

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Special Original Jurisdiction)

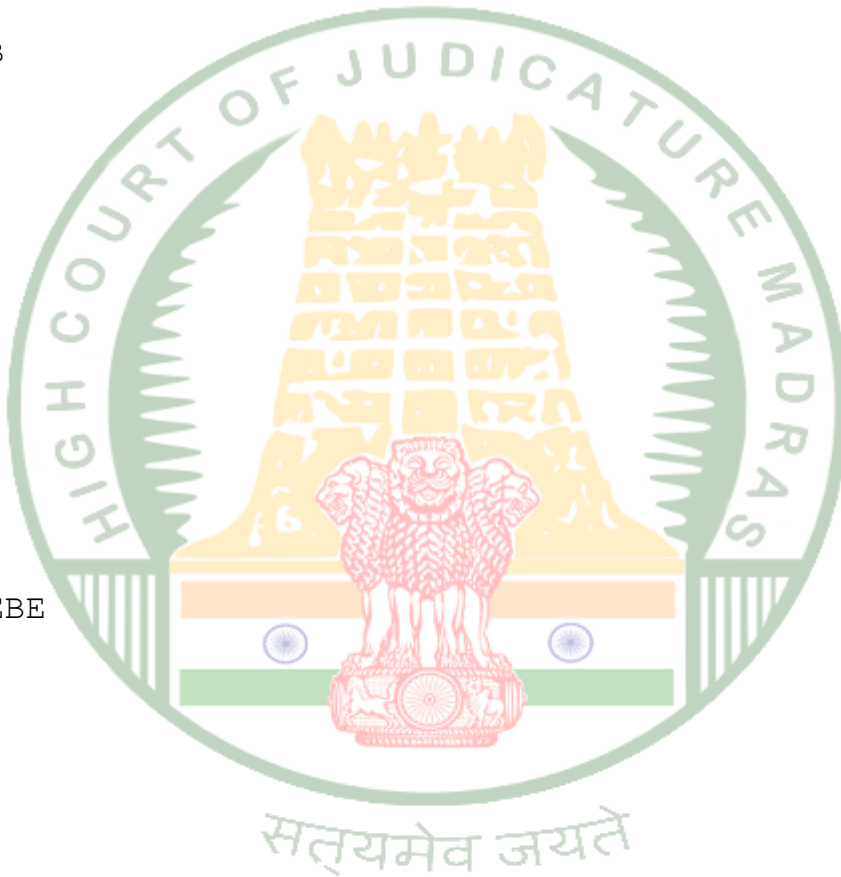
Monday, the Eleventh day of December Two Thousand Seventeen

