

WPA 8882 of 2020

Arijit Mitra

- Versus -

The State of West Bengal & Ors.

**Mr. Srijib Chakraborty
Mr. Rohit Banerjee
Mr. Amitava Bhowmik**

.....For the petitioner

**Mr. Jaharlal De
Mr. Shamim ul Bari**

.....For the State

**Mr. Tanmoy Mukherjee
Mr. K. Raihan Ahmed**

.....For the respondent no. 6

The petitioner, being the biological father of a minor son Sourajit, aged about 16 years, complains that a Social Investigation Report was filed under the provisions of Rule 19 of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 without complying with the specific provisions as stipulated in sub-rules (3), (5) and (8) of the said Rule.

Learned counsel appearing for the petitioner argues that in the absence of compliance with such provisions, the impugned Social Investigation Report stands vitiated and ought to be set aside.

It is further submitted that, subsequent to the filing of the report, counselling of the child, who is in custody of the mother at present, was initiated and the said report might have an adverse effect on such counselling in the event it is allowed to be retained on record.

Learned counsel appearing for the respondent mother submits that a second round of counselling was directed by this Court vide Order No. June 11, 2020 passed in W.P. 2082 (W) of 2020, pursuant to which the present proceeding is going on before the Child Welfare Committee. It is argued that there is no scope for directing any Social Enquiry Report in view of the nature of counselling sought by the petitioner himself.

Secondly, learned counsel for the private respondent argues that, since the petitioner did not challenge the Social Investigation Report in question on the previous occasion when he came up before this Court seeking counselling, the petitioner is barred by the principle of constructive *res judicata* in challenging such report at a subsequent stage.

Learned senior counsel appearing for the State respondents submits that the Social Investigation Report was apparently filed on a previous occasion and that the present counselling does not fall within the purview of Section 31 and Section 36 of the Juvenile Justice (Care and Protection of Children) Act, 2015; as such, the scope of applicability of Rule 19 of the 2016 Rules does not arise at all.

Upon a consideration of the materials, it appears that the present counselling which is going on in respect of the child Sourajit, was at the behest of the petitioner father. Since the custody of the minor is with mother and there was no occasion for the Child Welfare Committee to

initiate any enquiry within the purview of Sections 31 and 36 of the 2015 Act, there is no scope of filing any further Social Investigation Report.

However, the impugned Social Investigation Report, as rightly argued by learned counsel for the petitioner, was in gross violation of sub-rules (3), (5) and (8) of the 2016 Rules, since the report does not disclose the capacity of its author, insofar as whether he was a social worker, case worker or child welfare officer as envisaged in Rule 19(3). That apart, the basic principles of natural justice have not been ensured inasmuch as the said investigation report was not prepared upon participation of the petitioner. As such, the Social Investigation Report impugned in the present writ petition cannot stand the scrutiny of law.

Accordingly, WPA 8882 of 2020 is disposed of by setting aside the purported Social Investigation Report dated August 5, 2018 prepared in respect of the minor Sourajit.

No order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)