

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

+ **WP(C) No. 8889 OF 2011**

Date of Decision: 11.05.2012

COURT ON ITS OWN MOTION

... PETITIONER

Through : Mr. Anant Asthana, In-person
Ms. Minna Kabir, volunteer, Child
Rights and Legal Aid Worker
Ms. Bharti Ali, HAQ: Centre for
Child Rights
Mr. Ajay Verma, Adv. for IBJ
India
Ms. Anu Narula, advocate-
intervener

VERSUS

DEPT. OF WOMEN AND CHILD
DEVELOPMENT & ORS.

... RESPONDENTS

Through: Ms. Shobhna Takiar, Ms. Indrani
Ghosh, Advs. for GNCTD & Tihar
Jail
Mrs. Asha Menon, Member
Secretary and Mr. Digvijay Singh,
Project Officer, DLSA

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

A.K. SIKRI, ACTING CHIEF JUSTICE:

1. In this letter petition, a very serious issue touching upon the rights of juvenile in conflict with law is raised. It is pointed out that many times

when the accused persons are arrested by the Police and even when they happen to be children, they are lodged in Tihar Jail and subjected to the hardship of Adult Criminal Justice System. This may happen due to sheer negligence, omission or even deliberately. In support of this plea, it is mentioned that under Right to Information Act, 2005, information was received by the applicant from Central Jail No.7 which discloses that during the period October, 2010 to August, 2011, 114 persons were shifted from Tihar Jail to Observation Homes after they were found to be juveniles. It is thus stated that without proper care being taken by the Police Authorities at the time of arrest to find out whether the concerned person is a juvenile or adult, they are lodged in the jails. It is further mentioned that generally from appearance of the persons arrested, it can be made out that he is a child but in many cases inspite of the family of the persons arrested producing the birth certificate etc. to show that the person arrested is a child, still these evidences are ignored by the police and only when enquiry is conducted determining the age and it is ultimately found that the accused person is a child, is he shifted to Observation Homes. In the process, such children are subjected to the hardship of Adult Criminal Justice System in the first instance which would have been easily avoided if proper care is taken at the time of arrest of such persons.

2. Notice was issued to the Government of NCT of Delhi, Commissioner of Delhi Police as well as Director General of Tihar Jail. Mr. Asthana, Advocate has also been appearing on various dates of hearing which have taken place thereafter. Application was also filed by

International Bridges of Justice (India) Trust (for short 'IBJ') for impleadment as it wanted to intervene in the matter and support the cause. Additionally, Ms. Anu Narula, advocate who has been espousing such causes also sought permission to intervene in the matter. They were accordingly allowed to do so. When the matter was taken up on 8.2.2012, application filed by IBJ was listed in which it was pointed out that on the visit of their representatives to Central Jail No.7 of Tihar Jail, some young offenders, who were shown as between the age of 18 to 21 years, were found to be juveniles. Following order was passed in that application:

“CM 1796/2012 (for directions)

In this application filed by International Bridges of Justice (India) Trust, it is submitted that while interacting with some young offenders in Central Jail No.7 which is specially meant for young offenders between the age of 18 to 21 years, it was discovered that about 17 of the prisoners were stated to be below 18 years of age. This was the claim of those prisoners who wanted to support the claim either by way of birth certificate or some other proof. The averments in this application disclose that in respect of these 17 persons, no proper enquiry is made either by the police while apprehending them or by the Magistrate while remitting them to remand or even by the Jail authorities while admitting these persons. The names of these persons are mentioned in the list annexed with the application. In respect of one person, namely, B, it is stated that even the ossification test was done as per which it is turned out that he was less than 18 years of age and he has now been released and sent to the Observation Room. In the aforesaid circumstances, we direct the Superintendent Jail to conduct immediately an enquiry into the age of other persons mentioned in the annexure. In those cases where there is a proof in

the form of school certificate/date of birth certificate from the municipal record etc., that should be acted upon immediately. In those cases where there is no documentary proof of age, ossification test of such persons be conducted and matter reported on the next date of hearing.”

3. National Commission for Protection of Child Rights (NCPCR) was also requested, by the order passed on that date, to conduct an enquiry in respect of the persons of these categories lodged in all the jail complexes of Tihar Jail. NCPCR conducted the enquiry along with Delhi Legal Services Authority (DLSA). When the matter came up on 21.3.2012, this Court was informed that the members of NCPCR and DLSA along with certain volunteers had visited Jail Nos. 6 and 7 in Tihar Jail complex and found various irregularities and illegalities committed in treating adolescent undertrials/prisoners, namely, (a) adolescent undertrials/prisoners are kept mostly in Jail No.7 though some are housed in Jail No.6 as well where woman prisoners are also lodged; (b) after interacting and making enquiries in respect of 278 prisoners/undertrials, the team found that more than 100 appeared to be juveniles, i.e. less than 18 years of age at the time of commission of offence. The ages of some of these prisoners were as low as 15-16 years.

4. It is of utmost importance to take note of the fact that a separate adjudicating and treatment mechanism has been established for persons below 18 years of age who have committed an offence. A child is a part of the society in which he lives. Due to his immaturity, he is easily motivated by what he sees around him. It is his environment and social

context that provokes his actions. It is because of this immaturity that they are not supposed to be treated as adult offenders.

