PETITIONER:
SHEELA BARSE & ANR.

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT05/08/1986

BENCH:
BHAGWATI, P.N. (CJ)
BENCH:
BHAGWATI, P.N. (CJ)
MISRA RANGNATH

CITATION:
1986 AIR 1773 1986 SCR (3) 443
1986 SCC (3) 596 JT 1986 53
1986 SCALE (2)184
CITATOR INFO :
RF 1988 SC1531 (87)
E 1988 SC2211 (8)
RF 1992 SC1701 (35,48,53)

ACT:
Constitution of India, 1950, Art. 144,-Scope of-Duty of the Subordinate Courts/Judicial authorities to comply with the directions of the apex Court explained.
Constitution of India, Art 39(f)-Legislation, enactment and enforcement of Children's Acts-Constitutional obligation of State-States to enforce Children's Acls-District Judges to visit jails and see that child prisoners are accorded the benefit of Jail Manual.
Children Acts-Children-legislation for benefit of-Enactment and enforcement by States-Necessity of.

HEADNOTE:
The petitioner filed the present petition under Article 32 of the Constitution for release of children below the age of 16 years detained in jails within different States of the country, production of complete information of children in jails and existence of juvenile Courts, homes and schools in the country. The petitioner also asked for a direction to the State Legal Aid Boards to appoint duty counsel to ensure availability of legal protection for children as and when they are involved in criminal cases. The Supreme Court while directing the State Legal Aid and Advice Board in each State or any other Legal Aid organisation existing in the State concerned, to send two lawyers to each jail within the State once a week for the purpose of providing legal assistance to children below the age of 16 years who are confined in the jails, called for information from the District Judges about the children below the age of 16 years detained in various jails. However several District Judges did not comply with the direction within the time granted.
While showing concern and surprise that a direction given by the apex Court has not been properly carried out by the District Judges who are an effective instrumentality in the hierarchy of the judicial system, the Court,
444
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HELD: (1) Every defaulting District Judge who had not submit ted his report shall unfailingly comply with the direction and furnish the report by August 31, 1986 through his High Court, and the Registrar of every High Court shall ensure that compliance of the present direction is made. It is surprising that the High Courts have remained aloof and indifferent and have never endeavored to ensure submission of the reports by the District Judges within the time indicated in the order of this Court. [447G-H]

(2)(I) Enough the Children's Acts are on the statute book, in some States the Act has not been brought into force. This piece of legislation is for the fulfilment of a constitutional obligation and is a beneficial statute. There is hardly any justification for not enforcing the statute. Ordinarily it is a matter for the State Government to decide as to when a particular statute should be brought into force but in the present setting, it is appropriate that without delay every State should ensure that the Act is brought into force and administered in accordance with the provisions contained therein. [448B-E]

(2)(II) Such of the States where the Act exists but has not been brought into force should indicate by filing a proper affidavit as to why the Act is not being brought into force in case the Act is still not in force. [448E]

(3)(I) The safeguards which are provided in Jail Manuals prevalent in different States should be strictly complied with and the prisoners should have the full benefit of the provisions contained in the Manual. It is also the obligation of the High Court to ensure that all persons in judicial custody within its jurisdiction are assured of acceptable living conditions. [448F; 449A]

(3)(II) Every District and Session Judge should visit the district jail at least once in two months, and in the course of his visit, he should take particular care about child prisoners, both convicts and under trials and as and when he sees any infraction in regard to the children in the prison he should draw the attention of the Administration as also of his High Court. [448G-H]

JUDGMENT:

CRIMINAL ORIGINAL JURISDICTION: Writ Petition (Criminal) No. 1451 of 1985

Under Article 32 of the Constitution of India.

S.B. Bhasme, Harbans Lal, A.S. Bhasme, Badri Das Sharma,
445
C.V. Subba Rao, R. Kumar, D.N. Mukharji, R. Mukherji, Tapash A Roy, Dilip Sinha and J.R. Das for the Respondents.

The order of the Court was delivered by

BHAGWATI, CJ. This application under Article 32 of the Constitution has asked for release of children below the age of 16 years detained in jails within different States of the country, production of complete information of children in jails, information as to the existence of juvenile courts homes and schools and for a direction that the District Judges should visit jails or sub-jails within their jurisdiction to ensure that children are properly looked after when in custody as also for a direction to the State Legal Aid Boards to appoint duty counsel to ensure availability of legal protection for children as and when they are involved in criminal cases and are proceeded against. The Union of India and all the States and Union Territories have been impleaded as respondents.

