

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRWP No.6676 of 2020

Date of Decision: 22.09.2020

Gurpreet Singh

.....Petitioners

Vs

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Munish Gupta, Advocate
for the petitioner.

Mr. Ramdeep Pratap Singh, D.A.G., Punjab.

Mr. Sachin Rai Vaid, Advocate
for respondents No.6 and 7.

RAJ MOHAN SINGH, J.

[1]. The case was taken up for hearing through video conferencing.

[2]. Petitioner has preferred this petition for the issuance of appropriate directions to the official respondents to protect life and liberty of the petitioner and his minor daughter Avneet Kaur aged 9 years.

[3]. Earlier, the petitioner filed CRWP No.3553 of 2020 in the nature of habeas corpus for the release of his daughter from illegal custody of respondents No.6 and 7. At that time, the Child

Welfare Committee, Patiala was involved in the said case. This Court vide detailed order dated 24.07.2020 allowed the aforesaid petition by holding that the Child Welfare Committee, Patiala had acted illegally. The child does not fall under the ambit of Section 2(14) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'the Act') which deals with “*child in need of care and protection.*” Section 2(14)(v) of the Act prescribes that “children in need of care and protection means a child, 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.” The Child Welfare Committee has coram of five members and can pass order for final disposal of the case with minimum coram of three members in terms of proviso to Section 28 of the Act, but the order dated 05.06.2020 was passed by the Chairperson and one member of the Committee and that too on a gazetted holiday on account of Sant Guru Kabir Jayanti.

[4]. Before passing order dated 24.07.2020 in CRWP No.3553 of 2020, this Court also took note of the counselling report submitted by the District Programme Officer, Sangrur. According to said report, the child was happy with her father and wanted to reside with him. The counsellor made report on 04.06.2020. After recording incriminating facts, this Court

deprecated the action of the Child Welfare Committee, Patiala. The order dated 05.06.2020 passed by the Child Welfare Committee, Patiala was set aside. The petition was allowed and the custody of the minor was restored to the petitioner. It was also observed that respondents No.6 and 7 would be entitled to avail their legal remedies before the appropriate Court under the relevant statutes for custody of minor in regular proceedings. In the event of doing so, it was ordered that the same shall be decided by the competent Court in accordance with law without being influenced by any observation made in the said case. The child was directed to be produced before the DCPO, Sangrur for handing over the custody to the petitioner.

[5]. The order dated 24.07.2020 passed by this Court in CRWP No.3553 of 2020 was further assailed in LPA No.476 of 2020, which was dismissed by the Division Bench of this Court vide order dated 05.08.2020. The operative part of the order reads as under:-

“Welfare and interest of the child in matters concerning custody is paramount: there cannot be any quarrel with such a proposition either. What is the position in the matter at hands? Gupreet Singh (respondent No.6) being father of Avneet Kaur (minor) is her natural guardian. Nothing was brought on record to show if he had abandoned or neglected the child or was incapacitated in any manner to look after Avneet Kaur (minor). The

argument that Gurpreet Singh (respondent No.6) being member of the Armed Forces and posted away from home would hardly be positioned to care about Avneet Kaur (minor), would also not advance the cause of the appellants. For Avneet Kaur (minor) was residing with her grandfather, paternal uncle and paternal aunt at Sunam. Her father (Gurpreet Singh) being posted at Jalandhar Cantonment would visit her often. What further transpires from the record is that even Gurpreet Singh is slated to superannuate from service in January, 2021. Having said that we do not wish to delve any further into this aspect lest it prejudice the interest of the appellants. Thus, suffice it to say that interest and welfare of Avneet Kaur (minor) is well-protected and secured being in the custody of her father (Gurpreet Singh).

Before we part we consider it necessary to observe that observations and/or the conclusion recorded above are germane and confined to the present proceedings only. In the event, the appellants initiate any proceedings for custody of Avneet Kaur (minor) in terms of the liberty granted by the learned Single Judge, under the relevant statutes, the Court in seisin of the matter shall decide their claim on merits and strictly in accordance with law.

