



MAHARASHTRA STATE HUMAN RIGHTS COMMISSION

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MSHRC/MAS/11/2016/
 Date: 11 /11/2016

MAS/Case No. – 4280/2008-09

Name of the Complainant : Vitthal Salve
 Gautam Nagar, Pathri,
 Tal. Pathri, Dist. Parbhani

V/s.

Name of Respondent : Sr. Police Inspector,
 Patheri Police Station,
 Dist. Parbhani

 Divisional Commissioner
 Aurangabad

Date : **11th November, 2016**

Coram : **M. A. Sayeed, Member**

ORDER

Complainant, one of the political party – Republican Party of India, having branch office at Pathri Dist. Parbhani has moved this complaint against the management and social welfare department for gross neglect and supervision over functioning of an orphanage being funded by the State since number of years. The unfortunate incident of physical abuse on four minor boys occurred somewhere on 11.09.2008 as the offender Govind Jaiswal, on the night of 11.09.2008 physically abused four minor boys Kiran Kadam, Aatesh Awahad, Vilas Kadam and Vilas Sahebrao Kadam and threatened them with dire consequences if they complain against him to any authority. An

attempt was also made to physically abuse another victim Nitin Dongre and he was assaulted and beaten to maintain silence about the incident.

On the report of the victims offence u/s. 377, 323, 506 IPC and sec. 3(2)(5) of Schedule Caste and Schedule Tribes (Prevention of Atrocities Act, 1989) was registered against the offender. It is submitted that the Supervisor of the Children Home, Superintendent Social Welfare Dept. who was supposed to monitor and supervise the functioning of the Children's Home were conveniently let off without any disciplinary action taken against them. On these ground a case of violation of human rights is made out seeking indulgence of this Commission under section 12 of the Act.

2. From the detail response filed at Ex. 'A' by PI, Pathri Police Station, Parbhani, it is clear that appropriate legal action came to be taken against the offender by registering offence against the culprit referred above and infact the matter is subjudiced before the Ld. CJM, Parbhani and seems to be at evidence stage as revealed from the status report at Ex. 'B' filed on 21.09.2016.

So far as action against the Supervisor, of the Children Home and the Superintendent – Social Welfare Office is concern, a report has been filed on 29.08.2016 by the District Social Welfare Officer, Zilla Parishad, Parbhani at Ex. 'C', perusal of which indicates that necessary disciplinary action against the erring officer of the Children Home as well as the concerned officer came to be taken whereby the Supervisor and the guard of the Children's Home were dismissed from the service and unfortunately Shri M. A. Pathan Social Welfare Officer passed away on 10.03.2014 and infact one Shri Laxman Paithane was the

Superintendent at that relevant time whose services were terminated by the orders of the government with effect from 11.09.2010. Further the necessary sanction for running the said Children Home Dr. Babasaheb Ambedkar Hostel was also cancelled but got revived after the matter came to be taken up before the Ld. Minister of Social Welfare and sanction was revived by order dated: 18.02.2010.

3. Thus from the above noted background it is crystal clear that due to lack of proper supervision and control the children admitted in the said home were being neglected and the apathy on the part of the concerned officials and officers resulted into the unfortunate incident of the five children being subjected to physical and mental abuse by perverse, inhuman person which virtually brought a permanent trauma and wound to these children. Violation of human rights of these innocent children stands establish from filing of the criminal case against the culprit which is subjudice before the Court and dismissal of the officers who were held responsible for the alleged heinous crime.

4. Time and again the Hon'ble Supreme Court as well High Courts has been emphasizing need for introducing reform and measure for proper development of orphan and abandoned children which are as under:

"In Criminal Appeal Nos. 1208-1210 of 2008 Supreme Court held that:

- 1. Constitutional provisions relating to children: Children are the greatest gift to humanity. The sexual abuse of children is one of the most heinous crimes. It is an appalling violation of their trust, an ugly breach of our commitment to protect the innocent. There are special safeguards in the Constitution that apply specifically to children. The Constitution has envisaged a***

happy and healthy 34 childhood for children which is free from abuse and exploitation. Article 15(3) of the Constitution has provided the State with the power to make special provisions for women and children. Article 21A of the Constitution mandates that every child in India shall be entitled to free and compulsory education upto the age of 14 years. The word "life" in the context of article 21 of the Constitution has been found to include "education" and accordingly this Court has implied that "right to education" is in fact a fundamental right.

- 2. Article 23 of the Constitution prohibits traffic in human beings, beggars and other similar forms of forced labour and exploitation. Although this article does not specifically speak of children, yet it is applied to them and is more relevant in their context because children are the most vulnerable section of the society. It is a known fact that many children are exploited because of their poverty. They are deprived of education, made to do all sorts of work injurious to their health and personality. Article 24 expressly provides that no child below the age of 14 years shall be employed to work in 35 any factory or mine or engaged in any hazardous employment. This Court has issued elaborate guidelines on this issue.*
- 3. The Directive Principles of State Policy embodied in the Constitution of India provides policy of protection of children with a self- imposing direction towards securing the health and strength of workers, particularly, to see that the children of tender age is not abused, nor they are forced by economic necessity to enter into avocations unsuited to their strength.*

