



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.10.2021

CORAM

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.(MD)No.18244 of 2021

WEB COPY

Krishnammal

... Petitioner

Vs.

1. The District Collector,
Virudhunagar District,
Virudhunagar.

2. The Chair Person,
Child Welfare Committee,
Virudhunagar District,
Virudhunagar.

3. K.Senthil Kumar

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the first respondent herein to conduct an enquiry in the petitioner's representation dated 10.06.2021 and appoint the petitioner as a Fit Person to the child Dinesh Kumar within the stipulated period which this Court may deem fit.

For Petitioner : Mr.M.Jothi Basu

For Respondents : Mr.P.Subbaraj

Counsel for the State for R1 and R2

O R D E R

The petitioner seeks a direction to the first respondent herein to conduct an inquiry on the basis of his representation dated 10.06.2021 in relation to the appointment of the petitioner as the fit person as regards the minor child Dinesh Kumar.

2. The petitioner states that she married one Muthu in the year 1994. Through such marriage, the petitioner had three children. On account of differences between the couple, the marriage was dissolved through a customary divorce. Subsequently, in the year 2019, the petitioner married one Nallasamy. Previously, the said Nallasamy was married to one Sudha. The said Sudha is no more. Nallasamy and Sudha had a child called Dinesh Kumar. The said Dinesh Kumar is said to be about ten years old. The petitioner states that she is taking care of Dinesh Kumar since her marriage to Nallasamy. On 25.09.2021, Nallasamy died due to the COVID-19 infection.

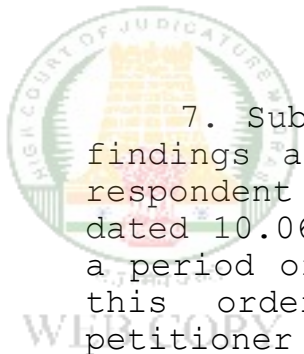


3. In these facts and circumstances, the petitioner states that the third respondent lodged a complaint before the Child Welfare Committee, Virudhunagar District and the Thiruthangal Police Station claiming custody over the child Dinesh Kumar. On 10.06.2021, the petitioner sent a representation to the first respondent to appoint her as a fit person in respect of the child Dinesh Kumar. In connection therewith, the petitioner appeared before the Child Welfare Committee, Virudhunagar District along with the child Dinesh Kumar on 12.06.2021.

4. The petitioner relies upon Section 27(10) of the Juvenile Justice (Care and Protection of Children) Act, 2015 and contends that the District Magistrate is empowered to act as the Grievances Redressal Authority for the Child Welfare Committee, and that any one connected with the child may petition the District Magistrate for appropriate orders. The petitioner also relies upon the Juvenile Justice (Care and Protection of Children) Model Rules, 2016. The petitioner contends that in terms of Rule 28 thereof any individual who is fit to temporarily receive a child for care, protection or treatment may be recognised by the Board or the Committee as a fit person. Therefore, the petitioner states that he is entitled to the consideration of his representation by the first respondent.

5. Mr.P.Subbaraj, learned counsel for the State, accepts notice on behalf of respondents 1 and 2. He submits that the first respondent may be directed to consider the petitioner's representation after providing a reasonable opportunity to the third respondent.

6. The Juvenile Justice (Care and Protection of Children) Act, 2015 envisages the constitution of the Child Welfare Committee. Section 27 of the enactment deals with the constitution of the Child Welfare Committee. Sub-section 10 thereof stipulates that the District Magistrate shall be the Grievances Redressal Authority for the Child Welfare Committee. It also enables any person connected with the child to file a petition before the District Magistrate, and also empowers the District Magistrate to pass appropriate orders. However, Section 27 does not confer power on the District Magistrate to appoint a fit person. Rule 28 of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 empowers the Juvenile Justice Board or the Child Welfare Committee to appoint a fit person. As per Sub-rule 10 of Rule 28, the child concerned shall not be placed with the fit person for a period exceeding thirty days. It also provides that if the child requires further care, the Committee may consider the placement of the child in foster care. Therefore, these aspects should be taken into account by the first respondent as also the second respondent while taking a decision on the petitioner's representation.



7. Subject to the above observations but without recording any findings as regards the entitlement of the petitioner, the first respondent is directed to consider the petitioner's representation dated 10.06.2021 and dispose of the same by a reasoned order within a period of thirty (30) days from the date of receipt of a copy of this order after providing a reasonable opportunity to the petitioner and the second and third respondents herein. On account of the fact that no findings have been rendered on the entitlement of the petitioner and because the first respondent has been directed to provide a reasonable opportunity to the third respondent before taking a decision, W.P(MD).No.18244 of 2021 is disposed of without notice to the third respondent. There will be no order as to costs.

Sd/-

Assistant Registrar (CRL)

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/ /2021

Sub Assistant Registrar(CS)

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To

1. The District Collector,
Virudhunagar District,
Virudhunagar.
2. The Chair Person,
Child Welfare Committee,
Virudhunagar District,
Virudhunagar.

+1 CC to M/s.G.M.LAW OFFICE(M.Jothi Basu), Advocate(SR-31887[F]
dated 11/10/2021)

+1 CC to M/s.SPL.GP(SR-31942[F] dated 11/10/2021)

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08.10.2021

MGJ(26.10.2021) 3P 5C