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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 787/2012 & CM No.10657/2013 (u/S 151 CPC)
A.K. ASTHANA Petitioner

Through: Petitioner in person.

Versus

UNION OF INDIA & ANR Respondents

Through: Mr. Anil Soni, CGSC for R-1.
Ms. Nisha Bhambhani with Ms.
Lakshita Sethi, Advs. for News
Broadcasters Association.
Mr. Aagney Sail, Adv. for NCPCR.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **25.03.2015**

1. The counsel for National Commission for Protection of Child Rights (NCPCR) seeks more time for making the application to the Supreme Court for clarification of the order in Bachpan Bachao Andolan petition, as recorded in the order dated 5th November, 2014.

2. The petitioner appearing in person states that the Guidelines for hospitals, Courts, competent authorities under Juvenile Justice (Care and Protection of Children) Act, 2000, framed under the directions of this Court and accepted and approved by us in the order dated 5th November, 2014 remain to be enforced and implemented for the reason of non-publication / non-circulation thereof. He also states that NCPCR and State Commission for Protection of Child Rights (SCPCR) have not filed their respective reports in this Court regarding compliance level of applicable laws, rules, regulations and guidelines by all concerned, as directed vide Clause 2.15 of

the Guidelines For Media Reporting on Children framed in these proceedings and inspite of the order dated 18th December, 2013.

3. We direct the NCPCR and the SCPCRs including the Delhi Commission for Protection of Child Rights (DCPCR) to, before the next date of hearing, file reports in terms of Clause 2.15 aforesaid and in compliance of order dated 18th December, 2013 in this regard.

4. As far as the grievance with respect to non-publication / non-circulation of the Guidelines recorded in our order dated 5th November, 2014 is concerned, we direct the Registry of this Court to immediately forward a copy of the said order dated 5th November, 2014 to all Child Welfare Committees and Juvenile Justice Boards (JJBs), to ensure implementation and compliance of the Guidelines contained therein. We further direct the Registry of this Court to also forward a copy of the said order to the Directorate of Health Services of Government of NCT of Delhi for onward circulation to all hospitals / nursing homes in Delhi. A copy of the said Guidelines be also forwarded to the Ministry of Health and Family Welfare, Government of India who are directed to circulate the Guidelines contained therein all over the country. Similarly, a copy of the said order dated 5th November, 2014 be forwarded to all the District & Sessions Judges of Delhi for onward distribution to all the Courts. Compliance be reported by the Registry on the next date of hearing.

Renotify on 15th July, 2015.

Sd/-
CHIEF JUSTICE

Sd/-
RAJIV SAHAI ENDLAW, J

MARCH 25, 2015/ gsr
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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 787/2012 and C.M.No.10657/2013 (u/S 151 CPC).

A.K. ASTHANA
Petitioner

Through: Petitioner in person.

versus

UNION OF INDIA and ANR Respondents

Through: Mr. Anil Soni, CGSC and Mr. Naginder Benipal, Adv.

Ms. Zubeda Begum and Ms. Sana Ansari, Advs. for GNCTD.

Ms. Lakshita Sethi and Ms. Nisha Bhambhani, Advs. for NBA.

Mr. Aagney Sail, Adv. for NCPCR.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

O R D E R

05.11.2014

- 1. This petition filed as a Public Interest Litigation flags the issue, of the media while disseminating news, disclosing the name and identity of children in need of care and protection, without seeking the permission of the Child Welfare Committee and in violation of Section 21 of the Juvenile Justice (Care and Protection of Children) Act, 2000.**
- 2. The petition was entertained and vide order dated 8th February, 2012 a Committee was constituted comprising of, representatives of UOI, Govt. of NCT of Delhi, NGOs working for welfare of children,**

representatives of media etc. to deliberate upon the guidelines to be formulated to regulate media reporting and disclosure of details relating to children and to submit a report.

3. The aforesaid Committee proposed 'Guidelines for Media Reporting on Children' and which were approved by this Court with some modifications vide order dated 8th August, 2012 and ordered to be implemented with immediate effect. However it was subsequently informed that the said Guidelines remained to be implemented as there was no circulation and publicity. This Court accordingly incorporated those Guidelines in its order dated 5th December, 2012 and directed immediate implementation thereof.

