

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

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Date of Decision: 23.10.2013

+ W.P.(C) 5598/2012

ANURADHA VASHISHT & ANR

..... Petitioner

Through: Mr D.K. Rustogi and Mr B.S.
Bagga, Advs.

Versus

GOVT. OF NCT OF DELHI AND ORS

..... Respondent

Through: Ms Zubeda Begum, Standing
Counsel for GNCTD

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

The petitioners before this Court were appointed as members of the Child Welfare Committee and joined the aforesaid position on 16.05.2011. Vide show-cause notice dated 18.11.2011, the Department of Women and Child Welfare, referring to the Regulation of Rule 24(6) of Delhi Juvenile Justice (Care & Protection of Children) Rule, 2009, requiring every member of the Committee to attend minimum of six

hours per sitting during the official working hours, read with Rule 24(7) of Delhi Juvenile Justice (Care & Protection of Children) Amendment Rules, 2010, whereby the Members of the Child Welfare Committee are allowed half day sitting, i.e. minimum three hours on any working day occasionally with the permission of the Chairperson, informed the petitioners that as per the information provided to the Department by the Chairman of the said Committee, they were not complying with the requirement of the Rules and sought their explanation for the shortfall in attending the meeting of the Child Welfare Committee

2. The petitioners responded to the aforesaid show-cause notice. In their reply, the petitioners, inter alia, stated as under:-

“...I have continuously been performing my duties with due diligence, meticulousness, attentiveness, assiduousness and conscientiousness. I have always been attending my duties regularly and that can be proved even from the files and cases which have been dealt with by me every day. Therefore, by no stretch of imagination it can be sold that I have not been complying with the provisions as stipulated Under Rule 24(6) and (7) of Delhi Juvenile Justice (Care & Protection of Children) Rule, 2009. It will be pertinent to point out here that since the very inception of my duties, whenever I have taken any half day/ leave I used to inform the Hon’ble Chairperson a day before and what to say of six hours working, I have performed even beyond the said period.

...It will not be out of place to mention here that Hon'ble Chairperson was in that habit of manipulating and interpolating the attendance register and on some occasions, even while I used to be present, Hon'ble Chairperson used to mark X in the attendance register and when I used to put my attendance, she again used to mark X in the attendance register. I then started mentioning date and time in the files/ cases, after dealing with the same, since 31.10.2011, and the said fact is very much evident from the cases/ files, which have been dealt with by me.

.....The ill-will of Hon'ble Chairperson is evident from the very fact that my sitting allowance was not signed by her for the month of September, 2011, till 10.10.2011 and consequently, Dr. Arti Mehta who was the officiating Chairperson on 30.9.2011, then in that capacity she sent the same on 10.10.2011 to DDO office Alipur Home. Hon'ble Chairperson did not get our signatures on the sitting allowance for the month of October, 2011 and she sent the same without my knowledge and signatures to DDO office Alipur Home, on 1.11.2011 and the sitting allowance has not been received by me as yet, for the month of September and October, 2011. These are only few instances of the behavior of Hon'ble Chairperson, who has made against me the false complaint, which is without any basis and the allegations are without as iota of truth."

3. Vide order dated 23.08.2012, the respondents terminated the appointment of the petitioners as the members of Child Welfare Committee, Sewa Kutir Complex, Kingsway Camp, Delhi with

immediate effect. Being aggrieved from such termination, the petitioners are before this Court, seeking setting aside of the impugned order.

4. Section 29(4) of the Juvenile Justice (Care and Protection of Children) Act, 2000, to the extent it is relevant, reads as under:-

“29. Child Welfare Committee.

(4) The appointment of any member of the Committee may be terminated, after holding inquiry, by the State Government, if –

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(iii) he fails to attend the proceedings of the Committee for consecutive three months without any valid reason or he fails to attend less than three-fourth of the sittings in a year.”

Rule 92(2) of the Juvenile justice (Care and Protection of Children) Rules, 2007 reads as under:-

“92. Functions of the Selection Committee. –

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(2) In the event of any complaint against a member of the Board or Committee, the Selection Committee shall hold necessary inquiry and recommend termination of appointment of such

member to the State Child Protection Unit or State Government, if required.”

