

Delhi High Court

Delhi High Court

Court On Its Own Motion vs Govt Of Nct Of Delhi on 15 July, 2009

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 9767/2009

COURT ON ITS OWN MOTION Petitioner

versus

GOVT OF NCT OF DELHI Respondent Through: Mr.A.S. Chandhiok, ASG with

Mr. Sanjay Katyal, Ms. Sweta Kakkad &

Mr. Varun Pathak, Advs. for UOI.

Ms. Mukta Gupta, Standing Counsel

with Mr. Rajat Katyal, Adv. for State.

Mr. Anil Shrivastav, Adv. for NCPCR.

Ms. Asha Menon, Member Secretary,

DLSA with Mr. Harish Dudani, OSD for

DLSA.

AND

+ W.P.(CRL) 2069/2005

SAVE THE CHILDHOOD

FOUNDATION Petitioner Through: Mr. H.S. Phoolka, Sr. Adv. with

Ms. Sunita Tiwari & Mr. Bhuwan

Ribhu, Advocates.

versus

UNION OF INDIA & ORS. Respondents Through: Mr.A.S. Chandhiok, ASG with

Mr. Sanjay Katyal, Ms. Sweta Kakkad &

Mr. Varun Pathak, Advs. for UOI.

Ms. Mukta Gupta, Standing Counsel

with Mr. Rajat Katyal, Adv. for State.

Mr. Anil Shrivastav, Adv. for NCPCR.

Ms. Asha Menon, Member Secretary,

DLSA with Mr. Harish Dudani, OSD for

DLSA.

AND

WP(C) No. 9767/09, WP(CrI)2069/05, W.P.(C) Nos.15090/06, 4125/07, 4161/08 page 1 of 20 + W.P.(C) 15090/2006

Q.I.C. & A.C. Petitioner Through: None.

versus

MINISTRY OF LABOUR &

EMPLOYMENT & ANR. Respondents Through: Ms. Zubeda Begum, Adv. for GNCTD.

and Labour Department.

Mr. Anil Shrivastav, Adv. for NCPCR.

Ms. Asha Menon, Member Secretary,

DLSA with Mr. Harish Dudani, OSD for

DLSA.

AND

+ W.P.(C) 4125/2007

ALL INDIA BHRASHTACHAR

VIRODHI MORCHA (REGD.) Petitioner Through: Mr. Tiger Singh, Adv. with Ms. Jasbir Singh & Mr. Manmeet Singh, Advs.

versus

KAROL BAGH BANGIYA

SWARAN SHILPI SAMITI

(REGD.) & ORS. Respondents Through: Mr. Mayank Nagi, Adv. for R-1.

Ms. Deepak Tiwari, Adv. for Ms. Sujata

Kashyap, Adv. for GNCT.

Mr. Sanjeev Sabharwal, Adv. with Mr.

Hem Kumar, Adv. for MCD.

Ms. Pinky Anand, Adv. with

Ms. Aakanksha Munjhal, Adv. for R-7.

Mr. Anil Shrivastav, Adv. for NCPCR.

Ms. Asha Menon, Member Secretary,

DLSA with Mr. Harish Dudani, OSD for

DLSA.

AND

WP(C) No. 9767/09, WP(Crl)2069/05, W.P.(C) Nos.15090/06, 4125/07, 4161/08 page 2 of 20 + W.P.(C) 4161/2008

COURT ON ITS OWN MOTION Petitioner

versus

STATE NCT OF DELHI Respondents Through: Ms. Zubeda Begum, Adv. for GNCT.

Mr. Anil Shrivastav, Adv. for NCPCR.

Ms. Asha Menon, Member Secretary,

DLSA with Mr. Harish Dudani, OSD for

DLSA.

Reserved on : July 09, 2009

Date of Decision: July 15, 2009

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE MANMOHAN

1. Whether Reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the Reporter or not? Yes.
3. Whether the judgment should be reported in the digest? Yes.

