

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (S) No.1462 of 2016

Ku. Chhaya Jadhav, D/o Shri D.B. Jadhav, Aged about 59 years, R/o Maatrichhaya, Tikrapara, Bilaspur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through its Secretary, Department of Women and Child Welfare, Ministry at Mahanadi Bhawan, New Raipur, P.S. Rakhi, Distt. Raipur (C.G.)
2. Collector/President, District Child Protection Committee, Bilaspur, Distt. Bilaspur (C.G.)
3. District Women and Child Welfare Officer / Secretary, District Child Protection Committee, Bilaspur, Distt. Bilaspur (C.G.)
4. Smt. Shamshad Gul Quraishi, appointed as Member, District Child Welfare Committee, Bilaspur, Distt. Bilaspur (C.G.)
5. Kantilal Sahu, appointed as Member, District Child Welfare Committee, Bilaspur, Distt. Bilaspur (C.G.)
6. Silas Madhukar Timothy, appointed as Member, District Child Welfare Committee, Bilaspur, Distt. Bilaspur (C.G.)
7. Dr. Niraj Kumar Khare, appointed as Member, District Child Welfare Committee, Bilaspur, Distt. Bilaspur (C.G.)

---- Respondents

ANDWrit Petition (S) No.1579 of 2016

1. Ashwini Kumar Tiwari, S/o Late Devi Prasad Tiwari, Aged about 50 years, R/o Civil Line, Gariyaband, Distt. Gariyaband (C.G.)
2. Smt. Arti Devangan, W/o Shri Bhomraj Devangan, Aged about 27 years, R/o Jidar Road, Mainpur, P.S. + Tahsil Mainpur, Distt. Gariyaband (C.G.)
3. Narottam Lal Sahu, S/o Late Shri Bisal Rai Sahu, Aged about 50 years. Vill. + P.O. + P.S. Chhura, Distt. Gariyaband (C.G.)
4. Smt. Purnima Tiwari, W/o Shri Ashwini Tiwari, Aged about 50 years, R/o Civil Line, Gariyaband, Distt. Gariyaband (C.G.)
5. Premlal Sinha, S/o Kriparam Sinha, Aged about 59 years, R/o Vill. + P.O. Baroda, Tahsil Rajim, Distt. Gariyaband (C.G.)

---- Petitioners

Versus

1. State of Chhattisgarh, through its Secretary, Department of Women and Child Welfare, Ministry at Mahanadi Bhawan, New Raipur, P.S. Rakhi, Distt. Raipur (C.G.)
2. Collector/President, District Child Protection Committee, Gariyaband, Distt. Gariyaband (C.G.)
3. District Women and Child Welfare Officer / Secretary, District Child Protection Committee, Gariyaband, Distt. Gariyaband (C.G.)
4. Smt. Shila Yadav, appointed as Member, District Child Welfare Committee, Gariyaband, Distt. Gariyaband (C.G.)

---- Respondents

For Petitioners: Mr. Rakesh Kumar Jha and Mr. Jai Prakash Shukla, Advocates.

For Respondents No.1 to 3 / State: -

Mr. Arun Sao, Deputy Advocate General.

For Respondents No.5 to 7 in W.P.(S)No.1462/2016: -

Mr. Umesh Pandey, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

31/01/2018

1. Since common question of law and fact is involved in both the writ petitions, they are heard together and are being decided by this common order.
2. The facts of the case as projected in W.P.(S)No.1462/2016 are taken for deciding the lis between the parties.
3. The petitioner was initially appointed as Member of Child Welfare Committee, Bilaspur by order dated 24-4-2015 for a period of three years under the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short, 'the Act of 2000') and the Juvenile Justice (Care and Protection of Children) Rules, 2007 (for short, 'the Rules of 2007'). Immediately thereafter, an advertisement was issued for fresh appointment on 16-9-2015 inviting applications up to 9-10-2015 for

the posts of Chairman and Members of the Child Welfare Committee for which the petitioner also applied and interview for the said posts was held on 12-1-2016 in which the petitioner was called for verification of documents to which the petitioner appeared and her documents were verified. Thereafter, the order of appointment was issued on 20-4-2016 and respondents No.4 to 7 were appointed as Members of the Child Welfare Committee and the petitioner was not appointed. Questioning her non-appointment, the petitioner has filed this petition.

4. Mr. Rakesh Kumar Jha, learned counsel appearing for the petitioners, would make two fold submissions, firstly that the applications were invited for the post of Member of the Child Welfare Committee under the Act of 2000 as amended by the Juvenile Justice (Care and Protection of Children) Amendment Act, 2011 and the Rules of 2007, but appointment has been made under Section 27(1) of the Juvenile Justice (Care and Protection of Children) Act, 2015 and as such, the rules of game cannot be changed in the middle of selection process, therefore, the appointment of private respondents is unsustainable and bad in law. Secondly, the petitioners are more meritorious than the private respondents, the Committee has failed to take into account that the petitioners are more meritorious and having experience for appointment as Members of the Child Welfare Committee and, therefore, they ought to have been appointed.
5. Mr. Arun Sao, learned State counsel, would submit that though applications were invited from eligible candidates under the Act of 2000 and the Rules of 200, but in the meanwhile, with effect from 31-12-2015, the new Act i.e. the Juvenile Justice (Care and Protection of

Children) Act, 2015 (for short, 'the Act of 2015') came into force and by virtue of Section 111 of the Act of 2015, the proceeding initiated for appointment under the old Act of 2000 is saved and held to be under the Act of 2015. He would further submit that the petitioners have participated in the appointment process without protest and demur and therefore for the reason of their non-selection, they cannot turn around and question their non-selection on that ground. He would also submit that comparative merit has been examined by the competent committee constituted by the State Government and the private respondents were found suitable and qualified to be appointed as Members of the Child Welfare Committee and therefore that cannot be challenged by the petitioners.

