

Judgment reserved on: May 05, 2009
Judgment delivered on: May 19, 2009

% Munira Siddiqi & Anr.
(Through her next friend and
Grandmother,
Rashida Siddiqi) & Anr. ... Petitioners
Through: Mr. Y.P. Narula Senior Advocate
with Mr. Aniruddha Choudhary,
Advocate for the Petitioner.

Mustafa Aleem Siddiqi
& Ors. ... Respondents
Through: Mr. Aman Lekhi, Senior Advocate
with Mr. H.A. Khan, Mr. J.S. Rai,
Mr. Rakesh Kumar, Mr. Rohit
Nagpal and Mr. Vaibhav Vats,
Advocate for Respondent.

HON'BLE MR. JUSTICE SUNIL GAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

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1. The order under challenge in this revision petition is of 30th September, 2006 of the Child Welfare Committee, constituted by the State Government to provide care and protection to the children, who are in need of it. The jurisdiction to do so is vested in this committee by Chapter

III of 'The Juvenile Justice (Care & Protection of Children) Act, 2000'.

2. Impugned order of 30th September, 2006 of the Child Welfare Committee is an interim order, which permits the Petitioner, who is grandmother of the child – Munira, to retain her custody over the child, till 6th October, 2006 and the Petitioner vide impugned order was directed to produce the aforesaid child before the Child Welfare Committee on 7th October, 2006. The Respondents herein, i.e., parents of the child, were also directed to be present before the Committee. The Committee had also issued direction to the Counselor, to visit the Petitioner, as well as to Respondents during this period and the Respondents were allowed to be their daughter, i.e., the child herein on 3rd and 5th October, between 8 p.m. and 9 p.m., but that too, in the presence of the counselor.

3. During the pendency of this petition, vide order of 6th November, 2006 of this Court, the child, i.e., Petitioner No.1 was permitted to travel to USA with her paternal Aunt-Mrs. Nemat King for the purpose of continuing her studies in seventh grade, but a direction was issued to the Petitioners to be present before this Court on 19th February, 2007. It is evident from the order of 19th February, 2007 of this Court that the paternal Aunt of

Petitioner-Child had assured this court that the Petitioner-child would be brought India in June, 2007 and accordingly, this matter was to be heard on 21st July, 2007 but on the adjourned date, this matter was not taken up, as further adjournment was sought and thereafter, this court was informed that the Petitioner-child would be coming to India in the winter break. Before this Court, vide order of 19th December, 2007, it was agreed upon by the parties that the Petitioner No.1-child would henceforth visit India twice in a year and the expenses for visit of the petitioner-child to India would be equally borne by paternal Aunt-Mrs. Nemat King of Petitioner-child and Respondent- father of the Petitioner-child. It is a matter of record that after December, 2007, the Petitioner-child, till date, has not visited India because this matter was adjourned from time to time for a negotiated settlement and despite efforts made for an amicable settlement by the Continuous Lok Adalat, nothing worthwhile has emerged.

4. Both the sides have been heard in this petition and the record has been perused.

5. At the outset, learned senior counsel for the Petitioner states that this court is a 'super parent' of the Petitioner-child and it is in the welfare of the Petitioner-

child that she remains with her grandmother or her paternal Aunt-Mrs. Nemat King, as she is pursuing her studies in USA and is happily living with her paternal aunt-Mrs. Nemat King – Respondents No. 3.

6. The case projected by the Petitioners is that the Petitioner-child was ill treated by Respondents No. 1 and 2, i.e., her natural parents and she had left the house of her parents on that account and now the Petitioner-child has reached age of discretion, as she would be sixteen years old in October, 2009. It has been pointed out that Petitioner-Munira is not an abandoned child and therefore, the fetters cannot be put upon her and her guardian, i.e., paternal grandmother and aunt, of Petitioner-child to produce petitioner-child before the Committee from time to time.

7. Learned senior counsel for the Petitioner points out that child friendly procedures are to be adopted by the Child Welfare Committee and the impugned order is in utter violation of clause 22 of the National Charter for Children, as it does not ensure care and protection of the Petitioner-child as per her wishes. It is pointed out that the interim order of 6th November, 2006, in these proceedings, had been passed by this Court, with the consent of the parties and therefore, the same is binding and now it

cannot be said that the impugned order is appealable and not revisable. In the last, it has been urged on behalf of the Petitioners that since the Petitioner-child does not want to live with her natural parents, she cannot be forced to do so and the Petitioner-child should be allowed to continue to live with her paternal aunt in USA for completing her studies and proper care of the Petitioner-child is being taken by her paternal aunt and therefore, the impugned order and the proceedings initiated by the Child Welfare Committee needs to be put to an end.

