

Madras High Court Asks Schools To Frame Anti-Sexual Harassment Policy, Provide Reporting & Redressal Mechanism To Students

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

R. MAHADEVAN; J., J.SATHYA NARAYANA PRASAD; J.

W.P(MD)No.26039 of 2022; 17.11.2022

A. Veronica Mary *versus* State of Tamil Nadu

For Petitioner : R. Alagumani; For Respondents : S. Shaji Bino Special Government Pleader

ORDER

R. MAHADEVAN, J.

Good and well-intentioned policies in pursuance of the constitutional ideals enable the citizens to lead a decent life with equality and dignity. State has been taking various initiatives in realizing the constitutional objectives, however, inaction on the part of the Executive thwarts any endeavor in enforcing the rights and implementing the policies. With this note, this court wishes to proceed with the issue involved in this public interest litigation.

2. The petitioner, who is a social activist, has filed the present writ petition for the following relief, based on the report published in the newspapers about an arrest of a school teacher for teaching in an obscene manner and an attempt of a girl to die by suicide as a result of sexual harassment:

"issuance of a writ of mandamus, directing the respondents to ensure the proper functioning of the mobile counselling centres to prevent sexual crimes against the students in Government Schools, Government Aided Schools and Private Schools in the light of G.O(Ms)No.121, School Education (E1) Department, dated 17.05.2012, by considering the representation of the petitioner dated 16.09.2022"

3. According to the learned counsel for the petitioner, the students are now, living in an unsafe environment both inside and outside the schools, where a lot of unlikely events, such as, teasing, misbehaviour, physical and mental abuse, particularly, sexual harassment, take place; and sexual harassment in schools not only affects the victim miserably, but also creates a sense of fear and restlessness amongst the students. However, the respondent authorities have not taken any effective measures to stop those unlikely events against the students from taking place. The learned counsel further submitted that though G.O(Ms)No.121, School Education (E1) Department, dated 17.05.2012, came to be passed, to set up mobile counselling centres, offering counselling services to the students through a professional counsellor or an assistant, giving awareness to the students and training to the teachers, for the purpose of solving the problems relating to sexual harassment in schools, it has not been in operation effectively in any District. Further, no information is available regarding the implementation of the said initiative by the Educational authorities with them. Therefore, the petitioner has made a representation to the respondents on 16.09.2022 to take steps to ensure the functioning of the said initiative. Finding no response on the same, she is before this court with the present Public Interest Litigation.

4. Heard the learned Special Government Pleader appearing for the respondents, who submitted that the respondent authorities have already taken steps to implement the aforesaid G.O. in letter and spirit.

5. This court considered the submissions made by the learned counsel on either side and perused the materials available on record.

6. Due to cultural and technological change, development in economy and various other factors, there are several evils prevailing in the society. Sexual harassment in schools, colleges and other educational institutions is one of these evils which remains inadequately addressed. Prevention of and protection against sexual harassment is an integral part of the rights guaranteed under Articles 14, 15 and 21 of the Constitution. Policies and legislations for protection against sexual abuse and its prevention, are a manifestation of these constitutional ideals and a furtherance of the principles under Articles 39(e) and 39(f) of the Constitution.

7. The Protection of Children from Sexual Offences Act, 2012 (“the Act”) was enacted with an objective to protect children from sexual abuse, harassment and exploitation due to their tender age. The Act creates a comprehensive framework for reporting, prosecution and trial of sexual offences that is childfriendly. The Protection of Children from Sexual Offences Rules, 2020 (“the Rules”) framed under the Act provides for a mechanism to prevent such offences from being perpetrated in the first place. Rule 3 provides for the following preventive steps to be taken by the State government through capacity building and awareness generation:

“3. Awareness generation and capacity building.—

(1) The Central Government, or as the case may be, the State Government shall prepare age-appropriate educational material and curriculum for children, informing them about various aspects of personal safety, including—

(i) measures to protect their physical, and virtual identity; and to safeguard their emotional and mental wellbeing;

(ii) prevention and protection from sexual offences;

(iii) reporting mechanisms, including Child helpline-1098 services;

(iv) inculcating gender sensitivity, gender equality and gender equity for effective prevention of offences under the Act.

(2) Suitable material and information may be disseminated by the respective Governments in all public places such as panchayat bhavans, community centers, schools and colleges, bus terminals, railway stations, places of congregation, airports, taxi stands, cinema halls and such other prominent places and also be disseminated in suitable form in virtual spaces such as internet and social media.

(3) The Central Government and every State Government shall take all suitable measures to spread awareness about possible risks and vulnerabilities, signs of abuse, information about rights of children under the Act along with access to support and services available for children.

(4) Any institution housing children or coming in regular contact with children including schools, creches, sports academies or any other facility for children must ensure a police verification and background check on periodic basis, of every staff, teaching or non-teaching, regular or contractual, or any other person being an employee of such Institution coming in contact with the child. Such Institution shall also ensure that periodic training is organised for sensitising them on child safety and protection.

(5) The respective Governments shall formulate a child protection policy based on the principle of zero-tolerance to violence against children, which shall be adopted by all institutions, organizations, or any other agency working with, or coming in contact with children.

(6) The Central Government and every State Government shall provide periodic trainings including orientation programmes, sensitization workshops and refresher courses to all persons, whether regular or contractual, coming in contact with the children, to sensitize them about child safety and protection and educate them regarding their responsibility under the Act. Orientation

programme and intensive courses may also be organized for police personnel and forensic experts for building their capacities in their respective roles on a regular basis."