4. The Committee aforesaid continued to deliberate on the guidelines to be followed by stakeholders other than media for reporting on children and now the National Commission for Protection of Child Rights (NCPCR) which was appointed as the convenor of the said Committee has along with its affidavit dated 3rd September, 2013 filed the guidelines proposed for stakeholders other than media for reporting on children. The counsel for the Central Government as well as the other appearing counsels state that the said guidelines have been formulated with their consultation, participation

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and efforts and all counsels state that the same be also incorporated in the order of this Court to ensure compliance therewith.

5. We have ourselves considered the said guidelines and find the same to be in order.

6. We accordingly direct that the following Guidelines framed by the Committee appointed by this Court and as approved by this Court should be implemented with immediate effect. The Guidelines are as follows:-

A. FOR HOSPITALS:

A.1. It shall be the duty of hospital or medical facility, where a child may be referred, admitted for treatment or being treated or which conducts any other medical examination / tests or provides any service to child, to ensure that no detail pertaining to identity and infringement upon privacy of such child is made available to media, unless ordered to do so by the Juvenile Justice Board or Child Welfare Committee concerned or any other court.

A.2. Inquiry Committee: Every hospital shall have an inquiry committee in place to inquire about cases of lapses regarding to breach

of privacy or confidentiality of children's identity. Inquiry committee will examine the reasons behind such lapse and shall recommend appropriate action against those responsible for such lapses, as per law.

A.3. Inquiry Committee shall have three members, out of which one member shall be an external person from a registered child rights organisation and it shall be headed by Chief Medical Officer of the hospital concerned. It shall be the responsibility of Chief Medical

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officer of hospital concerned to initiate inquiry committee meeting either on his / her own cognizance or on being complained about such lapse having been committed. Complainant, as well as, adversely affected

parties, shall be given reasonable opportunity of being heard in writing, before such committee finalizes its findings. A copy of such findings shall be provided to affected parties. Inquiry shall be completed within a period of 3 months from the date of incident being reported. Chief Medical Officer shall take action as per recommendation of the Inquiry Committee within one week from the conclusion of inquiry and shall intimate all members of the Inquiry Committee about action taken. A copy of proceedings of Inquiry Committee, copy of complaint, findings along with action taken report shall be submitted to State Commission for Protection of Child Rights or National Commission for Protection of Child Rights (Where State Commission for Protection of Child Rights does not exist) within one week from the implementation of Inquiry Committee's recommendations. The Commission concerned, upon receipt of inquiry committee case papers, shall record its satisfaction to the inquiry and if not satisfied shall take cognizance and initiate its own inquiry as per provisions of the Commission of Protection of Child Rights Act, 2005.

A.4. In case, the person/s responsible for lapse are outside the authority of Hospital, the head of Inquiry Committee shall mention so in his / her report to State / National Commission for Protection of Child Rights who in turn shall take up the matter with authority appropriate to cause action to be taken.

A.5. ?Hospital? means any hospital which comes under jurisdiction of Medical Council of India and includes any pathology, clinic or facility used for medical purposes.

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B. FOR COURTS

B.1. Courts shall obliterate details leading to disclosure of identity of a child from judicial proceedings before issuing a certified

copy or uploading them on the website.

B.2. Cause lists and case titles in the cases shall not mention the name of child. Instead pseudo names i.e. ?XYZ? or ?ABC? shall be used to refer to a child's name.

B.3. Registry / Reader / Alhmad of court concerned shall not accept any application as may be filed by lawyers or In-person parties, if they contain reference to the name of child, provided that in appropriate cases courts may permit so, after giving the reason in writing.

B.4. Inspection of judicial record shall be permitted only when an undertaking is given that child's identity related details shall not be disclosed to anyone else or be used for any other purpose except for legal representation in the case concerned or any other related case by the applicant applying for inspection.

B.5. Courts will ensure that names of children are not called at the time of hearing by the Court staff.

B.6. After declaration of juvenility or child in any case, the

Court passing such order shall obliterate the name and identity related details of such person being declared a juvenile or child from its record. For past court record, a direction to keep record in sealed cover shall be passed and application for inspection / certified copy shall be subject to clause B1 and B4 in addition to orders passed by concerned court.

