

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11080 OF 2017

Mr.Vishwanath S. Talkute for the Petitioner
Mr.Manish M. Pabale, AGP for the respondent

ORAL JUDGMENT: (PER A.S.OKA, J.)

1 As the regular Court presided over by Hon'ble
Shri Justice Kemkar is unable to hear this petition,
as per the General Standing Order issued by the
Hon'ble the Chief Justice, this petition has been
assigned to this Bench.

2 Yesterday, the parties were put to notice that the petition will be disposed of finally at the stage of admission. The petitioner was appointed as a Member of the Child Welfare Committee constituted under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short "JJ Act of 2000"). According to the case of the petitioner, her term was extended and ultimately came to an end in February 2014. By a notification dated 18th November 2014 issued under the provisions of section 29 of the JJ Act of 2000, the State

Government appointed the petitioner as the Chairperson of the Child Welfare Committee (for short "the said Committee"). The term of the petitioner was of three years. She was appointed as the Chairperson of the said Committee at Pune. The Juvenile Justice (Care and Protection of Children) Act, 2015 (for short "JJ Act of 2015") was brought into force with effect from 15th February 2016. As a result of coming into force of JJ Act of 2015, JJ Act of 2000 stood repealed. By virtue of sub-section 2 of section 111 of the JJ Act of 2015, the committees constituted under the JJ Act of 2000 continued to function. That is how the petitioner continues to discharge the functions as the Chairperson of the said Committee for Pune.

3 In the meeting of the Advisory Board held on 30th July 2016, a recommendation was made by the Advisory Board to take action of suspension against the petitioner. Accordingly, the Chairman of the Advisory Board addressed a letter dated 2nd August 2016 to the Secretary of the Women and Child Development Department of the State Government to initiate action of suspension against the petitioner. By a letter dated 4th August 2016, the District Women and Child Development Officer, Pune called upon the petitioner to submit her response to what is recorded in the minutes of the meeting dated 30th July 2016 of the Advisory Board. It appears that by a communication dated 26th October 2016, the Deputy Commissioner (Child Development) of the Directorate of Women and Child Development of the

State Government informed the Deputy Divisional Commissioner of Women and Child Development Department, Pune that he has constituted a committee headed by the Deputy Divisional Commissioner (Women and Child Development) and two Project Officers working on child development projects at Dapodi-Bopodi and Shivaji Nagar, Pune. It appears that on 18th August 2017, a notification was issued by the State Government on the basis of the report of the Inquiry Committee recording that the appointment of the petitioner has been brought to an end. A communication to that effect was issued to the petitioner on 16th September 2017 by the Incharge District Women and Child Development Officer. It is this action of the State Government which is impugned in this petition.

4 There is a reply filed by Ms Smita Dattatray Nivatkar, the Deputy Secretary, Women and Child Development Department of the State Government. It deals with the contention raised in the petition that the appointment of the petitioner was terminated only on the basis of the recommendation of the Advisory Board. It was contended in the reply that an Inquiry Committee under the provisions of sub-section 7 of section 27 of the JJ Act of 2015 was constituted and Inquiry was made by the said Committee. It is stated that the District Advisory Committee has merely taken cognizance of the complaints against the petitioner. It is contended that the Commissioner, Women and Child Development at Pune was directed to appoint an Inquiry Committee

under the Chairmanship of the Divisional Deputy Commissioner. It is contended that the petitioner filed her written say and defended the same before the Committee.

5 Though the report of the Inquiry Committee is not annexed to the affidavit-in-reply, the learned AGP has produced for the perusal of the Court a file which contains the report of the Inquiry Committee.

6 The first submission of the learned counsel for the petitioner is that entire action is at the behest of the Advisory Board which has no jurisdiction to take cognizance of the complaints against the petitioner. The second submission is that the Inquiry Committee has not been constituted by the State Government but by the Divisional Deputy Commissioner of the Women and Child Development Department. Thirdly, it is submitted that out of three members, two members were the Project Officers who cannot said to be of the rank which is superior to the Chairperson of the said Committee considering the status of the Committee and its members. The learned AGP submitted that in any event, the term of the petitioner expires on 17th November 2017. Secondly, he submitted that the petitioner has participated in the Inquiry and that the Inquiry Committee found the petitioner guilty of misuse of the powers. The learned counsel for the petitioner invited our attention to the fact that though against two other Members of the Committee, offences under the Prevention of Corruption Act, 1988

have been registered, no action has been taken against both of them.

7 We have carefully considered the submissions. We have perused the affidavit-in-reply and the file produced by the learned AGP. Under section 27 of the JJ Act of 2015, sub-section 9 lays down that the Committee shall have all the powers conferred by the Code of Criminal Procedure, 1973 on the Metropolitan Magistrates or the Judicial Magistrates (First Class), as the case may be. Thus, the Committee discharges judicial functions under the provisions of the JJ Act of 2015. Similar were the provisions of the JJ Act of 2000.

