

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated:07.12.2015

Coram:

THE HONOURABLE Mr.JUSTICE V.RAMASUBRAMANIAN

and

THE HONOURABLE Mr.JUSTICE N.KIRUBAKARAN

W.P.(MD)Nos.16273 and 20895 of 2015

and

M.P.(MD)No.1 of 2015 in W.P.(MD)No.16273 of 2015

W.P.(MD)No.16273/2015:

Mose Ministries,
rep.by its Administrator Jeyam Abraham,
20C/7,20/8, Anna Nagar,
Subramaniapuram, Trichy.

... Petitioner

vs.

- 1.The District Collector,
Collectorate Office,
Tiruchirappalli Dt.
- 2.The Social Welfare Commissioner,
Chepauk, Chennai.
- 3.The District social Welfare Officer,
Tiruchirappalli.
- 4.Child Welfare Committee,
rep.by its Chairman,
Observation Home at
Babu Road (East Boulewar Road),
Tiruchirappalli.
- 5.District Children Welfare Unit,
by its child Welfare Officer,
Tiruchirappalli.
- 6.The Inspector of Police,
K.K.Nagar Police Station,
Tiruchy.

... Respondents

W.P.(MD)No.20895 of 2015:

CHANGEindia

... Petitioner

vs.

- 1.The Principal Secretary,
Department of Social Welfare,
Government of Tamil Nadu,
Secretariat, Fort St.George,
Chennai-600 009.
- 2.The Deputy Superintendent of Police - CB CID,
Anti Human Trafficking Cell (Anti Vice Squad),
First Floor, Block-3 Electronic Complex,
SIDCO Industrial Estate, Guindy, Chennai-32.
- 3.The District Collector,
Collectorate, Collector Office, Road,
Trichy-620 001.
- 4.The Commissioner of Police,
Commercial Tax Building,
Race Course Road, Kajamalai,
Trichy-620 020.
- 5.The District Social Welfare Officer,
Collectorate Building,
Trichirappalli District-620 001.
- 6.The Child Welfare Committee,
Government Observation Home,
No.34, East Boulevard Road,
Tiruchirappalli-2.
- 7.The Director,
Central Bureau of Investigation (CB),
Anti Human Trafficking Unit,
Plot No.5-B, 6th Floor, CGO Complex,
Lodhi Road, New Delhi-110 003.
- 8.The Union Secretary,
Ministry of Home Affairs,
Government of India, North Block,
New Delhi-110 001.
- 9.Pastor Gideon Jacob,
Mose Ministries Complex, Ranganagar,
Subramaniapuram, Trichy.

... Respondents

Prayer in W.P.(MD)No.16273 of 2015:

Writ petition under Article 226 of the Constitution, praying for issuance of a writ of certiorarified mandamus, calling for the records on the file of the 3rd respondent pertaining to the order passed by him vide his proceedings in Se.Mu.No.821/A1/1025, dated 03.09.2015, quashing the same as illegal and consequently directing the respondents 1 to 3 to register the petitioner Mission under Juvenile Justice Act and Tamilnadu Hostels and Homes for Women and Children (Regulation) Act, 2014, in accordance with law, based on the relevant records submitted by them, within a time frame that may be stipulated by this Court.,

Prayer in W.P.(MD)No.20895 of 2015:

Writ petition under Article 226 of the Constitution, praying for issuance of a writ of mandamus, directing the 7th respondent Central Bureau of Investigation to investigate into the trafficking and illegal confinement of 89 girl children by the 9th respondent and consequently to direct the 1st respondent to restore the children living in the custody of 9th respondent to their respective parents.

For Petitioner : Mrs.J.Nish Banu for
in WP 16273/2015 Mr.M.Siddharthan
& E-9 in WP 20895/2015

For Petitioner in : Ms.D.Geetha
WP 20895/2015

For Respondents :Mr.K.Chellapandian,
WP No.16273/2015 Addl.Advocate General,
& RR 1 to 6 assisted by
in WP 20895/2015 Mr.A.K.Baskarapandian,
Spl.Govt.Pleader.

For Respondent-7 : Mr.S.Jayakumar

For Respondent-8 : Mr.N.Shanmugaselvam

ORDER

(Order of the Court was made by **V.RAMASUBRAMANIAN,J**)

I. Background Facts leading to these writ petitions:

An Institution by name Siloam Evangelical Mission (India) Limited, incorporated in the year 1988 as a Charitable Company under Section 25 of the Companies Act, 1956 and which changed its name as Good Shepherd Evangelical Mission Private Limited, is running several ministries. One of the ministries run by them is 'Mose Ministries', which is the petitioner in one of the writ petitions on hand. It is running a Destitute Home for girl children, who are said to have been abandoned by their parents. For the sake easy reference, we shall refer to this Mose Ministries, as 'the institution'.

2. According to the said institution, it was started in December 1994, in Usilampatty which attained notoriety for the high rate of female infanticide prevalent there. The institution claims to have saved several new born female babies from the jaws of death in Usilampatty and they shifted their home to Tiruchirappalli later. The institution obtained temporary registration under the provisions of the Orphanages and Other Charitable Homes (Supervision & Control) Act, 1960 in the year 2008. But, they did not obtain any registration either under the Juvenile Justice Act, 1986 or under the Juvenile Justice (Care and Protection of Children) Act, 2000 (Central Act 56 of 2000).

3.It appears that only in the year 2010, the said institution applied for registration under Central Act 56 of 2000 and the application

appears to have been returned for rectification of certain defects. It is not known whether those defects were rectified or not. But, the fact remains that so far the institution has not obtained registration.

4. Therefore, the District Social Welfare Officer, after the inspection conducted by a team on 01.08.2014, issued a notice dated 20.08.2014, calling upon the institution to show cause as to why it should not ordered to be closed down. The Institution sent a reply, but the District Social Welfare Officer was not satisfied with the reply. Therefore, a second notice followed by a third notice were issued.

5. Eventually, the District Social Welfare Officer lodged a First Information Report in Crime No.548 of 2015 on 25.08.2015 for alleged offences under Section 20(2) of the Tamil Nadu Hostels and Home for Women and Children (Regulation) Act, 2014 and Section 23 of the Juvenile Justice (Care and Protection of Children) Act, 2000. The District Social Welfare Officer also passed an order dated 03.09.2015, directing the said institution to hand-over all girl children aged above 18 years to the District Social Welfare Officer and the girls below the age of 18 years to the Child Welfare Committee.

6. Challenging the said order, the institution has come up with a writ petition in W.P.(MD)No.16273 of 2015. On 08.09.2015, a learned Judge of this Court before whom the writ petition came up for admission, directed the Government Advocate to take notice and to file a counter within a week. The learned Judge also granted an interim order to maintain status-quo. The said order was extended from time to time by

the learned Judge.

7. In the meantime, a Non-Governmental Organisation by name CHANGEindia, which claims to be a Centre for Advocacy and Research, came up with a public interest litigation in W.P.(MD)No.20895 of 2015 seeking the issue of a writ of mandamus to direct the Central Bureau of Investigation to investigate into the trafficking and illegal confinement of 89 girl children by the aforesaid institution and for a consequential direction to the Government of Tamil Nadu to restore the girl children to their respective parents. It is the case of the PIL petitioner that they have already filed a Public Interest Litigation in W.P. No.27263 of 2014 on the file of the Principal Bench of this court with regard to the statutory inspection and registration of all Child Care Institutions in the State. As part of their efforts in gathering data and documentation, the PIL Petitioner deputed student interns, studying the degree of Master of Social Work, to various districts in the State of Tamil Nadu, after identifying unregistered children's homes run in those districts.

