

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION Nos.30406; 29030; 29491 and 32764 of 2017

COMMON ORDER:

All these writ petitions are being disposed of by this Common Order as the petitioners questioned the action of the official respondents in adopting the procedure for selection of the Chairperson and Members to the Telangana State Commission for Protection of Child Rights (in short "State Commission") contrary to the Rules framed in G.O.Ms.No.3, dated 20.01.2015.

2) While in W.P.No.30406 of 2017, the appointment of Chairperson as well as the Members to the State Commission has been questioned; W.P.No.29030 of 2017 questioned the action of the official respondents in trying to appoint the unofficial respondent as the Chairperson to the State Commission as contrary to the rules made under G.O.Ms.No.3, dated 20.01.2015; and in W.P.Nos.29491 and 32764 of 2017 the challenge is confined to the appointment of Members to the State Commission under G.O.Ms.No.11, dated 10.07.2017.

3) In all these cases, the contentions as pleaded in the writ affidavits, can be summed up as follows:

- i) Section 18 of the Commissions for Protection of Child Rights Act, 2005 (in short "the Act") read with Rules 3 and 4 of Telangana State Commission for Protection of Child Rights Rules, 2014 (in short "the Rules"), prescribes the method and manner of constituting the Body under the name and style of 'State Commission for Protection of Child Rights', as defined under Section 2(g) of the Act.

ii) Section 17 of the Act mandates that the State Commission shall consist of a Chairperson with six Members. The qualifications for a person to be appointed are prescribed in Section 17(2) of the Act, which mandates that persons of eminence, who had carried out outstanding work with ability, integrity, standing and experience in education, child health, care, welfare or child development, juvenile justice or care of neglected or marginalized children or children with disabilities, elimination of child labour or children in distress, conversant with child psychology or sociology and laws relating to children, and such appointment shall be done on the recommendations of a three-Member Selection Committee constituted by the State Government under the Chairmanship of the Minister in-charge of Child Development.

iii) Rule 4(1) of the Rules mandates that in addition to the Minister in-charge of Child Development being the Chairman, the other two Members shall be one of the nominees of the Chief Justice of the High Court of the State and the Speaker of the State Legislature.

iv) The appointments of the Chairperson and the Members of the State Commission were made to the posts by the Government, based on the recommendations of the Selection Committee, consists of only two members, without the meeting being chaired by the Chairman. On account of such selection, the process undertaken by the two-Member Committee is vitiated and contrary to the mandate contained in Section 18 of the Act and thus, the consequential

recommendations made by such Selection Committee and the consequent appointments of Chairperson and the Members of the State Commission are illegal. Apart from that, specific allegations were made in W.P.No.30406 of 2017 against each of the candidates that they do not fit into and satisfy the criteria laid down in sub-section (2) of Section 17 of the Act. Similarly, allegations were also made against the candidates in W.P.Nos.32764 and 29491 of 2017.

4) In all cases, counter-affidavits have been filed by the Government and it is suffice to take into consideration the averments in the counter affidavit filed in W.P.No.30406 of 2017, as the same has been dealing with not only with respect to the Chairperson but also to the Members.

5) It is the contention of all the learned counsel appearing for the petitioners that in the absence of the Chairperson, the Selection Committee ought not to have conducted interviews and recommended the names for the post of Chairperson and the Members to the State Commission to the Government, as Section 18 of the Act specifically mandates that the Selection Committee shall consist of 3 persons and chaired by the Minister in-charge of the Department dealing with Children; that as the recommendations were made in violation of the mandatory procedure contained in the statute, the entire process is vitiated and as such, the appointments are liable to be set aside. It is further contended that the persons with high degree of qualifications are required to be appointed as the Chairperson, as specified in Section 17(2) of the Act, but the Chairperson, who has

been appointed, is only a practising advocate and he has not done any outstanding work for promoting the welfare of the children, which is a pre-requisite for him to be considered for appointment as a Chairperson. It is further contended that the person, who has been appointed as a Chairperson, is only an advocate and is being associated with the activities of the advocates and other sports organisations, which does not qualify him to be a man of eminence and attending certain meetings cannot be considered as having done an outstanding work for promoting the welfare of the children and that he is not qualified and fit to be appointed as a Chairperson and the recommendations were made by the two-Member Committee only on the whims and fancies of the Government and thus, the appointment of the Chairperson and the Members to the State Commission is liable to be set aside.

