

Present: Mr. Hemant Goswami petitioner No.1 in  
CWP No.2693 of 2010.

Mr. O.S. Batalvi, Advocate  
for the Union of India

Mr. J.S. Puri, Addl. A.G., Punjab

Mr. Anil Rathee, Addl. A.G., Haryana

Mr. Sanjay Kaushal, Sr. Standing Counsel with  
Mr. Pankaj Gupta, Advocate  
for UT, Chandigarh.

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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;*
- (j) 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; (l) 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 adversarial 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.

List for final arguments and disposal on 09.01.2013.

Copy of this order be given to the counsel for the States of Punjab and Haryana as well as the UT, Chandigarh, under the signatures of the Bench Secretary.

A photocopy of this order be placed on the connected cases.

PUNJAB AND HARYANA HIGH COURT

December 14,

*Attested.*  
*[Signature]*  
Principal Secretary  
(Additional-cum-Joint Secy)  
to the Hon'ble Chief Justice  
Punjab & Haryana High Court, Chd.

*sd/-*  
CA. K. Srinani  
Chief Justice

*sd/-*  
Chaitesh Kumar Jarm  
Judge