

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPC No. 2156 of 2019**

Smt. Madhulata Raajwade W/o Shri Bhojram Raajwade Aged About 57 Years R/o Rajwade Complex, Warehouse Road, Korba Police Station Korba, Tahsil And District Korba Chhattisgarh

---- Petitioner**Versus**

1. The State Of Chhattisgarh Through The Secretary, Department Of Woman And Child Development , Mahanadi Bhawan, Atal Nagar, Raipur Chhattisgarh.
2. The Collector Cum President Zila Bal Sanrakshan Samiti, Korba District Korba Chhattisgarh
3. The District Program Officer Department Of Woman And Child Development , Korba, District Korba Chhattisgarh.

---Respondents

For Petitioner	: Shri U.N.S. Deo, Adv.
For State	: Ms. Sunita Jain, G.A.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****28/02/2020**

1. The challenge in the present writ petition is to the order Annexure P-1 dated 10.06.2019 passed by the Secretary, Department of Woman And Child Development, Government of Chhattisgarh.
2. Vide the said impugned order based upon an inquiry report in respect of allegation of misuse of power while working on the post of Social Member of the Juvenile Justice Board, District Korba, the appointment of the petitioner as the Social Member of said Board has been cancelled.
3. Contention of the Petitioner in the present writ petition is that while cancelling the appointment of the petitioner, the respondent authorities have not followed the statutory provision as is required under the Juvenile Justice (Care and Protection of Children) Act, 2015.

4. The specific contention of the petitioner is that before passing of the impugned order Annexure P/1, the respondents have not conducted any enquiry whatsoever nor has the petitioner been given ample opportunity to defend his case. Therefore, the finding of the Inquiry Officer and the action on the part of the respondents both are bad and illegal.
5. It was the further contention of the petitioner that, from the document which has been enclosed by the respondents in their reply, it could not be conclusively proved that the respondent authorities could collect any substantial material with which the allegations of misuse of power by the petitioner could be established.
6. Further contention of the petitioner was that the entire action against the petitioner was initiated on an alleged complaint received by the National Commission for Protection of Child Rights in the name of one Mr. Vishal Pandey practicing advocate at the District Korba. The National Commission for Protection of Child Rights forwarded the said complaint to the Secretary Women and Child Development, Government of Chhattisgarh for an appropriate enquiry and an action. That based upon the said letter, an enquiry is said to have been conducted which according to the petitioner is in total violation of the basic principle that are required while conducting an enquiry and the finding has been given by the Inquiry Officer based on baseless material.
7. According to the Counsel for the petitioner, there was a necessity for a duly constituted enquiry to be conducted which has not been done. So also, the nature of allegations or the specific charge

against the petitioner was not disclosed before the impugned order was passed and for this reason also, the entire action stands vitiated and deserves to be quashed.

8. The State Counsel on the other hand opposing the petition submits that it is a case where respondent No. 1 had received a correspondence from the National Commission for Protection of Child Right dated 25.10.2018 whereby appropriate action was required to be taken by the respondent No. 1. Respondent No. 1 thereby ordered for an enquiry and the District Programme Officer was to conduct the enquiry and to submit his report. Annexure R/4 and Annexure R/5 are the two enquiry reports based upon which the impugned order has been passed.

9. That for proper appreciation of fact, it would be relevant to consider the relevant facts of the case, the petitioner herein was appointed as Social Member of Juvenile Justice Board, vide the order dated 06.09.2019. In the notification of appointment, it was specifically mentioned that for removal of the Social Member from the Board of Juvenile Justice, it would be the provision of Sub-section 7 of Section 4 of the Juvenile Justice (Care and Protection of Children, Act 2015, which would have to be resorted. It would be relevant at this juncture to quote Subsection 7 of Section 4 which is reproduced hereinunder:-

“(7) The appointment of any member of the Board, except the Principal Magistrate, may be terminated after holding an inquiry by the State Government, if he-

- (i) has been found guilty of misuse of power vested under this Act; or
- (ii) fails to attend the proceedings of the Board consecutively for three months without any valid reasons; or
- (iii) fails to attend less than three-fourths of the sitting in a year; or

(iv) becomes ineligible under sub-section (4) during his term as a member”.

10. It would be also relevant at this juncture to refer to Subsection 4 of Section 4 of the Juvenile Justice (Care and Protection of Children), Act 2015, which prescribes the various grounds on which the person shall be ineligible for being a Member of the said Board, which is reproduced hereinunder;-

“(4) No person shall be eligible for selection as a member of the Board, if he--

- (i) has any past record of violation of human rights or child rights;
- (ii) has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or has not been granted full pardon in respect of such offence;
- (iii) has been removed or dismissed from service of the Central Government or a State Government or an undertaking or corporation owned or controlled by the Central Government or a State Government;
- (iv) has ever indulged in child abuse or employment of child labour or any other violation of human rights or immoral act.”