JUDGMENT

MANMOHAN , J :

1. Today's children constitute tomorrow's future. To ensure a bright future of our children, we have to ensure that they are educated and not exploited.

2. In fact, children are the most vulnerable members of any society.

They are entitled to special care and assistance because of their physical and mental immaturity. The problem is more complicated in developing

WP(C) No. 9767/09, WP(CrI)2069/05, W.P.(C) Nos.15090/06, 4125/07, 4161/08 page 3 of 20 countries like ours, where child labour exists in relationship with illiteracy

and poverty.

3. To eliminate the menace of child labour and to effectuate the mandate of Articles 23, 24, 39, 45 and 47 of the Constitution, Supreme Court had

given a large number of mandatory directions in "M.C. Mehta v. State of

Tamil Nadu reported in AIR 1997 SC 699". One of the important

directions was to direct an employer to pay a compensation of Rs.20,000/-

for having employed a child below the age of 14 years in hazardous work in

contravention of Child Labour (Prohibition & Regulation) Act, 1986

(hereinafter referred to as "CLPRA, 1986"). The appropriate Government

was also directed to contribute a grant/deposit of Rs.5,000/- for each such

child employed in a hazardous job. The said sum of Rs.25,000/- was to be

deposited in a fund to be known as Child Labour Rehabilitation-cum-

Welfare Fund and the income from such corpus was to be used for

rehabilitation of the rescued child.

4. As the constitutional mandate and statutory provisions with regard to

children were not being vigorously implemented and there was lack of

coordination between different agencies of the Government of NCT of Delhi

and other authorities, this Court, vide a detailed order dated 24th September,

2008 directed the National Commission for Protection of Child Rights

(hereinafter referred to as 'National Commission'), to formulate a detailed

Action Plan for strict enforcement and implementation of CLPRA, 1986 and

other related legislations. The National Commission was directed to suggest WP(C) No. 9767/09, WP(CrI)2069/05, W.P.(C) Nos.15090/06, 4125/07, 4161/08 page 4 of 20 measures regarding education, health and financial support to the rescued

children. The National Commission was also directed to suggest measures

for timely recovery and proper utilization of funds collected under the

Supreme Court's direction in the aforesaid M.C. Mehta's case.

5. The National Commission after holding consultation with various stakeholders and after conducting research and survey submitted to this Court a Delhi Action Plan for Total Abolition of Child Labour.

6. According to the National Commission, the child labour profile in Delhi is of two types namely, out-of-school children living with their parents in Delhi and migrant children from other states who have left their family behind.

7. The Action Plan for Total Abolition of Child Labour is based on two strategies. The first strategy is an 'Area Based Approach' for elimination of child labour, wherein all children in the age group of 6 to 14 years would be covered whether they are in school or out-of-school. The National Commission has proposed that this approach be initiated as a Pilot Project in North-West District of Delhi.

8. The second strategy is an approach to be adopted in the context of migrant child labour. It involves a process of identification, rescue, repatriation and rehabilitation of child labour. This strategy is proposed to be implemented as a Pilot Project in South Delhi District.

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9. It is pertinent to mention that both the strategies in essence implement CLPRA, 1986, Delhi Shops and Establishment Act, 1954, Juvenile Justice (Care and Protection of Children) Act, 2000 and the Bonded Labour System (Abolition) Act, 1976.

10. One of the objectives of the Area Based Approach is to mobilize and build consensus on the issue of total abolition of child labour through universalisation of elementary education. The plan attains to mobilize and build consensus by holding public meetings, rallies and by involving Municipal Councilors, RWAs etc.

11. The Area Based Approach also aims to enroll all children in the age group of 6 to 14 years in schools and to withdraw them from work, while at the same time ensuring their retention in schools. This approach also seeks to integrate older children withdrawn from work in classes according to their age through programmes of various courses and accelerated learning. This objective is sought to be achieved by setting up Transitional Education Centres or Non-Residential Bridge Course Centres or Residential Bridge Course Camps as well as by holding Short Term Camps. This approach also aims to build local institutions for protection of Child Rights by forming Committees and Forums of Liberation of Child Labour (Youth and Teachers Wings) as well as strengthening of Vidyalaya Kalyan Samitis and by implementing training and retention programmes on issues relating to Child Labour and Children Rights to Education along with tasks and roles of specific stakeholders.

