

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR. JUSTICE A.K. JAYASANKARAN NAMBIAR
&
THE HONOURABLE MR. JUSTICE SHAJI P. CHALY**

MONDAY, THE 6th DAY OF APRIL, 2020/17th CHAITHRA, 1941

W.P.(C). NO.9401 OF 2020

PETITIONER:

Suo Motu

RESPONDENTS:

1. The State of Kerala,
Represented by the Secretary to the Government of Kerala,
Secretariat, Thiruvananthapuram 695001
2. The Secretary, Home Department, Government of Kerala.
3. The State Police Chief, Police Head Quarters, Trivandrum.
4. The Union of India, represented by the Secretary,
Ministry of Home Affairs, Government of India, New Delhi.

Addl. Respondents:

5. The Special Secretary, Social Justice Department,
Government of Kerala, Secretariat, Thiruvananthapuram
Pin – 695001.
6. The Director, Women and Child Development Department,
Government of Kerala, Thiruvananthapuram.

[Addl. Respondents 5 and 6 are suo motu impleaded as per order dated 6.4.2020]

By Sri.Ranjith Thampan, Addl. Advocate General
By Sri.P. Narayanan, Sr. Government Pleader
By Assistant Solicitor General of India

This Writ Petition having come up for orders on 06/04/2020, the Court on the same day passed the following:-

A.K. JAYASANKARAN NAMBIAR, J.
&
SHAJI P. CHALY, J.

W.P.(C).NO.9401 OF 2020

Dated this the 6th day of April, 2020

ORDER

Shaji P. Chaly, J.

The Supreme Court of India, in the Suo Motu Writ Petition (Civil) No.4 of 2020, have issued directions to all the stakeholders who are managing the affairs of the Children Homes functioning under the Juvenile Justice (Care and Protection of Children) Act, 2015, [hereinafter called 'JJ Act'] taking into account the COVID-19 pandemic, to follow the advisories issued thereunder. It was on the basis of the said directives, we have impleaded the Special Secretary, Social Justice Department, Government of Kerala, Secretariat, Thiruvananthapuram, and the Director, Women and Child Development Department, Government of Kerala, Thiruvananthapuram, to monitor the matter and ensure protection of the children in the Children Homes as is directed by the Apex Court, especially to the Juvenile Justice Committee of the High Courts. The order of the Supreme Court is self explanatory, and it reads thus:

“1. This petition has been listed suo moto because of the COVID-19 pandemic which is sweeping the country. There are children who need care and attention and are kept in or children in conflict with law who are kept in various types of homes. There are also children who are kept in foster and kinship care. In these circumstances, it was felt that the interest of these children should be looked into. Interest of these children all of whom fall within the ambit of Juvenile Justice (Care and Protection of Children) Act, 2015 should be protected and to prevent the same, the following directions are issued.

2. As the pandemic COVID-19 is intensifying in India, it is important that urgent measures need to be taken on priority to prevent the spread of the virus to Child Care Institutions (CCIs). These include children in need of care

and protection (CNCP), and children in contact with the law (CiCWL) in Observation Homes. These directions also apply to children in foster and kinship care.

3. These directions have been formulated on the basis of current information and understanding of COVID-19 precautions and response. However, these are also evolving with the progress of the pandemic. State Government and nodal departments are therefore requested to keep the superintendents abreast with all relevant advisories, and circulars along with guidance issued where required. The Juvenile Justice Committees (JJs) of every High Court shall also ensure that these directions are complied with in letter and spirit. At the same time, it will be ensured that the directions issued by the State in respect of lock-down shall not be violated. However, we hope and expect that the District authorities will give necessary permission to transfer children to their family homes or Juvenile Justice Board (JJB) or any other authority.

4. MEASURES TO BE TAKEN BY CHILD WELFARE COMMITTEES

- CWCs are directed to proactively consider steps that are to be taken in the light of COVID - 19, while conducting their inquiries/inspections and also whether a child or children should be kept in the CCI considering the best interest, health and safety concerns.
- Special online sittings or video sessions may be called to consider measures that may be taken to prevent children residing in the Children's Homes, SAAs, and Open Shelters from risk of harm arising out of COVID- 19.
- Gatekeeping or preventive measures need to be considered and families counselled to ensure that institutionalization is the last resort. Focus should be on prevention of separation when possible.
- CWCs to monitor cases telephonically for children who have been sent back to their families and coordinate through the District Child Protection Committees and Foster care and Adoption Committees (SFCACs) for children in foster care.
- As far as possible, online help desks and support systems for queries to be established at the state level for children and staff in CCIs.
- It is important to consider that violence, including sexual and gender-based violence may be exacerbated in contexts of anxiety and stress produced by lockdown and fear of the disease, CWCs can monitor regularly through video conferencing, WhatsApp and telephonically to ensure prevention of all forms of violence.

