

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.25260 of 2019
13.02.2020

Between:

Mrs. Chamle Parvathi Dilip

...Petitioner

and

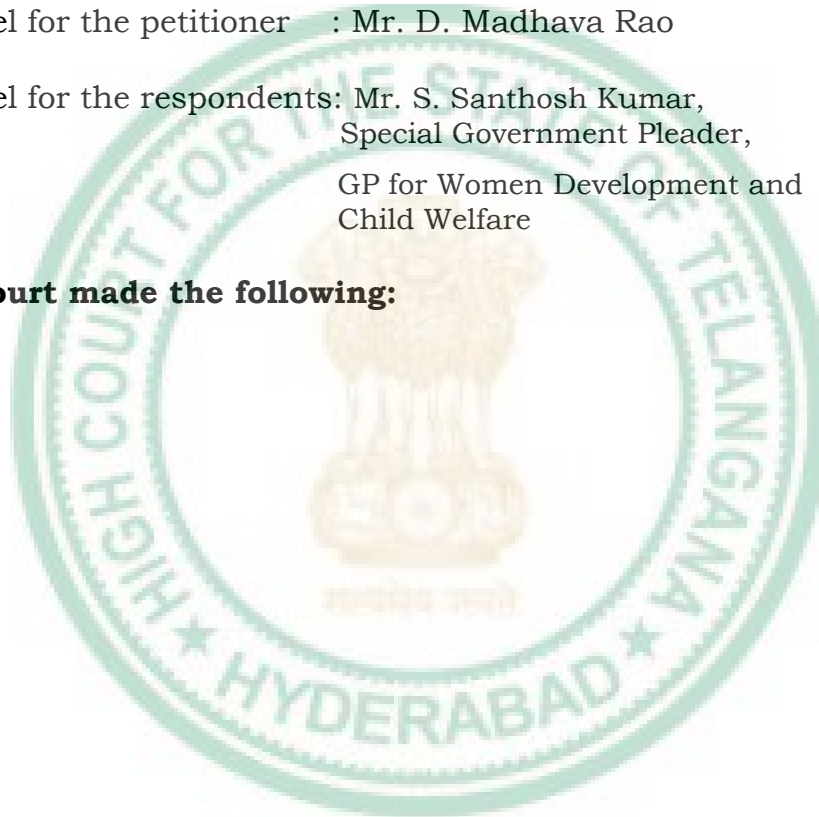
The State of Telangana and others

...Respondents

Counsel for the petitioner : Mr. D. Madhava Rao

Counsel for the respondents: Mr. S. Santhosh Kumar,
Special Government Pleader,
GP for Women Development and
Child Welfare

The Court made the following:



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

Mrs. Chamle Parvathi Dilip, the petitioner, has filed the present Habeas Corpus Writ Petition, *inter alia*, on the ground that her child, Sandeep, is in the illegal custody of the respondent Nos.7, 8, 9 and 10.

Briefly, the facts of the case are that the petitioner was living with her husband and a daughter in Anandwadi Village, Latur District, Maharashtra. While she was five months' pregnant, she lost her husband. On 29.04.2019, while she was eight months' pregnant, she was travelling with her daughter from Anandwadi Village, Latur District, Maharashtra to Biloli Village, Nizamabad District, Telangana. Suddenly, she started feeling unwell, and she noticed bleeding due to some complications in her pregnancy. Therefore, on the advice of the co-passengers, she was taken to Sri Sai Prasanna Nursing Home in Bodhan, Nizamabad District. Dr. M.Prasanna Kumari, the Doctor at the Hospital, told her she had to be admitted immediately. Despite the fact that the pregnancy had not completed its full term, the child had to be delivered through C-Section surgery. As such, the petitioner was admitted in the hospital on 29.04.2019. On 02.05.2019, she delivered a male child at 1:20 PM.

