

GAHC010044052017



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : WP(C)/6286/2017

SNEHALAYA CENTER FOR CHILD RIGHTS and ANR.
HAVING ITS OFFICE AT NEAR MEGHDOOT CINEMA HALL K.B. ROAD,
PALTAN BAZAR, GUWAHATI, ASSAM, PIN - 781008, REP. BYITS DIRECTOR
FATHER THADEUS KUJUR.

2: FATHER TRADEUS KUJUR
S/O TEOPHIL KUJUR DIRECTOR
SNEHALAYA
R/O SNEHALAYA
CENTRE FOR CHILD RIGHTS
K.B. ROAD
PALTAN BAZAR
GUWAHATI - 781008
ASS

VERSUS

THE UNION OF INDIA and 7 ORS.
REP. BY THE SECRETARY TO THE MINISTRY OF WOMEN and CHILD
DEVELOPMENT, SHASTRI BHAWAN NEW DELHI- 110001.

2:THE NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS

REP. BY MEMBER SECRETARY
5TH FLOOR
CHANDERLOK BUILDING
36 JANPATH
NEW DELHI- 110001.

3:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE SOCIAL
WELFARE DEPARTMENT
DISPUR
GUWAHATI - 781006

ASSAM

4:THE DEPUTY COMMISSIONER

KAMRUP
METRO
OFFICER OF THE DEPUTY COMMISSIONER
PANBAZAR
GUWAHATI - 781001
ASSAM

5:THE DIRECTOR OF SOCIAL WELFARE

ASSAM
KACHARI GHAT
M.G. ROAD
UZAN BAZAR
GUWHATI -1
MG ROAD
LATASIL
UZAN BAZAR
GUWAHATI
ASSAM
PIN - 781001.

6:THE STATE CHILD PROTECTION SOCIETY

ASSAM CUM DIRECTOR
SOCIAL WELFARE
VISHNU RABHA PATH BELTOLA
GUWAHATI
ASSAM- 781028.

7:THE CHILD WELFARE COMMITTEE

KAMRUP METRO
BAL BHAWAN
OPPOSITE TO VIVEKANANDA KENDRA UZAN BAZAR
GUWAHATI - 781001
ASSAM

8:DISTRICT CHILD PROTECTION OFFICER

NOUJAN ROAD
UZAN BAZAR
HOUSE NO. 41
1ST BYE LANE
GUWAHATI-781001

Advocate for the Petitioner : MR N DUTTA

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

30.05.2024

Heard Mr. K. N. Choudhury, learned Senior Counsel assisted by Mr. M. Das, learned counsel for the petitioner. Also heard Ms. A. Gayan, learned counsel appearing for respondent nos. 1 and 2 and Mr. B. J. Talukdar, learned Senior Counsel and Government Advocate appearing for respondent nos.3, 4, 5, 6, 7 and 8.

2] The petitioner is before this Court assailing the impugned order dated 13.10.2017 issued by the National Commission for Protection of Child Rights vide order no. F.NO.AS-83787/2017-18/JJ. By the said order, the Commission directed as under :

1. FIR to be registered against the unregistered Home within 24 hours as per section 42 of J.J. Act, 2015.
2. CWC's order to keep the children to unregistered Home is violation of J.J. Act, 2015, Deputy Commissioner, Kamrup (Metro) shall ensure that all the children residing in the unregistered Home be shifted to some other registered Home.
3. Deputy Commissioner will take action on CWC's role in this matter u/s 27 (9) of J.J. Act, 2017.
4. The Deputy Commissioner as per section 27 sub section (8) of J.J. Act, 2015, which states that "*The District Magistrate shall conduct a quarterly review of the functioning of the Committee*" 2015, shall conduct review of the CWC Kamrup (Metro) within 07 days.
5. The activities of the said Home since its inception in 2007 shall also be inquired including other unregistered Homes of the same society and report to be submitted to the Commission within a month time from the date of.
6. In case of non-compliance of this order till 16.10.2017, the order will be forwarded

to the Legal Cell of NCPCR for initiating action against the responsible authority.

7. Disciplinary action has to be taken against the DCPO, Kamrup for non-implementation of J.J. Act, 2015.

3] It is the submission of the learned counsel for the petitioner that the petitioner is the Trust which was established by executing proper trust deed and the purpose of the trust is to establish, run and manage shelter homes for destitute children as well as for adults. In terms of the objects of the Trust, 5 separate homes were established across the city of Guwahati as residential homes for small boys, girls as well as for destitute adults. As required under the Juvenile Justice (Care and Protection of Children) Act, 2015, the Trust applied for registration before the competent authority i.e, the Director of Social Welfare, Government of Assam under the 2006 Act for registration of the Trust. A certificate of registration under the Juvenile Justice (Care and Protection of Children) Act, 2000 was issued by the Director of Social Welfare on 16.07.2007. By the said certificate it was certified that "Snehalaya, Don Bosco" with registered Office at Kamrup District as on 16.07.2007 was registered under Section 34(3) of the Juvenile Justice (Care and Protection of Children) Act, 2000 as amended in 2016 under the Department of Social Welfare, Government of Assam. In terms of the said Registration granted, the Trust continued its philanthropic activities of running 5 different homes. The Snehalaya homes, as the 5 homes are collectively called are situated in different parts of the city. It is submitted that these five (5) homes are (i) Children's home at Dhirenpara (for boys), (ii) Don Bosco shelter home at Pan Bazaar (for boys), (iii) Auxilium Snehalaya at Noonmati (for girls and boys), (iv) Jyoti Snehalaya at Beltola (for girls and boys) and (v) Ila Snehalaya at Bethkuchi (for destitute adults). It is submitted that all these homes are managed and looked after by the Snehalaya Trust and have been rendering services in the care and protection of children as