8. The student interns sent by the PIL Petitioner to the District of Tiruchirappalli appear to have submitted a fact finding report on 15.07.2015, alleging human rights violations, trafficking and illegal confinement of about 89 children in Mose Ministries (the institution) for the past several years. The gist of the fact finding report submitted by the student interns sent by the PIL petitioner is -

(I) that the home in question is not registered;

(ii) that it does not fulfil the eligibility criteria as stipulated in

the Rules;

(iii) that out of the 89 inmates, 36 are above the age of 18 and are accommodated in the residence of the Pastor and taught theology;

(iv) that children below the age of 18 years are taken care of by one of the girls brought up in the same home from childhood and who had completed only a three year course in theology;

(v) that though the campus is monitored through CCTV, there is no security and hence two male volunteers said to be brothers/pastors stay during the night time in the children's home;

(vi) that there are no cooks, mentors, councillors, female warden, etc. and the children are allowed to fend for themselves by undertaking all daily chores such as cooking food, washing clothes, etc.;

(vii) that none of the children know anything about their parents or families and are tutored and debarred from any contact with any outside world;

(viii) that some of the children are sent to the Villupuram Branch of the institution as a measure of punishment;

(ix) that every year, a group of 10 children are taken to Germany for soliciting funds and they are made to perform road shows, street theatre, prayer, etc in Germany; and

(x) that the said Mose Ministries has violated every letter of law that governs such homes.

II. Interim Order appointing A commissioner:

9. The public interest litigation W.P.(MD)No.20895 of 2015 first

came up before us for hearing as to admission on 25.11.2015. At that time, one Mrs.Indira Gandhi, Chairman of the Child Welfare Committee, appointed by the State of Tamil Nadu for the District of Tiruchirapalli, was present in Court as she happens to be an Advocate also. She corroborated the claim made by the petitioner in the public interest litigation.

10. Therefore, taking note of the seriousness of the allegations, we passed an order on 26.11.2015, requesting Mr.K.Chellapandian, learned Additional Advocate General, to ask the District Social Welfare Officer, Tiruchirappalli, to be present in Court on the next date, namely 27.11.2015, along with the list of recognised homes which are run reasonably well, in and around the Tiruchirappalli and Madurai Districts, for the purpose of examining whether there was any necessity for rehabilitating the children housed in the aforesaid Mose Ministries to those homes.

11. Accordingly, the District Social Welfare Officer appeared before us on 27.11.2015. Taking note of the submissions made, we also had the writ petition W.P.(MD)No.16273 of 2015 filed by institution tagged along with the public interest litigation, so as to have a comprehensive hearing.

12. After taking note of the submissions of the District Social Welfare Officer as well as the learned counsel for the public interest litigation petitioner and the counsel appearing for the institution Mose Ministries, we passed the following order, on 27.11.2015.

"The District Social Welfare Officer as well as the Chairman of the Child Welfare Committee were present in Court. According to the District Social Welfare Officer, the 9th respondent does not have recognition as on date. Both parties raised serious disputes about the conditions in which the children are located. There are 89 girls housed in the home in question. Out of them 35 are stated to have attained majority.

2. Therefore, we direct Deepthi Arivunithi, I Additional District Judge, Madurai to visit the home on 28.11.2015 and 29.11.2015 and submit a report to this Court on the following:-

"(i) The infrastructural facilities available in the building;

(ii) The status of the girls housed in the home in question;

(iii) The identification of the children with reference to the area from which they hail;

(iv) The Registers maintained in the 9th respondent home about the location from which and the parents from whom the children were procured and other details.

3. The details of the schools or educational institutions in which the girls are said to be studying. The Officer shall file a report containing the above details on 01.12.2015. The District Social Welfare Officer and the Chairman of the Child Welfare Committee are permitted to accompany the Judicial Officer.

4. The matter is directed to be lited on 01.12.2015."

13. On 01.12.2015, the I-Additional District Judge, appointed by this Court submitted a comprehensive report and a confidential report. We took both the reports on file and found that in the comprehensive report, the I-Additional District Judge had carefully avoided mentioning any confidential details about the children. The confidential information containing the identities of the children was furnished in the other report. Therefore, on 01.12.2015, we directed the Registry to furnish the copy of the comprehensive report filed by the I-Additional District Judge to the learned counsel appearing for the PIL petitioner and the learned counsel appearing for the home. We directed both the parties to come-up with any objections that they may have to the said report, on 02.12.2015 and adjourned the case on 02.02.2015.

14. On 02.12.2015, both parties, namely the PIL petitioner as well as the learned counsel for Mose Ministries accepted the factual findings recorded in the comprehensive report of the I-Additional District Judge. However, both the parties made submissions in support of their respective cases, both on the basis of the said report and otherwise.

15. Since the comprehensive report filed by the I-Additional District Judge is very exhaustive and also since both parties have not challenged the findings and the suggestions recorded therein, we wish to make the highlights of the report, as part of this order.

III. Highlights of the Report submitted by the Commissioner:

16. The report is divided into Five parts and it contains two Annexures. The Infrastructural facilities available in the home, are

detailed in Part-I of the Report. The Registers maintained in the institution are listed in Part-II. The details of the inmates, as reflected in the individual files maintained by the institution are provided in Part-III, the Report based on the interaction with girls is provided in Part-IV and the relevant provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 are provided in Part-V. In Annexure-I to the Report, a food chart is given to show what type of food is served. Annexure-II is the copy of the Attendance Register maintained by the institution.

17. The positive features of the institution, mentioned in Part-I of the Report relating to the availability of infrastructural facilities are: -

(i) There are adequate toilet, sanitation and drinking water facilities. Food is provided three times a day and snacks are provided once a day; and

(ii) There are 89 inmates, out whom 54 girls are aged 18 years and above. They are accommodated in two dormitories, with 33 girls accommodated in the ground floor and 21 accommodated in the first floor. CCTV cameras are also installed.

18. However, the negative features indicated in the First Part of the Report are -

(i) that there is no watchman;

(ii) that one of the inmates is made to act as the Warden ; and

(iii) that no mechanism is provided for reporting sexual abuse if any. No one is employed for the upkeep of the facilities. There is an open kitchen and only one cook appears to be employed.

19. Insofar as the infrastructural facilities available for girls aged above 18 years are concerned, there are adequate toilet, sanitation and drinking water facilities. But, there is no watchman and there are no security arrangements. One lady is acting as the warden.

