Before A. K. Sikri, The Chief Justice & Rakesh Kumar Jain, J.

COURT ON ITS OWN MOTION—*Petitioner*

versus

STATE OF PUNJAB—*Respondent*

CWP No. 9968 of 2009

April 9, 2013

Constitution of India 1950- Article 21A & 226 - Public Interst Litigation- Juvenile Justice (Care and Protection of Children) Act, 2000 - The Commissions for Protection of Child Rights Act, 2005 - Ss. 17, 18 & 25 - Right of Children to Free and Compulsory Education Act, 2009 - Child Labour (Prohibition and Regulation) Act, 1986 - S. 3 - Juvenile Justice (Care and Protection of Children) Rules, 2007 - Rl. 91 - Rights of children - Appalling condition of Children Homes run by the Department of Women & Children and the Observation Homes run by the Department of Social Security - Section 3 of the Child Labour (Prohibition and Regulation) Act, 1986 authorising the use of child labour in so called non-hazardous industries would offend constitutional mandate and is no longer good law after the passing of RTE Act and the amendment in the Constitution by inserting Article 21A - Held that whenever a child above the age of 14 years is forced to work, it has to be treated as an offence under Section 374 IPC and to be dealt with sternly- Various directions and guidelines issued.

Held, that provisions contained in Section 3 of the Child Labour (Prohibition and Regulation) Act, 1986 authorising the use of child labour in so called non-hazardous industries would offend the aforesaid constitutional mandate and would no longer be good law after the passing of RTE Act and the amendment in the Constitution by inserting Article 21A.

(Para 12)

Further held, that there shall be total ban on the employment of children up to the age of 14 years, be it hazardous or non-hazardous industries. This would, however, be subject to the exception that child

should only be allowed to work with the family in only those trades/ occupations notified by the Child Labour Technical Advisory Committee as constituted under Section 5 of the Act of 1986 and for the sole purpose of learning a new trade/craftsmanship or vocation.

(Para 13)

Further held, that we are of the opinion that whenever a child above the age of 14 years is forced to work, it has to be treated as an offence under Section 374 IPC and it is to be dealt with sternly. We, thus, hold that as and when any matter is brought to the notice of the State Commission (or for that matter suo motu cognizance taken by the State Commission) involving violation of child rights even where a child above the age of 14 year is employed, the State Commission under the CPCR Act will have the jurisdiction to deal with the same and pass necessary directions.

(Para 15)

Further held, that the violators have to be dealt with effectively and in a speedy manner. Therefore, wherever violations are found, cases under the provisions of Part-IV of the Child Labour Prohibition Act have to be registered without delay in each and every case. In such cases, the enforcement agencies shall also always keep in mind the provisions of Section 374 IPC and, wherever required, this provision would be added in all cases of such violations.

(Para 16)

Further held, that Chairperson of Committee should be a person who has been a Judge of the High Court - It would be appropriate if the rules are framed containing the constitution of the Selection Committee for appointment of these Members and also stipulating the procedure for appointment. Till that is done, we direct that the Committee which is constituted for the appointment of Chairperson as per proviso to Section 18 of the CPCR Act shall make appointment of the six Members of the State Commission as well. In the alternative, the State Governments can constitute the Selection Committee on the lines contained in Rule 91.

(Paras 21-22)

Further held, that there is need to create awareness about this as well for which requisite steps should be taken by the respondents. In order to ensure that these Children Homes function properly, the State Commissions should undertake the job of overlooking the functioning of these bodies which is also the power given to it under Section 13 of the CPCR Act. Still, we would impress upon the Chandigarh Judicial Academy to evolve a module/training programme for sensitizing all the stake-holders on child rights and also to deal with the cases in the Children's Courts. We also issue a direction for creating Children's Courts with specialised infrastructure. Needless to mention, National Commission as well as State Commissions shall start discharging their functions under this Act in a meaningful manner. Similar duties assigned to National Commission as well as State Commissions under Section 31 of the Right to Education Act shall also be diligently discharged.

(Para 24, 26, 27 & 28)

Hemant Goswami, petitioner in CWP-2693-2010 in person.

H.C. Arora, Advocate/Amicus Curiae Anil Malhotra, Advocate for petitioner in CWP-13137-2012 and for respondent No.3 in CWP-2693-2010.

O.S. Batalvi, Special Senior Standing Counsel with Kamla Malik, Advocate for Union of India.

J.S. Puri, Addl. Advocate General, Punjab.

B.S. Rana, Addl. Advocate General, Haryana.

Sanjay Kaushal, Standing Counsel for U.T., Chandigarh.

A.K. SIKRI, CHIEF JUSTICE

(1) The children in any society, being the most voiceless and defenceless group, require special attention for protection of their human rights. It is indeed the duty of the society at large, including the legal and judicial authorities, to protect those who are helpless to protect themselves, and this is especially true of children. The controversy raked up through the present petitions also relates to the rights of the children.

(2) In the year 2009, this Court had taken suo motu cognizance of the issue raised in CWP-9968-2009 pertaining to the proper and effective implementation of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as 'the J.J. Act'). The trigger point was the two news items, one dated 18.6.2009 and the other dated 19.6.2009 depicting appalling conditions of the Children Homes run by the Department of Women and Children and the Observation Homes run by the Department of Social Security. Taking cognizance of these two news items the Vacation Judge passed orders dated June 20, 2009 directing the Sessions Judge of the area where these Children Homes and Observation Homes are run, to conduct a surprise visit forthwith and report about the running of those institutions, particularly, in respect of following:

1. The quality of food served to the inmates;
2. The medical facilities for the inmates;
3. The health status of the inmates

The reports were received on which orders dated July 09, 2009 were passed directing the Secretary, Punjab State Legal Services Authority to scrutinize these reports and put up a note indicating, in a tabulated form, the deficiencies that need to be removed by these institutions. Afterwards, the Juvenile Justice Committee of this Court in its meeting held on August 11, 2009, took note of the pitiable state of affairs at the Observation Home at Sonepat. The sordid state of the said Observation Home depicted that Observation Home at Sonepat had two barracks and a front side courtyard with high walls. The entry gate was similar to jail gate. The Home was having no source of recreation facilities or playground for the juveniles housed therein. The courtyard was filled with stagnated water due to blockage of drainage system and there was hardly any place for going out of barrack for using courtyard. Enquiry revealed that there was no arrangement for potable water. The bathrooms and kitchen were also in deplorable condition. The Observation Home was managed by a single teacher who, besides performing job of a teacher, was also looking after the overall administration of the Home. In this manner, no meaningful education was being imparted

to the children. The Observation Home was found to be worse than a prison. Observation Home at Hoshiarpur (Punjab) was found to be no better with almost similar dilapidated conditions. It was also noted that the juveniles were detained in both the Observation Homes for very long periods, in some cases for 20-22 months which was against the letter and spirit of Section 2 of the J.J. Act. As that provision entitles the juveniles to appeal as a matter of right, the Committee, thus, felt that a lot of steps were required to put the various provisions of the juvenile justice system on track. Some of the violations of the J.J. Act, which were found, were:

(i) There was no nomination of Judicial Magistrate Ist Class to head the Juvenile Justice Board so as to assign supervisory powers to the Chief Judicial Magistrate to oversee and review the working of the Juvenile Justice Board.

