

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on : February 04, 2014*  
*Judgment Delivered on : March 03, 2014*

+ **WP(C) 9590/2009**

CHHATRAVAS, CHANDRA ARYA  
VIDYA MANDIR

..... Petitioner

Represented by: Mr.Maninder Singh, Sr.Advocate  
instructed by Mr.Nitinjya Chaudhary,  
Advocate

versus

THE DIRECTOR, DEPTT OF WOMEN  
AND CHILD DEV. & ANR.

..... Respondents

Represented by: Mr.Rajeeve Mehra, ASG instructed  
by Ms.S.Pushkarna, CGSC,  
Mr.Neeraj Chaudhary, CGSC,  
Mr.Aditya Malhotra, Mr.Ravjot  
Singh, Mr.Gaurav Sharma, Ms.Sana  
Sundaram and Ms.Aditi Mohan,  
Advocates for UOI with  
Ms.A.Kapoor, Deputy Secretary,  
Ministry of Women and Child  
Development  
Mr.G.Tushar Rao, Advocate for  
Intervener – Arya Bal Griha  
Mr.Digvijay Rai, Advocate for  
Intervenor – Arya Kanya Sadan,  
Mr.Amit Mahajan, Advocate for  
Chandravati Chaudhary Smarak Trust  
Mr.Anant Kumar Asthana, Advocate  
for applicant/HAQ Centre for Child  
Rights Intervener in CM  
No.5131/2012  
Mr.Sushil Dutt Salwan, Advocate  
with Ms.Latika Dutta, Advocate for  
GNCT

**CORAM:**

**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**

**HON'BLE MR. JUSTICE JAYANT NATH**

**PRADEEP NANDRAJOG, J.**

1. No doubt the officers of the Department of Women and Child Development, Government of NCT of Delhi are an illuminating lot, but it appears that half of them are fused and the remaining half are confused. Sometimes the stand taken is that with the promulgation of the Juvenile Justice (Care and Protection of Children) Act, 2000, the Women and Children Institutions Licensing Act, 1956 has been repealed and thus it is pleaded that the petitioner would not be entitled to a renewal of the license granted to it under said Act for running a home for orphans or parents who cannot support their children and that the petitioner should obtain a permission under the Juvenile Justice (Care and Protection of Children) Act, 2000. At other time the stand taken is that a license under the Women and Children Institutions Licensing Act, 1956 has to be obtained but after the petitioner obtained the necessary permission under the Juvenile Justice (Care and Protection of Children) Act, 2000. Shifting the stand in the pleadings and the communications as aforesaid, a lot of confusion was created by the shifting stand taken. As recorded in the order dated July 30, 2012 the final stand taken was that the Women and Children Institutions Licensing Act, 1956 stood repealed with the promulgation of the Juvenile Justice (Care and Protection of Children) Act, 2000.

2. The fused and the confused stand taken by the first respondent therefore compelled us to issue a notice to the Additional Solicitor General

so that proper assistance could be rendered to the Court.

3. Hearing arguments on February 03, 2014 and February 04, 2014 the matter was reserved for judgment.

4. Since there would be a reference to various statutory provisions and as we intend to refer to the same in a brief manner, we record at the outset that the statutory provisions under column No.A would be referred to by the short name under column No.B. The same would be:-

A.	B.
1. Women and Children Institutions Licensing Act, 1956	Licensing Act, 1956
2. The Children Act, 1960	Children Act, 1960
3. Orphanages and other Charitable Homes (Supervision and Control) Act, 1960	Orphanages Act, 1960
4. The Juvenile Justice Act, 1986	JJ Act, 1986
5. Juvenile Justice (Care and Protection of Children) Act, 2000	JJ Act, 2000

5. The Constitution of India has accorded a special status to the children and we find a reference to the children in the Articles of the Constitution concerning Fundamental Rights as also the Directive Principles of State Policy. To wit : Article 24, 39(e) and (f) as also Article 45.

