

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO. 108 OF 2021

1. Bachpan Bachao Andolan,
L-6, Kalkaji, New Delhi- 110019
Represented by its Executive Directorate
Mr.Dhananjay Tingle, age- 53 years.
2. Sampurna Behura,
Legal-Director,
Bachpan Bachao Andolan
L-6, Kalkaji, New Delhi- 110019. ... Petitioners.

V/s.

1. The State of Maharashtra,
through its Chief Secretary
Government of Maharashtra
Mantralaya, Mumbai 400032.
2. State of Maharashtra,
Through Department of Women
& Children, Mantralaya,
Mumbai 400032.
3. Maharashtra State Legal Services
Authority High, Court, PWD Building,
Fort, Mumbai 400001.
4. Directorate of Social Welfare
& Special Assistance
Government of Maharashtra.
1st Floor, Annex Building,
Mantralay, Madam Cama Road,
Hutatma Rajguru Chowk,
Nariman Point, Mumbai- 400032.

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NANOSKAR

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5. Maharashtra State Commission for
Protection of Child Rights, 3rd Floor,
New Administrative Building,
Madam Cama Road,
Hutatma Rajguru Chowk,
Nariman Point, Mumbai- 400032.
6. Director General of Police- Maharashtra
Chatrapati Shivaji Marg, Colaba,
Mumbai 400 001. ... Respondents.

Mr.Pragyan Sharma (through V.C.) along with Mr.Tejesh Dande,
Mr.Bharat Gadhavi, Ms.Taruna Panwar and Ms.Surabhi Katyal
for the Petitioners.

Mr.P.P.Kakade, Government Pleader with Ms.R.A.Salunkhe, AGP
and Mr.S.B.Kalel, AGP for the Respondent- State.

Dr.Anup Yadav, Principal Secretary, Women and Child Welfare
Department, Government of Maharashtra (through V.C.).

**CORAM : NITIN JAMDAR, AND
M.M. SATHAYE, JJ.**

DATE : 1 February 2024.

JUDGMENT: (Per Nitin Jamdar, J.)

Rule. Rule made returnable forthwith. Respondents
waive service. Taken up for disposal.

2. Bachpan Bachao Andolan, the Petitioner, is a non-governmental organization working for the protection and advocacy of children's rights. The founder of this organization was conferred the Nobel Peace Prize for their contribution to safeguarding the rights and well-being of children. The Respondents are the authorities representing the State of Maharashtra. The focus of this petition is on the inadequacies and deficiencies in the efforts of the State of Maharashtra to implement legislation about the rights of children and the orders passed by the Hon'ble Supreme Court. The Petitioners highlighting these shortcomings seek directions to enhance the State's efforts in this domain.

History of legislation

3. To place the subject matter in context a brief overview of the backdrop to the Juvenile Justice (Care and Protection of Children) Act, 2015 would be useful. A report published by the Tata Institute of Social Science commissioned by the State of Maharashtra provides a comprehensive background on the development of the legislative framework related to the subject. In British India, the Apprentices Act of 1850 marked the initial legislative effort to address juvenile delinquency. This Act empowered the courts to consider children engaged in minor offences as apprentices rather than resorting to imprisonment. Subsequently, the Reformatory School Act of 1897 allowed for the redirection of children sentenced to imprisonment to reformatory schools. The Criminal Procedure Act

of 1898 then introduced specialized procedures for juvenile offenders. Madras, Bengal, and Bombay provinces enacted their Children Acts in 1920, 1922, and 1924, respectively. The Borstal Schools Act, established in 1929, aimed at detecting, training, and treating adolescent offenders, with the first Borstal School established in Punjab in 1912. The Constitution of India specifies the obligation of the State towards children, guaranteeing their rights and protection. Specific provisions for children include free and compulsory education between ages 6 and 14 (Article 21A) and the prohibition of children's employment in hazardous occupations (Article 24). Article 39 under the Directive Principles of State Policy, and Article 45 calls for state provision for early childhood care and education for all children up to the age of six years. Article 47 enjoins the State to enhance living standards, improve health, and raise nutrition levels.

4. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) were issued in 1985, and the "Riyadh Guidelines" for the Prevention of Juvenile Delinquency in 1990. India as a State Party to the Beijing Rules and Riyadh Guidelines has ratified the United Nations Convention on the Rights of the Child and is obligated to fulfil the provisions of these international instruments. Following the ratification of various international instruments, several existing legislations underwent amendments. New legislation, including the Child and Adolescent Labour (Prohibition) Act, 1986; Pre-Conception and Pre-Natal

Diagnostic Techniques Act, 1994; Prohibition of Child Marriage Act, 2006; Right of Children to Free & Compulsory Education Act, 2009; and Protection of Children from Sexual Offences Act, 2012, were enacted. Policy initiatives included the National Charter for Children and the National Plan of Action for Children. The United Nations Convention on the Rights of the Child and the Juvenile Justice Act were incorporated into the Juvenile Equity (Care and Assurance) Act 2000, which, with some modifications, became the Juvenile Justice (Care and Protection) Act in 2001.

5. The Juvenile Justice (Care and Protection) Act of 2001 was enacted to establish Child Welfare Committees, Juvenile Justice Boards, Special Police Units, and appropriate Homes for children in need of care and protection. The goal was to enhance the living conditions of juveniles in conflict with the law, provide medical facilities for children in the custody of the State, and address various issues related to the rights of children. Despite amendments to the Act in 2006 and 2011, several issues persisted. These included an increase in incidents of child abuse in Child Care Institutions, inadequate facilities and quality of care in the Children's Homes, delays in adoption, and a lack of clarity regarding roles and responsibilities. Recognizing the need for significant changes, it was proposed to repeal the existing Act and introduce comprehensive legislation. This led to the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2015 (Act of 2015), which came into force. The primary objective of this new legislation is to ensure

child-friendly treatment for children alleged and found in conflict with the law, as well as for children in need of care and protection.

Proceedings in the Hon'ble Supreme Court

6. Meanwhile, Petitioners filed a writ petition under Article 32 of the Constitution of India in the Hon'ble Supreme Court. The Petitioner highlighted the primary duties of the State to ensure the fulfilment of children's needs and the protection of their basic human rights. The Petitioners drew attention to the Court that despite the enactment of the Act of 2000 in consonance with various standards from the International Conventions, the Government had failed to implement the provisions of the Act of 2000. Various surveys and research conducted in different States were relied upon. The Petitioners prayed that all States implement the Act of 2000 in its true spirit. Subsequently, the Act of 2000 was repealed, and the Act of 2015 was enacted. However, the Petitioner's grievance remained, alleging a lack of implementation of the Act of 2015. In the course of the proceedings, the National Commission for Protection of Child Rights and the National Legal Services Authority were also implemented. The Supreme Court identified several issues of serious concern and for deliberation, taking note of the affidavit filed by the Ministry of Women and Child Welfare Department, opinions and data supplied by NALSA, and various suggestions and recommendations. These encompassed the National and State Commissions for the protection of child rights, the State Child

Protection Society and District Child Protection Units, the Juvenile Justice Court and Child Welfare Committee, the role of the Police, child care institutions, and the juvenile justice fund.

7. The Supreme Court disposed of the petition by judgment and order dated 9 February 2018 issuing various directions in the case of *Sampurna Behura v. Union of India*¹. The directions issued by the Hon'ble Supreme Court in its judgment and order dated 9 February 2018 are as under:

94. Keeping in mind the concerns expressed by all the learned counsel and the need to invigorate the juvenile justice system in the country, we are of the view that the following directions ought to be given and we do so:

94.1. The Ministry of Women and Child Development in the Government of India and the State Governments should ensure that all positions in the NCPCR and the SCPCRS are filled up well in time and adequate staff is provided to these statutory bodies so that they can function effectively and meaningfully for the benefit of the children.

94.2. The NCPCR and the SCPCRS should take their duties, functions and responsibilities with great earnestness keeping in mind the faith reposed in them by Parliament. A position in these statutory institutions is not a sinecure. These bodies have a very significant and proactive role to play in improving the lives of children across the country.

94.3. The State-level Child Protection Societies and the District-level Child Protection Units have an enormous responsibility in ensuring that the JJ Act is effectively implemented and Child Care Institutions are managed and maintained in a manner that is conducive to the well-being of children in all respects including nutrition, education, medical benefits, skill development and general living conditions. These two bodies would be well advised to take the assistance

¹ (2018) 4 SCC 433

of NGOs and civil society to ensure that the JJ Act serves the purpose for which it is enacted by Parliament.

