

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7393 OF 2021

1. Sanjay S/o Sampatrao Kalbande
Age : 41 years, Occ : Advocate,
R/o Yashwant Nagar, Ambad Road,
Jalna, Tq. & Dist. Jalna.
2. Shri Bhausahab S/o Karbhari Gunjal
Age : 58 years, Occ : Development
Consultant,
R/o First Floor, Someshwar Hospital,
Balaji Nagar, Near Railway Station,
Partur, Tq. Partur, Dist. Jalna.
3. Shrimati Anaya W/f Mukesh agrawal
Age : 52 years, Occ : Business,
R/o 1/28/10, Near Civil Club,
Mantha Road, Jalna,
Tq. & Dist. Jalna.
4. Dr. Devram Eaknath Choure
Age : 58 years, Occ : Medical Profession,
R/o Flat No.32, JPC Bank Colony,
Near Agrasen Nagar, Jalna,
Tq. & Dist. Jalna.
5. Adv. Sanjay Sarangdhar Gavhane
Age : 44 years, Occ : Advocate,
R/o Plot No.15, Pushpak Nagar,
Telecom Colony, Jalna,
Tq. & Dist. Jalna.

..PETITIONERS

-VERSUS-

1. The State of Maharashtra
Through :
Secretary, Women and Child
Development Department,
3rd Floor, New Administrative Building,

Madam Cama Road, Hutatma Rajguru Chowk,
Mumbai – 400 032.

2. Commissioner,
Women and Child Development Department,
Pune.
3. Divisional Deputy Commissioner,
Women and Child Development Department,
Aurangabad Division, Aurangabad.
4. District Collector,
Jalna.
5. District Woman and Child Development
Officer, Jalna.

..RESPONDENTS

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Mr.S.T. Chalikwar, advocate for the petitioners.
Mrs.M.A. Deshpande, A.G.P. for respondent Nos.1
to 5.

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CORAM : RAVINDRA V. GHUGE
AND
S.G. DIGE, JJ.

RESERVED ON : 31st MARCH, 2022
PRONOUNCED ON : 5th MAY, 2022

JUDGMENT (PER S.G. DIGE, J) :

1. Rule. Rule made returnable forthwith.
With consent of the parties taken up for final
hearing at admission stage.

2. By this petition, the petitioners are
praying to quash and set aside the termination
order of Chairperson and members of Child Welfare

Committee, Jalna issued by notification dated 9th March, 2021 of Women and Child Development Department, Government of Maharashtra. It is also prayed to direct the respondents to accept the resignations of petitioner nos.1 to 4 as Chairperson and Members of Child Welfare Committee, Jalna. The petitioners are also seeking additional reliefs.

3. Brief facts of the case are as under :-

a) Petitioner no.1 was appointed as Chairperson of Child Welfare Committee (for short, "CWC"), Jalna from 6th April, 2018, and Petitioner nos.2 to 4 were appointed as members of CWC, Jalna from 6th April, 2018, for a period of three years from the date of their appointments. Petitioner no.5 was appointed as member of CWC from 8th March, 2019, for a period of three years from the date of appointment.

b) Respondent no.1 is the Secretary, Women and Child Development Department, Government of Maharashtra and is responsible for the development of women and child in the State of Maharashtra. Respondent no.2 is the Commissioner of Women and Child Development Department, State of Maharashtra. Respondent no.3 is the Divisional Deputy Commissioner, Women and Child Development Department, Aurangabad Division, Aurangabad.

Respondent No.4 is the District Collector, who is Grievance Redressal Authority of the Child Welfare Committee. Respondent no.5 is the District Woman and Child Development Officer, Jalna.

4. On 9th January, 2020, a surprise visit was conducted by President District Legal Services Authority/Principal District Judge, Jalna to Late Rajkunvar Rameshchandra Bang Shishuvihar Gruh, run by Maharashtra Marwadi Charitable Trust (for short, "Charitable trust"). The said Shishuvihar gruh and observation home meant for mentally retarded children situated at Jalna. The Principal District Judge found several irregularities. The condition of child home was pathetic, unhygienic and unhealthy. Records of purchases were not maintained. The learned Principal District Judge sent a report to the Guardian Judge of Jalna district, High Court, Aurangabad. This Court has taken cognizance of said report, which resulted into a Suo-moto Public Interest Litigation no.2 of 2020.