8 What is material for consideration is sub-section 7 of section 27 of the JJ Act of 2015 which reads thus:

“27(7). The appointment of any member of the Committee shall be terminated by the State Government after making an inquiry, if

i. he has been found guilty of misuse of power vested on him 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 consecutively for three months without any valid reason or he fails to attend less than three-fourths of the sittings in a year.”

9 Thus, the power to terminate the appointment of any Member of the Committee vests in the State Government. Termination can be on one of the three grounds specified in sub-section 7. The action of

termination is to be taken only after an Inquiry is held by the State Government.

10 As far as JJ Act of 2015 is concerned, as of today, there is no rule which governs the Inquiry. Perusal of the file shows that in the meeting of the Advisory Board of District Pune held on 30th July 2016, a recommendation was made to the State Government to initiate action of suspension against the petitioner. The recommendation was communicated by the Secretary of the Advisory Board to the State Government. There is a note put up by the Section Officer of the Women and Child Development Department on 17th September 2016 which refers to the recommendation of the Advisory Board. It also records that two other Members of the said Committee were arrested while accepting bribe. There is no specific decision recorded of authorising either to the Divisional Commissioner or the Divisional Deputy Commissioner to constitute an Inquiry Committee or to make appointment of the members of the Inquiry Committee. The second note which is on record is of 31st May 2017 which refers to the report of the Committee headed by the Divisional Sub Commissioner and two Project Officers.

11 However, perusal of the file shows that there were letters addressed by the Chairperson of the District Advisory Board to various Authorities of the State Government including the Divisional Commissioner. It appears that on 20th September 2016, a letter was addressed by the Desk Officer of

the Women and Child Development Department of the State Government to the Commissioner of the Women and Child Development Department, Pune by which the Divisional Commissioner was informed to constitute a Committee headed by the Divisional Deputy Commissioner. There is nothing to show that a decision as aforesaid was taken by the State Government. There is no decision on record of the State Government authorising the Divisional Commissioner to nominate two Members of the Committee headed by the Divisional Deputy Commissioner. As noted earlier, two other members of the Committee are the Project Officers. As stated earlier, there is no decision taken by the State Government authorising either the Divisional Commissioner or the Divisional Deputy Commissioner to appoint two members of the Committee. Therefore, it is impossible to accept the submission that the Inquiry Committee was constituted by the State Government or that the State Government validly delegated its powers to constitute Inquiry Committee either to the Divisional Commissioner or to the Divisional Deputy Commissioner.

12 For taking action of removal under sub-section 7 of section 27, an Inquiry has to be held by the State Government. Therefore, it was necessary for the State Government itself to appoint an Inquiry Committee which has not been done in the present case. It appears from the file that the report of the Inquiry Committee was placed along with a note before the State Government and action of the

removal of the petitioner was approved by the Hon'ble Minister.

13 There is one more aspect of the matter. Perusal of the report of the Inquiry Committee shows that in the concluding part, it is merely observed that as the Members of the various Committees are indulging in fights and are often complaining to the Divisional Commissioner, the time of the Divisional Commissioner is wasted in dealing with the said complaints. That is the reason for removal of the petitioner. This conclusion will not take the case under any of the three clauses of sub-section 7 of section 27 of the JJ Act of 2015. In any case, only on the ground that the constitution of the Inquiry Committee was completely illegal and the action of removal was taken on the basis of the report of the Inquiry Committee, the impugned order/decision will have to be set aside. While we do that, we must also note here that two members of the Committee were trapped while taking bribes and an offence under the Prevention of Corruption Act, 1988 has been registered against them. However, as of today, no action has been taken against both of the Members by the State Government and it is only stated that an Inquiry is in progress.

14 While we set aside the action of the State Government, we must note here that we have made no adjudication on the correctness allegations made against the petitioner. Needless to add that if the petitioner applies for re-appointment, the concerned

Authority will have to take into consideration the allegations which have been made against the petitioner for ascertaining the fitness of the petitioner. We may also note that the term of the petitioner as the Chairperson will come to an end on 17th November 2017 and therefore, from that day she cannot function as the Chairperson.

15 Subject to what is observed above, we pass the following order:

- (I) The impugned notification dated 18th August 2017 is hereby quashed and set aside and the decision of the State Government of terminating the appointment of the petitioner as the Chairperson of the Child Welfare Committee, Pune stands set aside;
- (II) As clarified earlier, no adjudication is made into the allegations of mis-conduct made against the petitioner and all issues in that behalf are kept open;
- (III) Rule is made absolute on above terms.

(A.K.MENON,J.)

(A.S.OKA,J.)