

WPA 4155 of 2021

**Aparna Atarathi (Saha) & Anr.
Vs.
The State of West Bengal & Ors.**

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Mr. Kamalesh Bhattacharya
Mr. Bidhan Biswas
... For the Petitioners

Mr. Subhabrata Dutta
Mr. Debashis Sarkar
Mr. Abdus Salam
... For the State

Learned counsel for the petitioners argued that the petitioners applied for being appointed as 'fit' persons to take care of a girl child name Koel, who is presently placed at a home with NIJOLOY under the provisions of Juvenile Justice (Care & Protection of Children) Act 2015 and the Rules framed thereafter. Learned counsel argues that although such application was made to the Child Welfare Committee, the Directorate of Child Rights & Trafficking, West Bengal refused such application on the ground that a fit person recognized by the Child Welfare Committee could be given custody of a child temporarily for a specified period not exceeding thirty days.

Learned counsel argues that such refusal was *de hors* Rule 28 of the 2017 Rules which does not contemplate any such stipulation.

Moreover, it is argued that Section 37 of the 2015 Act categorically provides the modalities of appointing a person as fit person and/or granting foster care of a child to a person upon an enquiry being held. Without following such

procedure, the petitioners' application was rejected. It has further been argued by the petitioners that the same authority which rejected the petitioners' application for being declared a fit person, also refused the petitioners' prayer for foster care. The same logic as mentioned above applies to such rejection as well, since it is the Child Welfare Committee which is to decide such question.

Learned counsel appearing for the respondent authorities submits at the outset that, under the 2015 Act, the Child Welfare Committee has to take a call on such application being made by a person.

In the present case, the application of the petitioners dated September 29, 2020 was never decided by the Child Welfare Committee and the same is pending.

Furthermore, it is submitted that there is no material on record to establish that such application was at all served on the Child Welfare Committee.

Be that as it may, since the petitioners have a right to apply for being appointed as fit persons, if considered otherwise eligible in accordance with law by the Child Welfare Committee, it would be appropriate if the said Committee is directed to consider the application of the petitioners in accordance with law.

Hence the purported refusal of the petitioners' application for being granted foster care of the minor girl Koel and for being declared as fit person for taking care of the child, being passed without jurisdiction, is set aside.

WPA 4155 of 2021 is disposed of by granting liberty to the petitioners to approach the respondent no. 3 with appropriate applications

for being granted foster care and/or declared fit persons to take care of the child Koel within a fortnight from date. If such applications are made, the respondent no. 3 shall consider those in accordance with the procedure as provided under the provisions of Juvenile Justice (Care & Protection of Children) Act 2015 and the connected West Bengal Rules of 2017, upon appropriate enquiry, as expeditiously as possible.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)

