

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated:20.01.2016

Coram:

THE HONOURABLE Mr.JUSTICE V.RAMASUBRAMANIAN

and

THE HONOURABLE Mr.JUSTICE N.KIRUBAKARAN

W.P.(MD)Nos.16273 and 20895 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 Bouleward 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 : Mr.Veeraraghavan Ramakrishnan
in WP 16273/2015 for Mr.M.Siddharthan
& R-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 THIS COURT WAS MADE BY V.RAMASUBRAMANIAN, J

When the matter was taken up on 11.1.2016, Ms.D.Geetha, learned counsel appearing for the petitioner in the public interest litigation filed notes of submissions. Mr.M.Siddharthan, the learned counsel appearing for the children's home, filed a memo. The District Social Welfare Officer and the Chairman of the Child Welfare Committee filed their reports along with certain documents.

2. In the memo filed on behalf of Mose Ministries, they have prayed for the issue of appropriate directions with regard to four specific issues. They are :

(i) To allow the management of Mose Ministries to engage the services of competent teachers to teach the children and young women, computer, painting, typing, singing and cooking and also to allow theology teachers to take classes

(ii) To allow the girls aged above 18 years to mingle freely with the girls below the age of 18 without any restriction

(iii) To engage the services of anyone of the Pastors named by the management to organize Sunday prayers and

(iv) To allow a wedding already fixed for 1st February 2016 to be solemnized between one of the inmates by name Ms.Esther with a person by name Mr.Gladdy.

3. In the notes of submissions filed on 12.1.2016 by the learned counsel for the public interest litigation petitioner, it is stated as follows :

(i) that as per the information received by the public interest litigation petitioner through a whistle blower, the information regarding the parents of 89 inmates is available with Pastor Gideon Jacob, but he is not revealing the same

(ii) that even according to the Child Welfare Committee, the names and addresses of the parents of all the 89 inmates are recorded in a register and kept in a cupboard, whose key is in the custody of one of the inmates, who is refusing to part with the same

(iii) that the member of the committee accidentally stumbled upon

such a register, when the girl by name Evelyn allowed her a limited access to the cupboard and she has taken a photograph of the register in her mobile phone

(iv) that as per the report submitted in Tamil by the District Social Welfare Officer, the institution (Mose Ministries) procured the children through a nurse working in the Government Hospital at Usilampatti with the help of the President of the village panchayat, who was none else than the father of the nurse

(v) that the above facts go to establish a clear case of trafficking that require a thorough investigation by a specialised agency like the Central Bureau of Investigation

(vi) that the necessity to have an investigation is more pronounced in this case in view of the shocking revelation that the institution procured a total of 125 girl children, out of whom, only 89 are now available

(vii) that many of the parents have already approached the District Collector expressing a desire to take back their children

(viii) that according to the report of the Indian Council of Child Welfare, Mose Ministries is part of an umbrella organisation that is running similar homes in other cities such as Madurai, Salem and Tharangambadi and hence, a detailed and thorough investigation is warranted, especially since the children involved are girls

(ix) that there were reports in the Press about four missing children

from the very same institution, who were taken to Omen and the very fact that the children, who are not exposed to the outside world, are able to stage a dharna on a highway on 23.12.2015 go to show that they are being instigated through the girls above 18 years, by those in charge of the management and

(x) that there is an immediate need to conduct DNA tests so as to unite the children with their parents and also to have a medical examination conducted to find out whether there was any sexual abuse.

4. The District Social Welfare Officer has submitted one report containing the events that took place from 23.12.2015 upto 7.1.2016 and also the steps taken by the Committee. As per this report -

(i) The District Collector spent time from 7 PM to 8.30 PM on 24.12.2015 at the home and mingled with the children to enable the children to celebrate Christmas.

(ii) Though the children accepted the Christmas gifts, they refused to celebrate Christmas in the absence of Pastor Gideon Jacob.

(iii) The girls, above the age of 18, came to the building where the girls below the age of 18 are housed and all of them conducted a prayer meeting on 25.12.2015 for Christmas. Similarly, the children accepted the New Year gifts purchased by the Committee appointed by this Court, on 31.12.2015, but refused to celebrate New Year.

(iv) The children held a joint prayer meeting on the eve of New Year.

(v) Mr.R.Baskaran, the counsel for Mose Ministries, gained entry into the institution and distributed cakes to the children, but he went out upon being requested by the District Social Welfare Officer. When Mr.R.Baskaran attempted to go inside the institution and meet the children for the second time, he was not allowed entry, leading to a protest from the children.

