

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

+ W.P.(C) 1308/2013

Pronounced on: November 19, 2015

R.K. TARUN Petitioner

Through: Petitioner-in-person.

Versus

UNION OF INDIA & ORS Respondents

Through: Mr. Ajay Digpaul, CGSC with
Mr. C.M. Manaktala & Mr. Kunal Punj, Advs. for
R-1 & 2.

Ms. Zubeda Begum, Adv. for GNCTD.

Mr. Dharmesh Sharma, Member Secretary,
DSLISA & Mr. Surinder S. Rathi, OSD, DSLISA.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

Ms. G. ROHINI, CHIEF JUSTICE

1. In this petition filed by way of Public Interest Litigation, the petitioner seeks a declaration that Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 and Rule 12(3) of the Delhi Juvenile Justice (Care and Protection of Children) Rules, 2009 which prescribe the procedure to be followed for determination of age of a juvenile in conflict with law, are *ultra vires* and unconstitutional being violative of the Constitution of India.

2. We have heard the learned counsel for both the parties.

3. The Juvenile Justice (Care and Protection of Children) Act, 2000 (for short 'Act') has been enacted consolidating and amending 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.

4. Section 2(k) of the Juvenile Justice Act defines 'juvenile' or 'child' as a person who has not completed 18th year of age. The expression 'juvenile in conflict with law' is defined under Section 2(l) of the Juvenile Justice Act as a juvenile who is alleged to have committed an offence and has not completed 18th year of age as on the date of commission of such offence.

5. Section 4 of the said Act provides for constitution of one or more Juvenile Justice Boards by the State Government for every district for exercising the powers and discharging the duties conferred or imposed on such Boards in relation to juveniles in conflict with law. Every Juvenile Justice Board (for short JJB) shall consist of a Metropolitan Magistrate or a Judicial Magistrate of the First Class as the case may be and two social workers. As per Section 6 of the Juvenile Justice Act, notwithstanding anything contained in any other law for the time being in force, the JJB shall have power to deal exclusively with all proceedings under the Juvenile Justice Act relating to juvenile in conflict with law. Section 14 of the Juvenile Justice Act provides that where a juvenile having been charged with

the offence is produced before a JJB, it shall hold the inquiry in accordance with the provisions of the Juvenile Justice Act and may make such order in relation to the juvenile as it deems fit. The various orders that may be passed by JJB regarding juveniles are enumerated under Section 15 of the Act.

6. The issue raised in the present writ petition relates to the procedure to be followed for determination of the age of the person brought before the JJB under any of the provisions of the Juvenile Justice Act. Section 49 of the Act which provides for presumption and determination of age reads as under:

“49. Presumption and determination of age. – (1)
Where it appears to a competent authority that person brought before it under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a juvenile or the child, the competent authority shall make due inquiry so as to the age of that person and for that purpose shall take such evidence as may be necessary (but not an affidavit) and shall record a finding whether the person is a juvenile or the child or not, stating his age as nearly as may be.

(2) No order of a competent authority shall be deemed to have become invalid merely by any subsequent proof that the person in respect of whom the order has been made is not a juvenile or the child, and the age recorded by the competent authority to be the age of person so brought before it, shall for the purpose of this Act, be deemed to be the true age of that person.”

7. A plain reading of the above provision shows that when a person is brought before the competent authority under any of the provisions of the Act, the competent authority is required to make due inquiry as to the age of that person and for that purpose take such evidence as may be necessary and record a finding whether the person is a juvenile or not. The expression 'competent authority' has been defined under Section 2(g) as under:

“2. Definitions.-

(a) to (f) ”

(g) “competent authority” means in relation to children in need of care and protection a Committee and in relation to juveniles in conflict with law a Board.”

8. Thus, it is clear that so far as the juveniles in conflict with law are concerned, the competent authority is the Juvenile Justice Board. In the present petition, we are concerned with the procedure to be followed by the Juvenile Justice Boards for determination of age in terms of Section 49 of the Act read with the Rules made thereunder.