(ii) The requirement of establishment of Observation Homes and Special Homes in every district was not carried out;

(iii) There was a need to sensitize not only the Juvenile Justice Boards but also the State functionaries in regard to the requirements of the J.J. Act.

(iv) Child Welfare Committees for every district or for group of districts, as required under Section 9 of the J.J. Act, were not constituted in every district.

(v) The State Governments had not fulfilled their obligation to establish and maintain children homes either by themselves or in association with any voluntary organizations.

(vi) The State Governments were found wanting in carrying out another statutory requirement, namely, to appoint Inspection Committee for Children Homes for the State or a district or a city, as the case may be.

(vii) Special Juvenile Police Units were not constituted to fulfil the requirement of Section 10 of the J.J. Act, namely, as soon as a juvenile in conflict with law is apprehended by police, he is to be placed under the charge of the said Special Juvenile Police or the designated Police Officer.

(ix) There was hardly any implementation of the various provisions for process of rehabilitation and social reintegration, which include adoption, after-care, sponsorship, etc.

(3) Thereafter, this petition was taken up along with CWP No.15317 of 2007. In both these writ petitions, various aspects were highlighted. While these issues were taken care of and various orders passed from time to time another Public Interest Litigation Petition, being CWP No.2693 of 2010 came to be filed by Mr. Hemant Goswami. In this petition, the issue pertaining to Child Labour has been raised stating that many children below the age of 14 years have been found working in various places including Panjab University, Chandigarh which is against the provisions of Child Labour (Prohibition and Regulation) Act, 1986. (hereafter referred to as 'the Act of 1986') However, the grievance is that the authorities have not been taking any action. On this basis, prayer made in this petition is to the effect that children below 18 years, which is a legal age of contract, are not made to work and a mechanism be ensured where all such people who violate the provisions of the Act of 1986 are sternly dealt with. Prayer is also made to the effect that suitable steps for rehabilitation of all children engaged in prohibited employment be taken. The petitioners also seek direction for proper implementation of Right to Education Act so that these children are given free education and not made to do forced labour. Notice of motion in this petition was issued on 16.2.2010 taking cognizance of the issues involved.

(4) In the succeeding year, i.e., year 2011, this Court took cognizance of one letter dated 22.3.2011 addressed to the Principal Secretary, Haryana State Legal Services Authority, Chandigarh. In this letter, it was highlighted that provisions of J.J. Act had not been implemented in true and correct spirit, with specific instance of a juvenile named therein in custody and refusal of bail to him. It was registered as CWP No.5544 of 2011 with direction to be taken up along with CWP No.15317 of 2007.

(5) When the aforesaid three writ petitions were pending consideration, National Commission for Protection of Child Rights (NCPCR) also decided to file comprehensive writ petition, in the nature of Public Interest Litigation. This writ petition is CWP No.13137 of 2012. In this writ petition, NCPCR has prayed for the issuance of a writ in the nature of mandamus directing the States of Punjab, Haryana as well as U.T., Chandigarh to take steps to constitute and set up fully functional State Commissions for protection of child rights and Children's Courts under Sections 17 and 25 of The Commissions for Protection of Child Rights Act, 2005 (CPCR Act). Direction is also sought against the State of Punjab to take steps for nominating and appointing a Chairperson and other Members of a fully functional Punjab State Commission for Protection of Child Rights under Section 17 of the CPCR Act; to constitute Children's Courts in the State of Punjab under Section 25 of the CPCR Act; to ensure compliance of the mandatory provisions of J.J. Act providing for compulsory registration of Children Homes under Section 34 of the Act.

(6) All these four writ petitions were clubbed together at one stage. Replies from the respondents were elicited.

(7) A brief gist of the nature of the present four writ petitions would indicate that all these matters pertain to different shades of rights of the children which are sought to be secured by the provisions of various Acts. Main Acts with which we are concerned, are J.J. Act, CPCR Act, 2005, Right of Children to Free and Compulsory Education Act, 2009 (RTE Act) and Child Labour (Prohibition and Regulation) Act, 1986. Though the issues under these Acts may appear to be different, in order to secure these rights, the working of all these Acts, in tandem, is required to be examined. That was the primary reason for clubbing these cases and we heard the counsel appearing in all these cases at length on the issues involved.

(8) Before we proceed further, it would be apposite to have a glimpse of the four Acts in juxtaposition so as to have a comparative insight into the provisions of these Acts touching upon the rights of the child.

Name of Enactment	Juvenile Justice (Care And Protection of Children) Act, 2000	Commission for Protection of Child Rights Act, 2005	The Right of Children to Free and Compulsory Education, 2009	Child Labour (Prohibition and Regulation) Act, 1986
Main Objective	To provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles	Provide for National State Commissions, Courts for providing speedy trial of offences against children or violation of child rights & for incidental/ connected matters	To provide for free and compulsory education to all children of age 6 to 14 years	Prohibiting the engagement of children in certain employments and to regulate the conditions of work for children in certain other employments.
Definition of Child under the Enactment	Child in need of care and protection is defined with 9 different points	Child Rights defined as per UN Convention on the Rights of the Child.	Child means a male or female child of the age six to fourteen years	Child means a person who has not completed his fourteenth year of age.
Important and relevant Sections under the Enactment	Definition of child S.2(d), Juvenile Justice Board S.4-6, Important provisions for protection of juveniles S. 15 & 16, Child Welfare Committee S. 29-31, Benefits for children S.40-45	Definition of Child Rights S.2(b). National Commission formed under the Act S.3 with functions u/s 13 & 14, State Commission S. 24, Children's Court S.25 and 26.	Definition of child S.2(c),(d),(e). Rights of child to free education S.3,4 and 5. Protection of rights of child - Commission formed under CPCR Act S.31-34	Definition of child S.2(ii). Prohibition of employment of child S.3. Child Labour Technical Advisory Committee S. 5. Benefits for children under the Act Ss. 7, 8 and 13

Name of Enactment	Juvenile Justice (Care And Protection of Children) Act, 2000	Commission for Protection of Child Rights Act, 2005	The Right of Children to Free and Compulsory Education, 2009	Child Labour (Prohibition and Regulation) Act, 1986
Authority constituted under the Enactment	Juvenile Justice Board and Child Welfare Committee	National and State Commissions for Protection of Child Rights and Children's Court for speedy trial of offences against children Act	U/s 31, National and State Commissions for Protection of Child Rights as constituted under S.3 & 17 of the CPCR Advisory Councils S. 33, 34.	Child Labour Technical Advisory Committee
Role of the authority constituted under the Enactment	JJ Board: Deals with all the proceedings relating to the juvenile under law. Child Welfare Committee: looks after the children in need of care and protection	National and State Commissions: Have the duty of protection of all kinds of rights of children as elaborated in S.13. Children's Court: Speedy trial of offences against violation of child rights.	National and State Commissions: In addition to the functions under the CPCR Act, also look after the rights of education of children and inquire into the complaints of violation of the same.	Child Labour Technical Advisory Committee: to look into the complaints of violations under the Act i.e. where children are engaged in employments in violation of the provisions under the Act.

