

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16th DAY OF FEBRUARY, 2021

PRESENT

THE HON'BLE SHRI. ABHAY S. OKA, CHIEF JUSTICE

AND

THE HON'BLE SHRI. JUSTICE S. VISHWAJITH SHETTY

WRIT PETITION NO.10208 OF 2018 (GM-RES-PIL)

c/w

WRIT PETITION NO.49954 OF 2019 (GM-RES-PIL)

IN WRIT PETITION NO.10208 OF 2018

BETWEEN:

HIGH COURT OF KARNATAKA
REPRESENTED BY ITS REGISTRAR GENERAL
BENGALURU

...PETITIONER

(BY SHRI K. CHANDRANATH ARIGA, AMICUS CURIAE)

AND:

1. THE STATE OF KARNATAKA
REPRESENTED BY ITS CHIEF SECRETARY
AND OTHERS

RESPONDENTS

(BY SHRI M. DHYAN CHINNAPPA, ADDITIONAL ADVOCATE
GENERAL FOR R-1 TO R-3, R-5, R-6 AND R-8;
SMT. B.V. VIDYULATHA, ADVOCATE FOR R-4;
SHRI CLIFTON D'ROZARIO, ADVOCATE FOR R-7
SMT. ANUPAMA HEGDE, CGC FOR R-9)

THIS SUO MOTU WRIT PETITION (PIL) IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PURSUANT TO THE ORDER PASSED BY HON'BLE THE CHIEF JUSTICE ON 28.02.2018, ON LETTER DATED 19.02.2018 BY SRI RAVINDRA MAITHANI, SECRETARY GENERAL, SUPREME COURT OF INDIA AND IN COMPLIANCE OF THE DIRECTIONS ISSUED BY THE HON'BLE SUPREME COURT OF INDIA IN ITS JUDGMENT DATED 09.02.2018 IN WRIT PETITION (CIVIL) NO.473/2005, PRAYING THIS HON'BLE COURT TO ISSUE APPROPRIATE DIRECTIONS TO THE RESPONDENTS AND TO PASS APPROPRIATE ORDERS PURSUANT TO THE JUDGMENT PASSED BY THE HON'BLE SUPREME COURT OF INDIA, IN WRIT PETITION (CIVIL) NO.473/2005, DATED 09.02.2018, IN THE INTEREST OF JUSTICE AND EQUITY.

IN WRIT PETITION NO.49954 OF 2019

BETWEEN:

- 1 . BACHPAN BACHAO ANDOLAN
CHARITABLE SOCIETY
HAVING ITS OFFICE AT L-6
KALKAJI, NEW DELHI-110019
REPRESENTED BY ITS
AUTHORITY SIGNATORY
BHUWAN RIBHU AND ANOTHER

...PETITIONERS

(BY SHRI PRAGYAN SHARMA, ADVOCATE AND
SHRI VENKATESH P DALWAI, ADVOCATES)

AND:

- 1 . THE STATE OF KARNATAKA
REPRESENTED BY ITS CHIEF SECRETARY
AND OTHERS.

RESPONDENTS

(BY SHRI M. DHYAN CHINNAPPA, ADDITIONAL ADVOCATE
GENERAL FOR R-1, R-2 AND R-5;
SMT. B.V. VIDYULATHA, ADVOCATE FOR R-3;
SRI CLIFTON D'ROZARIO, ADVOCATE FOR R-4)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECT THE RESPONDENTS TO IMPLEMENT THE DIRECTIONS PASSED BY THE HON'BLE SUPREME COURT IN PARAGRAPH NO 103 OF ITS JUDGMENT DATED 09.02.2018 IN W.P. (CIVIL) NO.473/2005, AND ETC.

THESE WRIT PETITIONS, HAVING HEARD, FOR PASSING INTERIM ORDER, AND RESERVED, COMING ON FOR PRONOUNCEMENT OF ORDER, THIS DAY, **THE CHIEF JUSTICE** MADE THE FOLLOWING:

ORDER

On the earlier date, the submissions were heard mainly about functioning of the Juvenile Justice Boards (for short, 'the JJBs') established under sub-section (1) of Section 4 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short, 'the JJ Act').

2. Firstly, we are dealing with the issue concerning functioning of the JJBs in the State. As can be seen from the additional compliance memo filed by the State Government on 26th November, 2020, the JJBs have been established in thirty districts. In Bengaluru urban district, two JJBs have been established. The districts of Bijapur, Dakshina Kannada and Kalaburagi also have two JJBs.