20. From the Part-II of the Report, it is seen that most of the registers required to be maintained under Rule 67 of the Juvenile Justice (Care and Protection of Children) Rules are not maintained. Since Part-II of the Report revolves around statutory requirements, we prefer to extract Part-II of the Report in entirety as follows:

"REGISTERS MAINTAINED BY THE INSTITUTION

| <i>Sl. No.</i> | <i>Name of Register to be maintained under Rule 67 of the Juvenile Justice (Care and protection) Rules</i> | <i>Corresponding Year for which register available in the institution</i> | <i>Remarks (if any)</i> |
|----------------|--|---|---|
| 1 | <i>Admission and discharge register</i> | <i>Not available</i> | <i>Admission register not maintained. No details of the parents found in the individual case file. Since the child were taken in as infants, there is also no possibility of the child knowing anything about the parent or other person.</i> |
| 2 | <i>Supervision register</i> | <i>Not available</i> | |
| 3 | <i>Medical file or medical report</i> | <i>Available</i> | <i>All medical records not available in certain cases.</i> |
| 4 | <i>Nutrition diet file</i> | <i>Not available</i> | <i>Only a food chart showing menu for the week available (Annexed to the report. Refer Page No.--)</i> |

| | | | |
|----|---|--------------------------------------|--|
| 5 | Stock register | Only stock issue register available. | Register showing the stocks available is not found. |
| 6 | Log book | Not available | |
| 7 | Order book | Not available | |
| 8 | Meeting book | Not available | |
| 9 | Cash book | Expenses register available | Maintained only from 2014 after visit of the Welfare Officer and CWC, Chairman |
| 10 | Budget statement file | Not available | |
| 11 | Inquiry report file | Not available | |
| 12 | Individual case file with individual care plan | Individual case file available. | Individual care plan not available in the files |
| 13 | Children's Suggestion book | No such book maintained | |
| 14 | Visitor's book | Available | From July 2014 was not updated till the date of inspection. |
| 15 | Staff movement register | Not Available | |
| 16 | Personal belongings register | Not available | |
| 17 | Minutes register of Management Committee | Not available | |
| 18 | Minutes register of Children's Committees | No such committee formed. | |
| 19 | Attendance register for staff and juveniles or children | Available | Children's attendance register available from 2009 – 2015. Not maintained properly. Staff register available from October 2014. Not maintained properly. |

Apart from the above registers, the Child Welfare Committee, Chairman states that as per the requirement of the CWC, an acquittance roll for the staff members are to be maintained mandatorily. However, no such register has been maintained. I was informed that the salaries were paid through voucher. But inspite repeated demands, the vouchers were not produced for perusal.

Other than the mandatory registers, the following registers were found:

1. Toilet cleaning register – maintained from 2014.”

21. Part-III of the Report contains personal details of the inmates. These details have been collected from individual case files available in the institution. From the Tabulation given in Part-III of the Report, it is seen that out of 54 girls, who are aged below 18 years, only 23 girls are attending regular school. Some girls are stated to have been sent to a boarding school, but were later withdrawn. The transfer certificates issued by those schools appear to have been signed by unconnected persons, including the driver of a van. In respect of a few girls, the Management has recorded that they are suffering from learning disability. But, no certificates are available in the files to show that those girls suffer from any learning disability.

22. Some of the girls are stated, even as per the records, to have been sent to a farm in Villupuram, purportedly for the purpose of disciplining them. The learned I-Additional District Judge has stated in her Report that the nature of the treatment given to the girls who were sent for disciplining in a farm at Villupuram is not known.

23. One girl, aged about 18 years, had suddenly been discontinued from school and the records reveal that she had undergone USG (ultrasonography) of the abdomen. It is recorded that a cyst was found in her ovary. But no records are available with regard to the treatment meted out to the girl.

24. As per the records, one girl is said to have studied in

Pudukkottai, during the period from 02.08.2009 to 19.02.2011. But, in the attendance register of the home, she is marked present during the period from December, 2009 to July, 2010. Two girls, who are above the age of 18 years, are stated to have completed Nursing Course, but the certificates are not available. One of them has been sent for training in Bakery Course. Two girls, both of them are above 18 years of age, are stated to have been admitted in hospitals as in-patients. But no discharge summary is available in the file. One girl, aged above 18 years, is stated to be mentally retarded, but no certificate of disability is available. Another girl is stated to have undergone surgery for cleft lip, jar and palate. But, no discharge summary is found. One girl was discontinued in the second year of the B.Com. Degree Course. The file does not disclose the reason for discontinuance.

25. The records available in the institution also show that two babies, one aged about 19 months and another aged about 9 months, had died. In respect of one of them, there are no records available. Another girl about 20 months old is stated to have been gone back to her parents. But no details with regard to her parents are available.

26. In part IV of the Report, the District Judge has recorded the outcome of her conversation with the girls, both in groups as well as individually. This Part-IV is divided by the learned District Judge into four sections, the first providing the versions given by the children, the second containing the disturbing features that the District Judge found in the institution, the third containing the conclusions and the fourth

containing suggestions. Since all these four sections are of relevance for deciding our course of action, we are extracting the same as follows:

“The following were the versions of the children in no particular order:

•*The children were found surprised with the sudden media attention given to their institution and some children also stated that the school going children were belittled by others in school for belonging to such an institution.*

•*The children raised questions as to where the government was for all these years when they were raised by the institution. Some children even went to the extent of stating that the government officials did nothing more than taking a head count of the number of inmates every year.*

•*They state that their Pastor was the one who saved them from their deaths and gave them life. They are having good facilities and are happy in the home.*

•*Some even stated that the Welfare Officer challenged them that the government would win in the end and that all of them will be forced to go along with them.*

•*The children also stated that in their young age, when they were troublesome, they were actually sent to hostels in order to know the reality in the outside world. Only when they went to those hostels they realised how fortunate they were to live in such a good home.*

•*While describing their hostel some children said that they were not allowed to even take bath on all days in the boarding hostels and were beaten up if they take bath. The food was totally not good. Some children also said they developed skin infections when they were staying hostel. Then they were brought back to the home and they were happily united with their friends.*

•Some children stated that it was only due to their violent behaviors like talking back to the wardens or shirking of duty or jumping over the walls etc. they needed to be taught discipline. Further they state that at that age, they were not matured. However, now they are all matured and would never behave the way they used to behave. The children would also state that due to their behavior they were sent to other boarding schools in places like Porayar, Tharangambadi, Thanjavur, Ponmalaipatti etc. including Villipuram.

•When questioned in general, it was found that the children in the home had no interaction with any person outside the home. Even the school going children did not have touch with friends who were not part of the home.

•Most of the children were school drop outs or studying privately. The school going children are dropped in a van belonging to the institution by its driver one Nesamani and Sarah, the warden of the institution.

•The children studying privately are taught by one Saira Banu, who takes classes separately for 10th and 12th standard children.

•The children state that they were bought costly dresses and boast that each of them have about 30 dresses each and even their classmates in school as them as to how they are given such costly dresses. Further, they state that they are given good food and therefore have no further needs.

On basis of the interaction with the children, the following are the disturbing features found:

- The children in both facilities are largely left to fend for themselves with no proper adult supervision.
- The so-called staff of the institution do not know any details about the institution and were depending upon the girl/inmate designated as warden for the details.
- One or two of the children are nominated as

wardens/leaders and are given the responsibility of running the institution. It is pertinent to point out that the so called warden are also girls who are barely between 21-23 years old.

