

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE
(via video conference)**

W.P.A. No. 10881 of 2020

**Nasrin Begum & Ors.
Vs.
The State of West Bengal & Ors.**

Mr. Kallol Basu,
Mr. Debashis Banerjee,
Mr. Apalak Basu,
Ms. Pritha Bhawmick Basu,
Ms. Priyanka Ghosh,
Mr. Abhishek Datta
... for the petitioners

Mr. Samrat Sen,
Ms. Amrita Panja Moulick
...for the respondent-authorities

The grievance of the petitioners is that, despite the petitioner nos. 1 and 2 being the biological parents of a male minor, namely, Sk. Jehan Alam, who is seven and half months old, the respondent-authorities have taken custody of the child and, thereby depriving the petitioner nos. 1 and 2 of their legal rights as well as hampering the well-being of the child.

Learned counsel for the petitioners argues that the concerned Child Welfare Committee of South 24-Parganas District is not functioning at the present moment and, as such, there is no scope of inquiry by such committee at present. Hence, the biological son of

the petitioner nos. 1 and 2, cannot be kept away from the said petitioners indefinitely by the authorities.

Learned senior counsel appearing for the respondent-authorities places reliance on two reports filed by the Child Welfare Committee, North 24-Parganas as well as the concerned Agency, being the respondent no. 6, and submits that due care is being taken of the minor child in every respect. It is further submitted that, contrary to the allegations of the petitioners, the communication dated June 22, 2020 (Memo No. 2016-SW/O/JJA-20/11) clearly indicates that, in the absence of any notification for formation of CWC for the South 24-Parganas District, C.W.C. North-24-parganas has been entrusted to look after the statutory works of South 24-Parganas District.

It is further submitted on behalf of the respondent-authorities that there are grave allegations against the petitioners to the effect that the petitioner nos. 1 and 2 sold their child for a monetary consideration to the petitioner nos. 3 and 4, which is also being investigated into under the relevant provisions of criminal law. In such circumstances, it is argued by the respondent-authorities, it would not be prudent to hand over the child to the petitioner nos. 1 and 2 at this moment.

That apart, it is contended, due to directions given by a Division Bench of this Court keeping in mind

the pandemic situation, the visitation right to children in 'homes' and adoption facilities has been restricted.

The petitioners rely on Sections 31 and 37 of the Juvenile Justice (Care and Protection of Children) Act, 2015 as well as the relevant provisions of the West Bengal Juvenile Justice (Care and Protection of Children) Rules, 2017, to argue that, in the event the biological parents are sufficiently capable of taking care of the minor child-in-question, the C.W.C. does not have jurisdiction to enquire into the matter or take custody of the child.

Sub-section (3) of Section 36 of the 2015 Act specifically stipulates, inter alia, that if the Child Welfare Committee, after completion of enquiry as envisaged therein, is of the opinion that the 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.

Section 37 of the 2015 Act envisages orders which can be passed regarding a child in need of care and protection. Clause (b) of sub-section (1) of Section 37 indicates the Committee may pass order of restoration of the child to parents or guardian or family with or without supervision of Child Welfare Officer or designated social worker.

However, the 2015 Act sufficiently empowers the concerned CWC to hold an inquiry before taking a decision regarding a child perceived to be in need of care and protection. Such inquiry assumes particular importance in this case, since serious allegations have been levelled against the petitioners regarding trafficking of the minor. Irrespective of the fate of the criminal proceedings, which, at the moment, have no direct bearing in the matter, CWC has the authority under law to enquire into the matter independently and come to a conclusion as regards the need to send the child to a specialised adoption agency. There may arise occasions, within the purview of the Act, where, despite the existence of biological parents, the child may be in need of continued care and protection. Hence, it would be a premature exercise, at this juncture, to direct custody of the minor child to be returned to the petitioner nos. 1 and 2.

Accordingly, W.P.A. No. 10881 of 2020 is disposed of by directing the respondent no. 3, exercising the jurisdiction of respondent no. 4 as per the communication dated June 22, 2020, to complete the enquiry, as contemplated in Section 36 of the 2015 Act, with regard to the minor child, namely, Sk. Jehan Alam, as expeditiously as possible, positively within February 28, 2021. The respondent no. 3 shall grant opportunity of representation to the petitioners, to place

their version before the Committee, prior to coming to a conclusion on the enquiry.

The respondent no. 3 shall communicate the decision taken by the said respondent, immediately upon arriving at the same, to the petitioners.

It will be open to the petitioners to redress their grievance, if any, against the post-inquiry decision of the C.W.C, in accordance with law, before the appropriate forum.

Respondent no. 3 and 6 shall ensure due care and protection of the minor child, including appropriate immunization and medical care, till such time as the child is in custody of the respondent no. 6 or of any other adoption agency under the supervision of the respondent no. 3.

There will be no order as to costs.

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

(Sabyasachi Bhattacharyya, J.)