5. The main reason for this inference is the fact that a young person is believed to be less blameworthy than adult, as he is prone to act in haste due to lack of judgment, easily influenced by others.

“From the inception, youth justice system has preceded from the assumption that the children and young people, by dint of their relative immaturity, are less able to control their impulses, less able to understand the seriousness of the offences and less able to foresee the consequences of their actions.”

(Youth Justice in England and Wales, John Pitts in the New Politics of Crime and Punishment, edited by Roger Mathews, Willian Publishing, Pg.71).

6. Along with the aforesaid, what needs to be kept in mind is the main object and purpose of the JJ Act. The focus of this legislation is on the juvenile’s reformation and rehabilitation so that he also may have an opportunity to enjoy as other children. In ***Pratap Singh v. State of Jharkhand (2005) 3 SCC 551***, the Supreme Court elaborating on the objects and purpose of the JJ Act, made the following observations:

“...The said Act is not only a beneficent legislation, but also a remedial one. The Act aims at grant of care, protection and rehabilitation of a juvenile vis-à-vis the adult criminals. Having regard to Rule 4 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, it must also be borne in mind that the moral and psychological components of criminal responsibility were also one of the factors in defining a

juvenile. The first objective, therefore, is the promotion of the well-being of the juvenile and the second objective to bring about the principle of proportionality whereby and whereunder the proportionality of the reaction to the circumstances of both the offender and the offence including the victim should be safeguarded...”

7. There can be no denial of the fact that lodging juveniles along with hardened adult criminals can have drastic implications on the physical and mental well being of a juvenile offender. Trying minor in adult courts and sentencing them in adult prison is totally against the object and purpose of the JJ Act. Even for hardened career criminals, jail can be a dangerous place, but for youth it can be especially dangerous as they are often vulnerable to prison victimization because of their size and age.

8. It cannot be overlooked that youth offenders often have psychological or social issues that need to be addressed as part of the rehabilitative process. Adult facilities/prison often lack the staff to address the needs of young incarcerated persons. In effect, what will happen is that if the youth is sent to an adult prison, then it is more likely for him to re-offend and escalate into violent behaviour than their peers who go to juvenile system, where rehabilitative services are far more extensive. Juveniles confined within an adult prison may not have social services they need but with constant access to criminal minds, there are more chances of them becoming a recidivist.

9. Taking stock of the aforementioned observations, it can be said without any doubt that the basis of the separate justice system for

juveniles is that the adolescents are different from adults, less responsible for their transgressions and more amenable to rehabilitation.

10. Personal liberty of a person is one of the oldest concepts to be purported by national courts. As long ago as in 1215, the English magna carta provided that,

“No free man shall be taken or imprisoned.... but..... by law of the land.”

11. Today, the concept of personal liberty has received a far more expansive interpretation. The notion that is accepted today is that liberty encompasses these rights and privileges which have long been recognized as being essential to the orderly pursuit of happiness by a free man and not merely freedom from bodily restraint. There can be no cavil in saying that lodging juveniles in adult prisons amounts to deprivation of their personal liberty on multiple aspects.

12. In this backdrop, lodging of juveniles in the prison clearly amounts to violation of their fundamental rights guaranteed under Article 21 of the Constitution of India; contrary to the provisions of The Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the JJ Act) apart from adverse psychological impact on these children. Obviously such a position is because of the reason that at the time of arrest of such persons, there is no proper age verification and had that been so, juveniles would not have been subjected to hardship of Adult Criminal Justice System. Therefore, keeping in view the aforesaid, this Court felt imminent directions were required to obviate the recurrence of

such cases and also for proper verification of those lodged in Jail who appeared to be minors. The Court thus gave various directions in its order dated 21.3.2012 and since these are to form part of the final directions as well, we quote the said order in its entirety:

“1. We are informed, that the teams comprising of the members of National Commission for Protection of Child Rights (NCPCR) & Delhi Legal Services Authority (DLSA) along with certain volunteers had visited Jail No.6 & 7 in Tihar Jail Complex; that adolescent under trials/prisoners are kept mostly in Jail No.7 though some are housed in Jail No.6 also where women prisoners are also lodged; these teams interacted and made enquiries in respect of 278 prisoners/under trials; after verification, these teams prime facie found more than 100 of the aforesaid 278 prisoners to be juveniles i.e. who were less than 18 years of age at the time of commission of offence. Ages of some of such prisoners were as low as 15-16 years.

2. This startling revelation clearly demonstrates that neither proper inquiry is being conducted by the Police at the time of arresting or by the Magistrates when such prisoners are produced before these Magistrates. Once it is found that such prisoners were juveniles, sending them to jail even for a day amounts to denial of their fundamental right and right to liberty.

