

IN THE HIGH COURT OF MADHYA PRADESH
PRINCIPAL SEAT AT JABALPUR

W.P. No. /2020

Petitioner : Dheeraj Kumar Kukareja & Anr.

Versus

Respondents : Union of India & Ors.

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Chronological Events(Part-B)

<u>Sr. No.</u>	<u>Dates</u>	<u>Events</u>
1	09.02.2018	The Hon'ble Supreme Court passed judgment in the case
2	01.07.2019	FIR was registered by the respondents against the juvenile.
3	02.07.2019	The petitioner's news with identity of the petitioner was published in the news.
4	25.07.2019	The petitioner submitted complaint to the respondent no 08.

Place-Jabalpur

(Dheeraj Kumar Tiwari)

Date-

Counsel for Petitioners

IN THE HIGH COURT OF MADHYA PRADESH

PRINCIPAL SEAT AT JABALPUR

W.P. No. /2020

Petitioners:

1. Dheeraj Kumar Kukareja S/o Shri

2.

Versus

Respondents :

1. Union of India through the Secretary
Ministry of Women and Child
Development, New Delhi, India
2. National Commission for Protection of
Child Rights through The Chairperson,
Ministry of Women and Child

Development, Government of India New
Delhi, India

3. The State of M.P. through the Secretary,
Ministry of Women and Child
Development Department, Vallabh
Bhawan, Bhopal (M.P.)
4. State Commission for Protection of Child
Rights through the Chairperson, Ministry
of Women and Child Development,
Government of M.P. 59, 4th Floor,
Narmada Floor, Jail Road, Arera Hills,
District Bhopal, M.P.
5. The State Of Madhya Pradesh through the
Secretary, Home Department, Vallabh
Bhawan, Bhopal (M.P.)
6. The Director General of Police Jabalpur
Division, District Jabalpur, M.P.
7. The Inspector General of Police Jabalpur
Division, District Jabalpur M.P.
8. The Superintendent of Police, Jabalpur ,
District Jabalpur M.P.
9. The House Station Officer, Madhotaal,
District Jabalpur, M.P.

WRIT PETITION UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA

1. Particulars of the cause/order against which the petition made:-

- (i) Date of Order : NIL**
- (ii) Passed in : NIL**
- (iii) Passed by : NIL**

Subject matter in brief:—

The petitioner is aggrieved by the inertia and inaction of the respondents wherein due to such inertia of the respondents and non-compliance of the directions issued by the Hon'ble Supreme court of India in *Writ Petition (Civil) No. 473 of 2005 Sampurna Behurua Vs. Union of India* decided on 09.02.2018 the petitioners suffered the huge miscarriage of justice and due to non-following of the procedure established by law the petitioner's identity was disclosed to the public at large by way of exhibiting the same in the newspapers and in the materials therein related to the activity which led to the violation of the law of the land with regards to the identity and implementation of the Juvenile Justice (Care and protection of children) Act 2000.

The petitioner for the purpose of redressing his grievance has approached to the various authorities and submitted a detailed representations also, but till today no action has been taken by the respondent government authorities for the purpose of redressing his grievance which amount for inertia and

malice of the respondent government, *in toto* the respondents are acting arbitrarily without any reason acting illegally. Hence this petition.

2. **A declaration that no proceeding on the same subject matter has been previously instated in any Court, authority matter has been previously instated in any court, authority or tribunal, the status or result thereof, along with copy of the order:**

The petitioner declares that no proceeding on the same subject matter has been previously instated in any Court, authority or tribunal.

3. **Details of remedies exhausted:**

The petitioner declares that he has availed all statutory and other remedies.

4. **Delay, if any, filing the petition and explanation thereof:—**

That there is no delay, if filing the writ petition.

5. **Facts of the case:—**

Briefly stated facts of the case are given as under:—

- 5.1 That, petitioners are the citizen of India and a resident of district Jabalpur and uninterruptedly is the holder of the fundamental rights prescribed in the part III of the constitution of India and deserves the right to approach to the court whenever he is being

deprived from the exercise of such fundamental right unless expressly provided for.

- 5.2 That, the protection and care of the juveniles has always been the priority of the Government of India and it is for the said purpose the Juvenile Justice (Care and protection of children) Act 2000 was enacted by the parliament followed by the Juvenile Justice (Care and protection of children) Act 2015 with the purpose exhibited therein as:-

“An Act to consolidate and amend the law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established, hereinafter and for matters connected therewith or incidental thereto.