Name of Enactment	Juvenile Justice (Care And Protection of Children) Act, 2000	Commission for Protection of Child Rights Act, 2005	The Right of Children to Free and Compulsory Education, 2009	Child Labour (Prohibition and Regulation) Act, 1986
Benefits available to the children	Provides for the rehabilitation and social reintegration of the children or juveniles who are guilty under the law.	All kinds of rights on whole are protected under the Act due to diverse functions and powers u/s 13 of the Act.	Protection of right of education of children of age 6 to 14 years.	Protection of children from being employed in places with high risks to the life of the children and providing better work environment for the children.

(9) Respondents were asked to file their definite action plan in respect of the steps taken or proposed to be taken regarding the aspects highlighted in order dated 7.9.2009 in CWP No.15317 of 2007.

These are:

"(1) Steps for improving the living conditions in the Shelter Homes;

(2) Steps to ensure proper medical facilities to the inmates;

(3) Steps to provide facilities for drinking water and maintaining hygiene in the shelter homes;

(4) Steps regarding vocational training programmes to be started for inmates;

(5) Steps to provide educational facilities to the inmates;

(6) Steps regarding improvement in the quality of the food being served to the inmates;

(7) Mechanism to be put in place for periodic visits and inspections by the officer to be nominated at each district headquarters;

(8) Removal of congestion in the shelter homes wherever necessary;

(9) Steps for providing entertainment facilities to the inmates;

(10) Steps to be taken for the establishment of Child Welfare Committee in terms of Section 29 of the Act and Inspection Committee in terms of Section 30 thereof;

(11) Steps for the implementation of the recommendations made by the High Court on the Administrative side that the Juvenile Justice Board should be headed by a Judicial Magistrate Ist Class instead of CJM as is the position currently.

(12) Steps for training of the members of Juvenile Justice Board as also of the Judicial Officers working as presiding officers of the Juvenile Justice board, regarding child psychology."

In compliance with those directions, affidavits were filed on behalf of States of Punjab and Haryana. Matter was heard and thereafter orders dated 9.11.2009 were passed requesting the Juvenile Justice Committee of Judges of this Court to monitor the action plan submitted by the respondents. We would like to record here that insofar as CWP No.15317 of 2007 is concerned, that writ petition was disposed of vide orders dated July 13, 2012. We reproduce the said order in its entirety:

"Reply filed in Court on behalf of respondent No.3- State of Haryana is taken on record. This writ petition has been filed in public interest drawing the attention of the Court to the delay being caused in disposal of the cases wherein children in conflict with law are arrayed as accused and further bad conditions of the Juvenile Homes etc. were also brought to the notice of this Court.

Notice of motion was issued on 1.10.2007. Thereafter, many orders were passed directing the States to take remedial steps to improve in such homes and the respondents were also directed to constitute the Juvenile Justice Boards (hereinafter referred to as "the Boards") as per the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as "the Act"). Many steps were also suggested to

upgrade the living conditions in the Juvenile Homes, as is evident from the order passed on 21.3.2012, which reads as under:-

> "Having perused the various orders passed by this Court from time to time in this Public Interest Litigation, we are of the considered view that the following issues arise for determination by this Court:-
>
> 1. Whether under Section 14 of the Juvenile Justice (Care and Protection of Children) Act, 2000 and in view of the decision of the Apex Court in Sheela Barase (II) and others vs. UOI and others, AIR 1986 SC 1773, inquiries/ cases which are pending before the Juvenile Justice Boards for more than the stipulated period of 4 months would, by implication of law, stand closed?
>
> 2. The steps that are required to be taken to activate the children homes, juvenile homes, observation homes, etc. and how best to make the required amenities and facilities available to the juveniles who are sent to such homes.
>
> 3. The constitution/composition and functioning of the Juvenile Justice Boards in the States of Punjab and Haryana and Union Territory of Chandigarh.
>
> It is our considered view that if the aforesaid three issues are to be addressed by the Court, the issues arising in the writ petition as well as the issues emanating from the various orders passed by this Court from time to time would stand adequately answered. We, therefore, make it clear that we propose to confine the scope of this Public Interest Litigation to the aforesaid three issues and no further."
>
> In response to the aforesaid order, affidavits have been filed by the States of Punjab and Haryana, respectively, wherein it is stated that constitution of the Boards in most of the districts is complete and wherever members are needed to be appointed the appointment shall be made with promptitude. It is also brought to the notice of the Court that efforts have been made to upgrade the living

conditions in the Juvenile Homes and further that attempt shall made to see that the cases of juveniles are disposed of expeditiously as per provisions of the Act.

In the circumstances, we dispose of this writ petition by issuing directions to all the Presiding Officers of the Boards in both the States of Punjab and Haryana and Union Territory of Chandigarh to make an endeavour to dispose of the cases involving the children in conflict with law within four months as per the provisions of Section 14 of the Act. We further direct Secretaries of the Legal Services Authorities in the States of Punjab and Haryana and Union Territory of Chandigarh to ensure that either they or their representatives shall visit the Juvenile/Observation Homes twice a month. If any deficiency is found, the same shall be brought to the notice of the concerned District Magistrate/competent authority which shall be remedied within a week thereafter. Both the States of Punjab and Haryana and Union Territory of Chandigarh are also directed to complete the constitution of the Boards where the same have still not been constituted within three weeks from today. In case action is not taken by the Secretaries or the representative of the three Legal Services Authorities, the matter be brought to the notice of Executive Chairman of the respective Legal Services Authority who shall take steps to ensure proper living conditions in the Juvenile/Observation Homes."

Some interim orders have been passed in these writ petitions and in compliance thereof half-hearted measures have been taken by the respondents. The slow and lackadaisical approach of the authorities in this behalf has been commented upon by the Court from time to time. In the orders dated 14.12.2012, it was, *inter alia*, noted as follows:

"Though, in these petitions common issues are raised, which pertain to various kinds of rights of the children with emphasis on child labour that is rampant in the States of Punjab and Haryana as well as UT, Chandigarh, CWP No.2693 of 2010 is treated as lead case.

The Child Labour (Prohibition and Regulation) Act, 1986 (for short the, 1986 Act) was passed in the year 1986 i.e. more than 25 years ago, which imposes a complete ban on the employment of children upto the age of 14 years. Even today, the reality shows otherwise. Thereafter, in the year 2005, The Commissions for Protection of Child Rights (CPCR) Act 2005 (for short, the 2005 Act) was passed and the main purpose of this Act, is to ensure enforcement of various rights guaranteed to children under the Constitution of India and other laws framed by the Legislature. It, inter alia, provides for constitution of National Commission as well as State Commissions and Courts for providing speedy trial of offences against children or the violation of child rights and all incidental connected matters.

The National Commission for Protection of Child Rights (NCPCR) was constituted by the Central Government under Section 3 of the 2005 Act. State Governments are obligatory to constitute similar State Commissions for protection of child rights under Section 17 of the 2005 Act.