5. MEASURES TO BE TAKEN BY JUVENILE JUSTICE BOARDS AND CHILDREN COURTS

Juvenile Justice Boards (JJB) and Children's Courts are directed to proactively consider steps that are to be taken in the light of COVID-19, while conducting

their inquiries/inspections. Online or video sessions can be organized.

- The Juvenile Justice Boards/Children's Courts may consider measures to prevent children residing in Observation Homes, Special Homes and Places of Safety from risk of harm arising out of COVID- 19.
- In this regard, JJBs and Children's Courts are directed to proactively consider whether a child or children should be kept in the CCI considering the best interest, health and safety concerns. These may include:
 - Children alleged to be in conflict with law, residing in Observation Homes, JJB shall consider taking steps to release all children on bail, unless there are clear and valid reasons for the application of the proviso to Section 12, JJ Act, 2015.21
 - Video conferencing or online sittings can be held to prevent contact for speedy disposal of cases.
 - Ensure that counselling services are provided for all children in Observation homes.

It is important to consider that violence, including sexual violence may be exacerbated in contexts of anxiety and stress produced by lockdown and fear of the disease. JJBs would need to monitor the situation in the Observation Homes on a regular basis.

6. MEASURES TO BE TAKEN BY GOVERNMENTS

All states need to recognize that COVID-19 has been declared a pandemic, which warrants urgent attention and action to pre-empt emergency and disaster situation from arising with regard to children in State care. It is directed that all State Governments shall:

1. Circulate information to all CCIs about how to deal with COVID - 19 immediately, with instructions that awareness about COVID- 19 is spread in a timely and effective manner.
2. Begin preparing for a disaster/emergency situation that may arise. Work with Persons in Charge of CCIs and District Child Protection Units to plan staffing rotations or schedules to reduce in-person interaction by CCI staff, where feasible. Begin developing a system for how to organise trained volunteers who could step in to care for children, when the need arises.
3. Ensure that all government functionaries perform their duties diligently, and that strict action would be taken should there be any dereliction of duty. As

per Rule 66 (1), Juvenile Justice Model Rules, 2016, any dereliction of duty, violation of rules and orders, shall be viewed seriously and strict disciplinary action shall be taken or recommended by the Person-in-charge against the erring officials.

4. Make provisions to ensure that counselling is made available, and that there are monitoring systems in place to prevent violence, abuse, and neglect, including gender-based violence, which may be exacerbated in contexts of stress produced by lockdown.
5. Ensure adequate budgetary allocation is made to meet the costs that are likely to arise for the effective management of the pandemic, and that all bottlenecks and procedural delays are effectively curbed.
6. Ensure adequate availability of good quality face masks, soap, disinfectants such as bleach, or alcohol-based disinfectants, etc.
7. Ensure availability of adequate food, drinking water, and other necessities such as clean clothes, menstrual hygiene products, etc.

7. DIRECTIONS TO CCIs

The Person in Charge of the CCI and all other staff working in the CCI shall proactively and diligently take all necessary steps to keep the children safe from the risk of harm arising out of COVID-19, in furtherance of the fundamental principle of safety enshrined in the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act, 2015).

1. The Health Ministry has set up **new National Helpline on COVID-19, which are 1075 and 1800-112-545**. In case of any queries or clarifications related to Coronavirus pandemic, call on this number. In addition, **Childline 1098** continues to be operational.
2. In the case of staff or children with symptoms, call the helplines above mention and or a local doctor. Go to the hospital only if you receive such advise by doctor/helpline, or if symptoms are severe-
3. Staff or any other individual found to be exhibiting symptoms of COVID-19 should not be permitted to enter the CCI.
4. CCIs should promote social distancing. The Ministry of Health and Family Welfare, Government of India (MOHFW), has issued Guidelines on Social Distancing.

5. CCIs should enforce regular hand washing with safe water and soap, alcohol rub/hand sanitizer or chlorine solution and, at a minimum, daily disinfection and cleaning of various surfaces including the kitchen and bathrooms. Where adequate water is not available, immediate steps should be taken to ensure it is made available through necessary action, including enhancing budget allocation for the said purpose.
6. CCIs should provide appropriate water, sanitation, disinfection, and waste management facilities and follow environmental cleaning and decontamination procedures.

This information should be made available to families fostering children under foster or kinship care schemes.

8. PREVENTIVE MEASURES FOR CCIs

In order to prevent children and staff members in CCIs from getting infected by COVID - 19, Persons in Charge of CCIs shall:

1. Know and make known how COVID -19 spreads

The best way to prevent illness is to avoid being exposed to this virus. Current understanding on the virus is that it spreads mainly from person-to-person.

