

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 28.11.2018

1. CRWP-352-2018 (O&M)

Radhika and another

...Petitioners

Versus

State of Haryana and others

...Respondents

2. CRWP-393-2018 (O&M)

Tikali

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Wazir Singh, Advocate
for the petitioners (in CRWP-352-2018).

Mr. J.S. Dahiya, Advocate
for the petitioner (in CRWP-393-2018).

Mr. Naveen Sheoran, DAG, Haryana.

Mr. S.S. Narula, Advocate (amicus curiae).

ARVIND SINGH SANGWAN, J.

This order shall dispose of abovementioned two criminal writ petitions praying for issuance of a writ in the nature of habeas corpus directing the official respondents to release detainee Radhika daughter of

Amarjeet Singh-petitioner No.2, Muskan and Rubee, from the illegal and wrongful custody of respondent No.2 Bal Gram, Rai, Sonipat.

On 23.04.2018, the District Judge, Sonipat was directed to inspect the Bal Gram, Rai and submit the report. Thereafter, on 08.05.2018, noticing the fact that petitioner No.1 Radhika is not interested in going to Bal Gram, Rai, she was released and directed to stay in Nari Niketan, Sector-26, Chandigarh. Thereafter, on 11.05.2018, the following order was passed: -

“Admittedly, petitioner No.1 has completed 18 years of age as her date of birth is 01.02.1999 as reflected in the Aadhar card as well as Secondary Examination Certificate issued by the Board of School Education Haryana.

As per provisions of Juvenile Justice (Care and Protection of Children) Act, 2015 and the guidelines, the child on completion of 18 years of age cannot be kept against his/her wish.

In the present case, petitioner No.1 has completed 19 years of age but it has not been shown from the record as to what formalities were required to be completed and what formalities have been completed. Simply it has been said that the matter is to be considered by the Committee but neither the procedure has been shown nor anything is there on record that the case of petitioner No.1 was considered by any Committee or authority. Simply by saying that interest of the child is to be taken into consideration but inspite of the fact that she has completed 18 years of age, she has not been allowed to leave

the place only on the ground that it was no recommendations by the Committee. From perusal of reply on record, it appears that neither the provisions have been followed nor anything relevant has been mentioned.

Mr. S.S. Narula, learned Amicus Curiae submits that as per provisions of Section 25 Sub Rule (4), the Probation Officer or the Child Welfare Officer or Case Worker or social worker, is to prepare a post release plan and the same is to be submitted to the Board or the Committee, two months before the child is due to leave the Child Care Institution, recommending after care for such child, as per the needs of the child but it appears that no such proceedings have been initiated.

However, efforts are being made by learned State counsel to satisfy the Court on instructions from Ms. Anita (Coordinator) Bal Gram Rai, Sonipat, Ms. Sunaina, CWC Member Sonipat and Mr. Hari Dass Shastri, Member C.W.C. Panipat on the ground that the petitioner no.1 was transferred to this Ashram when she was already more than 18 years of age. The prescribed procedure should have been followed even by the Ashram, where earlier, she was staying but neither that procedure has been followed by the earlier institution nor by the present one. Even it should have been completed at the time of transfer to the present Ashram.

Accordingly, respondent No.1-Secretary, Women and

Child Development Department, Haryana, is directed to file a specific affidavit by taking into consideration the observations made in the order and also to file status report explaining therein as to why the initiative was not taken on completion of 18 years of age and also to mention therein as to how many children are still there in all such institutions being run by the State Government and in the Ashram in spite of completing the age of 18 years. Respondent no.1 is also directed to ensure the relevant provisions of the Act and the guidelines are being followed by other institutions running in different districts as well in the State of Haryana.

Petitioner no.1 does not want to go to Nari Niketan but she is interested in staying with Amarjeet Singh-petitioner No.2 and his wife, namely, Birmati and submits that there is no danger to her life and security. Both are also present in the Court. Petitioner no.2 as well as his wife will submit their affidavits mentioning therein that they are ready to abide by all terms and conditions to be imposed by this Court. They have also undertaken to take care of petitioner No.1 and to produce her, in case, she is required by this Court during pendency of the proceedings.

Adjourned to 25.05.2018.

The Incharge, Nari Niketan, Sector 26, Chandigarh is directed to release petitioner No.1, namely, Radhika and be

allowed to accompany petitioner No.2 and his wife.

*Meanwhile, the Child Welfare Committee, Sonipat is directed to consider the claim of girls, namely, Muskan and Rubee, who are detenues in **CRWP No.393 of 2018**. The claim of alleged detenues be considered by the Committee within a period of three days from the date of receipt of certified copy of the order.*

It is also directed that the Committee shall consider and decide their claim. However, in case, it is found that they are more than 18 years of age, then after completing all necessary formalities, they be released.

Respondent no.1 is directed to be present in the Court on the next date of hearing and the compliance report by way of affidavit be filed before this Court on or before the date fixed.”

Learned State counsel, on the basis of status report filed by Principal Secretary, Women and Child Development Department, Haryana, in which it is stated that vide agenda item No.10 of the meeting of Standing Committee held on 03.07.2009, a decision was taken regarding orphan girls being maintained at Bal Gram, Rai (Sonapat) and thereafter, Juvenile Justice (Care & Protection of Children), Act, 2015 and Juvenile Justice (Care & Protection of Children) Model Rules, 2016 are notified by the Ministry of Women and Child Development and the same are being implemented by all the States throughout the country and therefore, there is no requirement for framing a special policy at the State level and the same will be adopted by the State of Haryana, following the due procedure.

Learned State counsel, on instructions from Smt. Rajni Pasricha, Joint Director, Women and Child Welfare Department, Haryana, has stated that the aforesaid Act and Rules are being followed throughout the State of Haryana and in future, the same will be followed.

In view of the above, learned counsel for the petitioners submit that these petitions be rendered as infructuous at this stage with liberty to the petitioners to file the fresh petition(s) in case any further clarification or implementation of the Act and Rules is required. However, Mr. S.S. Narula, Advocate, who is appointed as Amicus Curiae by this Court, is granted liberty to file fresh petition, if so required.

Disposed of, accordingly.

[ARVIND SINGH SANGWAN]
JUDGE

28.11.2018
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No