

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 2ND DAY OF JULY 2015/11TH ASHADHA, 1937

WP(C).No. 19713 of 2015 (L)

PETITIONER :

JANASEVA SISUBHAVAN,
P.B NO. 107, U.C.COLLEGE P.O., ALUVA
ERNAKULAM
REPRESENTED BY ITS GENERAL SECRETARY INDIRA SABARINATH.

BY ADVS.SRI.B.S.SWATHY KUMAR
SRI.VENKATESH GOPI
SMT.T.RESHMA
SMT.M.G.AISHWARYA

RESPONDENTS :

1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY
SOCIAL JUSTICE (C) DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM - 695 001.
2. CHILD WELFARE COMMITTEE
ERNAKULAM DISTRICT, GOVERNMENT CHILDREN'S HOME
KAKKANAD - 682 030.

R1 BY SPL.GOVERNMENT PLEADER, SRI.T.T.MOHAMMOOD
R2 BY ADV. SRI.S.SUBHASH CHAND

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
02-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

- P1 - TRUE COPY OF THE CERTIFICATE OF RECOGNITION NO. 1364 ISSUED BY THE BOARD OF CONTROL FOR ORPHANAGES & OTHER CHARITABLE HOMES FOR JANASEVA BOYS HOME.
- P2 - TRUE COPY OF THE CERTIFICATE OF RECOGNITION NO. 682 ISSUED BY THE BOARD OF CONTROL FOR ORPHANAGES & OTHER CHARITABLE HOMES FOR JANASEVA GIRLS HOME.
- P3 - TRUE COPY OF THE CERTIFICATE OF REGISTRATION NO. SW4-980/2012 DT. 23.5.14 ISSUED BY THE SOCIAL JUSTICE DEPARTMENT.
- P4 - TRUE COPY OF THE CERTIFICATE OF REGISTRATION NO. SW4-979/2012 DT. 23.5.14 ISSUED BY THE SOCIAL JUSTICE DEPARTMENT.
- P5 - TRUE COPY OF THE CERTIFICATE OF RECOGNITION NO. 866 ISSUED BY THE BOARD OF CONTROL FOR ORPHANAGES & OTHER CHARITABLE HOMES FOR FOUNDLING HOME.
- P6 - TRUE COPY OF THE ORDER DT. 14.5.15 OF THE CHILD WELFARE COMMITTEE, LOHIT DISTRICT, ARUNACHAL PRADESH.
- P7 - TRUE COPY OF THE ORDER IN OP NO. 2515/15 DT. 01.6.15 OF THE CHILD WELFARE COMMITTEE, ERNAKULAM.
- P8 - TRUE COPY OF THE CERTIFICATE DT. 10.5.15 ISSUED BY G.B CHAKMA BASTI - I UNDER CHONGKHAM CIRCLE, DISTRICT LOHIT, ARUNACHAL PRADESH.
- P9 - TRUE COPY OF THE CERTIFICATE DT. 15.5.15 ISSUED BY OFFICER-IN-CHARGE POLICE OUT POST, CHONGKHAM DISTRICT NAMSAI, ARUNACHAL PRADESH.
- P10 - TRUE COPY OF THE ORDER IN WPC NO. 14259/2014 DT. 18.6.15.
- P11 - TRUE COPY OF THE ORDER DT. 24.6.15 OF THE 2ND RESPONDENT.
- P12 - TRUE COPY OF THE ORDER DT. 29.6.15 OF THE 2ND RESPONDENT.

RESPONDENTS' EXHIBITS :

NIL

/TRUE COPY/

PA TO JUDGE

ASHOK BHUSHAN, C.J. & A.M. SHAFFIQUE, J.

W.P.(C) No. 19713 OF 2015

Dated this the 2nd day of July, 2015

JUDGMENT

Ashok Bhushan, Ag.C.J.

Heard learned counsel for the petitioner, Sri.B.Swathi Kumar, Sri.S.Subash Chand, learned counsel appearing for the Child Welfare Committee and Sri.T.T.Mohammood, learned Special Government Pleader appearing for the State.

