

10.06.2020.

Item No. 1

**IN THE HIGH COURT OF CALCUTTA**

**W.P. 5327 <sup>(W)</sup> of 2020**

**(Via Video Conference)**

**(The Court on its own motion)**

**In re: Contagion of COVID-19 Virus in  
Children Protection Homes.**

**Re: The State of West Bengal.**

**Mr. Kishore Dutta. Ld. Advocate General,  
... for the State.**

In terms of our earlier order dated 3<sup>rd</sup> June, 2020, the supplementary affidavits have been filed by the Secretary, Department of Women and Child Development and Social Welfare and the Secretary, Health Department, Government of West Bengal.

In view of the alarming rise in child trafficking and child rights abuse, we have directed the Principal Secretary, Home Department to be present during the Video Conferencing.

The learned Advocate General appeared on behalf of the State and has apprised us of the taken by the Department of Women and Child Development and Social Welfare as well as the Health Department with regard to the physical and mental health conditions of the children at all the Homes.

It appears from the report filed by the Secretary, Department of Women and Child Development and Social Welfare that the ratio of children and Councilors (i.e. 50 : 1) is more or less maintained in all the Homes except few Homes where the number of Councilors possibly have not been increased, as the number of children in such Homes had never exceeded the sanctioned strength. We have been informed by Ms. Ghosh that the Councilors whose service for the time being has remained unutilized due to reduced number of children in various Homes may be deployed in other Homes or rearrangement could be made from the Councilors functioning in a particular district depending upon the necessities and exigencies of the situation. However, we would like to observe that the

Government should maintain a list of Councilors in each district on the basis of the sanctioned strength of each Home so that when the sanctioned strength is reached the children do not suffer due to lack of counseling. Accordingly a report in the form of an affidavit is called for from the Secretary. The affidavit shall also disclose the clinical psychologist attached to homes in each district. The physical and mental health of the children are of paramount consideration and no compromise should be made on this score.

We had observed on the earlier occasion that the Department of Women and Child Development and Social Welfare should also monitor the children who have been temporarily released and handed over to their parents during the lockdown period. We have been informed by Ms. Ghosh that keeping in mind the welfare of the children the superintendent of each Home is monitoring the physical and mental health condition of such children. In the affidavit to be filed by Ms. Ghosh the steps taken by the department with regard to monitoring of such children shall also be maintained in details. It is needless to mention that all the children be in homes or with their parents during this time require constant monitoring and their safety and security are of paramount consideration.

The Secretary, Department of Health in his affidavit has disclosed the performance and the good health practice initiated by the said department for the children of the migrant workers. In the report it is stated that as on 4<sup>th</sup> June, 2020, out of 29658 children, 5360 children were kept at institutional quarantine and 24298 were in home quarantine. General health check up was done on 29658 children. COVID-19 tests have been carried out on 3005 children and about 13603 children have been provided with mental health support. The report also suggests that 43 children were in the category of “higher referral” and on 803 children “some specific actions were taken”, without specifying the nature of action.

We have explained to Mr. Rupam Banerjee, the Joint Secretary, Health Department, who was present during the video conferencing, the details that would be required with regard to the institutional quarantine, home quarantine and what exactly would mean with regard to the expression “Higher Referral” and “other specific action taken”. We would also like to know as to why the

mental health support was provided only on 13603 children out of 29658 children and COVID – 19 test was carried out only in respect of 3005 children. We would also like to know the infrastructure of the Institutions, which were designated as institutional quarantine centers including the number of Doctors and Councilors attached to such quarantine centers.

We, accordingly, direct the Secretary, Department of Women and Child Development and Social Welfare to file an affidavit disclosing such details and clarifying Annexure 1 and 2 of the affidavit of compliance filed in terms of our order dated 3<sup>rd</sup> June, 2020.

