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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 7440/2018

SHREEPARNA SENGUPTA AND ANR. Petitioners

Through: Mr Tarique Siddiqui, Mr Rakshan
Ahmed and Ms Reetika Gupta,
Advocates.

versus

CHILD WELFARE COMMITTEE AND ORS. Respondents

Through: Ms Hetu Arora Sethi, ASC for R-1 &
2.
Mr Chitradeep Sengupta/R-3 in
person.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **10.09.2018**

1. The petitioner no.2 has filed the present petition (on her behalf as well as on behalf of her minor daughter – petitioner no.1) impugning the orders dated 28.02.2018 and 14.06.2018 passed by the Child Welfare Committee (CWC) under Section 27(9) of the Juvenile Justice Act, 2015 (hereafter ‘the Act’).

2. By the aforesaid order dated 28.02.2018, the CWC was of the view that opinion of the medical or psychological experts are paramount and the child in question (daughter of petitioner no.2 and respondent no.3) was required to be evaluated psychologically through appropriate therapy to determine the stress, depression level and any bad tutoring or poisoning of mind to alienate the child from other parent.

3. Pursuant to the aforesaid direction, the child in question (petitioner no.1- hereafter ‘the Child’) was produced before the doctors at All India Institute of Medical Sciences (AIIMS) and the first counselling session was completed on 12.06.2018. The next counselling session was fixed on 21.07.2018 and CWC directed that the child be produced for the said session. Further, petitioner no.2 and respondent no.3 were also directed to be present on that occasion.

4. The proceedings before the CWC were commenced at the instance of respondent no.3, who is the father of the child. It is relevant to note that there is a matrimonial dispute pending between petitioner no.2 and respondent no.3 and the Child is in the custody of petitioner no.2. It is also not disputed that respondent no.3 has filed an application for seeking visitation rights to meet his daughter (the Child) and the said application is pending before the Family Court.

5. It is in the aforesaid context that respondent no.3 had filed the application with the CWC asserting that depriving the Child of the rights to interact with her father (respondent no.3) would amount to violation of the child’s rights. It is in this context that the matter was taken up by CWC.

6. In the first instance, this Court is not persuaded to accept that the Child is one in need of care and protection.

7. Section 2(14) of the Act defines the expression “child in need of care and protection” as under:-

“14. “child in need of care and protection” means a child—

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

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;”

8. In the present case, the Child is studying in a well-known school in Delhi. It is apparent from her certificate of merit issued by the said school that she is an outstanding student and she also participates in various extracurricular activities. There is no material to indicate that the Child is at a risk of abuse by her mother (petitioner no.2). There is also no material to indicate that petitioner no.2 is unfit to take care of the Child. On the contrary, the fact that the Child is doing well in academics as well as extra circular activities indicates otherwise. There is also no reason to suspect that the Child is one that in requirement of care or protection.

9. Nonetheless, this Court did interdict the Child’s psychological evaluation by the doctors by AIIMS as one session had already been held.

10. The psychological assessment report has been forwarded to this Court. It has been reported that no depression or anxiety symptoms could be observed on testing. It is also reported that the Child's comprehension is adequate and speech was relevant and spontaneous. It is also reported that the child is attached to her mother, although, finds her dominating. The child feels some distress on account of parental conflict. But that is not unexpected where parents are engaged in a bitter legal battle.

11. This Court is of the view that the Child should not be disturbed in any manner further by repeatedly taking her to hospital or to be produced before the CWC. Accordingly, the proceedings before the CWC in this regard are terminated. It is clarified that this would not preclude the Family Court from considering the application of respondent no.3 to permit visitation rights to the Child.

12. The petition is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

SEPTEMBER 10, 2018
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