3. We have also been shown the order dated 16th March, 2012 titled State v. R in FIR No.269/2011 passed by the Juvenile Justice Board-1, Sewa Kutir Complex, Kingsway Camp, Delhi-110009 presided over by Ms. Anuradha Shukla Bhardwaj, Principal Magistrate. This order pertains to a child who was in the year 2009 declared a juvenile, 15

years of age by JJB itself. However when he was again arrested in the year 2011, inspite of aforesaid declaration/proof that he was a juvenile even in the year 2011, he was produced before the Magistrate and was sent to jail. Even though at the time of his arrest the police officer who arrested had suspicion about his age and therefore he was taken to a hospital for examination of his age, but he could not get the report from the hospital about his age and in these circumstances the police officer produced that juvenile before the ordinary criminal court presided over by the Metropolitan Magistrate. This is inspite of the clear mandate of law that even in case of a suspicion the arrested prisoner is to be produced before the JJB. By the time his age was ascertained and the Magistrate ordered him to be sent to JJB, the said juvenile named R had spent 1 month and 17 days in jail which could have been avoided with little precaution.

4. We intend to lay down comprehensive guidelines and policy and would like to issue directions to the various authorities as to how to deal with such cases. For this purpose the petitioner Mr. Asthana as well as the interveners namely International Bridges of Justice (India) Trust as well as Ms. Anu Narula, Advocate have already stated that they would be working on this aspect and would submit draft guidelines which should be followed while dealing with such matters. While that exercise is going on, certain immediate directions are required to be passed in this matter. We accordingly direct:-

(i) Those inmates in jail about whom investigations were made by the teams of NCPCR /DLSA etc. and who are suspected to be juvenile as per initial investigations, shall be kept by the Supdt., Tihar Jail separately, insulated and segregated from all other

prisoners. They shall be produced in batches before the JJB. Further enquiry into the matter to conclusively determine their age shall be conducted by the JJB. Those who are ultimately found to be juvenile shall be shifted from the jail to observation home by the JJB.

(ii) Ms. Anu Narula, Advocate has also annexed, with her application, list of 19 such prisoners who according to her may be juveniles though their ages are shown as above 18; some of those may be in the list of the prisoners investigated by NCPCR /DLSA. Enquiry into their ages shall also be conducted in a similar manner.

(iii) Teams of NCPCR /DLSA in a similar manner as aforesaid, shall visit Tihar Jail. Those who appear to be juvenile, procedure for ascertainment of their ages shall also be followed in a similar manner as aforesaid by producing them before the JJB. These teams, shall document the cases and forward the list to jail authorities as well as JJB.

(iv) The investigating officers, while making arrest shall reflect the age of the prisoner arrested in the Arrest Memo. It would be the duty of the Police Officer to ascertain the said age by making inquiry from the prisoner arrested if such prisoner is in possession of any age proof etc. In other cases if prisoner, from appearance, appears to be juvenile and the police officer has belief that the prisoner is a juvenile, he shall be produced before the JJB instead of criminal court.

(v) The police authorities shall introduce "Age Memo" on the line of "Arrest Memo" which was evolved by the Supreme Court in the case of D.K. Basu v. State of West Bengal 1996(9) SCALE 298. A concrete and

well thought scheme in this behalf needs to be evolved by Special Juvenile Police Unit to address the concern. We direct Special Juvenile Police Unit to evolve such a scheme and place before us on the next date of hearing.

(vi) As and when a young person is apprehended/arrested and he is produced before the Magistrate, it will be the duty of the Magistrate also to order ascertainment of age of such a person. The Magistrate shall, in all such cases, undertake this exercise wherefrom the young person from his/her looks appears to be below 18 years of age and also in all those cases where in the arrest memo age is stated to be 18-21 years. A preliminary enquiry in this behalf shall be undertaken of all these young persons whose age is stated to be up to 21 years on the lines of judgment of the Supreme Court in *Gopinath v. State of West Bengal* AIR 1984 SC 237.

5. In order dated 16th March, 2012 passed by the JJB in R's case the JJB has made certain suggestions though at the same time it is stated that it is not competent to give any directions. After going through these suggestions, we are of the opinion that these suggestions are necessary to be followed and therefore we give hereunder following directions based on those suggestions.

In conducting the inquiry the:-

- I.O. shall ask the person if he has been a part of formal schooling at any point of time and if the child answers in affirmative the I.O. should verify the record of such school at the earliest.
- If the parents of the person are available, this inquiry should be made from them. The I.O. should ask the

parents if they have got the date of birth of the child registered with the MCD or gram pradhan etc. as provided under law and taken the answers/documents on record.

- Where no such document is found immediately and the I.O. has reasonable grounds to believe that such document might be existing he shall produce such person before Board and should seek time for obtaining these documents.
- A preliminary inquiry can be made from the parents of such person about the time of their marriage and the details of how many children do the parents have and after how long of the marriage were these children born.
- In addition to above an inquiry of previous criminal involvement of the juvenile shall necessarily be made with the effort to find if there is any past declaration of juvenility. For this the police should also maintain data of declaration of juvenility.

The inquiry conducted in each case shall be recorded in writing and shall form a part on investigation report in each case where a child claims his age up to 21 years irrespective of whether he is found a juvenile or an adult.

- Special Juvenile Police Unit shall set up a mechanism in place for necessary coordination and assistance to police officer who may require such information.
- An advisory/circular/Standing Order, as may be appropriate, be prepared by the Special Juvenile Police Unit for the assistance of police officer/IOs/JWOs for the purpose of assistance on matters related to age

inquiry. Such advisory/Circular/Standing Order shall also include the procedure which needs to be followed by the IOs in cases of transfer of cases from adult courts to JJB and vice versa.