In view of the above, we are dissuaded to interfere with the impugned order and judgment rendered by the learned Single Judge. The appeal being bereft of merit is accordingly dismissed.”

[6]. By way of present petition, the petitioner has pleaded that when the minor was handed over to the petitioner, the Child Welfare Committee, Sangrur forcibly took a writing from the

petitioner that it would keep on counselling the minor child. The writing was given under protest as this Court had already given liberty to private respondents to resort to appropriate proceedings in accordance with law.

[7]. On 07.08.2020, a team from the office of Child Welfare Committee, Sangrur visited the house of the petitioner and told that they want to meet the minor child for the purpose of counselling. The Team was apprised of the order passed by this Court as there was no order passed by this Court in the said context, but the team/officials of respondent No.5 insisted that they have to submit report with their Chandigarh Office and they have come in terms of the order passed by the Chandigarh Office. They will have to conduct the counselling of the minor. They questioned the minor repeatedly and the child responded to their repeated query and answered that she is happy with the petitioner and family. The team wanted the child to give answer in negative. While leaving the house, the team members i.e. officials of respondent No.5 again stated that they will keep visiting every week for the purpose of counselling. Petitioner has pleaded the aforesaid facts in para No.10 of the petition.

[8]. The officials of respondent No.5 again visited the house of petitioner on 17.08.2020. The visit was on surprise note as the minor and petitioner were not present in the house. The

team left a message that they would visit again in the next week. On 26.08.2020, the Team members again visited the house of the petitioner and literally tried to thrash the child by asking her questions as to whether she is happy in the house of petitioner or not.

[9]. A representation dated 09.08.2020 was filed before respondent No.4 apprising entire facts and circumstances by the brother of petitioner. No diary number was given and the brother of the petitioner was asked to drop the same in the box installed outside the office. No action was taken by the Authority. The petitioner himself tried to contact respondent No.4, but he was not allowed to meet.

[10]. In reply by way of short affidavit of Ms. Navneet Kaur Toor, District Child Protection Officer, Sangrur filed on behalf of respondents No.2, 4 and 5, pleadings of para No.10 have been admitted. Visits by the Team of respondent No.5 have also been admitted in para No.2, 4 and 9 of the reply. For ready reference, paras no.2, 4 and 9 of the reply are reproduced hereasunder:-

“2. That Para no.10 is correct to the extent that the counselor from the office of Deponent visited the house of the petitioner on 07.08.2020 for the follow-up of the minor daughter of the petitioner. That follow-up of every child who comes into the preview of the Child Welfare Committee and District Child Protection Unit is done on regular basis to

ensure that the child is being taken care of properly. It is incorrect that the counselor from the office of the deponent wanted the child to answer in negative. However it is correct that the counselor told the family of the petitioner that atleast three follow-ups of the minor child of the petitioner will be done.

4. *That Para no.12 is correct that the counselor from the office of the deponent visited the house of the petitioner again but it was visited on 14.08.2020. It is also correct that the minor child and her family were not available at their house.*

9. *That follow-up of every child who comes into the preview of the Child Welfare Committee and District Protection Unit is done on regular basis to ensure that the child is being taken care of properly. Similarly the follow-ups of the minor daughter of the petitioner were being done and the house of the petitioner were visited by the counselor of the office of the deponent were visited on 07.08.2020, 14.08.2020 and 26.08.2020. It was found that the minor daughter of the petitioner was happy residing with her father and now no more follow-ups are required in this case.”*

[11]. Respondent No.5 in its reply has taken a stand that the counsellor from the office of respondent No.5 visited the house of the petitioner on 07.08.2020 for follow up of the minor daughter of petitioner and the same was within the purview of the Child Welfare Committee and District Child Protection Unit, which has to be done to ensure that the child is being kept properly. Respondent No.5 has also admitted that the team i.e. officials of respondent No.5 also visited the house of the

petitioner on 14.08.2020, but the minor and her family members were not available at that time. The officials of respondent No.5 again visited on 26.08.2020. In the reply, respondent No.5 has recorded that after visiting the house of petitioner on 07.08.2020, 14.08.2020 and 26.08.2020, it was found that the minor daughter of the petitioner was living happily with her father and now no more follow up is required in the case.

