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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.REF. 1/2020

COURT ON ITS OWN MOTION

..... Petitioner

Through:

versus

STATE

..... Respondent

Through: Mr. Rahul Mehra, SSC (Criminal)
for the State.

Mr. H.S. Phoolka, Senior
Advocate with Ms. Prabhsahay
Kaur for the Intervenor.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

HON'BLE MR.JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **14.12.2020**

1. The hearing has been conducted through video conference.

CRL.M.A. No. 17294/2020 (for impleadment/intervention)

2. This application has been moved by the NGO *Bachpan Bachao Andolan* founded by the Nobel Laureate Shri Kailash Satyarthi, which is a reputed child rights organisation started in 1980, with its primary focus on child rights in India, including issues of child labour, right to education for children, retrieval of missing children, education and rehabilitation of children and other similar aspects of children's welfare.

3. By way of this application, *Bachpan Bachao Andolan* has sought impleadment, or in the alternative intervention, in the present criminal reference with the aim and intent of assisting this court in the disposal of the present reference.
4. Issue notice.
5. Mr. Rahul Mehra, learned Senior Standing Counsel (Criminal) appears for the Government of NCT of Delhi and accepts notice.
6. Mr. H.S. Phoolka, learned senior counsel instructed by Ms. Prabhsahay Kaur, learned counsel for the applicant submits that the applicant has a long and distinguished record as a child rights organization in India and deserves to be impleaded as a party-respondent in the present reference to assist this court on the serious questions that arise in the proceedings.
7. The application is allowed; *Bachpan Bachao Andolan* (NGO) is impleaded as intervenor in the matter; and Mr. H.S. Phoolka Senior Advocate is appointed as *Amicus Curiae* to assist this court.
8. The application is disposed of.

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9. The present criminal reference has been placed before this Court on Office Note dated 28.09.2020, based upon a Reference Order dated 17.08.2020 made by the learned Principal Magistrate, Juvenile Justice Board-II (JJB), Delhi Gate, New Delhi and addressed to the learned Registrar General of this Court under Section 395(2) Cr. P.C.
10. By way of the criminal reference under section 395(2) Cr.P.C., the learned JJB-II has referred for the decision of this court certain

questions of law in the case titled *State vs. 'P' & Anr.* arising from FIR No. 142/2019 registered under sections 302/120-B IPC at P.S.: Jaitpur titled pending before it.

11. To get context a brief reference may be made to the factual matrix of the case pending before the JJB, which is :
 - (a) On 10.07.2019 a Child-in-Conflict-with-Law (herein after referred to as 'CCL') 'P' was produced before the JJB-II in case FIR No.142/2019 registered under sections 302/120-B IPC on the allegation that he, along with his mother and two other persons, had murdered his father. On 13.11.2019, upon conducting an age inquiry, it was found that CCL 'P' was 16 years, 10 months and 5 days old at the time of commission of the alleged offence;
 - (b) Thereafter, upon making preliminary assessment in terms of section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015 ('Juvenile Justice Act', for short), *vidé* order dated 13.03.2020, the JJB-II concluded that CCL 'P' shall *not* be treated as an adult and shall be proceeded against, before the JJB;
 - (c) CCL 'P' was subsequently admitted to bail under section 12 of the Juvenile Justice Act; but it was found that since his father had been murdered and his mother was in judicial custody in the same case, no member of his extended family was willing to take responsibility of CCL 'P'. As per counselling report dated 26.06.2020, it was further recorded

that CCL 'P' was also not willing to stay with his extended family or relatives;

- (d) On the other hand, the reference records that CCL 'P' does not have any friends in the Place of Safety where he is presently housed; that he feels lonely; and that he wishes to pursue his studies and would like to go to a place where he would be encouraged to do so;
- (e) Since Observation Homes/Places of Safety are meant only for receiving CCLs temporarily during the pendency of an inquiry against them, such places are not equipped to cater to educational and other needs of children who are in need of care and protection;
- (f) In the circumstances, the reference records, that the Counsellor recommended that CCL 'P' be shifted to a Shelter Home/Children's Home and accordingly *vidé* order dated 01.07.2020 CCL 'P' was declared as a Child-in-Need-of-Care-and-Protection (herein after referred to as 'CNCP'); and was referred to the Child Welfare Committee (CWC) Lajpat Nagar, Delhi for being housed in a Children's Home in accordance with law;
- (g) However, it transpires that the CWC has reverted CCL 'P' back to the JJB (on two occasions), *inter alia vidé* order dated 03.07.2020, in which the CWC has recorded the following reasons for sending the juvenile back to the JJB :