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12. The Strategy for Unaccompanied Migrant Child Labourers in Delhi is based on "Protocol on Prevention, Rescue, Repatriation and Rehabilitation

of Trafficked and Migrant Child Labour" issued by Ministry of Labour and Employment, Government of India, 2008. According to the Action Plan, trafficked and migrant child labourers are primarily engaged in prohibited occupations such as zari, bulb manufacturing, auto workshop units and domestic household etc.

13. This strategy contemplates constitution of a Steering Committee on Child Labour at the State level and District Level Task Force on Child Labour at District Level.

14. The Delhi Action Plan provides for a detailed procedure to be adopted at the pre-rescue and actual rescue stage. The pre-rescue plan deals with as to how information is to be collected, verified and as to the composition of the rescue team as well as what training is to be imparted in advance to the members of the rescue team. The pre-rescue plan provides for prior preparation of residential centres through RBC, JJ Homes, NGO Shelter for accommodating the child labour proposed to be rescued.

15. The Delhi Action Plan provides a detailed procedure for interim care and protection of the rescued children. It provides for immediate medical examination of the children and as to how investigation is to be conducted and charge sheet is to be prepared.

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16. The strategy for Unaccompanied Migrant Children also provides for assessment and verification of Childâs background and intra state as well as inter state repatriation.

17. The Action Plan provides for detailed procedure for rehabilitation and social integration of the child labour as well as training and capacity building of duty bearers.

18. In a bid to ensure proper coordination amongst different agencies of the Government of NCT of Delhi, the Action Plan defines the role and responsibilities of various departments/authorities involved in the process in the following consolidated manner:

"7.7. The Responsibilities of the Respective Departments

7.7.1. Delhi Police

The concerned Deputy Commissioner of Police should:

a. Make the necessary arrangements of police force for raids as per the demand and requirement of Action Force;

b. Personally participate in the raids conducted by the Action Force;

c. Should take charge of the child labour liberated by the Action Force;

d. Should take steps to arrest the owners/employers of the child labour as per provision of Indian Penal Code Sec. 331, 370, 374 and 34 as well as provisions of Sec. 23, 24, 26 of Child Justice (Care and Protection) Act. They should register the crime and take all the necessary future steps to conduct further criminal proceedings;

WP(C) No. 9767/09, WP(Cr)2069/05, W.P.(C) Nos.15090/06, 4125/07, 4161/08 page 8 of 20 e. Should treat the liberated child labour with respect and honour and hand them over to children's home in the charge of officers of Women and Child Welfare Department;

f. Put forward the cases of child labour as per Section 32 with the help of Action Force in front of Child Welfare Committee. As per the decision of the Child Welfare Committee, the children should be handed over to their parents through JAPU if the children are from other states.

7.7.2. Department of Labour, GNCTD:

a) To keep the areas in their jurisdiction where the child labour is likely to be hired under continuous active surveillance.

b) In case the child labour is found to be employed and if their number is high, then immediate action should be taken within 24 hours after contacting the District Collector and police officers by carrying out a raid through Action Force. If the number of child labour is less, then immediate action should be taken to liberate them on the very day with the help of departmental colleagues and police.

c) To keep track of the planning and conduct of every child labour rescue operation. It should be ensured that adequate number of officers and shop inspectors are present during the raid. There should be active participation in the liberation of child labour. Necessary action should be carried out against the employer of the child labourer as per the provisions of Section 3 of Child Labour (Prohibition and Regulation) Act, 1986; if this is applicable. If Section 3 of the Act is not applicable then action should be taken under provisions of Section 7, 8, 9, 11, 12 and

13.