2. Along with this writ petition, I.A. No.9213 of 2015 has also been filed with a prayer to stay further proceedings pursuant to Ext.P13 order produced along with the application, pending disposal of the writ petition. The petitioner, a charitable organisation, registered under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 as well as The Juvenile Justice (Care and Protection of Children) Act, 2000, has come up with the writ petition praying for the following reliefs:

“i. Declare that Exts.P12 is highly illegal, arbitrary and violative of the mandatory provisions of the Act and Rules hence legally unsustainable and liable only to be quashed;

ii. Issue writ of certiorari or any other appropriate writ order or direction calling for the records leading to Ext.P12 and quash the same;

iii. Issue a writ of mandamus or any other appropriate writ, order or direction commanding and compelling the 2nd respondent to comply with the provisions of the Act and Rules and conduct an enquiry as contemplated under the Act and Rules and here the children before passing any orders regarding the repatriation/transfer and also ensure that the custody of the children are entrusted to safe hands where their life, person and future safe and their welfare and interest protected;

iv. Issue a writ of mandamus or any other appropriate order or direction commanding and compelling the 2nd respondent to allow the children to remain at Janaseva till the detailed enquiry contemplated under the Act and Rules are done and a decision taken as to where the children's life, person and future will be safe and secure;"

3. Petitioner's case in the writ petition is that one person brought 16 children to the petitioner's institution on 20.05.2015. The 16 children constituted 6 girls and 10 boys of the age group 6 to 14. The petitioner institution, on 25.05.2015, produced the children before the Child Welfare Committee(for short 'CWC'), Ernakulam. The CWC, Ernakulam permitted the temporary custody of the children with the petitioner institution,

by order dated 01.06.2015 (Ext.P7). The petitioner institution is having temporary custody of the children since then. Now an order dated 24.06.2015(Ext.P11), issued by the Chairman of CWC, Ernakulam has been received by the petitioner institution which informed that the CWC has taken a decision to repatriate the 16 children brought from Arunachal Pradesh. The petitioner, aggrieved by the said decision, has come up with the writ petition.

4. Learned counsel for the petitioner submits that even if the CWC takes a decision to repatriate the children to Arunachal Pradesh, the said repatriation has to be in accordance with the provisions of 2000 Act and Rules framed thereunder. It is the State Government to take the matter of repatriation and unless the State Government makes arrangements in consultation with the Arunachal Pradesh State Government the children cannot be repatriated. No proper arrangements have been made for safe delivery of the children. He submits that the petitioner does not want to come in the way of CWC in entering a

decision to repatriate the children but for the welfare of the children for which it is running this charitable organisation, this writ petition has been filed.

5. Sri.S. Subash Chand and learned Government Pleader submits that in pursuance of the decision, the CWC, Ernakulam and State through the District Collector, Ernakulam is making arrangements for safe delivery of the children at Arunachal Pradesh. The learned counsel for CWC further submits that CWC, Ernakulam has also informed that the CWC, Lohit District of Arunachal Pradesh about the programme of the children. It is submitted that tickets have already been booked for all the children and children are accompanied by two male constables and one female constable along with a social worker to Lohit, Arunachal Pradesh. It has further been submitted that the CWC, Lohit will arrange all the parents to take the custody of the children.

6. We have considered the submission of the learned counsel for the parties and perused the record. In I.A.No.9213 of

2015 the order issued by CWC, Ernakulam has already been brought on record. The CWC, Ernakulam has taken a decision to repatriate the children in accordance with the fundamental principles of the Kerala Juvenile Justice (Care and Protection of Children) Rules, 2014. The CWC has referred to the principles V, XII, and XIII of the fundamental principles for taking care of the welfare of the children. Admittedly, the children had been brought from different States, the CWC, under Section 31, is the final authority to take decision regarding the welfare of the children who needs care and protection. The CWC, Ernakulam after interacting with the children had taken a decision that children have to be repatriated and united with their family. We do not find any error in the decision of CWC, Ernakulam.

7. Learned counsel for the petitioner has rightly submitted that the petitioner institution does not come in the way of CWC taking a decision to repatriate the children to their home is basically good for the welfare and safety of the children. It is submitted on behalf of CWC that all arrangements have been

made to send all the children by train along with appropriate escort and CWC, Lohit is ready to take the custody of the children to hand over to their parents. We are of the view that the apprehension of the petitioner is misconceived.

In view of the above, we do not see any reason to interfere in the matter. We only observe that the CWC, Ernakulam and State shall ensure that the children are safely delivered to CWC, Lohit. The Writ Petition is dismissed accordingly.

**Ashok Bhushan,
Chief Justice.**

**A.M. Shaffique,
Judge.**