6. With the increase in the number of neglected children and orphans at the time of partition, the Licensing Act, 1956 was promulgated noting that a large number of children houses and orphanages had mushroomed where destitute children were exploited; conditions being inhumane in these institutions. Section 2(b) of the Act defined an institution to mean an institution established and maintained for the reception, care, protection and welfare of women or children and Section 2(a) defined a child to mean a boy or a girl who had not completed the age of 18 years. Section 3 barred

establishment or maintenance of an institution after the commencement of the Act except under and in accordance with the conditions of a license granted as per the Act.

7. The writ petitioner had established an institution for the reception, care and protection as also welfare of children and had obtained a license for the same under the Licensing Act, 1956. The license was for running a home for orphan girls and destitute boys and girls with effect from August 08, 1973. The same was renewed from time to time and lastly till August 06, 2008.

8. Aforesaid writ petition was filed because of an ambivalent stand taken by respondent No.1. Flip flopping, sometimes the stand taken was that no license was required to be issued and sometimes the stand was that after the registration was granted under sub-Section 3 of Section 34 of the JJ Act, 2000 only then would the license be extended under the Licensing Act, 1956 i.e. registration envisaged by Section 34(3) of the JJ Act, 2000 was stated to be a prior requirement and a condition for being eligible to be issued a license under the Licensing Act, 1956.

9. The writ petition was filed praying that the respondent No.1 be directed to renew the license under the Licensing Act, 1956 without insisting upon obtaining registration under Section 34(3) of the JJ Act, 2000.

10. As per the writ petitioner, and we refer to the amended writ petition, it provides, free of charge, boarding and lodging to 400 orphan girls at its campus at Chander Arya Vidya Mandir at East of Kailash another institution by the name Chandra Ashraya Griha is also located in the same campus where 75 orphan and destitute girls are housed. It appears that at Arya Anathalaya and a Kanya Sadan at Daryaganj either orphaned children or children who cannot be maintained by their parents are lodged; these would

be boys and girls.

11. The factual matrix would be relevant only to note that children housed by the petitioner at its homes are either orphans or those whose parents or a single parent cannot maintain the child.

12. Reverting back to the Licensing Act, 1956 under which petitioner was granted a license way back in the year 1973 to establish an institution for the reception, care, protection and welfare of children, we find that the said act was brought into force in Delhi in the year 1960 because sub-Section (3) of Section 1 of the Act required a notification to be issued in the official gazette giving the appointed date on which date the Act would come into force in a State. The Delhi Women and Children Institutions Licensing Rules, 1960 were simultaneously promulgated to give flesh and blood to the bone structure under the statute concerning the nitty gritty of the infrastructure and facilities at the Institutions so that inspection thereof could be effected and those desirous of establishing the institutions knew what they were supposed to provide for.

13. Though not relevant, we may note that as per Section 12 of the Licensing Act, 1956, as from the date of the commencement of the Licensing Act, 1956 in any State, any corresponding law in force in the State immediately before such commencement would stand repealed.

14. The Orphanages Act, 1960 was promulgated on April 09, 1960 noting that hundreds of orphanages and charitable homes, whose conditions were pitiable, had mushroomed in India. The Act was intended to make a provision for the supervision and control of orphanages and homes for neglected women and children and for matters connected therewith. As per sub-Section (3) of Section 1 of the Act it was to come into force when a notification appointing the date of its applicability was notified by each

State. Section 31 of the Orphanages Act, 1960 stated that as from the date of the coming into force of the Act in any State, the Licensing Act, 1956 or any other Act corresponding to the said Act in force in that State immediately before such commencement shall stand repealed. It needs to be highlighted that as per the Orphanages Act, 1960 a child was defined to mean a boy or a girl who has not completed the age of 18 years. A '*home*' was defined to mean an institution, whether called an orphanage, a home for neglected women or children by any name called, maintained or intended to be maintained for the reception, care, protection and welfare of women or children. A Board was constituted as per Section 7 to supervise and control generally all matters relating to the management of homes in accordance with the provisions of the Act.

15. Concededly no notification under sub-Section (3) of Section 1 of the Orphanages Act, 1960 has been promulgated till date in Delhi and thus in Delhi the provisions of the Orphanages Act, 1960 do not apply and as a consequence in Delhi the Licensing Act, 1956 continued to operate.

