

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE A. ABHISHEK REDDY

WRIT PETITION No.2679 of 2020

17.02.2020

Between:

Smt. Bharathi VNL Sridhara

...Petitioner

and

The State of Telangana,
Rep. by its Principal Secretary,
Home Department, Secretariat, Hyderabad,
and others.

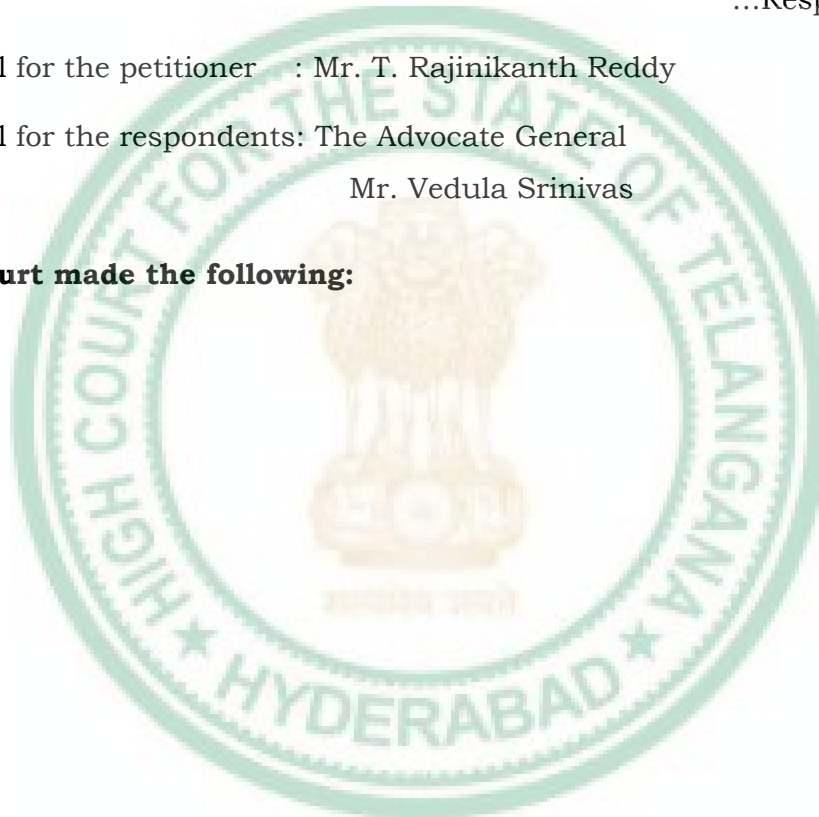
...Respondents

Counsel for the petitioner : Mr. T. Rajinikanth Reddy

Counsel for the respondents: The Advocate General

Mr. Vedula Srinivas

The Court made the following:



ORDER: (Per the Hon'ble the Chief Justice Sri Raghvendra Singh Chauhan)

The petitioner, Mrs. Bharathi V.N.L. Sridhara, has filed the present Habeas Corpus Writ Petition, *inter alia*, on the ground that her two children, namely Aarush Kaivalya Sridhara, a four year old child, and Sourish Rudra Sridhara, a two and a half year old child, are illegally detained by her husband, Mr. Surendra Babu Sridhara, the respondent No.6.

The brief facts of the case are that according to the petitioner, initially she was staying in the United States of America on student visa. Subsequently, she obtained a Conditional Green Card (CGC). She has applied for permanent Green Card. Her application is still pending before the United States Immigration Department. She further claims that she was residing with her husband, the respondent No.6, in the United States. She gave birth to both her children in the United States. Therefore, both her husband and children are citizens of the United States.

She further claims that on 10.12.2018, she, along with both the children, came back to India. She was supposed to fly back to the United States on 30.03.2019. But, due to her ill-health, she could not fly off to the United States on the said date. She informed the respondent No.6, her husband, and requested him to change the date of the return ticket. But, he refused to do so. He further informed her that he would be reaching Kadapa on 31.03.2019.

Moreover, according to her, on 31.03.2019 her husband came back to Kadapa. But, the matrimonial disputes, which have been existing since their stay in the United States, again erupted. She claims that she was physically assaulted by her husband. But, keeping in view the future of the children, initially she did not file any complaint against her husband, or against her in-laws. Since she was unwell in July,

2019, she left for treatment for Bangalore. She left both her children with her in-laws, as her father had suffered from heart attack in August. She further claims that on 17.09.2019, she started working for Spectro Max Company. From 17.09.2019 till 17.01.2020 she continued to be in touch with her children through skype, or through weekend visits till November, 2019. She further claims that since she was being harassed by the respondent No.6, on 23.01.2020 she filed an F.I.R, namely F.I.R.No.8 of 2020, for the offences under Sections 498-A, 323 and 506 I.P.C. But, ever since then, her husband has not allowed her access to the children. Therefore, she also filed a petition before the learned District Judge, Kadapa, who referred the matter to the Lok Adalat. The matter was listed before the Lok Adalat for mediation and resolving the dispute between the parties on 26.11.2019. However, the respondent No.6 failed to appear before the Lok Adalat. Her main grievance is that she is neither being permitted to contact, nor have the custody of the children. Moreover, her *bona fide* apprehension is that there is a grave possibility that her husband may take both the children with him to the United States, thereby depriving her the custody of her children. Hence, the present Habeas Corpus Writ Petition before this Court.