8. Apart from raising a preliminary objection, regarding this revision being not maintainable and the impugned order being appealable, learned senior counsel for Respondents contends that the Petitioner-Munira is not a child '*in the need of care and protection*' within the meaning of section 2(d) of 'The Juvenile Justice (Care & Protection of Children) Act, 2000'. It has been contended on behalf of the Respondents that the aforesaid act would apply only when the parent or guardian are 'unfit or incapacitated' to exercise control over the child and it is not so in the present case as the Respondents being natural parents are very much capable of taking care of their daughter Munira. It has been pointed out that the counselor attached to Child Welfare Committee has

specifically stated in the order impugned that the Petitioner-child should not be allowed to go to USA. It has been also pointed out that the ***final authority under this Act is the Child Welfare Committee, who has exclusive jurisdiction over this matter and it cannot be divested on its authority.*** In the last, it has been submitted that the Child Welfare Committee while passing the impugned order has not exceeded its jurisdiction and there is no illegality in the impugned order and in view of the dictum of the Apex Court in its decision **(2008) 13 SCC 133**, the remedy of appeal cannot be by-passed and therefore, this petition deserves dismissal. Nothing else has been urged by either side.

9. Before provisions of 'The Juvenile Justice (Care & Protection of Children) Act, 2000' can be invoked in this case, it is required to be seen whether the petitioner-Munira would be a child within the definition of 'child' under the aforesaid Act. Sub-Section (d) of Section 2 of the aforesaid Act defines a child who is in the need of care and protection and the relevant Clause of this provision is (IV), which is as under:-

"who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child"

10. Whether such a parent or guardian is unfit to exercise control over the child is an issue which would be subject matter of the Inquiry as provided for under Section 33 of this Act and the said Inquiry has to be conducted by the Child Welfare Committee constituted by the State Government Under Section 29 of this Act. The powers of this Committee, have been spelt out in Section 31 of the aforesaid Act.

11. The question whether the petitioner- child has been ill treated by her natural parents, i.e. respondent Nos. 1 & 2, can be answered in the Inquiry proceedings which are required to be conducted by the Child Welfare Committee. Simply because the Child Welfare Committee has asked the grandmother or the Aunt of petitioner-child to appear before it or to produce the petitioner- child, it would not mean that unnecessary fetters are being put upon the petitioners. For determining as to what is in the best interest of the petitioner-child, the wishes of the child are to be certainly kept in mind and a Counselor has been told by the Child Welfare Committee to interact with the grandmother of the child as well as with the natural parents of this girl child. There is a report of the Counselor who had advised the Child Welfare Committee to allow the petitioner- child to temporarily remain with her

grandmother, but it was with a condition that the petitioner-child should study in Delhi and should not go to USA.

12. Normally courts do not impose their views upon the parties in the matters like the present one. The Child Welfare Committee is a body which has been duly constituted by the State government for this purpose. However, purely as an interim measure, petitioner child was allowed to go to USA to enable her to complete her studies for seventh Grade. The said purpose has been achieved.

13. On the jurisdictional aspect, not much is required to be said as there is an interim consent order of 19th December, 2007, vide which the parties had agreed that the petitioner- child would be brought to India twice in an year and the expenses were to be equally borne by both the sides. Unfortunately, the aforesaid interim order has not been complied with. However, there is no necessity of going into the aspect as to who is the defaulter because this petition is being finally decided.

14. Vide order of 6th November, 2006, Mrs. Nemat King, Aunt of the petitioner-child was impleaded as respondent No.3 in this petition and by this order, it was made clear

that by virtue of the permission granted to the petitioner-child to stay abroad with respondent No.3, the custody of the child is not being transferred to her Aunt. An unconditional undertaking was also given by respondent no. 3 to bring back the petitioner-child to India in February, 2007 and respondent No.3 had also given an assurance that she would bring about a situation whereby the petitioner-child develops affinity towards her natural parents. No such efforts have been made.

15. In the peculiar facts and circumstances of this case, a direction is issued to Ms. Nemat King, respondent No.3, i.e. Aunt of the petitioner-child to bring back from USA, the petitioner child i.e Munira Siddiqui (who will be completing sixteen years of age in September, 2009) and to produce her before the Child Welfare Committee on 7th July, 2009 at 11AM. Aforesaid order is being passed because I do not find any illegality or infirmity in the impugned order.

16. In case the petitioner- child does not appear before the Child Welfare Committee on 7th July, 2009, the Child Welfare Committee would ensure the personal appearance of the petitioner- child through the State government and the expenses for bringing back the petitioner- child from USA be recovered from her Aunt- Ms. Nemat King i.e.

respondent No.3 or eventually from the petitioner-Rashida.

17. Upon appearance of the petitioner- child before the Child Welfare Committee, the inquiry as envisaged under Section 33 of the aforesaid Act, be completed preferably within a period of three months and the restoration be done in terms of Section 39 of this Act.

18. The records of the Child Welfare Committee be returned back forthwith along with copy of this order for compliance. Parties are directed to appear before the Child Welfare Committee on 7th July, 2009.

19. Before parting with this order, it is required to be clarified that irrespective of the outcome of the present proceedings conducted by the Child Welfare Committee, parties would be well within their rights to seek the legal custody of the petitioner-child by moving the competent court under the Guardians and Wards Act, 1890.

20. With aforesaid directions, this petition stands disposed of.

Sunil Gaur, J.

May 19, 2009
pkb/rs