

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.05.2008

CORAM

THE HON'BLE Mr. JUSTICE K.VENKATARAMAN

and

THE HON'BLE Mr. JUSTICE M.SATHYANARAYAN

Writ Petition No.11835 of 2008

V.Balachandar ... Petitioner

Vs.

The Superintendent,
Government Special Home for
Boys, Sathuvachari,
Vellore 632 009. ... Respondent

Writ petition has been filed under Article 226 of The Constitution of India to issue a Writ of Mandamus directing the respondent for release of juveniles who have been detained for more than three years in the Special Home for Boys, Vellore.

For Petitioner : Mr.V.Karthick for M/s.T.S.Gopalan

For Respondent : Mr.M.Dhandapani, Spl.G.P.

O R D E R

(Order of the Court was made by K.VENKATARAMAN, J)

The petitioner has come forward with the present writ petition for Mandamus directing the respondent to release the juveniles, who have been detained for more than three years in the Special Home for Boys, Vellore.

2. The short facts which led to the filing of the present writ petition are as follows:-

(a) The petitioner had worked in the State Bank of Travancore and on his retirement, he has involved in voluntary service in Ramana Kendra. He is a social activist, connected with the Government Special Home for Boys, in the capacity as Member, Home Welfare Committee. He has also involved with the Government Children Home for Boys, Ranipet and Government After Care Home for Women in Vellore and he visits these institutions frequently to interact and educate

the inmates. In that capacity, he has filed the present writ petition in public interest to seek redressal from this Court regarding a common cause involving juveniles detained for more than three years.

(b) Recently, the petitioner has gone through the records of the Government Special Homes for Boys at Vellore and found that several juveniles have been kept in detention for more than three years in the Government Special Home at Vellore. The particulars have been given in the affidavit in support of the writ petition.

(c) It is further averred that Section 15 (g) of the amended Act 33 of 2006 provides for an order directing the juveniles to be sent to a special home for a period of three years. A close reading of the provisions under the said Act would indicate that the procedural law pertaining to a juvenile has been substantially amended and altered by the provisions of Act 56 of 2000 along with amendment Act 33 of 2006. Thus, the juvenile who has been detained under the Act and who has completed three years, will have to be reviewed and the juvenile will have to be forthwith released. Since the provisions of the said Act have not been noticed by the authorities concerned, several children, who have been detained in the Government Special Home for Girls, Kellys, Chennai and who have also spent more than three years in the Special Home, continue to remain till they reach the age of juvenility and hence, the petitioner has approached this Court for the relief set out earlier.

3. Counter affidavit has been filed by the respondent, which in nutshell is as follows:- The particulars with regard to the juveniles, who have been detained, have been set out in paragraphs 3, 4, 5, 13 and 15 of the counter affidavit. After setting out the persons, who have been detained, finally, at the end of the counter, the respondent has sought for a direction from this Court for the release of the juveniles from the Special Home who have completed three years of detention and also to revise the order of Juvenile Justice Board to limit the detention for maximum period of three years, who have not completed three years period and to issue orders to include the detention period served in Observation Homes by the juveniles for the calculation of total period of stay. Thus, practically what the petitioner has sought for has been conceded by the respondent by his counter.

4. We have considered the submissions of Mr.Karthick, learned counsel appearing for the petitioner and Mr.M.Dhandapani, learned Special Government Pleader appearing for the respondent.

5. Since several facts have not been disputed by the respondent in their counter, we are not dealing with each one of the contentions raised by the petitioner. But, however, for better appreciation of the facts, it would be more appropriate to extract

the provision of the Juvenile Justice (Care and Protection of Children) Act, 1986 and more so, Section 21 of the said Act, which reads as follows:-

" 21.Orders that may be passed regarding delinquent juveniles - (1) Where a Juvenile Court is satisfied on inquiry that a juvenile has committed an offence, then notwithstanding anything to the contrary contained in any other law for the time being in force, the Juvenile Court may, if it so thinks fit -

(a) allow the juvenile to go home after advice or admonition;

(b) direct the juvenile to be released on production of good conduct and placed under the care of any parent, guardian or other fit person executing a bond, with or without surety as that court may require, for the good behaviour and well-being of the juvenile for any period not exceeding three years;

(c) direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for the good behaviour and well-being of the juvenile for any period not exceeding three years;

(d) make an order directing the juvenile to be sent to a special home -

(i) in the case of a boy over fourteen years of age or of a girl over sixteen years of age, for a period of not less than three years;

(ii) in the case of any other juvenile, for the period until he ceases to be a juvenile;

provided that the Juvenile Court may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case it is expedient so to do, for the reasons to be recorded, reduced the period of stay to such period as it thinks fit;