- *The only other person available in the premises is another 26 year old girl called Sarah. It is stated that she has been given the overall responsibility of the home. But, during interaction, the children never spoke about the present of the warden Sara but only spoke about the children nominated as wardens. These versions co-relate to the fact that no voucher receipt showing payment of salary to the said warden called Sara was produced for inspection.*
- *One Jessy Infanta introduced herself as a School Instructor. However, the irony remains that there is no provision for any such school facility inside the campus. None of the children spoke about the involvement of the said Jessy Infanta in their studies. It is once again pertinent to point out that no voucher showing payment of any salary to the individual was shown inspite of specific demands.*
- *One Raji was introduced as a cook in the facility. The attendance register reveals his name only for the month of November 2015. Further, the said name finds place in the visitor's register and the time of entry is marked therein. During the interaction most of the girls claim themselves to be good cooks and also set out the dishes which they can prepare. All these only leads to a conclusion that the children themselves have been cooking for themselves and no such cook as named exists in the facility.*
- *I was given a list of workers, who were persons from the Good Sheperd World Prayer Centre, who were deputed to clean the premises. However, the so-called warden Sara*

did not even know the names of the persons entering the premises to clean the toilets. It is important to note here that the children themselves state that they have duties in kitchen, toilet, common area and other places and some times they are also sent to hostel when they refuse to do their duties.

- *The administrator himself admits that the walls of the facility were raised only recently and the gates were raised recently. The administrator Pastor Selvaraj has no clue about any of the staff in the facility or the details of the inmates. It is pertinent to point out here that he is the only person who has been with the institution from the time the children were brought to the institution as infants.*
- *When asked about the procedure he following while taking in the children at Usilampatti, he stated that no procedure was followed. The children were simply taken in. Hence, no process of admission as stipulated under the act was followed.*
- *When I asked questions regarding how hostels were selected to put the children into boarding, he told me that before lodging the children, two members of the institution would visit the school and check the facilities and only thereafter the children were sent to hostel. He also stated that he has personally visited the facility in Agaram. However, the children seem to state that they were sent to the hostel only for being taught a lesson or to discipline them.*
- *When I questioned about the facility in Villipuram, Pastor Gideon Jacob told me that it was his personal property and the same was like a farm. On questioning why the children were being sent there, he has replied that the children who become difficult to handle are being sent*

there so that they learn some discipline. On being asked as to what kind of discipline was taught there, he stated that they were given tailoring classes and were made to read the bible. He was unable to name the teachers who taught tailoring classes in Villipuram.

- *On the whole, it is noted that the children were being sent to boarding schools and to Villipuram only in the form of punishment. The children who have not been to boarding school consider themselves fortunate and state that they never misbehave in the institution.*
- *There are no watchmen or security available outside the premises during the nights and children remain un-monitored.*
- *Further, there are entries in the visitor register showing names like 'G.T. Benjamin – purpose of visit – to advice from G.M. at 6.00 p.m.' and 'K. Selvakumar – purpose of visit – Watchman Duty at 3.00 to 5.00'. These entries were not properly explained by the staff.*
- *It is important to note here that the other 35 girls were shifted from this premises only last year, upon the advice of the Welfare Officer.*
- *The same state of affairs exist for the girls above 18 years. The girls take care of the facility including cleaning, mopping of floors, cleaning of toilets, washing of clothes and cooking.*
- *In addition of taking care of themselves, the girls are made to clean the house of their Pastor Gideon Jacob and cook for him and his family.*
- *The girls have stated that they are prohibited from entering the well decorated hall very strictly and the said hall is used for the purpose of meetings and high officials from church and other organisations gather in the said room.*

(The Administrator had stated that the room was meant for grand celebration of the girls birthdays).

- *The typewriting classes are being held by few of the girls themselves who completed typewriting studies in school.*
- *Few children are being sent to the 5 Loaves, German Bakery since 2013, in the name of training. There is no specified course or duration prescribed. The administration calls it an on-job training. On being questioned if the children are being given any stipend, the reply was in negative. This is nothing but exploiting the labour of the girls under the custody of the administration.*
- *The children who have studied nursing are not being sent to such jobs, but are being taught Theology.*
- *Some children have been promised that they will be permitted to study degree through correspondence. It is also pertinent here to point out that even children who have scored 200/200 in some subjects are made to study Theology. All the older children have been promised to be married off in the near future by the Pastor.*
- *Many children also express their desire to meet with their parents and even say that they have made a prayer and are hopeful to meet their parents sometime in future.*
- *The older girls totally lack general knowledge and the girls confess that they have never handled money. When I asked one of the children what you will do if you want a pencil. She immediately told me that she would pray to Jesus and Jesus would in turn send the pencil through some person. When I asked one of the girls what she would do if she was stranded in a public place without money and how she would reach her home. She simply stated that she would pray to Lord Jesus to send someone to take her and then she would wait for that person.*

- *From the initial days, the children are being taught to think that anything to do with the government is sub-standard and useless. So the children feels proud when they are being taken to private hospitals for treatment. With pride, they state that they are always taken in omni cars or vans for everything and are always escorted. In short the children have till date not interacted or mingled with any person, who is not part of the institution. Hence, these children have a preconceived notion against government institutions.*
- *Though the children are not aware of what happens in the outside world, they are being kept abreast with the current litigation with all details being shared with them. I even find that my arrival has been discussed and my personal details have been given to the children and one of the children told me that I belong to a particular caste. The children have been made to think that their Pastor Gideon Jacob is suffering for the sins committed by the children and inspite of the fact that he was their saviour, he is being troubled only because of the sins of the girls.*
- *According to the children, the pastor has repeatedly told the children that they were thrown out of their homes and rescued by him. Further he has told them that their parents were not at all interested in their welfare and that it was only he who is interested in their welfare and it is only he who is taking care of all of them.*
- *So all the children believe that the Welfare Officer and other persons from the government have come to take the joy away from their lives and therefore do not want to leave the institution which has sacrificed to save them.*
- *Some children are being taken to Germany during the summer vacation. It is not known as to how they took the*

children out of the country without any intimation to the Child Welfare Committee. It is not known as to how their passports were obtained and the children concerned state that they have never been to a passport office or to any other office regarding their passport and visa.

- *Some children have been pulled out of regular schooling since they interacted with other students in school, who were not part of the institution. These children were made to take up private studies.*
- *According to the individual report available, the institution has sent a normal child to a school for the disabled. The child was thereafter sent back, when it was found that she was not suffering from any kind of disability.*
- *In the attendance register from Feb-2012 to Dec-2012, some children are marked absent. When I sought for an explanation regarding the same, none of the staff had any idea and though few of those children were lodged in hostel. There are certain other entries wherein the child was marked absent for one or two days. It is not known as to where the children were on those days. The copy of the relevant attendance register has been annexed for ready reference.*

Conclusion:

1. *It is apparent from the inspection that the Mose Ministries Complex, Subramaniapuram, Trichy and the Mose Ministries Complex, Ranga Nagar Trichy have not been maintained as per the requirement under the Juvenile Justice (Care and Protection) Act, 2006.*
2. *The registers have not been maintained in conformity with the rules prescribed thereunder.*
3. *The safety and security measures are inadequate and in fact non-existent.*

4. *Hence, the safety and security of the 89 girls housed in the institution is at peril.*
5. *The girls are made to work in other institution run by the Pastor, without giving them any salary and thus the labour of the girls are being exploited.*
6. *Most of the girls have lost the chance of formal education for one reason or the other.*
7. *The institution has not taken any effort till date for rehabilitation or social integration of the girls in the home, which the prime objective of the Juvenile Justice (Care and Protection) Act, 2000.*
8. *The Juvenile Justice Amendment Act, 2006 makes it compulsory for all voluntary organisations for children in need of care and protection to be registered within 6 months from the date of the coming into force of the enactment. The Juvenile Justice Act, 2006 came into force on 22.08.2006. This institution has failed to comply with the mandatory requirements under the Act.*
9. *The children have been unauthorizedly taken out of the homes and sent to different places without the prior sanction of the statutory authority.*
10. *The children have been unauthorizedly taken out of the homes and sent to Germany without the prior sanction of the statutory authority.*
11. *The children are brought up in isolated conditions and are forced to be dependent on the Pastor for their needs.*

Suggestions:

Since all the girls in the institution are being maintained with the basic comforts of food, clothing and shelter, a time frame may be fixed within which the institution may be directed to comply with the requirements under the Act and to get themselves certified in conformation with the statutory requirements.”