FOR COMPETENT AUTHORITIES UNDER J.J. ACT:

C.1. Orders and cause list shall not mention name of child, as far as possible.

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C.2. Calling of names of children or juveniles shall not be permitted. It shall be duty of lawyer concerned, family members of child or probation officer or welfare officer from the children home / observation home concerned to ensure that concerned child is produced when the matter is taken up for hearing and appropriate directions in this regard will be issued to all concerned so that child does not suffer in any way due to failing from appearing before authorities. Proactive efforts from Juvenile Justice Board and Child Welfare Committees are to be made in this regard and to ensure that child does not suffer in any way because of such procedural requirements.

C.3. Every Juvenile Justice Board, Child Welfare Committee, institutions for juveniles in conflict with law and children in need of care and protection shall have notice boards prominently visible stating that disclosure of identity of a child is punishable under Section 21 of the Juvenile Justice (Care and Protection of Children) Act, 2000 and those who happen to witness any proceedings before such competent authorities are deemed to have consented to abide by such condition.?

7. The counsel for the NCPCR has also filed before us the Report dated 2nd September, 2014 of the Committee aforesaid inter alia to the effect that though guidelines pertaining to the police and lawyers have also been formulated by the Committee but could not be finalized as the same need clarification from this Court. It is stated that the Delhi Police Revised Standing Order No.Ops-47 with respect to missing persons read with Standard Operating Procedure drafted on the directions issued by this Court

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in W.P.(Crl.) No.249/2009 titled Court on its own motion Vs. State provides for the Police to immediately photograph every found / recovered child for purposes of advertisement and to make people aware of the missing child and for such photographs of the recovered child to be published on the website and through the newspaper and even on the T.V. so that the parents of the missing child could locate their missing child and recover him or her from the custody of the police. It is stated that the said procedure is violative of Section 21 supra which prohibits any report in any newspaper, magazine, news-sheet or visual media, of any

inquiry regarding a juvenile in conflict with law or a child in need of care and protection under this Act, from disclosing the name, address or school or any other particulars calculated to lead to the identification of the juvenile or child and publication of any picture of such juvenile or child without the permission of the Child Welfare Committee.

8. The counsel for the Central Government invites attention to the order dated 10th May, 2013 of the Supreme Court in W.P.(C) No.75/2012 titled Bachpan Bachao Andolan Vs. Union of India directing that every found / recovered child must be immediately photographed by the police for W.P.(C) 787/2012

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purposes of advertisement and to make people aware of the missing child and publication of the photographs of the recovered child on the website and through the newspapers and even on the T.V. so that the parents of the missing child could locate their missing child and recover him or her

from the custody of the police. He states that any prohibition imposed by the Court in the proposed Guidelines would be in contravention of the said order of the Supreme Court.

9. Though it appears to us that in neither of the orders aforesaid the provisions of Section 21 supra were considered but we have still enquired from the counsels whether not the aforesaid directions are necessary for immediately restoring the recovered child to his / her parents / guardians and that if it were to not so, considerably more time would be taken in locating the parents / guardians and informing them and resultantly in the recovered child staying for longer periods in a juvenile home or otherwise away from his parents / guardians and which is likely to be not in his / her interest and may be more prejudicial to the child.

10. The counsel for the NCPCR and the petitioner appearing in person though not controverting the aforesaid, state that still, in view of the W.P.(C) 787/2012 page 8 of 9

provisions of Section 21, a provision be made for obtaining the permission of the Child Welfare Committee.

11. We have enquired as to how much time is likely to be taken in obtaining the said permission.

12. The counsel for the NCPCR assures us that the said permission can be obtained within a day of recovery of the lost / missing / removed from the custody of parents / guardians child.

13. The counsel for the NCPCR at this stage states that he will be making an appropriate application to the Supreme Court for clarification of the order aforesaid in Bachpan Bachao Andolan petition.

14. We are also of the opinion that the same would be a more appropriate course.

15. List for further consideration on 28th January, 2015.

CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J

NOVEMBER 05, 2014

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