WHEREAS, the provisions of the Constitution confer powers and impose duties, under clause (3) of article 15, clauses (e) and (f) of article 39, article 45 and article 47, on the State to ensure that all the needs of children are met and that their basic human rights are fully protected;

AND WHEREAS, the Government of India has acceded on the 11th December, 1992 to the Convention on the Rights of the Child, adopted by the General Assembly of United Nations, which has prescribed a set of standards to be adhered to by all State parties in securing the best interest of the child;

AND WHEREAS, it is expedient to re-enact the Juvenile Justice (Care and Protection of Children) Act, 2000 to make comprehensive provisions for children alleged and found to be in conflict with law and children in need of care and protection, taking into consideration the standards prescribed in the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993), and other related international instruments.”

- 5.3 That, the protection of juvenile in conflict with laws has always been of a great importance to the state and the same was poignantly pronounced by the Supreme court of India in the case of *Writ Petition (Civil) No. 473 of 2005 Sampurna Behurua Vs.*

Union of India decided on 09.02.2018 wherein the supreme court of India gave the following directions :

- 1) The Ministry of Women and Child Development in the Government of India and the State Governments should ensure that all positions in the NCPCR and the SCPRs are filled up well in time and adequate staff is provided to these statutory bodies so that they can function effectively and meaningfully for the benefit of the children.*
- 2) The NCPCR and the SCPCR should take their duties, functions and responsibilities with great earnestness keeping in mind the faith reposed in them by Parliament. A position in these statutory institutions is not a sinecure. These bodies have a very significant and proactive role to play in improving the lives of children across the country.*
- 3) The State level Child Protection Societies and the District level Child Protection Units have an enormous responsibility in ensuring that the JJ Act is effectively implemented and Child Care Institutions are managed and maintained in a manner that is conducive to the well being of children in all respects including nutrition, education, medical benefits, skill development and general living conditions. These two bodies would be well advised to take the assistance of NGOs and civil society to ensure that the JJ Act serves the purpose for which it is enacted by Parliament.*
- 4) The State Governments must ensure that all positions in the JJBs and CWCs are filled up*

expeditiously and in accordance with the Model Rules or the Rules framed by the State Government. Any delay in filling up the positions might adversely impact on children and this should be avoided.

- 5) The JJBs and CWCs must appreciate that it is necessary to have sittings on a regular basis so that a minimal number of inquiries are pending at any given point of time and justice is given to all juveniles in conflict with law and social justice to children in need of care and protection. This is a constitutional obligation.*
- 6) The NCPCR and the SCPCRs must carry out time-bound studies on various issues, as deemed appropriate, under the JJ Act. Based on these studies, the State Governments and the Union Territories must take remedial steps.*
- 7) In particular the NCPCR and the SCPCRs must carry out a study for estimating the number of Probation Officers required for the effective implementation of the JJ Act. Based on this study, the State Government must appoint the necessary number of Probation Officers. It must be emphasised that the role of a Probation Officer is critical for the rehabilitation and social reintegration of a juvenile in conflict with law and due importance must be given to their duties as postulated in the Model Rules and Rules, if any, framed by the State Governments and the Union Territories.*
- 8) The MWCD must continue to make creative use of information and communication technology not*

only for the purpose of collecting data and information but also for other issues connected with the JJ Act such as having a database of missing children, trafficked children and for follow up of adoption cases etc. With the utilization of technology to the fullest extent, administrative efficiency will improve considerably, which in turn will have a positive impact on the lives of children.

9) It is important for the police to appreciate their role as the first responder on issues pertaining to offences allegedly committed by children as well as offences committed against children. There is therefore a need to set up meaningful Special Juvenile Police Units and appoint Child Welfare Police Officers in terms of the JJ Act at the earliest and not only on paper. In this context, it is necessary to clearly identify the duties and responsibilities of such Units and Officers and wherever necessary, guidance from the available expertise, either the National Police Academy or the Bureau of Police Research and Development or NGOs must be taken for the benefit of children.

10) The National Police Academy and State Police Academies must consider including child rights as a part of their curriculum on a regular basis and not as an isolated or sporadic event.

11) The management of Child Care Institutions is extremely important and State Governments and Union Territories would be well advised to ensure that all such institutions are registered so that children can live a dignified life in these Institutions

and issues of missing children and trafficking are also addressed.

- 12) *State Governments and Union Territories would be well advised to appoint eminent persons from civil society as Visitors to monitor and supervise the Child Care Institutions in all the districts. This will ensure that the management and maintenance of these Institutions are addressed. We have no doubt that the State Legal Service Authorities and the District Legal Service Authorities will extend full assistance and cooperation to the government authorities in this venture as well as to the Visitors.*
- 13) *The JJ Fund is a bit of an embarrassment with an absence of an effective response from the State Governments and the Union Territories. If financial resources are not made available for the welfare of the children we shudder to think what could be better utilization of the funds.*
- 14) *NALSA has done a remarkable job in collecting data and information relating to the JJ Act, as evidenced by the three part Report prepared by it. We request NALSA to carry forward the exercise and complete a similar Report preferably before 30th April, 2018 to assist all the policy making and decision taking authorities to plan out their affairs.*
- 15) *The importance of training cannot be over-emphasized. It is vital for understanding and appreciating child rights and for the effective implementation of the JJ Act. All authorities such as*

JJBs and CWCs, Probation Officers, members of the Child Protection Societies and District Child Protection Units, Special Juvenile Police Units, Child Welfare Police Officers and managerial staff of Child Care Institutions must be sensitized and given adequate training relating to their position. A very positive step has been taken in this regard by NALSA and we expect the NCPCR with the assistance of the SCPCRs to carry forward this initiative so that there is meaningful implementation of the JJ Act.