94.4. The State Governments must ensure that all positions in the JJBs and CWCs are filled up expeditiously and in accordance with the Model Rules or the Rules framed by the State Government. Any delay in filling up the positions might adversely impact on children and this should be avoided.

94.5. The JJBs and CWCs must appreciate that it is necessary to have sittings on a regular basis so that a minimal number of inquiries are pending at any given point of time and justice is given to all juveniles in conflict with law and social justice to children in need of care and protection. This is a constitutional obligation.

94.6. The NCPCR and the SCPCRS must carry out time-bound studies on various issues, as deemed appropriate, under the JJ Act. Based on these studies, the State Governments and the Union Territories must take remedial steps.

94.7. In particular the NCPCR and the SCPCRS must carry out a study for estimating the number of Probation Officers required for the effective implementation of the JJ Act. Based on this study, the State Government must appoint the necessary number of Probation Officers. It must be emphasised that the role of a Probation Officer is critical for the rehabilitation and social reintegration of a juvenile in conflict with law and due importance must be given to their duties as postulated in the Model Rules and Rules, if any, framed by the State Governments and the Union Territories.

94.8. The MWCD must continue to make creative use of information and communication technology not only for the purpose of collecting data and information but also for other issues connected with the JJ Act such as having a database of missing children, trafficked children and for follow-up of adoption cases, etc. With the utilisation of technology to the fullest extent, administrative efficiency will improve considerably, which in turn will have a positive impact on the lives of children.

94.9. It is important for the police to appreciate their role as the first responder on issues pertaining to the offences allegedly committed by children as well as the offences committed against children. There is therefore a need to set up meaningful Special Juvenile Police Units and appoint Child Welfare Police Officers in terms of the JJ Act at the earliest and not only on paper. In this context, it is necessary to clearly identify the duties and responsibilities of such units and officers and wherever necessary, guidance from the available expertise, either the National Police Academy or the Bureau of Police Research and Development or NGOs must be taken for the benefit of children.

94.10. The National Police Academy and State Police Academies must consider including child rights as a part of their curriculum on a regular basis and not as an isolated or sporadic event.

94.11. The management of Child Care Institutions is extremely important and State Governments and Union Territories would be well advised to ensure that all such institutions are registered so that children can live a dignified life in these Institutions and issues of missing children and trafficking are also addressed.

94.12. State Governments and Union Territories would be well advised to appoint eminent persons from civil society as Visitors to monitor and supervise the Child Care Institutions in all the districts. This will ensure that the management and maintenance of these Institutions are addressed. We have no doubt that the State Legal Service Authorities and the District Legal Service Authorities will extend full assistance and cooperation to the government authorities in this venture as well as to the Visitors.

94.13. The JJ Fund is a bit of an embarrassment with an absence of an effective response from the State Governments and the Union Territories. If financial resources are not made available for the welfare of the children we shudder to think what could be better utilisation of the funds.

94.14. NALSA has done a remarkable job in collecting

data and information relating to the JJ Act, as evidenced by the three part Report prepared by it. We request NALSA to carry forward the exercise and complete a similar Report preferably before 30-4-2018 to assist all the policy making and decision taking authorities to plan out their affairs.

94.15. The importance of training cannot be overemphasised. It is vital for understanding and appreciating child rights and for the effective implementation of the JJ Act. All authorities such as JJBs and CWCs, Probation Officers, members of the Child Protection Societies and District Child Protection Units, Special Juvenile Police Units, Child Welfare Police Officers and managerial staff of Child Care Institutions must be sensitised and given adequate training relating to their position. A very positive step has been taken in this regard by NALSA and we expect the NCPCR with the assistance of the SCPCRS to carry forward this initiative so that there is meaningful implementation of the JJ Act.

94.16. Since the involvement of the State Governments and the Union Territories is critical to child rights and the effective implementation of the JJ Act, it would be appropriate if each High Court and the Juvenile Justice Committee of each High Court continues its proactive role in the welfare of children in their State. To make the involvement and process more meaningful, we request the Chief Justice of every High Court to register proceedings on its own motion for the effective implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015 so that road-blocks if any, encountered by statutory authorities and the Juvenile Justice Committee of the High Court are meaningfully addressed after hearing the governmental authorities concerned. A copy of this judgment and order should be sent by the Secretary General of this Court to the Registrar General of each High Court for being placed before the Chief Justice of every High Court for initiating suo motu proceedings.

8. After the sou moto petition initiated by this Court was disposed of, the Petitioners have filed this present petition contending that the State of Maharashtra has failed to adhere to

various crucial directives of the Supreme Court in its order dated February 9, 2018. The details regarding the non-compliance are specified in the petition, outlining areas where the State has purportedly fallen short in meeting its obligations as mandated by the Supreme Court, and as per the Act of 2017. The State has not treated this petition as an adversarial proceeding and has placed on record its commitments.

9. When the petition came up for consideration on 3 April 2023, keeping in mind the gravity of the issue, we had directed that a joint meeting be convened by the Department of Women and Child, Maharashtra State Legal Services Authority, Directorate of Social Welfare & Special Assistance, Government of Maharashtra, Maharashtra State Commission for Protection of Child Rights, and the Director General of Police. The purpose of the meeting was to identify the issues, discuss appropriate actions, and determine the steps to be taken in the matter before this Public Interest Litigation was considered. We specifically directed the State of Maharashtra to identify the issues, remedies, and measures that need to be addressed, necessitating intervention and directions from this Court. Subsequently, on 24 April 2023, a meeting was conducted under the chairmanship of the Principal Secretary, Women and Child Development. The attendees included the Principal Secretary of child Development; the Special Inspector General of the Prevention of Crime Against Women and Child Department; the Joint Secretary of law and Judiciary; the Deputy Secretary, Maharashtra State Legal

Services Authority; Joint Secretary, Women and Child Development; Deputy Secretary (Law), Women and Child Development Department; Commissioner (Child Development), Commissionerate, Women and Child Development Department, Pune; Law Officer, Maharashtra State Child Right Protection Commission; Advocates of Bachpan Bachao Andolan; and a Consultant from Bachpan Bachao Andolan. The outcome of the meeting is on record.

10. The decision taken by the State and the directions issued are placed on record by way of an affidavit in reply. Rejoinder is filed by the Petitioners and suggestions are given by the Petitioners to which there is a further reply filed by the State.

11. We have heard Mr. Pragyan Sharma, learned advocate along with Mr. Tejesh Dande, learned advocate for the Petitioners. Mr. P.P. Kakade, Government Pleader for the Respondent- State. Dr. Anup Yadav, Principal Secretary, Women and Child Welfare Department, Government of Maharashtra also joined through video-conferencing to assist the Court. Also a representative of the Maharashtra State Legal Services.

12. When the present Public Interest Litigation was initially heard, it became clear that several directives issued by the Supreme Court on 9 February 2018 in *Sampurna Behura* were not adhered to. Furthermore, during the hearing of this petition, it became evident that the State would need to address and fulfil several obligations

outlined in the directives issued by the Supreme Court. In light of these circumstances, we will now examine the issues surrounding the non-compliance with the Supreme Court's directions and the obligations under the Act of 2018, analysing the context in which these directives were issued and examining the necessary steps for the State to align with the specified mandates. We have elaborated on the duties and functions of each authority and agency involved to emphasise the importance of the area they operate in and how a lapse on their part will have serious social consequences.

Maharashtra State Commission for Protection of Child Rights

13. Section 17 of the 2015 Act outlines the formation of the State Commission for the Protection of Child Rights. The State Commission is to be comprised of a Chairperson and six Members, with at least two members being women. They should have expertise in the fields of child health, care, welfare, child development, juvenile justice, care of neglected or marginalized children, children with disabilities, elimination of child labour, children in distress, child psychology or sociology, and laws relating to children. The specific duties of the State Commission are stated in Section 13 of the 2015 Act.

14. The State Commission is entrusted with a comprehensive mandate to safeguard and uphold the rights of children, encompassing various functions aimed at ensuring their well-being and protection. Foremost among these responsibilities is the task of

scrutinizing and evaluating the efficacy of existing legal safeguards designed for the protection of child rights. The State Commission is empowered to examine the prevailing laws and recommend measures for their effective implementation, thus fostering an environment conducive to the realization of children's rights. Furthermore, the State Commission is authorized to investigate instances of child rights violations and advocate for the initiation of legal proceedings in such cases, thereby ensuring accountability for transgressions against the welfare of children.

