

IN THE HIGH COURT OF SINDH AT KARACHI

CP NOS.S-728/2016 & 2116/2018

Date

Order with signature of Judge

07.03.2019

Mr. Qadir Hussain Khan, advocate for the respondent No.2 in C.P. No.2116 of 2018.

Mr. Salman Talibuddin, Advocate General Sindh and Ch. Khalid Nawaz, Assistant Advocate General and Ms. Nigar Afaq, State counsel.

Mr. Saeed Ahmed Memon, advocate on behalf of Mr. Mushtaq A. Memon advocate, learned amicus curiae.

Mr. Faheem Hussain Panhwar, Deputy P.G.

Ms. Anjum Iqbal, Addl. Secretary Women Development Department, Ms. Nuzhat Shirin, Chairperson, Sindh Commission on the status of Women, Ms. Fauzia Masood, Deputy Director, Sindh Child Protection Authority, Karachi, Muhammad Khaliq Qureshi, Deputy Director/Focal Person, Sindh Welfare Department, DSP Raza Mian I.G.P. (Legal).

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ORDER

SALAHUDDIN PAHNWAR, J: By order dated 17.10.2018 passed in CP No.S-2116/2018, Province of Sindh was directed to ensure that orphanage houses, under the government; semi government or NGOs, shall be supervised under one umbrella according to Sindh Orphanages (Supervision and Control) Act, 1976 with further direction that the Chief Secretary Sindh and Secretary Social Welfare Department shall call report from all over the province regarding safe houses/places specific for orphans; pursuant to that the Secretary, Social Welfare Department has submitted report which contains that:-

Proper implementation of relevant law relating to orphanages board and constitution of orphanage Board in accordance with Act 1976.	The department is now doing its level best to implement all the provisions of the relevant law and to achieve such objectives. The following actions have been taken in compliance to provisions of the law as well as orders of this honourable Bench:- i. Orphanage Board has been constituted and notified, annexure-C. ii. Minimum standards for functioning of Orphanages have been prepared and circulated. iii. The Divisional Commissioners and DIGs are
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	<p>being approached conveying them the orders of Hon'able court to regularly visit the Orphanages set up under NGOs as directed by Hon'able Bench in the case of Beenish Liaqat vs SHO and others.</p> <p>iv. An advertisement/notice was given in the leading Newspapers advising management of all Orphanages running by private entities to get themselves registered under Orphanage Law in compliance to the relevant provisions of the said law as well as orders of this Hon'able Court, annexure-D.</p> <p>v. In order to bring them under one umbrella as directed by the Hon'able Bench in the case of Beenish Liaqat vs SHO & others, the list of Orphanages working in the province has been effectively prepared and is submitted vide annexure-E, as directed by Hon'able Bench.</p> <p>vi. The mechanism for proper supervisions and monitoring the Orphan Homes in the province is being prepared under Orphanage Board as directed by the Hon'able Bench in the above case.</p> <p>vii. It is however, submitted that no Orphanage has so far approached the Social Welfare Department for registration other than the Anjuman Hayat ul Islam, the affairs of which are presently being managed by Social Welfare Department.</p> <p>viii. Government of Sindh, has been requested to allocate Rs.100 million as endowment fund for the welfare of Orphans in the province. The funds shall be utilized through the Orphanage Board, vide summary dated 12-02-2019, annexure-F.</p> <p>ix. All Orphanages have been communicated to abide by the principles of the law and maintain required standards in the care of children residing with their Organizations. These standards, must cover the quality education, up-bringing, quality health care and their rehabilitation after they reach the age of self-dependence.</p> <p><i>Keeping in view the alarming position regarding wellbeing of orphans residing with the Private Orphanages and in order to improve their lot with capacity building from teen age, the Hon'able Bench is requested to kindly pass the following directions to all the Orphanages for compliance and in case</i></p>
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	<p><i>of failure they may be issued contempt notices.</i></p> <ul style="list-style-type: none">• All Orphanages should get themselves registered immediately under the Orphanage law.• All the Orphanages should not resort to eye wash by providing sub-standard education to the children in the name of vocational training. All Orphanages must improve the standard of formal and vocational education for the children and make efforts to modernize their education system at primary and secondary level leading towards college and University education in a manner that it must eventually result in the benefit of children when they are groomed and reach the age of self-dependence.• The Orphanages must send the eligible children to Government and Private education system and the Management of Private education may be directed to waive educational expenses for Orphans as part of their Commercial Social Responsibility (CSR).• Orphanages need to maintain data of all children residing/resided with them with all details and reasons for leaving along-with their new destinations. The data management about Orphan girls is more important in order to prevent any wrongdoings with their lives as expressed by this Hon'able Bench from time to time.• Orphanages should get their accounts of last 10 years conducted from a firm of repute.• PEMRA must be obliged to accord due publicity free of cost about identifications of orphans as and when it is approached by Social Welfare Department.• NADRA must ensure issuance of form B and CNIC to all Orphans living with Orphanages
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2. Thankfully, the quarter concerned seem to have come out of a long sleep and dust from an **'Act'** of **1976** is being wiped off.

