

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.1560 OF 2015

Lata Mohanlal Gandhi,
age: 57 years, Occ: Professional,
R/o 30/86, Old Kapad Bazar,
Ahmednagar, Tq. & District
Ahmednagar.

Petitioner

Versus

01 The State of Maharashtra,
through its Principal Secretary,
Women & Child Development
Department, Mantralaya,
Mumbai – 400 032.

02 Deputy Secretary,
Women & Child Development,
3rd Floor, New Administrative
Building, Madam Cama Road,
Hutatma Rajguru Chowk,
Mumbai-32.

03 Commissioner of Women &
Child Development Department,
Maharashtra State, 28,
Rani's Baug, Near Old Circuit
House, Pune-1.

04 Deputy Commissioner of
Child Development,
Maharashtra State, 28,
Rani's Baug, Near Old Circuit
House, Pune-1.

05 District Women & Child
Development Officer,
Sarje Pura, First Floor,
Aarpit House, Ahmednagar,
Tq. & District Ahmednagar.

Respondents

Mr.S.P.Brahme, advocate for the petitioner
Mr.S.G.Karlekar, A.G.P. for Respondents.

**CORAM : R.M.BORDE &
V.K.JADHAV, JJ.**

Reserved on : 30th April, 2015
Pronounced on : 09th June, 2015.

JUDGMENT (Per R.M.Borde, J.):

1 Heard. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2 The petitioner was appointed as Member of the Child Welfare Committee, Ahmednagar, during the period 2008 to 2011. Her tenure was extended up to April 2015. Since performance of the petitioner was found to be satisfactory, she came to be appointed as Chairperson during the next tenure i.e. for the period till April 2016. There were two members of the Committee. One Dr.Rajendra Pawar and another Mr.Preetam Bedarkar came to be appointed as Members of the Committee along with the petitioner.

3 The petitioner contends that she performed her duties honestly and to the best of her ability. She received a communication dated 30.01.2014 issued by Respondent No.5 directing her to remain present for a meeting which was convened on 31.01.2014. It is the contention of the petitioner that she caused appearance before the Assistant Commissioner, Pune on 31.01.2014 and thereupon she learnt that an inquiry has been proposed against her. An application was tendered by the petitioner on the same day requesting to supply copies of the documents mentioned in the communication dated 30.01.2014.

The petitioner contends that in spite of issuing reminders for supply of documents, she was not supplied with copies of complaints and as such was unaware of nature of the allegations levelled against her. It is the contention of the petitioner that she was not informed about dates prescribed by the Inquiry Committee for inquiring into the allegations levelled against her nor she was supplied with the relevant documents demanded by her. The petitioner, as such, contends that the procedure of inquiry adopted is in breach of principles of natural justice.

4 The petitioner also contends that inquiry has not been conducted by the Selection Committee as contemplated by Rule 92 of the Juvenile Justice (Care and Protection of Children) Rules, 2007. The petitioner, thus, contends that since there was no proper inquiry as contemplated under the Rules, the final action taken by the State Government directing termination of her appointment as Chairperson of the Child Welfare Committee, Ahmednagar, by virtue of issuance of communication dated 18.11.2014, is bad in law. The petitioner contends that the action of termination is in breach of provisions of Section 29(4) of the Act and Rule 92 of the Rules of 2007. The petitioner places reliance on the judgment in the matter of **Smt.Renuka Vishnu Ghule Vs. State of Maharashtra**, (Writ Petition No.2400 of 2014, decided on 14th October, 2014), to support her contentions and requests to quash the order of termination issued by the State Government.

5 An affidavit-in-reply has been presented by the District Women and Child Development Officer, Ahmednagar, on behalf of Respondents No.1 to 4. According to the contesting Respondents,

notification issued by the State directing termination of appointment of petitioner as Chairperson of the Child Welfare Committee is in observance of the procedure prescribed under the Act and the Rules. It is the contention of the Respondents that the State of Maharashtra has framed Rules in exercise of powers under Section 68 of the Juvenile Justice (Care and Protection of Children) Act, 2000 and those Rules are published in the Official Gazette on 05.09.2002 and amended Rules have been published on 13.01.2011. It is the contention of the Respondents that in view of Rule 11(4) of the Rules of 2011, the State Advisory Board is invested with the powers to hold inquiry in respect of the cases falling under Section 29(4) of the Act of 2000. It is the contention of the Respondents that the State Advisory Committee has inquired into the matter and concluded that the petitioner is guilty of exercise of powers vested in her and as such, recommended action of termination of the petitioner.