(vi) Some persons, who were formerly employed in the institution, attempted to meet the children in the school, but they were denied entry.

(vii) Some persons claiming to be the parents, met the District Collector and submitted a petition that their children should be united with them.

(viii) Pursuant to earliest order passed by this Court, a Team went to Usilampatti, met the Joint Director of Health Services in the Government Hospital at Usilampatti and enquired about the details of children born in the hospital from 1990 to 2000.

(ix) The Team also met one Mr.Agni, former president of the village panchayat of Vadugapatti and came to know that he handed over some children to Mose Ministries, which was then functioning at No.5/4, Veerabadhira Nadar Street located in the 19th ward of the local panchayat.

(x) As per the statement of the former president of the village panchayat, the premises where Mose Ministries was located in Usilampatti was let out by one Mrs.Rani, the daughter of the former president of village panchayat and she herself was employed as a nurse in the Government

Hospital. In the enquiry conducted with another staff nurse by name Mallika (now retired), it was revealed that whenever any children born in the Government Hospital were abandoned, a proper procedure of handing over the same to recognized adoption centres, after giving information to the police officials, was followed. Mallika claimed ignorance about the very existence of the institution Mose Ministries, when she was employed there and

(xi) When the Team made enquiries with persons residing in the neighbourhood where the institution was formerly located, they told the Team that the children were kept by five Germans, who were never in contact with the localites.

5. Mr.K.Chellapandian, learned Additional Advocate General produced the print out of the photographs, taken by the Child Welfare committee/District Social Welfare Officer in her mobile phone, of a Register that was kept in a locked cupboard, whose keys were with one of the inmates by name Evelyn. The learned Additional Advocate General submitted, on instructions, that the register, into which, the committee/District Social Welfare Officer accidentally stumbled upon, when Evelyn permitted limited access to them, contained the details of parents of all the children. It also contained certain other details. But, the children were vociferous and they did not allow the District Social Welfare Officer to take the register into custody.

6. As we have indicated in the first paragraph of this order, the matter

came up for hearing in the forenoon of 11.1.2016. From the Notes of submissions filed by the learned counsel for the PIL petitioner, the memo filed by the learned counsel for the institution and the reports filed by the District Social Welfare Officer, it became clear that a Register containing the details of the parents of the children was available in the children's home and that the immediate seizure of the said Register was essential.

7. Therefore, we passed over the case on 11.1.2016 with a direction to Mr.R.Baskaran, learned counsel for the institution, to speak to the concerned inmate Ms.Evelyn through phone (mobile phone of the care taker of the institution) and direct her to hand over the said Register to the care taker. We also directed a Member of the Child Welfare Committee and a representative of the Church to be present at the spot to take an inventory of the records and the registers, so that both sides do not raise a dispute later.

8. On 12.1.2016, the Chairman of the Child Welfare Committee submitted a report stating that two members of the Child Welfare Committee went to the home. Pastor Selvaraj representing the institution was also present there. But, two girls by name Davaniya and Evelyn told them that the particular Register that they were looking for, was not any more available and that after the District Social Welfare Officer took the photographs of the register on 6.1.2016, the Register was taken away by one Ms.Esther on 10.1.2016 along with the keys of the cupboard.

9. Therefore, the care taker of the children's home could take into her

possession, only the following documents :

<i>S.No</i>	<i>Document Type</i>	<i>Number</i>
1	<i>Children's particulars like educational documents, children's personal data, residence certificates, health report and photos in A4 sheets (xerox)</i>	<i>12 (folios)</i>
2	<i>Registers</i>	
	<i>1. Inmate attendance</i>	<i>5</i>
	<i>2. Diet and expenses</i>	<i>4</i>
3	<i>Children photo documents (xerox)</i>	<i>2(files)</i>
	<i>Photos</i>	<i>55 Nos.</i>
4	<i>Scan report of inmates (xerox)</i>	<i>1 (file)</i>
5	<i>Building documents (xerox)</i>	<i>1 (file)</i>
6	<i>Bills and receipts (xerox)</i>	<i>2 (folios)</i>
7	<i>Official letters (xerox)</i>	<i>3 (folios)</i>
8	<i>Official documents (xerox)</i>	<i>1 (file)</i>
9	<i>Children's bio-data 2014 (xerox)</i>	<i>1 (file)</i>
10	<i>General documents (xerox)</i>	<i>1 (file)</i>
11	<i>Co-worker documents (xerox)</i>	<i>1 (file)</i>
12	<i>Home particulars (xerox)</i>	<i>1 (file)</i>
13	<i>Exam applications (xerox)</i>	<i>8 copies</i>
14	<i>Children's bio-data cover (for 6 children) (xerox)</i>	<i>1</i>
15	<i>Adhar card and passport (xerox)</i>	<i>1</i>

10. In the light of what transpired on 11.1.2016 and the list of documents seized by the care taker and submitted to us on 12.1.2016, we heard the submissions of Ms.D.Geetha, learned counsel for the PIL petitioner, Mr.K.Chellapandian, learned Additional Advocate General appearing for the State and Mr.Veeraraghavan Ramakrishnan, learned counsel appearing for the institution.

