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23/04/2021

CHIEF JUSTICE AND SURAJ
GOVINDARAJ

This petition concerns the issues regarding vulnerable children who are forced to sell toys, flowers, etc., on the streets of Bengaluru and in particular, at traffic junctions. The order dated 13th October 2020 refers to the children who are forced to sell toys, flowers, etc., on the streets in the context of violation of rights of such children under Article 21-A of the Constitution of India. On 18th November 2020, this Court passed an order directing the State Government and Bruhath Bengaluru Mahanagara Palike (BBMP) to come out with a scheme for identification of such children and collection of data relating to such children. Under the order dated 30th November 2020, after noticing that the State Government and BBMP did not respond in terms of the order of 18th November 2020 regarding collection of the data, this Court directed the Member Secretary of the Karnataka State Legal Services Authority (for short 'KSLSA') to ensure that a meeting of all the stakeholders is convened for the purpose of evolving a scheme for identification of the children. Thereafter, the Member Secretary convened meetings of various stakeholders and copies of minutes of the meetings were placed on record on 22nd December 2020. Thereafter, several orders were passed concerning the collection of data. The order dated 12th February 2021 notes that Data Collection Team (for short 'DCT') has been constituted and training is being imparted to its members. The

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order records that after imparting training to the members of the DCT, actual work of survey will commence in which several stakeholders such as Traffic police, Special Juvenile Police Unit (SJPU), Officers of BBMP, the representatives of NGOs will be involved. This Court fixed a special hearing of this petition in the Conference Hall of the High Court on 18th February 2021 at 4.30 p.m., so that all stakeholders could be properly heard. Accordingly, hearing was conducted on 18th February 2021 in the presence of all the stakeholders whose names are recorded in the order passed on that date.

2. Thereafter, the work of survey commenced. There are reports filed on record from time to time by the Member Secretary of KSLSA. Apart from the first four progress reports, there is a final report placed on record by him. A reading of all the reports and the perusal of the data collected shocks the conscience of the Court. We may at this stage refer to the final report submitted by the Member Secretary of KSLSA, on conclusion of the survey. In the final report, the manner in which survey was carried on and mapping was done has been set out. The mapping work was done at altogether 432 hotspots in the city and 886 vulnerable children were mapped in the city of Bengaluru. The data was collected through mobile App. The mobile App was a

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pro-bono contribution of one youngster Sri Abhishek Krishnan from Kochi, Kerala. The data collection was made as per the revised Standard Operating Procedure (SOP). Broadly, it is mentioned in the report that due to reason of mobility of population and due to the awareness created by some media, the members of DCT could collect data of total 720 children, though mapping was done in relation to 886 children. The results of the survey are shocking. 534 children were found involved in child beggary and 186 children were found to be involved in child hawking. In fact, categorization of the children has been made classifying the children into six categories. The categories are as under;

Category Nos.	Description	No. of Data Collected
Category 1	Child and its group begging as a profession	52
Category 2	Child begging or hawking for family economic problem	219
Category 3	Child being required to work/child labour, family business/construction work	337
Category 4	Disabled or handicapped child begging	9
Category 5	Infants carried by mothers/care takers either begging or hawking	76

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Category 6 Mafia forcing a child into begging or hawking 27

Total 720

3. From page 13 onwards, the actions recommended in the case of children belonging to six categories have been mentioned. The State Government and other authorities will have to take immediate call on recommendations and state before the Court on the next date, the steps which they propose to take or the steps which they have already taken.

4. We are dealing only with some of the important findings which appear from the reports submitted by the KSLSA. Very detailed directions will have to be issued on the implementation of various recommendations made in the said report. Before we deal with the recommendations, we must note here that BBMP has commenced the implementation of the project of road side school as stated in the memo placed on record. It will be appropriate if BBMP places on record before the next date, the details of the facilities of education provided to the children.

5. From the reports placed on record, it is revealed that there are serious cases of child trafficking in the City. Details of number of children rescued have also been

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placed on record. What is important is a document placed on record along with progress report No.3. It is mentioned therein that one Smt.Nagarathna, the then BEO of Vijayanagara (who is presently working in mid-day meal section) claimed that she is running a child care Institute under the banner of "Sarayu Charitable Trust". She informed the Member Secretary of KSLSA that four children who were staying in the Institute had gone to Madhya Pradesh with her parents and they have not returned to School. Therefore, the Member Secretary spoke to his counterpart in Madhya Pradesh State. The Member Secretary of Madhya Pradesh Legal Services Authority (MPLSA) took steps to contact the children through the Member Secretary of the District Legal Services Authority of Ashok Nagar District (DLSA, Ashok Nagar). On enquiry being made, it was revealed that one person has played a role in inter-state migration of labour. After making inquiry, the Authorities of the MPLSA came to know that the children who were formerly housed in the Institute run by Smt.Nagarathna (Sarayu Charitable Trust, Bengaluru) were shifted by their parents to their native place in Madhya Pradesh as it was revealed that there were allegations of sexual abuse of children in the said Institution. A copy of the letter addressed by the Member Secretary of MPLSA to the Director General of Police, Bhopal is produced along with the report. A copy of FIR registered at Kachanar

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Police station in Ashok Nagar District is also annexed to the same. The letter records that the Executive Chairperson of MPLSA, Bhopal requested the Director General of Police, Police Headquarters, Bhopal to look into the entire matter.