“a) That before sending the child to the CWC, his case should be disposed of at JJB.

b) That it would be difficult for the Child Care Institution (hereinafter referred as 'CCI') to comply with two directions from two different Benches (CWC and JJB) in respect of a child who is having dual status i.e. CNCP as well as CCL.

c) That in the absence of Social Investigation Report (hereinafter referred to as 'SIR'), particulars of nature of case and final outcome of the case, it would be difficult for the CWC to restore such child with his parents/guardian or fit person. It is suggested that the requirement of execution of bond before the JJB by the person to whom such child is restored by CWC be dispensed with."

(Emphasis supplied)

- (h) Furthermore, upon CCL 'P' being sent back by the JJB *vidé* order dated 14.07.2020, the CWC sent the child back yet again to the Place of Safety recording the following in its order dated 16.07.2020:

"Section 8(3)(g) does not talk of producing the child before CWC for taking custody and placing the child in a Child Care Institution meant for child in need of care and protection only. As per section 17(2) the child can be referred to CWC if it is satisfied on enquiry that the child brought before it has not committed any offence. As per this the Hon'ble Board should dispose of the case at its level and pass an order about its CCL status.

Rule 10(i)(ii) needs to be read in the light of section 17 and section 18 of the Act where as per section 17, it requires the Board to be satisfied on enquiry that the child brought before it has not committed any offence and in case of section 18, the Hon'ble Board is satisfied on enquiry that a child irrespective of age has committed a heinous offence, which is not a case here in case of child P.

... .. The Hon'ble High Court of Delhi has clearly directed that such Children (having dual status of CCL & CNCP) who are

facing inquiries and were granted bail but are unable to fulfil conditions or whose parents did not claim them are housed in a separate dormitory. The Hon'ble High Court has not directed for handing over the custody of the child to CWC, rather it has directed the CWC, JJB and all other authorities to ensure that in case of such children, who face enquiry but are unable to avail of the bail order in their favour, they should be closer to the Probation Officers, who should on weekly basis interact with the concerned children and transmit the report to the CWC. The CWC would in turn monitor the situation on a period basis, once a month.

Again, as per section 49(1) 'Place of Safety' is an institution for placement of person above the age of 18 years and CCL who is between the age of 16-18 years and is accused of or convicted for committing a heinous offence.

The child Master P is placed in Place of Safety as he is accused of committing a heinous offence. The child will complete 18 years of age (D.O.B-1.09.2002) in about two months as per the SIR produced before the Bench.

The child was interacted by the Bench, LAC, DSLSA & counseling was conducted by counselor from Manas Foundation. The Bench is of the opinion that both CWC and the Board should work collectively to address the issue of the child for providing education, protection, care and vocational training. Since the child is first declared CCL, his custody should be retained in Place of Safety, Delhi as per the Act where he can continue his stay after the age of 18 years.

As such, the child Master P is return back to Place of Safety, Majnu ka Tila, Delhi & the Welfare Officer is directed to provide care and protection to the child and produce him before the JJB-II."

(Emphasis supplied)

- (i) In its reference, the JJB has further pointed-out that in other similar cases, CCLs who were also declared CNCPs have been dealt with differently by different CWCs; and in some cases, the children were sent back to the JJBs, while in others they were placed by the CWCs in Child Care Institutions (CCIs) other than Observation Homes. Four such examples have been set-out in the reference.
 - (j) It has accordingly been pointed-out by the JJB that there is no uniformity in the procedure followed by CWCs in respect of children having dual status of CCL and CNCP, irrespective of the gravity of the offence alleged.
 - (k) The JJB has also drawn the attention of this court to order dated 18.01.2018 made by a Co-ordinate Bench of this court in W.P.(C) No. 5137/2013, where observations have been made in relation to a juvenile with the dual status of a CCL and a CNCP.
12. In this backdrop, the JJB has posed the following questions of law for decision by this court:

Question 1. *Whether the expression ‘transferring to Committee’ used in section 8(3)(g) of Juvenile Justice (Care and Protection of Children) Act, 2015 and the expression ‘referring the child to the Committee’ used in Rule 10(1)(ii) of Juvenile Justice Rules, 2016 have different connotations?*

Question 2. *Where a Juvenile Justice Board, pending an inquiry of a CCL, accords him the dual status of being a CNCP also, can the Child Welfare Committee re-assess the findings/directions of the Juvenile Justice Board and form a different opinion to justify returning the child*

to Observation Home/Place of Safety/Special Home, under the Juvenile Justice Board?