Thus, it is clear that the aforesaid rule specifically provides for developing ageappropriate materials for awareness; police verification and background check for employees of school or any institution housing children; sensitization programmes for employees in contact with children about child safety and their responsibility under the Act.

8. Undoubtedly, unless the Protection of Children from Sexual Offences Act, 2012 and the rules thereunder are implemented diligently, it is impossible to realize the constitutional goals and ensure the rights of children. Protecting the children from sexual abuse, while in care of legal guardian/any person who is taking care of the child, is an internationally recognized obligation under the Convention on the Rights of the Child and the States are required to take measures on all fronts for the same.

9. Taking note of the need and necessity to prevent the instances relating to sexual harassment in schools, the Government passed G.O.(Ms.)No.121, School Education (E1) Department, dated 17.05.2012, outlining five key features, which read as follows:

"1. தவறான நடவடிக்கைகளில் ஈடுபடும் ஆசிரியர்கள் மீது ஒழுங்கு நடவடிக்கை எடுத்து, அவர்களுக்கு கரும் தண்டனையான (Major Punishment) அதாவது கட்டாய ஓய்வு (Compulsory Retirement) / பணி நீக்கம் (Removal) / பணியறவு (Dismissal) போன்ற தண்டனை வழங்கப்படும். (அரசுப் பள்ளி ஆசிரியர்களைப் பொறுத்தவரையில், தமிழ்நாடு அரசுப் பணியாளர் நடத்தை விதி 19(2) இதற்குப் பொருந்தும். இவ்விதியை மீறுபவர்களுக்கு மேற்குறிப்பிட்ட தண்டனைகளுள் ஒன்று வழங்கப்பட வேண்டுமென தமிழ்நாடு குடிமைப் பணி (ஒழுங்கு மற்றும் மேல்முறையீடு) விதிகளில் விதி 8-ல் கூறப்பட்டுள்ளது.

2. சம்பந்தப்பட்ட ஆசிரியரின் கல்விச் சான்றுகள் அனைத்தையும் ரத்து செய்ய சார்ந்த துறை மூலம் நடவடிக்கை எடுத்து கல்விச் சான்றுகளை ரத்து செய்யப்படும்.

3. பள்ளிக் குழந்தைகளும், மாணவ மாணவிகளும் பிற நபர்களின் தவறான நடவடிக்கைகளிலிருந்து தங்களைப் பாதுகாத்துக் கொள்ளும் வகையில் அவர்களுக்கு போதிய விழிப்புணர்வை ஏற்படுத்தப்பட வேண்டும்.

4. ஆசிரியர்கள் தவறான செயல்களில் ஈடுபடாவண்ணம் தகுந்த உளவியல் ஆலோசகர்கள் மூலம் ஆசிரியர்களுக்கு உளவியல் ரீதியான ஆலோசனைகள் வழங்கப்படவேண்டும்.

5. பள்ளி மாணவ மாணவிகளின் மனநிலை பாதிக்கும் பிரச்சினைகளை களைவதற்கான உளவியல் ஆலோசனைகளை வழங்குவதற்கென பள்ளிக் கல்வித் துறை மூலம் உளவியல் ஆலோசகர், உதவியாளர், மற்றும் அனைத்துவகை வசதிகளுடன் கூடிய நடமாடும் - ஆலோசனை மையங்கள் ஏற்படுத்தி, இதன்மூலம் மாணவ மாணவியருக்கு விழிப்புணர்வும், ஆசிரியர்களுக்கு ஆலோசனைகளும் வழங்கப்பட வேண்டும்."

In 2012, in the light of rising reported instances of sexual abuse against students by teachers, in exploitation of their fiduciary relationship, the counselling service on wheels was introduced by the government through the aforesaid G.O. It is an effective initiative to prevent the instances of sexual abuse among children in the schools by making psychological counselling services accessible. The mobile centres are required to undertake sensitization and awareness programmes among students and provide psychological counselling to teachers. It has been a decade since this initiative was introduced, but there is no substantial change, as evident from the information received through RTI by the petitioner.

10. At this juncture, it is important to mention here that the Government has recently, announced a helpline number '14417' to be printed in all the school textbooks and constituted a dedicated team to handle the calls coming through this toll free number, to help the students make complaints relating to child abuse and sexual harassment.

11. The aforesaid move by the Government is highly appreciable. At the same time, this court cannot lose its sight with regard to non-functioning of the mobile counselling centres, as it is important and necessary to protect the students in the schools against the sexual crimes at the threshold itself. Thus, visualizing the importance of the same, this court directs the respondents to consider the representation of the petitioner and take immediate action and if the mobile counselling services are found to be not functioning properly, the same should be in operation forthwith.

12. Before parting, this court, considering the fact that sexual abuse is an assault on the very dignity and personhood of a child, which leaves a lasting trauma on children hindering their overall development, deems it fit to issue the following directives to the Government, for effective implementation of policies and legislations framed against the sexual crimes, in the schools:

(i) The School Education Department in coordination with the State Commission for Protection of Child, shall ensure that

(a) Internal Complaints Committee is constituted in schools as required under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

(b) The schools may frame anti-sexual harassment policy and a copy of the same is distributed to the students and teachers.

(c) Every school has a reporting and redressal mechanism in place and it is made known to the students.

(ii) A nodal body with representatives from the State Commission for Protection of Child and School Education Department, shall be formed to coordinate and monitor the Government led awareness and sensitization programmes in schools on sexual abuse; and monitor the operationalization of mobile counselling centers.

13. With the above directions, the Writ Petition stands disposed of. There is no order as to costs.