9. Section 68 of the Act empowered the State Government to make rules to carry out the purposes of the Act and the proviso to Section 68(1), which was inserted by Amendment Act 33 of 2006 w.e.f. 22.08.2006 states that the Central Government may also frame Model Rules in respect of all or any of the matters with respect to which the State Government may make rules under Section 68(1) and where any such Model Rules have been framed they shall apply to the State until the rules in respect of that matter is made by the State Government.

10. In exercise of the power conferred under the proviso to Section 68(1) of the Juvenile Justice Act, the Central Government made the Rules called The Juvenile Justice (Care and Protection of Children) Rules, 2007 which came into force with effect from 26.10.2007. Rule 12 of the said Rules deals with the procedure to be followed by the JJB or the Child Welfare Committee in determination of age of a juvenile or child. The said Rule to the extent it is relevant reads as under:

“12. Procedure to be followed in determination of Age-

(1)

(2)

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining –

- (a) (i) the matriculation or equivalent certificate s, if available; and in the absence whereof;
(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;
(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if

considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.”

11. Subsequently, in the year 2009, the Government of GNCTD also made Rules in exercise of the powers conferred under Section 68(1) called the Delhi Juvenile Justice (Care and Protection of Children) Rules, 2009. Rule 12 of the said Rules also provides for the procedure to be followed in determination of age, the relevant portion of which reads as under:

“12. Procedure to be followed in determination of Age-

(1)

(2)

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining –

(a) (i) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) the matriculation or equivalent certificates, if available;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.”

12. The validity of the above mentioned two Rules, i.e., Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 made by the Central Government (hereinafter referred to as the Model Rules) and Rule 12(3) of the Delhi Juvenile Justice (Care and Protection of Children) Rules, 2009 (hereinafter referred to as the State Rules) is the subject matter of the present petition.

13. The contention of the petitioner is that the procedure prescribed both under Rule 12(3) of the Model Rules and under Rule 12(3) of the State Rules for determination of the age of a child or juvenile in conflict with law is unjust, unreasonable and impracticable. It is contended that as per the procedure prescribed under both the sets of Rules, the birth certificate given by a Corporation or a Municipal authority or a Panchayat which is the most authenticated document has not been given the priority. The further contention is that even among the two sets of Rules, there is no uniformity of the procedure prescribed for determination of age and that the same is resulting in a lot of confusion and difference of opinion among the Courts/JJB/CWC while deciding as to which document is to be preferred for determining the juvenility.

14. We may, at the outset, point out that the language of both Rule 12(3) of the Model Rules and Rule 12(3) of the State Rules is exactly the same, however, there is a difference in the priority given to the documents sought to be produced to substantiate the age of the child or juvenile in conflict with the law. While Rule 12(3) of the Model Rules gives first preference to Matriculation or equivalent certificates; second preference to the date of birth certificate from the school first attended and third preference to birth certificate given by a local body, Rule 12(3) of the State Rules gives first preference to the date of birth certificate from the school first attended; second preference to the birth certificate given by a local body and third preference to the matriculation or equivalent certificates.

15. According to the petitioner, the procedure prescribed under both the Model Rules and the State Rules is unreasonable and impracticable and therefore the same are liable to be declared as *ultra vires* and unconstitutional. The petitioner claims that the birth certificate issued by the local body is the most authenticated document and therefore the same should have been given first preference while making the inquiry into the determination of age.

16. The petitioner, therefore, impugns Rule 12(3) of the Model Rules as well as the State Rules. The *vires* of the impugned Rules is questioned primarily on the ground that the failure of the Central Government and GNCTD to give first preference to the birth certificate issued by the local body has rendered the impugned Rules unreasonable and impracticable. While stating that different courts are following different procedure and the same is leading to a lot of confusion, it is suggested that there should in fact be no priority and depending on facts and circumstances of the case, the court should have freedom to adopt the appropriate procedure of enquiry. Attention in this regard is drawn to Section 7A of the Juvenile Justice Act.

