

Court On Its Own Motion vs State on 29 September, 2021

Author: Siddharth Mridul

Bench: Siddharth Mridul, Anup Jairam Bhambhani

\$~31

*

+

IN THE HIGH COURT OF DELHI AT NEW DELHI
CRL.REF. 1/2020
COURT ON ITS OWN MOTION

Through: Mr. H.S. Phoolka, Senior
(Amicus Curiae) with Mr.
Dewan, Advocate.

versus

STATE

Through: Ms. Nandita Rao, ASC (Senior)
and Mr. Sanjay Lao, Senior
Counsel (Criminal), Government
State with S.I. Sanjeev
Ms. Prabhsahay Kaur, A
Bachpan Bachao Andolan
Mr. R.H.A. Sikander, A
Delhi Commission for Protection
Child Rights (DCPCR)/R
Mr. Kawal Jeet Arora,
Secretary, DSLSA.
Mr. Ripudaman Bhardwaj
UI.
Ms. Anu Grover Baliga,
DHCLSC with Mr. Harsh
Advocate for DHCLSC.

\$~33

+

W.P.(CRL) 1560/2017
SADHAN HALDAR

Through: Mr. H.S. Phoolka, Senior
(Amicus Curiae) with Mr.
Dewan, Advocate.

Signature Not Verified

Digitally Signed

By:DURGESH NANDAN

Signing Date:01.10.2021 CRL.REF. 1/2020 & W.P.(CRL) 1560/2017
12:12:15

versus

THE STATE NCT OF DELHI & ORS

.....Respondent

Through: Ms. Nandita Rao, ASC (Criminal) and Mr. Sanjay Lao, Standing Counsel (Criminal), GNCTD for the State with Inspector Mahesh Pande AHTU.

Ms. Prabhsahay Kaur, Advocate for Bachpan Bachao Andolan.

Mr. R.H.A. Sikander, Advocate for Delhi Commission for Protection of Child Rights (DCPCR)/R-4.

Mr. Kawal Jeet Arora, Member Secretary, DSLSA.

Mr. Ripudaman Bhardwaj, CGSC for UOI.

Mr. Tushar Sannu, SC (EDMC) with Mr. Shubham Gupta, Advocate for EDMC.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% 29.09.2021 Order released on : 01 October, 2021 The criminal reference in this case arises from certain questions of law placed by the Principal Magistrate, Juvenile Justice Board-II, Delhi Gate, New Delhi for decision before this court, which concern circumstances when a child in conflict with law ('CCL') also happens to be a child in need for care and protection ('CNCP'). The writ petition, which has since been tagged with the criminal reference, relates essentially to measures required to be taken to prevent child trafficking.

2. However, in the course of proceedings in these matters, Mr. H. S. Phoolka, learned Senior Advocate and Amicus Curiae, Ms. Prabhsahay Kaur, learned counsel appearing on behalf of Bachpan Bachao Andolan ('BBA') and Mr. R. H. A. Sikander, learned counsel appearing for the Delhi Commission for Protection of Child Rights ('DCPCR') have brought to the notice of this court several other issues which pertain to interpretation and effective implementation of some provisions of the Juvenile Justice (Care and Protection of Children) Act 2015, ('JJ Act'); and considering the nature of the issues flagged, this court has been persuaded to widen the scope of the present proceedings, to address what we see as matters critical to the administration of juvenile justice.

3. One of the issues so raised, which is sought to be addressed by way of the present order, is that of overlong pendency of a sizeable number of cases relating to 'petty offences' committed by juvenile delinquents, which are in fact required to 'stand terminated' as per section 14 of the JJ Act.

4. In this behalf the DCPCR has brought to the attention of this court that as on 30.06.2021 some 795 cases pertaining to petty offences committed by juveniles are pending before the 06 (six) Juvenile Justice Board's ('JJBs') in Delhi for a period between 06 months and 01 year; and some 1108 such cases are pending for more than 01 year, meaning thereby that some 1903 petty cases are

pending, which section 14 of the JJ Act mandates should stand terminated, as hereinafter discussed. Also, the data shows, that the pendency figures for petty offences has increased by 44% in just the last 06 months. A tabulated summary of the data relating to petty offences pending before JJBs in Delhi, as presented to this court by the DCPCR as part of its additional written submissions is as follows :