5. The Divisional Deputy Commissioner, Women and Child Development, Aurangabad (Respondent No.3), conducted enquiry of child home. On 8th December, 2020, the F.I.R. came to be registered against the President, Secretary and trustees of the Child Home and also against the

petitioners. On 11th December, 2020, petitioner no.1 lodged F.I.R. against the officers of respondents at Kadim Police Station, Jalna. The petitioners gave resignations of the post of Chairperson and members of CWC, alleging that without giving any notice, without taking say of Child Welfare Committee, a false and concocted FIR is lodged against Chairperson and members of CWC. The Committee felt this action as insult and injustice of quasi-judicial authority. Fed up by the behaviour and apathy of Women and Child Development Department, petitioner no.3 gave their resignation on 15th December, 2020 and petitioner nos.1, 2, 4 and 5 on 06.02.2021 gave resignations. However, no action was taken on the resignations of the petitioners. By Government Notification dated 9th March, 2021, the termination order of the petitioners is issued. The said notification is under challenge in this petition.

6. It is contention of the learned counsel for the petitioners that the petitioners are responsible persons in the society. The termination order specifically cites holding of enquiry. In fact, no enquiry is conducted, no show-cause notice is issued, no witnesses are examined, no opportunity to cross examine witnesses is given and no say of the petitioners is taken to explain the alleged misuse of powers.

There is violation of the principles of natural justice. The termination of the petitioners on the ground of holding them guilty of misusing power, is a blot on the career of petitioners. In the first information report, there are no allegations, whisper or any act against the present petitioners. Allegations are only against the President, Secretary and Director Board of Charitable Trust. The petitioners cannot be held responsible for the guilt of the trustees of the said trust. There is no case against the petitioners to prosecute them for the offence punishable under section 6(ii), 9(i)(4)(5)(i) (i-a), 17 of the Hindu Adoption and Maintenance Act, 1956 (For short "Act of 1956") and under section 80 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short, "JJ Act, 2015").

7. The learned counsel further submits that the adoption process is within the control of respondents' office. Respondent no.5's office, in connivance with the said trust, neglected their duties. For shielding their own officers, respondents are making scapegoats of the petitioners. The petitioners' role in adoption process is limited. The petitioners as Child Welfare Committee neither offer nor receive any orphan, abandoned or surrendered child, for the purpose of adoption to attract the provisions of

section 80 of the JJ Act, 2015. As per section 100 of the JJ Act, 2015, the petitioners, as Child Welfare Committee, are protected for action taken in good faith. Petitioners have tendered their resignations but no action is taken on it. The learned counsel, therefore, requested to allow the petition.

8. The learned counsel for the petitioners relied upon the judgment in the case of **Prakash Balwantrao Dethe Vs. State of Maharashtra** reported in 2007(1) All M.R. 220 and the judgment in the case of **Dr.Padmakar Trimbak Pandit Vs. The University of Pune and anr.** reported in 2004(2) All M.R. 182.

9. It is the contention of the learned counsel for respondents that the Child Welfare Committee is a quasi-judicial authority and having authority to dispose off cases for the care, protection, treatment, development, rehabilitation and to provide their basic need and protection for children in need of care and protection. The State Government has power to terminate the appointment of any member of CWC after making enquiry.

10. The learned counsel further submits that in the present matter, Women and Child Development Department has observed and followed

all legal provisions laid down in JJ Act, 2015 and the Maharashtra Juvenile Justice (Care and Protection of Children) Rules, 2018 (For short, "JJ Rules, 2018"). Pursuant to the report of Chairperson of District Legal Services Authority, Jalna, a Suo-moto Public Interest Litigation was taken up.

