

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.**

WRIT PETITION NO. 11205 OF 2016

Balvikas Sansthachalak Va
Karmachari Sanghatna, Maharashtra State,
Tuljabhavani Nagar, New Railway Station Road,
Latur, through its President
Shivaji S/o Wamanrao Joshi,
Aged : 50 years, Occu. Agril.,
R/o. Latur, Tq. & Dist. Latur.

Petitioner...

Versus

1. The State of Maharashtra,
through its Secretary to the
Government of Maharashtra in
Women & Child Development Department,
Maharashtra State, Mantralaya,
Mumbai-32.
2. The Commissioner,
Women & Child Development,
Maharashtra State, Pune.

Respondents...

.....
Shri. N. P. Patil Jamalpurkar, Advocate for the petitioner
Shri. S. S. Dande, AGP for respondents No. 1 and 2
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**CORAM : R. M. BORDE &
A. M. DHAVALA, JJ.**

DATE OF RESERVING THE JUDGMENT : 06.06.2018
DATE OF PRONOUNCING THE JUDGMENT : 29.06.2018

JUDGMENT [PER A. M. DHAVALA, J.] :-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties and taken up for final disposal at the stage of admission.

2. The petitioner-a non-government organization dealing with care and protection of children, challenges the circular of Commissioner of Women and Child Development, Maharashtra State, Pune (R-2) dt. 01.06.2016 as illegal, arbitrary, without authority of law and violative of Articles 15, 21, 39, 39-A, 45, 47 and 51-A(k) of the Constitution of India and the Juvenile Justice (Care & Protection of Children) Act, 2015 (herein after referred to as “Juvenile Justice Act”) and seeks quashing of the same.

3. By the impugned circular, respondent No. 2 has communicated to all Child Welfare Committees (in short “CWC”) certain guidelines regarding admission of juveniles in need of care and protection and directions for preventing misuse of the said provision by children having one or two parents capable of taking care of the children. The grievance of the petitioner is based on the interpretation of said circular and order dt. 20.06.2016 passed by CWC, Parbhani, whereby the admissions of juveniles having one or two parents have been cancelled with direction to deliver custody of such children/juveniles to their parents and producing only orphans for admissions.

4. Shri. N. P. Patil–Jamalpurkar, learned counsel for the petitioner argued that the impugned directions by CWC

dt. 20.06.2016 are based on the circular of respondent No. 2 dt. 01.06.2016 and both are contrary to the provisions of Section 2(14) of Juvenile Justice Act, 2015 in general and sub-clauses 4 and 5 thereof in particular. He argued that, the children having parents also need care and protection if their parents are unfit to take their care or the parents themselves are subjecting their children to exploitation, abuse or neglect. Such blanket order taking away all children except orphans from the purview of care and protection by CWC is certainly violative of the constitution as well as the provisions of Juvenile Justice Act.

5. Per contra, Shri. S. S. Dande, learned Assistant Government Pleader for the respondents, argued that circular dt. 01.06.2016 was issued by respondent No. 2 in view of the abuse of provisions of Juvenile Justice Act by several persons. Those persons though capable of taking care of their children, were sending their children in special homes only for their own convenience and such children were permitted to go to the house of their parents during holidays and vacations. There were 69000 children under care and protection of CWC. After this circular, the figure was reduced to 19000. He pointed out that there is nothing wrong with the circular dt.01.06.2016 and admitted that the order passed by CWC dt. 20.06.2016 was incorrect. When it was brought to the notice of

respondent No. 2, it has issued fresh letter dt. 21.07.2016 and the CWCs are informed that the provisions of Section 2(14) for keeping the children in need of care and protection in the special homes should be followed and all children falling under the categories shown in the said section should be admitted in CWC.

6. We have carefully considered the arguments of the learned advocates. The points for our consideration are; whether the circular dt.01.06.2016 issued by respondent No. 2 is violative of the provisions of Constitution & the Juvenile Justice Act and whether it is required to be quashed and set aside.

