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

+ **W.P.(C) 8785/2016**

% **Date of Decision: 19th February, 2018**

RADHAKANTA TRIPATHY Petitioner

Through: Petitioner in person.

versus

UNION OF INDIA & ANR Respondent

Through: Ms. Monika Arora, CGSC
with Mr. Harsh Ahuja, Mr.
Kushal Kumar, Mr. Vibhu
Tripathi, Advs. for R-1 & 2.
Ms. Astha Khatwani, Joint
Secretary, MOWCD.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

1. This writ petition was filed on the 23rd of September, 2016 making a grievance that the National Commission for Protection of Child Rights (*hereinafter referred to as "NCPCR"*) has to be statutorily constituted under the provisions of Section 8 of the Commission for Protection of Child Rights Act, 2005. However, the petitioner submits, that the NCPCR is unable to transact any business at all because of vacancies of its members.

2. The petitioner has placed Sections 3 & 8(2) of the of the Commission for Protection of Child Rights Act, 2005 providing for constitution of the Commission and vacation of office by the Chairperson and Members. These statutory provisions read as follows:

“Section 3.

Constitution of National Commission for Protection of Child Rights.—(1) The Central Government shall, by notification, constitute a body to be known as the National Commission for Protection of Child Rights to exercise the powers conferred on, and to perform the functions assigned to it, under this Act.

(2) The Commission shall consist of the following Members, namely:—

(a) a Chairperson who is a person of eminence and has done outstanding work for promoting the welfare of children; and

(b) six Members, out of which at least two shall be women, from the following fields, to be appointed by the Central Government from amongst persons of eminence, ability, integrity, standing and experience in,—

(i) education;

(ii) child health, care, welfare or child development;

(iii) juvenile justice or care of neglected or marginalized children or children with disabilities;

(iv) elimination of child labour or children in distress;

(v) child psychology or sociology; and

(vi) laws relating to children.

(3) The office of the Commission shall be at Delhi.

xxx xxx xxx

Section 8 - Vacation of office by Chairperson or Members. – (1)

(2) If a casual vacancy occurs in the office of the Chairperson or a Member, whether by reason of his death, resignation or otherwise, such vacancy shall be filled within a period of ninety days by making afresh appointment in accordance with the provisions of section 4 and the person so appointed shall hold office for the remainder of the term of office for which the Chairperson, or a Member, as the case may be, in whose place he is so appointed would have held that office.”

3. Additionally, our attention is drawn to Rule 18(5) of the National Commission for Protection of Child Right Rules, 2006, which provides the following quorum of the Commission:

“Rule 18 - Procedure for transaction of business.—

(1)

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(5) Four members including the Chairperson shall form the quorum at every meeting of the Commission.”

4. We are informed that the NCPCR came into existence on 5th March, 2007 by virtue of a notification issued by the respondent.

Ms. Santha Sinha was appointed its first Chairperson and she demitted the office on or around 4th March, 2010. Two Members were also appointed to the NCPCR on 10th April, 2007 who were in such position till 9th April, 2010.

5. We are informed that earlier, the NCPCR remained without Members between a period from 22nd November, 2013 to November, 2015 and without a Chairperson with effect from 10th October, 2014 till September, 2015. Ms. Stuti Narain Kacker was appointed as Chairperson in September, 2015 while four Members came to be appointed in November, 2015, one of whom demitted the office only after five days serving in such position on superannuation.

6. Mr. Radhakanta Tripathy, the petitioner who appears in person, has been agitating the failure of the respondents to fill up the three vacancies amongst the members of the NCPCR since 2014. The present writ petition was filed in September, 2016 seeking issuance of writ of mandamus to appoint these three members of the NCPCR and to make it fully functional.

7. In the affidavit which came to be filed by the respondent no.2 – Ministry of Women and Child Development, Government of India, we were informed that the respondents had initiated the process of appointment by publishing advertisements in different newspapers on 22nd April, 2016 & 31st August, 2016 inviting applications to these vacant posts and that interviews have also

been conducted of the applicants.

8. In the hearing on 13th February, 2018, we were informed that pursuant to the first advertisement, 265 applications had been received by the due date i.e. 5th June, 2016 and upon scrutiny 168 applications were found valid. As a result of the second advertisement which was published on 31st August, 2016, 136 applications were received, out of which 90 applications were found to be valid. In the further selection process, after holding interviews on 6th September, 2016 and 3rd October, 2016, nine candidates were shortlisted.