- Between a person who is infected with the virus and other people who are in close contact with that person;
- Having face-to-face contact with a COVID-19 patient within 2 meters and for >15 minutes;
- Through respiratory droplets produced when an infected person coughs or sneezes. These droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs;
- There is currently no vaccine to prevent COVID-19.

2. Take necessary steps to practice, promote and demonstrate positive hygiene behaviours and monitor their uptake

- Frequent usage of hand sanitizer by guard, gardener, driver, etc. present in the residential premises/compound. Ensure that hands are cleaned and disinfected often - Clean hands at the main door and schedule regular hand washing reminders;

- If possible, make arrangements hand sanitizers that contain at least 70% alcohol. Ensure that all surfaces of hands are covered, and they are rubbed together until they feel dry. The Person in Charge of the CCI should make necessary arrangements to utilize emergency/contingency funds for this purpose, and submit requisition for additional budgetary allocation where required, at the earliest.

3. Practice social distancing

- Physical distancing must be maintained. Shaking hands and hugging as a matter of greeting to be avoided. Instruct children and staff to maintain social distance by putting distance (at least 2 metres (6 feet) distance between yourself and anyone who is coughing or sneezing) between themselves and other people if COVID-19 is spreading in the community. This is especially important for people who are at higher risk of getting very sick, such as older;
- Reduce number of people entering into CCIs;
- Meetings shall be done through video conferences and/or rescheduled;
- Distancing should be applying in the CCIs where children and staff members congregate such as the reading, dining and television rooms. For example, use of these spaces can be scheduled at 25% participation and the schedule developed to ensure more social distancing.

4. Cleaning and disinfecting rigorously

Current evidence suggests that COVID-19 may remain viable for hours to days on surfaces made from a variety of materials. *Cleaning* refers to the removal of dirt and impurities, including germs, from surfaces. Cleaning alone does not kill germs. But by removing the germs, it decreases their number and therefore any risk of spreading infection. *Disinfecting* works by using chemicals to kill germs on surfaces. This process does not necessarily clean dirty surfaces or remove germs. But killing germs remaining on a surface after cleaning further reduces any risk of spreading infection.

- Clean and disinfect the CCI building, specially water and sanitation facilities at least once a day, and particularly surfaces that are touched by many people (railings, door and window handles, toys, teaching and learning aids etc.) Clean *and* disinfect frequently touched surfaces daily. This includes gates/doors, doorbells, tables, doorknobs, light switches, handles, desks, phones, toilets, water taps, wash basins, etc.;

- Do not shake dirty laundry; this can minimize the possibility of dispersing virus through the air;
- Wash items using the hot water and dry items completely. Dirty laundry that has been in contact with an ill person can however be washed with other people's items if washed in hot water and with adequate amounts of soap/detergent;
- Ensure adequate, clean toilets;
- Maintain clean and hygienic kitchen conditions;
- Cleaning/disinfecting all couriers packages, parcels, grocery packets before bringing inside the house and sanitizing hands right after the process. Preferably wear disposable gloves;
- For disinfection, diluted household bleach solutions, alcohol solutions with at least 70% alcohol, and most common household disinfectants should be used when possible.

9. RESPONSIVE MEASURES FOR CCIs

1. Conduct regular screening: Symptoms can include fever, cough and shortness of breath. In more severe cases, infection can cause pneumonia or breathing difficulties. These symptoms are similar to the flu (influenza) or the common cold, which are a lot more common than COVID-19. This is why testing is required to confirm if someone has COVID-19.

2. Health referral system to be followed: The CCI should immediately follow procedures established by the Ministry/Department of Health and Family Welfare, if children or staff or other service providers working in the CCI become unwell. First step is to inform the nurse/doctor attached to the CCI at the earliest, when there is a suspicion of COVID-19 infection in any staff/child. CCIs can call the helplines referred above or a local doctor. Children or people affected should go only if such advise is given by doctor/helpline, or if symptoms are severe-

3. Quarantine: In case of symptoms, the children the CCI should have a quarantine/segregated section (*where possible*) & make alternate arrangements where a quarantine facility is not possible.

4.Planning in advance for emergency situations. The Person in Charge of the CCI shall, in coordination with the health staff attached to the CCI, - plan ahead with the local health authorities to plan for any emergency that may arise due to the COVID-19. This shall include:

- updating the emergency contact lists
- separating sick children and staff from those who are well, without creating stigma;
- for informing parents/caregivers, and consulting with health care providers/health authorities wherever possible; and
- whether or not children/staff need to be referred directly to a health facility, depending on the situation/context, or sent home, after obtaining the necessary orders from the concerned Child Welfare Committee or Juvenile Justice Board, or Children’s Court.
- Information about such procedures shall be shared with staff, parents and children ahead of time.