- 4. Article 45 has provided that the State shall endeavor to provide early childhood care and education for all the children until they complete the age of fourteen years. This Directive Principle signifies that it is not only confined to primary education, but extends to free education whatever it may be upto the age of 14 years. Article 45 is supplementary to Article 24 on the ground that when the child is not to be employed before the age of 14 years, he is to be kept occupied in some educational institutions. It is suggested that Article 24 in turn supplements the clause (e) and (f) of Article 39, thus ensuring distributive justice to children in the matter of education. Virtually, Article 45 recognizes the importance of dignity and 36 personality of the child and directs the State to provide free and compulsory education for the children upto the age of 14 years.***
- 5. The Juvenile Justice Act was enacted to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of such matters relating to disposition of delinquent juveniles. This is being ensured by establishing observation homes, juvenile houses, juvenile homes or neglected juveniles and special homes for delinquent or neglected juveniles.***
- 6. Even in the case of Vishal Jeet vs. Union of India, (1990) 3 SCC 318 this Court issued several directions to the State and Central Government for eradicating the child prostitution and for providing adequate and rehabilitative homes well manned by well qualified trained senior workers, psychiatrists and doctors.***

7. The above analysis shows our Constitution provides several measures to protect our children. It obligates both Central, State & Union territories to protect them from the evils, provide free and good education and make them good 37 citizens of this country. Several legislations and directions of this Court are there to safeguard their intent. But these are to be properly implemented and monitored. We hope and trust that all the authorities concerned through various responsible NGOs implement the same for better future of these children.

In Cri. O. P. (MD) No. 11735 of 2014 and MP (MD) Nos. 1 to 8 of 2014, the Hon'ble Madras High Court has made suggestions which are as under:

SUGGESTIONS

1. In the facts and circumstances of the case, this Court makes the following suggestions:

i) Parents and family members should interact with children regularly creating awareness about safety and abuses including sexual abuses being inflicted on them and how to avoid and to raise alarm in case of any attempt to abuse.

ii) The parents should interact regularly with the children so that if any abuse is made which can be found out even if the child does not voluntarily report.

iii) School authorities should create awareness about the child abuses. If any behavioral change in the student is noted the same should be brought to the notice of the parents and enquire the child in a conducive atmosphere to find out any abuse has been inflicted.

iv) Media should also play active role in educating and sensitising the society about child abuses and sex offences by giving required publicity about the existing laws against sexual offences especially child sexual offences.

v) People should be educated to note the behavioral changes of the children and find out the reasons for abuses to save the child from trauma which may be prolonged.

vi) The investigating agencies should coordinate with NGOs, who are working for the welfare of children and prevention of child abuse by foreign nationals.

vii) Since both the parents are working and there is no elderly people, namely, grand parents in the family, the children are left with custody of third parties namely, servants, neighbours etc. resulting in abuse of children. Therefore, atleast one parent should be available in the family to look after the children.

viii) There should be efforts by all to revive the disintegrated joint family system for more benefits including safety of children.

ix) Children should be taught to be careful with the strangers.

x) Since liquor is one of the basic main reasons for commission of more and more crimes especially child sexual abuses affecting the entire society day by day, the Central Government and State Governments may consider ?introduction prohibition? IN CONSONANCE with [Article 47](#) of the Constitution of India and as per wishes of the father of our nation, Mahatma Gandhi and other great leaders."

Even Government of Maharashtra had time and again issued guidelines regarding protection and care of children in Child Homes which are enclosed herewith.

5. In the light of the law discussed above and the trauma and injury caused to the children who presently are staying with their parents, in

my humble opinion it is a fit case wherein an order of interim compensation in a way to give some solace to these innocent wounded souls and the authority responsible is the Dept. of Social Welfare as well as the Management of the Children Home as it is only on account of their casual , approach in maintaining proper vigilance over the functioning of the said Children Home that this sordid incident occurred. **As such following recommendations are made:**

a) Both the authorities i.e., Social Welfare Department, Govt. of Maharashtra and the Management of the Dr. Babasaheb Ambedkar Students Hostel, Pathri are in joined to pay jointly and severally the interim compensation amount of Rs.2,00,000/- (Rupees Two Lacs Only) each to the lawful guardian of the victims within six weeks from the receipt of this order failing which, they are liable to pay compound interest @12.50% till realization of the entire amount.

b) The Ld. Principal Secretary, Women & Child Development Department, Mantralaya, Mumbai is directed to issue circulars in tuned with the guidelines laid down by the Hon'ble Madras High Court stated supra above.

b) The last but not the list is the confidential report submitted by the Divisional Commissioner, Aurangabad pointing out certain lapses on part of the management of Children Home i.e. shifting the children to another premises without necessary permission; lack of hygiene and sanitation as considering the strength of the children only one toilet and bathroom are available while the other toilet and bathroom were found locked and non functional. In my opinion the responsible concerned department in the government should take immediate steps to rectify these lapses; initiate necessary action against the

management for shifting the children to the new premises without proper sanction and submit follow up report to this Commission within six weeks from the date of receipt of the order.

The Ld. Secretary of this Commission to forward the copy of recommendation passed by this Commission to the concerned departments for information and action in accordance with the provisions of section 18(e) reproduced supra above. With these recommendations the case stands closed and disposed off.

**(M. A. Sayeed)
Member**