16. Seven months after the promulgation of the Orphanages Act, 1960, the Children Act, 1960 was promulgated on December 26, 1960 and as per sub-Section (3) of Section 1 thereof the said Act was to come into force in the Union Territories alone on such date as the Administrator of the Union Territory would notify in the official gazette. Vide a notification dated December 01, 1961 No.F.40(8)/61-DSW(1), the Children Act, 1960 was brought into force in the Union Territory of Delhi with effect from January 01, 1962.

17. The Children Act, 1960 was promulgated to provide for the care, protection, maintenance, welfare, training, education and rehabilitation of neglected and delinquent children and for the trial of delinquent children in

the Union Territories. Section 58 of the Children Act, 1960 read as under:-

***“58. Act 8 of 1897 and certain provisions of Act 2 of 1974 not to apply.-***

*(1) The Reformatory Schools Act, 1897, and section 27 of the Code of Criminal Procedure, 1973, shall cease to apply to any area in which this Act has been brought into force.*

*(2) The Women's and Children's Institutions (Licensing) Act, 1956 shall not apply to any children's home, special school or observation home established and maintained under this Act.”*

18. It is apparent that vide sub-Section 2 of Section 58, the Licensing Act, 1956 ceased to apply to any Children Home, Special School or Observation Home established and maintained under the Children Act, 1960.

19. The Children Act, 1960 defined a child, vide Section 2(e), to mean a boy who had not attained the age of 16 years or a girl who had not attained the age of 18 years. Vide Section 2(g) Children Home meant an institution established or certified by the Administrator under Section 9 as a Children Home. Section 9 reads as under:-

***“ 9. Children's homes –***

*(1) The Administrator may establish and maintain as many children's homes as may be necessary for the reception of neglected children under this Act.*

*(2) Where the Administrator is of opinion that any institution other than an institution established under sub-section (1) is fit for the reception of the neglected children to be sent thereunder this Act, he may certify such institution as a children's home for the purposes of this Act.*

*(3) Every children's home to which a neglected child is sent*

*under this Act shall not only provide the child with accommodation, maintenance and facilities for education, but also provide him with facilities for the development of his character and abilities and give him necessary training for protecting himself against moral dangers or exploitation and shall also perform such other functions as may be prescribed to ensure all round growth and development of his personality.*

*(4) The Administrator may, by rules made under this Act, provide for the management of children's homes including the standards and the nature of services to be maintained by them and the circumstances under which, and the manner in which, the certificate of a children's home may be granted or withdrawn."*

20. Children Home would thus be a place where neglected children would be accommodated so that they could be educated and provided with facilities for the development of their character etc. as envisaged by sub-Section 3 of Section 9. A few explanatory words may be spoken of by us at this stage. A re-look at sub-Sections (1) and (2) of Section 9 of the Children Act, 1960 would evidence that Children's Home could be established either by the Administrator or individuals. If established by individuals the same had to be recognized by the Administrator on being certified that such institution would be fit for a Children's Home for the purposes of the Children Act, 1960. It could be argued that since because of sub-Section 2 of Section 58 of the Children Act, 1960 the Licensing Act, 1956 shall not apply to Children's Home, Special School or Observation Home established under the Children Act, 1960 and as Children's Homes were established as per sub-Section 1 of Section 9 by the Administrator, the provisions of the Licensing Act, 1956 would not apply to said Children's Homes alone and that the provisions of the Licensing Act, 1956 would continue to apply to

institutions certified by the Administrator as fit for the reception of neglected children as per sub-Section (2) of Section 9, but the argument overlooks the fact that the certification contemplated by sub-Section (2) of Section 9 is ‘*to certify such institutions as a Children’s Homes for the purposes of this Act*’.

21. As per Section 2(l) a neglected child was defined as one who was found begging or found without having any home or settled place of abode or any ostensible means of sustenance or was destitute, whether as an orphan or not or had a parent or guardian who was unfit or unable or was not exercising proper control over the child or was a child living in a brothel or with a prostitute or who frequently went to a place used for purposes of prostitution.