It is an accepted position that without the constitution of State Commissions, there cannot be proper enforcement of the rights of the children. Functions and powers of the Commissions are given in Section 13 of the Act, which reads as under:-

"13. (1) The Commission shall perform all or any of the following functions, namely:-

(a) examine and review the safeguards provided by or under any law for the time being in force for the protection of child rights and recommend measures for their effective implementation;

(b) present to the Central Government, annually and at such other intervals, as the Commission may deem fit, reports upon the working of those safeguards;

(c) inquire into violation of child rights and recommend initiation of proceedings in such cases;

(d) examine all factors that inhibit the enjoyment of rights of children affected by terrorism, communal violence, riots, natural disaster, domestic violence, HIV/AIDS, trafficking:

maltreatment, torture and exploitation, pornography and prostitution and recommend appropriate remedial measures;.

(e) look into the matters relating to children in need of special care and protection including children in distress, marginalized and disadvantaged children, children in conflict with law, juveniles, children without family and children of prisoners and recommend appropriate remedial measures;

(f) study treaties and other international instruments and undertake periodical review of existing policies, programmes and other activities on child rights and make recommendations for their effective implementation in the best interest of children;

(g) undertake and promote research in the field of child rights;

(h) spread child rights literacy among various sections of the society and promote awareness of the safeguards available for protection of these rights through publications, the media, seminars and other available means;

(i) inspect or cause to be inspected any juvenile custodial home, or any other place of residence or institution meant for children, under the control of the Central Government or any State Government or any other authority, including any institution run by a social organisation; where children are detained or lodged for the purpose of treatment, reformation or protection and take up with these authorities for remedial action, if found necessary;

(j) inquire into complaints and take suo motu notice of matters relating to,-

(i) deprivation and violation of child rights;-

(ii) non-implementation of laws providing for protection and development of children;

(iii) non-compliance of policy decisions, guidelines or instructions aimed at, mitigating hardships to and ensuring welfare of the children and to provide relief to such children, or take up the issues arising out of such matters with appropriate authorities; and

(k) such other functions as it may consider necessary for the promotion of child rights and any other matter incidental to the above functions.

(2) The Commission shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force."

This provision itself demonstrates the need and importance of the National Commission as well as the State Commissions. Though the Act was passed in the year 2005 and going by this, in letter and spirit, such Commissions were to be constituted immediately, it is a matter of regret that for waking up the State Governments from slumbers, such PILs are required to be filed to remind them of their statutory duties. Even after various orders passed in these petitions, the State Commissions are yet to be constituted by the State of Haryana as well as the UT, Chandigarh.

The State of Punjab constituted the Commission on 15.4.2011, but it has yet to start functioning. In the order dated 18.10.2012, directions were given to nominate the Members of the Commission, as by that time, only Chairman of the Commission was appointed. Three Members have been appointed just three days before i.e. on 11.12.2012.

Insofar as, the State of Haryana is concerned, the Cabinet took a decision only a couple of days before i.e. on 12.12.2012, approving the constitution of such a Commission. Though, on the last date of hearing, the statement was made that the Commission will be constituted with all paraphernalia and infrastructures within a period of two months, even today,

statement is made that the Commission shall be constituted shortly, without specifying any time bound period therefor. The snail's pace at which things are going on, needs strong condemnation.

The state of affairs in the UT, Chandigarh is no better and gives a classical example of red tapism. On 18.10.2012, statement was made by learned counsel for the UT, Chandigarh that the proposal of constitution of the Commission has been sent to the Central Government for its approval. Learned counsel for the Central Government had immediately responded, which is also recorded in the order (that the powers in this behalf have already been delegated to the Administrator, UT, Chandigarh and therefore, no formal approval of the Central Government is required by the UT, Chandigarh). On this statement, direction was given to the UT, Chandigarh to take steps for the constitution of the Commission immediately. However, things are where these were on the last date of hearing. Mr. Sanjay Kaushal, learned counsel for the UT, Chandigarh, has today placed on record a communication dated 12.11.2012, which is addressed to the Secretary, Government of India, Ministry of Home Affairs, New Delhi. In this communication, proposal for creation of posts for the constitution of Commission is mentioned with the stipulation that it has financial implications to the tune of Rs.76.35 lacs per year and the Government of India is asked to accord necessary approval for creation of the posts mentioned in this letter. Thus, for want of financial approval, the matter is at standstill and is not making any further headway.

If any such approval is required, we direct the Central Government to give the necessary approval within one week from today. Within one month thereafter, the UT, Chandigarh shall also set up its Commission with the appointments of the Chairman and Members and shall also take further steps for appointment of other officials as required under the proposal.

It hardly needs emphasis that the Chairman and Members of these Commissions are to be appointed in accordance with the provisions of the 2005 Act and the Rules framed thereunder.

We have heard Mr. Hemant Goswami, who is petitioner No.1 in CWP No.2693 of 2010 and Mr. Anil Malhotra, Advocate, who is the counsel for NCPCR in CWP No.13137 of 2012, on various issues raised in these petitions. They have made their detailed submissions and have also given suggestions for proper implementation of the Child Labour (Prohibition and Regulation) Act, 1986 as well as The Commissions for Protection of Child Rights (CPCR) Act 2005. It is also submitted that these Acts are to be implemented and enforced in tune with The Juvenile Justice (Care and Protection of Children) Act, 2000 and The Right of Children to Free and Compulsory Education Act, 2009. Comprehensive directions may require in this behalf on which Mr. Hemant Goswami and Mr. Anil Malhotra have given their suggestions. We have requested them to give written synopsis containing those suggestions within two weeks with advance copy to the counsel for the respondents.

It hardly needs to be reminded to the respondents that these petitions are not to be treated as adversial litigation. On the contrary, full cooperation and positive attitude of the States of Punjab and Haryana as well as the UT, Chandigarh is needed and we hope that the respondents would exhibit such attitude. It is, keeping in view this spirit, we have requested learned counsel for the States of Punjab and Haryana as well as the UT, Chandigarh also to give their suggestions."

(10) Pursuant to the aforesaid orders, all the parties have given their suggestions. Counsel for the parties were also heard in detail on those suggestions.

Re: Child Labour:

(11) Under the J.J. Act of 2000, a person up to the age of 18 years is treated as 'child'. Same age is prescribed under the CPCR Act, 2005 as well. However when it comes to prohibition of Child Labour Act of 1986, the definition of child means a person who has not completed his fourteenth year of age. Thus, virtually there is no prohibition of child labour in case

of children who are more than 14 years but less than 18 years of age. Furthermore, this Act focuses on the prohibition of employment of children in certain specified work places, which are harmful for the children, and there is no absolute prohibition. At the same time, now, RTE Act creates an obligation on the part of State to provide free and compulsory education to all children aged between 6 to 14 years. This is now the constitutional obligation as well. As right to education is made fundamental, it would, therefore, follow that as far as children up to the age of 14 years are concerned, since they are to be provided free education, there would be absolute ban/bar and prohibition from child labour.