On September 24, 1985, notice was directed to all the respondents. A few of the respondent States filed counter affidavits in response to the notice. The matter was adjourned on March 31, 1986. to April 15, 1986, to enable the respondents who had not yet filed their affidavits to file such affidavits. On April 15, 1986, after hearing counsel who appeared for the parties this Court pointed out:

> " ....It is an elementary requirement of any civilised society and it had been so provided in various statutes concerning children that children should not be confined to jail because incarceration in jail has a dehumanising effect and it is harmful to the growth and development of children. But even so the facts placed before us, which include the survey made by the Home Ministry and the Social Welfare Department show that a large number of children below the age of 16 years are confined in jails in various parts of the country ."

This Court directed the District Judges in the country to nominate the Chief Judicial Magistrate or any other Judicial Magistrate to visit the District Jail and Sub-Jail in their districts for the proposes of ascertaining how many children below the age of 16 years are confined in jail, what are the offences in respect of which they are charged, how many of them have been in detention-whether in the same jail or previously

446

in any other jail-before being brought to the jail in question, whether they have been produced before the children's court and, if so, when and how many times and whether any legal assistance is provided to them. The Court also directed that "each District Judge will give ut most priority to this direction and the Superintendent to each jail in the district will provide full assistance to the District Judge or the Chief Judicial Magistrate or the Judicial Magistrate, in this behalf who will be entitled to inspect the registers of the jail visited by him as also any other document/documents which he may want to inspect and will also interview the children if he finds it necessary to do so for the purpose of gathering the correct information in case of any doubt. The District Judge, Chief Judicial Magistrate or the Judicial Magistrate, as the case may be, will submit report to this court within 10 weeks from today. It will also be stated in the report as to whether there are any children's home, Remand Home or observation Homes for children within his district and if there are, he will inspect such children homes, remand homes and observation homes for the purpose of ascertaining as to what are the conditions in which children are kept there and whether facilities for education or vocational training exist. Such reports will be submitted by each District Judge through the Registrars of the respective High Courts to the Registrar of this Court. Each State Government will also file affidavit stating as to how many children homes, remand homes and observation homes for children are in existence in the respective State and how many inmates are kept in such children homes, remand homes or observation homes. The would also direct the State Legal Aid & Advice Board in each State or any other Legal Aid organisation existing in the State concerned, to send two lawyers to each jail within the State once in a week for the purpose of providing legal assistance to children below the age of 16 years who are confined in the jails." The writ petition was adjourned to July 17, 1986.

On April 24, 1986 the Court again made the following order:

> "We have adjourned the writ petition to 17.7.1986 for hearing and final disposal but we feel that it would be desirable to take it up when the Bench sits in vacation. We would direct that the matter may be placed for final disposal before a Bench of this Court on 24.6.1986. We have granted two months' time to the District Judges to make their reports vide our order dated 15.4.1986. Fresh intimation to this effect may be sent to the District Judges through the Registrars of the High Courts. We may re-

447

> iterate that as soon as the reports are received copies A thereof may be supplied to the Advocates during the vacation itself .. "

The writ petition was thereafter listed on July 12, 1986, during the long vacation for hearing. The Court found that though reports from several District Judges had come in response to the earlier direction, yet several District Judges had not sent their reports. The Court observed:

> "It is a little surprising that though we gave directions long back directing the District Judges/Chief Judicial Magistrates to send their reports of inspection of not only the District Jails but also Sub-Jails in the districts on or before 10.6.86 (24.6.86), the reports have not yet come in respect of several Districts and particularly in respect of sub-jails in the Districts. We propose to give directions for expediting submission of these reports at the next hearing of the writ petition. We are very keen that the High Courts should be requested to monitor the submission of these reports and we have therefore requested the counsel appearing in the case to make constructive suggestions in that behalf.