Provided further that the Juvenile Court may, for reasons, to be recorded, extend the period of such stay, but in no case the period of stay shall extend beyond the time when the juvenile attains the age of eighteen years, in the case of a boy, or twenty years, in the case of girl;

6. The provisions of the said Act underwent a sea change and the Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000) was introduced. The provisions of Section 21 of the Old

Act was amended and Section 15 was enacted, which is extracted here under:-

" 15. Order that may be passed regarding juvenile -
(1) Where a Board is satisfied on inquiry that a juvenile has committed an offence, then, notwithstanding anything to the contrary contained in any other law for the time being in force, the Board may, if it so thinks fit -

(a) allow the juvenile to go home after advice or admonition following appropriate inquiry against and counselling to the parent or the guardian and the juvenile.

(b) direct the juvenile to participate in group counselling and similar activities.

(c) order the juvenile to perform community service;

(d) order the parent of the juvenile or the juvenile himself to pay a fine, if he is over fourteen years of age and earns money;

(e) direct the juvenile to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond, with or without surety as the Board may require, for the good behaviour and well-being of the juvenile for any period not exceeding three years.

(f) direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for the good behaviour and well-being of the juvenile for any period not exceeding three years;

(g) make an order directing the juvenile to be sent to a special home

(i) in the case of juvenile, over seventeen years but less than eighteen years of age for a period of not less than two years;

(ii) in case of any other juvenile for the period until he ceased to be a juvenile;

Provided that the Board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case it is expedient so to do, for the reasons to be recorded, reduce the period of stay to such period as it thinks fit".

7. Later, by the amendment Act 33 of 2006, Section 15 (g) was altered to the following effect:-

" (g) make an order directing the juvenile to be sent to a special home for a period of three years;

Provided that the Board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case, it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit.

8. Thus, the close reading of the above provisions would indicate that the procedural law pertaining to the juveniles has been substantially amended and altered by the provisions of the Act 56 of 2000 coupled with the amendment Act 33 of 2006. In a case of juvenile, who has completed more than three years, his case will have to be reviewed and the juvenile will have to be forthwith released. The objects and reasons of amendment Act 33 of 2006 stipulates that Act 56 of 2000 amended inter alia clarify that the Juvenile Justice Act shall apply to all cases involving detention or criminal prosecution of juveniles under any other law and also to provide for alternatives to detention in the observation home to achieve the intention of the Juvenile Justice Act. If the intention of parliament in Section 15 (g) of the Act is viewed, then the parliament had only envisaged detention of a juvenile for a period of three years and no more. Therefore, the rehabilitation of a juvenile being paramount, the intention of the parliament was to release juveniles who had spent three years will have to be given effect and such an ameliorative measure cannot be denied to juvenile who were detained prior to Act 33 of 2006. Any contrary interpretation would render the juveniles detained prior to Act 33 of 2006 would suffer for a longer period than juveniles sentenced after the commencement of Act 33 of 2006. Such a classification of juveniles apart from being discriminatory, renders the benevolent provisions of the Act illusory and nugatory for children who have been dealt with under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000.

9. Further, the detention period in the Observation Homes shall be included for calculating the total period of three years of stay. Otherwise, it will cause a serious anomaly.

10. Thus, considering the totality of the circumstances and also taking into consideration the counter affidavit filed by the respondent, it would be appropriate to issue the following directions:-

(a) The juveniles from the Special Homes, who have completed three years shall be released forthwith.

(b) The order of the Juvenile Justice Board is limited for a period of maximum three years for the juveniles, who have not completed the three years period of stay.

(c) The detention period served in Observation Homes by the juveniles shall be included while calculating the total period of three years of stay.

11. With the above directions, the writ petition stands disposed of. No costs.

12. Before parting with the case, we place on record our appreciation of the petitioner Mr.V.Balachandar, who has brought forth the present state of affair of the Juveniles by filing the present Public Interest Litigation. We also appreciate Mr.V.Karthik, learned counsel who has appeared for the petitioner in this matter and gave valuable suggestion for passing the present order, which will benefit several juveniles who have been detained for more than three years in the Special Homes. We also place on record the valuable assistance of Mrs.Jayashree Raghunadan, Commissioner of Social Defence. It is needless to say that Mr.M.Dhandapani, learned Special Government Pleader has taken the issue in the right perspective and immediately come forward with the counter with a fair admission, which deserves all appreciation.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sbi

To

The Superintendent,
Government Special Home for
Boys, Sathuvachari,Vellore 632 009.

+ 1 CC to Mr.T.S.Gopalan, Advocate, S.R.No.26965
+ 1 CC to The Government Pleader, S.R.No.26963.

W.P.No.11835 of 2008

BV(CO)
SRA(23/05/2008)