22. Section 2(m) defined an Observation Home to mean an institution or place established or recognized by the Administrator under Section 11 of the Act as an Observation Home. Section 11 reads as under:-

**“11. Observation homes –**

*(1) The Administrator may establish and maintain as many observation homes as may be necessary for the temporary reception of children during the pendency of any inquiry regarding them under this Act.*

*(2) Where the Administrator is of opinion that any institution other than an institution established under sub-Section (1) is fit for the temporary reception of children during the pendency of any inquiry regarding them under this Act, he may recognize such institution as an observation home for the purposes of this Act.*

*(3) Every observation home to which a child is sent under this Act shall not only provide the child with accommodation, maintenance and facilities for medical examination and treatment, but also provide him with facilities for useful occupation.*

*(4) The Administrator may, by rules made under this Act, provide for the management of observations homes including the standards and the nature of services to be maintained by them and the circumstances under which, and the manner in which, an institution may be recognized as an observation home or the recognition may be withdrawn.”*

23. The inquiry referred to in sub-Section 1 of Section 11 was the one envisaged by Section 8 of the Act.

24. Section 2(q) defined a Special School to mean an institution established or certified by the administrator under Section 10. The said Section reads as under:-

***“10. Special schools –***

*(1) The Administrator may establish and maintain as many special schools as may be necessary for the reception of delinquent children under this Act.*

*(2) Where the Administrator is of opinion that any institution other than an institution established under sub-Section (1) is fit for the reception of the delinquent children to be sent thereunder this Act, he may certify such institution as a special school for the purposes of this Act.*

*(3) Every special school to which a delinquent child is sent under this Act shall not only provide the child with accommodation, maintenance and facilities for education but also provide him with facilities for the development of his character and abilities and give him necessary training for his reformation and shall also perform such other functions as may be prescribed to ensure all round growth and development of his personality.*

*(4) The Administrator may, by rules made under this Act, provide for the management of special schools, including the standards and the nature of service to be maintained by them*

*and the circumstances under which and the manner in which, the certificate of a special school may be granted or withdrawn.”*

25. Section 2(j) of the Children Act, 1960 defined a delinquent child to mean a child who has been found to have committed an offence.

26. In a nut shell, the Children Act, 1960, after defining a child as per Section 2(e) went on to make special provisions for two categories of children : (i) a neglected child as defined under Section 2(l); and (ii) a delinquent child as defined under Section 2(j).

27. A Board called the Child Welfare Board was constituted under Section 4 and was charged with the duty to discharge the powers conferred upon the Board in relation to neglected children. As regards delinquent children, the Children Court established under Section 5 of the Act was empowered to discharge the duties conferred upon such Court in relation to delinquent children under the Act.

28. The Children Act, 1960 laid the foundation for Juvenile Jurisdiction. Various States in India enacted the Children Act and this led to the observation of the Supreme Court in the decision reported as AIR 1986 SC 1773 Sheela Barse & Anr. Vs. UOI & Ors. to enact a uniform legislation on the subject throughout the country.

29. The JJ Act, 1986 was promulgated. Section 63 thereof read as under:-

**“63. Repeal and savings. –**

*If, immediately before the date on which this Act comes into force in any State, there is in force in that State, any law corresponding to this Act, that law shall stand repealed on the said date :*

*Provided that the repeal shall not affect –*

*(a) The previous operation of any law so repealed or anything duly done or suffered thereunder; or*

*(b) Any right, privilege, obligation or liability acquired, accrued or incurred under any law so repealed; or*

*(c ) Any penalty, forfeiture or punishment incurred in respect of any offence committed against any law so repealed; or*

*(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed.”*

30. As held in the decisions reported as AIR 1955 SC 352 Ameer-un-Nissa Begum & Ors. Vs. Mahboob Begum & Ors., AIR 1975 SC 155 Indian Tobacco Co.Ltd. Vs. The Commercial Tax Officer Bhavanipore & Ors. and AIR 1979 SC 602 G.P.Nayyar Vs. State (Delhi Administration) according to the Common Law Doctrine, the repeal of the repealing enactment would not revive the Original Act if the second repealing enactment manifests an intention to the contrary. Since the JJ Act, 1986 contained provisions relating to Juveniles, both delinquent as also neglected; a neglected juvenile being amongst others one without a home or means of subsistence and is destitute as also having a parent or a guardian who was unfit or incapacitated to exercise control over the juvenile, the repeal under the JJ Act, 1986, vide Section 63 thereof of any law corresponding to said Act, would repeal the Children Act, 1960 but that would not mean that the Licensing Act, 1956 would revive qua neglected and destitute children.

