

In the High Court of Judicature at Madras

Dated: 17.02.2015

Coram:

The Honourable Mr. SANJAY KISHAN KAUL, Chief Justice
and

The Honourable Mr. Justice M.M. SUNDRESH

Writ Petition No. 32023 of 2013

1. Shri. Puramon Kynjing
2. Smt. Labok Shylla
3. Smt. Rikanan Nongrum
4. Smt. Iohbiang Swer
5. Smt. Thrimtimai Ryndem
6. Smt. Asha Basumatari
7. Smt. Maya Khongdup
8. Smt. Kham Dkhar
9. Smt. Ribha Phawa
10. Smt. Banri Suna
11. Smt. Biangpor Lyngdoh
12. Smt. Hulti Surong
13. Smt. Najaret Garai
14. Smt. Mimidalin Pohleng
15. Smt. Yiang Pasi
16. Smt. Miding Syrti
17. Smt. Rijunom Papih
18. Smt. Brigita L. Nonglait
19. Smt. Kyntiewrillin L. Nonglait
20. Smt. Herina Kharbani

... Petitioners

vs.

1. The Chairman
Child Welfare Committee
Krishnagiri.
2. Sri Niveditha Trust
(A unit of Seva Bharathi, Tamil Nadu)
rep. by its Secretary J.C. Indumathi
No.3/367, Narasamma Colony
NH 7, Krishnagiri Road, Hosur
Krishnagiri District 635 109.
3. The Child Welfare Committee
Government of Meghalaya
Lower Lachumiere
East Khasi Hills, Shillong.
.. R3 suomotu impleaded as per order
dated 09.01.2014.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the first respondent in connection with the impugned order passed by the first respondent in No.99/Ku.Na.Ku/2013, dated 24.10.2013 transferring the children of the petitioners from the second respondent Trust to Meghalaya and quash the same.

For Petitioners : Mr. S. Ravi
for Mr.M.Ramamoorthi

For Respondents : Mr. P.H. Arvind Pandian, AAG
assisted by Mr.S.T.S.Murthi
Govt. Pleader for R1
Mr. B. Rabu Manohar for R2
Mr. Khalid Khan
for Govt. of Meghalaya - R3
Mrs. Geetha Ramaseshan
Counsel for NCPCR.

O R D E R

(Made by The Hon'ble The Chief Justice)

The petitioners before us are residents of Meghalaya and have approached this Court in view of the impugned order dated 24.10.2013 passed by the Child Welfare Committee, Krishnagiri District, whereby the children residing and obtaining education have been asked to be handed over to be taken away to the Home State. The impugned order has been passed in exercise of the powers conferred under Section 38 of the Juvenile Justice (Care and Protection) Act, 2000 (hereinafter referred to as the 'said Act') . The order is cryptic and recording no reasons even though the power enjoyed by the Child Welfare Committee is statutory.

2. The question of applicability of the said Act would arise only if the child is in need of care and protection, as defined under Section 2(d) of the said Act. In the present case, the children were sent back to Meghalaya and thereafter, in pursuance of the directions of this Court, the matter was examined by the Chief Secretary, Meghalaya, where their parents were present and their statements recorded. It is undisputed that the stand of the parents is that it is as per their request and decision, that the children are studying in the present place. It is trite to say that the parents are the natural guardians of the children and entitled to take decision, unless it can be said that the parents are incapacitated on account of any ground, more specifically, as

enunciated under Section 2(d) of the said Act. There is no factual basis at present at least to give a finding that the provisions of the said Act, would be attracted.

3. In pursuance to the said interim directions, the children are continuing their education at present as per the wishes of their parents. If the parents do not want their education, in the present scenario, it is always open to the parents to withdraw them.

4. Learned counsel appearing for the National Commission for Protection of Child Rights (NCPCR) submits that the aforesaid position cannot be disputed, though in the typed-set of documents filed by the Commission, the report and the draft protocols on child trafficking have been filed. The push and pull factors have been specified by the Commission. We are, thus, of the view that the Commission can always verify the facts qua the education of these children and if any adverse factors are found, necessary action under the said Act, can be taken.

5. Learned counsel for the Commission also submits that there are certain suggestions made for action to be taken by the State of Tamil Nadu as well as the State of Meghalaya enumerated at pages 29 and 30 and 30-33 respectively. We call upon the two States to examine the suggestions for necessary action in a time bound manner not exceeding four months from today as prayed.

6. The petition is, thus, closed, in terms of the aforesaid directions while quashing the impugned order. Parties are allowed to bear their own costs.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

ATR

To

1. The Chairman
Child Welfare Committee
Krishnagiri.

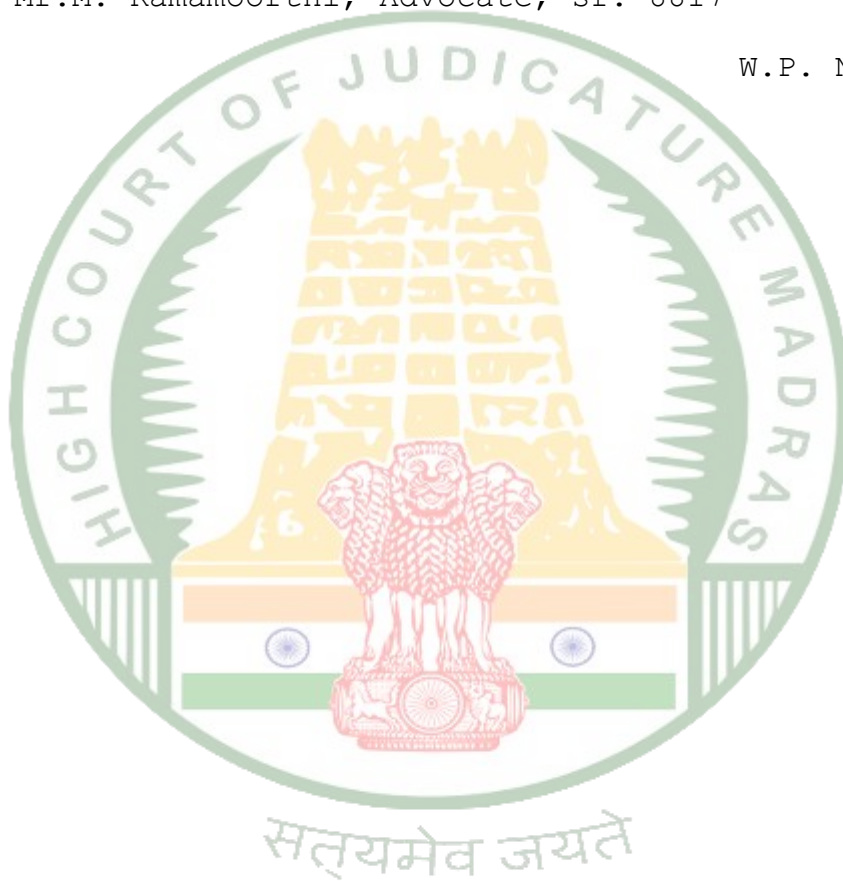
2. The Child Welfare Committee
Government of Meghalaya
Lower Lachumiere
East Khasi Hills, Shillong.

3. The National Commission for protection of Child Rights
(N.C.P.C.R)
New Delhi.

1 cc to Mr.M. Ramamoorthi, Advocate, sr. 8817

W.P. No. 32023 of 2013

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