6. Mr. Umesh Pandey, learned counsel appearing for respondents No.5 to 7 in W.P.(S)No.1462/2016, would also support the impugned orders.
7. I have heard learned counsel for the parties and considered their rival submissions and also went through the records with utmost circumspection.
8. It is not in dispute that the process of appointment of the Members of the Child Welfare Committee was initiated under the Act of 2000 and the Rules of 2007 made thereunder, but in the meanwhile, the Act of 2015 came into force with effect from 31-12-2015. Section 111 of the Act of 2015 provides as under: -

“111. Repeal and savings.—(1) The Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Act shall be deemed to have

been done or taken under the corresponding provisions of this Act.”

9. Sub-section (2) of Section 111 of the Act of 2015, which is an overriding provision, clearly says that notwithstanding the repeal of the Act of 2000, anything done or any action taken under the said Act shall be deemed to have been done or taken under the corresponding provisions of the Act of 2015. Under the old provision, the Child Welfare Committee was to be constituted under Section 19 which provides for Child Welfare Committee, whereas under the new Act of 2015, Section 27 confers power upon the State Government to establish Child Welfare Committee. Under sub-section (1) of Section 27 of the Act of 2015, the State Governments have been empowered to constitute one or more Child Welfare Committees for exercising the powers and to discharge the duties conferred on such Committees in relation to children in need of care and protection under the Act. A careful comparison of both the provisions enumerated under the old Act of 2000 and the new Act of 2015 would show that as such there is no material change in the procedure for appointment of Members and Chairman of the Child Welfare Committee. Apart from this, the procedure initiated for appointment under the Act of 2000 is already saved by sub-section (2) of Section 111 of the Act of 2015, therefore, the proceeding for appointment of Member initiated under the Act of 2000 is saved by Section 111(2) of the Act of 2015 in which also the petitioners have participated without demur and protest and finding no berth have decided to file writ petitions taking the ground that the rules of game cannot be changed in the meanwhile which deserves to be rejected making the proceeding valid and to be treated to be the proceeding under the Act of 2015 by virtue of sub-section (2) of

Section 111 of the Act of 2015. However, the petitioners have not suffered any prejudice and they have willingly participated in the proceeding initiated for appointment of Member of the Child Welfare Committee without raising any such objection before the selection committee. Therefore, the first argument of learned counsel for the petitioners deserves to be rejected and is accordingly rejected.

10. This would lead me to the next submission of learned counsel for the petitioners that the petitioners are more competent and experienced than the private respondents, therefore, the selection committee ought to have appointed them. This point is no longer *res integra*.

11. The Supreme Court in the matter of **Madan Lal and others v. State of J & K and others**¹ has clearly held that this court cannot sit as a court of appeal and try to reassess the relative merits of the candidates concerned who had been assessed at the oral interview and observed as under: -

“10. Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful. It is also to be kept in view that in this petition we cannot sit as a court of appeal and try to reassess the relative merits of the candidates concerned who had been assessed at the oral interview nor can the petitioners successfully urge before us that they were given less marks though their performance was better. It is for the Interview Committee which amongst others consisted of a sitting High Court Judge to judge the relative merits of the candidates who were orally interviewed, in the light of the guidelines laid down by the relevant rules governing such interviews. Therefore, the assessment on merits as made by such

1 (1995) 3 SCC 486

an expert committee cannot be brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of an appellate body and we are certainly not acting as a court of appeal over the assessment made by such an expert committee.”

12. The aforesaid principle of law pronounced by Their Lordships of the Supreme Court is clearly applicable to the facts of the present case. The relative merits of the petitioners and the private respondents cannot be reassessed by this Court as an appellate authority in the jurisdiction under Article 226 of the Constitution of India.
13. Learned counsel for the petitioners has placed reliance upon the decisions of the Supreme Court in the matters of **Maharashtra State Road Transport Corpn. and others v. Rajendra Bhimrao Mandve and others**² and **K. Manjusree v. State of Andhra Pradesh and another**³. These two cases are not applicable to the facts of the present case, as in the instant case, the Act itself permits that the proceeding initiated under the Act of 2000 will be deemed to be the proceeding initiated under the Act of 2015 and saves the proceeding initiated under the old Act of 2000.
14. As a fallout and consequence of the aforesaid discussion, both the writ petitions are liable to be dismissed and are hereby dismissed accordingly leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

2 (2001) 10 SCC 51

3 (2008) 3 SCC 512