PETTY OFFENCES DATA Juvenile Justice Board 31.12.2020 30.06.2021 6 months-1 year 1 year or 6 months-1 year 1 year or more more 367 953 795 1108 Total - 1320 Total - 1903 Total pendency as on 31.12.2020 - 1320 Total pendency as on 30.06.2021 - 1903 Increase by 44%

5. The provisions of the JJ Act that are most relevant and material for addressing the above issue, are :

"2. In this Act, unless the context otherwise requires,--

***** (12) ☐child means a person who has not completed eighteen years of age;

***** (35) ☐juvenile means a child below the age of eighteen years;

***** (45) ☐petty offences includes the offences for which the maximum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment up to three years;

☐ Powers, functions and responsibilities of the Board.---

***** (3). The functions and responsibilities of the Board shall include'--

(e) directing the Probation Officer, or in case a Probation Officer is not available to the Child Welfare Officer or a social worker, to undertake a social investigation into the case and submit a social investigation report within a period of fifteen days from the date of first production before the Board to ascertain the circumstances in which the alleged offence was committed;

(h) disposing of the matter and passing a final order that includes an individual care plan for the child's rehabilitation, including follow up by the Probation Officer or the District Child Protection Unit or a member of a non- governmental organisation, as may be required;

***** ☐o. Apprehension of child alleged to be in conflict with law.---

***** (1) As soon as a child alleged to be in conflict with law is apprehended by the police, such child shall be placed under the charge of the special juvenile police unit or the designated child welfare police officer, who shall produce the child before the Board without any loss of time but within a

period of twenty-four hours of apprehending the child excluding the time necessary for the journey, from the place where such child was apprehended:

Provided that in no case, a child alleged to be in conflict with law shall be placed in a police lockup or lodged in a jail.

***** □4. Inquiry by Board regarding child in conflict with law. --- (1) Where a child alleged to be in conflict with law is produced before Board, the Board shall hold an inquiry in accordance with the provisions of this Act and may pass such orders in relation to such child as it deems fit under sections 17 and 18 of this Act.

(2) The inquiry under this section shall be completed within a period of four months from the date of first production of the child before the Board, unless the period is extended, for a maximum period of two more months by the Board, having regard to the circumstances of the case and after recording the reasons in writing for such extension.

(3) A preliminary assessment in case of heinous offences under section 15 shall be disposed of by the Board within a period of three months from the date of first production of the child before the Board.

(4) If inquiry by the Board under sub-section (2) for petty offences remains inconclusive even after the extended period, the proceedings shall stand terminated:

Provided that for serious or heinous offences, in case the Board requires further extension of time for completion of inquiry, the same shall be granted by the Chief Judicial Magistrate or, as the case may be, the Chief Metropolitan Magistrate, for reasons to be recorded in writing.

***** □6. Review of pendency of inquiry. --- (1) The Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall review the pendency of cases of the Board once in every three months, and shall direct the Board to increase the frequency of its sittings or may recommend the constitution of additional Boards.

(2) The number of cases pending before the Board, duration of such pendency, nature of pendency and reasons thereof shall be reviewed in every six months by a high level committee consisting of the Executive Chairperson of the State Legal Services Authority, who shall be the Chairperson, the Home Secretary, the Secretary responsible for the implementation of this Act in the State and a representative from a voluntary or nongovernmental organisation to be nominated by the Chairperson.

***** 94. Presumption and determination of age. --- (1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the

Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age. (2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining --

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.

***** ☐Rule 12. Pendency of Inquiry. - (1) For the purpose of sub-section (3) of section 16 of the Act, the Board shall maintain a 'Case Monitoring Sheet' of every case and every child in Form 11. The said Form shall be kept at the top of each case file and shall be updated from time to time. The following points shall be considered so far as ☐progress of inquiry' mentioned in Form 11 is concerned:

(i) time schedule for disposal of the case shall be fixed on the first date of hearing;

(ii) scheduled date given in column No. (2) of ☐progress of inquiry' shall be the outer limit within which the steps indicated in column (1) are to be completed. (2) The Board shall submit a quarterly report in Form 12 about the pendency of the cases, visits to Homes etc. to the following:

(i) Chief Judicial Magistrate or Chief Metropolitan Magistrate;

(ii) District Magistrate.