IV. Analysis of rival contentions and Discussion:

27. To begin with, we wish to take up the suggestions that the learned District Judge has incorporated in the last paragraph of Part-IV of her Report. In the fourth and concluding section of the Part-IV of her Report, the learned District Judge has suggested that a time frame may be fixed for the institution to comply with the requirements under the Act and get themselves certified in conformity with the statutory requirements. Therefore, it is contended by Mrs.Nisha Banu, learned counsel appearing for the institution that the institution may be given an opportunity to comply with the statutory requirements.

28. But, it is not possible for us to agree to the suggestions made by the learned District Judge. Merely because the institution has provided the basic requirements of *roti, kapda aur makhan*, we cannot condone gross violations of statutory prescriptions.

29. As seen from the other parts of the Report, the institution is guilty of serious violations of certain statutory prescriptions, which are not condonable by any Court. These violations can be listed as follows:

Violation-1 (No Registration)

30. The institution in question, by the very nature of the activities carried on by them would be treated as a "Children's Home". Under Section 34(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000, it is only the State Government which can establish and maintain, either by itself or in association with voluntary organizations, children's homes, in every district. By virtue of an amendment made under the Juvenile Justice (Care and Protection of

Children) Amendment Act, 2006, which came into effect from 22.08.2006, sub-section (3) was inserted under Section 34. This sub-section (3) of Section 34 made it mandatory for all institutions, whether run by the State Government or run by the voluntary organizations, to get registered within six months from the date of commencement of the Amendment Act.

31. Rule 71(1) of the Juvenile Justice (Care and Protection of Children) Rules, 2007, mandates all institutions and organizations running institutional or non-institutional care services, whether run by the Government or by Voluntary Organizations, to get registered in terms of Section 34(3) of the 2000 Act. But, unfortunately, the institution in question has not obtained registration so far. Without registration, no institution has a right to exist.

Violation-2 (No steps for restoration)

32. Section 39(1) of the 2000 Act, prescribes the restoration of and protection to a child, as the primary objective of any children's home or the shelter home. Sub-section (2) of Section 39 mandates every children's home to take such steps as are necessary for the restoration of and protection to a child, deprived of the family environment.

33. But, there is not even any sign of the institution in question striving to take steps for the restoration.

Violation-3 (No measure of rehabilitation)

34. Chapter-IV of the 2000 Act makes it clear that rehabilitation and social reintegration of a child should begin during the

stay of the child in a children's home. The rehabilitation and social reintegration should be carried out alternatively by (i) adoption, (ii) foster care, (iii) sponsorship, and (iv) sending the child to an after-care organization.

35. From the manner in which the institution in question is functioning, it is clear that the institution is not interested in the rehabilitation and social reintegration of the children. The institution has not moved a little finger towards rehabilitation and social reintegration.

Violation-4 (Unlawful sourcing of children)

36. The parentage of all the 89 inmates is not known to anyone. In the affidavit filed in support of the writ petition filed by the institution, the Administrator of the Institution has claimed that when female infanticide was widely prevalent in Usilampatti Town of Madurai District, several female infants were brought to their door steps at night time and placed in the cradles. Therefore, the Administrator of the Institution claims that they do not know the identities of the parents of these babies.

37. The relevant portion of the affidavit filed by the Administrator of Mose Ministries in W.P.(MD)No.16273 of 2015 makes an interesting reading and hence it is extracted as follows:

"4.I humbly submit that the service called Mose Ministries was started in the Town of Usilampatty Tamilnadu in December 1994, with sole aim to save female babies, who were threatened by female infanticide in their hundreds at that time. After few week of its inspection

female babies were brought to our door step immediately after birth mostly in the darkness of the night, and were placed in the cradles that were kept in front of that home. Since, the killing of female babies, after birth through poisoning, injuring or drowning was very rampant in that area in those days our primary concern was to save the life of the new born female babies at any cost. The identities of those babies brought to our door step were not known to us or were not informed to us. Throwing of babies in the cradle happen in the midnight and even if the inmates of the house rushed to the door step to see the reason bringing the children, those effort mostly ended futile, since, those people who brought the babies fled away after leaving the babies in the cradle. They never wanted to be identified. Any argument with them or revelation of their identity cold have just jeopardised the life of the little babies too.

5.From our side we did not bring these babies to the police in those days or to any authority for registration and retrospectively our efforts to bring them under the clutches of law has not been so effective for not disclosing the identity of the children and that it is now shown as a lapse on our administration."

38. But unfortunately, the institution in question has completely forgotten to take note of two things. Even before the advent of the Juvenile Justice (Care and Protection of Children) Act, 2000, there were two different enactments in force. One was the Orphanages and Other Charitable Homes (Supervision and Control) Act, 1960 (in short "Orphanages Act") and the other was the Juvenile Justice Act, 1986.

39. Section 2(d) of the Orphanages Act defines a home to

mean an institution, whether called an orphanage, a home for neglected women or children, a widows' home, or by any other name, maintained or intended to be maintained for the reception, care, protection and welfare of women or children.

40. Section 13 of the Orphanages Act makes it clear that after the commencement of the Act, no person shall maintain or conduct any home except under and in accordance with the conditions of a certificate of recognition granted under the Act.

41. But, the institution in question obtained a mere temporary recognition under Orphanages Act for the first time in the year 2008. Therefore, we do not know how the institution established a home in the year 1994, without any certificate of recognition granted under the Orphanages Act. The very setting-up of the Children's Home in the year 1994 by the institution, was in violation of Section 13 of the Orphanages Act.

42. Under Section 16(3) of the Orphanages Act, the previous written consent of the Board of Control, constituted by the State Government under Section 5 of the Act is required, to change either the name or the location of a children's home. In the case on hand, the Mose Ministries, admittedly, shifted their location from Usilampatty to Tiruchirappalli long time ago. They did not obtain the previous written consent of the Board of Control to change its location. Section 24 of the Orphanages Act makes any violation of the provisions of the Act punishable with imprisonment which may extend upto three months.

Mose Ministries did not obtain a certificate of recognition under the Orphanages Act, until the year 2008 when they were granted only temporary recognition.

43. Therefore, the institution cannot even escape by contending that the the Juvenile Justice (Care and Protection of Children) Act, 2000 came into force only in the year 2000 and that Section 34(3) came into force only in 2006.