31. In the State of Delhi the Juvenile Justice (Delhi) Rules, 1987 were

promulgated on November 17, 1987 and as per Rule 55, the Delhi Children Rules, 1961 were repealed.

32. On November 20, 1989 the General Assembly of the United Nations adopted the Convention on the Rights of the Child wherein a set of standards to be adhered by all State parties in securing the best interest of the child were prescribed. The convention emphasized the social re-integration of children to the extent possible. The Government of India having ratified the convention found it expedient to re-enact the existing law relating to juveniles bearing in mind the standards prescribed in the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (Beijing Rules); the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990) and all other relevant International Instruments.

33. The JJ Act, 2000 was promulgated to consolidate and amend the law relating to Juveniles. In the year 2007 Juvenile Justice (Care and Protection of Children) Rules, 2007 were promulgated. Section 69 of the JJ Act, 2000 repealed the JJ Act, 1986.

34. Under the JJ Act, 2000, Children's Home, Observation Homes, Shelter Homes and Special Homes were conceived of as per the definitions contained in Section 2(e) – to be read along with Section 34, Section 2(o) – to be read along with Section 8, Section 2(u) – to be read along with Section 37 and Section 2(v) – to be read along with Section 9. The said provisions read as under:-

*“2(e). "children's home" means an institution established by a State Government or by voluntary organization and certified by that Government under section 34.*

**34. Children's homes.-**

*(1) The State Government may establish and maintain either by itself or in association with the voluntary organizations, children's homes, in every district or group of districts, as the case may be, for the reception of child in need of care and protection during the pendency of any inquiry and subsequently for their care, treatment, education, training, development and rehabilitation.*

*(2) The State Government may, by rules made under this Act, provide for the management of children's homes including the standards and the nature of services to be provided by them, and the circumstances under which, and the manner in which, the certification of a children's home or recognition to a voluntary organization may be granted or withdrawn.*

*(3) Without prejudice to anything contained in any other law for the time being in force, all institutions, whether State Government run or those run by voluntary organizations for children in need of care and protection shall, within a period of six months from the date of commencement of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, be registered under this Act in such manner as may be prescribed.”*

*“2(o). "observation home" means a home established by a State Government or by a voluntary organization and certified by that State Government under section 8 as an observation home for the juvenile in conflict with law.*

#### **8. Observation homes.-**

*(1) Any State Government may establish and maintain either by itself or under an agreement with voluntary organizations, observation homes in every district or a group of districts, as may be required for the temporary reception of any juvenile in conflict with law during the pendency of any inquiry regarding them under this Act.*

*(2) Where the State Government is of opinion that any institution other than a home established or maintained under sub-section (1), is fit for the temporary reception of juvenile in conflict with law during the pendency of any inquiry regarding them under this Act, it may certify such institution as an observation home for purposes of this Act.*

*(3) The State Government may, by rules made under this Act, provide for the management of observation homes, including the standards and various types of services to be provided by them for rehabilitation and social integration of a juvenile, and the circumstances under which, and the manner in which, the certification of an observation home may be granted or withdrawn.*

*(4) Every juvenile who is not placed under the charge of parent or guardian and is sent to an observation home shall be initially kept in a reception unit of the observation home for preliminary inquiries, care and classification for juveniles according to his age group, such as seven to twelve years, twelve to sixteen years and sixteen to eighteen years, giving due considerations to physical and mental status and degree of the offence committed, for further induction into observation home.”*

*“2(u). “shelter home” means a home or a drop-in-centre set up under section 37.*

### **37. Shelter homes.-**

*(1) The State Government may recognize, reputed and capable voluntary organizations and provide them assistance to set up and administer as many shelter homes for juveniles or children as may be required.*