(3) The District Judge shall conduct an inspection of the Board once every quarter and appraise the performance of the members of the Board on the basis of their participation in the proceedings of the Board and submit a report to the Selection Committee constituted under rule 87 of these rules. (emphasis supplied)

6. Although on the one hand it is appreciated that the JJ Act and the rules made thereunder provide a detailed, comprehensive and self-

contained code for dealing with juvenile delinquency and related matters, it would appear that by reason of the detailed provisions so made, the statutory scheme has also become somewhat labyrinthine and arcane, by reason of which it seems, stakeholders are losing their way in the scheme in some ways.

7. Be that as it may, by way of the present order, our endeavour is to dispose of matters which, on a plain reading and straight application of section 14 of the JJ Act, simply cannot remain pending and are required to be closed by termination of proceedings. Section 14 mandates the automatic termination of inquiries which answer to the following ingredients :

- i. They must relate to a 'child' alleged to be in conflict with law;
- ii. They must pertain to 'petty offences' alleged against that child;
- iii. They must be inquiries that remain 'inconclusive' even after 04 months plus a maximum extension of 02 months from the 'date of first production' of the child before the JJB.

8. Now, for an inquiry to even commence before a JJB, it obviously must relate to a child who is in conflict with law, meaning thereby, that first and foremost, the age of the subject of inquiry must be determined in accordance with section 94 of the JJ Act. Furthermore, the provision mandates that the period of 04 months (which may be extended by a period of 02 months) is to be reckoned from the 'date of first production' of the child before the JJB.

9. In the course of submissions made before us by learned counsel appearing for the parties as also by Ms. Anu Grover Baliga, learned Secretary, Delhi High Court Legal Services Committee, whose assistance was sought by this court, it is gathered that the process of age determination itself takes substantial time, by reason of which matters remain pending before JJBs for even longer than the maximum 06 month period prescribed in section 14. Worse still, it is pointed-out, that in the past several months, by reason of the truncated functioning of courts resulting from the prevailing COVID-19 pandemic, juveniles were not being produced before the JJBs at all, either in-person or through video-conferencing; and, since it was understood that the time of 04 months stipulated in section 14 would begin to run only after the date of first production of the child before the JJB, hundreds of matters relating even to petty offences have been languishing at various stages for much longer than 04 months.

10. As seen from the collated data presented before us by the DCPCR based on input data received from various JJBs in Delhi, the consequence of the delay is that around 1903 inquiries against juveniles relating to petty offences are pending as on 30.06.2021; and that this number has in fact increased by 44% within just six months between 31.12.2020 and 30.06.2021.

11. Though by way of consolation, it is also submitted that most children who are implicated in petty offences are not 'apprehended' by the police, or if apprehended, are almost immediately handed-over to the care and custody of the parents or guardians; and that therefore, the mere pendency of an inquiry under section 14 does not operate to the child's detriment. We are, however, of the view that even the mere pendency of an inquiry against a child is certainly stigmatic and impacts the dignity of the child; and therefore, this situation must not be allowed to continue, especially when it is plainly in the teeth of the provisions of section 14(4).

12. To put it quite simply, we find the aforesaid position completely unacceptable.

13. We think that the large pendency is a result of a flawed understanding of the statutory dispensation. We say so for the following reasons :

i. The inquiry contemplated in section 14, quite evidently, can relate only to a 'child' who is alleged to be in conflict with the law. Accordingly, the determination as to whether the subject of an inquiry is a child, is a jurisdictional factor, which must be answered at the very threshold by the JJB, failing which the process of inquiry cannot even begin. Since section 14 contemplates a maximum of 06 months within which the entire inquiry must be completed, it cannot be said that the 06 month period would only commence once the subject is declared to be a child; or, that the time taken for age determination would be in addition to the 06 month period provided for completion of the inquiry under section 14. In our view, the age determination process must be completed within the 04 month period, extendible by 02 months, stipulated in section 14 and cannot extend beyond that period. And since section 14 says that the period of 04 months shall run from the date of first production of the child before the JJB, we direct that in consonance with the spirit of section 10, the child must be so produced before the JJB, whether or not apprehended or otherwise detained, without any loss of time but in any case within a period of twenty-four hours of the child becoming subject of processes under the JJ Act;