7. There is no debate that, as per article 39 of the Constitution, the State is bound to take steps for giving opportunities and facilities to develop children of tender age belonging to weaker section in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation, moral and material abandonment. It is common knowledge that, children having no parents (orphans) have no means of livelihood and are always likely to be exploited or abused. Though children having one or two parents normally have better care and protection from their parents, sometimes even they are exploited or abused by their parents and they also need care and protection from the State.

8. The provisions of Juvenile Justice Act were introduced in 1986 and those were amended in 2000 and again in 2015. The Juvenile Justice Act, 2015 makes provisions of juveniles in two parts. First part deals with juvenile in conflict with the law and second with the children in need of care and protection. The act makes elaborate provisions for preventing the exploitation of the children and the abuse of the children and for their orderly development. Section 2(14) defines child in need of care and protection as follows (the sub-clauses which are relevant for the purpose of considering the arguments advanced in this case are shown in bold letters).

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

(ii) who is found working in contravention of labour laws for the time being in force or is found begging, or living on the street; or

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

(a) has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child; or

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

(c) has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or

(iv) who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or **having parents or guardians unfit to take care**, if found so by the Board or the Committee; or

(v) **who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or**

(vi) who does not have parents and no one is willing to take care of, or whose parents have abandoned or surrendered him; or

(vii) who is missing or run away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed; or

(viii) who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or 7

(ix) who is found vulnerable and is likely to be inducted into drug abuse or trafficking; or

(x) who is being or is likely to be abused for unconscionable gains; or

(xi) who is victim of or affected by any armed conflict, civil unrest or natural calamity; or

(xii) who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnisation of such marriage."

9. Section 31 of the Juvenile Justice Act requires that, any child in need of care and protection shall be produced before the Committee by various authorities named therein. Section 35 authorizes parents or guardian, who for physical, emotional or social

factors beyond their control, wishes to surrender their child, shall produce the child before the Committee. Sub-rule (3) of Section 35 provides for period of two months to the parents for reconsideration of their decision. Section 36 authorizes CWC to hold inquiry and thereafter pass order to send children to Children's Home or a fit facility or fit person. Section 37 provides for various orders which should be passed by the CWC and Section 37(1)(b) authorizes CWC to restore the child to parents or guardian or family with or without supervision of CWC.

10. On considering all these provisions, it is abundantly clear that the consideration for providing care and protection in the Children's Home or by any other mode is the requirement of care and protection of the child. It is immaterial whether the child is orphan or child is having one or two parents. The children having one or two parents if neglected, exploited or abused either by the parents or by somebody else, they are also entitled to the protection under Juvenile Justice Act. A bare reading of the statutory provisions, International Conventions & Treaties as well as the available jurisprudence manifests the statutory intendment that such child (i.e. a child found begging is a street child, a working child or a child being or likely to be grossly abused, tortured, or exploited for the purpose of sexual abuse or illegal acts as well as a child who is found vulnerable and

likely to be inducted into drug abuse or trafficking) is not to be treated as an offender but is only to be treated as a victim hence as a child in need of care and protection' within the meaning of the expression under the Juvenile Justice Act.

11. Having considered the legal provisions, we have no doubt that the order passed by CWC, Parbhani, dt. 20.06.2016, whereby the admissions of all children earlier admitted in Children's Home were cancelled in exercise of powers under Section 29 and direction was issued to hand over custody of juveniles from Children's Home to the single or double parents and to produce the only orphans before the Committee for appropriate orders of admission in Children's Home, is erroneous and contrary to law but the same is not challenged in this petition.

