A

SHEELA BARSE

v.

SECRETARY, CHILDREN AID SOCIETY & OTHERS

DECEMBER 20, 1986

B [P.N. BHAGWATI, CJ, AND R.S. PATHAK, J.]

Bombay Childern's Act, 1948: Children—Citizens of future era—Problem child—A negative factor—Provisions of Childrens Act to be properly translated into action—Child Welfare Officer/Superintendent of Observation Home/Presiding Officer of Juvenile Court—Should be duly motivated and approach oriented.

C

Constitution of India, 1950, Articles 12, 21 & 24—Children's Aid Society, Bombay undoubtedly an instrumentality of the State—Necessity to act in a manner satisfying requirements of Articles 21 & 24 and Directive Principles of State Policy.

D

The respondent—a society registered under the Societies Registration Act, 1860 is also a Public Trust under the Bombay Public Trusts Act of 1950. It has set-up many Observation Homes under the provisions of the Bombay Children's Act 1948.

E **The appellant, in a letter to the High Court, made certain grievances about the working of the New Observation Home managed by the respondent at Mankhurd. The High Court treated the aforesaid letter as a writ petition and disposed it of by giving certain directions.**

Aggrieved by the decision of the High Court, the appellant filed
F **the present appeal by special leave contending that the High Court failed to consider (i) that children while staying in the Observation Homes are forced to work without remuneration and are engaged in hazardous employment; (ii) that the shortfall in follow up action in the Observation Homes has not been properly considered by the High Court and the directions given by the High Court are inadequate; and**
G **(iii) that the Society should have been treated as a State and not as a voluntary organisation within the meaning of Arts. 21 and 24 of the Constitution.**

Disposing of the appeal,

H **HELD: 1.1 Children are the citizens of the future era. On the**

proper bringing up of the children and giving them the proper training to turn out to be good citizens depends the future of the country. In recent years, this proposition has been well realised. Every society must, therefore, devote full attention to ensure that children are properly cared for and brought up in a proper atmosphere where they could receive adequate training, education and guidance in order that they may be able to have their rightful place in the society when they grow up. [875D; 877C]

1.2 The Children's Act 1948 has made elaborate provisions to cover all the rights of the child and if these provisions are properly translated into action and the authorities created under the Act become cognizant of their role, duties and obligation in the performance of the statutory mechanism created under the Act and they are properly motivated to meet the situations that arise in handling the problems, the situation would certainly be very much eased. [875F-G]

1.3 The Child Welfare Officer (Probation) as also the Superintendent of the Observation Home must be duly motivated. They must have the working knowledge in psychology and have a sense of keen observation. On their good functioning would depend the efficacy of the scheme. [876C-D]

1.4 The Juvenile Court has to be manned by a Judicial Officer with some special training. Creation of a court with usual Judicial Officer and labelling it as Juvenile Court does not serve the requirement of the statute. If that were so, the statute has no necessity of providing a Juvenile Court. The statutory scheme contemplates a judicial officer of a different type with a more sensitive approach-oriented outlook. Without these any Judicial Officer would, indeed not be competent to handle the special problem of children. [876G-H]

2. Children in Observation Homes should not be made to stay long and as along as they are there, they should be kept occupied and the occupation should be congenial and intended to bring about adaptability in life aimed at bringing about a self-confidence and picking of humane virtues. However, for employment in Children's home, the children would not be given any remuneration. [876E]

3. The Children Aid Society should have been treated as a State within the meaning of Art. 12 and it is undoubtedly an instrumentality of the State on the basis of the test laid down by the Supreme Court. The Society has, therefore, to regulate its activities not only in accordance

with the statutory requirements but also act in a manner satisfying the requirements of the constitutional provisions in Article 21 and 24 as also the Directive Principles of State Policy. The State of Maharashtra is therefore directed to take prompt action to strictly enforce the law, act up to the requirements of the constitutional obligations and the directions given by the High Court as also by the Supreme Court in this judgment. [877D-F]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 300 of 1985.

From the Judgment and Order dated 4.2.85 of the Bombay High Court in Crl. Writ Petition No. 487 of 1984.

Govind Mukhoty, P.H. Parekh and Ms. L. Krishnamurthy for the Appellant.

A.B. Rohatgi, S.B. Bhasme, R. Karanjawala, Mrs. Karanjawala and M.N. Shroff for the Respondents.

The following Judgments were delivered:

BHAGWATI, CJ. In this appeal by special leave the appellant who is a freelance journalist by profession and a Member of the Maharashtra State Legal Aid and Advice Committee, seeks to challenge the judgment of the Bombay High Court delivered on 4th February, 1985 on a writ petition filed by her.