It would thus be seen that before terminating the appointment of the petitioners as the members of the Child Welfare Committee, the respondent was required to hold an enquiry in terms of sub-rule (2) of Rule 92 of the Juvenile justice (Care and Protection of Children) Rules, 2007 and such an enquiry was to be conducted by the Selection Committee. The enquiry into the complaints against the petitioners is stated to have been conducted by Mrs Satnam Benerjee, Joint Director, Department of Women and Children Welfare. As noted earlier, the enquiry in terms of the requirement of sub-rule (2) of Rule 92 was to be conducted by the Selection Committee and not by an officer of the Department. The learned standing counsel states that the Selection Committee had delegated the function of holding an enquiry to the Joint Director. However, there is no material on record to show any such delegation. In any case, since the function of holding enquiry has been statutorily assigned to the Selection Committee, it could not have delegated such power to an officer of the Department. The enquiry, therefore, must necessarily have been conducted by the Selection Committee. For this reason alone, the impugned order is liable to be set aside.

5. Even otherwise, I find from a perusal of the aforesaid report that there is no finding recorded by the Joint Director holding thereby that the petitioners had not attended the duty in terms of the requirement of the Rules. The relevant portion of the Enquiry Report reads as under:-

“It was observed that the attendance was not marked by the two members (of CWC) into the attendance register for the period from 8.11.11 onwards by Mrs. Anuradha Vashist and Dr. Arti Mehta, but their reply was that, the attendance register was not made available to them. There can be some logic in the reply as it could not be a matter of coincidence that both the above members absented themselves simultaneously during the same period. However, the explanation of the chairperson was that both the said members stopped marking attendance as a matter of principle copies of attendance register for October – November and December, 2011 are attached.

After having visited the office of CWC Kingsway Camp and on 28.12.2011 personally enquiring into their complaints the undersigned observed that there was a total lack of congeniality among the members and the chairperson and the efforts are made in making such allegations and counter allegations which are difficult to substantiate and there persists an atmosphere of animosity and hatred among each other.

There seemed very little feel of cohesiveness among the complaining member and the chairperson and it could hardly be called a committee supposed to be performing the sensitive

nature of social work, (i.e. for care and protection of children) assigned to the committee.”

6. It would thus be seen that the Inquiry Officer herself found some merit in the plea taken by the petitioners that though they had attended duty, the Attendance Register was not made available to them by the Chairperson and that was the reasons they could not mark their presence. In the absence of a finding that the petitioners had not attended their duty in terms of the requirement of the Rules, the appointment of the petitioners could not have been terminated on the aforesaid ground.

7. A perusal of the Enquiry Report would also show that Inquiry Officer found total lack of congeniality amongst the Members and Chairperson and she also found that there were allegations and counter-allegations which could not be substantiated. Mere lack of congeniality amongst the Members and Chairperson or an atmosphere of animosity and hatred between the Chairperson and the Members, on the other hand, could not have a ground for removing the petitioners from the membership of the Child Welfare Committee in terms of Section 29(4) of Juvenile Justice (Care and Protection of Children) Act, 2007.

8. This is also the grievance of the petitioners that in the enquiry, they were not given any opportunity to place their case before the Inquiry Officer. A perusal of the report would show that the reply furnished by the petitioners was considered by the Inquiry Officer. But, there is no reference to any participation by the petitioners in the enquiry. The learned standing counsel submits that notice of the enquiry was duly sent to the petitioners, but they did not participate in the enquiry. However, there is no material on record, evidencing service of the aforesaid notice on the petitioners. In case, the enquiry was held without serving notice upon the petitioners, that would vitiate the enquiry process since in that event the petitioners had no opportunity to place their case before the Inquiry Officer. Be that as it may, even if I proceed on the assumption that the petitioners, despite opportunity, did not participate in the enquiry proceedings, since the inquiry was not conducted by the Selection Committee and there is no finding of the Inquiry Officer that the petitioners had not attended their office in terms of the requirement of the Rules, the impugned orders cannot be sustained.

For the reasons stated hereinabove, the impugned orders dated 11.11.2011 and 23.08.2012 are hereby set aside. The writ petition stands disposed of. There shall be no order as to costs.

OCTOBER 23, 2013
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V.K. JAIN, J.