Mr. T. Rajinikanth Reddy, the learned counsel for the petitioner, has pleaded that since the children are below the age of five years, the petitioner, being the biological mother, is the natural guardian of the children. Hence, she cannot be denied the custody of the children till they attain the age of five years. Hence, the present custody of the children with the respondent No.6 is patently illegal.

On the other hand, Mr. Vedula Srinivas, the learned counsel appearing for the respondent No.6, submits that the petitioner happens to be a divorcee. Secondly, even in the United States, the petitioner and the respondent No.6 have had marital disputes. Thirdly, it is the petitioner who left her children with her in-laws, and has not bothered to

take care of them. Therefore, the custody of the children should not be given to the petitioner.

Heard the learned counsel for the parties.

Even if the petitioner happens to be the divorcee, she cannot be denied the custody of the children. For, according to the law, as long as the children are below the age of five years, it is the mother who is the natural guardian and not the father.

Moreover, even if there are matrimonial disputes between the husband and the wife, the mother cannot be denied the custody of the children.

Furthermore, no evidence had been produced by the respondent No.6 to establish the fact that it is the mother, who has abandoned the children, and is uncaring towards the children. Admittedly, it is the petitioner who had brought the children with her from the United States on 10.12.2018; she had been interacting with the children through skype, and through weekend visits; it is the petitioner who had filed the present petition seeking custody of the children. Therefore, it is rather obvious that it is the petitioner who is wanting to take care of her children, but is being prevented from doing so. Thus, the respondent No.6 cannot take the benefit of his own wrong.

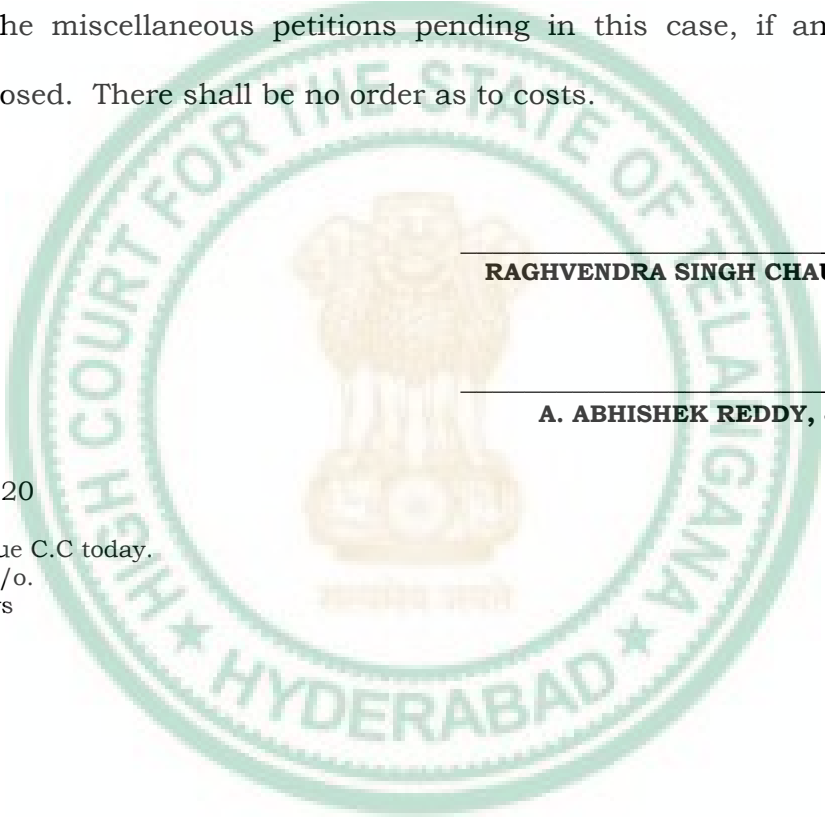
For the reasons stated above, this Habeas Corpus Writ Petition is, hereby, allowed.

The respondent Nos.5 and 6 are directed to restore the custody of both the children, namely Aarush Kaivalya Sridhara and Sourish Rudra Sridhara, to the petitioner.

However, the petitioner is directed to give her permanent address of Bangalore before this Court, as well as to inform the respondent No.6

about her permanent address. Moreover, the custody so given to the mother shall be of a temporary nature till the parties file their petition for seeking the permanent custody of the children. During this period, the respondent No.6 shall have the right to visit both the children, namely Aarush Kaivalya Sridhara and Sourish Rudra Sridhara, from 9' O clock in the morning till 4' O clock in the evening on every weekend of every month. Moreover, it is clarified that the observations made hereinabove shall not influence the final decision of the concerned Court with regard to the permanent custody of the children.

The miscellaneous petitions pending in this case, if any, shall stand closed. There shall be no order as to costs.



RAGHVENDRA SINGH CHAUHAN, CJ

A. ABHISHEK REDDY, J

17.02.2020

Note: Issue C.C today.
B/o.
vs