(12) Thus, we are of the opinion that provisions contained in Section 3 of the Child Labour (Prohibition and Regulation) Act, 1986 authorising the use of child labour in so called non-hazardous industries would offend the aforesaid constitutional mandate and would no longer be good law after the passing of RTE Act and the amendment in the Constitution by inserting Article 21A. We would like to reproduce the following observations of the apex court in the case of ***Unni Krishnan, J.P. and others*** versus ***State of A.P. and others (1).***

> "1. The citizens of this country have a fundamental right to education. The said right flows from Article 21. This right is, however, not an absolute right. Its content and parameters have to be determined in the light of Articles 45 and 41. In other words every child / citizen of this country has a right to free education until he completes the age of fourteen years. Thereafter his right to education is subject to the limits of economic capacity and development of the State."

(13) We, thus, hold that there shall be total ban on the employment of children up to the age of 14 years, be it hazardous or non-hazardous industries. This would, however, be subject to the exception that child should only be allowed to work with the family in only those trades/ occupations notified by the Child Labour Technical Advisory Committee as constituted under Section 5 of the Act of 1986 and for the sole purpose

(1) (1993) 1 SCC 645

of learning a new trade/craftsmanship or vocation. This exemption too can only be permitted if the same is not in violation of Article 21-A and provisions ofArticle 51A(k) of the Constitution of India, i.e., where the child is attending regular school to get education. In case the child is not studying in a school, this exemption cannot be claimed even by the family as it affects rights of the child as protected by the Constitution of India especially those under Article 21 of the Constitution.

(14) The thorny issue, however, is about the "child labour" in case of children who are above 14 years of age. It is argued by Mr.Goswami that though the Child Labour Abolition Act, 1986 imposed no bar on the employment of such a child as labour, non-grant of protection to the children between 14-18 years of age creates certain contradictions, namely:

(i) Till the attainment of age of majority, no child can consent to any contract, even an employment contract.

(ii) All employment contracts, whether verbally or in writing or implied would be void ab initio if entered with any person under the age of 18 years. The will of the person below 18 years of age can be said to be missing.

(iii) Any employment of labour which is without the will of the person employed attracts provisions of Section 374 of the Indian Penal Code, which reads, - "Section 374: whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with both."

(iv) Our nation has signed and ratified (on 11th December, 1992) the "Convention on the Rights of the Child". Article 1 thereof says, - "**Article 1**: for the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier." Thus, as per international commitment also, the Union Government agrees to accept a person up to the age of 18 years as 'child'.

(v) As per J.J. Act, 2000 which was enacted after the ratification of the "Convention on the Rights of the Child" by our Union Government, the child under the legislation is defined as, "Section 2(k): "juvenile" or "child" means a person who has not completed eighteenth year of age.

Highlighting the aforesaid contradictions, it is argued by Mr. Hemant Goswami, who appeared in person, that employment of any person under 18 years of age should be treated as "prohibited and forced labour" attracting the provisions of Section 374 of the Indian Penal Code, as by that time such a person has not attained majority and is incapable of giving any consent.

(15) We are of the opinion that whenever a child above the age of 14 years is forced to work, it has to be treated as an offence under Section 374 IPC and it is to be dealt with sternly. The problem, however, may arise when a child between 14–18 years of age is committed to labour by the parents willingly and with their consent. It may be difficult to prohibit the same. Having regard to the age of the child fixed under the Child Labour Abolition Act, we are of the opinion that in such circumstances, the case can still be brought before the State Commission formed under the CPCR Act, 2005 which has the jurisdiction to look into the matters of violation of child rights. The task of this Commission is akin to that of Human Rights Commission with the only difference that the State Commissions, established under the CPCR Act, would be dealing with the human rights of children. We, thus, hold that as and when any matter is brought to the notice of the State Commission (or for that matter suo motu cognizance taken by the State Commission) involving violation of child rights even where a child above the age of 14 year is employed, the State Commission under the CPCR Act will have the jurisdiction to deal with the same and pass necessary directions.

(16) The next area which needs attention in this case is to deal with the violators firmly so that it acts as deterrent. The violators have to be dealt with effectively and in a speedy manner. Therefore, wherever violations are found, cases under the provisions of Part-IV of the Child Labour Prohibition Act have to be registered without delay in each and every case. In such cases, the enforcement agencies shall also always keep in mind the provisions of Section 374 IPC and, wherever required, this provision would be added

in all cases of such violations. The trial Courts dealing with such offences would keep in mind the provisions of Section 374-A IPC while awarding compensation to the victims. Whenever a victim is convicted by the trial Court and he files appeal there-against, ordinarily, the appeal be admitted only if penalty/compensation is deposited by the convict in the Court so that even if it is felt that the amount of compensation is not to be realised immediately, interest on such deposits, at least, is paid to the account/ victimised child. Wherever the officers fail or neglect to take effective action immediately, apart from taking necessary disciplinary action, action can also be taken, in appropriate cases, under Section 166 IPC against such officers.

(17) There is also a need for rehabilitation of such children in the society. Mr. Goswami has given the following suggestions in this behalf:

> "(a) **Moving out the child from the exploitative environment:** the rescued child must not be left alone and should not be sent back to parents and/or to the same environment where he/she is again likely to be exploited. It is the duty of the State to ensure the availability of suitable facility/ hostel where the child can stay.
>
> (b) **Ensuring Education:** As per the provisions of "The Right of Children to Free and Compulsory Education Act or Right to Education Act (RTE)" and the provisions of Article 21A of the Constitution, the State must ensure that the rescued Child is immediately admitted in the age-appropriate class of a good school under the provisions of RTE Act. The first preference should be "Private Aided Schools" where there are existing vacancies in the age-appropriate class. The State has to monitor and ensure that the child is comfortable in his new surroundings and all what may be necessary is provided to the child to adapt to the new surroundings. Suggestion is in agreement with the provisions of "The Right of Children to free and Compulsory Education Act or Right to Education Act (RTE)" and the provisions of Article 21A of the Constitution.
>
> (c) **ENSURING FOOD/MEALS/CLOTHES NECESSITIES:** The State is running many incentive schemes for out of-school children, like the mid-day scheme and many other under Sarv

Siksha Abhiyaan, etc. the State must ensure that the recovered Child is provided healthy food for sustenance and all basic necessities. The proposal is in line with the proposal of the Government of India under the "National Charter for Children, 2003," the "WHO Child Growth Standards (Acta Paediatrica, International Journal of Paediatrics, Volume 95 April 2006 Supplement 450, ISSN 0803- 5326)" and the vision of the Government under various statutory schemes.

(d) **PENALTY/COMPENSATION SHOULD BE FOR THE BENEFIT OF THE CHILD:** A sum of Rs.25,000/- or more (suggestion is 1 lakh rupees, in view of the change in rupee value between 1996 and 2012) should be recovered from the violator as compensation in each and every case of violation detected and under the supervision of the "Commission for Protection of Child Rights" the same should be deposited in the name of the child as a monthly interest bearing "Fixed Deposit" and after attaining age of majority, or after employment of the child on attaining the age of majority, the said amount should be deposited in a Public Provident Fund (PPF) account in the name of the young adult, to be maintained by him/her in future, but with a 5 years lock-in period, or to be utilised for payment of fee for any form of higher education supervised by the child protection commission. In M.C. Mehta vs. State of Tamil Nadu [(1996) 6 SCC 756] after referring to how impracticable and unrealistic the distinction between hazardous and non-hazardous processes was, the Supreme Court directed that either employment be given to an adult member of the family so that the child can be taken out of employment or, as an alternative, a corpus of Rs.25,000/- be formed by the offending employer and out of this corpus a monthly income be paid to the family. The Supreme Court further directed that on discontinuation of employment, the child should be given free education in a suitable institution.