well as destitute adults suffering from HIV and AIDS.

4] 19.08.2017 the National Commission for Protection and Child Rights visited two (2) of the homes under the Snehalya Trusts and thereafter, the impugned order dated 13.10.2017 was issued. The learned counsel for the petitioner submits that this order was issued on incorrect facts and therefore it is not correct to say that the homes were not registered. Each home is a unit of "Snehalya Trust" and the Trust itself was registered under the Juvenile Justice Act (Care and Protection of Children) Act, 2000, as per the certificate given by the Director of Social Welfare on 16.07.2007. It is submitted that where the homes are different units of the Trust, separate individual registration of the homes are not necessary. It is submitted that pursuant to the enactment of the Juvenile Justice Act (Care and Protection of Children) Act, 2015, a public notice was issued making it mandatory for all institutions whether run by the Government or Voluntary Organizations, either wholly or partially for housing Children or running Child Care institutional Services for Children in need of Care and Protection or Children in Conflict with Law (Children Home, Open Shelter, Specialized Adoption Agency, fit facility or place of safety) must be registered under Section 41 of the Act. By the said notice it was also informed that these institutions which have not been registered under the said Act are requested to make an application with a copy of its registration certificate under Societies Registration Act-1860 or other Trust Rules, Byelaws, Memorandum of Association and list of Governing body. In response to this public notice, the Snehalya Trust submitted its registration certificate and also applied for separate registration of its four (4) different units run by the Snehalya Trust. In response to the applications made by these four (4) units of the Trust individual registration of the Units were given on 01.02.2019 by the Secretary, Social

Welfare cum State Child Protection Society under the J.J. Act. The registration was valid for 5 years.

5] It is submitted that the impugned order passed by the Commission was not based on correct facts and well prior to the impugned order passed, these homes were already registered as is evident from the documents enclosed in the writ petition as well as the averments made in the affidavit by the State Government. Under such circumstances, the findings of the NCPCR in its impugned order that there was no registration and the consequential direction to register the FIR against the unregistered homes and that the children are to be taken out of these unregistered homes and put in registered homes are contrary to the provisions of the Act and is not supported by the facts as is evident from the pleadings placed before the Court. Therefore, it is submitted that the impugned order be interfered with, set aside and quashed, and all consequential steps that were directed to be undertaken be also interfered with and set aside.

6] Ms. A. Gayan, learned CGC for respondent nos. 1 and 2 submits that an affidavit-in-opposition has been filed contesting the contentions made in the writ petition. As per the mandate of the Act it is the homes which are required to be registered. Since there was no registration of the individual children's homes, the NCPCR upon due consideration of the facts and upon visits made to the homes passed the order dated 13.10.2017 which is impugned in the writ petition and therefore, there is no infirmity in the impugned order. She, however, fairly submits that as on date all the individual homes are registered and therefore the provisions of the Act have been complied with.

7] Mr. B. J. Talukdar, learned Senior Counsel appearing for the State Government submits that as per the records available with the State

Government, the Trust was already registered in terms of the certificate issued by the State Government dated 16.07.2007. In response to the subsequent application by the Trust, the individual homes have also been registered by the competent authority and the State Government.

8] The learned counsel for the parties have been heard. Pleadings available on record are also carefully perused.

9] The petitioner before the Court is the Trust which has been set up and registered by the Trust deed dated 02.09.2002, where the aims and objectives are being elaborately set out. The petitioner Trust has set up four (4) different homes for children as well as one (1) home for destitute adults. The certificate of Registration was granted to the petitioner's Trust on 16.07.2007 by the Department of Social Welfare. Upon due registration, the Trust carried on with its activities of running and managing different units of destitute adults and children homes.

At this stage a reference to the relevant provisions of the Act is necessary. Under section 2(19) of the Juvenile Justice Act (Care and Protection of Children) Act, 2015, it is provided that a Children's Home means as a children's home established or maintained in every district or parts of the district by the State Government either by itself or through voluntary or non Government organizations registered for such purposes specified in Section 50. Under Section 2(51) 'Registered' with reference to child care institutions or agencies or facilities managed by the State Government, or a voluntary or non-governmental organization, means observation homes, special homes, place of safety, children's homes, open shelters or Specialised Adoption Agency or fit facility or any other institution that may come up in response to a particular need or agencies or facilities authorised and registered under Section 41, for

providing residential care to children, on a short-term or long-term basis;"

Under Rule 41 of the Act provides as under :

41. Inspection - (1) The State Government shall constitute State and district level inspection committees.

(2) The State Inspection Committee shall comprise of a maximum of seven members from among the State Government, namely the Board of Committee, the State Commission for the protection of Child Rights, the State Human Rights Commission, State Adoption Resource Agency, medical and other experts, voluntary organizations and reputed social workers. The Member-Secretary, State Child Protection Society shall be the Chairperson of the State Inspection Committee.