PRESENT

The Hon`ble Mr.Justice T.S.SIVAGNANAM
and
The Hon`ble Mr.Justice P.VELMURUGAN

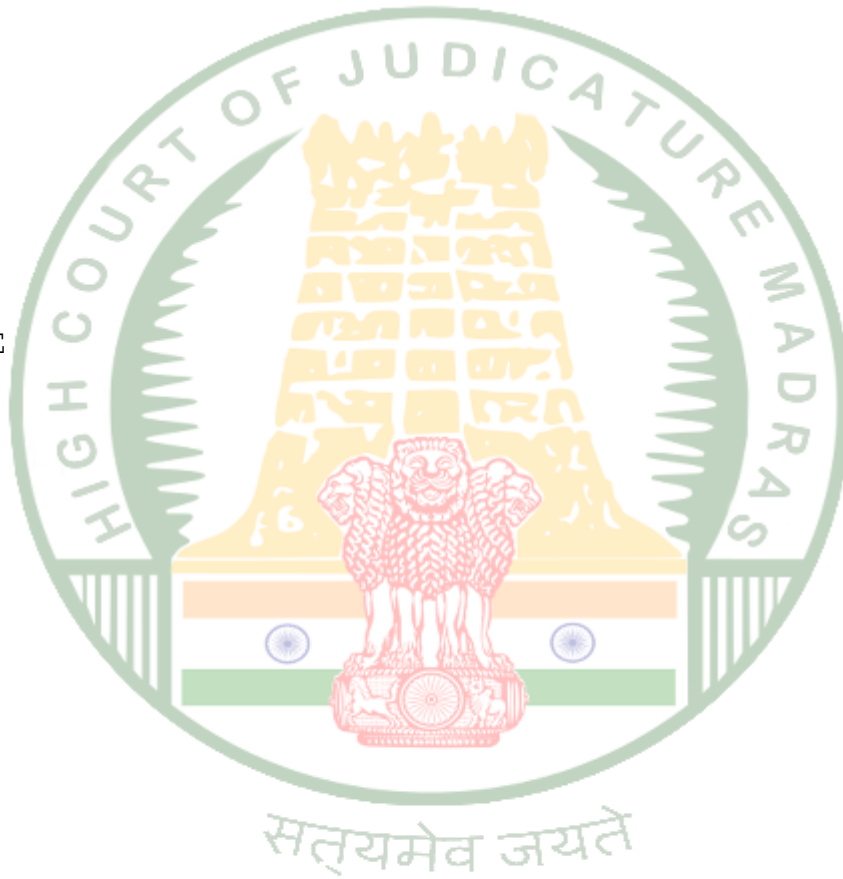
WP(MD) No.8122 of 2017

- 1 JULIA JACOB
- 2 EUNICE
- 3 ESTHER
- 4 BEULA
- 5 ZIPPORAH
- 6 SUSANNA
- 7 REBECCA
- 8 SARA
- 9 TABEA
- 10 HENA
- 11 MICHELLE
- 12 DEBORATH
- 13 RUTH
- 14 ANGEL
- 15 DAMARIS
- 16 GLORY PHOEBE
- 17 TRYPHOSA
- 18 RAHEL
- 19 NAGOMI
- 20 PRISCILLA
- 21 ELIZABETH
- 22 LEYAL
- 23 HELENA
- 24 VICTORIA
- 25 JOY
- 26 MARYANN
- 27 MAGDALENA
- 28 MIZPA JACOB
- 29 GNANAOLI
- 30 DOROTHY
- 31 VERONICA
- 32 FLORANCE
- 33 FRANCIS
- 34 GLADYS
- 35 EVELYN
- 36 THERESA
- 37 BERENIKA
- 38 OLIVIA
- 39 JOANA



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40 CHRISTINA
 41 GRACE G
 42 DAVANIA
 43 SYLVIE
 44 NICOLA
 45 JOSEPHINE
 46 CORINNA
 47 PAMILA
 48 VIRGINIA
 49 RAFFAELA
 50 SHARON
 51 LOURA
 52 CATHERINE
 53 VIVIAN
 54 LINDA
 55 JANETT
 56 MERCY
 57 CAROLYN
 58 PHYLLIS
 59 DOMINIQUE
 60 JASMINE
 61 JACQUELINE
 62 ANNICA G,
 63 CLARIE
 64 PAULINE
 65 ALISON
 66 HARRIET
 67 SALOME
 68 TAMARA
 69 CELINE
 70 BERYL
 71 ALICE
 72 SHEEBA
 73 QUELUA
 74 CHRYSTAL
 75 ULRICA
 76 MELISSA
 77 SAMANTHA
 78 MERIAH
 79 KIMBERLY
 80 FIONA
 81 ASHLEY
 82 LYNN
 83 ESTELLE
 84 CHIARA
 85 LARISSA
 86 LOREEN



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... PETITIONERS

Vs

1 THE DIRECTOR OF SOCIAL WELFARE,
<http://www.judis.nic.in>
 DEPARTMENT OF SOCIAL WELFARE,
 CHEPAUK, CHENNAI.

2 THE DISTRICT COLLECTOR,
COLLECTORATE OFFICE,
TRICHY DISTRICT.

3 THE DISTRICT SOCIAL WELFARE OFFICER,
COLLECTORATE BUILDING,
TRICHY.

4 THE CHILD WELFARE COMMITTEE
REP. BY ITS CHAIRMAN,
HAVING OFFICE AT
OBSERVATION HOME AT BABU ROAD (EAST BOULEVAR ROAD),
TRICHY.