11. In so far as the Register in question is concerned, Mr.Veeraraghavan Ramakrishnan, learned counsel appearing for the

institution took time to get instructions from the Pastor. Thereafter, an affidavit is filed by one Mr.Jeyam Abraham, the Administrator of the institution. A specific stand is taken by the institution, in the said affidavit, with regard to the aforesaid Register. The affidavit is extracted in entirety, so that the stand taken by the institution can be tested for its veracity. Paragraphs 2 to 7 of the affidavit read as follows:

"2. I state that, pursuant to the directions of this Hon'ble Court, I contacted the children and young women in the home along with Advocate R.Baskaran over the telephone. I particularly spoke to Davinya, Esther and Evelyn who have been named in the aforesaid report. I repeatedly told the children and young women that they were not entitled to remove any document relating to the home presently in custody of the Child Welfare Committee. In case, any of them had taken any document from the bureau or elsewhere, I requested them to return the document immediately.

3. I state that the children and young women emphatically told me that they did not take any document either from the bureau or elsewhere. Only the medical prescriptions required by Esther were seen and returned immediately by Esther.

4. I state that since the children and young women have denied taking the documents and it is possible that the documents are available in the bureau or among other documents with the Child Welfare Committee.

5. I further state that the documents referred in the aforesaid report were not registers but were notings of

informal enquiries made about the children's parentage. I understand that copies of these documents are available with the Child Welfare Committee and with Change India and the said documents can be reconstructed.

6. I state that I am second to none in complying with the orders of this Hon'ble Court and in cooperating with the Child Welfare Committee. However, I state that it is unfortunate that the authorities should hand over the bureau key to one of the inmates and allow unsupervised access to the bureau. This has now exposed the children and the young women to needless suspicion.

7. Meanwhile, I am continuing to make enquiries about the document and will take efforts to locate the documents at the earliest, if indeed they have been taken by the inmates and will immediately report to this Hon'ble Court if the documents are available with the inmates."

12. To our mind and in our considered view, the seizure of the said Register appears to be of utmost importance. The print out of the photographs of some pages of such a Register, taken by the District Social Welfare Officer, contains a wealth of information about the identity of the parents of the inmates. For the present, we are not recording in this order, the contents of the print outs, as the same may tempt persons in possession of the Register, either to tamper with it or to destroy it or to tamper with the witnesses. But, suffice it to say that the management of Mose Ministries has not come to court with clean hands. In the affidavit filed by the institution, they have not denied the existence of such a Register. But they have taken a

stand that it was only notings of informal enquiries made about the parentage of the children. The Administrator has also agreed in paragraph 5 of his affidavit that these notings could be reconstructed from the photo copies taken by the Child Welfare Committee and the PIL Petitioner. Therefore, a stage has now come for us to proceed to unearth the veracity of the allegations of trafficking, etc.

13. In the first detailed order that we passed, constituting a Committee to take over the management of the institution, we did not deal with and record any finding with regard to certain serious allegations made in the affidavit in support of the PIL. There are a variety of reasons for this, one of them being, the state of mind of the inmates and the second being the urgent need to remove the inmates from the custody of those in management of Mose Ministries.

14. Therefore, much to the shock, dismay and discomfiture on the part of the PIL petitioner, we were postponing an enquiry into allegations of trafficking and abuse, since we were of the view (i) that so long as the inmates were in the state of mind that we have recorded earlier, no investigation would bring forth any result and (ii) that a ground work was absolutely essential before any investigation is undertaken.

15. But, we do not think that an order for an investigation by a specialised agency can be postponed anymore. In the affidavit filed on behalf of Mose Ministries in support of the writ petition filed by them in W.P.(MD)No.

