

psv

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4216 OF 2015**

The Child Welfare Committee, Pune & Anr.	...Petitioners
Vs.	
The State of Maharashtra & Ors.	...Respondents

Mr.V.S. Talkute for Petitioners.
Ms.Kavita Solunke AGP for Respondent Nos.1 and 3.

**CORAM : NARESH H. PATIL AND
G.S. KULKARNI, JJ.**

DATE : 24th JULY 2018

P.C.:

The learned Counsel seeks leave to delete the name of petitioner No.1. Leave granted.

2. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

3. The petitioner No.2 states that she was appointed as a Chairman of the Child Welfare Committee, Pune. A complaint came to be lodged by respondent No.5 on 5th February 2014 before the respondent No.2 stating therein that her three children were staying in respondent No.4/institution since 23rd May 2013. It was alleged that her 8 years old daughter was sexually exploited by one 14 years old boy on 26th November 2013 in the premises of respondent No.4. A similar incident

occurred during Diwali days. On 28th November 2013, the complainant was informed by her daughter about the incident. Thereafter the incident was informed to the petitioner No.2 and one Smt. Meshram. They visited Balgriha. It is alleged that they did not take cognizance of the incident so as to get the victim admitted to the hospital. It is alleged that they were enjoying the hospitality provided by respondent No.4. Daughter of the complainant was admitted in hospital. The medical report stated that she was sexually exploited. FIR was registered by police and the issue was taken up by the Maharashtra State Commission for Protection of Child Rights. By an order dated 31st December 2014, the Commission passed orders including order directing action against the petitioner. Clauses (II) and (III) of the order read as under:-

“(II) Action, should be initiated against trustees of Balgram for violation of clause 16 of Juvenile Justice (care & protection of children) Rule 2007 as well as clause 15(A)(3) of Maharashtra Juvenile Justice (Care & Protection of Children) Amendment Rules 2002 & Amendment Rules 2011 and also against the Chairman and Members of Child Welfare Committee and District Women & Child Development Officer for not taking appropriate corrective step in this regard.

(III) Action should be initiated under Section 15(1) of Commission for Protection of Child Rights Act, 2005 against concern members of Child Welfare Committee and District Child Development Officer and trustees.”

4. This petition is directed against the order passed by the Commission as stated above.

5. The learned Counsel appearing for the petitioner submits that the petitioner at the relevant time was a practicing Advocate. She was appointed for a specific tenure. She is no more attached to the Committee in any capacity. The main grievance of the petitioner before issuing direction by the Commission is that the petitioner was not heard which has caused her a serious injustice and the same will have serious consequences on the life and career of the petitioner. The petitioner therefore filed this petition in the year 2015.

6. On 23rd April 2015, Division Bench of this Court passed following order:-

- “1. Heard the learned counsel for the petitioners. Issue notice to the respondent Nos.1,3,4 and 5 returnable on 22nd June 2015. Learned AGP waives service for respondent Nos.1 and 3.
2. By way of ad-interim relief, we direct that no action shall be taken as against the petitioners on the basis of the impugned order passed by the second respondent. In addition to service of notice through Court, the Advocate for the petitioners to serve private notice to the respondent No.5. If proper affidavit of service is not filed within a period of three weeks from today, ad-interim relief shall stand vacated without further reference to the Court.”

7. It is submitted by the learned Counsel for the petitioner that ad-interim relief is still continued and the petitioner is protected so far.

8. Respondent Nos.1 and 3 filed affidavit in reply through District Women and Child Development Officer, Pune. We also find affidavit in reply filed on behalf of respondent No.2 through Sangeeta Srivastava.

Paragraph 19 of the said reply reads thus:-

“19. With respect to para E & F of the Ground I say that this respondent has recorded the reason in the recommendation dated 10th October, 2011 and 31st December, 2014, Paras 3 and 4 of the order dated 31st December, 2014 cover the issue regarding the act of Commission and omission committed by the petitioner. I further say that as in this case, due to act of omission committed by the petitioner and others, this incident took place and therefore, the Commission has recommended to take action against section 15(1) of C.R.C. Act, against the petitioner, District Women and Child Development Officer and Trustee of S.O.S. Balgram. I also say that if petitioner would have applied the statutory power as prescribed under the law, then this incident could have been avoided. This incident took place since both boys and girls were permitted to be kept in the same house. Therefore, it is proved that petitioner failed to perform their duty, and due to this the rights of the child have been violated. Hence, Commission has recommended to initiate an action under section 15(1) of the Commissions for Protection of Child Rights Act against the petitioner and others.”

9. The learned AGP submits that necessary steps would be taken to implement the order passed by the Commission by the State in accordance with law.

10. We have perused the record placed before us. In view of the consequences which the petitioner would face on the implementation of

the order passed by the Commission, it is submitted that principles of natural justice ought to have been followed in proper spirit by the Commission. Paragraph 7 of the impugned order passed by the Commission states as under:-

“7. In view of foregoing paras, relevant legal provisions, documents, submission and answers of the questions as raised on the basis of the contentions, the Commission's observations is as under :

I) Permission given in favour of S.O.S., Balgram, Pune to run children home should be withdrawn if not done. However possibility may be explored to make alternative administrative arrangement aiming welfare of children for remedial action.

II) Action, should be initiated against trustees of Balgram for violation of clause 16 of Juvenile Justice (care & protection of children) Rule 2007 as well as clause 15(A)(3) of Maharashtra Juvenile Justice (Care & Protection of Children) Amendment Rules 2002 & Amendment Rules 2011 and also against the Chairman and Members of Child Welfare Committee and District Women & Child Development Officer for not taking appropriate corrective step in this regard.

III) Action should be initiated under Section 15(1) of Commission for Protection of Child Rights Act, 2005 against concern members of Child Welfare Committee and District Child Development Officer and trustees.

IV) Compensation of Rs.50,000 is being awarded to victim under the Section 15(3) of Commission for protection of Child Rights Act, 2005 as interim relief. The amount shall be paid by trustee of S.O.S. Balgram. ”

11. After considering the record and the submissions advanced, we find that an appropriate opportunity ought to have been awarded to the petitioner. Principles of natural justice are required to be adhered to. In

case such an opportunity is provided, the petitioner would be in a position to submit her explanation before the Commission. Such exercise would also help the Commission to reach just and proper conclusion. It is submitted that the petitioner could not get such opportunity.

12. In view of the aforesaid reasons and the observations, we quash and set aside the following directions issued in the clauses (II) and (III) of the impugned order passed by the Secretary, Maharashtra State Commission for Protection of Child Rights:-

“II) and also against the Chairman and Members of Child Welfare Committee and District Women & Child Development Officer for not taking appropriate corrective step in this regard.

III) Action should be initiated under Section 15(1) of Commission for Protection of Child Rights Act, 2005 against concern members of Child Welfare Committee and District Child Development Officer

13. In the facts, the matter stands remanded back to the Commission. The petitioner shall appear before the Commission on 20th August 2018. On petitioner's appearing, the Commission shall commence the necessary proceedings in respect of the subject matter and complete the same within three months from 20th August 2018.

14. The petitioner undertakes to co-operate with the Commission. In case the petitioner fails to co-operate with the Commission, then the

Commission would be entitled to proceed further ex-parte on available records. We do not express any opinion on merits of the case.

15. Writ petition is allowed in the above terms.

16. Registry to forward a copy of the order to the Commission by fastest mode of communication.

[G.S. KULKARNI, J.]

[NARESH H. PATIL, J.]