*(2) The shelter homes referred in sub-section (1) shall function as drop-in-centres for the children in the need of urgent support who have been brought to such homes through such persons as are referred to in sub-section (1) of section 32.*

*(3) As far as possible, the shelter homes shall have such facilities as may be prescribed by the rules.”*

*“2(v). "special home" means an institution established by a State Government or by a voluntary organization and certified by that Government under section 9.*

#### **9. Special Homes.-**

*(1) Any State Government may establish and maintain either by itself or under an agreement with voluntary organizations, special homes in every district or a group of districts, as may be required for reception and rehabilitation of juvenile in conflict with law under this Act.*

*(2) Where the State Government is of opinion that any institution other than a home established or maintained under sub-section (1), is fit for the reception of juvenile in conflict with law to be sent there under this Act, it may certify such institution as a special home for the purposes of this Act.*

*(3) The State Government may, by rules made under this Act, provide for the management of special homes, including the standards and various types of services to be provided by them which are necessary for re-socialization of a juvenile, and the circumstances under which and the manner in which, the certification of a special home may be granted or withdrawn.*

*(4) The rules made under sub-section (3) may also provide for the classification and separation of juvenile in conflict with law on the basis of age and the nature of offences committed by them and his mental and physical status.”*

35. Rules 2(d), 2(k) and 2(l) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 defining ‘child friendly’, ‘orphan’ and ‘place of safety’ read as under:-

*“2(d). "child friendly" means any process in interpretation, attitude, environment and treatment, that is humane, considerate and in that best interest of the child.*

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*2(k). "orphan" means a child who is without parents or willing and capable legal or natural guardian.*

*2(l). "place of safety" means any institution set up and recognized under sub-Section (3) of Section 12 and sub-Section (1) of Section 16 of the Act for juvenile in conflict with law or children.”*

36. Rules 2(m) and 2(n) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 read as under:-

*“2(m) “recognized” means a person found fit by the competent authority or, an institution found fit by the State Government on the recommendation of the competent authority as per clauses (h) and (i) of section (2) of the Act; or, recognition of an institution or agency or voluntary organization by the State Government to operate as a children’s home, observation home and special home; or a shelter home, specialized adoption agency or after care organization under sub-section (1) of section 37, sub-section (4) of section 41 and clause (a) of section 44 of the Act.*

*2(n) “registered” means all institutions or agencies or voluntary organizations providing residential care to children in need of care and protection registered under sub-section (3) of section 34.”*

37. Rules 70 and 71 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 read as under:-

***“70. Certification or recognition and transfer of Management of Institutions and after care organizations.—***

*(1) Any organization desiring certification under the Act shall make an application together with a copy each of the rules, bye-laws articles of association, list of members of the society or the association running the organization, office bearers and a statement showing the status and past record of specialized childcare services provided by the organization, to the State Government, who shall after verifying the provisions made in the organization for the boarding and lodging, general health, educational facilities, vocational training and treatment services may grant certification or recognition under sections 8, 9, 34, 37, 41 and 44 of the Act, as the case may be, on the condition that the organization shall comply with the standards or services as laid down under the Act and the rules framed their under, from time to time and to ensure an all round growth and development of juvenile or child placed under its charge.*

*(2) Any organization desiring recognition under the Act shall make an application to the Competent Authority, who shall after due inquiry, recommend the State Government for such recognition.*

*(3) The State Government may, transfer the management of any State run institution under the Act to a voluntary organization of repute, who has the capacity to run such an institution; and certify or recognize the said voluntary organization as a fit institution to own the requisite responsibilities under a Memorandum of Understanding for a specified period of time.*

*(4) The State Government may, if dissatisfied with the conditions, rules, management of the organization certified or recognized under the Act, at any time, by notice served on the manager of the organization, declare that the certificate or recognition of the organization, as the case may be, shall stand withdrawn as from a date specified in the notice and from the said date, the organization shall cease to be an organization certified or recognized under sections 8, 9, 34, 37, 41 or 44 of the Act, as the case may be:*