ii. Moreover, it bears attention that section 94 stipulates that determination of age is to be made, in the first instance, by the obvious appearance of the subject brought before the JJB; and if the appearance leaves any doubt as to age, then by the stepped methodology contained in section 94(2), beginning with the specified date of birth certificate and, if required, ending with an ossification test. It is to be noted that the proviso to section 94(2)(iii) stipulates that age determination by an ossification test conducted on the orders of JJB, shall be completed within 15 days from the date of such order, from which it is only logical that age determination by other methodologies contemplated in section 94(1) and 94(2) cannot take months-on-end. Since even age determination is required to be made, in the first instance, by the obvious appearance of the subject, it is inconceivable that the production before the JJB itself can be delayed beyond the 24 hour period stipulated in section

14. Clearly, statutory provisions did not contemplate an extraordinary and unprecedented situation like the recent pandemic; and therefore, in ordinary times, it was expected that juveniles would be produced before the JJBs within the stipulated time. However, even in the context of the pandemic, in a recent judgment dated 28.07.2020 rendered in W.P.(C) No. 4361/2020 by a Division Bench of this court headed by Hon'ble the Chief Justice in *Bachpan Bachao Andolan vs GNCTD & Ors.*, the court has issued directions addressing the unprecedented situation, inter-alia directing as follows:

□(b) We are informed that proceedings before the Child Welfare Committees and other bodies where the children are required to participate, are already being conducted by video-conference. We direct that this process should be continued, and the requirement of taking the child out of the home/ Child Care Institution should be avoided as far as possible. whereby, as per the directions issued, children in conflict with law ought to have been produced before the JJBs via video- conferencing, which would have answered the requirement of the date of first production of the child under section 14(2). This however, we are informed, has not been done in most cases.

15. All else apart, we are clear however, that on a plain reading of section 14(4), if an inquiry relates to a 'child'; and the allegation is that the child has committed a 'petty offence'; and a period of 04 months has elapsed from the date of the child's first production before a JJB; but the inquiry remains inconclusive, by operation of law, that is to say automatically, such inquiry proceedings are to 'stand terminated'. In our view, beyond the stipulated period, the very jurisdiction of a JJB to continue with such an inconclusive inquiry, ceases, without any further requirement. It goes without saying that this period of 04 months can be extended by a maximum of 02 more months but only after recording reasons in writing for such extension.

16. Though, as per the clear mandate of the Division Bench of this court in *Bachpan Bachao Andolan* (supra), children ought to have been produced before the JJBs via video-conferencing during the pandemic, without delving further into that lapse, and with a view to promptly correcting the prevailing anomalous situation, we are persuaded to pass the following directions, in line with section 14(4) and in the best interests of affected juveniles, for immediate and peremptory compliance :

i. In all cases alleging petty offences against children/juveniles, where the inquiry has been pending and remains inconclusive for longer than 01 year, regardless of whether the subject child/juvenile has been produced before the JJB, all such inquiries shall stand terminated with immediate effect; a formal order closing all such matters shall be passed by the JJBs in each file within 02 (two) weeks from the date of this order; and any children/juveniles detained in relation to such inquiries, shall be released immediately without waiting for recording the formal orders. In issuing this direction we take note of the fact that when a report/final report is filed alleging a petty offence, it is the State's own case, that the subject is a child or juvenile. We are passing these directions *ex debito justitiae*, to correct an error in the judicial dispensation, since we believe there is no justification in keeping such matters pending any longer;

ii. Insofar as cases against children/juveniles who are alleged to have committed petty offences, where inquiries are pending for between 06 months and 01 year, the State is directed to apprise this court of the number of such cases pending in each JJB in Delhi along with the date of institution of the inquiry and the date of first production (if any) in each case, within 10 (ten) days from the date of this order, so that further necessary directions in that behalf may be passed by this court.

17. We make it clear that the termination of inquiries as per our directions under section 14 would not in any manner deter the preparation and implementation of requisite rehabilitation and social reintegration plans as contemplated inter-alia in chapters V, VI and VII of the JJ Act, which would be proceeded in accordance with law.

18. List for further consideration on 12.10.2021.

SIDDHARTH MRIDUL, J.

ANUP JAIRAM BHAMBHANI, J.

SEPTEMBER 29, 2021 ds [Click here to check corrigendum](#), if any