15. In recognition of the various challenges faced by children in various distressing situations, the State Commission is enjoined with several responsibilities. These include examining factors impeding the enjoyment of rights for children affected by terrorism, communal violence, natural disasters, domestic violence, HIV/AIDS, trafficking, maltreatment, torture, exploitation, pornography, and prostitution. Remedial measures, tailored to the unique circumstances of each scenario, are to be recommended by the Commission. Additionally, the Commission is mandated to address the needs of children requiring special care and protection, including those in distress, marginalized and disadvantaged children, children in conflict with the law, juveniles, children without familial support, and children of incarcerated parents. Remedial measures tailored to their specific needs and circumstances are to be proposed. The State Commission is to study treaties and other international instruments. Periodic reviews of existing policies, programs, and activities related

to child rights on both national and international fronts are to be undertaken, to provide recommendations for their effective implementation in the best interest of children. Promoting research in the field of child rights is another facet of the responsibility of the State Commission, aiming to contribute to a deeper understanding of the challenges and potential solutions. The State Commission is also entrusted with the task of fostering child rights literacy across various sections of society, to raise awareness about the safeguards available for the protection of these rights. Inspecting or causing inspections of juvenile custodial homes and other institutions meant for children falls within the purview of the State Commission. The State Commission is also empowered to inquire into complaints and take *suo motu* notice of matters related to the deprivation and violation of child rights, non-implementation of laws, and non-compliance with policy decisions, guidelines, or instructions aimed at safeguarding and promoting the welfare of children. It is vested with the authority to engage with appropriate authorities to address issues arising from such matters.

16. The purpose of detailing the functions of the State Commission is to emphasise the areas which will be affected if the State Commission does not function properly. These functions underscore the Commission's pivotal role in the cause of child rights for their protection, and holistic development and well-being. Therefore, it is clear that the State Commission which has numerous crucial functions to fulfill cannot do so if it is understaffed.

17. In paragraph 94.1 in *Sampurna Behura*, the Supreme Court specifically instructs the Ministry of Women and Child Development of the State Government to ensure the timely appointment of personnel to all positions within the State Commission. Adequate staffing must be provided to the statutory bodies to enable effective functioning for the benefit of children. The first topic is the responsibility of the Ministry of Women and Child Development in the State of Maharashtra to ensure timely and complete staffing of all positions within the Maharashtra State Commission for Protection of Child Rights (State Commission). Adequate staffing is crucial to enable the State Commission to operate effectively and meaningfully for the benefit of children. This is despite the Supreme Court mandate instructing the State Ministry of Women and Child Development to guarantee timely appointments and provision of sufficient staff for these statutory bodies. The objective is to enable these bodies to operate efficiently and meaningfully, with a primary focus on promoting the well-being of children.

18. The Petitioners have placed on record that out of 12 available posts in the State Commission, 6 remained unfilled. This information was disclosed by the State on 31 May 2020 in response to the Petitioners' inquiry under the Right to Information Act, 2005. The State has informed that the Chairperson and six members have been appointed by the Government through a Notification dated 29 April 2022. According to the Government Resolution dated 28

January 2009, a total of 12 posts are sanctioned for the State Commission. Among these, 8 posts have been occupied through transfers and temporary postings, and 4 posts remain vacant. It is stated that furthermore, on 3 April 2023, the Ministry of Women and Child Welfare Department issued directions to fill two Higher-Grade Stenographer posts through outsourcing following the appropriate procedure and efforts are underway to complete the necessary steps for the appointments. However, it cannot be overlooked that the functions of the State Commission without adequate staff are severely affected. The State Government cannot neglect to provide adequate staff for the State Commission. The deficiency not only leads to a failure to meet the operational requirements of the Commission but also undermines the objectives of the Act. Furthermore, it is a matter of concern that this position is such despite the Supreme Court's observations in *Sampurna Behura* emphasizing the State's obligation to take the State Commission seriously.

19. Concerning the vacant positions in the State Commission, the Government Pleader and the Secretary assure that these positions will be expeditiously filled through outsourcing within a stipulated time frame. Consequently, we propose to set a specific timeline for the State to complete the hiring process and to issue directives ensuring the formulation of modalities. These modalities should guarantee the Commission's operational continuity, preventing any disruption due to insufficient staff.

20. The Hon'ble Supreme Court has observed in *Sampurna Behura* that the State Commission must take its duties seriously and regularly. In the reply affidavit filed, the activities of the Commission are placed on record. It is stated that the State Commission since May 4, 2022, has conducted about 300 hearings on child rights complaints in various locations, resolving 97 complaints. The website of the State Commission is updated for user-friendliness, providing information on child rights, functions, stakeholders, legislation, complaint forms, and contact details. The 'Chirag' app has been enhanced and updated. Financial reports for 2016-17 and 2017-18, along with the audit report for 2017-18, have been presented to the Legislative Assembly and will be uploaded. The State Commission has addressed issues such as drug abuse in Aurangabad and initiated the "Bal Rakshak" campaign. It has conducted various child welfare programs, organized the "Khelto Raho" Kids Carnival, and addressed child safety concerns in schools. It is stated that the State Commission is actively reviewing the implementation of the Act of 2015, planning review meetings at regional headquarters. The State Commission also plans to organize "Bal Adalat" to address child-related issues and develop protocols for the reformation and rehabilitation of children in collaboration with NGOs. In collaboration with the International Justice Mission, a study on child rights, rehabilitation, and social integration was conducted by the Tata Institute of Social Sciences, guided by an advisory board chaired by a learned retired judge of this Court. The

report was submitted pursuant to Supreme Court directions. No doubt, there are various efforts made by the State Commission but it is undisputed that numerous challenges persist in the implementation of the 2015 Act, demanding effective resolution.

21. The Supreme Court in *Sampurna Behura* has emphasized the functions and responsibilities of the State Commission. In this context, the Petitioners have highlighted the significance of studies to be conducted by the State Commission and the Annual Reports. These studies are required to be carried out per the provisions of the Act of 2015. Section 109 of the Act of 2015 specifically addresses the monitoring and implementation of the Act. The State Commission under Section 17 of the Commissions for Protection of Child Rights Act, 2005, is mandated to monitor the implementation of the provisions of the Act of 2015, in the manner as prescribed. In addition to their functions under the Act of 2005 Act, the State Commission, under Section 109 of the Act of 2005, is entrusted with the responsibility of preparing the Annual Report as referred to in Section 16 of the Act of 2015. It is important to note that the Act of 2015 requires the Commission to submit an annual report to both the Central Government and the concerned State Government. Additionally, the State Commission has to submit special reports at any time. The State Government is obligated to present the annual and special reports of the State Commission before the State Legislature within one year from the date of receipt of such reports.

22. Further, under Rule 94 of the Maharashtra State Juvenile Justice (Care and Protection of Children) Rules, 2018 (framed under the Act of 2015, referred to as “Rules of 2018”), the State Commissions are mandated to monitor various aspects. This includes the review and establishment of institutions created under the Act, the development of information, education, and communication materials, the formulation of protocols for the reformation and rehabilitation of children, the creation of awareness regarding the identification and reporting of crimes against children, the conduct of sensitization workshops, the development of informational materials, and the creation of training modules for stakeholders, among other responsibilities. The State Commission has to identify issues falling within the purview of the 2015 Act and conduct studies that will serve as the basis for remedial action by the State Government. This information and studies detailing the problems, proposed measures, and statistical data should be readily accessible. This is the purpose of publishing the Annual Reports.

23. The State Commission is obligated to issue an Annual Report under Section 16 of the 2005 Act. It is on record that the report of the Commission for the years 2016-17 and 2017-18, as well as the audit report for the year 2017-18, were presented before the Legislative Assembly held in March-April 2023. These reports are intended to be uploaded on the website, and the annual reports from 2018 onward are currently in progress. Consequently, it becomes evident that the Annual Reports are not being uploaded regularly,

and for the past five years, no Annual Report has been prepared. This situation is regrettable, particularly considering the willingness of organizations like the Petitioner to complement the work of the authorities under the Act. Various organizations, including the Petitioner, dedicated to the cause of children's rights would find their efforts hampered due to the absence of official data published through Annual Reports by the State Commission. Neither the Authorities would be taking adequate steps nor the voluntary agencies can address the issues effectively due to the lack of official data.