17. The grounds on which a subordinate legislation can be challenged are well settled. It has been consistently held by the courts that any inquiry into the *vires* of the subordinate legislation must be confined to the grounds (i) on which plenary legislation may be questioned; (ii) that it is contrary to the Statute under which it is made; (iii) that it is contrary to the other statutory provisions; (iv) that it is so patently arbitrary that it cannot be said to be in

conformity with the statute; and (v) that it violates Article 14 of the Constitution of India [vide *State of Karnataka vs. H. Ganesh Kamath*, (1983) 2 SCC 402, *Indian Express Newspapers (Bombay) (P) Ltd. vs. Union of India*, (1985) 1 SCC 641, *General Officer Commanding-in-Chief vs. Dr.Subhash Chandra Yadav*, (1988) 2 SCC 351, *Supreme Court Employees Welfare Association vs. Union of India*, (1989) 4 SCC 187, *Delhi Administration vs. Siri Ram*, (2000) 5 SCC 451, *Mahachandra Prasad Singh (Dr.) vs. Bihar Legislative Council*, (2004) 8 SCC 747, *J.K. Industries Ltd. vs. Union of India*, (2007) 13 SCC 673) and *Academy of Nutrition Improvement vs. Union of India*, (2011) 8 SCC 274].

18. As held in *J.K. Industries Ltd.* (supra), it is also a well settled principle of law that where the validity of subordinate legislation is challenged, the court has to start with a presumption that the impugned rule is *intra vires*. In other words, the impugned rule has to be read down only to save it from being declared *ultra vires* if the court finds in a given case that the above presumption stands rebutted.

19. It is not in dispute that Juvenile Justice Act is a special law enacted to deal with offences committed by juveniles in a manner which is meant to be different from the law applicable to adults. The determination of age, therefore, assumes great importance in all the matters that are brought before the Juvenile Justice Boards. Rule 12 of the Model Rules as well as the State Rules provides the procedure to be followed by the Courts, Juvenile Justice Board and Child Welfare Committee for the purpose of determination of age

in every case concerning a child or a juvenile or a juvenile in conflict with law.

20. In *Ashwini Kumar Saxena v. State of Madhya Pradesh*, (2012) 9 SCC 750, the Supreme Court was dealing with the nature of enquiry required to be conducted under Rule 12 of the Model Rules with reference to Section 7-A of the Juvenile Justice Act. In that context, it was held:

“32. Age determination inquiry” contemplated under Section 7-A of the Act read with Rule 12 of the 2007 Rules enables the court to seek evidence and in that process, the court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the court needs to obtain the date of birth certificate from the school first attended other than a play school. Only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the court needs to obtain the birth certificate given by a corporation or a municipal authority or a panchayat (not an affidavit but certificates or documents). The question of obtaining medical opinion from a duly constituted Medical Board arises only if the abovementioned documents are unavailable. In case exact assessment of the age cannot be done, then the court, for reasons to be recorded, may, if considered necessary, give the benefit to the child or juvenile by considering his or her age on lower side within the margin of one year.

33. Once the court, following the abovementioned procedures, passes an order, that order shall be the conclusive proof of the age as regards such child or juvenile in conflict with law. It has been made clear in

sub-rule (5) of Rule 12 that no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof after referring to sub-rule (3) of Rule 12. Further, Section 49 of the JJ Act also draws a presumption of the age of the juvenility on its determination.

34. Age determination inquiry contemplated under the JJ Act and the 2007 Rules has nothing to do with an enquiry under other legislations, like entry in service, retirement, promotion, etc. **There may be situations where the entry made in the matriculation or equivalent certificates, date of birth certificate from the school first attended and even the birth certificate given by a corporation or a municipal authority or a panchayat may not be correct. But court, Juvenile Justice Board or a committee functioning under the JJ Act is not expected to conduct such a roving enquiry and to go behind those certificates to examine the correctness of those documents, kept during the normal course of business. Only in cases where those documents or certificates are found to be fabricated or manipulated, the court, the Juvenile Justice Board or the committee need to go for medical report for age determination.”**

(emphasis supplied)