Question 3. *In case of conflicting opinion of JJB and CWC regarding rehabilitation and restoration of a child with dual status, how can such conflict be resolved in best interest of such child? (Note : Although section 101 of the Act provides that an aggrieved party can file an appeal to Children's Court against the order of the Committee or the Board within 30 days from the date of such order. However, in the present case, no one has approached Children's Court on behalf of the CCL 'P' and there is no appropriate authority or procedure provided in the Act to resolve a situation akin to one at hand as in the present case?)*

Question 4. *Can the Child Welfare Committee restore a child having dual status to his parents/guardian/fit person during pendency of inquiry without furnishing of bond or undertaking before the Board by the person to whom such child is restored?"*

13. This Court is of the view that it is necessary to examine as to how a CCL who is also a CNCP, is to be dealt-with by the system in the best interests of the juvenile and in accordance with law. This question should first be deliberated at the administrative level in an effort to present before this Court the best possible scenarios, which this Court would then consider and approve.
14. In the circumstances, this Court is of the view that since this is a very serious matter concerning the welfare of children housed in children's homes in Delhi and it is imperative to look into the welfare of such children, a Committee comprising of the following members is hereby constituted:

- (a) Mr. Vijay Dev, Chief Secretary, Govt. of NCT of Delhi, who will be the Convenor of the Committee;
 - (b) Mr. Rahul Mehra, learned Senior Standing Counsel (Criminal), Govt. of NCT of Delhi;
 - (c) Mr. H.S.Phoolka, learned Senior Advocate as *Amicus Curiae* assisting this court; and
 - (d) Ms. Bharti Ali, Director of HAQ:Centre for Child Rights, B-1/2 Ground Floor, Malviya Nagar, New Delhi-110017.
15. The Committee shall *inter-alia* examine the following aspects and submit a report thereon to this Court :
- (a) Total number of CCLs housed in Delhi;
 - (b) Number of Observation Homes, Places of Safety, Special Homes and Children's Homes in Delhi;
 - (c) Total capacity of each of these types of homes and the number of children currently housed in them ;
 - (d) What are the facilities available in Observation Homes, Place of Safety and Special Homes for the education and rehabilitation of children, including for imparting vocational skills;
 - (e) How many Probation Officers are available in Delhi; how are they assigned for a given CCL; is there a dedicated Probation Officer appointed for each CCL; and whether they file reports on the status of the CCL for whom they are appointed;
 - (f) Do the Children Homes in Delhi have a separate room/dormitory for CCLs sent to them as CNCPs; what is the method used to keep them segregated from other CNCPs in such home; and are there separate facilities available for such CCLs who have a dual status of CCL and CNCP;

- (g) Whether any complaints have been received by any CWCs in respect of CCLs housed in Children Homes; and whether a complaint mechanism exists for such eventuality;
 - (h) Whether the GNCTD maintains any record or data on the status of employment and assimilation into society of CCLs after they are released by a JJB;
 - (i) Such other related or consequential aspect or matter, as the Committee may consider relevant.
16. To facilitate the functioning of the Committee all concerned authorities shall, upon his request, compile relevant data and furnish the same to Mr. Rahul Mehra, learned Senior Standing Counsel (Criminal) within 02 weeks, who will thereupon place the same before the Convenor. The Convenor of the Committee shall convene the first meeting of the Committee within 01 week of the complete data being placed before him.
17. List for reporting compliance as a part-heard matter on 21st January, 2021.
18. The order be uploaded on the website of this Court forthwith.

J.R. MIDHA, J.

ANUP JAIRAM BHAMBHANI, J.

DECEMBER 14, 2020/uj