24. The learned Government Pleader and the Secretary have informed us that the preparation of annual reports is ongoing, and the annual reports for the last five years will be published soon. However, the current efforts are falling short. Therefore, it is necessary to establish a timeline and issue time-bound directions to ensure the timely and regular uploading of Annual Reports.

Child Protection Society and District Child Protection Units

25. Under Section 106 of the Act of 2015, each State Government is mandated to establish a Child Protection Society for the State and a Child Protection Unit for every District. These units are to be comprised of officers and other personnel designated by the Government. Their primary responsibility is to address issues related to children, ensuring the effective implementation of the aforementioned Act. This involves tasks such as establishing and

maintaining institutions as outlined in the Act, notifying competent authorities concerning children, overseeing rehabilitation efforts, and coordinating with various official and non-official agencies. Additionally, these units are required to perform any other functions prescribed by relevant authorities.

26. Under 86 of the Rules of 2018, where the composition is provided for the State Child Protection Society which consists of officers from the State Government. It performs various functions, including overseeing the implementation of the Act and Rules, supervising and monitoring agencies and institutions under the Act, and addressing roadblocks, issues, and complaints related to the care and protection of children. Additionally, the duties include ensuring that all institutions established under the Act and Rules are in place and fulfilling their assigned duties. The Child Protection Society reviews reports from District Child Protection Units on the functioning of institutions in various districts, takes necessary actions to facilitate child protection, and monitors the functioning of District Child Protection Units. The Society is also tasked with developing programs for foster care, sponsorship, and after-care. It investigates, seeks reports, and makes recommendations in cases of death or suicide in Child Care Institutions and other institutional care settings. It maintains databases of children in institutional and non-institutional care, as well as various institutions and facilities at the State level. The Society monitors and administers the Juvenile Justice Fund set up by the State Government, including disbursing funds to

District Child Protection Units, Special Juvenile Police Units, and police stations.

27. The District Child Protection Units operate under the supervision of the District Magistrate, as per Rule 88 of the Rules of 2018. They are enforced with various responsibilities, including maintaining a report of quarterly information sent by the Board regarding children in conflict with the law produced before the Board and the quarterly report sent by the Committee. They arrange individual or group counselling and community service for children and conduct follow-ups on individual care plans. Other functions include maintaining a list of monitoring authorities, recording run-away children from Child Care Institutions, identifying families at risk and children in need of care and protection, and assessing the number of children in difficult circumstances. They also create district-specific databases, facilitate non-institutional programs like sponsorship, foster care, and aftercare, and transfer children for restoration to their families. The units ensure inter-departmental coordination, network with civil society organizations, inquire into cases of death or suicide in childcare institutions and address complaints and suggestions from children. They maintain district-level databases of missing children and facilities and forward information to relevant authorities. This includes databases of medical and counselling centres, education facilities, and experts experienced in working with children in difficult circumstances. The units generate awareness and organize programs for the

implementation of the Act. They notify the State Government about vacancies in the Board or Committee in advance. The District Child Protection Officer is the Nodal Officer in the district for the implementation of the Act and the Rules.

28. The reference to the provisions above would show that the State Child Protection Society and the District Child Protection Units play an important role in the implementation of the Act of 2015. The State Child Protection Society performs a comprehensive range of functions to ensure the effective implementation of the Act and Rules, covering aspects such as institutional framework, rehabilitation measures, penalties, and procedures for the better protection of children. These two bodies co-ordinate with the State Authorities and the non-governmental organizations to discharge a wide range of functions. They are mandated to ensure that the authorities and the institutions under the Act of 2015 in relation to children and their rehabilitation are in order. The Hon'ble Supreme Court in *Sampurna Behura* has observed that if these bodies perform their duties, responsibilities and functions as expected by them, the effective implementation of the Act of 2015 would be easily achieved. The Supreme Court observed that in many places these bodies are not functioning.

29. It is informed that as of the year 2022, the State Child Protection Society has been constituted, and 36 District Child Protection Units have been established. It is also informed that the Child Protection Society is collaborating with various non-

governmental organizations. Despite the importance of their functions, these two bodies, again face the issue of lack of staff. In the State of Maharashtra, the position as of today is that in the State Child Protection Society, out of 17 posts 7 posts are vacant and in District Child Protection Units, out of 432 posts 152 are vacant. Here, again the learned Government Pleader and the Secretary assure the Court that the process of filling up the vacancies is being undertaken and these vacancies will be filled up shortly. Considering the importance of the State Child Protection Society and the District Child Protection Units as stressed by the Hon'ble Supreme Court in *Sampurna Behura*, such contingencies should not have occurred in the first place and, therefore, a time limit is required to be set to fill up the vacancies, which are almost 1/3 in number in both, State Society and District Units.

30. The learned counsel for the Petitioners has drawn our attention to Rule 90 of the Rules of 2018, more particularly sub-rule (1) thereof, wherein as regards the selection of chairperson and members of the Board, it is stated that the Member Secretary of the Selection Committee shall initiate the process of filling up of the vacancies six months before the incumbent demitting the office. There is no reason why such a protocol should not be followed by the State in respect of the Child Protection Society and District Units also, and directions in that regard are necessary.

Juvenile Justice Board

31. Under Section 4 of the Act of 2015, the State Government has to constitute for every district, one or more Juvenile Justice Boards for exercising the powers and discharging its functions relating to children in conflict with law under the Act. The Board consists of a metropolitan magistrate or a judicial magistrate with two social workers who are actively involved in health, education or welfare activities pertaining to children as per the qualifications prescribed. Chapter II of the Rules of 2018 speaks of the sittings of the Juvenile Justice Board and its functions.

32. The State Government has to ensure that all the posts in the Juvenile Justice Board are filled up expeditiously. The Supreme Court in *Sampurna Behura*, held that there is a pressing need for State Governments to conduct a thorough study regarding the availability of adequate staff for Juvenile Justice Boards. Emphasizing that Juvenile Justice Boards function as quasi-courts, the Supreme Court highlighted the importance of having adequate staff to ensure efficient operation. Furthermore, the Supreme Court stressed the significance of addressing the administrative responsibilities of Juvenile Justice Boards to facilitate effective coordination among various stakeholders involved in juvenile inquiries. The Supreme Court, thus, having considered the importance of filling up all positions in the Juvenile Justice Board expeditiously, issued a direction that the State must ensure that all the positions in the Board are filled up expeditiously and in

accordance with the Model Rules or the Rules framed by the State Government. It was observed that any delay in filling up the positions might adversely impact children and this should be avoided. The Petitioners have drawn our attention to Rule 91(1) of the Rules of 2018 which postulates that the Member Secretary has to intimate in case of vacancies in advance.

33. The Juvenile Justice Board have to have regular sittings regularly so that a minimum number of inquiries are pending. Section 7 (1) of the Act of 2015., the Juvenile Justice Board Board has to meet and seat at such time as and when necessary, considering the requisite of the matter referred to them. The State has placed on record that the number of pending cases before the Juvenile Justice Board as of 3 May 2023 is 30,043. In its affidavit, the State asserts that efforts have been undertaken to expedite the resolution of these pending cases. It is stated that the Juvenile Justice Board have been holding regular sittings, carrying out their responsibilities as outlined in the Act of 2015 within the State of Maharashtra. The affidavit refers to specific measures taken, including induction training sessions for Social Work Members of Juvenile Justice Boards at the Maharashtra Judicial Academy.

34. We are informed that out of 38 sanctioned Juvenile Justice Boards, 35 are operational, and among these 35 Boards, 4 sanctioned posts are vacant. Palghar is a new District the Government has given permission to form a Juvenile Justice Board for it and accordingly the members of Juvenile Justice Boards have

been appointed by the Government. It is informed that the Magistrate is to be appointed. The learned Government Pleader and the Secretary assure that these vacancies will be filled within a time-bound period.

Child Welfare Committee

35. Under Section 27 of the Act of 2015, the State Government has to constitute one or more Child Welfare Committees for every district to discharge the duties conferred on such committees concerning children. The Committees consist of a chairperson and four other Members as the State Government may think fit. Under Section 27(3) of the Act of 2015, the District Child Protection Unit shall provide a Secretary and other staff that may be required for secretarial support to the Committee for its effective functioning.