21. In the light of the settled principles of law regarding the inquiry into the *vires* of the subordinate legislation coupled with the object sought to be achieved by enacting the Juvenile Justice Act, we are unable to hold that the impugned Rules suffer from any infirmity to declare the same as *ultra vires* the Act. In our considered opinion, neither the Rule making authority while making the impugned Rules travelled beyond the scope of the Juvenile

Justice Act nor the impugned Rules are in any manner contrary to the provision of the said Act or any other statutory provision. Absolutely no case is made out to show that the impugned Rules are either in violation of Article 14 of the Constitution of India or patently arbitrary and unreasonable. May be according to the petitioner, it would be more reasonable to give first preference to the birth certificate issued by the local body, however, no enactment can be struck down on the ground that the court thinks it unjustified. The legislation by the Parliament or the delegated legislation are supposed to be made keeping in view the needs of the people and what is good and bad for them. The court, therefore, cannot sit in judgment over their wisdom. Similarly, the contention that different courts are following different procedures is no ground to challenge the *vires* of the subordinate legislation. Once the statutory rules have prescribed the procedure to be followed, in the event of deviation of the prescribed procedure, remedies are available to the concerned parties thereagainst. However, such deviation cannot be a ground to find fault with the statutory rules.

22. In may also be added that in the affidavit filed on behalf of GNCTD, it has been stated that it is in the process of reviewing the State Rules and requested the Delhi State Legal Services Authority for its views. It is brought to our notice that certain suggestions have already been made by DSLSA for amendment of the State Rules.

23. The next question that requires consideration is whether JJBs in Delhi are required to follow the procedure prescribed under Rule 12(3) of the Model Rules or the procedure prescribed under Rule 12(3) of the State Rules. Before considering the said question, we may refer to Section 68 of the Act which confers rule-making power both on the Central Government and the State Government.

“68. Power to make rules.— (1) The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act:

Provided that the Central Government may, 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 is made by the State Government and while making any such rules, **so far as is practicable, they conform to such model rules.**

(2) xxx xxx xxx”

(emphasis supplied)

24. The proviso to Section 68(1) itself makes clear that the Model Rules framed by the Central Government are applicable to the State until the Rules in respect of that matter is made by the State Government. Therefore, the Model Rules that were framed by the Central Government in the year 2007 were in operation in Delhi till 2009 when the Government of NCT of Delhi made Rules in exercise of the powers conferred under Section 68(1) of the

Act. However, the proviso to Section 68(1) further stipulates that Rules made by the State Government so far as is practicable, shall be in conformity with the Model Rules. Therefore, the question that arises for consideration is whether the procedure prescribed under the Model Rules would prevail and consequently the date of birth recorded in matriculation or equivalent certificates has to be given preference to the date of birth recorded in the birth certificates issued by the local body.

25. The Member Secretary of Delhi State Legal Services Authority filed an affidavit stating that the first preference may be given to the birth certificate issued by the municipality/municipal authority/corporation/panchayat as it has been experienced that the birth certificate issued by the said authorities is found to be more credible document than by any other authority. It is also submitted by him that making an enquiry into the correctness of the date of birth recorded in the school certificates is a time consuming process and would delay the proceedings before the JJB.

26. It is relevant to note that the proviso to Section 68(1) states that the Rules made by the State Government must be in conformity with the model Rules '**so far as is practicable**'. Therefore, there is nothing wrong in making a slight deviation from the procedure prescribed in the Model Rules regarding the priority to be given to the documents produced to substantiate the age of the child or juvenile in conflict with law, depending on the needs of a particular State.

27. Therefore, we are of the opinion that there is no need for any confusion in the procedure to be followed by JJBs in Delhi for determination of age of the child or juvenile in conflict with law. Despite the slight variation in the preference to be given to the evidence that is required to be produced for determination of age between the Model Rules and the State Rules, the JJBs in Delhi are required to follow the procedure prescribed in the State Rules only.

28. Accordingly, we hold that Rule 12(3) of both Model Rules and the State Rules are valid. However, we clarify that the JJBs in Delhi are required to follow the procedure prescribed in Rule 12(3) of the State Rules.

The writ petition is accordingly disposed of. No costs.

CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J.

NOVEMBER 19, 2015
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