Six further weeks have passed beyond the time indicated if the order dated April 15, 1986, and even till this day analysis shows that several District Judges have not complied with the direction. This Court had intended that the report of the District Judges would be sent to the Registry of this Court through the Registrars of the respective High Courts. This obviously meant that the Registrars of the High Courts were to ensure compliance. We are both concerned and surprised that a direction given by the apex Court has not been properly carried out by the District Judges who are an effective instrumentality in the hierarchy of the judicial system. Failure to submit the reports within the time set by the Court has required adjournment of the hearing of the writ petition on more than one occasion. We are equally surprised that the High Courts have remained aloof and indifferent and have never endeavoured to ensure submission of the reports by the District Judges within the time indicated in the order of this Court. We direct that every defaulting District Judge who has not yet submitted his report shall unfailingly comply with the direction and furnish the report by August 31, 1986, through his High Court and the Registrar of every High Court shall ensure that compliance with the present direction is made.

448

Article 39(f) of the Constitution provides that the State shall direct its policy towards securing that children

are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. Every State excepting Nagaland has a Children's Act. It is a fact some of the Acts have been in existence prior to inclusion of the aforesaid clause in Article 39 by the amendment of 1976. Though the Acts are on the statute hook. in some States the Act has not yet been brought into force. This piece of legislation is for the fulfilment of a constitutional obligation and is a beneficial statute. Obviously the State Legislatures have enacted the law on being satisfied that the same is necessary in the interest of the society, particularly of children. There is hardly any justification for not enforcing the statute. For instance, in the case of Orissa though the Act is of 1982, for four years it has not been brought into force. Ordinarily it is a matter for the State Government to decide as to when a particular statute should be brought into force but in the present setting we think that it is appropriate that without delay every State should ensure that the Act is brought into force and administered in accordance with the provisions contained therein. Such of the States where the Act exists but has not been brought into force should indicate by filing a proper affidavit by August 31, 1986, as to why the Act is not being brought into force in case by then the Act is still not in force.

Under the Jail Manuals prevalent in different States every jail has a nominated committee of visitors and invariably the District and Sessions Judge happens to be one of the visitors. The purpose of having visitors is to ensure that the provisions in the Manual are strictly complied with so far as the convicts and the under-trials prisoners detained in jail are concerned. Being in jail results in curtailment of freedom. lt is, therefore, necessary that the safeguards which are provided in the Manual should be strictly complied with and the prisoners should have the full benefit of the provisions contained in the Manual. We direct that every District and Sessions Judge should visit the District Jail at least once in two months and in course of his visit he should take particular care about child prisoners, both convicts and undertrials and as and when he sees any infraction in regard to the children in the prison he should draw the attention of the Administration as also of his High Court. We hope and trust that as and when such reports are received in the High Court the same would he looked into

449

and effective action would be taken thereupon. It is hardly necessary A to point out that it is the obligation of the High Court to ensure that all persons in judicial custody within its jurisdiction are assured of acceptable living conditions.

The Court had made a direction to the State Legal Aid Boards to provide the facility of lawyer's service in regard to under-trial children. No report has yet been received from any Board as regards action taken in this direction. The State Boards will now furnish the information also by August 31, 1986.

Certain other directions have been given earlier by this Court. All such directions shall be complied with and returns shall be furnished to this Court also by August 31, 1986. We hope and trust that there would be strict compliance with these directions now made and there would be no occasion for any further direction to be made for the

self same purpose. The writ application shall be placed for directions on September 8, 1986.

The petitioner, we must record, has undertaken real social service in bringing this matter before the Court. She has stated to us that she intends visiting different parts of the country with a view to gathering further information relevant to the matter and verifying the correctness of statements of facts made in the counter affidavits filed by the respondent States. We are of the view that the petitioner should have access to information and should be permitted to visit jails, children's homes, remand homes, observation homes, Borstal schools and all institutions connected with housing of delinquent or destitute children. We would like to point out that this is not an adversary litigation and the petitioner need not be looked upon as an adversary. She has in fact volunteered to do what the State should have done. We expect that each State would extend to her every assistance she needs during her visit as aforesaid. We direct that the Union Government-respondent no. 1-shall deposit a sum of rupees ten thousand for the time being within two weeks in the Registry of this Court which the petitioner can withdraw to meet her expenses.

We would like to make it clear that the information which the petitioner collects by visiting the children's institutions in different States as indicated above is intended to be placed before this Court and utilised in this case and not intended for publications otherwise.

S.R.

450