

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.15409 of 2015 (O&M)
Dated of Decision:19.09.2015**

Dayal Singh College Trust Society

..... Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.V.K. Jindal, Sr. Advocate, with
Mr.M.S. Punia, Advocate,
for the petitioners.

Mr.Rajesh K. Sheoran, Addl. A.G. Haryana.

Mr.Amar Vivek, Addl. A.G. Haryana,
for respondents No.1 to 2 & 5.

Mr.Sajjan Singh, Advocate,
for respondent No.4.

RAKESH KUMAR JAIN, J. (ORAL)

CM No.10604 of 2015

This application is filed for preponing the date of
hearing of the main case from 30.11.2015.

Application is allowed.

The hearing of the main petition is preponed for today
and the same is taken on board for decision with the consent of
the parties.

CWP No.15409 of 2015 (O&M)

The petitioner is a registered society, running two
schools, namely, Dyal Singh Public School, Dyal Singh Colony,
Karnal and Dyal Singh Public School, Sector 7, Karnal.

VIVEK PAHWA
2015.09.22 12:02
I attest to the accuracy and
authenticity of this document

This petition has been filed to assail the validity of complaint dated 21.7.2015, made by respondent No.4, decided by respondent No.2 on 22.7.2015, in violation of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000. Section 29 of the Act provides for a child welfare committee (for short 'the Committee'), which comprises of five members including the chairperson. The said Committee is constituted by the State of Haryana by way of a notification in which the following are the members:-

1. V.K. Sharma
2. Jagmati Devi
3. Hawa Singh
4. Ms.Seema Chacchan (no longer participating in CWC for 18 months and as such deemed to be suspended).

The Chairperson of the Committee is Surinder Singh Maan. The Committee can pass an order with a coram of 3 members including the chairperson in terms of Rule 26 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (for short 'the Rules').

The complaint made by respondent No.4 was in regard to maltreatment of the students by the teachers/management of the schools for various reasons. The said complaint was decided on 22.7.2015 by the Committee in which three members participated, namely, V.K. Sharma, Jagmati Devi and Hawa Singh. The Committee directed the school authority vide its interim order not to stop the students coming to the schools and also restrained them from giving inhuman treatment to the children causing harm to their physical and mental health.

Assailing the said interim order dated 22.7.2015, learned counsel for the petitioner has argued that object for enactment of the Act was to consolidate and amend the law relating to juveniles in “conflict with law” and “children in need of care and protection”, by providing proper care, protection and treatment by catering to their development needs, and by adopting a child friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation.

It is further submitted that the Act is meant for “child in need of care and protection” and “juvenile in conflict with law”, which are defined in Section 2(d) and (l) of the Act. The said definitions of “child in need of care and protection” and “juvenile in conflict with law” are reproduced as under: -

“(d) "child in need of care and protection" means a child-

(i) who is found without any home or settled place or abode and without any ostensible means of subsistence,

[(ia) who is found begging, or who is either a street child or a working child.]

(ii) who resides with a person (whether a guardian of the child or not) and such person-

(a) has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out, or

(b) has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in

- question being killed, abused
or neglected by that person,*
- (iii) who is mentally or physically challenged or ill children or children suffering from terminal diseases or incurable diseases having no one to support or look after,*
 - (iv) who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child,*
 - (v) who does not have parent and no one is willing to take care of or whose parents have abandoned him or who is missing and run away child and whose parents cannot be found after reasonable inquiry,*
 - (vi) who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts,*
 - (vii) who is found vulnerable and is likely to be inducted into drug abuse or trafficking,*
 - (viii) who is being or is likely to be abused for unconscionable gains,*
 - (ix) who is victim of any armed conflict, civil commotion or natural calamity;*
- (l) "juvenile in conflict with law" means a juvenile who is alleged to have committed an offence."*

It is further submitted that Chapter II of the Act is dedicated to the "Juvenile in Conflict with Law" and Chapter III to the "Child in Need of Care and Protection". In order to deal with the "Juvenile in Conflict with Law", the legislature has provided Juvenile Justice Boards, for the "Child in Need of Care and Protection" a Child Welfare Committee is constituted under the Act.