6. The other issue which is flagged is regarding 33 children who were earlier in the Child Care Institute run by Smt.Nagarathna in the premises of Government School, Vijayanagar. It is pointed out in the report that it is the Institute which is allegedly run by the said Smt.Nagarathna who was BEO, Vijayanagar under the banner "Sarayu Charitable Trust". By a letter dated 22nd February, 2021 addressed by the Member Secretary of the KSLSA to the Deputy Commissioner of Police, Crime-1 and SJPU in-charge and the Assistant Commissioner of Police, they were informed that a case has been registered in Crime No.21 of 2021 by Kachanar Police, Ashok Nagar District, State of Madhya Pradesh containing allegation of inter-state human trafficking against the said un-registered Institute (Sarayu Charitable Trust). Certain information was sought by the Member Secretary in the said letter about the action taken on four aspects stated in the letter. There is a letter dated 12th March, 2021 submitted by the Police Inspector of Vijayanagar Police Station to the Member Secretary. It is recorded that the said Sarayu Charitable

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Trust, without obtaining permission from any Authority, has permitted housing of fourteen female children and nineteen male children. It is recorded that there is no permission granted in favour of the said Sarayu Charitable Trust to use the building as a Child Care Institute. Details of the accused persons were also stated in the said report. The State Government will have to inform the Court about the action, if any, taken against the accused persons and the said institution. The State Government shall also file on record a report about the action taken by it in terms of letter dated 22nd February, 2021. Thereafter, appropriate directions will have to be issued about the steps to be taken in respect of 33 children. When we deal with the same, we will have to also consider the manner in which the concerned Child Welfare Committee has exercised its jurisdiction.

7. Now coming to the final report, it is noted therein that on 6th March, 2021 at night hours, one of the members of the DCT, West Zone met a person who was proposing to sell a trafficked child for Rs.50,000/-. This information was immediately communicated to DCT Crime-1 by officials of KSLSA. It is complained in the report that no action has been taken. Today, the learned Additional Government Advocate submitted that while

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investigating into Crime No.67 of 2021 of Basavanagudi Police Station, investigation was taken up about this incident. Four persons were arrested and two infants were produced before the Child Welfare Committee (for short 'CWC') and they have been retained in the custody of two families who were already looking after the infants. We direct the State Government to produce on record up-to-date reports on the investigation carried out in Crime No.67 of 2021 of Basavanagudi Police Station and Crime No.54 of 2020 of Chamarajapete Police Station. The reports be tendered in sealed cover on the next date.

8. There is a suggestion made about the need to amend Section 74 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'the said Act of 2015'). Another suggestion is that Aadhar card of all vulnerable children must be prepared at the earliest. This suggestion requires immediate consideration. Reliance is also placed on record on an initiative taken by the Telangana State in the year 2018. The said Government has developed a face recognition tool called "Darpan". By using the data collected by visiting all the Child Care Institutes, it is possible to track the missing children.

9. There are certain directions sought in the report. The first is about the need to constitute Special

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Juvenile Police Units (for short 'SJPU's').

10. Section 107 of the said Act of 2015 reads thus:

“Section 107: Child Welfare Police Officer and Special Juvenile Police Unit.

(1) In every police station, at least one officer, not below the rank of assistant sub-inspector, with aptitude, appropriate training and orientation may be designated as the child welfare police officer to exclusively deal with children either as victims or perpetrators, in co-ordination with the police, voluntary and non-governmental organisations.

(2) To co-ordinate all functions of police related to children, the State Government shall constitute Special Juvenile Police Units in each district and city, headed by a police officer not below the rank of a Deputy Superintendent of Police or above and consisting of all police officers designated under subsection (1) and two social workers having experience of working in the field of child welfare, of whom one shall be a woman.

(3) All police officers of the Special Juvenile Police Units shall be

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provided special training, especially at induction as child welfare police officer, to enable them to perform their functions more effectively.

(4) Special Juvenile Police Unit also includes Railway police dealing with children.”

(emphasis added)

11. There is no material placed on record to show that sub-sections (1) and (2) of Section 107 of the said Act of 2015 have been effectively complied with. There is nothing placed on record to show that Special Juvenile Police Units have been formed in each District and City. In the report, it is stated that even Child Welfare Police Officers as contemplated by sub-section (1) of Section 107 of the said Act of 2015 have not been appointed in any part of the State of Karnataka. The State Government shall file a compliance report regarding compliance with the provisions of sub-sections (1) and (2) of Section 107 of the said Act of 2015 on or before the next date. A prayer is made for issuing a direction to the State Government to appoint two social workers as a part of SJPU. The State is under an obligation to implement the provisions of the said Act of 2015.