(e) **REGULAR MONITORING:** the Child Protection Commission should regularly monitor the rehabilitation of the rescued children."

We find these suggestions to be meritorious as they are backed with proper rationale and, therefore, these be treated as our directions.

(18) Coming to the petition of NCPCR, four reliefs are claimed in this petition which are dealt with hereunder.

First Relief - Constitution of State Commissions for protection of child rights.

(19) As pointed out above, both the States have already constituted the State Commissions. The Chairmen as well as Members to the State Commissions are, however, yet to be appointed. Sections 17 and 18 of the CPCR Act are relevant in this behalf. As per Subsection (2) of Section 17, State Commission is to consist of a Chairperson and six Members with qualifications prescribed therein. This sub-section(2) of Section 17 reads as under:-

> "(2) The State Commissions shall consist of the following Members, namely:-
>
> (a) a Chairperson who is a person of eminence and has done outstanding work for promoting the welfare of children; and
>
> (b) six Members, out of which at least two shall be women, from the following fields, to be appointed by the State Government from amongst persons of eminence, ability, integrity, standing and experience in,-
>
> (i) education;
>
> (ii) child health, care, welfare or child development;
>
> (iii) juvenile justice or care of neglected or marginalized children or children with disabilities;
>
> (iv) elimination of child labour or children in distress;
>
> (v) child psychology or sociology; and
>
> (vi) laws relating to children.
>
> 3. The headquarter of the State Commission shall be at such place as the State Government may, by notification, specify.

Section 18 of the CPCR Act provides for appointment of Chairperson and other Members and power in this behalf is given to the State Government. Proviso to Section 18 stipulates that Chairperson shall be appointed on the recommendations of a three Member Selection Committee constituted by the State Government under the Chairmanship of Minister in-charge of the Department dealing with children. Submission of the learned counsel for NCPCR was that selection of Chairperson and six Members of the State Commissions should be only after consultation with the High Court of Punjab & Haryana by the respective State Governments. Though the statutory provisions, as noted above, do not provide for such consultation, the aforesaid plea is founded by the petitioner on the basis of judgment of the Supreme Court in ***Namit Sharma*** versus ***Union of India (2).*** It is the submission that keeping in view the functions of the State Commissions prescribed under Section 13 of the CPCR Act which require skilled expertise, experience of judicial functioning, legal acumen for study and interpretation of various laws pertaining to child rights besides judicial understanding to take up complaints or suo motu notice for protection of interests and welfare of children as also other remedies for vindication of child rights, such functions/powers can be best exercised by the persons who have been the Judges of the High Court, particularly, having regard to the circumstances requiring emergent relief. It is also argued that perusal of Section 14 of the CPCR Act, which deals with powers relating to enquiries to be conducted by the State Commissions and Section 15 of the said Act, which authorizes State Commissions to take certain steps after enquiry, would clearly necessitate that the Chairpersons heading the Commissions must have judicial expertise to exercise the quasi judicial functions so prescribed. Insofar as constitution of State Commission by U.T., Chandigarh is concerned, Mr. Kaushal, learned Senior Standing Counsel for U.T., Chandigarh has submitted that the Administrator, U.T., Chandigarh has already approved the U.T. Commission for Protection of Civil Rights and steps are afoot for getting concurrence of Ministry of Home Affairs.

(20) It cannot be disputed that Section 13 of the CPCR Act encompasses wide range of powers, *viz.*, to take suo motu cognizance of

(2) JT 2012 (9) SC 196

complaints against abuse of child rights as also against nonadherence to laws for protection and development of children, order inquiry into violation of child rights and recommend initiation of legal proceedings, examine/review safeguards for protection of child rights and suggest measures for their effective implementation, examine factors infringing rights of children, look into the matters of special care for all classes and categories of children, study legal instruments and international treaties, spread child rights literacy, conduct inspection of children homes, etc. In order to discharge such functions, the Chairperson needs to have legal expertise, judicial wisdom and experience in the higher judicial echelons. The functions are clearly quasi judicial in nature. In similar context, dealing with appointment of Chief Information Commissioner under the Right to Information Act, 2005, the Supreme Court in **Namit Sharma** (*supra*), after examining the functions and duties which are to be performed by the Chief Information Commissioner and Members of the Commission, held that those functions are of quasi judicial nature and, therefore, the Chief Information Commissioner should be a person of judicial mind, expertise and experience in that field. Though the similar provisions for appointment were not declared as unconstitutional, the Court deemed it appropriate to read down the said provision to save it from the vice of unconstitutionality by recommending that the competent authority should prefer a person who is or has been a Judge of the High Court for appointment as Information Commissioner. The Chief Information Commissioner at the Centre or State level should normally be the Chief Justice of the High Court or Judge of the Supreme Court of India. Following discussion in this behalf needs to be quoted:

> "102. The independence of judiciary stricto sensu applies to the Court system. Thus, by necessary implication, it would also apply to the tribunals whose functioning is quasi-judicial and akin to the court system. The entire administration of justice system has to be so independent and managed by persons of legal acumen, expertise and experience that the persons demanding justice must not only receive justice, but should also have the faith that justice would be done.
>
> 103. The above detailed analysis leads to an ad libitum conclusion that under the provisions and scheme of the Act of 2005, the persons eligible for appointment should be of public

eminence, with knowledge and experience in the specified fields and should preferably have a judicial background. They should possess judicial acumen and experience to fairly and effectively deal with the intricate questions of law that would come up for determination before the Commission, in its day-to-day working. The Commission satisfies abecedarians of a judicial tribunal which has the trappings of a court. It will serve the ends of justice better, if the Information Commission was manned by persons of legal expertise and with adequate experience in the field of adjudication. We may further clarify that such judicial members could work individually or in Benches of two, one being a judicial member while the other being a qualified person from the specified fields to be called an expert member. Thus, in order to satisfy the test of constitutionality, we will have to read into Section 12(5) of the Act that the expression 'knowledge and experience' includes basic degree in that field and experience gained thereafter and secondly that legally qualified, trained and experienced persons would better administer justice to the people, particularly when they are expected to undertake an adjudicatory process which involves critical legal questions and nicetics of law. Such appreciation and application of legal principles is a sine qua non to the determinative functioning of the Commission as it can tilt the balance of justice either way. Malcolm Gladwell said, "the key to good decision making is not knowledge. It is understanding. We are swimming in the former. We are lacking in the latter". The requirement of a judicial mind for manning the judicial tribunal is a well accepted discipline in all the major international jurisdictions with hardly with any exceptions. Even if the intention is to not only appoint people with judicial background and expertise, then the most suitable and practical resolution would be that a 'judicial member' and an 'expert member' from other specified fields should constitute a Bench and perform the functions in accordance with the provisions of the Act of 2005. Such an approach would further the mandate of the statute by resolving the legal issues as well as other serious issues like an inbuilt conflict between the Right to Privacy and Right to

Information while applying the balancing principle and other incidental controversies. We would clarify that participation by qualified persons from other specified fields would be a positive contribution in attainment of the proper administration of justice as well as the object of the Act of 2005. Such an approach would help to withstand the challenge to the constitutionality of Section 12(5).