44. The Juvenile Justice (Care and Protection of Children) Act, 2000 is only a successor of the Juvenile Justice Act, 1986. The 1986 Act defined a juvenile to mean a boy has not attained the age of sixteen years or a girl who has not attained the age of eighteen years. Section 9(1) authorises the State Governments to establish and maintain as many juvenile homes as may be necessary for the reception of neglected juveniles. Under sub-section (2) of Section 9, the State Government was empowered to certify any institution other than a home established by the Government itself, as fit for the reception of the neglected juveniles.

45. Therefore, when Mose Ministries was established in 1994 in Usilampatty, the Juvenile Justice Act, 1986 was in force. But, they did not obtain a certificate of fitness in terms of Section 9(2) of the 1986 Act for the reception of neglected juveniles. Hence, the manner in which the institution received all these 89 inmates either immediately after their birth or sometimes later, was completely illegal.

46. Under Section 9(3) of the 1986 Act, a juvenile home certified by the State Government was obliged, not merely to provide the

juvenile with accommodation, maintenance and facilities for education, vocational training and rehabilitation, but also to provide him with facilities for the development of his character and abilities and give him necessary training for protecting himself against moral danger or exploitation. But, the institution in question has not done any of these things and has actually kept the children away from the Society.

47. The 1986 Act provided for the constitution of one or more Juvenile Welfare Boards under Section 4(1). The members of the Board were vested with the powers of a Magistrate under the Code of Criminal Procedure. Section 4(3) of the 1986 Act prescribed that the Juvenile Welfare Board shall function as a Bench of Magistrate and shall have the powers conferred by the Code of Criminal Procedure upon a Metropolitan Magistrate.

48. A very detailed procedure was prescribed in Chapter-III of the 1986 Act, as to how neglected juveniles can be taken care of. Under Section 13(1) of the 1986 Act, whenever a police officer or any other person or organization authorised by the State Government was of the opinion that a person was apparently a neglected juvenile, such person should take charge of the neglected juvenile. But he should immediately bring the neglected juvenile before the Juvenile Welfare Board. Under Section 13(3), every juvenile taken charge of under subsection (1) should be brought before the Board without any loss of time but within a period of 24 hours.

49. Section 14 of the 1986 Act prescribed a special procedure

to be followed when the neglected juvenile has a parent or guardian. Section 15 prescribed the procedure for the conduct of an enquiry by the Board, in respect of neglected juveniles.

50. When Mose Ministries started the children's home in 1994 in Usilampatti, atleast the Juvenile Justice act 1986 was in force. Therefore, the admissions made in paragraphs 4 and 5 of the affidavit in support of the writ petition filed by the institution in question make it clear that the procedure prescribed by Section 13 of the 1986 Act was not followed.

51. Therefore, (i) the manner in which Mose Ministries has procured 89 girl children, (ii) their failure to get registered under the Orphanage Act, (iii) their failure to get a certificate under the Juvenile Justice Act, 1986 and (iv) their omission to follow the procedure stipulated in Section 13 of the 1986 Act, are all acts that could not be condoned by this Court. The object and purpose of the Orphanages Act, Juvenile Justice Act, 1986 and Juvenile Justice (Care and Protection of Children) Act, 2000 are to ensure that these neglected juveniles are rehabilitated and reintegrated into the Society, either by reunion with their parents or by other methods. This primary object and purpose of the three enactments have been completely defeated by the institution by just picking up infants without even trying to find out the parentage of these children.

Violation-5 (Passports obtained by questionable methods and children taken on foreign tour)

52. Yet another serious violation pointed out in the Report is that some of these children have been taken to Germany during summer vacation. The learned I-Additional District Judge has indicated in her Report that it is not known as to how the institution took the children out of the country without any intimation to the Child Welfare Committee.

53. In the writ petition filed by the institution, they have furnished copies of the letters issued by the Headmistress of a school by name R.C.Authimulam Middle School to the Consulate of the Federal Republic of Germany certifying that some of the girls were students of the said school and that they would continue their studies after returning from the German Tour.

54. The institution has also produced three letters issued by the District Social Welfare Officer, one of which was to the Regional Passport Officer recommending the issue of Passports to some children. The details of those letters are as follows:

(i) One letter bearing Roc.No.6042/A3/2007, dated 26.04.2010, was issued by a District Social Welfare Officer by name Tmt.D.Vijayarani, D.R.S., recommending the issue of passports to seven children by name Christina, Navina, Ulrica, Jasmin, Berenike, Loreen, and Olivia.

(ii) Another letter in Roc.No.6042/A3/2007, dated 03.05.2010, had been issued by another District Social Welfare Officer by name Tmt.C.Luxmi to the Regional Passport Officer, informing him that Pastor Gideon Jacob, the Chairman of Mose Ministries is to be treated as the Guardian of the children, including the children for whom passports were

sought.

(iii) By a third letter, bearing the same reference number, dated 04.05.2010, the same District Social Welfare Officer Tmt.C.Luxmy issued permission to Pastor Gideon Jacob to take seven children named in the letter for a tour of Germany and Poland from 12.05.2010 to 11.06.2010. The names of these children did not tally with the names of the children for whom passports were recommended by the District Social Welfare Officer in her letter dated 26.04.2010.

55. But, it remains a matter of fact that some of these children have been taken to Germany and Poland. It is not known how passports were obtained by the institution, for these children. Normally, it is not possible to obtain passports for any person, especially a minor, without the names of the parents being mentioned and without the parents signing the application form, if the application is for a minor. Even if a person applies as the guardian of a minor, for the issue of a passport, the names of the parents have to be indicated in the application form and a proper legal document evidencing the appointment of such a person as the legal guardian should be produced.

56. In the case on hand, the institution admittedly does not know the names of the parents of any of these 89 inmates. All the children whom they have taken to Germany and Poland, are minors. Pastor Gideon Jacob was never appointed by any court of competent jurisdiction as the guardian of any one of these minor children. Therefore, it is a mystery as to how passports for these children were

obtained.

57. What is more shocking is the conduct of two District Social Welfare Officers by name Tmt.D.Vijayarani and Tmt.C.Luxmy, who issued the letters dated 26.04.2010, 03.05.2010 and 04.05.2010, requesting the Regional Passport Officer to issue passports and to recognise Pastor Gideon Jacob as the guardian of these children. Obviously these two District Social Welfare Officers are completely ignorant of the provisions of the Juvenile Justice Act, 2000 and we do not know what havoc they have played in the lives of juveniles, due either to their ignorance or to their indifference. The Commissioner of Social Welfare should look into the conduct of these two officers.

58. It appears that the wife of Pastor Gideon Jacob is in Germany. It is also claimed that the institution receives funds from abroad, apparently for the purpose of running this home. Therefore, without the knowledge of the Child Welfare Committee, the children could not have been taken out of the country, even in cases where passports were obtained lawfully. But in this case, the very manner in which passports had been obtained, raises several questions and the Child Welfare Committee was completely in the dark about the foreign trips that the children were taken to.

Violation-6 (Two different Entries regarding date of birth and date of admission in the Registers)

59. In the set of documents filed by the institution, in their writ petition W.P.(MD)No.16273 of 2015, the institution itself has given

the names of 58 children who are below the age of 18 years. This list is in the form of a tabular column, containing (i) the original name (ii) the name as given for school registration (iii) the original date of birth (iv) the date of birth as given for school registration (v) the original age (vi) age as per school registration (vii) original date of admission (viii) date of admission as contained in the child profile maintained by the institution and (ix) the profile number of each of these 58 children below the age of 18 years.