d) Even if the job carried out by the child worker does not fall under the dangerous job category, the child labourer should be liberated from the clutches of unscrupulous employers and handed over to the police with a view to eradicate the undesirable practice of child labour and bringing these children under the mainstream of education.

e) To document all details of the liberated child worker by obtaining details from him in an affectionate manner and furnishing a copy to the police department. A complaint WP(C) No. 9767/09, WP(CrI)2069/05, W.P.(C) Nos.15090/06, 4125/07, 4161/08 page 9 of 20 against the employer of the child labourer should be lodged (with the help of Task Force, if necessary) with the police and his statement should be recorded as a matter of formality and duty.

f) While obtaining information from the child labourer, if it is found that the employer had paid any money as financial assistance, loan advance etc. to the parents, then immediate report should be made to the District Collector for declaring the child labourer as 'forced' labourer and a copy should be endorsed to the Government through the Commissioner.

g) Due care of the liberated child labourers should be taken till they are sent to the Children's Home and it should be seen that they are provided with proper food, water and other facilities in time.

h) As per the definition specified in Section 2(K) of the Juvenile Justice (Care and Protection of Children) Act 2000, the individual who is below 18 years of age should be considered as a child. Therefore in the course of raid, if child workers above 14 years of age are found, then they should also be liberated from the clutches of the employer(s) and handed over to the police.

i) A sum of Rs. 20,000/- (Rupees Twenty Thousand) should be recovered from the employer of child labourer subjected to legal action vide Section 3 of Child Labour (Prohibition & Regulation) Act 1986 as per the directives issued by the Hon'ble Supreme Court in the M.C. Mehta case, 1996 and credited to the District Child Labour Welfare Fund of the District to which the child originally belongs.

j) To designate nodal officers at senior level to be part of the District Level Child Labour Task Force (districtwise) and also for the rescue team.

k) To strengthen the intelligence network through the Community Workers of the Labour Department on the status of out-of-school children, places of work involving children and their employers/contractors/middlemen, etc.

l) Necessary legal action should also be taken against the employers of child labourers under the following legislations and corresponding Rules (wherever applicable):

WP(C) No. 9767/09, WP(CrI)2069/05, W.P.(C) Nos.15090/06, 4125/07, 4161/08 page 10 of 20 i. Delhi Shops and Establishment Act, 1954

ii. Minimum Wages Act, 1948

iii. Motor Transport Workers Act, 1961

iv. Factory Act, 1948

v. Interstate Migrant Workmen (Regulation of Employment and Condition of Services) Act, 1979. vi. Contract Labour (Regulation & Abolition) Act, 1970.

7.7.3. Women and Child Welfare Department, GNCTD

- a) Generation of awareness among masses against the practice of child labour. Steps should be taken for the rehabilitation of local child labourers with the help of Deputy Commissioner (DC) and voluntary organizations, if the child labourer happens to be from the local area.
- b) Take charge of child labourers liberated by the Action Force and see that they are provided adequate food, clothing and shelter. Due care should be taken about their safety.
- c) If the child worker happens to be a local person, she/he should be inducted in the mainstream of education with the help of education officer. If possible, he/she should be provided job oriented technical education.
- d) The Superintendent of the Children Home to which the liberated Child Labourers have been placed should arrange for the interaction/taking of statements by the concerned Child Welfare Committee.
- e) Information about instructions of the Child Welfare Committee should be independently submitted to the DC and Labour Commissioner every month.
- f) DWCD, GNCTD should designate nodal officers at senior level who can be part of the District Child Labour Task Force for every district.
- g) Issue letters to the respective CWCs to nominate a member who can be part of the District Child Labour Task Force. Such member of the CWC can be a link between the CWC WP(C) No. 9767/09, WP(CrI)2069/05, W.P.(C) Nos.15090/06, 4125/07, 4161/08 page 11 of 20 and District Child Labour Task Force for all practical purposes, including, attending the pre-rescue planning meeting of the Task Force, issuing Orders for the interim care and custody of the rescued child reports (SIR), verification/identification of their families and their ultimate repatriations/follow-up. The CWC Member will get the inquiry done and Social Investigation Report prepared under JJ Act in a child friendly manner at the camp/home/hostel/RBC where the children have been lodged.
- h) To keep the Homes ready for the reception and suitable accommodation of the rescued child labours.
7.7.4.Education Department, GNCTD
- a) In order to absorb the liberated child labourer into mainstream of education without any discrimination, (sex/caste etc.) they should be offered free and compulsory education and should be compelled to receive it.
- b) Various schemes sponsored by the Central and State Governments should be implemented for this purpose.
- c) During their educational period, they should get the benefit of free meals scheme of the State Government.
- d) The Department will set up initially 250 Alternative Innovate Education Centres (AIEC)/NRBCs in the areas of child labour concentration and/or in the areas having large number of out-of-school children. The Department would also ensure that all the children at NRBCs/RBCs are given free mid day meal (as assured by the Department, vide UEE Mission letter no. 39, dated 11.4.2009).
- e) Care should be taken to see that the child labourer develops liking for the education.
- f) The education officer and Principal of the school should be held responsible for the dropouts among the child labourers receiving education.
- g) Parents of child labourer should be counseled to stress the importance of education among the labourers.