- In each case, where a police officer arrests a person as adult and later on such person turns out to be a juvenile, DCP concerned shall undertake an inquiry to satisfy him/her that a deliberate lapse was not committed.

6. In so far as Magistrates are concerned, in order to undertake their job properly in the manner suggested above, we are of the opinion that there should be a special course/training programme conducted by the Delhi Judicial Academy for these Magistrates. The programme shall be devised by the Delhi Judicial Academy in consultation with DLSA and the Delhi Judicial Academy shall start orientation programme on these lines within one month from today in batches.

7. In our order dated 8th February, 2012 we had taken note of the submission of learned counsel appearing for International Bridges of Justice (India) Trust to the fact that it had discovered that about 17 of the prisoners were stated to be below 18 years of age. The learned counsel for the Jail Authorities had taken time to verify those cases. The learned counsel for the Jail Authorities today submits that three prisoners were found to be juvenile who have since been sent to observation room; six have already been released on bail and in respect of 8 remaining prisoners, report is awaited. She shall submit the report before the next date.

8. List for further proceedings on 2nd May, 2012.”

13. Thereafter, the matter was taken up on 2.5.2012 and some more directions/ clarifications were issued which are as under:

“8. Some immediate directions/clarifications are required, which we proceed to pass today itself as follows:

(i) In our order dated 21.3.2012, we have given certain directions. Direction No. (vi) was to the effect that in those cases where a young person is apprehended/arrested and as per the arrest memo, his age is stated to be between 18 ? 21 years, a preliminary enquiry in this behalf shall be undertaken by the concerned Magistrate on the lines of the judgment of the Supreme Court in Gopinath v. State of West Bengal AIR 1984 SC 237. We are informed that instead of holding preliminary enquiry in the manner suggested in the aforesaid judgment, the Magistrates have started sending files of these cases to Juvenile Justice Board. This is clearly impermissible. Juvenile Justice Board gets jurisdiction in those cases where the age of a person is less than 18 years. Therefore, the Magistrates shall not send those files to Juvenile Justice Board and are reminded that it is the Magistrates before whom such cases come up, have to hold preliminary enquiry themselves.

(ii) The file of the cases so sent to JJB shall be sent back to the concerned Magistrates.

(iii) Attention of the Magistrate is also drawn to Section 7A of the Juvenile Justice (Care and Protection of the Children) Act, 2000 as well as Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules 2009 in this behalf.

(iv) In the report which the NCPCR is proposing to file, it is pointed out that there are about 392 inmates lodged in Jail No.7 and Jail No.11, who are perceived to be juveniles. The

names of these persons are given in Annexure 'A'(colly). Copy is already handed over to the learned counsel for Delhi Police. It is also pointed out that in addition, there are certain girls/boys lodged in Jail No. 2 and 6 who are convicts, who appear to be less than 21 years of age even today. All these persons shall be segregated from others and lodged in separate wards as they are perceived to be juveniles as on today.

(v) The Jail Superintendent shall also file the report in terms of directions contained in para 7 of the order dated 21.03.2012.

List the matter on the date already fixed above.”

14. The aforesaid directions issued and steps taken by the NCPCR and others have yielded remarkable results. Many undertrials and convicts lodged in jail have turned out to be juveniles at the time of commission of the alleged crime and, therefore, they have been released and/or now dealt with in accordance with the JJ Act. Such persons in whose case enquiry is to be conducted and are to be produced before the Juvenile Justice Board, are coming before the Juvenile Justice Board in great numbers. We are, however, informed that at the time of their production, some of them go unrepresented. We direct that all such persons/children will be provided with and will be represented by the Legal Aid counsel. It would be applied even in those cases where they may be having their private counsel but the counsel is not available. NALSA guidelines in this behalf will be followed. Juvenile Justice Board will also undertake necessary exercise of getting the requisite Form 'B' filled and there would not be any laxity in this behalf.

15. We would also like to note, with utmost contentment, the immediate step taken by Delhi Judicial Academy in consultation with DLSA in organizing the training programs for the Metropolitan Magistrates. There are approximately 200 Metropolitan Magistrates who are to be imparted this training. The Judicial Academy has already prepared schedule as per which training is to be imparted in four batches on 21st April, 2012, 19th May, 2012, 21st July, 2012 and 18th August, 2012. First batch has already been given training on 21st April, 2012.

16. We place on record that all the parties involved in this case prepared a joint report to eliminate incarceration of children in jail. We also place on record our appreciation for the joint efforts of Mr. Asthana, Advocate, Ms. Anu Narula, Advocate and Mr. Ajay Verma, advocate (who appeared for IBJ), and Ms. Shobhna Takiar, Advocate along with the representatives of Delhi Police in preparing, collating and presenting to the Court valuable suggestions in consolidated form. In this venture, DLSA, Ms. Minna Kabir and NCPCR deserves special mention.

