



सत्यमेव जयते

Delhi Commission for Protection of Child Rights (DCPCR)

Government of NCT of Delhi

2nd, 4th, 5th Floor, ISBT Building, Kashmere Gate, Delhi-110006

Ph: 011-23862685/86, Helpline No. 9311551393, Email: dcpcr@hotmail.com

Ref. No. F3/DCPCR/2022-23/12323

Dated:28.06.2023

STATUTORY RECOMMENDATION

1. In case of Rajesh Kumar vs. State Govt. of NCT of Delhi) & Ors., W.P (Crl.) 1361/2021), the Order was passed pursuant to Hon'ble High Court took "*judicial notice of the apathy in the functioning of the CCIs and the failure on the part of the CCIs in not providing a conducive environment for the children housed at the CCIs.*".
2. Further, the High Court remarked, "*It appears that there is a complete lack of direction and initiative amongst the persons manning these institutions as to how they must guide the children towards a better future.*"
3. Consequently, the Hon'ble High Court directed the Secretary, Department of Women and Child Development, and the Chairperson, Delhi Commission for Protection of Child Rights (DCPCR) to conduct periodic meetings at least once in every three months to monitor the functioning of the CCIs and improve the shortcomings as observed by the Court. Further the Hon'ble High Court has directed that the said authority shall ensure periodic inspection of all CCIs in Delhi, which must be conducted at least once in three months.
4. Accordingly, the Order states that a report of the functioning of every CCI along with the Minutes of the Periodic Meeting of the Secretary, Department of Women and Child Development, and the Chairperson, Delhi Commission for Protection of Child Rights shall be filed in the Court twice a year i.e. on every 31st July and 31st January of each calendar year.

AK



सत्यमेव जयते

5. The Commission has followed up with the Secretary many times on this matter. Constrained by an evasive and disinterested approach, the Chairperson, DCPCR formally wrote to the Secretary dated 07.02.2023. The copy of the letter is attached for reference.
6. Nearly 1.5 months after the letter, the meeting was held on 20.03.2023 the minutes of which till date have not been issued by the Secretary, Department of Women & Child Development.
7. According to the Court Order, a minimum of four meetings and consequent review of the Child Care Institutions should have happened already. However, much to the injury of the Government's role in supporting children in most traumatised conditions, no review of the Child Care Institutions has been undertaken pursuant to the Court's directives.
8. This amounts to blatant disregard, and wilful contempt of the High Court of Delhi. It appears that the Secretary has no interest in the proper functioning of Child Care Institutions and has abdicated her responsibilities towards children who are victims of parental death or abandonment, sexual violence, trafficking or similarly vulnerable situation.
9. It is, therefore, not surprising that the Child Care Institutions remain in poor state: more than 2/3rd children who have stayed in the institutions for years could not read basic story text, and dozens of children run away from these homes.
10. In exercise of its powers under section 13(1) of the Commission For Protection of Child Rights Act 2005, the Commission took note of the wilful insubordination and defiance of Order passed by the Hon'ble High Court of Delhi by the Secretary, Department of Women & Child Development.
11. Therefore, this Commission considered the matter in its statutory meeting and in exercise of its powers under section 15 of the Commission For Protection of Child Rights Act 2005 resolved to formally recommend to the Government to remove Ms. Garima Gupta from such a sensitive



सत्यमेव जयते

department in the light of complete apathy and disinterest in the matters that concern children who have already suffered enough by virtue of violence or parental loss.

12. The Commission further resolved to recommend that this wilful contempt of the High Court direction, and abdication of responsibility towards the Child Care Institutions by the Secretary of the Department of Women & Child Development in her service records.
13. The Commission further resolved to recommend imposition of a major penalty on the Secretary of the Department of Women & Child Development.
14. Further, the Commission notes that the Hon'ble High Court of Madras in a Full Bench decision in Abdul Sathar vs Principal Secretary in 2021 has held that the Government is bound by the recommendations of the statutory Commissions such as the National Human Rights Commission (NHRC) & the State Human Rights Commissions (SHRCs).
15. The relevant para from the above-said Madras HC Full Bench judgement is also reproduced as under:

"450. Likewise, the Commission which has been assigned a constitutional role with statutory backing, its recommendations are not liable to be slighted or ignored. If the recommendations are open to be ignored or the concerned Government in its discretion, can refuse to accept the recommendation and provide reasons for non-acceptance of the recommendation, the remedial action contemplated in the Act would be an empty promise and a mirage, betraying its core purpose."

462. Protection of Human Rights is not to be pigeon-holed, into a statutory cage and the Commission in the role of the protector of the rights is to be relegated to a subservient position to the executive. The fundamental rights which are guaranteed in the Constitution of India, are the human rights defined under the Act. Therefore, any interpretation of the statutory provision tantamount to interpretation of the fundamental rights as well, as guaranteed by the Constitution of India. When a Commission is



सत्यमेव जयते

constituted for securing the fundamental rights of the citizens, such Commission being a Protector of the human rights, cannot function with emasculated enforceable power. The human rights, as it is universally understood, are inherent in every human being, such rights are non-negotiable and inalienable.”

16. The Commission outlines that the nature of powers of DCPCR under the Commissions for Protection of Child Rights Act, 2005 is in many ways analogous to that of the NHRC/SHRCs under the Protection of Human Rights Act, 1993.
17. THEREFORE, the Commission expects that its recommendations be accepted and implemented.
18. This issues with the prior approval of the Commission.

(Anurag Kundu)
Chairperson, DCPCR

To

Chief Secretary, Government of NCT of Delhi, 5th Floor, A-Wing, Delhi Secretariat, New Delhi-110002

Copy to:

Secretary to Hon'ble Chief Minister, 3rd Floor, Delhi Secretariat, New Delhi-110002