11. The office of the Commissioner, Women and Child Development had issued the directions to District Women and Child Development Officer, Jalna to immediately transfer the children admitted in Charitable Trust, Jalna, Child Care Institution and Special Adoption Agency to other registered Child Care Institution. Accordingly, 5 girls and 1 boy were transferred and admitted in Child Care Institutions in Aurangabad district. Thereafter the Charitable Trust, Jalna Child Care Institution and Special Adoption Agency is closed down and there are no children at present in the said institution.

12. In Suo-Moto Public Interest Litigation No.2/2020, this Court (Coram : S.V. Gangapurwala & R.N. Laddha, JJ) has directed the respondents to furnish the detailed information of children admitted in Charitable Trust, Child Care Institution and Special Adoption Agency by the orders of CWC, Jalna and it is also directed to furnish the details of children given in foster

care under the orders of CWC, Jalna.

13. The learned counsel further submitted that the CWC, Jalna has given three children in foster care without following due procedure of law. The CWC, Jalna has not followed the procedure before granting foster care order in favour of the respective foster parents. As per the JJ Act, 2015 and JJ Rules, 2018, it is mandatory and necessary to obtain home study report of foster family, social investigation report and individual care plan of said child. The CWC, Jalna has failed to pass an order as per prescribed Form No.21 of the JJ Rules, 2018. The CWC, Jalna has passed the order only on the basis of the social investigation report, which was incomplete. Even there was no Medical Report to certify that the child is fit to be in foster care. There was no Home Study Report to assess the suitability of the foster parents. The order passed by the CWC, Jalna regarding foster care is bad in law and without exercising due diligence and application of mind.

14. The learned counsel further submits that as per the provisions of rule 7(10) of the Adoption Regulations, 2017, it is necessary that efforts shall be made by the Child Welfare Committee to discourage surrender of child by biological parents, for exploring the possibility

of parents retaining the child and for that purpose to do proper counseling of the parent or guardian, who wish to surrender child. But, the CWC, Jalna failed to follow the prescribed process of enquiry of parents and has violated the provisions of law. The CWC, Jalna intentionally bypassed the legal provision of JJ Act, 2015 and JJ Rules, 2018 as well as CARA Guidelines, 2017 for personal gain and infringing the rights of the child and other prospective adoptive parents. Hence, the present petitioners are not entitled to seek any relief as prayed.

15. We have considered the submissions advanced by both the learned counsel. Perused the record.

16. The issue involved in the present petition is, whether termination of the petitioners is illegal and can directions be given to accept their resignations.

17. Before addressing the core issue, it is necessary to see the statutory provisions in respect of termination of Chairperson and members of 'CWC'.

a) Section 27 (7) (i), (ii) and (iii) of the Juvenile Justice (Care and Protection of Children) Act, 2015, which reads thus:

27. Child Welfare Committee.

(1)

(2)

(3)

(4)

(5)

(6)

(7) The appointment of any member of the Committee shall be terminated by the State Government after making an inquiry, if -

(i) he has been found guilty of misuse of power vested on him under this Act;

(ii) he has been convicted of an offence involving moral turpitude and such conviction has not been reversed or he has not been granted full pardon in respect of such offence;

(iii) he fails to attend the proceedings of the Committee consecutively for three months without any valid reason or he fails to attend minimum three-fourths of the sittings in a year.

b) The Rules are provided for making enquiry in respect of complaint made against a member of Board or Committee. Rule 91 (15) and (16) of Maharashtra State Juvenile Justice (Care and Protection of Children) Rules, 2018 read as under:-

"Rule 91 (15) If any complaint is made against a member of the Board or Committee, the State Government shall direct the Commissioner, or Divisional Deputy Commissioner, Women and Child Development to hold necessary inquiry and submit report to the State Government for necessary action except in respect of judicial officers. The complaints against judicial officers shall be forwarded to the Registrar of the High Court for action.

16. The Commissioner, or Divisional Deputy Commissioner, Women and Child Development shall complete the inquiry and submit the report to the State Government within a period of one month and the State Government shall take appropriate action within two months."