- 16) *Since the involvement of the State Governments and the Union Territories is critical to child rights and the effective implementation of the JJ Act, it would be appropriate if each High Court and the Juvenile Justice Committee of each High Court continues its proactive role in the welfare of children in their State. To make the involvement and process more meaningful, we request the Chief Justice of every High Court to register proceedings on its own motion for the effective implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015 so that road-blocks if any, encountered by statutory authorities and the Juvenile Justice Committee of the High Court are meaningfully addressed after hearing the concerned governmental authorities. A copy of this judgment and order should be sent by the Secretary General of this Court to the Registrar General of each High Court for being placed before*

the Chief Justice of every High Court for initiating suo motu proceedings.

And in para 96

Finally, we request and urge the Chief Justice of each High Court to seriously consider establishing child friendly courts and vulnerable witness courts in each district. Inquiries under the JJ Act and trials under other statutes such as the Protection of Children from Sexual Offences Act, 2012, the Prohibition of Child Marriage Act, 2006, trials for sexual offences under the Indian Penal Code and other similar laws require to be conducted with a high degree of sensitivity, care and empathy for the victim. It is often said that the experience in our courts of a juvenile accused of an offence or the victim of a sexual offence is traumatic. We need to have some compassion towards them – even juveniles in conflict with law, since they are entitled to the presumption of innocence - and establishing child friendly courts and vulnerable witness courts is perhaps one manner in which the justice delivery system can respond to ease their pain and suffering. Another advantage of such child friendly courts and vulnerable witness courts is that they can be used for trials in which adult women are victims of sexual offences since they too are often traumatized by the not so friendly setting and environment in our courts.

A copy of the judgement of the Supreme Court passed in Writ Petition (Civil) No. 473 of 2005 Sampurna Behurua Vs. Union of India decided on 09.02.2018 is being filed herewith as **Annexure P/1**.

- 5.4 That the respondent state government has specifically issued a detailed notification vide order dated 28.12.2016 exhibiting and describing the detailed responsibilities and duties of each officer and employee working for the obedience of the laws relating to children in conflict with law and enumerated and described the responsibility of each and every person involved in such context. A copy of the order dated 28.12.2016 by the respondent is being filed herewith as **Annexure P/2**.
- 5.5 That, the respondents logged a FIR on 01.07.2019 under sections 467,468 and 34 Indian Penal Code read with 4A Public Gambling Act 1867 wherein named the petitioner as one of the accused and alleged the commission of aforesaid offences by the petitioner. A copy of the FIR along with other relevant documents is being filed herewith as **Annexure P/3**.
- 5.6 That the alleged offences pertaining to the FIR dated 01.07.2019 involves an accused which was in conflict with law and the police could have found out the same by verifying the age proof details of the juvenile in conflict with law and also by following the due procedure as enumerated in chapter V of the code of criminal procedure 1973 specifically the procedure established in section 41, 41B and 42 and shall have then proceeded for the purpose of invoking and complying with the law for the Juveniles in conflict with law. *Per Contra* the police without doing so did

not followed the procedure established by law straightaway proceed for the press conference and reported the same to the media without due care and attention. A copy of the newspaper exhibiting the name of the Juvenile is being filed herewith as **Annexure P/4.**

5.7 That, the petitioner was minor and the Juvenile Justice Act is applicable to petitioner the police did not sent the case to the special child police for the purpose of registration and offence and violated the law of the land. The age of the petitioner could be determined from the mark sheet and other documents of the petitioner. A copy of the marksheet of the petitioner is being filed herewith as **Annexure P/5.**

5.8 That the petitioner in order for the redressing his grievance has also submitted a complain to the respondent but till today the respondents have not taken any stand on that and the complaint of the petitioner is still pending for the consideration and the respondents are at inertia and acting arbitrarily violating the law of the land. A copy of complaint to superintendent of police dated 25.07.2019 is being filed herewith as **Annexure P/6.**

6. Grounds urged:—

6.1 That, the petitioner's rights prescribed in the constitution of India part III , Articles 14, 15 also articles 39 (e), 39 (f) and 47 are

being violated by the act of the respondents, however such act of respondents is expressly bared by the law of the land.