17. Today, we have heard all the counsels and aforementioned persons with reference to these guidelines submitted by them. We are of the opinion that specific and detailed directions need to be issued to all the appropriate authorities for compliance so as to prevent the incarceration of children in conflict with law, in the jails or their subjection to the Adult Criminal Justice System. In addition to the directions given by this Court

on earlier occasions, which have already been extracted above, following guidelines and directions are issued which are to be kept in mind for taking suitable measures in this behalf:

A. For Commissioner of Police

- (i) Commissioner of Police shall issue a Standing Order clarifying the roles and responsibilities of police officers, Investigation Officers, Inquiry by DCPs in case of lapse, Juvenile or Child Welfare Officers, SHOs and DCPs in view of the provisions of JJ Act and Rules made there under, Judgment of Hon'ble Delhi High Court in W.P. (C) 8889 of 2011 dated 21.03.2012 and any subsequent order/ Judgment as may be passed and to revise and modify such Standing Order in case of any change in law.
- (ii) Commissioner of Police on receipt of half yearly report suggested in Para C-3 from Nodal Head of SJPU shall pass necessary directions to give effect to the recommendations and to address the concerns as may be raised in such reports. An Action Taken report of the same shall also be forwarded to the Juvenile Justice Committee of Hon'ble Delhi High Court.

B. For Deputy Commissioners of Police, In-charge of Districts concerned:

- (i) In case any person approaches the DCP with a complaint that Police is not taking notice of juvenility of any offender and is refusing to take on record the documents being provided to suggest juvenility and instead treating a child as adult, it shall be the duty of DCP concerned to do an immediate inquiry into such complaint.

Such inquiry shall be completed within 24 hours of having received such complaint and if the complaint turns out to have merit and truth, DCP concerned shall make orders to the concerned police officers to immediately take corrective steps and shall also initiate disciplinary action against erring police official.

- (ii) In cases where any action is taken against an erring police officer, a quarterly report of the same containing the nature and reasons of such lapse and details of action taken shall be furnished by the DCP concerned to the concerned JJB having jurisdiction over that district along with a copy to the Nodal Head of Special Juvenile Police Unit for their record and intimation.
- (iii) DCPs shall, during the regular monthly meeting with all the SHOs & Inspector-Investigations, shall brief them about their responsibilities, any new judgment or order from JJBs and Courts, any practice direction etc. and shall ensure that their subordinate police officers don't show children as adults, take all necessary steps to verify the age of accused persons and are in overall compliance with the provisions of JJ Act & Rules.
- (iv) DCPs shall also ensure that all the police stations under their jurisdiction put in place the required setup and required notice boards etc, as has been specified in the Standing Order No. ops. 12, Act & the Rules or any other circulars in this regard.
- (v) On being intimated by the JJBs about any lapse having been committed on age investigation, DCP concerned shall institute an inquiry and take such action as may be required or appropriate. An

action taken report shall be submitted to the JJB by the DCP concerned within a month from the receipt of such intimation.

C. For Nodal Head/ In-Charge of Special Juvenile Police Unit.

- (i) Nodal Head of Special Juvenile Police Unit shall cause quarterly (once in three months) inspection of all the police stations through an official not below the rank of ACP in order to check that all the police stations have put in place the required setup and all the obligations required.
- (ii) A report shall be prepared by such ACPs of such visits documenting the best practices or shortcoming noticed at the police stations and shall be submitted to the Nodal Head of SJPU within 10 days of such visit.
- (iii) Nodal Head of SJPU shall make a report on half yearly basis and shall submit it to the Commissioner of Police with recommendations. A copy shall also be submitted to Juvenile Justice Committee of Hon'ble Delhi High Court.
- (iv) District Level units of SJPU shall on a regular basis monitor the functioning of police stations of that district vis a vis implementation of JJ Act and Rules and direction of this Hon'ble Court and shall provide necessary guidance and trainings to the police.

D. For the Officer In Charge of the Police Station:

- (i) It shall be the duty of the Officer Incharge of the Police Station to ensure that police officers of his or her police station have taken all

measures to ensure that proper inquiry or investigation on the point of age has been carried out and that all the required formalities, procedure have been carried out and required documents have been prepared in this regard.

- (ii) Officer In Charge shall also ensure that a notice board , prominently visible , in Hindi, Urdu and English language informing that persons below the age of 18 years are governed under the provisions of JJ act and cannot be kept in police lock up and jails and are not to be taken to the Adult Criminal Courts. Such notice Board shall also contain the names and contact details of Juvenile Welfare Officers, Probation Officers and Legal Aid Lawyers of DSLSA.

E. For the Investigating Officer or any other police officer acting under the instruction of Investigation Officer:

- (i) Every Police officer at the time of arresting/apprehending young offenders shall be under obligation to inform the alleged offender about his right to be dealt with under the provisions of Juvenile Justice Act if he is below 18 years of age and a proper counselling shall be done on the point of age.
- (ii) IO or any other police officer affecting the arrest/ apprehension shall also prepare the Age Memo. A copy of such Age Memo shall also be delivered to the alleged offender and his parents/ guardians/ or relative who have been intimated about his arrest.
- (iii) At the time of forwarding the copy of FIR to the Ilaka Magistrate within 24 hours, IO shall be under duty to file the preliminary age

memo along with the FIR in case arrest /apprehension is made before forwarding the FIR.