WP(C) No. 9767/09, WP(CrI)2069/05, W.P.(C) Nos.15090/06, 4125/07, 4161/08 page 12 of 20 h) Monitoring of academically weaker children in schools will be done with the involvement of CRC and NGOs for (as

assured by the Department, vide UEE Mission letter no. 39, dated 11.4.2009) preventing dropouts.

i) The concerned District Urban Resource Centre Coordinator (DURCC) will send a monthly report to the Dy. Commissioner of the District with a copy of the same to the SPD (SSA) and Director (Education), GNCTD about the following:

- i. School wise and class wise attendance and drop-outs corresponding to the number of children enrolled;
- ii. Number of out-of-school children in the district (school wise and class wise) along with the list;
- iii. The efforts made for awareness/sensitization/educational counseling of children and their parents.

Such reports should be examined in the following meeting of the district level Task Force and of the state level Steering Committee as well as at the highest level in the Education Department of GNCTD for remedial measures.

j) Department will ensure that all its schools have adequate number of teachers in proportion to children in each class (subject specific, wherever applicable) and they are maintaining punctuality. It should also introduce a system of incentive/reward for its schools which maintains higher enrolment/retention of out-of-school children and prevent dropouts as well as a system of disincentives for those who consistently fail to identify, enroll and retain the out-of-school children.

7.7.5. Health Department, GNCTD

a) After receiving information about the raid of Action Force through Labour Officer/Police Officer, complete medical examination of liberated child labourers should be carried out.

b) Immediate medical treatment should be initiated, if required.

WP(C) No. 9767/09, WP(CrI)2069/05, W.P.(C) Nos.15090/06, 4125/07, 4161/08 page 13 of 20 c) Clear certificate of age (issued by medical officers not below the rank of Government Assistant Surgeon) of the liberated child labourer should be furnished immediately to the investigating police officer or Government labour officer as per their demand.

d) Expenses incurred towards the treatment and issuance of medical certificate should be met by the DC from the District Child Welfare Fund and should be recovered from the employer of the child labourer and reimbursed to the District Child Welfare Fund after recovery. 7.7.6. Municipal Corporation of Delhi (MCD)

a) Under its Slum Development Programme, the MCD should enhance the standard of living of all children living in the slums within its jurisdiction and particularly ensuring effective access to free health check up and medical care, quality education, recreation, vocational training and community life.

b) MCD Schools should provide free and compulsory education to all rescued child labourers belong to Delhi irrespective of their age (by arranging accelerated learning for the older children through NRBCs wherever necessary for mainstreaming them to age appropriate classes) without any discrimination (sex/caste etc.). They should be mentoring the non-formal education programmes run by NGOs in various slums with a view to bringing all out-of-school children in the area into the fold of mainstream education.

c) The Headmasters and the teachers of the MCD schools will hold a monthly meeting of the parents for

sensitizing/counselling them about importance of the education. Experts/communities leaders would be invited to such meetings.

d) MCD will also have sensitization/counselling programmes for the slum-dwellers in general about the importance of education for their children and the facilities available for the same as well as the long-term evil impacts of child labour through meetings, prabhat ferries, documentary films, etc. in the colonies.