18. This section and rule empower the State Government to terminate the members of CWC after making enquiry. In present case, Principal District Judge, Jalna/President District Legal

Services Authority had conducted a surprise visit to Late Rajkunvar Rameshchandra Bang Shishuvihar gruh run by Marwadi Charitable Trust. The Principal District Judge found several irregularities there. The condition of child home was pathetic, unhygienic and unhealthy. Pursuant to the report of the Principal District Judge, Jalna, this Court has taken cognizance of report, which resulted into Suo-moto Public Interest Litigation no.2 of 2020. Thereafter, the office of the Commissioner, Women and Child Development, Maharashtra State, Pune (Respondent No.2) has issued directions to the Deputy Divisional Commissioner, Aurangabad Division, Aurangabad (Respondent No.3) to conduct inspection of the Marwadi Charitable Trust, Child Care Institution, Special Adoption Agency and CWC, Jalna about the irregularities and has further directed seizure of entire record and proceedings. Accordingly, Respondent No.3-Deputy Divisional Commissioner, Aurangabad has conducted the inspection on 24th August, 2020 of Marwadi Charitable Trust, Jalna Child Care Institution, Special Adoption Agency and CWC, Jalna in respect of irregularities and seized the record and submitted the report on 8th September, 2020 to the office of the Commissioner.

19. It appears from the record that after receiving the report, it was noted that there

were serious irregularities in the adoption process. A show cause notice was issued to the petitioners. The petitioners have replied to the show cause notice. Thereafter, the F.I.R. was lodged against the petitioners and the trustees of Marwadi Charitable Trust, Child Care Institution.

20. The Petitioners contend that no opportunity was given to them to put-forth their side. It appears from the record that show cause notice was issued to the petitioners and they have tendered their reply dated 28.08.2020. In this reply, the petitioners have stated that they have given letters dated 10.02.2020 and 27.02.2020 to take action against the Charitable Trust. It is significant to note that these letters are given by the petitioners when irregularities were noticed by the Principal District Judge, Jalna.

21. It appears to us from the record that, to avoid from any liability and to show that the petitioners have taken action against wrongdoers, these letters were given by the petitioners. Though the petitioners were appointed in 2018, no action was taken by them against the child home or even to Charitable trust, who failed to perform their duties under JJ Act, 2015 till February, 2020. The petitioners have also given

their written say dated 12.10.2020 to respondent no.4. First information report is filed against the petitioners along with the trustees of the Charitable Trust. In this F.I.R. specific allegations are made against the petitioners. Though the petitioners are stating that they have not misused powers, it appears from record that CWC Jalna has not followed the procedure before granting foster care order in respect of three children given in foster care. The CWC, Jalna has not followed mandatory provisions provided under JJ Act, 2015 and JJ Rules, 2018.

22. The foster families to whom, the children were given by CWC, Jalna had filed Writ Petitions before this Court praying to give children to them as per the provisions of the Act of 1956. This Court (Coram : S.V. Gangapurwala & Shrikant D. Kulkarni, JJ) by order dated 7th May, 2021 dismissed these Writ Petitions. While dismissing these petitions, this Court has observed as under:-

"The facts of the case at hand are very much disturbing. The CWC, Jalna and the Specialized Adoption Agency, Jalna have committed breach of mandatory provisions of the JJ Act, 2015 and the Rules, 2018 before accepting surrender of the child and

giving interim custody of child by way of foster care order. The JJ Act, 2015 is a complete code itself, which governs the field. When statute requires that a particular thing has to be done in a particular way, it must be done in that way only. In the case at hand, the Specialized Adoption Agency and the CWC Jalna have flouted the mandatory provisions of the JJ Act.

We are not impressed by the argument advanced by Mr.Dharurkar. We have to protect the best interest of the child throughout the process of adoption. Unfortunately, in the case at hand, best interest of the child seems to have not been protected to give purposeful interpretation to the definition of child in need of care and protection under Section 2(14) of the JJ Act, 2015.