11. From Annexure R/2, which has been filed along with the reply, it appears that proceedings against the petitioner was initiated on the ground of National Commission for Protection of Child Rights receiving certain complaint from one Vishal Pandey dated 15.10.2018. The secretary in turn had directed the District Program Officer to conduct an Enquiry and to submit a report who seems to have issued notice to the said complainant Vishal Pandey.

12. From the perusal of the enquiry report, it clearly reflects that the said complainant Vishal Pandey had not appeared before the Inquiry Officer in spite of repeated efforts being made in this regard. No factual materials have been provided by the complainant Vishal Pandey before the Inquiry Committee or the Inquiry Officer at any point of time, as is evident from the enquiry report enclosed along with the writ petition.

13. It is settled position of law that where certain allegation or charges are levelled against a person, it is the duty of the complainant or the Department too first establish the allegation or the charge levelled against the charged person and only then arises the necessity for the delinquent or the Charged Officer to produce evidence in rebuttal to proof his innocence. In the instant case, there is no material collected by the State authorities at the behest of the complainant Vishal Pandey. To make things worse, the complainant Vishal Pandey did not even appear before the Inquiry Officer in spite of notices being served on him. In the absence of the complainant coming forward and adducing evidence before the Inquiry Officer or to any other competent authority, there was nothing further which was left to be inquired upon by the Inquiry Officer. Moreover, if we look into the contents of the enquiry report, it is evidently clear that the enquiry report submitted by the Inquiry Officer is as bald and vague as it could be, inasmuch as there is no specific details or data provided in respect of the alleged misconduct or the Act of misuse of power on the part of the petitioner reflected from the enquiry report. It is expect that the Inquiry Officer or the Committee would go into details of the allegations and collect relevant materials for the same. In the absence of which, bald and vague averment can not be a finding of the enquiry report.

14. Another aspect which needs consideration is the fact that from the perusal of Annexure P/17 filed along with the rejoinder which is a correspondence from the Office of the Collector to the Additional Secretary in the Department, it reflects that the Collector on 02.02.2019 himself had issued a correspondence to the Secretary that the complainant Vishal Pandey in spite of notices has not

appeared neither has he given any correspondence in respect of allegation that he has levelled against the petitioner. In spite of that Annexure P/18, a notice was issued to the petitioner on the same day i.e. 06.02.2019. This Court is of the opinion that when the Collector at the first instance did not receive any response from the complainant either in the form of a statement or by appearance before the Collector or any material that he has produced before the Collector, there was no necessity for proceeding further. The petitioner meanwhile, had given a detailed reply to the said notice on 14.02.2019. From the endorsement made in the document, it appears that the said reply was also received in the office of the Collector on 15.02.2019 itself.

15. From the perusal of the impugned order Annexure P/1 dated 10.06.2019, there is no discussion in respect of the reply that the petitioner had submitted, there is no discussion in respect of the contents of the said reply also. On the contrary, the respondent No. 1 seems to have proceeded on the basis of the bald and vague enquiry report which the District Program Officer had submitted.

16. Given the said fact, this Court further considers the finding given in the enquiry report. The plain perusal of the findings in the enquiry would reveal that no data whatsoever has been provided by the Enquiry Officer both in respect of notice by the Enquiry Officer issued for his appearing before the Enquiry Officer for making any explanation, neither is there any specific allegation or charge or any other detail provided by the Enquiry Officer in respect of any specific instance of misuse of power being made by the petitioner except a bald allegation of the petitioner misusing his power as the social

member of Juvenile Justice Board District Korba. No details whatsoever is available in the writ petition in the reply of the respondents, the impugned order also does not reflect any of these details. The Enquiry Officer report is silent on these aspects, thus, the entire enquiry report becomes vague.

17. Now we have to look at the provision of subsection 7 of Section 4 of the Act, 2015 which specifically envisages that the appointment of any member may be terminated only after holding an enquiry by the State Govt and one of the grounds available is, if he is found guilty of misuse of power. Now on perusal of the enquiry proceeding and the enquiry report it would clearly reflect that in the absence of specific evidence narrated by the Inquiry Officer more so, in the absence of any specific details provided by the complainant to add with it the complainant himself not appearing before the Inquiry Officer or before any other authorities under the Department, it can not be held that the Department had substantial material available with them to hold the petitioner guilty of misuse of power.

18. In view of the same, this Court is of the opinion that the action on the part of the respondents in cancelling the appointment of the petitioner as the Social Member of the Juvenile Justice Board District Korba is unsustainable under law and the same deserves to be set aside/ quashed. Accordingly, the impugned order Annexure P/1 dated 10.06.2019 is set aside/ quashed and it is ordered that the appointment of the petitioner on the post of social member of Juvenile Justice of Board be restored till the conclusion of his period of tenure as member as per Annexure P/5 dated 06.09.2017.

19. The writ petition stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

Jyotijha