104. As a natural sequel to the above, the question that comes up for consideration is as to what procedure should be adopted to make appointments to this august body. Section 12(3) states about the High- powered Committee, which has to recommend the names for appointment to the post of Chief Information Commissioner and Information Commissioners to the President. However, this Section, and any other provision for that matter, is entirely silent as to what procedure for appointment should be followed by this High Powered Committee. Once we have held that it is a judicial tribunal having the essential trappings of a court, then it must, as an irresistible corollary, follow that the appointments to this august body are made in consultation with the judiciary. In the event, the Government is of the opinion and desires to appoint not only judicial members but also experts from other fields to the Commission in terms of Section 12(5) of the Act of 2005, then it may do so, however, subject to the riders stated in this judgment. To ensure judicial independence, effective adjudicatory process and public confidence in the administration of justice by the Commission, it would be necessary that the Commission is required to work in Benches. The Bench should consist of one judicial member and the other member from the specified fields in terms of Section 12(5) of the Act of 2005. It will be incumbent and in conformity with the scheme of the Act that the appointments to the post of judicial member are made 'in consultation' with the Chief Justice of India in case of Chief Information Commissioner and members of the Central Information Commission and the Chief Justices of the High Courts of the respective States, in case of the State Chief Information Commissioner and State Information Commissioners of that State Commission. In the case of

appointment of members to the respective Commissions from other specified fields, the DoPT in the Centre and the concerned Ministry in the States should prepare a panel, after due publicity, empanelling the names proposed at least three times the number of vacancies existing in the Commission. Such panel should be prepared on a rational basis, and should inevitably form part of the records. The names so empanelled, with the relevant record should be placed before the said High Powered Committee. In furtherance to the recommendations of the High Powered Committee, appointments to the Central and State Information Commissions should be made by the competent authority. Empanelment by the DoPT and other competent authority has to be carried on the basis of a rational criteria, which should be duly reflected by recording of appropriate reasons. The advertisement issued by such agency should not be restricted to any particular class of persons stated under Section 12(5), but must cover persons from all fields. Complete information, material and comparative data of the empanelled persons should be made available to the High Powered Committee. Needless to mention that the High Powered Committee itself has to adopt a fair and transparent process for consideration of the empanelled persons for its final recommendation. This approach, is in no way innovative but is merely derivative of the mandate and procedure stated by this Court in the case of L. Chandra Kumar (supra) wherein the Court dealt with similar issues with regard to constitution of the Central Administrative Tribunal. All concerned are expected to keep in mind that the Institution is more important than an individual. Thus, all must do what is expected to be done in the interest of the institution and enhancing the public confidence. A three Judge Bench of this Court in the case of Centre for PIL and Anr. v. Union of India & Anr. [(2011) 4 SCC 1] had also adopted a similar approach and with respect we reiterate the same.

105. Giving effect to the above scheme would not only further the cause of the Act but would attain greater efficiency, and accuracy in the decision- making process, which in turn would

serve the larger public purpose. It shall also ensure greater and more effective access to information, which would result in making the invocation of right to information more objective and meaningful.

106. For the elaborate discussion and reasons afore-recorded, we pass the following order and directions:

1. The writ petition is partly allowed.

2. The provisions of Sections 12(5) and 15(5) of the Act of 2005 are held to be constitutionally valid, but with the rider that, to give it a meaningful and purposive interpretation, it is necessary for the Court to 'read into' these provisions some aspects without which these provisions are bound to offend the doctrine of equality. Thus, we hold and declare that the expression 'knowledge and experience' appearing in these provisions would mean and include a basic degree in the respective field and the experience gained thereafter. Further, without any peradventure and veritably, we state that appointments of legally qualified, judicially trained and experienced persons would certainly manifest in more effective serving of the ends of justice as well as ensuring better administration of justice by the Commission. It would render the adjudicatory process which involves critical legal questions and nuances of law, more adherent to justice and shall enhance the public confidence in the working of the Commission. This is the obvious interpretation of the language of these provisions and, in fact, is the essence thereof.

3. As opposed to declaring the provisions of Section 12(6) and 15(6) unconstitutional, we would prefer to read these provisions as having effect 'postappointment'. In other words, cessation/termination of holding of office of profit, pursuing any profession or carrying any business is a condition precedent to the appointment of a person as Chief Information Commissioner or Information Commissioner at the Centre or State levels.

4. There is an absolute necessity for the legislature to reword or amend the provisions of Section 12(5), 12(6) and 15(5), 15(6) of the Act. We observe and hope that these provisions would be amended at the earliest by the legislature to avoid any ambiguity or impracticability and to make it in consonance with the constitutional mandates.

5. We also direct that the Central Government and/or the competent authority shall frame all practice and procedure related rules to make working of the Information Commissions effective and in consonance with the basic rule of law. Such rules should be framed with particular reference to Section 27 and 28 of the Act within a period of six months from today.

6. We are of the considered view that it is an unquestionable proposition of law that the Commission is a 'judicial tribunal' performing functions of 'judicial' as well as 'quasi-judicial' nature and having the trappings of a Court. It is an important cog and is part of the court attached system of administration of justice, unlike a ministerial tribunal which is more influenced and controlled and performs functions akin to the machinery of administration.

7. It will be just, fair and proper that the first appellate authority (i.e. the senior officers to be nominated in terms of Section 5 of the Act of 2005) preferably should be the persons possessing a degree in law or having adequate knowledge and experience in the field of law.

8. The Information Commissions at the respective levels shall henceforth work in Benches of two members each. One of them being a 'judicial member', while the other an 'expert member'. The judicial member should be a person possessing a degree in law, having a judicially trained mind and experience in performing judicial functions. A law officer or a lawyer may also be eligible provided he is a person who has practiced law at least for a period of twenty years as on the date of the advertisement. Such lawyer should also have experience in social

work. We are of the considered view that the competent authority should prefer a person who is or has been a Judge of the High Court for appointment as Information Commissioners. Chief Information Commissioner at the Centre or State level shall only be a person who is or has been a Chief Justice of the High Court or a Judge of the Supreme Court of India.

9. The appointment of the judicial members to any of these posts shall be made 'in consultation' with the Chief Justice of India and Chief Justices of the High Courts of the respective States, as the case may be.

10. The appointment of the Information Commissioners at both levels should be made from amongst the persons empanelled by the DoPT in the case of Centre and the concerned Ministry in the case of a State. The panel has to be prepared upon due advertisement and on a rational basis as afore- recorded.

11. The panel so prepared by the DoPT or the concerned Ministry ought to be placed before the Highpowered Committee in terms of Section 12(3), for final recommendation to the President of India. Needless to repeat that the High Powered Committee at the Centre and the State levels is expected to adopt a fair and transparent method of recommending the names for appointment to the competent authority.