WP(C) No. 9767/09, WP(CrI)2069/05, W.P.(C) Nos.15090/06, 4125/07, 4161/08 page 14 of 20 e) The MCD should ensure that all its schools have adequate number of teachers in proportion to children in each class (subject specific, wherever applicable) and such teachers are maintaining punctuality. It should also introduce a system of incentive/reward for its schools which maintains higher enrolment/retention of out-of-school children and prevent dropouts as well as a system of disincentives for those who consistently fail to identify, enroll and retain the out-of-school children.

f) The Education Department of MCD will obtain the list of children who are not attending schools and will instruct the Principal of the concerned school(s) to bring such children back to school.

g) The concerned Zonal Dy. Education officer (DEO) will send a monthly report to the Dy. Commissioner of the District with a copy of the same to the Labour Commissioner and the Education Department of MCD about the school wise and class wise attendance and drop-outs corresponding to the number of children admitted. The report should also include the efforts made for sensitization/educational counseling of children and their parents. Such reports should be examined in the following meeting of the district level Task Force and of the state level Steering Committee as well as in the Education Department of MCD for remedial measures.

h) The Zonal Deputy Education Officer (DEO) will be responsible as the Nodal Officer on behalf of MCD on various matters relating to the pre-rescue planning, rescue and post-rescue rehabilitation/education in the concerned MCD area(s).

7.7.7. Deputy Commissioner of the District concerned

a) To ensure that no incidence of child labour in any form is found within his/her jurisdiction.

b) To get the meeting of the District level Task Force on Child Labour on monthly basis and to preside over the same.

c) To forward a copy of the monthly meetings of the District level Task Force on Child Labour, detailed report of the WP(C) No. 9767/09, WP(CrI)2069/05, W.P.(C) Nos.15090/06, 4125/07, 4161/08 page 15 of 20 review meeting should be sent to the Government of NCT of Delhi through Labour Commissioner.

d) To get a list of all voluntary organizations dealing with the problems of child labour prepared with areas of their expertise and to ensure that such list is updated on regular basis. Along with these organizations, public awareness drives should be arranged. Public opinion should be generated to stress that education is the right of every child and is a first step towards progress.

e) To get constantly updated about the raids, rescues and rehabilitations of child labourers in the district and to extend all necessary support to the rescue team.

f) To ensure that all necessary actions are taken within his competence under the Bonded Labour System (Abolition) Act and Rules, 1976 as well as under the 'Centrally Sponsored Plan Scheme for Rehabilitation of Bonded Labour', if the facts and circumstances in which child labourers are found lead to the presumption that they are forced labourers/bonded labourers.

g) To also ensure that Rs.20,000/- per child labourer is recovered from his/her employer and credited along with Rs.5000/- to the District Child Labour Welfare Fund, as per the direction of the Hon'ble Supreme Court of India in the case of M.C. Mehta, 1996.

h) To furnish a utilization certificate to the Government through the Labour Commissioner about the funds stated above on half yearly basis, before 30 September and 31 March every year.

i) Guidance may be sought (wherever necessary) from the Labour Commissioner with regard to the utilization of collected funds. As far as possible, the amount collected should be utilized for the rehabilitation of the child labourers for whom the amount is collected.

j) As per the judgment of the Supreme Court cited above, adult unemployed member of the family of the child labourer should be provided employment there in his place and the child should be directed to receive education. WP(C) No. 9767/09, WP(CrI)2069/05, W.P.(C) Nos.15090/06, 4125/07, 4161/08 page 16 of 20 k) In case the child has taken up the job due to economic condition of the family, adequate efforts should be made to provide all benefits to the family under all relevant developmental and social security schemes of the Government.