[12]. Notice of motion was issued on 01.09.2020 for 15.09.2020. Respondent No.5 was restrained from making any visit to the house of petitioner. The reply filed by respondent No.5 was drafted on 15.09.2020. The pleadings in para No.9 of the reply to the extent of showing that the minor is living happily with her father is not a surprise because by that time, the respondent-Authority had come to know about the cognizance of the case taken by this Court.

[13]. While passing the order dated 24.07.2020 in CRWP No.3553 of 2020, this Court had also taken note of *inter se* relation between the petitioner and private respondents. Respondents No.6 and 7 are the real *massi/massad* of the petitioner. Respondent No.8 is a sitting MLA from the ruling party, who is related to private respondents No.6 and 7. During the proceedings dated 05.06.2020, before the Child Welfare Committee, Patiala, respondents No.6 and 7 along with son of

respondent No.8 with some unknown persons came to the office of Child Welfare Committee, Patiala and thereafter child was taken away by respondents No.6 and 7 from the custody of the petitioner. After taking note of the aforesaid facts, this Court passed the order dated 24.07.2020 in CRWP No.3553 of 2020, which was upheld by the Division Bench of this Court vide order dated 05.08.2020 in LPA No.476 of 2020.

[14]. Respondent No.5 has admitted the visits of its team members/officials to the house of petitioner on 07.08.2020, 14.08.2020 and 26.08.2020. Respondent No.5 has exceeded its jurisdiction by interfering in the administration of justice. Respondent No.5 has given illegal colour of alleged welfare of the child. It appears that the visits made by the officials of respondent No.5 were intended to create some evidence in favour of respondents No.6 and 7, so that they can rely upon the same while seeking custody of the child under regular remedy for which liberty was given by this Court in the order dated 24.07.2020.

[15]. Learned counsel for respondents No.6 and 7 has tried to explain the conduct of respondent No.5. He has supported the acts of respondent No.5, by denying the allegations of collusion between respondent No.5 and his client i.e. respondents No.6 and 7.

[16]. After considering the submissions made by learned counsel for the parties and having perused the material on record, I am fully satisfied that respondent No.5 has tried to interfere in the life of petitioner and his minor daughter in an illegal manner. Such interference at the instance of private respondents cannot be ruled out in view of earlier proceedings dated 05.06.2020, when the child was taken away by respondents No.6 and 7 from the office of Child Welfare Committee, Patiala in the presence of son of respondent No.8 and other unknown persons. The action on behalf of respondent No.5 cannot be regarded a routine effort for ascertaining welfare of the child, particularly when no such direction was given by this Court in the order dated 24.07.2020. The child did not require any such care and protection as she did not fall under the purview of Section 2(14)(v) of the Act. Petitioner was never incapacitated by any order of the Committee or Board to take care of his minor daughter. There is no question of providing foster care by respondents No.6 and 7.

[17]. From the facts and attending circumstances of the case, I find that the action of respondent No.5 is deplorable, *mala fide* and suffers from inherent lack of jurisdiction. Consequently, this petition is allowed with a cost(s) of Rs.50,000/- to be paid by respondent No.5/Chairperson from

her personal pocket. The amount of cost(s) shall be deposited in the Punjab Chief Minister's Relief Fund Covid-19 and an intimation along with receipt shall be placed on record within a period of two weeks from today. Further, the Respondents are restrained from interfering in the lives and personal liberties of the petitioner and his minor daughter Avneet kaur aged 9 years. However, respondents No.6 and 7 may act in accordance with law in terms of the liberty given by this Court vide order dated 24.07.2020 passed in CRWP No.3553 of 2020.

September 22, 2020

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No