

ITEM NO.1 Court 5 (Video Conferencing)

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SMW (C)No.4/2020

IN RE: CONTAGION OF COVID 19 VIRUS IN CHILDREN PROTECTION

(with applns. for Appropriate orders/directions, exemption from filling affidavit, exemption from paying court fee, intervention and intervention/impleadment)

WITH

W.P.(Cr1.) No. 274/2020 (PIL-W)

IA No.97311/2020 - GRANT OF INTERIM RELIEF)

Date : 01-12-2020 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE L. NAGESWARA RAO
HON'BLE MR. JUSTICE HEMANT GUPTA

By Courts Motion
Mr. Gaurav Agrawal, A.C.

Mr. Tushar Mehta, S.G.
Mrs. Swarupama Chaturvedi, AOR
Ms. Neha Rai, Adv.

Union of India

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Ms. Swati Ghildiyal, Adv.
Mr. G.S. Makker, Adv.
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 Ms. Jaspreet Gogia, AOR
 Dr. Monika Gusain, AOR
 Mr. Narendra Kumar, AOR

UPON hearing the counsel the Court made the following

O R D E R

On 9.10.2020, this Court took note of the letter dated 25.09.2020 issued by the Senior Consultant, Legal Division, National Commission for Protection for Children Rights (NCPCR) to all District Magistrates/Collectors of the State of Karnataka directing repatriation and restoration of the children

placed in the children protection homes.

The learned Amicus Curiae brought to our notice that a general direction for repatriation of children from the children protection homes without an individual assessment is contrary to the provisions of the Juvenile Justice Act, 2015. He submitted that individual assessment of each child has to be considered before repatriating him to parental care.

The NCPCR responded to the notice issued by this Court on 9.10.2020 by filing an affidavit. The NCPCR has made it clear that Section 40 (3) of the Juvenile Justice Act shall be scrupulously followed before repatriating children from children protection homes to parental care.

The learned Solicitor General of India brought to our notice an order dated 8.10.2020 passed by the Joint Secretary to the Government of India, Ministry of Human and Child Development by which the general directions issued by the NCPCR to the District Authorities to repatriate children to parental care have been set aside. He also referred to a letter written by the NCPCR to the Union of India on 3.11.2020 in which it was pointed out that the

children from children protection homes shall not be sent to parental care without an individual assessment of each child keeping in mind the objectives of the Juvenile Justice Act.

In view of the submissions made by the learned Solicitor General of India appearing for the NCPCR, we trust and hope that repatriation of children from the children protection homes to their parental care shall be made after following the provisions of the Juvenile Justice Act.

List the matter on 15.12.2020 for consideration of other issues.

W.P.(Cr1.) No. 274/2020:

The above writ petition has been filed for issuance of a direction to record the evidence of child victims/witnesses of human trafficking through video conferencing from a government facility within the local jurisdiction of the residence of the child victim/witness concerned. This direction is mainly sought in view of the Covid-19 pandemic. However, the petitioner is also interested in the said facility being continued even after the Covid-19 pandemic abates.

The learned Amicus Curiae after conferring with Ms.Anitha Shenoy, learned senior counsel appearing for the petitioner has submitted certain proposals for recording the testimonies of the child witnesses in human trafficking through Video Conferencing.

The first stage of the proposal given by the learned Amicus Curiae relates to the infrastructure being made available for the purpose of Video Conferencing. Necessary equipment for Video Conferencing including a desktop or a laptop connected to the internet with functioning broad-band connection and anti-virus software on such devices, with waiting area with a rest room to maintain the privacy of the children and other related facilities are amongst the suggestions made by the learned Amicus Curiae.

Ms.Anitha Shenoy, learned senior counsel for the petitioner commended acceptance of the suggestions made by the Amicus Curiae and that directions should be given to the State Governments to initiate the process by making available the necessary infrastructure. The learned Amicus Curiae has selected certain cases for the proposed Pilot Project, the details of which have been given in the note submitted by him for the

purpose of today's hearing. In these cases, children residing in the States of Bihar, West Bengal and Assam have been identified. For example, in the case arising out of FIR No.463/2016 pending in the Court of Additional Sessions Judge, Saket Court, New Delhi, trafficked children are residing in the Districts of Araria, Purnia, Kishanganj, Supaul and Kathiar in the State of Bihar. The remote point for recording their evidence through video conferencing is required to be set up at Araria. It is very difficult for the children to travel to Delhi to depose in court during the pandemic. Creation of a facility for recording the depositions of children/ victims of trafficking by Video Conferencing would save the children of arduous journeys to distance places where the courts are situated.

We have heard Mr. Manish Kumar, learned counsel for Bihar, Ms. Diksha Rai, learned counsel for the State of Bihar and Mr. Nikhil Parikshith, learned counsel for the State of West Bengal. We find merit in the suggestions made by the Amicus in providing the required infrastructure in certain places to enable the children/ victims of human trafficking to depose from their places of residence by avoiding long

journeys. The facility can continue not only during the pandemic but even after it abates. Sufficient care has to be taken to rule out any external influence or pressure on the child victim/witness when they depose through video conferencing. This Court proposes the appointment of retired judicial officers as Co-ordinators. The learned Amicus Curiae suggested that he may be permitted to consult the State Legal Service Authorities of the States of Assam, Bihar and West Bengal to find out about the availability of the retired judicial officers who will be willing to take up the responsibilities of Co-ordinators to expertise the recording of the evidence of child victims/witnesses through video conferencing. The learned Amicus Curiae is permitted to consult the State Legal Services Authorities and submit a report before the next date of hearing.

Mr. Manish Kumar, learned counsel for the State of Bihar submitted that the infrastructure is already available in the State of Bihar. He submitted that the Probation Officer has been conferred with certain functions and duties under the Juvenile Justice Act and the Rules made thereunder, and this Court should ensure that there is no over-lapping of the duties

entrusted to a Coordinator by this Court and the duties of the Probation Officers under the Juvenile Justice Act.

The learned Amicus Curiae appearing for the State of Assam and West Bengal sought time for getting instructions. Learned counsel for the above 3 states and the advocate on record for the State of Rajasthan are directed to instruct the State Governments to initiate the process of providing the required infrastructure for the video conferencing facilities immediately.

The State of Assam, West Bengal and Rajasthan shall provide the necessary infrastructure with all the required facilities at Gauhati, Kolkata and Jaipur respectively.

List this matter on 21.01.2021.

In the meanwhile, all the State Governments shall provide information relating to the number of child victims/witnesses of human trafficking who are required to depose in courts at places other than those residing outside the States. One district may be identified by each State Government/ Union

Territory for establishing Video Conferencing facility for recording evidence of children/ victims of human trafficking. The State Governments are directed to file the Status Reports within four weeks from today.

**(B.Parvathi)
Court Master**

**(Anand Prakash)
Court Master**