36. Under Section 29, the Child Welfare Committee is vested with the power to dispose of cases for the care, protection, treatment, development and rehabilitation of children in need of care and protection, as well as to provide for their basic needs and protection. The functions and responsibilities of the Committees, as prescribed under Section 30 of the Act of 2015, encompass a comprehensive range of duties, including taking cognizance of and receiving the children produced, conducting inquiries on issues related to the safety and well-being of the children, directing social investigations by Child Welfare Officers or probation officers, and submitting

reports before the Committee. Additionally, the Committees are responsible for declaring fit persons for the care of children in need of care and protection, directing placement in foster care, ensuring care, protection, rehabilitation, or restoration of children based on individual care plans, and issuing necessary directions to parents, guardians, fit persons, or relevant facilities. Furthermore, the Committees play a crucial role in selecting registered institutions for the placement of children requiring institutional support, conducting regular inspections of residential facilities, and recommending improvements in service quality. They also certify the execution of surrender deeds, provide opportunities for parents to reconsider their decisions, and make efforts to keep families together. The Committees are actively involved in restoration efforts for abandoned or lost children, declaration of orphan, abandoned, and surrendered children as legally free for adoption, and taking *suo motu* cognizance of cases involving children not presented before the Committee. Moreover, the Committees address cases referred by the Board, coordinate with police, labour departments, and other agencies for child protection, and, in cases of abuse in child care institutions, conduct inquiries and provide directions to relevant authorities. They are also instrumental in accessing legal services for children and perform various other functions and responsibilities as may be prescribed. Again, we have detailed the duties and responsibilities as to which areas will be affected if the Committee do not function properly.

37. Regarding the Child Welfare Committees, it is stated that

the State has initiated the process of appointing individuals to fill the 9 vacant posts of Child Welfare Committees in Mumbai City and Mumbai Suburban. An advertisement was published on 14 May 2022, inviting proposals from eligible candidates, however, due to the receipt of a limited number of proposals, a second advertisement was published on 10 August 2022. In response to the second advertisement, the office of the Commissioner of the Women and Child Development Department has received applications for the positions of Chairperson and member of the Child Welfare Committee. The list of candidates recommended by the selection committee has been submitted to the State Government for further necessary action on 1 February 2023.

38. In Child Welfare Committees, out of 175 sanctioned posts, 20 are currently vacant. It is imperative to take time-bound steps and provide the necessary direction to address this issue.

39. As per Section 28(1), the Child Welfare Committees have to meet at least twenty days a month and in case of any emergency as and when required.

40. The State has placed on record that the number of pending cases for Child Welfare Committees as of 3 May 2023 is 10,008. In its affidavit, the State asserts that efforts have been undertaken to expedite the resolution of these pending cases. The affidavit refers to specific measures taken, including the conduction of induction training for members and chairpersons of Child Welfare

Committees in two separate batches. It is stated that the Women and Child Development Department is actively implementing a Mentorship Programme aimed at providing guidance to Child Welfare Committees.

High-Level Committee

41. Under Section 16(2) of the Act of 2015, the establishment of a High-Level Committee is mandated, comprising the Executive Chairperson of the State Legal Services Authority, the Home Secretary, the Secretary responsible for implementing the Act, and a representative from a voluntary or non-governmental organization nominated by the Chairperson. The Secretary has communicated that the nomination process for various members has already been initiated. Consequently, we expect that the report encompassing all pending cases before the Board will be compiled and presented to the Committee under Section 16(2) within a specified time frame. In this context, we intend to issue time-bound directives to expedite the proceedings.

Probation Officers

42. Section 2(48) of the Act of 2015 defines the Probation Officer. The duties of Probation Officers, as specified under Rule 66 of the Rules of 2018, encompass a range of responsibilities, including conducting a social investigation of the child in Form 6, attending proceedings of the Board and Children's Court, and submitting

reports as required. They are tasked with clarifying the problems of the child in institutions for orientation, monitoring, education, vocational, and rehabilitation aspects, and for establishing cooperation between the child and the person in charge. Probation Officers play a crucial role in assisting children to develop contacts with their families, participating in pre-release programs, and helping establish post-release contacts for emotional and social support. They also ensure regular post-release follow-up. Probation Officers may also accompany children to various facilities and evaluate their progress. They discharge monitoring authority functions and maintain records of their activities in a diary or register. Furthermore, Probation Officers identify alternatives for community services and establish linkages with the voluntary sector, undertaking any other tasks as assigned.

43. Thus, it can be seen that the role of the Probation Officer is pivotal in safeguarding the rights of juveniles in conflict with the law, ensuring they receive proper representation and a fair hearing before the Juvenile Justice Board. How the inquiry is conducted is crucial for the effective rehabilitation of the juvenile. The significance of the Probation Officer extends to the preparation of both an individual care plan and a post-release plan, emphasizing their integral involvement in these processes. Recognizing the gravity of their responsibilities, the necessity for adequate training, sensitization, and awareness for Probation Officers cannot be emphasised enough. These officers must be well-equipped to fulfil

their duties and responsibilities effectively. To this end, the State Government must ensure the provision of comprehensive training programs for Probation Officers. Furthermore, the Supreme Court in *Sampurna Behura*, has mandated a study to determine the optimal number of Probation Officers required. The State authorities are obligated to appoint the necessary number of Probation Officers, keeping in mind their critical role in the rehabilitation and social re-integration of juveniles in conflict with the law.

44. The State Commission has to conduct studies to estimate the required number of Probation Officers for the effective implementation of the Act of 2015. Based on these studies, the State Government must appoint the necessary number of Probation Officers. We are informed that the Commission, in collaboration with the NGOs, International Justice Mission and Tata Institute of Social Studies, has undertaken a study which aims to estimate the number of Probation Officers needed for the effective implementation of the Act of 2015. This research is guided by the Advisory Committee, chaired by a retired learned Judge of this Court. The study covered six selected districts in Maharashtra, utilizing a mixed-methods design incorporating both qualitative and quantitative data, along with various tools and data-gathering protocols. The State informs that a study has been conducted to assess the current status of District Probation Officers. Out of a total of 263 positions, 140 are currently vacant, and the recruitment process is underway. Consequently, in this aspect also a direction for

ensuring a time-bound compliance process is necessary.

Use of Technology

45. There is a need to use technology for the collection and analysis of the data for the effective implementation of the Act of 2015. This aspect is emphasised by the Hon'ble Supreme Court in *Sampurna Behura*. The integration of technology in the realm of child rights, particularly by Juvenile Justice Boards and Child Welfare Committees, is of importance. Beyond facilitating the effective functioning of these entities, technology plays an important role in addressing multifaceted challenges. This could include the tracing and tracking of missing children, the rescue of those employed in hazardous industries, combating child trafficking, managing cases of children leaving Child Care Institutions, addressing victims of child sexual abuse, and implementing necessary follow-up actions. The data collected can present a valuable opportunity for streamlined information management. The Supreme Court also emphasized that the utilization of computers and peripherals can significantly enhance the administrative functioning of Juvenile Justice Boards and Child Welfare Committees, contributing to efficiency and effectiveness. Therefore, the State should provide essential software and hardware to Juvenile Justice Boards and Child Welfare Committees for leveraging technological advantages to ensure the well-being and protection of children. Additionally, videoconferencing can be explored, especially in cases where the convenience of juveniles in conflict with the law is compromised. By

considering the implementation of videoconferencing facilities in appropriate instances, the accessibility and efficacy of justice processes concerning children's rights can be further enhanced.

46. The State has informed the development of a portal designed for tracking missing children in accordance with the guidelines outlined in the 2015 Act. This portal offers an integrated virtual space for the stakeholders involved. However, it is essentially an individual database in digital form. However, the potential lies in creatively utilizing this information to address the challenges outlined in the Act of 2015. To effectively analyse the data, the State should consider enlisting the services of technological experts. The experts can provide insights into various methods, including the utilization of data analysis to formulate queries and generate reports based on these queries. Given the diverse issues surrounding children in need of support, these agencies can collaborate with the State to conduct a comprehensive analysis of juvenile reports, thereby enhancing the efficiency of manpower. The State can explore options, either by developing in-house tools for data analysis or by collaborating with external agencies. The State can make this data accessible to various agencies involved in assisting children, subject to privacy and other safeguards. This collaborative approach would enable these agencies to contribute effectively, augmenting the State's efforts in this regard.