12. The selection process should be commenced at least three months prior to the occurrence of vacancy.

13. This judgment shall have effect only prospectively.

14. Under the scheme of the Act of 2005, it is clear that the orders of the Commissions are subject to judicial review before the High Court and then before the Supreme Court of India. In terms of Article 141 of the Constitution, the judgments of the Supreme Court are law of the land and are binding on all courts and tribunals. Thus, it is abundantly clear that the Information Commission is bound by the law of precedence, i.e., judgments

of the High Court and the Supreme Court of India. In order to maintain judicial discipline and consistency in the functioning of the Commission, we direct that the Commission shall give appropriate attention to the doctrine of precedence and shall not overlook the judgments of the courts dealing with the subject and principles applicable, in a given case.

It is not only the higher court's judgments that are binding precedents for the Information Commission, but even those of the larger Benches of the Commission should be given due acceptance and enforcement by the smaller Benches of the Commission. The rule of precedence is equally applicable to intra appeals or references in the hierarchy of the Commission."

(21) The response of State of Haryana to the suggestions is that as per proviso to Section 18, a Committee has been constituted under the Chairmanship of the Minister in-charge of the Department who shall appoint the Chairperson. However, no specific plea is made about the suggestions given above having regard to the mandate of **Namit Sharma** (*supra*). We direct that the Chairperson should be a person who has been Judge of the High Court.

(22) Insofar as appointments of six Members are concerned, it is clear that no procedure or guidelines have been stipulated in Section 17 or Section 18 of the CPCR Act. The petitioner, thus, suggests that a High-Powered Selection Committee should be constituted by the State Governments headed by retired Judge of the High Court as Chairperson along with suitable Members to make recommendations for appointment of the remaining six Members of the State Commissions. The process of selection should entail issuance of public advertisement for inviting applications, interviewing eligible candidates and recommending a panel of names of suitable persons. The Union Territory, Chandigarh is directed to speed up its actions for setting up State Commission. The States of Punjab and Haryana as well as U.T., Chandigarh shall also ensure that these State Commissions become fully functional by appointing Chairpersons and Members in the manner as highlighted above.

(23) In order to have transparency in the system and fair chance of consideration to all eligible persons, the selection should be after issuing public advertisement for inviting applications and after interview/discussion with the eligible candidates. It would be appropriate if the rules are framed containing the constitution of the Selection Committee for appointment of these Members and also stipulating the procedure for appointment. Till that is done, we direct that the Committee which is constituted for the appointment of Chairperson as per proviso to Section 18 of the CPCR Act shall make appointment of the six Members of the State Commission as well. In the alternative, the State Governments can constitute the Selection Committee on the lines contained in Rule 91 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (for short 'J.J. Rules').

Second Relief - Mandatory Registration of all Children Homes:

(24) It is the submission of the petitioner that for the effective implementation of the provisions of Section 34 of the J.J. Act, 2000, the registration of Children Homes should be made compulsory. The respondents concur with the same and the stand taken by them is that there is necessity of mandatory registration of these children homes and taking action against those Children Homes which are not registered. It is also stated that no Government grant or financial aid or any other benefit be given to such Children Homes which are not registered. It hardly needs to be emphasised that to check malpractices in various Children Homes, which have surfaced over a period of time, it becomes necessary to make the registration of such children homes not only mandatory but there has to be direct compliance of this provision. There is need to create awareness about this as well for which requisite steps should be taken by the respondents. In order to ensure that these Children Homes function properly, the State Commissions should undertake the job of overlooking the functioning of these bodies which is also the power given to it under Section 13 of the CPCR Act.

Third Relief – Constitution of Selection Committee under Rule 91 of J.J. Rules to make selection of Child Welfare Committee (Rule 20), Inspection Committee (Rule 63) and Advisory Boards (Rule 93) under the J.J. Act and Rules:

(25) We find from the replies filed by the States of Punjab and Haryana as well as U.T., Chandigarh that Committees under the aforesaid

provisions have already been constituted and working in these States/Union Territory. Apart from constitution of these Committees, the petitioner has given the following two suggestions:-

> "vii. The Inspection Committee must ensure that all accounts of all privately run homes/institutions are regularly compulsorily audited by a firm of Chartered Accountants who should also ensure that proper account books are regularly maintained of all financial transactions and all payments are made or received through cheques/bank drafts with minimal cash payments. The regularly audited account statement must be sent to the inspection committee by all privately run homes/institutions. It is also suggested that SCPCR may maintain a panel of approved Chartered Accountants at various district levels through whom these audits of accounts should be got done for all privately run institutions/children homes.
>
> vii. The Inspection Committee must ensure that in accordance with the provisions of Section 3 of the Right of Children to Free and Compulsory Education Actr, 2009 (RTE Act), every child of the age of 6 to 14 years shall have a right to free and compulsory education in a neighbourhood school till completion of elementary education as also ensure that no form of child labour of employment of children in any vocation, trade, business or employment is permitted in any form whatsoever. Any children home or institution found violating this condition should be reported to the SCPCR by the inspection committee for prosecution and legal action."

The respondents have stated that they would consider these suggestions positively. We direct that such an exercise be done within a period of two months, on the feasibility of accepting these suggestions by passing necessary orders.

Fourth Relief – Constitution and notification of Children's Courts and appointment of Special Public Prosecutors under Sections 25 and 26 of the CPCR Act.

(26) The petitioner submits that for the purpose of conducting speedy trial of offences relating to violation of child rights, the provisions incorporated in Section 25 of the CPCR Act require that State Government

may by notification with the concurrence of the Chief Justice of the High Court, specify a Children's Court and notify Special Public Prosecutors for conducting cases in such a court. We find that States of Punjab and Haryana as well as U.T., Chandigarh have already designated specific Courts of Sessions to be the Children's Courts and also appointed Special Public Prosecutors for conducting cases in the Children's Courts. Sensitisation courses are organised as well from time to time by the Chandigarh Judicial Academy as well as by the Government at their level. Still, we would impress upon the Chandigarh Judicial Academy to evolve a module/training programme for sensitizing all the stake-holders on child rights and also to deal with the cases in the Children's Courts.

(27) We also issue a direction for creating Children's Courts with specialised infrastructure. Such a court has been established in District Court, Karkardooma in Delhi with child witness courtroom. We impress upon the High Court as well as the Governments to establish similar child witness courtrooms in all court complexes. The concerned Building Committees of the High Court would look into this aspect and take steps for establishing child witness courtrooms at the earliest. It would go a long way for proper deposition of children as witnesses and even in those cases which are against child offenders.

(28) We would like to mention at this stage that recently, the Parliament has enacted the 'Protection of Children from Sexual Offences Act, 2012'. This is an Act to protect children from offences of sexual assault, sexual harassment and pornography. It becomes necessary to have effective implementation of this enactment as well. Under the Act, the National Commission and State Commissions have been made the designated authorities to monitor the implementation. Rules, 2012 have also been framed under this Act and Rule-6 prescribes for such monitoring with specific functions assigned to National Commission and State Commissions. Needless to mention, National Commission as well as State Commissions shall start discharging their functions under this Act in a meaningful manner. Similar duties assigned to National Commission as well as State Commissions under Section 31 of the Right to Education Act shall also be diligently discharged.

(29) These writ petitions are disposed of with the directions aforesaid.

M. Jain