6.2 That, the Hon'ble Supreme Court of India in the case of *Sampurna Behurua Vs. Union of India* has explicitly issued direction to the state to comply with the law relating to the child in conflict with law and has also asked for its effective implementation and for the said purpose a copy of the order was sent to the registrar general of each High Court for compliance but the respondents acts clearly show that the law has not been followed and the child's identity has been disclosed amounts to violation of the law.

6.3 That the disclosure of identity of the child in conflict with law is an offence. Prohibition on disclosure of identity of children enumerated in section 74 of the Juvenile Justice (Care and Protection of Children) Act, 2015 provides for the punishment to such person in conflict with the same.

6.4 That, the Madhya Pradesh Juvenile Justice (Care and Protection of Children) rules 2003 Section 9 (5) provides for the procedure of placing the child before the special juvenile police unit and the word used is 'Shall' which has strict interpretation but yet the procedure was not followed by the respondents and the abidance of section 9 of the said Act was not kept intact while

dealing with the FIR and hence it caused huge prejudice and injustice to the petitioner.

6.5 That, the petitioner's identity was expressly disclosed by the respondents to the media and the petitioner has his whole life to be live for and the mental trauma that he has suffered due to act of the respondents is likely to affect the life of the petitioner which was not the purpose and aim of the Juvenile Justice Act.

6.6 That, the respondents had all the means to keep intact the necessary requirements needed for the effective implementation of the law of the land but yet the respondents choose act in an arbitrary way which is not permissible by law.

6.7 That, the petitioner aggrieved by the act of the respondents submitted the detailed complain to the authorities, however after waiting for a reasonable time also the respondents did not acted on the same and kept it at inertia meaning thereby that the respondents are not acting in conformity with the law of the land. Hence this petition for giving the appropriate direction to the respondents.

7. **Relief Prayed for:—**

It is therefore prayed that this Hon'ble court may kindly be pleased:—

- (i) To issue a writ of mandamus directing the respondents to ensure the effective and efficient implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015 keeping intact the direction issued by the Hon'ble Supreme Court in the case of *Sampurna Behuraa Vs. Union of India*.
- (ii) To kindly be pleased to call for the entire reports/actions which has been taken by the respondents no 01 and respondent no 03 pursuant to the direction given by the Hon'ble Supreme Court in the case of *Sampurna Behuraa Vs. Union of India*.
- (iii) To kindly be pleased to call for the entire record pertaining to the subject matter of the petition.
- (iv) To, kindly be kindly be pleased to direct the respondents to make proper and fare investigation into the matter and take proper action on the complaint dated 25.07.2019 (Annexure P/6).
- (v) To grant any other relief which this Hon'ble Court may deem just and proper in the circumstance of the case is also to be granted in favour of the petitioner along with cost of the petition.

8. **Interim order/writ, if prayed for:—**

NIL

9. **Documents relied on but not in possession of the petitioner:—**

That, the petitioner has submitted all the relevant documents which were in the petitioner's possession and needed for the purpose of adjudication but reserves the right to file any other document in the future if needed and ordered by the Hon'ble High Court.

10. **Caveat:—**

That, no notice of lodging a caveat by the opposite party is received.

Place-Jabalpur

(Dheeraj Kumar Tiwari)

Date-

Counsel for Petitioner

IN THE HIGH COURT OF MADHYA PRADESH
PRINCIPAL SEAT AT JABALPUR

W.P. No. /2020

Petitioner : Dheeraj Kumar Kukareja & Anr.

Versus

Respondents : Union of India & Ors.

AFFIDAVIT

I, Dheeraj Kumar Kukareja

M.P. do hereby declare on oath as under:—

1. I am the petitioner no.1 in the instant writ petition under article 226 of the Constitution of India and well conversant with the facts of the case.
2. That, the instant petition has been drafted by my counsel as per my instruction. The contents of the same have been read over and understood by me in Hindi.
3. That, the contents from para 1 to 10 of the instant petition and the annexures are true and correct to my personal knowledge and belief.

Deponent

VERIFICATION

I, Dheeraj Kumar Kukreja the above named deponent do hereby verify that the contents from para 1 to 3 of the above affidavit are true and correct to my personal knowledge.

Verified and signed on this day of Feb 2020 at Jabalpur (M.P.)

Deponent

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LIST OF DOCUMENTS

<u>Sr.No.</u>	<u>Documents with its date</u>	<u>Org./Copy</u>	<u>Pg.No.</u>
1.	The judgment of supreme court dated 09.02.2018		
2.	The order of the state government dated 28.12.2016		
3.	The FIR dated 01.07.2019		
4.	The news paper page dated 02.07.2019		
5.	The marksheet of the minor		
6.	The complaint to SP dated 25.07.2019		

Place-Jabalpur

(Dheeraj Kumar Tiwari)

Date-

Counsel for Petitioners