9. Unfortunately, the selection process was not finalized and on 13th February, 2018, we were informed by Ms. Monika Arora, Id. CGSC for the respondent nos.1 & 2 that the Ministry had decided to initiate a fresh selection process for the existing three vacant posts of Members of the NCPCR. We were compelled to take note of the solemn statutory functions which are required to be discharged by the NCPCR and stands prescribed thus by Section 13 of the statute:

“13. Functions of Commission.—

(1) The Commission shall perform all or any of the following functions, namely:—

(a) examine and review the safeguards provided by or under any law for the time being in force for the protection of child rights and recommend measures for their effective implementation;

*(b) present to the Central Government, annually and at such other intervals, as the Commission may deem fit, **reports upon the working of those safeguards;***

*(c) inquire into **violation of child rights** and recommend initiation of proceedings in such cases;*

(d) examine all factors that inhibit the enjoyment of rights of children affected by terrorism, communal violence, riots, natural disaster, domestic violence, HIV/AIDS, trafficking, maltreatment, torture and exploitation, pornography and prostitution and recommend appropriate remedial measures;

*(e) look into the matters relating to **children in need of special care and protection including children in distress, marginalized and disadvantaged children, children in conflict with law, juveniles, children without family and children of prisoners** and recommend appropriate remedial measures;*

(f) study treaties and other international instruments and undertake periodical review of existing policies, programmes and other activities on child rights and make recommendations for their effective implementation in the best interest of children;

*(g) undertake and **promote research** in the field of child rights;*

*(h) spread **child rights literacy** among various sections of the society and promote awareness of the safeguards available for protection of these rights through publications, the media, seminars and other available means;*

(i) inspect or cause to be inspected any juvenile custodial home, or any other place of residence or institution meant for children, under the control of the Central Government or any State Government or any other authority, including any institution run by a social organisation; where children are detained or lodged for the purpose of treatment, reformation or protection and take up with these authorities for remedial action, if found necessary;

(j) inquire into complaints and take suo motu notice of matters relating to,—

(i) deprivation and violation of child rights;

(ii) non-implementation of laws providing for protection and development of children;

(iii) non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships to and ensuring welfare of the children and to provide relief to such children,

or take up the issues arising out of such matters with appropriate authorities; and

(k) such other functions as it may consider necessary for the promotion of child rights and any other matter incidental to the above functions.

(2) The Commission shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force.”

(Emphasis supplied)

10. It was also noted by us that the delay in completing the appointment is clearly extremely detrimental to the welfare, well being and interests of children in the country.

11. According to the petitioner-in-person, even the Chairperson of the NCPCR is going to demit office in 2018 upon superannuation.

Therefore, keeping in view the spirit, intent and purpose of the Commission for Protection of Child Rights Act, 2005, it is absolutely imperative that the respondents in all seriousness address the issues flagged in this writ petition and take immediate steps in filling up these vacancies as well as the anticipated vacancy of Chairperson, well in time.

12. Pursuant to our order dated 13th February, 2018, Ms. Astha Khatwani, Joint Secretary, Ministry of Women and Child Development, Govt. of India is present in court and has produced the record. We have perused the same.

13. The petitioner has placed before us a copy of the order dated 28th August, 2012 passed by the Supreme Court in Writ Petition (Civil) No.399 of 2010 titled **Radhakanta Tripathy vs. Union of India and Anr.** when the petitioner had invoked the jurisdiction of the Supreme Court under Article 32 of the Constitution of India making a grievance that the NCPCR itself had not yet been constituted. This writ petition was disposed of with the following directions:

“Since the provisions of the Commission for Protection of Child Rights Act, 2005, require such vacancies to be filled up within 90 days, the Central Government shall take immediate steps to see that the said vacancy is filled

up within the time prescribed.”

14. So far as the above position, as laid before the court in the instant writ petition as well, is concerned, several orders have been passed since 2016 when the first vacancy of member arose in the NCPCR. The failure to filling up the vacancies till today tantamounts to violation of the statutory provisions.

Looked at from any angle, the matter of filling up of the vacancies in the NCPCR brooks no delay at all.

We, therefore, dispose of the writ petition with a direction to the respondents to forthwith take steps for filling up the vacancies in the National Commission for Protection of Child Rights, and in any case, to complete the selection process within 90 days from today.

15. The respondents shall also examine the position with regard to the office of the Chairperson of the NCPCR, and if the same is falling vacant as stated by the petitioner, shall initiate the steps to fill up such vacancy as well in anticipation before the vacancy arises.

Dasti to the parties.

ACTING CHIEF JUSTICE

C.HARI SHANKAR,

JFEBRUARY 19, 2018/pmc