Special Juvenile Police Unit

47. To coordinate all functions of police related to children,

the State Government has to constitute a Special Juvenile Police Unit in each district. This unit shall be headed by a police officer, not below the rank of Deputy Superintendent of Police or above and shall consist of all police officers designated under the subsection, specifically the Child Welfare Police Officer, and two Social Workers with experience in the field of child welfare, one of whom shall be a woman. Section 107 of the 2015 Act mandates that in every police station, at least one officer, not below the rank of Assistant Sub-inspector, possessing the necessary aptitude, appropriate training, and orientation, may be assigned the role of Child Welfare Police Officer. This officer is designated to exclusively handle cases involving children, whether as victims or perpetrators. Coordination with the police, as well as voluntary and non-governmental organizations, is an essential aspect of this responsibility. Furthermore, Rule 89 of the Rules of 2018 requires the establishment of a Special Juvenile Police Force Unit. This Rule emphasizes that each state should constitute a Special Juvenile Police Unit in every district, tasked with coordinating all police personnel dealing with matters related to children.

48. The Hon'ble Supreme Court in *Sampurna Behura* has highlighted the crucial role of local police as a significant stakeholder in the effective implementation of the Act of 2015. To enhance the effectiveness of the Special Juvenile Police Force Unit, it is stipulated that the unit should include two social workers with practical experience in child welfare, and one of them should preferably be a

woman. This addition aims to bring a gender-sensitive approach to handling issues concerning children within the purview of the Act. The Supreme Court has noted that while many States have appointed Child Welfare Police Officers and established Special Juvenile Police Units, their duties and responsibilities remain vaguely defined. The Court expressed concern that these appointments often exist symbolically, lack effective training programs, and are made merely to fulfil legal requirements. The Supreme Court emphasized the need for clarity in defining the functions, duties, and responsibilities of Child Welfare Police Officers and Special Juvenile Police Units. To address this issue, the roles of Child Welfare Police Officers and Special Juvenile Police Units need to be specified. The Supreme Court has directed that the Special Juvenile Police Force Unit and Child Welfare Police Force are necessary to be set up in terms of the provisions of the Act of 2015 and not only on paper. Also, the State Police Committees should include child rights as part of their curriculum on a regular basis.

49. The State has placed on record that there are a total of 34 regular districts and 3 railway districts, resulting in the establishment of 49 Special Juvenile Police Units in the State. Approximately 1119 police officers are designated as members of these special units. Additionally, it is stated that the Women and Child Development Department has released an amount of Rs.40 lakhs for conducting training for the Police Department, and the training is currently

ongoing. The Petitioners emphasize the lack of clear information regarding the formation of a Special Juvenile Police Unit (SJPU) and the designation of any Police Officer as a Child Welfare Police Officer. The Petitioners pray for a direction for detailed information, including the number of Special Juvenile Police Units, a list of staff within these units, and a roster of designated police officers serving as Child Welfare Officers. We propose to issue specific directions for this purpose that this information be made publicly accessible.

Child Care Institutions

50. Child Care Institutions play an important role in the implementation of the Act of 2015 and the Rules. The Supreme Court in *Sampurna Behura* has highlighted the need for an evaluation and assessment of all Child Care Institutions in every state. This includes understanding the condition of the institutions, infrastructure requirements, and staffing needs. The Supreme Court underscored the urgent need for comprehensive reforms and improvements in Child Care Institutions, focusing on their conditions, standards, segregation of children, education, staffing, and the implementation of effective monitoring mechanisms.

51. The Management Committees in the Child Care Institutions is an important aspect of the functioning of child care institutions. The composition of the Committee and its functions are stipulated under the Rules. These outline the establishment and responsibilities of the Management Committee for Child Care

Institutions. The Committee is responsible for the overall management of the institution and the well-being of the children. Briefly stated, the committee shall consist of various members, including the District Child Protection Officer as the Chairperson, the Person-in-charge as the Member-Secretary, and members such as Probation Officer, Medical Officer, Psychologist, Workshop Supervisor, Teacher, Social Worker, and two child representatives from Children's Committees, among others. The Management Committee is required to meet at least once every month. The agenda includes a comprehensive review of various aspects such as care in the institution, medical facilities, food and hygiene conditions, mental health interventions, education, vocational training, legal aid services, and more. A complaint and redressal mechanism is established in every institution, including a Children's Suggestion Box to which the chairperson of the Management Committee holds the key. Emergency meetings can be called for immediate attention to certain problems or suggestions. Suggestions received through the suggestion box are discussed and reviewed in the monthly meeting. A Children's Suggestion Book is maintained in every institution, recording complaints, actions taken by the Management Committee, and follow-ups. The Board or Committee reviews this book at least once a month. A similar position of importance applies to the Children Committee which is contemplated under Rule 42 of the Rules of 2018, the person in charge of each institution for children is mandated to facilitate the establishment of children's committees for distinct age groups (6-10

years, 11-15 years, and 16-18 years), comprised entirely of children. These committees are encouraged to engage in various activities, including improving the institution's conditions, reviewing care standards, devising daily routines and diet plans, developing educational and recreational plans, supporting each other during crises, reporting abuse, and creatively expressing their views through various mediums. Thus the Management Committee plays a crucial role in overseeing the various aspects of a Child Care Institution, ensuring the well-being and proper development of the children under its care.

52. However, it is pointed out to us that out of 493 Child Care Institutions, 115 institutions do not have Management Committees. The direction of the Supreme Court, contained in paragraph 95.12 of the decision in *Sampurna Behura*, would have been kept in mind by the State while considering that 115 Child Care Institutions do not have management committees.

53. Chapter VII of the Act of 2015 concerns the process of rehabilitation and social re-integration of child care institutions. The Petitioners contend that, as per the National Commission Report prepared by the Academy of Management Studies on the social audit of CCIs, published in November 2020, as per the Rules of 2018; the Management Committee shall meet at least once every month to consider and review the functioning of Child Care Institutions, however, in majority of the cases, the management committee meeting is not conducted. In many of the Child Care Institutions,

there are no adequate Child Welfare Officers/Probation Officers/Case Workers. In 80% of the Child Care Institutions, there is no availability of a Written Child Protection Policy. The list of irregularities and inadequacies observed in the National Committee report dated November 2020 includes non-availability of Child Welfare Officers, Child Care Institutions not having proportionate staffing, counsellors for the State not available, inadequate state-run management of CCIs, etc.

54. Despite the importance of these Committees, they are not constituted in all the Child Care Institutions. The Secretary assures that the State will take necessary steps in that regard and will require assistance from the District Collector in that regard. We do not doubt that the District Collector, in achieving the object of the Act in a time-bound manner, will render all assistance for which we intend to issue separate directions.

Maharashtra Legal Services Authority

55. The Maharashtra State Legal Services Authority has provided information indicating its commitment to the rehabilitation of juveniles and ensuring effective representation before the Juvenile Justice Board. From the information supplied, the following position emerges: It has directed all District Legal Services Authorities in the State of Maharashtra to take steps in empanelling an adequate number of proficient lawyers for each Juvenile Justice Board. The goal is to offer free legal assistance, advice, and rehabilitation services

to integrate juveniles into the mainstream of society. The Authority has formulated a Common Minimum Program for 2023, instructing all District Legal Services Authorities to organize Legal Awareness Programs and Camps regularly at Juvenile Justice Boards. Legal Aid Clinics have been established in Juvenile Justice Boards, serving as primary health centres offering essential services. These clinics, manned by Para Legal Volunteers and Panel Advocates appointed by District Legal Services Authorities, focus on providing holistic assistance. Juveniles are enrolled to engage in community services, aiding other children in their studies and assisting other destitute individuals because such endeavours instil a belief in juveniles that they can contribute positively to society, boosting their confidence. The Juveniles receive training in technical fields and vocational training, enhancing their prospects for securing employment and livelihood. It is stated that the counselling centres play a crucial role in addressing issues like drug addiction, drinking, and smoking, and promoting overall well-being. Parents are also counselled and motivated to accept Juveniles back into their families. The Petitioners acknowledge that adequate measures are being taken by the Legal Services Authority. We emphasise that these efforts are not one time but the continuous nature of movements that must be sustained.