Here, worth reminding here that it is not the function of the Court (s) to issue directions for implementation / enforcement of laws as same, *otherwise*, is mandatory obligation of the quarter concerned. The Courts, however, can competently hammer wherever the (Courts) find the quarters concerned sleeping or indolent in doing what they are required to do. It is, *undeniable*, obligation and duty of the quarter concerned to:

- i) make the people aware of a law, particularly when it relates to such like issue (s);
- ii) ensure giving the subject what they, per law, are entitled to;
- iii) ensure an action against any wrong-doer when the law demands or permits so;
- iv) make things easy and accessible;

Therefore, the quarter concerned is not legally justified in getting a direction for PEMRA for free of cost publicity rather it is hoped that Federal / Provincial Government must include such laws into category of **'programmes of public interest'**. The quarter concerned, accordingly, is hoped to proceed on such line so as to take advantage, provided for such programmes in the PEMRA law itself.

3. I would further add an **'orphan'**, undeniably, falls within meaning of a **'citizen'** hence he is entitled for his **'identity'** which, legally is the CNIC, therefore, it shall be the absolute responsibility of the quarter concerned to formulate a mechanism that without hurting the **'dignity'** of such **orphan** he gets his **identity**. Therefore,

the Chief Secretary shall look into the matter personally and proceed further for having a mechanism.

4. With regard to recommendations learned A.G. Sindh present, refers the Sindh Private Educational Institutions (Regulations and Control) Rules, 2005 made under the Sindh Private Education Institutions (Regulations and Control) Ordinance, 2001 and contends that private schools are bound to provide scholarships on merits upto 10% of the total strength of students in that institution; according to him and per Social Welfare Department, private schools may be directed to adopt orphans atleast 2% of their total strength of students. Since Sindh Orphanages (Supervision and Control) Act, 1976 and the Sindh Private Education Institutions (Regulations and Control) Ordinance, 2001 are not specifying such remedy hence it would be upon the Legislature to introduce policy / adaptation of orphan kinds and their expenses. Needless to mention that orphans shall be defined at least whose one parent are not dead, in case one parent is alive, he has no means.

5. Keeping in view the alarming position regarding well-being of orphans residing with the Private Orphanages and in order to improve their lot with capacity building from teen age, it is hereby directed that :-

- All Orphanages should get themselves registered immediately under the Orphanage law.
- All the Orphanages should not resort to eye wash by providing sub-standard education to the children in the name of vocational training. All Orphanages must improve the standard of formal and vocational education for the children and make efforts to modernize their education system at primary and secondary level leading towards college and University education in a manner

that it must eventually result in the benefit of children when they are groomed and reach the age of self-dependence.

- The Orphanages must send the eligible children to Government and Private education system and the Management of Private education may be directed to waive educational expenses for Orphans as part of their Commercial Social Responsibility (CSR).
- Orphanages need to maintain data of all children residing/resided with them with all details and reasons for leaving along-with their new destinations. The data management about Orphan girls is more important in order to prevent any wrongdoings with their lives as expressed by this court from time to time.
- Orphanage organizations shall get their accounts of last 10 years conducted from a firm of repute.
- Allocate Rs.100 million annually (as demanded by relevant department) endowment fund and increase the same as per decision of the Board.
- The Secretary, Social Welfare Department shall convey orphanage Board meetings quarterly and submit report with minutes.

Learned A.G. Sindh and Secretary Social Welfare Department shall pursue the amendments in relevant law regarding admission of orphans in private schools and colleges *inter alia* as discussed above. To come up for compliance on 13th May 2019.

J U D G E