12. Though this order is incorrect and is based on the circular issued by respondent No. 2 dt. 01.06.2016, on carefully going through the circular dt. 01.06.2016, we do not find that the same is contrary to the provisions of Juvenile Justice Act or to any provisions of the Constitution. It is apparent that, the circular has been issued in view of the fact that many poor persons due to their poverty were abusing the provisions of Juvenile Justice Act and sending their children to Children's Home though they were fit to take care and

protection of such children. The circular shows that, these children were going to their parents during Diwali and Summer vacation. Shri. Dande, learned Assistant Government Pleader referred to Section 98, which provides for grant of leave or leave of absence to a child placed in an institution by the Committee or Board on special occasions like examinations, marriage of relatives, death of kith or kin or accident or serious illness of parent or any emergency of like nature, for a period generally not exceeding seven days in one instance, excluding the time taken in journey. The circular extensively discuss the provisions of Juvenile Justice Act, 2015 in general and Section 2(14) in particular. The circular points out that CWCs were not following the proper procedure before passing the order of admission of the children to the Children's Home. The circular refers to all the relevant provisions of Juvenile Justice Act and directs that the CWCs to ascertain the need of care and protection to the children before admitting the children in the Children's Home.

13. Clause No. (vii) does state that, as per Section 32(iii), there should be inquiry report that the children has no family or family support and then only the children should be admitted in Children's Home or handed over to institute or to the fit person, but, there are

various clauses disclosing that children having parents can be also admitted in the Children's Home. Clause (xii) and (xiii) explains the cases in which the children are having parents can be admitted to the Children's Home. There is mention that, only because the parents having poor financial condition or that there are no education facilities in the village, the children should not be admitted in the Children's Home. It appears to be contrary to the provisions of Section 35 which authorizes that, a parent or guardian, who for physical, emotional or social factors beyond their control, wishes to surrender their child, shall produce the child before the Committee. In extreme case, poverty of parents can be a ground for categorizing the children having need of care and protection. The circular shows that, some workers shift the place of residence on account of earning their livelihood to some different stations. Such children are generally not in need of care and protection and therefore such children should not be admitted.

14. On overall consideration of the circular dt. 01.06.2016, we find that, there was no intention to direct the CWCs that they should not admit the children having one or two parents in any case. The circular will have to be read as a whole and one or two sentences cannot be torn out of the context. The object of the circular is to

direct the CWCs to admit only deserving children who are in need of care and protection and such admissions should be in consonance with the provisions of Juvenile Justice Act. This circular has been misinterpreted by the CWC, Parbhani while passing the order dt.20.06.2016. The learned Assistant Government Pleader has produced before us fresh letter issued by Commissioner of Women and Child Development, Maharashtra State, Pune (R-2) to all CWCs on 21.07.2016, which is marked as 'Article X'. It only lays down that, all children falling in the definition of child in need and care and protection as per Section 2(14) should be admitted in the Children's Home. It has clarified that, there was a misconception that only orphans would be kept in Children's Home and would be admitted hereinafter in the Children's Home. We do not find that the circular is violative of provisions of Constitution or the provisions of Juvenile Justice Act. We clarify that, clause 7 directing that the children having no family or no support should only be admitted in Children's Home or handed over to fit person or institution and sentence in clause 12 that children cannot be admitted only on the ground that their parents are financially poor or there is no facility of school available in the village have to be read in the context of other provisions cited and in the light of subsequent letter dt. 21.07.2018 (Article X).

15. Indeed, the Children's Home cannot be a Lodging Boarding or a Hostel free of charge. The students who are not in need of care and protection cannot be admitted in Children's Home only for the convenience of the parents. If the parents are unfit to take care of their children and the children are covered by any provisions of Juvenile Justice Act, then only such children can be admitted in the Children's Home. It is seen that, many children are admitted in the Children's Home only for the sake of saving money for their residence and education even when their parents were not unfit. Such children were residing in Children's Home like a free lodging boarding or a free hostel and were attending their houses whenever the schools were closed during Diwali and Summer vacation. It is clear misuse of provisions of the Juvenile Justice Act, which was criticized and the directions were issued by the impugned circular to stop such misuse.

16. With this clarification, we find that the circular does not deserve to be quashed.

17. In the result, the writ petition is dismissed. Rule is discharged. No order as to costs.

[A. M. DHAVALA]
JUDGE

[R. M. BORDE]
JUDGE