60. The above tabulation is furnished by the institution itself and not given by the I-Additional District Judge who inspected the institution. We do not know as to how different dates of birth are found. Surprisingly, there are two different dates of admission also.

61. As per the affidavit filed by the Administrator of the Institution in support of their own writ petition, they do not know the details such as the date of birth or the parentage of any of these children. No contemporary records were also maintained by the institution, to record important details such as (i) the date on which each child was allegedly left at their door steps (ii) the birth marks on the child and (iii) the approximate number of days or months before which the child could have been born. In such circumstances, it is perplexing as to how the institution invented its own date of birth for each child and later multiplied it for the purpose of the record.

Violation.7 (Emotional abuse of children)

62. Admittedly, some of the children were sent to a farm

owned by the Pastor at Villupuram, for the purpose of disciplining them. There are no records to show what mistakes these children committed and what was the nature of disciplining that they were exposed to. Though children were allegedly sent to a farm, it is recorded in the registers that they were made to undergo tailoring classes in the farm, for the purpose of disciplining the indisciplined children.

63. The petitioner in the public interest litigation has made allegations of physical, sexual and emotional abuse of these children. Though there is no concrete evidence as on date, to support the allegation of sexual abuse, the measures undertaken by the institution to discipline some of the children, would certainly tantamount to emotional abuse.

64. As a matter of fact, the I-Additional District Judge who spoke to the children, found the children to have been tutored, to say parrot like, what the institution wanted to convey to this court. Two days of interaction with the children was not sufficient for the learned District Judge to break the ice and make the children open up. From one of the observations made by the learned District Judge under the caption "Disturbing features", it is seen that the children have been brain washed to think and act in a particular manner. Therefore, without further investigation, the real truth as to whether there were other kinds of abuses or not, may not come out at all. But nevertheless the admitted fact that the children were sent out purportedly for disciplining them, certainly establishes emotional abuse.

Violation-8 (Failure to provide regular education and violation of fundamental right to compulsory education)

65. Not all children are sent to regular schools. Even children who had scored 200 out of 200 in some subjects were not sent to regular schools but sent only to attend theology classes. Some of them are sent for training to an institution called German Bakery.

66. Some children are branded as slow learners or as persons with learning disability. But no records are available to show how such a conclusion was arrived at. Interestingly, the institution has taken transfer certificates for some children who studied in different schools. The certificates were signed by persons of questionable authority. Two certificates were signed by a van driver by name Nesamany and one was signed by a Pastor unconnected with the institution. Therefore, no inclination is shown by the institution to provide education to these children and to bring them into the mainstream of the Society.

Violation-9 (Absence of medical records)

67. It is seen from the report of the learned District Judge that one girl by name Florence was made to undergo ultrasonography (USG) of the abdomen. It is recorded that a cyst was found in her right ovary. But no medical records are kept.

68. One girl by name Dorothy is stated to have undergone some treatment as an in-patient in a hospital in May, 2013, but no medical records are available. Not even a discharge summary is available. Another girl by name Hena is stated to have undergone

surgery for cleft lip, but no discharge summary is available. A girl by name Rebecca, who is mentally and physically retarded, is stated to have undergone some treatment as an in-patient in a hospital, for five days in April, 2010, but no discharge summary is available. The institution does not seem to have realised that the lack of medical records including the discharge summary would naturally raise suspicions about the possibility of sexual abuse, especially since all of them are girls.

Violation-10 (Absence of children on a few occasions)

69. In the attendance register for the period from February, 2012 to December, 2012, the institution has marked some children as absent. The District Judge sought an explanation, but the staff of the institution feigned ignorance. It is not known where those children were taken, who took them and why they took them on these days when they were absent. Children in need of care and protection, cannot be allowed to go out of the home, either at their own volition or at the instance of those in-charge of the management of the institution.

V. Summary of our findings:

70. From (i) the very averments contained in the writ petition filed by Mose Ministries (ii) the contents of the Report submitted by the learned I-Additional District Judge, who inspected the home and (iii) the submissions made by the Chairman of the Child Welfare Committee and the District Social Welfare Officer, which we have analysed and discussed critically in the preceding part of this order, we arrive at the following findings:

(i) That without obtaining a certification under Section 9(2) of the Juvenile Justice Act, 1986, that it was a juvenile home entitled to admit juveniles, the institution received infants from unknown sources from the year 1994;

(ii) That from the year 1994 till the year 2008, the institution failed to get recognition under Section 13 of the Orphanages and Other Charitable Homes (Supervision and Control) Act, 1960, though they obtained a temporary recognition in 2008.

(iii) That even after the advent of the Juvenile Justice (Care and Protection of Children) Act, 2000, as amended by the Amendment Act 33 of 2006, the institution failed to obtain a registration in terms of Section 34(3) read with Rule 71.

(iv) That the institution procured 90 girl children, all during their infancy, in a manner not known to law, which has now resulted in the personal details such as the date of birth, parentage, place of birth, etc. of these children not known and never to be known.

(v) That these children are provided adequate food, clothing and shelter, but not allowed either to mingle with other children or to get educated.

(vi) That these children are not provided educational or other rehabilitational measures and no steps are taken for their social reintegration.

(vii) That passports have been obtained for these children by dubious methods and they have also been taken on foreign trips.

(viii) That some of these children have been subjected atleast to emotional abuse and almost all children appear to suffer from something similar to Stockholm Syndrome, which is completely antithetic to the object and purpose of the Juvenile Justice Act.

71. Apart from a comprehensive report running to about 72 pages, the District Judge, who inspected the home and interacted with the children, also submitted a confidential report in a sealed cover. The confidential report contains details regarding (i) the children who underwent medical treatment, but in respect of whom no medical records are available (ii) the details of 33 children who were sent to boarding schools at different locations such as Tharangambadi, Porayar, Thanjavur, Agaram, Ponmalaipatti, etc. by way of punishment and the transfer certificates issued to those children by unauthorised persons (iii) the children who were beaten by teachers and wardens in some boarding schools to which they were sent and in which they were allowed to take bath only for three days in a week and (iv) the details of two children who died after being taken into the institution, with one of them having suffered from HIV/AIDS.

72. The confidential report also states that the children who were taken to Germany, were made to distribute pamphlets to the public and sing songs and perform plays in streets. The passports of these children were not available in the files. The report also states that two children were stopped from attending regular school, since they attempted to interact with other children in the school.

73. Since the confidential report contains the names of some children, we chose not to provide copies of the confidential report to the learned counsel appearing on both sides. Since the case involves the lives of minor girl children, we owe a duty not to expose them to the risk of being harassed. In cases of this nature, the question of violation of the principles of natural justice will not arise, merely because the copy of the confidential report was not furnished.

74. In any case, the institution cannot raise the plea of violation of natural justice merely on account of the non-furnishing of the copy of the confidential report. This is due to the reason that all the findings that we have recorded and the conclusion that we have reached are based upon the comprehensive report itself and not based upon the confidential report.