5 THE SUPERINTENDENT OF POLICE,
TRICHY DISTRICT, TRICHY.

(*)

6. THE DIRECTOR,
CENTRAL BUREAU OF INVESTIGATION (CBI),
ANTI HUMAN TRAFFICKING UNIT,
PLOT NO.5-B, 6th FLOOR,
CGO COMPLEX, LODHI ROAD,
NEW DELHI- 110 003.

... RESPONDENTS

**R6 IS SUO MOTU IMPEADED VIDE COURT ORDER
DATED 11.12.2017 IN WP (MD) No. 8122/2017**

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to issue a writ of Mandamus directing the respondents herein to set the petitioners herein free forthwith from the control and custody of the respondents herein at Mose Ministries Home, Trichy and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of this case and thus render justice.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr. ISAAC MOHANLAL, Senior Counsel for M/S.M.SIDDHARTHAN, Advocate for the petitioners and of Mr.V.MURUGANANTHAM, Additional Government Pleader on behalf of the Respondents the court made the following order:-

RESERVED ON	29.06.2017
PRONOUNCED ON	11.12.2017

(Order of this Court was made by **P.VELMURUGAN, J.**)

Heard Mr. Isaac Mohanlal, learned Senior Counsel appearing for the petitioners and Mr.V.Muruganantham, Additional Government Pleader appearing for the respondents.

2. The petitioners have filed the writ petition praying for issuance of a Writ of Mandamus, directing the respondents to set the petitioners herein free forthwith from the control and custody of the respondents herein at Mose Ministries Home, Trichy.

3. The main contention of the writ petitioners are that due to the rampant practice of female infanticide that was prevalent in the vicinity in 1980s and 1990s. The Government of Tamil Nadu introduced infant cradle system to save and protect the lives of innocent babies. Non Government Organisations too were then encouraged to take care of these destitute and helpless children abandoned by their own biological parents. The Founder of Mose Ministries, Pastor Gideon Jacob along with his family had taken care of us, rescuing from imminent death and abandonment by providing shelter, food, clothing, medical care, education and professional training for future lives.

4. The legal issue is that Mose Ministries had not been registered under the Juveniles Justice Act. The petitioners are inmates of Mose Ministries home at Trichy under the administration of Pastor Giden Jacob and the application for registration of the Home was pending since 2011. On 03.09.2015, District Social Welfare Officer passed an order, as against the said order, the Mose Ministries home filed WP.No.(MD).No.16273 of 2015 and status quo was ordered by this Court. Subsequently, a public interest litigation in WP.(MD).No.20895 of 2015 was filed by one Change India Movement. Both the writ petitions were taken up together by the Division Bench and passed an interim order, based on the interim order home was placed under the custody of the District Social Welfare Department, Trichy with the District Collector being the Chairman of the Committee. The Division Bench also passed the final order on 13.11.2016 stating that the inmates have the freedom to decide their future.

5. As per the order of the Division Bench, the administration of the home was handed over to the committee constituted by the Court. Pastor Gideon Jacob paid money periodically to the committee so that the home could run smoothly and all basic needs of the petitioners could be met without any delay or hindrance. The petitioner's case is that though, a sum of Rs.28lakhs was given in the name of the District Collector, Trichy within a period of one year, the basic needs like food and medical treatment were not met as it was in earlier days. It is alleged that the petitioners are under the clutches of the Committee, with 'wardens' and 'police women' dictating scolding and threatening them inside the home. The petitioners wish to bring the present depressing situation of their home and the reluctant approach of the authorities who are administering the home at present. The authorities are exercising excessive restrictions inside the campus to the maximum at present. They are forcibly detaining the inmates inside the campus without allowing to move freely by locking the doors of the home. The petitioners states that they had been brought up within the premises