In the writ petition she made grievance about the working of the New Observation Home located at Mankhurd which is maintained and managed by the Children's Aid Society, Bombay. According to her, the Children's Aid Society, is registered under the Societies Registration Act 1860, and has also been treated as a Public Trust under the Bombay Public Trusts Act of 1950. The Society was founded on 1st May, 1926. The Chief Minister of Maharashtra State is the ex-officio President and the Minister for Social Welfare is the Vice-President of the Governing Council of the Society. The said Society receives grants from the State. It has set up a Remand Home at Umerkhadi within Bombay area and it is now run as an Observation Home under the provisions of the Bombay Children's Act, 1948 (hereinafter referred to as 'the Act'). The Society runs three observation homes—one at Umerkhadi established in 1927, the second at Mankhurd established in 1960 and the third, the New Observation Home also at Mankhurd.

The appellant's letter of 22nd August, 1984 was treated as a writ petition by the High Court wherein the grievances made by the petitioner were of four types as set out by the High Court in paragraph 23 of its judgment:

(1) Delay in repatriation or restoration of children to their parents in respect of whom orders for repatriation were made by the Juvenile Court;

(2) Non-application of mind in the matter of taking children into custody and directing production before the Juvenile Court;

(3) Absence of proper follow-up action after admission of the children in the Observation Homes, in particular, grievance was made that the Child Welfare Officers were not performing their duties and such failure led to continued detention of children without any justification; and

(4) Detention in such circumstances was illegal and the condition very often resulted in harassment to the children so detained.

The Society appeared before the High Court and filed counter affidavits denying allegations of facts raised in the writ petition and both parties produced documents. The High Court went into the matter at considerable length, found some of the allegations to be without any justification and yet others were accepted. In paragraphs 44 and 45 of the impugned judgment, the High Court colated its directions and recommended thus:

"(A) (i) A copy of the repatriation order passed by the Juvenile Court should always be sent to the Juvenile Aid Police Unit as it is now sent to the Observation Home. The order should specify that the police should implement that order within a week. What should be done by the police and the Observation Home in case the order is not implemented is mentioned in paragraph 27 of this judgment;

(ii) The possibility of detailing sufficient number of personnel in the police department for the work con-

A nected with the Bombay Children Act should be speedily considered (Paragraph 28);

(iii) The Government should immediately review the resolution dated 2nd September, 1965 issued by the Education and Social Welfare Department, B which fixes the allowances for escort duties done by voluntary organisations (paragraph 29);

(iv) It is also recommended that the Government should consider the constitution of an Escort Service which can consist of police personnel, youth volunteers and Government servants (latter part of C paragraph 29);

(v) The observation homes and the JAPU should not wait for a sufficient number of children being ready for being escorted before implementing the D orders passed by the Juvenile Court (Paragraph 30).

(B) (i) The Magistrate presiding over the Juvenile Court should insist, in the case of local children, that the police must trace the parents of the children within a maximum period of 48 hours and take steps to re- E store them to their parents (paragraphs 32 and 33)

(ii) Any tendency, if there is one, on the part of the personnel of JAPU of fulfilling the quota for a month should be firmly put down; (paragraph 32);

In this Court, the appellant has maintained that the High Court failed to consider several of the contentions advanced by her at the hearing of the writ petition, namely, (1) children while staying in the Observation Homes are forced to work without remuneration and are engaged in hazardous employment. There were instances where Observation Homes assigned the work to private entrepreneurs with a view G to making financial gains for the Society. In support of this circumstance, reliance was placed upon an affidavit on behalf of the respondent filed in the High Court. The appellant next contended, relying on the balance-sheet of the Society forming part of the annual report, it has been contended before the High Court that the Society was making a profit of about Rupees four lakhs a year by engaging children into H it to discharge various types of labour without making any payment to

them. According to the appellant, the shortfall in follow-up action has not been properly considered by the High Court and the directions given by it are inadequate. In giving the directions, the High Court lost sight of mandatory provisions of the Children's Act as also the provisions in Articles 21 and 24 of the Constitution and the provisions contained in the Directive Principles of the State Policy. It is the submission of the appellant that Respondent No. 1 Society should have been treated as a State and not as a voluntary organisation. In view of the materials placed on the record about the constitution and manning of the Society as also funding thereof, according to the appellant, the Court should have appreciated the position that it was the protector of the helpless children living within its jurisdiction and such care and attention and provisions of amenities as were necessary for their proper upkeep and bringing up should have been ensured by the judgment of the High Court. She also contended that the directions of the High Court in the matter of illegal detention of children was not adequate.

Children are the citizens of the future era. On the proper bringing up of children and giving them the proper training to turn out to be good citizens depends the future of the country. In recent years, this position has been well realised. In 1959, the Declaration of all the rights of the child adopted by the General Assembly of the United Nations and in Article 24 of the International Covenant on Civil and Political Rights 1966. The importance of the child has been appropriately recognised. India as a party to these International Charters having rectified the Declarations, it is an obligation of the Government of India as also the State machinery to implement the same in the proper way. The Children's Act, 1948 has made elaborate provisions to cover this and if these provisions are properly translated into action and the authorities created under the Act become cognizant of their role, duties and obligation in the performance of the statutory mechanism created under the Act and they are properly motivated to meet the situations that arise in handling the problems, the situation would certainly be very much eased.