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12. Another issue canvassed is about the strengthening Child Line-1098. The Child Line is run by one NGO. There are reports that the helpline is not effectively working. KSLSA has given several suggestions on the issue of strengthening Child Line-1098. We direct the State Government to look into the said suggestions and take a decision thereon before the next date.

13. Another issue raised is about the failure to comply with Rule 91 of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 (for short 'the Model Rules'). Section 109 of the said Act of 2015 provides for monitoring of the implementation of said Act of 2015 by the State Commission for Protection of Child Rights. We direct the State Government to place on record the steps so far taken by the State Commission for protection of child rights on the next date in a sealed cover.

14. There are several suggestions made about the functioning of CWC, Bengaluru. It is stated that CWC is not functioning 24 x 7 and proper enquiry is not being conducted by CWC. Now coming to the provisions of the said Act of 2015 concerning CWCs, mainly the functions relate to the children in need of care and protection as defined in sub-section (14) of Section 2 of the said Act of 2015. Section 36 of the said Act of 2015 provides for holding of an inquiry on production of a child. It is submitted

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that proper inquiry as contemplated by Section 36 read with Rules 18 and 19 of the Model Rules is not being conducted. Section 27 deals with the orders which may be passed regarding a child in need of care and protection. The detailed procedure has been laid down in the Model Rules on this aspect. Rule 18 of the Model Rules deals with the production of child before the Committee and Rule 19 deals with the procedure for inquiry. As per Rule 19, when the child is brought before CWC, it shall assign the case to a Social Worker or Case Worker or Child Welfare Officer for conduct of social investigation as contemplated by Sub-section (2) of Section 36. Under sub-rule (4) of Rule 19, an individual care plan in Form 7 including a suitable rehabilitation plan in respect of each child is required to be prepared. It is provided that social investigation conducted by Social Worker or Case Worker or Child Welfare Officer will be as per Form 22. These are the salutary provisions which are of immense importance. It appears that the same are not being followed at all. It will be appropriate if the State Government conducts training workshops for the benefit of the members of CWCs in a phase wise manner. The State Government can always take assistance of the Karnataka Judicial Academy for imparting training to the members of CWC. During the course of the training, emphasis will have to be laid on sensitizing the members of CWC.

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15. There is also a need to provide proper infrastructure to the CWCs in BBMP area and at other places so that it can function more efficiently. We propose to hear the State Government on the next date and pass appropriate orders on the next date.

16. Another important issue is with regard to the unregistered child care institutions. It is necessary for the State to initiate action in accordance with law against all the unregistered child care institutions. In fact, it is submitted before this Court that there are 56 unregistered child care institutions against whom action needs to be initiated. The State Government shall immediately initiate necessary action

17. However, the most important issue which we will have to deal with is about rehabilitation of 720 children who have been identified and mapped in a survey conducted on the basis of the orders of the Court. Now the State Government will have to come out with its plans on the recommendations made by KSLSA for dealing with the serious issue of trafficking of children. The State Government will have to consider whether it wants to constitute a special investigation team. It is only after taking the response of the State Government, we propose to issue detailed directions.

18. We direct the State Government to file a detailed affidavit for reporting compliance in terms of

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directions/observations made in this order. The affidavit shall be filed by the State Government by 25th May 2021. Even the BBMP shall file an affidavit by the said date about the steps taken to provide education to the children.

19. It will be appropriate that if the Secretary of KSLSA convenes meetings of all the stakeholders on the issue of taking action on the basis of the findings/recommendations in the reports submitted by KSLSA. One meeting may be convened preferably in the third week of May, 2021, and the second meeting shall be after the State Government files an affidavit as ordered hereinabove. A comprehensive report shall be submitted by the Secretary of KSLSA by 3rd June 2021, on the measures taken in this regard.

20. Another issue which has to be considered by this Court is about preventive measures which is again a wider issue. The question is why so many children should be subjected to misery and agony in the city of Bengaluru and especially the child trafficking. We propose to issue detailed directions in this behalf on the next date of hearing.

21. If certain urgent issues arise which may be noticed by KSLSA, we grant liberty to the Secretary of KSLSA to file a memo before the Registrar (Judicial) so that a Bench can be constituted in vacation to deal with the same issues. It will be always open for the Secretary of

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KSLSA to co-ordinate with the stakeholders, if the Secretary finds that immediate action concerning some of the children covered by the survey is required to be taken in accordance with the said Act of 2015.

22. List the petition on 4th June 2021 at 2:30 p.m. for considering the question of issue of further directions. Before we part this order, we must record the appreciation of the services rendered by KSLSA, its officials, law students, para-legal volunteers, all other stakeholders and the officials of the entities such as BBMP and the State Government etc. It is only because of their efforts; such comprehensive survey has been conducted. What is revealed by the survey is an eye opener for everyone.