(3) The State Inspection Committee shall carry out inspections of the Child Care Institutions as defined under sub-section (21) of section (2) of the Act housing children in the State in Form 46.

(4) The State Inspection Committee shall carry out random inspections of the institutions housing children to determine whether such institution is housing children in need of care and protection.

(5) The State Inspection Committee shall submit report to the Secretary of the Department implementing the Act.

(6) The State Inspection Committee shall make recommendations for improvement and development of the Institutions in accordance with the provisions of the Act and the rules made there under and shall forward the same to the State Child Protection Society Or the District Child Protection Unit for appropriate action.

(7) The State Inspection Committee shall interact with the

children during visits to the institution to determine their well-being and to get their feedback.

(8) The District Inspection Committee shall comprise of following members:

(i) Member of the Board Or the Committee;

(ii) District Child Protect Officer as the Member Secretary;

(iii) Medical Officer;

(iv) One member of the civil society working in the area of child rights, card, protection and welfare;

(v) One mental health expert who has experience of working with children.

(9) The District Inspection Committee shall inspect all Child Care Institutions in the district in Form 46.

Section 42 of the Act provides as under :

42. Evaluation. -- *(1) The evaluation of functioning of the Board, Committee, special juvenile police units, registered institutions, or recognized fit facilities and persons under the Act may be done by the Central Government Or the State Government once in three years through institutions and agencies such as reputed academic institutions, schools of social work of Universities, Management Institutions, multi-disciplinary Committee especially constituted for the purpose etc.*

(2) The findings of the evaluation as per sub-rule (1) above shall be shared between the Central and the State Governments in order to strengthen and improve the functioning of different structures.

10] A careful perusal of the provisions of the Act as extracted above reveals that there is no specific description or parameters under the Act to define a child care institution or a child safety home.

The submissions of the learned counsel for the petitioner is that the petitioner is a Trust which runs child care institutions and/or destitute homes and for which purposes five (5) units/homes were established. So it is the Trust which is to be understood to be one complete unit offering child care services in terms of the mandate of the Act of 2000 as well as under the present Act of 2015.

11] From the perusal of the pleadings it is seen that there is no dispute that this Trust was registered w.e.f. 16.07.2007. No materials have been placed before this Court by the respondents to support the contention that the each unit of the petitioner has to be registered separately. If the petitioners' Trust is taken as child care institution, notwithstanding that it has several different units under it, there is no prescription under the Act which provides for registration of each separate unit specifically. The object of the Act is to provide for proper care for child development and social integration by adopting a child friendly approach to the adjudication and all parameters in respect of children-in-conflict with law and for the rehabilitation through the processes provided in the institutions and projects that are established. The establishment of children's home specified in Section 50 (2) of the Act wherein the State Government shall

designate any children's home as a home fit for children with special needs delivering special services depending on the requirements. Therefore, upon careful perusal of the provisions of the Act and the Rules, this Court cannot come to a conclusion that the Act prevents or restricts establishment of a children home by way of Trust or Society and that such established children's home is prohibited under law to have different units unless each such Unit(s) are separately registered. There is no provision in the Act which specifically provides for separate registration of each of the units as mandatory requirement. Therefore, on the facts which have been placed before the Court, it is held that the petitioner was granted registration by the appropriate competent authority and the State Government w.e.f. 16.07.2007 and the children's homes which were run by the Trust are also deemed to be registered w.e.f. 16.07.2007 under the provisions of the Act.

12] In such view of the matter, in the order dated 13.10.2017, the findings arrived at by the NCPCR cannot not be held to have been based on proper and correct appreciation of the facts or law. Be that as it be, w.e.f. 01.02.2019 the individual units of the Trust have also been registered and the same is not disputed by the respondents. The Trust was registered w.e.f. 16.07.2007 and the remaining 4 units that have been registered w.e.f. 01.02.2019,

13] In that view of the matter, this Court is of the view that the findings

arrived at by the NCPCR are not based on correct facts. As such, this Court has arrived at a finding that the impugned order dated 13.10.2017 passed by the NCPCR is not based on correct facts. Accordingly, the impugned order dated 13.10.2017 is set aside and the directions contained in the order will carry no consequence as on date. Accordingly, all consequential actions that may have been taken pursuant to the impugned order dated 13.10.2017 passed by the NCPCR shall not be proceeded any further against the petitioner's Trust. The petitioner, however, will continue to adhere to the mandate of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 and other provisions of law governing child care and protection.

With the above observations this writ petition stands disposed of in terms of the above.

JUDGE

Comparing Assistant