

25.06.2020
KC&AD (1)

W.P. 5327(W) of 2020

COURT IN IT'S OWN MOTION
In Re: Contagion of Covid-19 Virus in Children
Protection Homes.
(Through video conference)

Mr. Kishore Datta, Ld. Adv. General,
Mr. Sayan Sinha.....For the State.

The affidavit filed by the Additional Chief Secretary, Home Affairs Department and Home Secretary, report filed by the Secretary, Women and Child Development and Social Welfare Department and the affidavit filed by the Secretary, Health Department in Court today are taken on record.

In the affidavit filed by the Home Secretary, district-wise details of the cases in relation to violation of child rights of all forms till 15th June, 2020 has been disclosed. Contrary to the earlier report, this affidavit spells out in detail and to the satisfaction of this Court the nature of the violation of child rights and the steps taken by the police authorities in connection with such reported cases. Most of the reports, state that there have been no instance of child trafficking, however, child marriage during this period in most of the districts have been rampant and with the assistance of the DALSA and the police authorities many of such child marriages could be prevented.

This alarming rise of child marriages during this lockdown period has given us a strong impression that these child marriages may be in the garb of child trafficking and we, accordingly, direct the Superintendent of Police of every districts to investigate into the cases regarding child marriage and to find out if such child marriages are for economic consideration or under the garb of child trafficking. It is needless to mention that the perpetrators of these child

marriages should be dealt with in accordance with law and cases should be registered against them without any delay.

The report in relation to North 24-Parganas, inter alia, has stated that cases of “other violation of child rights” are 124. We need to know the nature of such “other violation” and we direct the Home Secretary to file a report disclosing such “other violation of child rights” and the steps taken by the police against the violators.

We have received reports from the District Judges and the POSCO Courts that the investigating officers in most of the districts are delaying in production of the victim and/or filing application for recording of statement under Section 164 of the Criminal Procedure Code which only can enure to the benefit of the perpetrators of the crime.

We direct the Superintendent of Police of all the districts to ensure that the victims are produced immediately and not later than 48 hours before the Magistrates for recording of statement under Section 164 of the Criminal Procedure Code. All delays attributable to the prosecution should be immediately addressed and all attempts should be made that the progress of the trial takes place without any delay.

We understand that during the lockdown period police officers and the public prosecutors are facing difficulty. But we find no reason for not ensuring the recording of statement of the victims under Section 164 of the Criminal Procedure Code.

We have received report from the District Judges which show that after our earlier order, in most of the cases statements under Section 164 of the Criminal Procedure Code has been recorded.

The Superintendent of Police of all the districts must also ensure that there is no delay in investigation of the cases relating to child rights violation and charge-sheet are filed in time.

We have drawn attention to the learned Advocate General the report filed by the Superintendent of Police, Cooch Behar dated 22nd June, 2020 wherefrom it appears that 40 children have been recovered in the said district but apparently no FIR had been lodged against the perpetrators of the crime. Learned Advocate General has assured us that he would personally look into the matter and ensure that in all the districts immediate steps are taken for registration of FIR, once a complaint is received.

We call for a report as to the steps taken by the police authorities in the district of Cooch Behar regarding the recovery of children from 1st January, 2020 till 22nd June, 2020.

In one of our earlier order dated 21st April, 2020, we have recorded that the report shares by the Visitors and Principal Magistrates of the J.J.B.s and Chairperson of the C.W.C. would show that in most of districts the J.J.B.s are functioning under tremendous stress and the infrastructure is extremely inadequate. We have recently received reports from the Principal Magistrates of all the J.J.B.s functioning in the State, wherefrom we find the following deficiencies:

- i. No chamber for the Principal Magistrate and other members of the committee,
- ii. Lack of office space,
- iii. No separate room for vulnerable child witnesses,
- iv. No separate entrance for the C.C.L. and vulnerable witnesses,
- v. No official vehicle is assigned to the Principal Magistrate,
- vi. Lack of broad-band connection and inconsistent bandwidth,

- vii. Lack of hardware and software infrastructure required for audio-video linkage,
- viii. Inadequate and/or no support staff like bench clerk, lower division clerk-cum-typist, counsellor etc.,
- ix. No separate provision of wash-room for female staff/members/lady officers,
- x. No separate room for counselling for the C.C.L.s and for sitting of social worker members,
- xi. Lack of maintenance of public toilets and wash-room of Principal Magistrates.

The aforesaid list is only illustrative but not exhaustive. We have time and again apprised the Secretary, Women and Child Development and Social Welfare Department, but it appears from the report that the situation has not improved and the J.J.B.s in almost all the districts are facing infrastructural deficiencies which certainly impedes the functioning of the J.J.B.s, as a result whereof the children are suffering.

The learned Advocate General has assured us that he would immediately take up the issue with the Home Secretary and on the adjourned date would apprise as to the steps taken to remove such deficiencies.

The report filed by the Secretary, Women and Child Welfare Department discloses few cases of follow up action by way of phone call interventions which have brought succor to the family of the child and we hope that same kind of interventions would be made as and when occasion arises for the other children to safe-guard their interest. The said report also discloses the guidelines and the nature of information sought for as a follow-up action of children restored to families since March, 2020.

We would request the Secretary to submit a report afresh with regard to few cases of post-restoration follow-up of children to family on the adjourned date.

The report filed by the Secretary, Department of Health and Family Welfare shows that 75 children of the migratory workers have been found to be Covid-19 positive and subsequently they were referred to designated covid hospitals, samples were collected from asymptomatic children of migratory workers and 43 of such samples were reported as positive. Those 43 children were admitted at designated covid hospitals and as of now, those children have been discharged from such hospitals after recovery. These 43 positive children were mentioned as higher referral in the earlier report. However, considering the safety of the children we would like to know if any random test was carried out of the children of the migratory workers and if so, disclose the result of such random test with specific comment as to whether anyone of them tested positive, save and except the particulars already disclosed.

We have recently come across a newspaper report from the Ananda Bazar Patrika wherefrom it appears that one female minor girl belonging to North 24-Parganas has been recently recovered by the Maharashtra police with the help of the N.G.O.s . The trafficking took place in the year 2018 and although complaints were made against three traffickers, but it is reported that no attempt was made by the Bagda Police Station in recovering the female child.

We have shared the news item with the learned Advocate General. We call for a report to be filed with regard to the investigation of the said child trafficking case from the date of lodging of the complaint till date, together with an explanation for not being able to recover the child until intervention of the Maharashtra police.

We also brought it to the attention of the learned Advocate General that 13 C.C.L. boys from Dhruba Ahsram Observation Special Home had escaped and was culminated in registration of FIR vide Belghoria Police Station case no. 138 of 2020 dated 8th March, 2020 under Section 363 of the Indian Penal Code. Two of such C.C.L. boys have surrendered but the fate of the 11 C.C.L. boys are still unknown.

We are not happy with the investigation. The Police has not yet been able to recover the said 11 C.C.L. boys. We call for a detailed report with regard to the said police station case and progress of the investigation, on the adjourned date.

The matter stands adjourned till 2nd July, 2020 (at 2.00 P.M.).

At the request of the learned Advocate General we shall take up compliance of our directions in relation to districts of Cooch Behar, Darjeeling, Jalpaiguri, Kalimpong and Malda on the next date.

A video conference shall be held with the Secretary (Social Welfare) under the Andaman and Nicobar Administration, Port Blair and all stake holders are directed to be present through video linkage.

(HARISH TANDON, J.)

(SOUMEN SEN, J.)