The problem is such that it does not brooke delay. There is no unanimity of the problem also though there may be a pattern, every individual case is likely to pose a situation very often peculiar to itself. A set pattern would not meet the situation, and yield the desired results. What is, therefore, necessary is to appropriately train all the functionaries under the statute, create in them the necessary bias and motivate them adequately to arise to the demand of every situation.

A We appreciate that this is a difficult job but an intricate situation requiring delicate handling with full understanding of the problem would definitely require appropriate manning of the machinery. More than a mite of the grievances made by the appellant could not have been there if there had been competent handling of the situation. It is very much necessary, therefore, that officers at the different level B called upon to perform statutory duties by exercising powers conferred under the Statute have to be given the proper training and only when they had the requisite capacity in them should they be called upon to handle the situation.

Gerontocracy in silence manner indicated that like a young plant C a child takes roots in the environment where it is placed. Howsoever good the breed be if the sapling is placed on a wrong setting or an unwarranted place, there would not be the desired growth. Same is the situation with the humane child. The Child Welfare Officer (Probation) as also the Superintendent of the Observation Home must be duly motivated. They must have the working knowledge in psychology D and have a sense of keen observation on their good functioning would depend the efficacy of the scheme.

We are not inclined to agree with the contention advanced by the appellant that for employment in children's home, the children would be given remuneration. Children in Observation Homes should not be E made to stay long and as long as they are there, they should be kept occupied and the occupation should be congenial and intended to bring about adaptability in life aimed at bringing about a self-confidence and picking of humane virtues.

We are not inclined to agree with the supervision over the F Homes. Indeed, without this aspect being assured, the conditions of these Homes could not improve. Dedicated workers have to be found out, proper training to them has to be imparted and such people alone should be introduced into the children homes.

The Juvenile Court has to be manned by a Judicial Officer with G some special training. Creation of a Court with usual Judicial Officer and labelling it as Juvenile Court does not serve the requirement of the statute. If that were so, the statute have no necessity of providing a Juvenile Court. The statutory scheme contemplates a judicial officer of a different type with a more sensitive approach-oriented outlook. Without these any Judicial Officer would, indeed, not be competent to H handle the special problem of children.

In recent years, children and their problems have been receiving attention both of the Government as also of the society but we must say that the problems are of such enormous magnitude that all that has been done till now is not sufficient. If there be no proper growth of children of today, the future of the country will be dark. It is the obligation of every generation to bring up children who will be citizens of tomorrow in a proper way. Today's children will be the leaders of tomorrow who will hold the country's banner high and maintain the prestige of the Nation. If a child goes wrong for want of proper attention, training and guidance, it will indeed be a deficiency of the society and of the Government of the day. A problem child is indeed a negative factor. Every society must, therefore, devote full attention to ensure that children are properly cared for and brought up in a proper atmosphere where they could receive adequate training, education and guidance in order that they may be able to have their rightful place in the society when they grow up.

We agree with the appellant that the respondent-Society should have been treated as a State within the meaning of Article 12 as it is undoubtedly an instrumentality of the State on the basis of the test laid down by this Court. The respondent-Society has, therefore, to regulate its activities not only in accordance with the statutory requirements but also act in a manner satisfying the requirements of the Constitutional provisions in Articles 21 and 24 as also the Directive Principles of the State Policy.

We would direct the State of Maharashtra to take prompt action to strictly enforce the law, act up to the requirements of the constitutional obligations and proceed to implement the directions given by the High Court as also by us in this judgment. We direct that the State of Maharashtra shall pay to the appellant costs fixed at Rs.5000.

Before we part with this case, we may refer to a grievance made by the appellant in regard to some of the observations made by the High Court relating to her stand in the writ petition. The appellant pointed out that these observations were disparaging and the High Court ought not to have made the same. We may point out even at the cost of reiteration that the appellant is a social worker and a freelance journalist and she brought the matter before the High Court being genuinely aggrieved on account of non-implementation of the statute and being moved by the condition of the children in the New Observation Home. The appellant brought the writ petition before the High Court in larger public interest and for the purpose of securing im-

A plementation of the law. We do not think that the observation made by the High Court against her were justified. In fact, the High Court accepted most of the complaints made by her and proceeded to give relief by way of directions and recommendations. The High Court should have borne in mind that the appellant was not a lawyer and was not acquainted with the procedure followed in the Court. There was, B therefore, no need to make those observations. We would, therefore, direct that the observations criticising the appellant may be deleted.

PATHAK, J. On the basis of the earlier authorities of this Court by which this Bench of two Judges must be bound, it appears that we must treat the Children's Aid Society as falling within the expression C "the State" within the meaning of Article 12 of the Constitution. Having said that, I agree with the order proposed by the learned Chief Justice.

M.L.A.