3. Now, we go into the question regarding constitution and functioning of the JJBs, as provided in sub-sections (1) and (2) of Section 4 of the JJ Act. It is the obligation of the State Government to constitute for every district one or more JJBs for exercising the powers and discharging its functions relating to children in conflict with law within the meaning of JJ Act. As per sub-section (2) of Section 4, the JJBs shall consist of a Metropolitan Magistrate or a Judicial Magistrate of first class not being Chief Metropolitan Magistrate or Chief Judicial Magistrate (Principal Magistrate) with at least three years experience and two social workers selected in such manner as may be prescribed. The JJBs have powers of a Metropolitan Magistrate or a Judicial Magistrate of First Class under the provisions of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C). The powers, functions and responsibilities of JJBs have been laid down under Section 8 of the JJ Act.

4. Under sub-Section (1) of Section 110 of JJ Act, there is a powers vesting in the State Government to frame Rules. The proviso to sub-section (1) of Section 110 lays down that the Central Government will have power to frame Model Rules

which shall apply to the States until the Rules are framed by the concerned State Government. Admittedly, the State of Karnataka has not framed the Rules in exercise of its powers under sub-section (1) of Section 110. Therefore, at this juncture, the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 (for short 'the Model Rules') are governing the field which came into force with effect from 21st September, 2016.

5. As per sub-rule (1) of Rule 6 of the Model Rules, JJB is required to hold its sittings in the premises of an observation home or at a place in proximity to the observation home or at a suitable premises in any Child Care Institution meant for children in conflict with law under the JJ Act. Rule-6 of the Model Rule is relevant which reads thus:

“6. Sittings of the Board - (1) The Board shall hold its sittings in the premises of an observation home or at a place in proximity to the observation home or, at a suitable premise in any Child Care Institution meant for children in conflict with law run under the Act, and in no circumstances shall the Board operate from within any court or jail premises.

(2) The Board shall ensure that no person(s) unconnected with the case remains present in the room when the case is in progress.

(3) The Board shall ensure that only those person(s), in the presence of whom the child feels comfortable, are allowed to remain present during the sitting.

(4) The Board shall hold its sittings in a child-friendly premises which shall not look like a court room in any manner and the sitting arrangement should be such to enable the Board to interact with the child face to face.

(5) While communicating with the child, the Board shall use child friendly techniques through its conduct and shall adopt a child friendly attitude with regard to body language, facial expression, eye contact, intonation and volume of voice while addressing the child.

(6) The Board shall not sit on a raised platform and there shall be no barriers, such as witness boxes or bars between the Board and the child.

(7) The Board shall sit on all working days for a minimum of six hours commensurate with the

working hours of a Magistrate Court, unless the case pendency is less in a particular district and the State Government issues an order in this regard, or the State Government may, by notification in the Official Gazette constitute more than one Board in a district after giving due consideration to the pendency of the cases, area or terrain of the district, population density or any other consideration.

(8) When the Board is not sitting, a child in conflict with law may be produced before an individual member of the Board. For the said purpose, one member of the Board shall always be available or accessible to take cognizance of any matter of emergency and necessary directions required to deal with the emergency situation shall be given by such member to the Special Juvenile Police Unit or the local police of the district. The Principal Magistrate shall draw up a monthly duty roster of the members who shall be so available and accessible every day, including on Sundays and holidays. The roster shall be circulated in advance to all the police stations, the Chief Judicial Magistrate/Chief Metropolitan Magistrate, the District Judge, the District Magistrate, the Committees, the District Child Protection Unit and the Special Juvenile Police Unit.

(9) The social worker members of the Board shall be paid not less than Rs 1500 per sitting which shall include sitting allowance, travel allowance and any other allowance, as the State Government may prescribe.

(10) The Board shall be provided infrastructure and staff by the State Government.”