- (iv) On completion of age inquiry, which shall be done, preferably within one week of arrest/apprehension, the completed age memo be filed before the court concerned.
- (v) At the time of first production of an offender who is between 18 to 21 years of age as per the initial inquiry of the IO as above, before the Court, IO or the Police officer responsible for producing the offender before the Court, shall produce alleged offender, along with a copy of the FIR and age memo before the Secretary of respective District Legal Services Authority, irrespective of whether the alleged offender is being represented by a legal aid lawyer or not.
- (vi) If the alleged offender claims to be a juvenile and age documents to support such claim are not readily available and it is not possible for IO to obtain such documents within 24 hours of arrest, accused shall be produced before Juvenile Justice Board.
- (vii) At the time of first production of offender before Court or JJB, it shall be the duty of IO to ensure that parents or relatives of such offender are duly informed about (1) date, (2) time and (3) particulars of the court of such production and a copy of such intimation shall be produced before the Court at the time of first production.

F. For the Juvenile Welfare Officers (JWOs):

- (i) It shall be the duty of the Juvenile or Child Welfare Officer to obtain the copy of age declaration done by JJB or CWC and to forward such copy to the Special Juvenile Police Unit for entry into the record and to obtain a certificate that such entry has been done with SJPU and a copy of such certificate shall be deposited to the JJB or CWC concerned.
- (ii) It shall be the duty of the Juvenile Welfare Officer to ensure that any offender at the Police station who might be a juvenile is not treated as adult and if he notices any such incident, he shall immediately report to the Officer in Charge of the Police Station concerned with an intimation to District SJPU.
- (iii) In case, Any police officer is approached by any person alleging that some one who is a juvenile and has been treated as an adult by any officer of that Police Station, it shall be the duty of such police officer to record the statement of such complainant and then to register a DD Entry to this effect immediately and take up the issue with the Juvenile Welfare Officer or Investigation Officer concerned or the Officer In Charge concerned and cause corrective steps to be taken by such police officer. JWO shall furnish a copy of such DD Entry to the aggrieved person/ complainant. A report about such complaint, copy of DD entry, details of action taken or proposed to be taken shall be forwarded to the District SJPU within 24 hours of receiving such complaint.

G. For Tihar & Rohini Jails:

- (i) "Visitors' Boards" prescribed in Rule 12 and 13 of the Delhi Prison (Visitors of Prisons) Rules, 1988, shall specifically mention in their reports the status of young offender found in the jails and also recommend follow up action to be taken up by the Jail Authorities.
- (ii) The Jail Authorities will not get the medical examination test done at the first instance on its own. Such cases will be immediately intimated to the DSLSA with complete details such as FIR No, Court name, next date of hearing and other required details to enable DSLSA to take appropriate follow up action.
- (iii) Such persons who appear to be juveniles as per JJ Act, 2000 shall be segregated immediately from the other prisoners. If Jail authorities are of the view that any person brought in the Jail may be a probable juvenile, it should send a letter addressed to the Court Concerned within 24 working hours, requesting for an age inquiry to be conducted. Copy of such letter shall also be attached with the Warrant of the prisoner. It should be the prerogative and responsibility of the Court concerned to initiate an age inquiry as per law and make a decision accordingly. Jail authorities can maximum bring the fact of possible juvenility to the notice of Courts by way of a proper communication.
- (iv) Every Jail shall display at a prominent place in all the wards, canteen and visitors' area in Hindi, English and Urdu languages noticeboards informing inmates that persons who age was below 18 years at the time of commission of offense are not supposed to be in Jail and are entitled to kept in children Homes and be treated under

the Provisions of Juvenile Justice Act and be dealt with by the Juvenile Justice Board which make efforts for reformation and rehabilitation. Such Notification shall also inform the procedure to be adopted and the persons to be contacted within jail in case if they want to claim juvenility. Jail Authorities as well as Legal Aid Authorities shall be under duty to provide effective and speedy legal aid to every inmate who wants to put a claim of juvenility in the Court.

- (v) Jail authorities / Superintendent shall make available the details of each inmate, as maintained by them, to the panel visitors of NCPCR, which shall include but not be limited to name, address, age on record, previous history of institutionalization in jails , medical reports.

H. For Juvenile Justice Boards:

- (i) JJB shall conduct the proper age inquiry of each child brought before it as per the procedure laid down in Rule 12 of the Delhi Juvenile Justice (Care & Protection of Children) Rules 2009.
- (ii) On every occasion, when the case of a juvenile is transferred from the adult court to the JJB and the juvenile is transferred from jail to the concerned Observation Home, the JJB shall interact with the juvenile and record his/her version on how he came to be treated as an adult. If from the statement of the juvenile and after appropriate inquiry from IO, it appears that the juvenile was wrongly shown as an adult by the IO, then the JJB shall intimate the concerned DCP. This intimation shall be done in all those cases which are received

from the JJB by way of transfer from the adult court, and shall be done even in all those cases in which the declaration of juvenility has been done by the Adult Court.