VI. Solutions on hand:

75. If we go strictly on the basis of (i) the statutory prescriptions and (ii) the principles of "best interest of the child", there is only one way in which the writ petitions on hand could be disposed of. The writ petition filed by the institution should be dismissed and the institution should be directed to be closed. The public interest litigation is liable to be allowed with a direction to the State Government to transfer the minor children to any other children's home, so that the process of rehabilitation and social reintegration is commenced at the earliest. Insofar as those inmates above the age of 18 are concerned, they should be sent to destitute homes.

76. Though what we have indicated in the preceding paragraph is the only way in which both the writ petitions could be disposed of as per law, we are confronted in this case with a hobson's choice. As we have indicated earlier, the children are virtually suffering from a syndrome (something similar to stockholm syndrome) that makes them believe very strongly that Pastor Gideon Jacob is their only saviour. Therefore, the District Judge was of the opinion that any attempt to transfer the children physically by use of force, may meet with stiff resistance. If the attempts to shift the inmates to other institutions lead to violent reaction from the children or unpleasant and untoward incidents, the same may enure to the benefit of the founder of the institution. Therefore, we are of the considered view that the removal of Pastor Gideon Jacob and his coterie from the management and administration of the institution, rather than the removal of the inmates, would be a better option, for the present, so that the inmates are subjected to a kind of de-briefing, enabling them slowly to come out of the web of illusory world weaved around them. Once they come out of such a world, the process of their removal to other homes, for the purpose of rehabilitation and social reintegration, would become smooth.

77. In view of the above, the writ petitions on hand are disposed of to the following effect:

(i) A Committee comprising of the District Collector of Tiruchirappalli as the Chairperson, the Chairman of the Child Welfare

Committee of Tiruchirappalli, the District Child Protection Officer, the District Social Welfare Officer and two members of the Indian Council for Child Welfare, Tamil Nadu, nominated by its Chairperson Tmt.Chandra Devi Thanikachalam, shall forthwith take over the management and administration of the Home run by Mose Ministries.

(ii) The District Social Welfare Officer shall take over as the Caretaker of the Home immediately. If it is impossible, due to her other pre-occupations, she shall immediately nominate an Extension Officer working under her control as the Caretaker of the Children's Home. The Caretaker shall be available at the Home throughout the day so that the further directions issued hereunder may be implemented. If necessary the Caretaker may have a camp office in one of the rooms available in the building where girls above the age of 18 are now located.

(iii) Neither Pastor Gideon Jacob nor anyone appointed or nominated by him shall hereafter visit the children's home or interfere with the management and administration of the children's home. They shall also cease to have any communication whatsoever with the children, by whatever means. The Caretaker shall ensure that the present management of the home does not get into contact with the inmates.

(iv) Mr.Jeyam Abraham, who has sworn to the affidavit in support of the writ petition filed by the institution, and who claims to be the Administrator of the Children's home, shall hand over all the records, registers, personal files, passports, medical records, etc. of the inmates

to the District Child Protection Officer, immediately. If Pastor Gideon Jacob is in possession of any of the records, he shall also hand over the same to the District Child Protection Officer.

(v) The Indian Council of Child Welfare is requested to send atleast two of its volunteers for a period of two weeks to interact with the inmates and help the children get over any obsession that they have about the outside world.

(vi) The District Collector shall immediately nominate a duly qualified person to render counselling to the inmates on a day to day basis, to enable them to get assimilated into their families and eventually into the Society. The District Collector may seek the assistance of a recognised and well run children's home such as Annai Ashram in Tiruchirappalli, so that the Committee constituted hereunder is in a position to put atleast some of the children to regular schooling.

(vii) The Commissioner of Police, Tiruchirappalli, shall render all assistance to the Caretaker, as and when a request is made. The Commissioner shall also post women police officers in plain clothes, by rotation for ensuring the safety and security of the inmates of the home in both the premises. These officers may be drawn either from the Armed Reserve or from Tamil Nadu Special Police Special Battalion, but they should be officers having sensitivity to the needs of children who need care and protection.

(viii) The Committee shall take immediate steps to make enquiries in Usilampatti, Madurai District, and other areas, from where

these inmates were procured by the institution at the time of their infancy. The Superintendent of Police, Madurai Rural District, shall render all assistance to the Committee to trace out, to the extent possible, the parents and families of the inmates of the institution. But, the custody of the children shall not be handed over to the parents and families, even if they are identified, without getting orders from this court.

(ix) The Committee is requested to take all steps necessary to ensure that the children pursue regular education, from the stage where they discontinued the studies.

(x) The first meeting of the Committee shall be held on or before 09.12.2015 and complete the preliminary formalities such as the nomination of the Caretaker, posting of security, etc. and the District Social Welfare Officer shall file a report on 11.12.2015 about the status of implementation of this order.

(xi) Since the children have been brought up with a particular type of religious orientation, the Committee shall take a decision in its first meeting to devise methods to make necessary arrangements to enable the children to celebrate Christmas and New Year, in a manner befitting the occasions.

(xii) Since Pastor Gideon Jacob has apparently received foreign contributions, by showing these children to the donors, he is directed to place at the disposal of the Committee, a sum of Rs. 6,00,000/- (Rupees six lakhs) immediately. Further directions in this regard will be issued by this Court on 11.12.2015.

(xiii) The Committee shall bear in mind that the object of this exercise is to ensure that as and when the children and other inmates are fit enough, physically, mentally and emotionally, to move out of this institution and either get back to their families or get into other institutions, they are liable to be so sent.

Call on 11.12.2015 for a status report from the District Social Welfare Officer.

Index:yes
Internet:yes
gb

(V.R.S.,J) (N.K.K.,J)
07.12.2015

To:

- 1.The District Collector,
Collectorate Office,
Tiruchirappalli Dt.
- 2.The Social Welfare Commissioner,
Chepauk, Chennai.
- 3.The District social Welfare Officer,
Tiruchirappalli.
- 4.Child Welfare Committee,
rep.by its Chairman,
Observation Home at
Babu Road (East Boulewar Road),
Tiruchirappalli.
- 5.District Children Welfare Unit,
by its child Welfare Officer,
Tiruchirappalli.
- 6.The Inspector of Police,
K.K.Nagar Police Station,
Tiruchy.

7. The Principal Secretary,
Department of Social Welfare,
Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai-600 009.
8. The Deputy Superintendent of Police - CB CID,
Anti Human Trafficking Cell (Anti Vice Squad),
First Floor, Block-3 Electronic Complex,
SIDCO Industrial Estate, Guindy, Chennai-32.
9. The District Collector,
Collectorate, Collector Office, Road,
Trichy-620 001.
10. The Commissioner of Police,
Commercial Tax Building,
Race Course Road, Kajamalai,
Trichy-620 020.
11. The District Social Welfare Officer,
Collectorate Building,
Trichirappalli District-620 001.
12. The Child Welfare Committee,
Government Observation Home,
No.34, East Boulevard Road,
Tiruchirappalli-2.

Note to Office:

Issue today.

B/o.

gb

V.RAMASUBRAMANIAN,J
and
N.KIRUBAKARAN,J
gb

Order
in
W.P.(MD)Nos.16273
and 20895 of 2015
and
M.P.(MD)No.1 of 2015 in
W.P.(MD)No.16273 of
2015

Dated:07.12.2015