(underline supplied)

6. The requirements of infrastructure are laid down in sub-rules (4) and (6) of Rule 6. Thus, the location of JJBs has to be either in observation home within the meaning of sub-section (40) of Section 2 of the JJ Act or at a place in proximity to the observation home or at a suitable premises in any ‘Child Care Institution’, as defined in clause (21) of Section 2 of JJ Act. A perusal of Annexure-R7 to compliance memo dated 26th November 2020 will show that JJB at Chitradurga is located in Bala Bhavan, JJB of Chikkaballapur is located the office of the Deputy Commissioner, JJB at Haveri is located in the premises of Taluka Shri Shakti Bhavan, JJB at Koppal is located in a rented building, JJB at Mandya is located in the office of the DCPO, the JJB at Ramanagara district is located in the office of

the Deputy Commissioner. At Tumkur, as mentioned in Annexure R7, the JJB is in a separate building. However, it is not mentioned in the said Annexure as to whether the said place is located in proximity to observation home. Therefore, it is necessary for the State Government to ensure that the sittings of the JJBs should take place at the places specified in sub-rule (1) of Rule 6 of the Model Rules to achieve the objects of the JJ Act. If, in any of the districts, the location of JJBs does not satisfy the test of sub-rule (1) of Rule 6, necessary arrangements will have to be made by the State Government.

7. As regards the infrastructure of JJBs, the chart annexed as Annexure R6 to the additional memo of compliance dated 26th November, 2020 shows that proper infrastructure is not provided in case of many JJBs. For additional JJB in Bengaluru urban district, separate infrastructure has not been provided and even separate staff has not been sanctioned. Even in case of JJB of Bengaluru rural district, there are no separate premises. The said chart shows that JJBs at many places do not have proper infrastructure.

8. In the memo filed by the Karnataka State Legal Services Authority (KSLSA), reliance is placed on the memo dated 3rd

November, 2020 filed by it, wherein, inadequacy of infrastructure facilities has been pointed out. As regards the staffing pattern, it is submitted that apart from lack of infrastructure, adequate staff has not been provided to JJBs and that it is necessary to make available the services of interpreter or translator to each JJB. From the chart submitted along with the memo of compliance filed by the State Government, it appears that there is no post of interpreter or translator created or appointed on the establishments of JJBs. The State Government will have to consider of creating a post of interpreter or translator attached to each JJBs. Coming back to the chart at Annexure-R6 which we have already referred earlier, it can be seen that in case of many JJBs, adequate staff is not available.

9. To achieve the object of the JJ Act and the Model Rules, the JJBs are required to hold the sittings in a child friendly premises, as required by sub-rules (4) and (6) of Rule-6 of the Model Rules. It is necessary for the State Government to prepare the standard design of the premises of the JJB particularly, considering the requirements of sub-rules (4) and (6) of Rule-6 of Model Rules. Moreover, all JJBs should have

uniform staffing pattern and infrastructure. The State Government needs to prepare the standard designs of the JJBs and its staffing pattern after consulting all the stakeholders and the KSLSA.

10. Now coming to the requirement of sub-rule (7) of Rule-6. All the Boards are required to sit on all working days for a minimum six hours commensurate with the working hours of a Court of a Magistrate. The Registrar General has pointed out the difficulties in the way of sparing one learned Judicial Magistrate of the First Class for each JJB on full time basis. Therefore, the State Government shall consider of creating one or two additional posts of Judicial Magistrates First Class in each district, depending upon the requirements for number of JJB, so that compliance with sub-rule (7) of Rule-6 of the Model Rules can be achieved. The said Magistrates will exclusively work only in JJBs.

11. Sub-rule (1) of Rule 9 requires production of the child alleged to be in conflict with law before the Board within 24 hours of his being apprehended along with a report. The question is whether during the period of pandemic, such a child

can be produced through video conferencing at the time of first production and on all subsequent dates. As provided in sub-section (1) of Section 12 of the JJ Act, when any person, who is apparently a child who is apprehended and produced before the JJB, is entitled to be released on bail with or without surety, as a matter of right, as provided therein unless the circumstances laid down under the proviso to sub-section (1) of Section 12 are in existence. Thus, the question is whether, for the purpose of enquiry as contemplated under Section 14 of the JJ Act, the child can be permitted to appear through the video conferencing hearing. This issue is very relevant, though the number of positive cases of COVID-19 are considerably coming down, it will take long time for complete eradication of COVID-19. In case of children in conflict with law, the JJBs exercise powers under the provisions of Cr.P.C. Therefore, the Video Conferencing Rules framed by this Court can be applied to the functioning of the JJBs. Hence, the production/presence of the child can be secured before JJB through video conferencing. The State Government shall provide necessary infrastructure such as computer, internet connection and software as well as hardware required for conduct of Video Conferencing hearings.