Training

56. The Supreme Court in *Sampurna Behura* in paragraph 94.15 has emphasized the significance of training for individuals

responsible for achieving the objectives of the Act of 2015. It is crucial to sensitize them and provide adequate training related to their roles. The State has informed us that, in accordance with Rule 92 of the Rules of 2018, all selected individuals are mandatorily given training. The Women and Child Development Department has organized training programs on various topics from 2020 to 2023, including child rights and child education, related legislations, effects of cybercrime, orientation workshops, child care and protection workshops, emotional and psychological support during COVID-19, and other important aspects. This indicates substantial efforts being undertaken by the State, a position acknowledged by the Petitioners. However, this is an ongoing process, and the State must maintain the same vigour and spirit in its implementation.

57. Now we turn to other issues highlighted by the Petitioners which would require our intervention to meet the object and purpose of the Act of 2015 which are not contained as the directions of the Hon'ble Supreme Court in Sampurna Behura, but are equally important.

Protocol for Rehabilitation

58. The Petitioners have brought Rule 94(1)(ii) of the Rules of 2018 to our attention. This Rule specifies that, apart from the functions outlined in the 2005 Act, the State Government may formulate a protocol for the information and rehabilitation of children. The Act of 2015 is the primary legislation ensuring the

safety, security, dignity, and well-being of children. It caters to the needs of children by providing proper care, protection, development, treatment, and social reintegration. The Act sets standards of care and protection to secure the best interest of the child, emphasizing that rehabilitation is essential to reintegrate them into society. Therefore, this Rule mandates the State Commission to develop protocols for the reformation and rehabilitation of children. There are various factors, including education, health, socio-psychological support, skill development, and training, that need consideration during rehabilitation. Unfortunately, there is a lack of guidelines or protocols defining the step-by-step roles and responsibilities of each stakeholder in the rehabilitation of children. In this context, the Petitioners pray that the State develop protocols for the rehabilitation of children.

59. The State has responded to the suggestions by stating that the State has initiated a process to develop the protocol and involve experts and non-governmental organizations working in the field of children's welfare to address rehabilitation issues in the protocol. Three meetings have taken place with experts, non-governmental organizations, and stakeholders on March 20, 2023, November 7, 2023, and November 24, 2023. The Secretary asserts that the preparation of the protocol is in progress. The preparation of the Protocols is crucial as it would delineate the roles and responsibilities of each stakeholder for resolving the issues of children in need in a time-bound manner. The initial draft of the protocol should be

prepared promptly.

Social Investigation Report and Individual Care Plan

60. Under Section 8(3)(e) of the Act of 2015, the Juvenile Justice Board is required to direct the Probation Officer, or in case the Probation Officer is not available, the Child Welfare Officer or a social worker, to conduct a social investigation into the case and submit a social investigation report within fifteen days from the date of first production before the Board to determine the circumstances in which the alleged offence was committed. Section 30(iii) mandates the State Welfare Committee to direct Child Welfare Officers, Probation Officers, District Child Protection Unit, or non-governmental organizations to conduct a social investigation and submit a report before the Committee. Similar responsibility is assigned under Section 39(1), where the process of rehabilitation and social integration of children under this Act shall be undertaken based on the individual care plan of the child, preferably through family-based care such as restoration to family or guardian with or without supervision or sponsorship, or adoption or foster care.

61. The Petitioners contend that, according to the "Report of the Committee for Analysing Data of Mapping and Review Exercise of Child Care Institutions under the Juvenile Justice (Care and Protection of Children) Act, 2015 and Other Homes," issued by the Ministry of Women and Child Development, only 60.20 per cent of Child Care Institutes in Maharashtra submit Social Investigation

Reports, and only 39.60 per cent have an Individual Care Plan for every child. Therefore, the Petitioners seek direction to the Respondents to establish an online monitoring system for tracking and rehabilitating Children in Conflict with the Law, as well as Children in Need of Care and Protection. This system should mandate the uploading of Individual Care Plans, Social Investigation Reports, Rehabilitation Cards, and decisions taken thereafter regarding Children in Conflict with the Law and Children in Need of Care and Protection. There has been no response from the State Government in their affidavit in reply to these suggestions made by the Petitioners. Given the statutory obligations under Sections 8(3) (e), 30(iii), and 39(1) of the Act of 2015, there is no reason why the State should not consider creating an online portal, especially when such a portal has already been established by the Central Government under the name *Mission Vatsalya* Portal for all its stakeholders. The National Commission has also developed a portal named *Go Home And Reunite*”. The State should input the data into the said portal within a time-bound period, submitting the data on the total number of missing children and those identified. Instead of issuing one-time directions, the State may consider issuing a directive to input the data in a phase-wise manner.

Rehabilitation Cards

62. A Rehabilitation Card serves as a mechanism to monitor the development of the child in accordance with their Individual Care Plan. It can be issued as outlined in Form 14 of the Rules of

2018. Rules 13(8)(VI)(C)(D), 17(VI), 19(19), 67(3)(VIII), 71(E) (2), 71(I)(3) and 71(J)(1) of the Rules of 2018 govern the Rehabilitation Cards. The Rules of 2018 mandate the issuance of a Rehabilitation Card, to be prepared by the Rehabilitation-cum-Placement Officer, monitored by the appointed authority, and the progress report submitted to the Management Committee. The Child Welfare Officer or Case Worker is responsible for reviewing the individual care plan and noting their opinion in the Rehabilitation Card (Form 14) based on observations and interactions. The Rehabilitation Card is crucial as it enables the child to receive a stipend. The Rehabilitation Card plays a crucial role in the rehabilitation of children in conflict with the law and children in need of care and protection. Rule 17(vi) of the Rules of 2018 emphasizes the issuance of the Rehabilitation Card in Form 14 to monitor the progress of the child in conflict with the law. Rule 13(8) (vi)(c)(D) of the Rules of 2018 regulates the release of the child and appointing a monitoring authority for the remainder of the prescribed term. The appointed monitoring authority is responsible for maintaining a Rehabilitation Card for the Child in Form 14. According to Rule 71-E(2) of the Rules of 2018, the child shall be issued the Rehabilitation Card in Form 14, indicating the duration of the child's stay, unless a specific order shortens the duration by the Board, Committee, or Court. Under Rule 71-I(4), the Child Welfare Officer or Case Worker reviews the Individual Care Plan and records their opinion in the Rehabilitation Card based on their observations, interactions with the child, teachers, or instructors, and feedback

received from the parents. Rule 71-J (1) stipulates that the progress of the child should be examined with specific reference to the aims and targets outlined in the Individual Care Plan. There is no response from the State on this aspect. It is on record that 358 children have been rehabilitated. Therefore, the State must provide data on record and issue necessary directions to the concerned authorities to address why Rehabilitation Cards are not being issued promptly and ensure their prompt issuance.

Social Audit

63. The Hon'ble Supreme Court, in the case of *Exploitation of Children in Orphanages in the State of Tamil Nadu v. Union of India and Ors.*², underscoring the importance of social audits. The Supreme Court stressed that conducting a social audit every year is essential to ensure the effective implementation of the Act of 2015, providing a mechanism for self-reflection and service improvement. Social audit complements traditional governmental audits and has been endorsed by various enactments. Thereafter the Supreme Court issued directions in paragraph-108 which are already reproduced above.

64. The Social Audit is equally crucial for scrutinizing the utilization of funds allocated to the State. Social auditing, fundamentally a monitoring tool, empowers citizens not only to track fund utilization but, more importantly, to assess the

² (2017) 7 SCC 594

effectiveness of the welfare policy. This assessment includes evaluating the impact and allows organizations to appraise the sustainable roll-out of the scheme which is useful for the effective implementation of all welfare schemes/policies. These Audits promote transparency and accountability in government actions.

65. The reply affidavit of the State refers to a report based on a sample survey but lacks specific details required by the Act. The Petitioners highlight that the report is from 2019 and is based on information collected four years ago. Although the directions of the Supreme Court pertain to the Union of India, there is no reason why the State of Maharashtra should not conduct a Social Audit. The learned counsel for the Petitioners points out that the Karnataka High Court in a judgment dated 2 March 2021 passed in Writ Petition No.208/2018 has issued relevant directions for the state of Karnataka to consider carrying out a Social Audit. During the hearing, the Secretary affirmed that the Social Audit report would be completed and published by the end of June 2024 and would be conducted annually by the end of June each subsequent year.