Since the child was a pre-mature baby, he weighed only 2 kgs. The child was suffering from high jaundice, as his serum bilirubin content of the body was 9.8 Mgs%. The Doctor at the Nursing Home informed the petitioner that since they were only running a Nursing Home, the child needed to be taken to a Hospital. Therefore, they decided to shift the child either to Niloufer Hospital or Gandhi Hospital at Hyderabad. Since neither

the petitioner, nor her daughter could leave the Hospital, the Doctor suggested that a senior aaya-amma (Mid-wife) from the clinic, Shainaz Begum, is competent to take the child to Niloufer Hospital, Hyderabad. Upon the advice of the Doctor, the petitioner handed over the custody of the child to Shainaz Begum, in order to take the child to the Niloufer Hospital for being admitted there for the high jaundice that the child was suffering from.

Furthermore, according to the petitioner, despite the fact that Shainaz Begum was travelling with the medical records of the infant, the police intercepted her, on allegedly finding the movement of Shainaz Begum to be suspicious. They enquired about the child that she was carrying. The police force from the Afzalgunj Police Station informed the police at Bodhan Police Station. Therefore, the police from the Bodhan Police Station came to the Nursing Home, where the petitioner was admitted. Meanwhile, the police also informed the Integrated Child Development Services (ICDS) at Bodhan. Subsequently, the police registered a formal FIR, namely Crime No.157 of 2019, for offence under Section 370 read with 34 IPC. The police handed over the custody of the newly born child to the Child Welfare Committee. Despite the best efforts of the petitioner to have the child released, the Committee is refusing to release the child. Hence, the present Habeas Corpus Writ Petition before this Court.

By order dated 11.02.2020, this Court had directed the learned Government Pleader for Women Development and Child Welfare to produce the report of the social worker as well as the investigation report and the final order passed by the Committee. Consequently, today, the learned Government Pleader has

submitted certain documents, including the Social Worker Investigation Report. The same shall be taken on record.

Section 32 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (“the Act”, for short) deals with mandatory reporting regarding a child found separated from guardian. Section 36 of the Act deals with inquiry to be conducted by the Committee, once a child is produced before the Committee. Section 37 of the Act deals with orders passed regarding a child in need of care and protection.

Section 36(1) of the Act imposes a duty upon the Committee to call for a social investigation report from the Social Worker or Child Welfare Officer. Since the Committee is required to pass its final order on the basis of the report, obviously, the report has to deal with the socio-economic background of the child and his/her family.

However, a bare perusal of the report dated 09.05.2019 submitted by the Social Worker, Child Welfare Committee, Nizamabad, clearly reveals that the report does not discuss the socio-economic background of the family, to which the child belongs. Interestingly, despite the fact that the report names the petitioner as the mother of the child, in Form 22, under Rule 19(8) of the Rules, while on the one hand the mother’s name is given as Chamle Parvathi, on the other hand, her existence is denied. Moreover, no effort has been made either by the Social Worker or by the Committee to locate and record the statement of the petitioner, or to reunite the petitioner with the child.

Mr. D. Madhava Rao, the learned counsel for the petitioner, has pleaded that even if a criminal case has been registered

against Shainaz Begum and against the petitioner, for allegedly selling the child to Shainaz Begum, even then the mother's right to have the custody of the child cannot be denied. For, according to the learned counsel, as long as the child is below the age of five years, the mother is the natural guardian. Therefore, the custody of the child by the Committee is an illegal one. Moreover, the illegality is compounded by the fact that the Committee has not followed the tenor of Sections 36 and 37 of the Act. Despite the fact that the Committee knows the name and address of the petitioner, no effort has been made by the Committee to reunite the mother and the child. In fact, merely a notification has been issued in the local newspaper dated 26.06.2019, whereby the parents of unknown children are directed to contact the District Welfare Officer, and in case they do not contact the District Welfare Officer within a period of thirty days, the children would be put up for adoption. According to the learned counsel, the foremost duty of the Committee should be to reunite the parents and the child. Therefore, the learned counsel pleads that the custody of the child should be handed over to the petitioner.