It is further brought to our notice that in SMPIL No.2 of 2020 (Registrar (Judicial) Vs. Union of India and others), this Court has issued certain directions and in pursuance of directions issued by this Court, the District Women and Child Development Officer, Jalna has

filed F.I.R. bearing No.0577 of 2020 dated 18.12.2020 against the members of Child Welfare Committee, Jalna and Directors of Marwadi Charitable Trust, Jalna regarding illegalities committed in the process of adoption.

In the above background, the entire process of giving interim custody of child on execution of foster care agreement in this case is in breach of mandatory provisions of the JJ Act 2015 and Rules 2018.

In view of the above, the prayers made by the petitioners cannot be granted. We arrived at this conclusion by keeping the best interest of the female child as being paramount consideration."

23. In the above order, this Court has observed that petitioners have breached mandatory provisions of the JJ Act, 2015 and JJ Rules, 2018.

24. It is the contention of the learned counsel for the petitioners that before termination of the petitioners no enquiry is conducted, no show-cause notice is issued and no say of petitioners is taken to explain alleged misuse of powers. Termination order is blatant

violation of principles of natural justice.

25. It appears from the record that an enquiry is conducted by respondent No.3. Show-cause notice was given to petitioners. They have replied to it. Thereafter the F.I.R. is lodged against petitioners. So it shows that as per section 7 of the JJ Act, 2015, all legal formalities are completed. It is significant to note that the FIR was registered against the petitioners on 8th December, 2020, whereas the resignations have given by petitioner no.3 on 15.12.2020 and petitioner no.1, 2, 4 and 5 on 6th February 2021. It shows that after filing FIR against the petitioners, they have given their resignations.

26. It appears from record that the petitioners have committed irregularities and have not followed the mandatory provisions prescribed by law while working as CWC members. They were appointed on these posts by the Government so that they would work for the welfare of the child. But, the petitioners have failed to do so. All irregularities and pathetic conditions of child homes have been revealed after visit of the Principal District Judge. This Court has observed in it's order (supra) that the petitioners as CWC Committee have breached mandatory provisions of JJ Act, 2015 and JJ

Rules, 2018. There are specific allegations made against the petitioners in the F.I.R. There is violation of constitutional and legal rights of children in child home, who are poor, ignorant or in a socially or economically disadvantaged position. It was duty of the CWC to provide basic need and protection for children in need of protection and care. But, the CWC failed to do it. Hence, in our view, the termination of petitioners is not illegal.

27. The petitioners have given resignations alleging that, without giving any notice, without taking say of Child Welfare Committee, a false and concocted FIR is lodged against the Chairperson and members of Child Welfare Committee. Committee felt this action as insult and injustice of quasi-judicial authority. Fed up by the behaviour and apathy of Women and Child Development Department, the petitioners have given their resignations. In our view, after lodging F.I.R. against petitioners, they have chosen to give resignations. They were aware that as F.I.R. is lodged against them, their termination is inevitable. To avoid it, the petitioners have tendered their resignations.

28. Though the petitioners are praying for acceptance of their resignations, in our view, acceptance of petitioners' resignations would

amount to giving a clean chit to them, when serious allegations are made against them. It is the contention of the petitioners that there are no allegations against the petitioners in the said F.I.R. In our view, when F.I.R. is lodged against the petitioners, we cannot scrutinise those allegations. Moreover, in our view, this petition is premature. The petitioners could have possibly filed this petition in case of their acquittal from the criminal case pending against them. This may be a ground available to them, subject to the law applicable. But at this stage, as criminal case is pending against the petitioners and there are specific allegations levelled against them, hence, we would not issue directions to accept their resignations.

29. We have gone through the judgments in the cases of **Prakash Dethé (supra)** and **Dr.Padmakar Pandit (supra)**. The facts in the cited cases and the case at hand are different. In the present case, the enquiry was conducted against the petitioners. Show cause notice was given to the petitioners. They have replied to it. On the basis of the enquiry report, the F.I.R. is lodged against the petitioners. This Court has observed in the judgment that the petitioners have failed in their duties.

30. In view of above, the Writ Petition is dismissed. Rule is discharged. No costs.

(S.G.DIGE, J.)

(RAVINDRA V. GHUGE, J.)

SGA