*Provided that the concerned organization shall be given an opportunity of making a representation in writing, within a period of thirty days, against the grounds of withdrawal of certificate or recognition of that organization.*

*(5) The decision to withdraw or to restore the certificate or recognition of the organization may be taken, on the basis of a thorough investigation by a specially constituted advisory board under section 62 of the Act.*

*(6) On the report of the advisory board, the Officer- in- charge of the institution shall be asked to show cause so as to give an explanation within thirty days.*

*(7) When an organization ceases to be an organization, certified or recognized under sections 8, 9, 34, 37, 41 or 44 of the Act, the juvenile or the child kept therein shall, be transferred to some other institution of repute, certified or recognized under sections 8, 9, 34, 37, 41 or 44 of the Act or discharged, in accordance with the provisions of the Act and the rules relating to their discharge and transfer by giving intimation of such discharge or transfer to the Board or the Committee, as the case may be.*

#### **71. Registration under the Act –**

*(1) All institutions and organizations running institutional or non-institutional care services for children in need of care and protection, whether run by the government or voluntary organization, shall get themselves registered under sub-section (3) of section 34 of the Act.*

*(2) All such institutions shall make an application together with a copy each of rules, bye-laws, memorandum of association, list of governing body, office bearers, balance sheet of past three years, statement of past record of social or public service provided by the institution or organization to the State Government, who shall after verifying that provisions made in the institution or organization for the care and protection of children, health, education, boarding and lodging*

*facilities, if any, vocational facilities and scope of rehabilitation, may issue a registration certificate to such organization under sub-section (3) of section 34 of the Act and as per this rule.”*

38. Thus, under the JJ Act, 2000 the position could be stated : for children in need of care and protection Children’s Home are conceived of and for children in conflict with law Observation Homes and Special Homes are conceived of. As regards Shelter Homes the same would be for children in care of urgent need and support as also for juveniles.

39. Concededly the Children Act, 1960 which was promulgated on December 26, 1960 was brought into force in the Union Territory of Delhi on January 01, 1962. Vide sub-Section 2 of Section 58 thereof, the Women’s and Children’s Institutions (Licensing) Act, 1956 ceased to apply to any Children’s Home, Special School or Observation Home established and maintained under the Children Act, 1960.

40. The Licensing Act, 1956 applied to all institutions which were established for the reception, care, protection and welfare of children. It is apparent that with the promulgation of the Children Act, 1960 institutions which would be a Children’s Home, an Observation Home or a Special School would no longer be governed by the Licensing Act, 1956 for the reason these institutions would be governed hitherto fore by the Children Act, 1960. The definition of a neglected child as per Section 2(1) of the Children Act, 1960 would embrace a child without a home whether as an orphan or having parent(s). These children, housed in Observation Homes required the Observation Homes to be recognized by the administrator. For delinquent children it was the Special Schools where such children were to be housed. Thus, the provisions of the Licensing Act, 1956 would not apply

to Observation Homes and Special Schools with the promulgation of the Children Act, 1960.

41. With the promulgation of the JJ Act, 1986 law corresponding to the JJ Act, 1986 stood repeal. Under the JJ Act, 1986 a juvenile, a delinquent juvenile, a neglected juvenile, a Juvenile Home, an Observation Home and Special Homes were defined. Whereas Special Homes, as per Section 10 of the JJ Act, 1986 were for reception of delinquent juveniles and Observation Homes as per Section 11 were for the temporary reception of juveniles during the pendency of an enquiry regarding them, a Juvenile Home, as per Section 9 was a Home for the reception of neglected juveniles. A neglected juvenile as per Section 2(l) meant a juvenile who, inter-alia, was without a home or have a parent who was unfit or incapacitated to exercise control over the juvenile. Thus, because of Section 63 of the JJ Act, 1986 the corresponding provisions under the Children Act, 1960 ceased to apply.

42. The JJ Act, 2000 replaced the JJ Act, 1986 and we have in the Act, as per Section 2(d), the definition of a child in need of care and protection. This child has to be kept in a Children's Home.