6) Further, it is submitted by the learned counsel for the petitioners that similarly, with respect to each of the Members, there is no material placed before this Court to rebut the specific allegation that the persons, who are appointed, are not all with eminence, ability, integrity, standing and experience in the fields mentioned in Section 17(2) (b) (i) to (vi) of the Act. Learned counsel for the petitioners also pointed out that the activities shall be in relation to children and their development and the functions that are required to be discharged by the State Commission, appointed under Section 17 of the Act, are quasi-judicial in nature and in the circumstances, only the persons who have fully satisfied the criteria laid down, can be appointed as Chairperson and Members of the State Commission, and in the present case on hand, none of the Members are qualified to be appointed, thus, their

appointments are liable to be set aside. By placing reliance on the judgment in **The Govt. of A.P. and Anr. Vs. Hanumanth Kali Vara Prasad Babu Chemicals (P) Ltd.**,¹ it is further submitted by the learned counsel for the petitioners that 'it is settled rule of interpretation of statutes that when power is given under a statute to do a certain thing, in a certain way, the thing must be done in that way or not at all.' They also placed reliance on judgment of the Supreme Court in **Union of India v Namit Sharma**².

7) Sri Sitaram Chaparla, learned counsel for the petitioner in W.P.No.29491 of 2017, in addition to reiterating the settled principles placing reliance on the judgment of the Single Judge of Gauhati High Court in **Smt. Runumi Gogoi v State of Assam and Ors.**,³ submits that the said judgment is squarely on the point and the same is rendered under the protection of the Act and further, while rebutting the contention in the counter affidavit that there being no descent from the Chairman and further majority Members (2 members) having recommended the respective candidates unanimously, the absence of Chairman in the meeting would not really matter. He submits that the question of considering the majority would arise only when all the three members participated in the meeting and in the absence of the Chairman, since the meeting has been conducted by only two members, the same is only hypothetical and does not merit consideration. The learned counsel further contends that the question of considering the quorum does not arise as the mandate in Section 18 of the Act is clear that the selection process has to be

¹ 1991 (1) ALT 472

² (2013) 10 Supreme Court Cases 359

³ Writ Petition (C) No.4555 of 2013 of Gauhati High Court

carried out by the Selection Committee and not by two individuals constituting the Committee.

8) Learned Advocate General (Telangana), Sri D. Prakash Reddy, while admitting that the Chairman of the Selection Committee could not be present on account of his ill-health and the selection process was carried out in the timeline, which has been fixed by the Supreme Court, in its order dated 11.07.2017, wherein four weeks time was contemplated to complete the entire process and such time would expire by 11.08.2017. He further submits that since the statute has not prescribed any minimum quorum for conducting the Selection Committee meeting, the absence of Chairman does not vitiate the proceedings and the selection process. The learned Advocate General places reliance on the judgment of the Supreme Court in **Shri Ishwar Chandra v Shri Satyanarain Sinha and Others**⁴ and that of the Kerala High Court in **Dr.G. Santhana Krishnan v Union of India & Ors.**,⁵ and submits that there is no mandatory requirement of three members being present in the process of selection and, at any rate, there being no descent from the Chairman, the recommendations made to the Government are in order and the selection and the appointment of the Chairperson and the Members of the State Commission does not warrant any interference by this Court. He would also submit that in the absence of any specific *mala fides* and favouritism being attributed to the Members of the Selection Committee in recommending the respective candidates, this Court normally does not examine the merits and demerits of each of the

⁴ (1972) 3 Supreme Court Cases 383

⁵ 1996 SCC Online Ker 264 : (1996) 2 KLJ 775

recommendations, as the Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, would only examine the fairness in the process and the decision-making rather than decision *per se*. At any rate, the learned Advocate General, while placing the record with the Court, submits that the Court may go through the record and examine the same.

9) Having considered the pleadings as well as the respective submission, it is clear that the entire controversy revolves round two issues:

1. Whether the absence of Chairman vitiates the recommendations of the Selection Committee? And
2. Whether the respective candidates can be said to have satisfied the criteria laid down in the facts pleaded and on examination of the material on record?