of Mose Ministries as one single family, now the petitioners are under the custody of the District Social Welfare Department and once again the petitioners are labelled as 'orphans' and 'destitute'. The District Welfare Department had collected all the Original Documents viz., adhar cards, passports, certificates etc under their custody, the lives of the petitioners are in terrible manner and would jeopardize the future of the inmates. Hence, the petitioners pray to set them free forthwith from the control and custody of the respondents.

6. The learned Additional Government Pleader appearing for the respondents would submit that pursuant to the order passed by the Division Bench of this Court dated 30.11.2016 in WP.(MD).Nos.20895 and 16273 of 2015, the District Collector, Tiruchirapalli formed the committee and the first meeting of the committee was held on 30.03.2017, the Additional Government Pleader has also produced the copy of the minutes of the meeting before this Court. The Additional Government Pleader also filed a typed set of papers containing the expenditure details and the infrastructure arrangements made by District Social Welfare Officer, Trichy. The District Social Welfare Officer in her letter stated that due to lack of locker facilities in the home, the certificates of the inmates are kept under their custody of the District Social Welfare Officer. Further, the statement given by the inmates before the District legal services authority is not known and if any specific direction is given by the Court, the certificates and other documents will be returned back to the inmates. Pending registration, the home cannot be permitted to run further. The Division Bench also directed the CBI to conduct investigation and to file a detailed enquiry report within a period of nine months, till date the CBI has not filed any report before the Registry as to whether investigation has been completed and final report/charge sheet filed before concerned Magistrate Court.

7. At this juncture, it is relevant to reproduce the order of the Division Bench made in the earlier writ petitions in WP.(MD). Nos.20895 and 16273 of 2015 and the observation made by the Division Bench are as follows :-

"32. From the facts narrated herein above and from various interim orders passed by this Court on several occasions, as enumerated herein above, as of now, there is no controversy over the fact that as on the date when the first interim order was passed by this Court, in W.P. (MD)No.20895 of 2015, there were 89 inmates in Mose Ministries Children's Home at Trichy. Out of these 89 children, already 82 have completed 18 years of age. Thus, they are no more children in need of care in terms of the provisions of the Juvenile Justice (Care and Protection of Children) Act of 2015. They have got freedom to decide about their future. In order to ascertain the views of these children, who are now kept

in the said Home, which is controlled and managed by the Governmental authorities, we directed the Presiding Judge of the Children's Home at Trichy, to record the statements of these girls. She has recorded the statements of these girls and she has produced the same before this Court.

33. A perusal of the report would go to show that many of them have even crossed 20 years and one girl, by name Eunice is aged 27 years and 9 months. All of them have been almost educated and they have passed 12th standard successfully. Many of them know English, Hindi and Typewriting. In the statement made to the District Judge, they have stated that they are willing to continue to be under the care and custody in the Mose Ministries Children's Home. Regarding the wishes of these girls, we cannot express any view, because, being majors, they have got freedom to decide about their future. But, as per the interim order passed by this Court, they are now confined in the very same Home. This, in our considered view, is not only illegal, but against the rights of these girls to enjoy freedom. When we expressed this, the learned Senior Counsel appearing for the petitioner in W.P.(MD) No.16273 of 2015 and the learned Special Government Pleader, on instructions, submitted that the wishes of these inmates (girls) could be ascertained and they would be allowed to decide about their future according to their own wishes without any intervention whatsoever from any quarters. The said statement is recorded. At this juncture, we need to look into Sub-Section (4) of Section 39 and Section 46 of the Act (2015) which reads as follows:

"39(4). The children in need of care and protection who are leaving institutional care or children in conflict with law leaving special homes or place of safety on attaining eighteen years of age, may be provided financial support as specified in section 46, to help them to reintegrate into the mainstream of the society."