- (iii) JJBs shall determine the age of a person by way recording the evidence brought forth by the Juvenile and the prosecution/complainant and the parties shall be given an opportunity to examine, cross examine or re-examine witnesses of their choice.
- (iv) In case of medical age examination, the parties shall be given copies of the medical age examination report immediately by the JJBs. The parties shall have the right to file objection thereto, including the right to cross-examine before final age determination is done.
- (v) While declaring the age, the order of age declaration shall also state the age as nearly as possible as on the date of commission of the offence.
- (vi) Before commencing the age inquiry, a notice thereof shall be served upon the complainant by the JJB or the Court Concerned, which shall also accord opportunity to the complainant of being heard on the issue including producing evidence; however the age inquiry will be concluded within the stipulated time limit of one month.
- (vii) It shall be the duty of Board to ensure that every juvenile in whose respect age inquiry is being conducted is being represented by a Counsel and in those cases, where there is no lawyer present before the Board at the time of hearing of case; Board shall provide a Legal Aid Lawyer.

(viii) JJB shall give copy of age declaration to JWO to get it recorded with Nodal Officer of SJPU. A certified copy of the age declaration shall be mandatorily given to the juvenile or his/ parents on the same day along with a copy to the concerned Juvenile or Child Welfare Officer.

I. For National Commission for Protection of Child Rights (NCPCR):

- (i) NCPCR shall constitute a panel of at least ten (10) persons to make visits to various jails in Delhi in order to find out if there are any persons lodged in such jails who should have been the beneficiaries of the JJ Act. Members of such panel may visit various jails as per the schedule drawn in consultation with/ intimation to the Jail Authorities.
- (ii) Reports of such visits along with the list of probable juveniles shall be forwarded to the Member Secretary of Delhi State Legal Services Authority, Jail Authorities and the JJBs concerned for further action. NCPCR shall devise a Proforma which shall be used by such visitors and shall be supplied to all such visitors on the panel. Such filled up proformas will be used to compile a report.
- (iii) Such persons shall be only those persons who are in a position to and are willing to visit various Jails in Delhi at least once a month but it may conduct such visits more frequently if required.
- (iv) NCPCR shall make arrangements to pay for a reasonable honorarium and incidental expenses on travel etc. to the members

of this panel whose services would be obtained by NCPCR from time to time.

- (v) NCPCR shall provide training and orientation to all the members of the panel on JJ Act, method of Age inquiry, jail rules & discipline, and method of filling up the proforma etc.
- (vi) Such panel may be revised as and when required by NCPCR.

J. For Legal Aid Lawyers & Delhi Legal Services Authority:

- (i) Legal Aid Lawyers from Delhi State Legal Services Authority who are authorised to be the jail visiting lawyers shall visit Jails on their schedule as may be prescribed and shall intimate the details of inmates who may be juveniles to the Secretaries of the respective District Legal Services Authorities for further appropriate action.
- (ii) Legal Aid Lawyers shall be entitled to make visit to the Mulahiza ward(New admission ward) of the adolescent and female jails and be allowed to freely interact with the inmates and shall not wait for inmates to approach them in the legal aid room.
- (iii) Superintendent of each jail shall intimate to the DSLSA on a fortnightly basis about the names, case details, court and date of next hearing of those inmates who may be juveniles.
- (iv) Whenever any offender of 18 to 21 years age is produced at the office of the Secretary of concerned District Legal Services Authority, the secretary him/her self and in his/her absence the Front Office Lawyer will interact with the alleged offender to ascertain the facts as are relevant for determination of age such as date of birth, name of first attended school, names, number and date

of birth of siblings etc.) while explaining the purpose of seeking such information and shall move applications where necessary and irrespective of the alleged offender being represented by private counsel to request the Court to conduct an age inquiry.

K. For the Courts concerned:

- (i) Whenever an alleged offender is produced before a court, not being the JJB or CWC, it shall on the very first date of production question the offender about his/her age and shall inform such offender about the benefits of the JJ Act. If the offender claims or appears to be 18-21 years, it shall direct the IO to produce the alleged offender at the Office of the Secretary of District Legal Services Authority. The Court shall by way of an inquiry under Rule 12 of the Delhi JJ Rules 2009 satisfy itself that the offender is not a juvenile.
- (ii) If the court concerned is of the view that the offender produced before it may be a juvenile, it shall order for immediate transfer to Observation Home and production of such offender before the JJB concerned, and shall direct the Alhmed to send the case file to JJB immediately.
- (iii) If a claim of juvenility under Section 7A of the JJ Act is raised before any court at any point of time, the Court shall conduct an age inquiry as per the Rule 12 of the Delhi JJ Rules 2009 and if a person is established to be a juvenile, shall order for same day transfer to Observation Home (if offender is below 18 years as on the date of such order) and to the Place of Safety (if person has

turned adult on the date of such order) and shall direct the Alhmed to send the case file complete in all respect including documents relating to Bail etc. to the JJB Concerned.

- (iv) If there is an adult co-accused also, the copy of the judicial file shall be prepared by such Court and shall be forwarded to the JJB Concerned.