10) At the outset, we may examine the first contention, for which it may become necessary for this Court to make reference to the relevant provisions and the Rules.

SECTIONS (So far as relevant):

Section 2 (b): “child rights” includes the children’s rights adopted in the United Nations convention on the Rights of the Child on the 20th November, 1989 and ratified by the Government of India on the 11th December, 1992;

Section 2 (f): “prescribed” means prescribed by rules made under this Act;

Section 2 (g): “State Commission” means a State Commission for Protection of Child Rights constituted under Section 17.

Section 17 (1): A State Government may constitute a body to be known as the(name of the State) Commission for Protection of Child Rights to exercise the powers conferred upon and to perform the functions assigned to, a State Commission under this Chapter.

(2) The State Commission shall consist of the following Members, namely:-

- (a) a Chairperson who is a person of eminence and has done outstanding work for promoting the welfare of children; and
- (b) six Members, out of which at least two shall be women, from the following fields, to be appointed by the State-Government from amongst persons of eminence, ability, integrity, standing and experience in –
 - (i) education;
 - (ii) child health, care, welfare or child development;
 - (iii) juvenile justice or care of neglected or marginalised children or children with disabilities;
 - (iv) elimination of child labour or children in distress;
 - (v) child psychology or sociology; and
 - (vi) laws relating to children.

(3) The headquarter of the State Commission shall be at such place as the State Government may, by notification, specify.

Section 18: The State Government shall, by notification, appoint the Chairperson and other Members:

Provided that the Chairperson shall be appointed on the recommendation of a three Member Selection Committee constituted by the State Government under the Chairmanship of the Minister in-charge of the Department dealing with children.

RULES (So far as relevant):

Rule 3: Eligibility for Appointments as Chairperson and Members.

- (1) Any person who has at least ten years experience in the areas stated in sub-section (2) of section 17 of the Act may be appointed as Chairperson or Member of the State Commission.
- (2) No person having any past record of violation of human rights or child rights shall be eligible for appointment as Chairperson or Member of the State Commission.

- (3) No person having been convicted and sentenced for imprisonment of an offence which in the opinion of the State Government involves moral turpitude, shall be eligible for appointment as Chairperson or Member of the State Commission.
- (4) No person having been removed or dismissed from service of the Central Government or State Government or a body or corporation owned or controlled by the Central Government or a State Government shall be eligible for appointment as Chairperson or Member of the State Commission.
- (5) A person having held office with Commission as a Member or a Chairperson for two terms shall not be eligible to be appointed as a Chairperson or Member of the State Commission.

Rule 4: Selection Committee:

- (1) The Chairperson and the Members of the State Commission shall be appointed on the recommendation of a three Member Selection Committee constituted by the State Government under the Chairmanship of the Minister in charge of Child Development, nominee of the Chief Justice of the High Court of the State and Speaker of the State Legislature.
- (2) For the purposes of selection of the Chairperson and Members the State Government shall invite applications from qualified candidates from the public through an advertisement in at least in two leading national and vernacular dailies and the selection committee shall prepare a short list from the applications so received. The short listed candidates shall be selected on merit through an interview by the Selection Committee. Such selected candidates shall be recommended by the Selection Committee to the State Government for appointment.
- (3) The Selection Committee shall also prepare a wait list of two persons for each of the posts. The wait list shall be valid for three months.

11) In exercise of the powers conferred under Section 36 of the Act, the State Government also made Rules known as “Telangana

State Commission for Protection of Child Rights Rules, 2014".

Section 17 (2)(a) r/w Rule 3 mandates a person to be eligible to be appointed as a Chairperson or a Member shall have at least 10 years experience in the area specified in sub-section (2) of Section 17 of the Act i.e., in promoting the welfare of the children in the areas of education, child health, care, welfare or child development, juvenile justice or care of neglected or marginalized children or children with disabilities, elimination of child labour or children in distress, conversant with child psychology or sociology and laws relating to children. Though sub section (2) (a) of Section 17 of the Act specifies, a person to be appointed as a Chairperson should be a person of eminence and outstanding in promoting the welfare of the children, a conjoint reading of sub-section (2) (a) and 2(b) of Section 17 of the Act leave no manner of doubt that the areas mentioned in sub section 2 (b) (i) to (vi) of Section 17 of the Act are in relation to promoting the welfare of the children. The qualifications mentioned in Section 17 of the Act cannot be taken in a causal manner and in the process of selection of an individual, either to the post of Chairperson or to the post of Member, the Selection Committee has to ensure the best persons committed in promoting the welfare of the children. It is also needless to mention, the functions that are to be carried out by the Commission, either Central Commission or State Commission, which are specified in Sections 13 to 16 in Chapter III read with Rule 19 of the Rules, are onerous and require only persons of real calibre and commitment. In those circumstances, great responsibility rests upon the Selection Committee to ensure the