46. After care of children leaving child care institution.- Any child leaving a child care institution 40 on completion of eighteen years of age may be provided with financial support in order to facilitate child's reintegration into the mainstream of the society in the manner as may be prescribed."

34. In view of these provisions, we direct that the wishes of these (inmates) girls who have completed 18

years of age shall be ascertained by the Director of Social Welfare Department, and if they want to leave the Home, the Government shall provide financial support, as stated in Section 46 of the Act and allow them to choose their abode according to their choice. If any such girl who has completed 18 years of age wishes to continue to have the protection, she may be kept in any Home for destitute run by the Government or any other recognized Home.

35. So far as the seven children are concerned, who have not completed 18 years of age, of course, they need care and protection, as provided under the Juvenile Justice (Care and Protection of Children) Act of 2015. At the same time, we cannot allow these children to be kept in Mose Ministries Children's Home, because, it has not been registered as provided under Section 41 of the Act, 2015. They need to be kept in a registered Home, either run by the Government or by any other organization.

36. The learned Senior Counsel Mr. Isaac Mohanlal submitted that considering the fact that these children are studying in St. Joseph High Schools, they may be allowed to be in any recognized Home or registered Home near the said School, so that, they may not experience any inconvenience to go to the School. During the course of hearing, we were informed that there is one recognized children home, by name Nagammai Children's Home (Nagammai Kulanthaigal Illam) run by Thanthai Periyar Maniyammai Trust) at K.K.Nagar, Trichirappalli. The officials and the learned Special Government Pleader have got no objection for keeping all these seven children in the said Home. Therefore, we have no hesitation to issue a direction to the respondents to keep these seven children, namely Estelle, Fabienne, Chiara, Larissa, Loreen, Amelie and Navina, in Nagammai Children's Home at K.K.Nagar, Trichirappalli.

37. It is submitted by the learned Senior Counsel Mr. Isaac Mohanlal that the application made by the petitioner seeking registration of the Home as a Children's Home has been pending with the State Government from the year 2010 onwards. But the learned Special Government Pleader submitted that the District Social Welfare Officer had not recommended for the registration of the said Home, as the Home does not satisfy the legal requirements. But the fact remains that no order of rejection of the application made by the petitioner was made. The learned Senior Counsel Mr. Isaac Mohanlal would submit that if the defects noticed by the Director of Social Defence are intimated to the petitioner, he is prepared to rectify the same and

thereafter, his application could be considered by the Director of Social Defence, who is the competent authority, as of now, to grant registration.

38. The Director of Social Defence, who was present in Court, submitted that if all the formalities are complied with by the petitioner in W.P.(MD)No.16273 of 2015, his application could be disposed of by the Director, within a period of four weeks. The said statement is also recorded.

39. In view of the same, we are inclined to issue a direction to the petitioner in W.P.(MD)No.16273 of 2015-Mose Ministries, to submit all the required details and documents to the Director of Social Defence, within a period of four weeks from the date of receipt of a copy of this order. The Director of Social Defence shall inform the petitioner as to what are all the defects noticed and what are all the other documents required for being considered for grant of registration. After the above requirements are satisfied, the Director of Social Defence shall pass orders on the application of the petitioner, strictly in accordance with law, within four weeks thereafter.

40. It is also reported that in pursuance of the interim order passed by this Court, though the administration of the Home has been all along done by the officials of the Social Welfare Department, the petitioner, viz., Mose Ministries has paid so far Rs.28 Lakhs for running the Home by the Government. The same is recorded.