6 It is the contention of the Respondents that there were several complaints received against the petitioner and as such, an inquiry has been initiated and after extending appropriate opportunity of hearing to the petitioner and on reaching the conclusion that the charges levelled against the petitioner have been duly proved during the course of inquiry, the State Government, in exercise of powers under Section 29(4), has directed termination of appointment of the petitioner. It is contended that the Rules framed by the State Government envisages the Advisory Boards with the powers to conduct an inquiry in respect of allegations against the Chairperson of the Committee and tender report to the State Government. The State

Government, on receipt of the report of inquiry, has taken action under Section 29(4) of the Act, which cannot be said to be illegal.

7 It is further pointed out that members of the Committee, who were appointed along with the petitioner, have presented several complaints in respect of functioning of the Committee and the allegations are directed against the petitioner-Chairperson of the Committee. Respondent No.3 also received complaints, apart from members of the Child Welfare Committee, from Shri Vinod Kamble of Bhartiya Janadhikar Sanghatana dated 03.10.2013, Smt.Rubina Sheikh, dated 12.10.2013, Shri Dilip Namdeo Holkar, dated 17.11.2013 and Shri Rajendra Pawar, dated 22.11.2013. The District Women and Child Welfare Officer, Ahmednagar, conducted fact finding inquiry and submitted reports on 04.01.2014 and 05.09.2014 and recommended the higher authorities to terminate appointment of the petitioner as Chairperson of the Child Welfare Committee, Ahmednagar. It was noticed that the petitioner has not followed the provisions of Juvenile Justice Act, 2000 and Rules made thereunder while functioning as Chairperson of the Committee. There were several complaints against the petitioner and some of those allegations were of quite a grave nature. It is, thus, contended that action has been taken by the State Government in adherence to the provisions of the Act and the Rules and as such, petition does not deserve consideration.

8 The Child Welfare Committee is appointed for the District under Section 29 of the Act of 2000. The committee shall consist of a Chairperson and four other members, as the State

Government may think fit to appoint, of whom atleast one shall be a woman and another, an expert on matters concerning children. Section 29(3) provides for the qualifications of the Chairperson and the members and the tenure for which they may be appointed shall be such as may be prescribed. Sub-section (4) of Section 29 provides that the appointment of any member of the Committee may be terminated, after holding inquiry, by the State Government, if -

- (i) he has been found guilty of misuse of power vested under this Act;
- (ii) he has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or he has not been granted full pardon in respect of such offence;
- (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.

9 Section 68 of the Act provides for powers to make Rules. The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act. The proviso to sub-section (1) of Section 68, empowers the Central Government to frame model rules in respect of all or any of the matters with respect to which the State Government may make rules under this Section; and where any such model rules have been framed in respect of any such matter, they shall apply to the State until the rules in respect of that matter are framed by the State Government and while making any such rules, so far as is practicable, they conform to such model rules. The Central Government has framed Rules in 2007. Rule 91 of the Rules

provides for Selection Committee and its composition. Rule 92(2) provides that 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. Rule 96 of the Rules of 2007, framed by the Central Government, provides that until the new rules conforming to these rules are framed by the State Government concerned under Section 68 of the Act, these rules shall *mutatis mutandis* apply in that State. It is, thus, clear that applicability of the Rules of 2007 framed by the Central Government is limited until the State Government concerned frames rules in exercise of powers under Section 68 of the Act.