best of the persons are appointed as a Chairperson and the Members of the Commission.

12) In view of the above statutory framework and the functions entrusted in the Act and the Rule, in terms of Rule 4 (1) of the Rules, the Chairperson and Members of the State Commission shall be appointed on the recommendation of the three-Member Selection Committee constituted by the State Government under the Chairmanship of the Minister, in-charge of Department dealing with the Children, apart from the nominee of the Chief Justice of the High Court of the State and the Speaker of the State Legislature. From the file circulated by the learned Advocate General, a reference is made to G.O.Rt. No. 37 dated 29.01.2015, wherein the Government notified a Selection Committee consisting of Minister for WCD & SC to be the Chairperson and the Member Secretary of Telangana State Legal Services Authority as a Member and the Principal Secretary to the Government, Department for WCD & SC as a Member Convenor. It is to be noted here that constitution of the State Commission under Section 18 of the Act is prescribed under Rule 4 (1) of the Rules. Here the word 'prescribed' is defined under Section 2(f) of the Act as "*prescribed*" means '*prescribed by rules made under this Act*'. At the outset, the very constitution of the Selection Committee does not appear to be in conformity with Rule 4(1) of the Rules, as the said G.O.Rt.No.37 does not reveal any request having been made to the learned Chief Justice to nominate a person to be part of the Selection Committee. Likewise, there is no material on record evidencing the Speaker of the State Legislature nominating a person to be a Member of the Selection Committee. However, there being no

challenge in the present Writ Petitions, for disposal of the Writ Petitions, it is presumed that the Selection Committee constituted by the Government is entitled to proceed with the selection process.

13) The language employed in Section 18 of the Act makes it clear that mandates a recommendation is to be made by a three-Member Section Committee constituted by the State Government under the Chairmanship of Minister, in-charge of the Department dealing with the children. Likewise, Rule 4 (2) casts a burden on the Selection Committee to carry out the procedure of calling for applications, screening of the applications and shortlisting the candidates applied for, based on merit and thereafter select the candidates through interview by the Selection Committee. The use of the words, "selection to be done by the three-Member Selection Committee" in Section 18 of the Act does not leave any scope to allow consisting of two Members, therefore, the question of considering the quorum also does not arise. The Act specifically mandated that the selection to be done by a three-Member Selection Committee under the Chairmanship of Minister in-charge of the Department dealing with the Children. Statute not provided for invalidating a selection made by the two Member Committee, by itself, cannot validate an action or a proceeding, which has been carried out in contravention of the specified provisions in the Act and the Rules. Further, it may be noticed that there is no provision akin to Section 9 of the Act, wherein it is provided that 'no act or proceeding of the Commission shall be invalid merely by reason of any vacancy in or any defect in the constitution of, commission; or any defect in the appointment of a person as the

Chairperson or a Member; or any irregularity in the procedure of the Commission not affecting the merits of the case'. In the absence of any such provision, either in the Act or in the Rules, it cannot be construed that the Selection Committee consisting of two Members can make a recommendation and the Government can act on such recommendation. In those circumstances, the argument of the learned Advocate General is liable to be rejected in the light of the specific statutory provisions mandating a particular thing to be done in a particular manner, as otherwise, such action is liable to be declared as invalid. Further, the argument of the learned Advocate General that on account of the exigencies, wherein appointments are required to be made on or before 11.08.2017, as directed by the Supreme Court, the selection process has been carried out, cannot be a ground for violating the mandatory provision and the same shall not be justified as an act, which is otherwise not done in accordance with the procedure prescribed and hence the argument is liable to be rejected.