41. Now, turning to the investigation by the CBI, the Deputy Superintendent of Police has instructed Mr.S.Jeya Kumar, learned Special Public Prosecutor for CBI that the investigation is in progress. The details of the investigation, however, could not be disclosed. Mr.G.Kalaimani, Additional Superintendent of Police/CBI/Special Crime Branch, who made appearance before this Court, submits that he has been doing the investigation in the right direction by collecting materials and shortly, he would complete the investigation and file an appropriate police report, either positive or negative before the concerned jurisdictional Court.

42. But the learned Senior Counsel Mr.Isaac Mohanlal submitted that a time frame may be fixed for the CBI to complete the investigation. Though we are of the view that this Court cannot fix a time frame, so as to force the CBI to complete the investigation, the CBI should

also be fair to expedite the investigation and to finalize a police report, because fair investigation includes speedy investigation as well, which by itself is a fundamental right guaranteed under Article 21 of the Constitution of India. Therefore, though we are not inclined to fix any time limit for the CBI to complete the investigation, we direct the CBI to expedite the investigation and preferably, file a final report within nine months. Since, as per the provisions of the Juvenile Justice (Care and Protection of Children) Act of 2015 as well as under the provisions of Protection of Children from Sexual Offences Act, 2012, the investigation is to be done by a woman officer, the Director of CBI shall forthwith transfer the investigation to an Officer not 42 below the rank of Deputy Superintendent of Police, who shall be a woman officer. The present Investigating Officer shall hand over the case diary to the woman officer to whom investigation is transferred and the said officer shall expedite the investigation and file a final report to the jurisdictional Court."

8. Already, the Division Bench of this Court had given a specific direction to CBI to conduct investigation and to submit a final report preferably within a period of nine months and transfer the investigation to a woman officer not below the rank of Deputy Superintendent and directed to file a report before the Jurisdictional Court, so far no final report/charge sheet has been filed by the CBI before the Jurisdictional Court or compliance report before the Registry. The Division Bench has also made a specific observation as follows :-

"Regarding the wishes of these girls, we cannot express any view, because being majors, they have got freedom to decide about their future. But, as per the interim order passed by this Court, they are now confined in the very same Home. This, in our considered view, is not only illegal, but against the rights of these girls to enjoy freedom."

9. The Division Bench has also extracted sub section (4) of Section 39 and Section 46 of the Act (2015) the same is reproduced hereunder :-

"39(4). The children in need of care and protection who are leaving institutional care or children in conflict with law leaving special homes or place of safety on attaining eighteen years of age, may be provided financial support as specified in section 46, to help them to reintegrate into the mainstream of the society."

"46. After care of children leaving child care institution.- Any child leaving a child care institution on completion of eighteen years of age may be provided with financial support in order to facilitate child's reintegration into the mainstream of the society in the manner as may be prescribed."

10. Challenging the order of the Division Bench, the Change India approached the Hon'ble Supreme Court by way of SLP.(crl.). No.6868 of 2017, upon hearing the learned counsel for the petitioner, the Hon'ble Supreme Court of India dismissed the special leave petition, and observed no ground for interference is made out in exercise of jurisdiction under Article 136 of the Constitution.

11. Now, the matter is pending before the CBI for investigation, the fact remains that till date final report has not been filed by the CBI. Till date the CBI has not filed any final report/charge sheet either before the Jurisdictional Court or compliance report before this Court. We reasonably apprehend that all the petitioners are in active contact with the agencies of Mose Ministries, they appear to be acting on the dictates of others, presumably under pressure. The petitioners from a tender age have been brought up in the home, in a secluded atmosphere and they have not been exposed to the outer World or the stark realities of life. They are unprepared to face the World and it may be easy to state that all petitioners have attained majority and should be set free, but we are concerned about their safety and security and firmly believe they need to be properly prepared to face the World and the day to day challenges.