10 It is not a matter of dispute that the State Government has framed rules, namely Maharashtra Juvenile Justice (Care and Protection of Children) Rules, 2002 and those Rules have been amended in the year 2011. Rules of 2011 framed by the State Government, more particularly Rule 11 provides for Advisory Boards. Sub-rule (5) of Rule 11 provides that the State Advisory Board shall advise the Government on matters relating to the establishment and maintenance of the homes, mobilizing of the resources, provisions of facilities for education, training and rehabilitation of the child in need of care and protection and juvenile in conflict with law and co-ordination among the various officials and non-official agencies concerned. Sub-rule (5) of Rule 11 does not provide for inquiring into the allegations levelled against Chairperson of the Committee and making recommendations to the State Government at the conclusion of

such inquiry. The contention raised by the Respondents that an appropriate inquiry has been conducted in accordance with Rule 11 and report has been tendered to the State Government, recommending termination of appointment of the petitioner, does not appear to be in conformity with Rule 11. Sub-rule (5) of Rule 11 does not authorise the Advisory Board to hold an inquiry against the Chairperson of the Committee and recommend termination of his or her appointment. Section 29(4) of the Act, however, authorises the State Government to terminate appointment of the Member of Committee in the matters covered under clauses (i), (ii) and (iii) of sub-section (4) of Section 29. The power of the State Government to terminate appointment of Member or Chairperson of the Committee cannot be disputed. However, such power must be exercised in adherence to the principles of natural justice.

11 The petitioner has contended that she has not been served with necessary documents and that she has not been heard before directing termination of her appointment and thus principles of natural justice have not been adhered to.

12 In view of the peculiar facts and circumstances of this case, we deem it appropriate to remit the matter back to the State Government to take appropriate decision in accordance with Section 29(3) of the Act. The State Government may cause an appropriate inquiry in the matter and on observance of principles of natural justice, shall take appropriate decision. The order impugned in the petition shall stand quashed and set aside and the matter stands remitted back to the State Government for

reconsideration. The State Government shall take appropriate decision in the matter in adherence to the provisions of the Act of 2000 and Rules framed thereunder, as expeditiously as possible, preferably within three weeks from today.

13 Normally, as a consequence of quashing of the impugned order, this Court would have been directed reinstatement of the petitioner on the post of Chairperson of the Committee. However, looking to the allegations levelled against the petitioner and report of inquiry submitted against the petitioner by the Secretary, Maharashtra State Commission for Protection of Child Rights, we do not deem it appropriate to permit the petitioner to continue to hold the post of Chairperson of the Committee during the continuance of inquiry by the State Government. The copy of the report conducted by the Maharashtra State Commission for Protection of Child Rights in Case No.147/2014 has been brought to our notice by the State Government. Inquiry was conducted in the matter on the complaint sent to the National Commission in respect of sexual extortion of girl inmates residing in the home. The allegations levelled in the complaint are found to have been substantiated during the course of inquiry. It is also noted in the inquiry report that after confirming truthfulness of the allegations in respect of sexual abuse of minor girls, a letter was addressed to the present petitioner – Chairperson of the Child Welfare Committee and other members. However, neither the Child Welfare Committee nor the Commissioner, Women and Child Development Department, has taken any cognizance and appropriate measures to protect the children from victimization. A written reply was received by the Commissioner from the

Chairperson of Child Welfare Committee wherein she has contended that due to non cooperation of the Members, she is unable to take appropriate steps in the matter. It was noticed by the Maharashtra State Commission for Protection of Child Rights, that the contents of the reply of the Chairperson and Members of Child Welfare Committee are only allegations and counter allegations made against each other.

14 Considering the facts and circumstances of the case, the Commissioner deemed it necessary to direct investigation by the investigating agency and the matter has been referred to the Criminal Investigation Department of the State Government. On consideration of the allegations levelled against the Chairperson by the Members of the Committee and certain other complaints, we do not deem it appropriate to direct reinstatement of the petitioner – chairperson during conduct of inquiry. The petitioner is holding a quite responsible post and is expected to perform her functions with all seriousness and is expected to be sensitive since her functions relate to protection and care of minor children. It does *prima facie* appear that the petitioner has turned her blind eye to the allegations in respect of sexual harassment of the girl inmates in children home situate within her jurisdiction. In view of the allegations levelled against the petitioner, we direct that until completion of the inquiry and subject to the result thereof, the petitioner shall not be reinstated as Chairperson of the Child Welfare Committee, Ahmednagar.

15 In view of the reasons recorded in forgoing paragraphs,
Rule is made absolute to the extent as specified above. There shall
be no order as to costs.

V.K.JADHAV
JUDGE

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R.M.BORDE
JUDGE