16273 of 2015, they claimed that all the 89 inmates now available with them, were left at their doorsteps, without any clue about their parentage. But, this averment appears prima facie to be false. If this averment is actually false (subject to the outcome of an investigation), then the averment that there was trafficking, cannot be ignored or belittled. The refusal of the inmates of the home to hand over a very important Register or Notings (as the institution choose to call it) to the Committee appointed by this Court and the sudden disappearance of the same, raises serious doubts and casts a shadow of suspicion. Therefore, it is high time that we appoint a specialised agency, to investigate the allegations of trafficking and abuse.

16. Now, let us taken up for consideration, the requests made by Mr.Veeraraghavan Ramakrishnan, learned counsel appearing for Mose Ministries.

17. The first request made by the learned counsel for the institution is to allow the management to engage the services of competent teachers.

18. But, in the report filed by the District Social Welfare Officer, she has indicated that for children, other than those attending regular schools, tuition teachers have been engaged and that they are now slowly exposed to the outside world. Therefore, we do not wish to accede to the first request of the institution.

19. The second request is to allow the girls, aged above 18 years, to mingle freely with children below the age of 18. The third request is to

engage the services of anyone of the Pastors named by the management to organize Sunday prayers.

20. But, both the above requests are not feasible of being granted. The video recording of what happened on 23.12.2015, when the inmates staged a road roko on the public highway, shows that girls above 18 years are actually instigating girls below 18 years, at the behest of the persons in management of the institution. Today, a crucial register has disappeared only at the behest of girls above 18 years. Therefore, it is not possible for us to accede to the second and third requests.

21. In so far as the fourth request is concerned, it appears that Ms.Esther, whose wedding is proposed to be solemnized, has two siblings, both of whom are also housed in the institution. As per the report of the District Social Welfare Officer, her parentage is known and her father appears to have left behind properties to be inherited by her. Therefore, unless and until this girl comes out of her present mindset, understands her origins and takes an informed decision to marry anyone, the Court cannot give its seal of approval for a wedding arranged by Pastor Gideon Jacob.

22. Hence, all the four requests made by the learned counsel for the institution are rejected.

23. Now, coming to the issues that remains to be sorted out, there remains atleast three major issues, namely, (i) the medical examination of

the children, (ii) the examination and counselling to be provided to the inmates by Experts from NIMHANS, and (iii) an investigation by a Specialised Agency into the allegations of trafficking, etc.

24. Therefore, the following order is passed.

(i)The Joint Director of the Central Bureau of Investigation, Rajaji Bhavan, Chennai-600 090, is directed to depute a team, headed by an Officer of the rank of Deputy Superintendent of Police, specialised in anti-human trafficking issues, to hold an investigation into the allegations of trafficking as well as other allegations of abuse. The Team may include, to the extent possible, lady officers.

(ii)The Team so nominated shall take the assistance of a team of Experts from NIMHANS, Bangalore, to speak to the children, counsel them and first liberate the children from any obsessive mind set if they have.

(iii)After first carrying out the above task through a team of Experts from NIMHANS, the Team shall look into the other allegations of abuse, etc.

(iv)Immediately upon taking up the investigation, the Team shall make enquiries with hospitals in Usilampatti, the Nurses and Doctors employed therein and find out the method adopted by the institution for procuring children. The photo copy of the Register/Notings, taken by the Child Welfare Committee, shall be made use of by the team to proceed with this part of the investigation.

(v)The Team shall also arrange for DNA tests to be conducted upon persons who have now lodged claims with the District Collector that they are the parents of those children. DNA Tests shall also be conducted upon the children in respect of whom a claim is made by the so-called parents.

(vi)The Team shall file a Report before this Court in three months. Till then, the present arrangement shall continue.

(vii)The institution has already deposited a sum of Rs.6,00,000/- with the Committee appointed by this Court. The institution shall deposit another sum of Rs.4,00,000/- (Rupees four lakhs) with the Committee.

Post for reporting compliance in the second week of April, 2016.

Index:yes/no.
Internet:yes/no.
RS/gb

(V.R.S.J.) (N.K.K.J.)
20.1.2016

To:

- 1.The District Collector,
Collectorate Office,
Tiruchirappalli Dt.
- 2.The Social Welfare Commissioner,
Chepauk, Chennai.
- 3.The District social Welfare Officer,
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Government Observation Home,
No.34, East Boulevard Road,
Tiruchirappalli-2.

13.The Joint Director,
Central Bureau of Investigation,
Rajaji Bhavan, Chennai-90.

14.NIMHANS, Bangalore.

Note to Office:

Issue today.

B/o.

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V.RAMASUBRAMANIAN, J
AND
N.KIRUBAKARAN, J

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

20.1.2016