On the other hand, the learned counsel for the State and the learned Government Pleader for Women Development and Child Welfare have vehemently argued that since there is an allegation that the child was sold by the petitioner to Shainaz Begum, there is a high risk that the child may again be sold by the petitioner to a third party. Therefore, it is not in the interest of the respondents to hand over the custody of the child to the mother. Further, since it is the duty of the Committee to look after the interests of the children in need, the child's custody should continue with the

respondents rather than with the petitioner. Hence, the child's custody with the respondents is a legal one.

Heard the learned counsel for the parties, and perused the record.

Sections 36 and 37 of the Act are as under:-

“36. Inquiry :- (1) On production of a child or receipt of a report under section 31, the Committee shall hold an inquiry in such manner as may be prescribed and the Committee, on its own or on the report from any person or agency as specified in sub-section (2) of section 31, may pass an order to send the child to the children's home or a fit facility or fit person, and for speedy social investigation by a social worker or Child Welfare Officer or Child Welfare Police Officer:

Provided that all children below six years of age, who are orphan, surrendered or appear to be abandoned shall be placed in a Specialised Adoption Agency, where available.

(2) The social investigation shall be completed within fifteen days so as to enable the Committee to pass final order within four months of first production of the child:

Provided that for orphan, abandoned or surrendered children, the time for completion of inquiry shall be as specified in section 38.

(3) After the completion of the inquiry, if Committee is of the opinion that the said child has no family or ostensible support or is in continued need of care and protection, it may send the child to a Specialised Adoption Agency if the child is below six years of age, children's home or to a fit facility or person or foster family, till suitable means of rehabilitation are found for the child, as may be prescribed, or till the child attains the age of eighteen years:

Provided that the situation of the child placed in a children's home or with a fit facility or person or a foster family, shall be reviewed by the Committee, as may be prescribed.

(4) The Committee shall submit a quarterly report on the nature of disposal of cases and pendency of cases to the District Magistrate in the manner as may be prescribed, for review of pendency of cases.

(5) After review under sub-section (4), the District Magistrate shall direct the Committee to take necessary remedial measures to address the pendency, if necessary and send a report of such reviews to the State Government, who may cause the constitution of additional Committees, if required:

Provided that if the pendency of cases continues to be unaddressed by the Committee even after three months of receiving such directions, the State Government shall terminate the said Committee and shall constitute a new Committee.

(6) In anticipation of termination of the Committee and in order that no time is lost in constituting a new Committee, the State Government shall maintain a standing panel of eligible persons to be appointed as members of the Committee.

(7) In case of any delay in the constitution of a new Committee under sub-section (5), the Child Welfare Committee of a nearby district shall assume responsibility in the intervening period.

37. Orders passed regarding a child in need of care and protection :-

(1) The Committee on being satisfied through the inquiry that the child before the Committee is a child in need of care and protection, may, on consideration of Social Investigation Report submitted by Child Welfare Officer and taking into account the child's wishes in case the child is sufficiently mature to take a view, pass one or more of the following orders, namely:—

- (a) declaration that a child is in need of care and protection;*
- (b) restoration of the child to parents or guardian or family with or without supervision of Child Welfare Officer or designated social worker;*
- (c) placement of the child in Children's Home or fit facility or Specialised Adoption Agency for the purpose of adoption for long term or temporary care, keeping in mind the capacity of the institution for housing such children, either after reaching the conclusion that the family of the child cannot be traced or even if traced, restoration of the child to the family is not in the best interest of the child;*
- (d) placement of the child with fit person for long term or temporary care;*
- (e) foster care orders under section 44;*
- (f) sponsorship orders under section 45;*
- (g) directions to persons or institutions or facilities in whose care the child is placed, regarding care, protection and rehabilitation of the child, including directions relating to immediate shelter and services such as medical attention, psychiatric and psychological support including need-based counselling, occupational therapy or behaviour modification therapy, skill training, legal aid, educational services, and other developmental activities, as required, as well as follow-up and coordination with the District Child Protection Unit or State Government and other agencies;*
- (h) declaration that the child is legally free for adoption under section 38.*

*(2) The Committee may also pass orders for —
(i) declaration of fit persons for foster care;
(ii) getting after care support under section 46 of the Act; or
(iii) any other order related to any other function as may be prescribed.”*

A bare perusal of Sections 36 and 37 of the Act clearly reveals that once a child is produced before the Committee, the Committee has to decide with regard to the custody of the child. Section 37(1) of the Act gives different options to the Committee for the action to be taken by the Committee. One of the actions that can be taken by the Committee is to restore the child to the parents or guardian or family, with or without supervision of Child Welfare Officer or designated social worker.