L. For the Government Hospitals and Medical Boards:

- (i) All Government Hospitals shall constitute Medical Boards to carry out medical age examinations and shall give report not later than 15 days of request being made in this regard.
- (ii) All the members of medical Board (Physiologist, Dental Examiner and Radiologist/ Forensic expert) shall give their individual reports based on their respective examinations and the same shall be mentioned in the report , based on which the Chairperson shall give the final opinion on the age within a margin of one year.

M. Guidelines for Legal Services in Juvenile Justice Institutions:

- (i) When a child is produced before Board by Police, Board should call the legal aid lawyer in front of it, should introduce juvenile / parents to the lawyer , juvenile and his/her family/parents should be made to understand that it is their right to have legal aid lawyer and that they need not pay any fees to anyone for this.
- (ii) JJB should give time to legal aid lawyer to interact with juvenile and his/her parents before conducting hearing.

- (iii) Juvenile Justice Board should mention in its order that legal aid lawyer has been assigned and name and presence of legal aid lawyers should be mentioned in the order.
- (iv) Board should make sure that a child and his parents are given sufficient time to be familiar with legal aid counsel and get time to discuss about the case before hearing is done.
- (v) Juvenile Justice Board should make sure that not a single juvenile's case goes without having a legal aid counsel.
- (vi) Juvenile Justice Board should issue a certificate of attendance to legal aid lawyers at the end of month and should also verify their work done reports.
- (vii) In case of any lapse or misdeed on the part of legal aid lawyers, Board should intimate the State Legal Services Authority and should take corrective step.
- (viii) Juvenile Justice Board and the legal Aid lawyers should work in a spirit of understanding, solidarity and coordination. It can bring a sea-change.
- (ix) Legal Aid Lawyer should develop good understanding of Juvenile Justice Law and of juvenile delinquency by reading and participating in workshops/ trainings on Juvenile Justice.
- (x) Legal Aid Lawyer should maintain a diary at center in which dates of cases are regularly entered.
- (xi) If a legal aid lawyer goes on leave or is not able to attend Board on any given day, he/she should ensure that cases are attended by fellow legal aid lawyer in his/her absence and that case is not neglected.

- (xii) Legal Aid lawyer should not take legal aid work as a matter of charity and should deliver the best.
- (xiii) Legal Aid Lawyer should raise issues/ concerns/ problems in monthly meeting with State Legal Services Authority.
- (xiv) Legal Aid Lawyer should maintain file of each case and should make daily entry of proceeding.
- (xv) Legal Aid lawyer should not wait for JJB to call him/her for taking up a case. There should be effort to take up cases on his/her own by way of approaching families who come to JJB.
- (xvi) Legal Aid Lawyer should inspire faith and confidence in children/ their families who cases they take up and should make all possible efforts to get them all possible help.
- (xvii) Legal Aid lawyer should abide by the terms and conditions of empanelment on legal Aid Panel.
- (xviii) Legal Aid lawyer should tender his/her monthly work done report to JJB within one week of each month for verification and should submit it to concerned authority with attendance certificate for processing payments.
- (xix) Legal Aid Lawyer must inform the client about the next date of hearing and should give his/her phone number to the client so that they could make call at the time of any need.

18. In addition, we deem it imperative to issue the following direction for strict compliance by all concerned:

- (1) As per the Provision of Jail Manual, each jail shall have a welfare officer in addition to other officers. But in Delhi Jails, number of

welfare officers is inadequate where certain posts are lying vacant. There are only 5 Welfare Officers for 11 Jails. Jails Administration is directed to appoint required number of WOS.

- (2) **Accountability:** Granting compensation to the victims in respect of wrong done has become a matter of norm. However, it is necessary to ensure that compensation should not become a tool for the State to brush wrongs, committed by their officers, under the carpet. It is necessary to hold them personally accountable, as more often than not, the incarceration of the child in adult prison is the fault of arresting officer, who fails to fulfill his duty in ensuring that the accused is not a juvenile.
- (3) **Training and Sensitization of Magistrates/ Judicial Officers, Legal Aid Lawyers, Jail Visiting Lawyers and other lawyers etc.:** these are the three agencies that come in contact with the Juveniles in conflict with law, thus the need to ensure that a child in conflict with law should be treated as a child and not an offender, is primarily on them. Therefore, it is necessary that all the Officers are trained in respect of the provisions of the Juvenile Justice Act, and this can be done with a collaborative effort of the Civil Society Organizations and the State Agencies. A specific direction is hereby given for trainings to be organized by DSLSA, Bar Associations for training and sensitizing Legal Aid Lawyers, Jail Visiting Lawyers and all other lawyers as well. Intervener IBJ may also be associated in such trainings, as it has expressed its wish to impart such trainings.

19. The present task for identifying the persons stated to be between 18 to 21 years of age and determination of their actual age will go on and the process in respect thereof, as outlined in the aforesaid orders as also as per the guidelines and directions spelled out hereinbefore, shall be followed. On the implementation of the aforesaid directions and guidelines, a report shall be submitted to this Court every six months by the police authorities with copies to NCPCR and DLSA.

20. Writ petition is disposed of in the aforesaid terms.

ACTING CHIEF JUSTICE

MAY 11, 2012
pk

RAJIV SAHAI ENDLAW, J.