paid equivalent to a skilled worker as per the Minimum Wages Act, 1948, this court is of the opinion that the remuneration paid for the duration of the work, should be commensurate to the qualifications and experience of these independent professionals, having regard to the salaries paid to those with comparable qualifications employed by the government, in PSUs, or other institutions run by the government (e.g. hospitals), and this too may be considered in the meeting to be convened by the Principal Secretary.”

2. The Ministry of Women and Child Development (MWCD), Government of India was directed to bring the judgment to the notice of the NCPCR. Pursuant to the order, NCPCR filed its affidavit outlining the steps taken. The State of U.P. has also filed an affidavit disclosing the supplementary guidelines formulated subsequent to this Court’s order enumerating the instance is when a support person should be made available.

3. This Court is of the opinion that the need for support person should not be left to the discretion of the parents; in all cases, the option of availability of support person and right to claim the assistance of such support person should be made known to the victims parents. In these circumstances, the various enumerations should be only considered as broad guidelines and illustrative but not exhaustive. The State has an obligation to provide support persons to POCSO victims which cannot be made optional. Unless there are good reasons recorded by the CWC in its order, the familiarity of support persons is mandatory. The previous judgment of this Court is forthright and categorical on this aspect.

4. The NCPCR shall, after duly consulting all the State Governments and the Government of Union Territories, formulate model guidelines, based on which States and Union Territories may frame their rules in respect of support persons under Section 39 of the POCSO Act. For that purpose, initially NCPCR may formulate draft guidelines which may be circulated to all the States and after due consideration of their comments and suggestions, the guidelines may be finalised.

5. The guidelines shall take into consideration all relevant factors including (but not confined to):-

(i) requiring a uniform standard of education of support persons for which the minimum qualification may be graduation with relevant experience in child psychology, social work or child welfare, etc.;

(ii) the general practice of limiting engagements of support persons to number of cases to a particular time limit of three years or five years should be avoided. A suggestive uniform policy should be framed eventually leading to encadrement of such persons in the concerned

Ministry at the appropriate stage;

(iii) the reasonable remuneration to be paid to the support persons commensurate with the work and functions to be discharged by them;

(iv) creation of an All India Portal which will be accessible to all individuals and organizations such as JJBs and individual CWCs, which can list out the details of all support persons available in the concerned States and Union Territories; and

(v) a panel to be maintained by each State in respect of NGOs and support persons, whose services may be availed by the CWCs/JJBs. This list too should be accessible in the portal referred to in (iv) above.

The guidelines shall be finalised and filed in Court after eight weeks.

6. The NCPCR is, hereby, directed to delete any reference to the name of the child or victim, having regard to the provisions of the POCSO Act and the Juvenile Justice (Care & Protection of Children) Act. Instead an appropriate reference may be to a particular case number.
7. I.A. No.205441 of 2023 (Application for intervention) is allowed.
8. List after eight weeks.

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