Summary

66. We have detailed the scheme of the Act and the rules duties and functions of each authority to emphasise that Parliament has recognised that the protection and well-being of children is paramount in our society. India also being a signatory to conventions such as the United Nations Convention on the Rights of

the Child is obligated to ensure the protection and well-being of its children. The ratification of such conventions reflects a commitment to providing a secure and nurturing environment for children to grow and thrive. Several laws have been enacted, including the Act of 2015 to strengthen the legal framework safeguarding children's rights. In the State of Maharashtra, many obligations have remained to be fulfilled, particularly in staffing, reporting, and implementing technology in the context of child protection. A key area of concern is the inadequate staffing levels in the institutions responsible for child welfare. The failure to appoint personnel on time has resulted in a lack of staffing in the Commission and District Child Protection Units, hindering effective functioning for the benefit of children. The State Child Protection Society, responsible for implementing the Act, also faces understaffing issues. With vacant positions, including the critical roles like the Probation Officers, the rehabilitation measures, and penalties crucial for child protection suffer. Insufficient personnel affect the monitoring and protection of children in need. The lack of trained professionals contributes to an environment where cases of abuse and neglect may go unnoticed or unaddressed. The failure to submit Annual Reports regularly, as mandated by the Act of 2015, would leave various child rights organizations hampered by the absence of official data. Without this crucial information, both authorities and volunteers may struggle to address issues effectively, highlighting the importance of prompt and regular reports. Timely and accurate reporting is essential for identifying and addressing instances of child abuse or neglect.

Without efficient reporting systems, children remain at risk, and cases of maltreatment may persist without intervention. The use of technological tools can enhance monitoring, reporting, and coordination among relevant authorities. The large number of pending cases before Juvenile Justice Boards and Child Welfare Committees indicate to the area of concern. All these shortfalls pose a serious threat to the well-being of children, undermining their rights and leaving them vulnerable to exploitation and neglect. The lives of countless children are at stake and apathy towards child protection can perpetuate cycles of abuse, hinder educational opportunities, and jeopardize the overall well-being of the future generation. Thus urgent action is required to rectify the deficiencies in the implementation of child protection measures in Maharashtra. Proactive measures are required by the State to address staffing challenges, strengthen reporting mechanisms, and use technology for child welfare.

67. In these circumstances, we deem it appropriate to issue the following directions:

- (i) The Respondent State Authorities shall, within a period of three months, fill up the vacant posts in the Maharashtra State Commission for Protection of Child Rights;
- (ii) The Respondent State Authorities shall take steps to initiate the process of filling up anticipated vacancies in the Commission four months in advance to ensure that the

posts do not remain vacant. Necessary instructions to implement a framework to fill up vacancies in time be issued to all the concerned departments and agencies within four weeks;

- (iii) The Respondent State Authorities shall take steps to fill in all the vacant posts in the State Level Child Rights Protection Society and the District Level Child Rights Protection Units within a period of three months;
- (iv) The Respondent State Authorities shall take steps to initiate the process of filling up anticipated vacancies in the State Level Child Rights Protection Society and in the District Level Child Rights Protection Units four months in advance to ensure that the posts do not remain vacant. Necessary instructions to implement a framework to fill up vacancies in time be issued to all the concerned departments and agencies within four weeks;
- (v) The Respondent State Authorities shall fill up vacant posts, in the Juvenile Justice Board in the State within a period of three months;
- (vi) The Respondent State Authorities shall take steps to initiate the process of filling up anticipated vacancies in the Juvenile Justice Board four months in advance to ensure that the posts do not remain vacant. Necessary instructions

to implement a framework to fill up vacancies in time be issued to all the concerned departments and agencies within four weeks;

- (vii) The Respondent State Authorities will take steps to fill the vacant posts in Child Welfare Committees within a period of three months;
- (viii) The State Authorities shall take steps to initiate the process of filling up anticipated vacancies in the Child Welfare Committees four months in advance to ensure that the post do not remain vacant. Necessary instructions to implement a framework to fill up vacancies in time be issued to all the concerned departments and agencies within four weeks;
- (ix) All Child Welfare Committees shall ensure that as per mandate under Section 28 of the Act of 2015 the Committees shall meet at least twenty-one days a month;
- (x) The Respondent State Authorities shall take steps to fill up the vacant posts of District Protection Officers and vacant posts of Probation Officers within a period of three months;
- (xi) The State Authorities shall take steps to initiate the process of filling up anticipated vacancies in the District Protection Officers and the Probation Officers in advance to ensure that the posts do not remain vacant. Necessary instructions

to implement a framework to fill up vacancies in time be issued to all the concerned departments and agencies within four weeks;

- (xii) The Respondent State Authorities shall notify the constitution of the Committee under Section 16(2) of the Act of 2015, including the nominated members under Section 16(2), within a period of two months. The Secretary, Women and Child Welfare Department will place the data envisaged under Section 16(2) before the High Power Committee. Thereafter, the Secretary will convene, with the consultation of the Chairman of the High Power Committee, the meetings of the said Committee every six months;
- (xiii) The Respondent State Authorities shall ensure that the Annual Report for the years 2018 to 2023 is published within a period of four months;
- (xiv) The Respondent State Authorities shall ensure that in the future the Annual Report is prepared and made accessible online by the end of June every year. Necessary instructions to implement a framework to publish the Annual General Report every June be issued to all the concerned departments and agencies within four weeks;

- (xv) The Respondent State Authorities will issue necessary directions to constitute the Special Juvenile Police Units in the districts and the cities in the areas where they have not been so constituted within a period of three months under the charge of the officers not below the rank of Deputy Superintendent of Police. The State shall also review the existing Special Juvenile Police Units, and if the officers of the rank of Deputy Superintendent of Police and above are not part of the said units as envisaged under Section 107 of the Act of 2015, the State will issue necessary directions to reconstitute the said units within a period of three months;
- (xvi) The Respondent State Authorities shall issue necessary directions to ensure that, in every police station, at least one officer not below the rank of Assistant Sub-Inspector, as envisaged under Section 107 of the Act of 2015, is designated as the Child Welfare Officer within a period of four months;
- (xvii) Necessary instructions shall be issued within four weeks to ensure, as envisaged under Section 103, that all police officers take a periodical review of the progress, and training be given to them;
- (xviii) The Respondent State Authorities shall ensure that registered Child Care Institutions, that do not have Management Committees as per Rule 41 of the Rules of

2018, set up Management Committees as envisaged under Rule 41(3) of the Rules of 2018 and Children Committees under Rule 42 of the Rules of 2018. The Respondent State Authorities shall constitute the same and necessary instructions shall be given to each Institution that they should set up the management committees within a period of three months. The District Collector in each district will aid and assist the Authorities under the Act of 2015 in achieving the said purpose;

- (xix) In case, despite the directions, the Child Care Institutions do not set up the Committees as envisaged under Rules 41 and 42 of the Rules of 2018, the State would take necessary action against the said Institutions. This position be informed to the Institutions by Instructions/ Circular within four weeks;
- (xx) The Respondent State Authorities will prepare a draft of the protocol for information and rehabilitation of the children as per Rule 94(1)(iii) of the Rules of 2018 within a period of three months and proceed to finalise the same at the earliest;
- (xxi) The Respondent- State Authorities will take steps to populate the data pertaining to Maharashtra on the *National Mission Vatsalya Portal* set up by the Central Government within a period of three months, and also the

data regarding missing and rescued children identified pertaining to Maharashtra be submitted on the *Go Home and Reunite Portal* developed by the National Commission within a period of three months;

- (xxii) The Secretary of the Women and Child Welfare Department, will take a review as regards the status of Rehabilitation Cards, whether it has been issued to the children who are entitled to them, and after taking a review, issue necessary instructions to issue rehabilitation cards to those who are entitled to it as per the Rules;
- (xxiii) The Respondent State Authorities shall prepare a Social Audit by June 2024, and thereafter carry out a Social Audit every year and submit a report by the end of June every year. Necessary instructions to implement a framework to carry out and submit the social audit by June every year be issued to all the concerned departments and agencies within four weeks;
- (xxiv) The Respondent State Authorities will consider setting up a Task Force involving domain experts in the field of Data Analysis, either in-house or with outside agencies, for evolving methods of analysis of existing data to generate reports and other details for the effective implementation of the Act of 2015.

(xxv) The timeline will come into force from the date the order is uploaded on the server.

68. We place the responsibility of coordinating the implementation of the above directions on the Secretary, Women and Child Welfare Department, State of Maharashtra. All agencies and departments of the State will aid and assist the Secretary in that regard.

69. Rule is made absolute in the above terms.

70. List the Petition on 9 May 2024 at 2.30 for reporting compliance and further directions, if any.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)