10. MEASURES FOR CHILDREN UNDER FOSTER AND KINSHIP CARE

- Families that are fostering children should receive information about how to prevent COVID-19 as indicated above.
- Follow up should be made on their health and psychosocial well-being status, and they should be informed of how to do in case of symptoms

11. GUIDANCE ON MEASURES TO ENSURE WELLBEING OF CHILDREN (CNCP and CiCWL)

- **It is important to acknowledge that for children, it is natural to feel stress, anxiety, grief, and worry during an ongoing pandemic like COVID-19 disease.** They may express psychological distress (anxiety, sadness) by acting out in a different way- each child behaves differently. Some may become silent while other may feel and express anger and hyperactivity.
- **Reassure the children that they are safe. Let them know it is okay if they feel upset.** Share with them how you deal with your own stress so that they can learn how to cope from you. Caregivers need to validate these emotions and talk to children calmly about what is happening in a way that they can understand. Keep it simple and appropriate for each child’s age.

Give children opportunities to talk about what they are feeling. Anxiety and stress is also borne out of lack of knowledge, rumours and misinformation. Provide right kind of information from trusted sources in an honest, age-appropriate manner. Take time to talk with the children and to share the facts about COVID-19, - enabling them to understand the actual risk can make an outbreak less stressful.

- **Encourage children to connect with each other and to talk with people they trust, about their concerns and how they are feeling.**
- **Avoid watching, reading, listening or discussing too much news about the COVID-19 and persuade children to divert their attention to other topics as well.** Children may misinterpret what they hear and can be frightened about something they do not understand. Hearing about the pandemic repeatedly can be upsetting.
- Disruption of routine and closure of schools may be stressful for children. **Try to continue with the regular routine maintained in the home, with minimal disruptions**, so as to maintain a sense of security and wellbeing, while taking all measures to ensure the safety of the children and the staff.
- **Spend time with children and help them to unwind, preferably doing activities they enjoy.** Make it a point to have interactive activities, games etc. with children to keep them engaged in a positive way. Make sure children have enough opportunity to move around, run and do physical activities, even if they are not going to school or playing with friends outside. If schools are going to be closed for a period of time, talk to teachers to put up a list of interactive child-centric activities to keep children engaged.
- **It is important to consider that violence, including sexual and gender-based violence may be exacerbated in contexts of anxiety and stress produced by lockdown and fear of the disease. Do not use corporal punishment/violence to discipline children.** This will add to their anxiety and stress and may have serious mental health implication. All CCI staff need to be cognizant of the fact that there is an increased risk of violence (by peers, other staff members) including sexual abuse. Ensure prevention of all forms of violence.
- **Guide students on how to support their peers and prevent exclusion and bullying.**
- **Work with the health staff/social workers/counsellors to identify and support children and staff who exhibit signs of distress in the CCI.** In CCIs, there may be some children who are undergoing some kind of counselling or treatment for

pre-existing mental health issues. Ensure continuance of the treatment/therapy in consultation with the therapist/psychiatrist.

- **Ensure that no staff or child is subject to any form of stigmatizing words or behavior arising due to coughing, sneezing, etc.**, as this violates the principles of 'equality and non-discrimination,' 'dignity and worth'.
- **Encourage and support children to take care of their bodies** - taking deep breaths, stretching, doing yoga/meditation, eating healthy, well-balanced meals, exercising regularly, getting plenty of sleep, etc.
- **Work with social service systems to ensure continuity of critical services that may take place in CCIs**, such as health screenings, or therapies for children with special needs. Consider the specific needs of children with disabilities, and how marginalized populations may be more acutely impacted by the illness or its secondary effects.

12. The Registry of this Court is directed to immediately send a copy of this order by e-mail to the Chief Secretary of every State/Union Territory who shall ensure that a copy of this order with a translated version in the local language is sent to all the CWCs and CCIs. A copy of this order shall also be sent by e-mail to the Registrar Generals of all the High Courts who shall in turn ensure that a copy of the same is forwarded forthwith to the Principal Magistrates presiding over the JJBs and presiding officers of the Children Courts.

13. We further direct the Registrar Generals of every High Court to place this order before the Chairperson of JJC of every High Court. We request the JJC of all the High Courts to not only ensure due compliance of this order but they shall also regularly monitor the implementation of the directions issued hereinabove as frequently as possible and at least once a week.

14. With these directions the writ petition is disposed of."

The Supreme Court has also directed the Juvenile Justice High Court Committee to monitor the steps taken by the State Government in regard to the directives issued by the Apex Court, periodically and at least once a week. In that view of the matter, post the matter to 15.4.2020, and there will be a direction to the additional respondents to make available the first of its report, on the said

date, enumerating the details, and the steps taken in accordance with the directives issued by the Apex Court.

**A.K.JAYASANKARAN NAMBIAR
JUDGE**

**SHAJI P. CHALY
JUDGE**

prp/6/4/2020