12. Under Section 109, it is provided that the State Commission for Protection of Child Rights established under section 17 of the Commissions for Protection of Child Rights Act, 2005 is under an obligation to monitor the implementation of the provisions of the JJ Act in the manner prescribed. Rule 91 of the Model Rules lays down in what manner the State Commission for Protection of Child Rights, in consultation with the Central and State Government, should monitor the implementation of JJ Act. Apart from the above mentioned statutory requirement, the Apex Court, in the case of ***Sampurna Behura –vs- Union of India and others***¹, has elaborately discussed this issue. In paragraph 93 of the said decision, the Apex Court observed thus:

“93. Finally, it would be appropriate if some sort of an evaluation or social audit is carried out every six months for the next couple of years to monitor and supervise the implementation of the JJ Act. More than sufficient time has already elapsed since the 2000 Act was enacted by Parliament and certainly the children of our country deserve much better and cannot wait for another 15 or 16 years for the effective implementation of the JJ Act. Most of

¹ (2018) 4 SCC 433

the children who were born when the 2000 Act was enacted are nearing adulthood and many of them have not had the benefit of the provisions of the 2000 Act. This mistake, a serious one at that, cannot be repeated in the implementation of the JJ Act. It is said that children are the future of the country and if they are not looked after, it is the future of the country that is at stake.”

(underlines supplied)

Thus, in view of the dictum of the Apex Court referred supra, there is a need to conduct social audit of performance of various institutions created under the JJ Act. The State Government will have to respond on this issue.

13. Another issue is whether there is a Child Protection Policy is consistent with the principles incorporated in Section 3 of the JJ Act. Another important provision under the Model Rules is Rule 92 regarding enquiry in respect of a missing child. The State Government must place on record a detailed affidavit reporting compliance with the requirements of Rule 92 as well. If the said rule is not being implemented, necessary directions will have to be issued by the State Government to all the stakeholders regarding strict compliance of the procedure as

provided under sub-rules (2) to (6) of Rule-92 of the Model Rules and the State Government will have to strictly implement to the provisions of sub-rule (7) of Rule-92 by formulating the standard operating procedure for its effective implementation.

Accordingly, we issue further interim directions as under:

- (i) The State Government shall ensure that all the JJBs are located in the premises as provided in sub-rule (1) of Rule 6 of the Model Rules;
- (ii) The State Government shall prepare a uniform model design of the offices of JJBs, taking into consideration the requirements of the JJ Act and Model Rules and in particular, sub-rule (4) and (6) of Rule 6 of the Model Rules. In addition, the State Government shall formulate a uniform policy regarding the infrastructure to be provided to each JJBs and staffing pattern of each JJBs. The State Government shall do so, after holding consultation with all the stakeholders including KSLSA. The model design and policy regarding infrastructure

and staffing pattern shall be placed before the Court within a period of one month from today;

- (iii) Till this Court passes final order regarding the standard design and infrastructure, the State Government shall take all possible steps to provide proper infrastructure, staff and equipment to JJBs, as noted in Annexure-R6 to additional compliance memo dated 26th November, 2020. The State Government shall fix outer time limit for making compliance which shall be placed on record in the form of an affidavit within a period of one month from today;
- (iv) The State Government shall place on record, within a period of one month from today, whether any steps have been taken by the State Commission for Protection of Child Rights for monitoring and implementation of the provisions of the JJ Act after taking into consideration the provisions of Rule 91 of the Model Rules. The steps taken by the State Commission for monitoring and implementation of the JJ Act shall be placed on record along with

compliance report within a period of one month from today;

- (v) The State Government shall consider conducting social audit of the performance of the institutions under the JJ Act and implementation of the State policies regarding children;
- (vi) The State Government shall report to this Court the steps taken for implementation of Rule-92 of the Model Rules, in the light of the discussion made in this order;
- (vii) The State Government shall provide all the requisite infrastructure to each JJB for conduct of video conference hearing;
- (viii) Compliance as aforesaid shall be reported within a period of one month from today.

14. It is necessary to go into compliance with the various provisions of the JJ Act and model rules as well as the directions issued by the Apex Court in the case of ***Sampurna Behura*** (supra). For hearing the counsel appearing for the parties on these two issues as well as compliance of the earlier directions

issued by this Court, these petitions shall be listed before the first Court on 2nd March, 2021.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**

Vr