Since, the action in this case is being taken by the Committee, obviously, constituted under Chapter III of the Act, therefore, it is submitted that the power to be exercised by the Committee is only in regard to the children, who are in need of care and protection and the students of the school, who had their parents and guardians to look after their interest are not under the “child in need of care and protection”. It is further submitted that even otherwise, before initiating any action, the said Committee is required to hold an enquiry in terms of Section 33 of the Act and if it is found that a child is in need of care and protection then he has to be shifted to children’s home, which are provided under Section 34 of the Act.

During the course of hearing, it was also brought to the notice of the Court that the Chairperson of the said Committee has been exercising his powers by addressing himself as Judicial Magistrate, 1st Class, therefore, he was impleaded as a party by the Court and was served with a notice through Deputy Commissioner, Karnal and was also directed to be present in Court on 7.9.2015. It is recorded in the order dated 7.9.2015 that due to an inadvertence or misreading of Section 29(5) of the Act, he had been addressing himself as Judicial Magistrate, 1st Class, regretted and assured the Court that he would not address himself as Judicial Magistrate, 1st Class in his orders in future.

Be that as it may, the respondents filed their reply.

Learned Additional Advocate General, Haryana, was very fairly not contested the impugned order as the said order is otherwise violative of principle of natural justice and has been

passed in violation of the principle of *audi alteram partem*, besides the other legal defects in it.

Learned counsel for the State, however, has brought to the notice of the Court some more facts and beseeched the indulgence on account of equity alleging that name of eight students have been struck off from the rolls of the school on account of non-payment of enhanced fee of the Sessions 2014-15 and 2015-16. Details of those eight students are as under: -

Sr. No.	Name of the student	Class	Name and address of parents/guardian of the student
1.	Raghav Bhatia	UKG-A	Bharat Bhatia, r/o H.No.621, Sector 13 Ext., Karnal
2.	Radhika	VI-D	Bharat Bhatia, r/o H.No.621, Sector 13 Ext., Karnal
3.	Aakash	II-D	Amit Gupta, r/o H.No.2053-A, Sector 6, Karnal
4.	Chhavi	UKG-A	Amit Gupta, r/o H.No.2053-A, Sector 6, Karnal
5.	Shivam	VII	Rajinder Kumar, r/o H.No.1034/7, Karnal
6.	Himalya Wadhwa	-	Rajiv Kumar, r/o H.No.2092/6, Karnal
7.	Nakul Sachdeva	V-D	Vishal Sachdeva, r/o H.No.1163/6, Karnal
8.	Kavim Sachdeva	II-D	Vishal Sachdeva, r/o H.No.1163/6, Karnal

It is further submitted that the matter in regard to the enhancement of fee is already pending before the competent

authority, namely, Director Secondary Education, Haryana and CBSE, which will take some time, but in the meantime, the said students may not lose their year as their mid-term examinations are around the corner. It is also pleaded by him that the petitioner/society may be directed, in the meanwhile, to allow the aforesaid students to attend their classes on their deposit of the fee, without late fee and readmission fee, of the session 2013-14.

Learned senior counsel appearing for the petitioner has submitted that the school would re-admit the said students so that they may appear in the mid-terms exam and continue their studies but the said students have to pay/deposit the enhanced fee of the sessions 2014-15 and 2015-16, subject to the final outcome of the matter, which is pending before the competent authority in regard to enhancement of fee.

He further submitted, on instructions, that as soon as it is decided by the competent authority that the school is not entitled to the enhanced fee of the sessions 2014-15 and 2015-16 and was only entitled to the fee of the session 2013-14, the entire fee along with interest thereon shall be refunded to the said students/their parents within 15 days of the order without any objection. This statement of learned senior counsel for the petitioner has satisfied the counsel for the respondents.

Thus, in view of the aforesaid facts and circumstances, the impugned complaint and the order passed by the Committee are hereby set aside. The petitioner/school is directed to readmit the aforesaid students forthwith on the enhanced fee of the session 2014-15 and 2015-16 without

readmission fee and late fee and the school shall refund the enhanced fee along with interest to the students/their parents within 15 days from the date of passing of the order by the competent authority in their favour.

The students shall deposit their fee in two installments i.e. 1st installment within a week from the date of passing of this order and 2nd installment in the next month.

With these observations, the present petition is hereby allowed.

19.09.2015

Vivek

(RAKESH KUMAR JAIN)
JUDGE