12. At this juncture, we cannot express anything regarding the contacts and communications between the petitioners herein and the Mose Ministries, only after filing of the final report/charge sheet by the CBI, a clear picture would emerge. Since CBI has not been impleaded as party in this writ petition, we are not in a position to get any details from the CBI, hence, it is necessary to implead the 7th respondent in WP.(MD)No.20895 of 2015/CBI as 6th respondent in this writ petition. The petitioners have attained majority and filed this writ petition to set them free. Though, the petitioners have attained majority, it remains to be seen as to whether they are capable of leading their life outside the home and the same have to be tested only after giving proper counsellings. Even before expiry of the time limits fixed by the Division Bench to the CBI for filing final report before the Jurisdictional Court, the petitioners have approached this Court with this writ petition.

13. Based on the directions issued by this Court on 28.04.2017, on 07.10.2017, the Secretary Legal Services Authority, Tiruchirapalli in the presence of District Social Welfare Officer, Tiruchirapalli recorded the statement from the inmates who are more than 18 years and submitted the report before this Court on 12.06.2017, this Court has also perused the report submitted in the

sealed cover, pending investigation we do not want to express anything in this regard.

14. We therefore deem it appropriate that CBI should be impleaded as a party to this writ petition. Till completing the investigation and filing of final report/charge sheet, it is not appropriate to take final decision in this writ petition. We can consider the request made by the petitioners in the writ petition on merits only after filing of the final report/charge sheet by the CBI. Therefore, we suo-moto implead The Director, Central Bureau of Investigation (CBI), Anti Human Trafficking Unit, Plot No.5-B, 6th Floor, CGO Complex, Lodhi Road, New Delhi - 110003 as 6th respondent in this writ petition. Registry is directed to carryout necessary amendment in the cause title and communicate the copy of this order to the newly impleaded 6th respondent/CBI. However, in view of the above observation and in the interest of the petitioners and considering their age and state of affairs, we direct the respondents as follows :-

1. The respondents are directed to shift the petitioners safely with adequate protection from the Mose Ministries to some other Home recognised by the Government or suitable place which has adequate infrastructure / facilities and give periodical counselling for one month to the petitioners with the assistance of competent persons/counsellors/experts. Further, explain their rights and liberty, entitled to them under Section 47 of the Juvenile Justice Act.
2. After completion of one month period and after giving appropriate counselling, the District Social Welfare Officer is directed to record individual statement from the petitioners and to file an interim report.
3. The respondents should ensure proper safety, food, accommodation and other facilities are adequately provided to the petitioners during the said period.
4. During the said period, the 5th respondent should give adequate police protection to the Home in which the petitioners are shifted temporarily.
5. Further no male officers/staff should enter into the premises in which the petitioners are temporarily kept.
6. If any deviation is found, the same will be viewed seriously and the officers concerned will be dealt with in accordance with law.

7. The CBI/6th respondent is also directed to file a final report as expeditiously as possible.

8. Registry is directed to list the matter after filing an interim report by the respondents, on 05.02.2018.

sd/-
11/12/2017

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE DIRECTOR OF SOCIAL WELFARE,
DEPARTMENT OF SOCIAL WELFARE,
CHEPAUK, CHENNAI.
- 2 THE DISTRICT COLLECTOR,
COLLECTORATE OFFICE,
TRICHY DISTRICT.
- 3 THE DISTRICT SOCIAL WELFARE OFFICER,
COLLECTORATE BUILDING,
TRICHY.
- 4 THE CHAIRMAN,
THE CHILD WELFARE COMMITTEE
HAVING OFFICE AT
OBSERVATION HOME AT BABU ROAD (EAST BOULEVAR ROAD),
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- 5 THE SUPERINTENDENT OF POLICE,
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- 6 THE DIRECTOR,
CENTRAL BUREAU OF INVESTIGATION (CBI),
ANTI HUMAN TRAFFICKING UNIT,
PLOT NO.5-B, 6th FLOOR,
CGO COMPLEX, LODHI ROAD,
NEW DELHI- 110 003.

ORDER
IN
WP(MD) No.8122 of 2017
Date :11/12/2017

MS/CM-VR/SAR.2/12.12.2017/12P.7C