7.8. The above roles and responsibilities of concerned departments /authorities of Government of NCT of Delhi will be required for implementing both Strategy - I (Social Mobilization for Total Abolition of Child Labour) and Strategy - II (Pre-rescue, Actual-rescue, Interim care, Enforcement of Laws, Repatriation and Rehabilitation of Child Labour)."

19. Subsequent to the filing of the aforesaid Action Plan, the Labour

Department of Government of NCT of Delhi has raised some issues.

According to the Labour Department, CLPRA, 1986 prohibits employment of children only in certain scheduled occupations and processes.

Consequently, according to the Labour Department, child workers employed in non-hazardous jobs cannot be rescued. The Labour Department has further urged that in the Action Plan it has been stipulated that all children between the age of 14 to 18 years have to be liberated and handed over to the police, even though CLPRA, 1986, defines child as a person who has not completed 14 years of age.

20. On a perusal of CLPRA, 1986, we are of the view that under the said Act, only child workers employed in scheduled occupation and processes can be liberated and children employed above the age of 14 years cannot be rescued.

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21. However, in our view, the Juvenile Justice (Care and Protection of Children) Act, 2000, would apply to children between the age of 14 and 18 years as well as to those children employed below the age of 14 years in non-scheduled occupation and processes. Consequently, the said children would be governed by the Juvenile Justice (Care and Protection of Children) Act, 2000 as well as Bonded Labour System (Abolition) Act, 1976, if applicable and not by CLPRA, 1986, as stipulated in the Delhi Action Plan prepared by the National Commission.

22. Moreover, at the request of Labour Department, we direct that the responsibility of lodging a police complaint against an employer employing child labour would lie with the Delhi Police and not the Labour Department as directed in the Delhi Action Plan. We further clarify that the authority to take action under the Bonded Labour System Abolition Act, 1976, would be the Deputy Commissioner of District concerned and not the Labour Department. Accordingly, paras (e) and (f) of para 7.7.2 of the Delhi Action Plan are amended.

23. It is further clarified that the recovery of fine of Rs.20,000/- as stipulated by the Supreme Court in M.C. Mehta's case will not have to await a conviction order of the offending employer. The said amount would be recovered as arrears of land revenue and the said amount would be utilized for the educational needs of the rescued child even if the child has subsequently crossed the age of 14 years.

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24. The Deputy Director, Child Welfare, has also filed a Status Report stating that considering the capacity and existing strength of NGOs and Government run institutions in Delhi, the department would be able to

accommodate only about 500 additional children every month, since the restoration efforts take about 30 to 40 daysâ time. The said Status Report, however, states that all efforts would be made to motivate NGOs to enhance their capacity to accommodate more children and to register more Children Homes.

25. Keeping in view the aforesaid infrastructural limitation, we direct the labour department to begin implementing the Delhi Action Plan by accommodating for the time being about 500 children every month.

26. Moreover, being cognizant of the fact that ground level reality may be different from the one projected in the Action Plan, we grant liberty to the above-mentioned authorities to seek clarification or amendment of the Action Plan from this Court.

27. To conclude, we would only quote what Dr. Dorothy I. Height, a social activist, has said, "we have got to work to save our children and do it with full respect for the fact that if we do not, no one else is going to do it."

28. Consequently, we accept the Delhi Action Plan which provides a detailed procedure for interim care and protection of the rescued children to be followed by Labour Department as prepared by the National Commission

with the modifications mentioned hereinabove in paras 20 to 26 and we WP(C) No. 9767/09, WP(CrI)2069/05, W.P.(C) Nos.15090/06, 4125/07, 4161/08 page 19 of 20 further direct all the authorities concerned to immediately implement the

same. The Government of NCT of Delhi through the Labour Department is directed to file its First Taken Report to this Court after six months. For this purpose, list the present batch of matters on 13th January, 2010.

MANMOHAN

(JUDGE)

CHIEF JUSTICE

JULY 15, 2009

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