14) Keeping in view the object and purpose for which the Act has been enacted and keeping in view the specific qualifications, which are required to be fulfilled for a person to be eligible to be part of the State Commission, great care is required to be taken in appointing the Chairperson and the Members of the State Commission. The petitioners in W.P.Nos.30406, 32764 and 29491 of 2017 had specifically pleaded with respect to the eligibility or otherwise of the persons appointed. In the counter-affidavit filed by the Government, with respect to the individuals selected, the justification for their selection has been set out. As can be seen from the note file provided to the Court, the Director of Women

Development and Child Welfare Department, Telangana, Hyderabad, addressed a communication dated 31.07.2017, enclosing a list of 37 candidates, with a request to convene the meeting for selection of Chairperson. Therefore, by proceedings dated 04.08.2017, the intimation was issued to the Members of the Selection Committee that interviews would be held on 08.08.2017 at 10.30 a.m. onwards in the chambers of the Hon'ble Minister. The attendance sheet is available at Page No.459 and 461 (page No.460 not available in the file). At page No.465, the recommendations of the Selection Committee listed out three names. Except this recommendation, there is no material on record as to how and what comparative study was made by the two members of the Selection Committee to select the best among the 24 applicants, who attended the interview. Absolutely, there is no material whatsoever for selection of one candidate in preference to the other candidate. In other words, there appeared to be no objection for the assessment as such having been made in selecting the Chairperson. Similarly, intimation was issued to the Members of the Selection Committee that interviews for selection of Chairperson and Members would be held on 05.08.2017 at 2 p.m. onwards at Swarna Jayanthi Complex, Maithrivanam, Ameerpet, Hyderabad, and a list of 16 people were alleged to have been shortlisted on 05.05.2017 for the post of Members by the Selection Committee. While all the three members of the Selection Committee had appended their signatures, the Chairperson's signature was dated 06.05.2017 and the Member Secretary of TSLSA signature dated 05.05.2017. It may also be noted that though the recommendation of the Selection Committee was signed

by the two individuals, page No.401 of note file discloses that the selection process was undertaken by a panel consists of 4 members viz., Madhusudhan, Member Secretary, TSLSA, D Vinay Bhaskar, MLA, M. Jagadeeswar, Secretary to Government, WCD&SC and Smt. Vijiendira Boyi, Director for Women Development and Child Welfare Department. The above-mentioned facts do not indicate that since Chairman was not present, the selection process also was not conducted in the manner, which is required to be done, thereby, vitiating the very recommendations of the two-members Selection Committee even assuming for argument sake would be valid.

15) The judgment of the Supreme Court in **Shri Ishwar Chandra case** (4 supra) is distinguishable, as, in the case before the Court, the statute therein had not specified the quorum, unlike in the present case, wherein Section 18 of the Act clearly mandated that the selection is to be done by a three Member-Selection Committee. In those circumstances, there is also no requirement of dealing with the judgment of the Kerala High Court in **Dr.G.Santhana Krishnan case** (5 supra). It may also be mentioned that the judgment in **Smt.Runumi Gogoi case** (3 supra) cited by the learned counsel Sri Chaparla Seetaram has no application to the facts of the present case, as, in the case before the Gauhati High Court, as a matter fact, the Court found that there was no recommendation of the Selection Committee under Section 18 of the Act and the appointments were made on the dictates of the Chief Minister. The case turned on facts available before the Court therein.

16) In the light of the conclusion arrived at by the Court, the entire process of the selection is vitiated and it is not necessary for this court to give any finding with respect to the eligibility or otherwise of the candidates, who have been appointed as a Chairperson and Members of the State Commission. However, considering the heavy burden casts on the Selection Committee in the statute and the awed objects of the Commission, which are to be achieved, this Court cannot but emphasise that the persons with absolute commitment and with relevant experience of at least 10 years in the relevant field shall alone be considered for appointment of Chairperson and Members of the State Commission and the Selection Committee has to bestow its keen attention to the relative merits of the persons, who may seek to occupy the post of Chairperson and Members of the State Commission.

17) Accordingly, these Writ Petitions are allowed. There shall be no order as to costs.

18) Consequently, Miscellaneous Petitions, if any, pending in these writ petitions, shall stand closed.

CHALLA KODANDA RAM, J

Date:13.10.2017

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