43. Sub-Section 3 of Section 34, which commences with the words : *'Without prejudice to anything contained in any other law for the time being in force'* requires *'All institutions'* whether State Government runs or those run by voluntary organizations for children in need of care and protection to be registered under the Act in such manner as may be prescribed.

44. A child in need of care and protection would include a child who has a parent but such parent is unfit or incapacitated to exercise control over the child and would also include a child whose parents have abandoned or surrendered him. The words *'surrendered him'* would mean that the parent or parents have left the child for care and protection with somebody else and

which would include an institution. In this context we would be failing if we do not highlight the definition of '*abandoned*' and '*surrendered child*' as per clause (a) and (q) of Rule 2 of the Juvenile Justice (Care and Protection of Children) Rules, 2007. The word '*abandoned*' means an unaccompanied and deserted child who is declared abandoned by the Committee after due inquiry and '*surrendered child*' means a child, who in the opinion of the Committee, is relinquished on account of physical, emotional and social factors beyond the control of the parent or guardian.

45. The expression '*recognized*' and '*registered*' have not to be confused. As per Rule 2(m) of the JJ Rules, 2007 read with Rule 70 thereof recognition has to be obtained by a voluntary organization from the State Government to run a Children's Home, an Observation Home, a Special Home or a Shelter Home. Registration as per Section 2(n) read with Rule 71 is limited to institutions providing care service for children in need of care and protection and this registration has to be as envisaged by sub-Section 3 of Section 34 of the Act.

46. Thus, under the JJ Act, 2000 two broad category of children : (i) juveniles in conflict with law; and (ii) child in need of care and protection are clearly discernable and relatable to the four kinds of institutions contemplated by the Act; and each would require either a recognition and/or a registration as contemplated by the different provisions of the Act, and as noted above.

47. Whereas the Licensing Act, 1956 was a general law relating to children and women, the JJ Act, 1986 and the JJ Act, 2000 are special legislations pertaining to two categories of children and thus even if it be assumed that the Licensing Act, 1956 continues to hold the field, pertaining to the two categories of children referred to in paragraph 44 above, the JJ

Act, 2000 would prevail. The legislative intent could not be made more clear other than the use of the words '*Without prejudice to anything contained in any other law for the time being in force*' in the opening sentence of sub-Section 3 of Section 34 of the JJ Act, 2000.

48. Needless to state the mandate of Section 34(3) of the JJ Act, 2000 is to obtain registration of institutions run by voluntary organizations for children in need of care and protection under the Act. The issue of recognition has got nothing to do with Section 34(3) of the JJ Act, 2000 for the same pertains to Rule 2(m) read with Rule 70 of JJ Rules, 2007 and depending upon the nature of the Home, a recognition from the State Government under Section 8 for an Observation Home, under Section 9 for a Special Home, under sub-Section 2 of Section 34 for a Children's Home and under Section 37 for a Shelter Home.

49. The institutions established by the petitioner are for orphaned girls and boys as also for boys and girls who cannot be maintained by their parents. We see no escape from the fact that these children have been surrendered for care and upbringing to the institutions established by the petitioner and thus if not as per sub-clause (iv) of para (d) of Section 2 of the JJ Act, 2000, as per sub-clause (v) of para (d) of Section 2 of the said Act these children would be a child in need of care and protection requiring registration under sub-Section 3 of Section 34 apart from a recognition from a State Government.

50. The recognition by the State Government is independent of a registration under sub-Section 3 of Section 34 and we find that the first respondent is totally confused as to what to do. The application seeking license to run the institution for a child in need of care and protection would be an application seeking recognition and the State Government would

decide the same independently with reference to the norms prescribed to be a recognized institution to house a child in need of care and protection. The registration under sub-Section 3 of Section 34 would not be a recognition but a registration and thus the latter has to precede the former.

51. We dispose of the writ petition directing the State Government to treat application by the petitioner for extension of its license under the Licensing Act, 1956 to be an application seeking recognition. We would advise the petitioner to thereafter seek registration under sub-Section 3 of Section 34.

52. There shall be no order as to costs.

**(PRADEEP NANDRAJOG)**  
**JUDGE**

**(JAYANT NATH)**  
**JUDGE**

**MARCH 03, 2014**  
*mamta*