Since our last hearing we have received a report dated 8<sup>th</sup> June, 2020 from the Chairperson of the West Bengal Commission for Protection of Child Rights which we found to be very useful. The said report has provided data from 20<sup>th</sup> March, 2020 to 14<sup>th</sup> April, 2020. It has referred to cases of child marriage, sexual abuse, child trafficking and many other incident of violation of child rights. The Chairperson earlier had filed a report on 9<sup>th</sup> May, 2020 based on which we have passed an order on 13<sup>th</sup> May, 2020 by which we directed all the Departments of Government concerned to maintain a synergy and convergence amongst themselves so as to ensure that the children be institutionalized or un-institutionalized or even migrant children are safe and secured.

Recently it has come to our notice that a report has been filed by a NGO “**Bachpan Bachao Andolan**” before the Hon’ble Supreme Court wherefrom it appears that 136 minor girls being married off in Bengal due to the lockdown and the devastation caused by cyclone *Amphan*. An apprehension is expressed that on lifting of lockdown there is likely to be a massive spurt in child trafficking – for labour and commercial sexual exploitation. The State of West Bengal has many porous districts and incidents of child trafficking are not uncommon. The middlemen are quite active in some of these porous districts of Bengal. We would be failing in our duty if we cannot protect the children from any kind of abuse including their exploitation.

Mr. H. K. Kusumakar, the Secretary (C) Home Department is present through video conferencing. We have apprised him that in the recent reports filed before us by the District Magistrates and the Superintendents of Police of the districts have categorically informed us that there had been no incident of child abuse or violation of child rights in any of their respective districts. However, considering the

report filed by the Chairperson of the West Bengal Commission for Protection of Child Rights and the report of the NGO, which has been widely published in all the leading newspapers in the country, we direct the Principal Secretary, Home Department to file an affidavit with regard to the cases reported and apprehended as well as the steps taken by the Home Department with regard to the protection of child rights. The report should also specify as to the actions taken against the perpetrators of such crimes. The report should be filed by way of an affidavit.

The children are the most precious assets of a country and are regarded as best human resources who can excel the progress of the country in future. The adolescent children are most vulnerable class and susceptible to be trafficked either in lieu of a better future or for economic sustainability of the family, which they belong to. It is a common perception that the natal family is the safest heaven of the younger children yet they are trafficked by the family itself because of the poverty and uncertainty of the social stability. The exodus of the migrant labourers due to pandemic have exposed these younger children to be trafficked for some monetary gain and sustainability in life. The report submitted by the West Bengal Commission for Protection of Child Rights is alarming where the child marriages and the trafficking are being reported. Such report is not only troubling us but percolate the disturbing features appearing therefrom, which pains us and is a scar on the society. Trafficking in the garb of the child marriage or child labour are more disturbing because of the involvement of the family members of the children.

For a better implementation of the order, we direct that the Panchayat Pradhan of all the Panchayats of the respective districts should be sensitized about the child rights and evils of child marriages. This order should also reach to all Pradhan and it would be duty of the District Magistrates that at the panchayat level these issues are addressed and remedial measures are taken with all promptitude.

We also call for the report from the District Judges with regard to the implementation of our earlier direction in respect of recording of statements under Sections 164 of the Code of Criminal Procedure in POCSO cases. The report should be filed on or before 16<sup>th</sup> June, 2020.

In view of the reported cases of the child labour, we also direct the Secretary, Labour Department, to look into the matter and file a

report as to the steps taken by the Labour Department to prevent child labour and action taken by them against the perpetrators.

Let all the affidavits be filed on or before 16<sup>th</sup> June, 2020 and the matter shall appear for further consideration on 18<sup>th</sup> June, 2020.

This order shall be widely circulated and it would be the duty of the Home Secretary to communicate this order to all the Commissioners of Police, Superintendents of Police and the District Magistrates for compliance.

All the Secretaries of the District Legal Services Authority are directed to ensure that the child rights are protected and shall take up any incidence of child abuse either reported or apprehended immediately with the appropriate authorities.

Registry is directed to upload this order immediately and to communicate this order to the learned Advocate General and all the authorities including the Secretary, Labour Department, Government of West Bengal in course of this day.

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**(Soumen Sen, J.)**

**(Harish Tandon, J.)**