It is rather surprising that despite the fact that the Committee knew that the petitioner happens to be the child's mother, no effort was made by the Committee to reunite the mother and the child. Even if the Committee were of the opinion that the welfare of the child needs to be supervised, it was free to pass an order under Section 37 of the Act, placing the child under the supervision of a Child Welfare Officer or a designated social worker. But, the Committee cannot be permitted to deprive a mother of the custody of the child without any rhyme or reason. Therefore, the custody of the child with the Committee is not a legal one.

Hence, this Court directs the respondent-Committee to handover the possession of the child to the petitioner, with a caveat that the Committee would first verify the identity of the petitioner, and would pass an order directing that the Child Welfare Officer working in Anandwadi Village, Latur District, Maharashtra will visit the petitioner's house on a weekly basis and

will send its report to the Child Welfare Committee, informing it about the welfare and the custody of the child with the petitioner. Moreover, the petitioner is directed to produce the child as and when required by the concerned Court.

With these directions, this Habeas Corpus Writ Petition stands disposed of. There shall be no order as to costs.

The miscellaneous petitions pending, if any, shall stand closed.

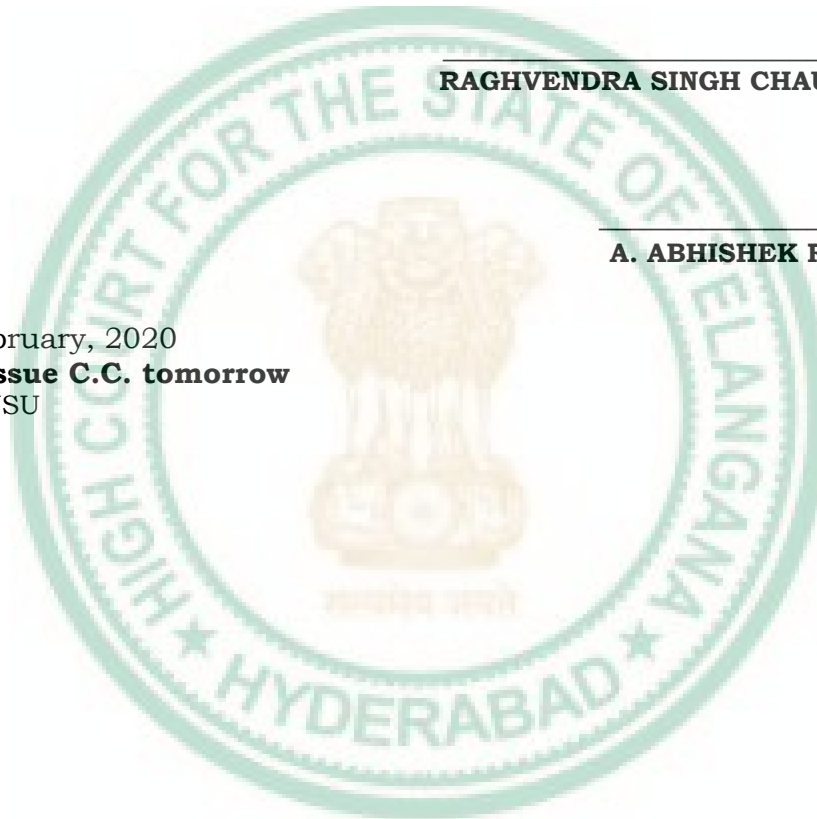
RAGHVENDRA SINGH CHAUHAN, CJ

A. ABHISHEK REDDY, J

13th February, 2020

Note: Issue C.C. tomorrow

JSU



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.25260 of 2019****(Per the Hon'ble the Chief Justice Sri Raghvendra Singh Chauhan)****Date: 13.02.2020****JSU**