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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2022

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P. Nos.4914, 6695, 6699 and 6701 of 2022
and
WMP Nos.5061, 5062, 6776, 6777,
6779, 6780, 6781 and 6782 of 2022

Dr. Saranya T. Jaikumar ... Petitioner in W.P. No.4914 of 2022
K. Durai Raj ... Petitioner in W.P. No.6695 of 2022
Murali Kumar ... Petitioner in W.P. No.6699 of 2022
Saraswathi ... Petitioner in W.P. No.6701 of 2022

vs.

The State of Tamilnadu
Represented by the
Additional Chief Secretary to Government-
Social welfare and Women
Empowerment Department,
Secretariat,
Fort St. George,
Chennai – 600 009. ...Respondent in all W.P.s

Common Prayer in W.P. Nos.4914, 6695 and 6699 of 2022 : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent as contained in the impugned order G.O. (Ms) No.12 dated 23.02.2022 – Social welfare and Women Empowerment Department and quash the same and consequently permit the petitioner to continue as a

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member in Tamilnadu Commission of Protection of Child Rights till the end of her term viz., 19.01.2024.

Prayer in W.P. No.6701 of 2022 : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent as contained in the impugned order G.O. (Ms) No.12 dated 23.02.2022 – Social welfare and Women Empowerment Department and quash the same and consequently permit the petitioner to continue as a Chair person in Tamilnadu Commission of Protection of Child Rights till the end of her term viz., 19.01.2024.

For petitioners : Mr.K.Newlin Frederick
For respondent : Mr.Silambanan
Addl. Advocate General
Assisted by
Mr. T. Seenivasan,
Spl. Government Pleader for R1

COMMON ORDER

The issue involved in these writ petitions is whether without following Section 7 of The Commission for Protection of Child Rights Act, 2005 (hereinafter referred to as the Child Rights Act), a Chairperson or a Member of Commission appointed under Section 4 of the said Act can be removed.

2. The petitioner in W.P. No.6701 of 2022 is the Chair person and the respective petitioners in other writ petitions viz., W.P. Nos.4914, 6695 and 6699 of 2022 are Members of the Child Rights Commission. As the issue involved in all these writ petitions are one and the same,

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they are disposed of by a common order.

3. The contention of the petitioners in these writ petitions is that under the impugned G.O., without following the procedure contemplated under Section 7 of the Child Rights Act, the petitioners have been removed as Members/ Chairperson. However, according to the respondent, they have inherent powers by exercising their rights under Section 16 of the General Clauses Act, 1897 to reconstitute the Commission by cancelling the earlier appointments of Members and the Chairperson. Therefore, according to them only in accordance with law, the impugned G.O. has been issued cancelling the earlier appointments.

4. The learned counsel for the petitioner drew the attention of this Court to Section 7 of the Act and would submit that only under the circumstances mentioned therein, a Member / Chairperson can be removed and not otherwise and further, he would submit that without affording any opportunity of hearing to the respective petitioners the impugned G.O. has been passed.

5. He would also submit that under Section 16 of the General Clauses Act, 1897 which the respondent relies upon does not get attracted in view of the fact that when there is a specific statutory

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procedure provided under the Child Rights Act for removal of a Member or a Chairperson, application of Section 16 of the General Clauses Act, 1897 is impermissible in law. The learned counsel for the petitioner would further submit that even though the posts held by the petitioners are Honorary in nature but when there is a statutory special procedure prescribed under the Child Rights Act, the respondent will have to necessarily follow the said statutory procedure and cannot fall upon Section 16 of the General Clauses Act.

6. Per contra Mr.Silambanan, learned Additional Advocate General appearing for the respondent would at the outset submit that only for the effective working of the Commission, the impugned G.O. has been passed cancelling the earlier appointments. He would submit that out of the five Members, only four Members are now in service as one of them has already resigned.

7. He also drew the attention of this Court to Section 16 of the General Clauses Act and would submit that inherent powers are vested with the respondent to suspend or dismiss any Member of the Commission. He would submit that the impugned G.O. has been passed

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not under Section 7 of the Act but only exercising the powers available to the respondent as per the provisions of Section 16 of the General Clauses Act. Therefore, according to him only in accordance with law, the impugned G.O. has been passed.

8. It is also further contended by the learned Additional Advocate General that the Members / chairperson are holding Honorary posts and they are not receiving any salary. Therefore according to him they do not have any vested right to challenge the impugned G.O.

Discussion :

9. The impugned G.O. issued by the Social Welfare and Women Empowerment [SW.5(2)] Department in G.O.Ms. No.12, dated 23.02.2022 reads as follows :

ORDER :-

In the Government Order fourth read above, the Government have appointed the Chairperson and six Members to the Tamil Nadu Commission for Protection of Child Rights.

2. The Government is always having a greater concern over the care and protection of children and during the last 9 months have implemented various novel schemes for the welfare and over all development for them. Towards this direction the Government have

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introduced / taken following Schemes and actions :-

I. During this pandemic, the State has taken swift action for rehabilitating the children affected and infected by COVID 19 as well as children of COVID affected / infected parents.

II. The District Level Task Force consisting of seven members including the District Collector of the concerned District as Chairperson has been constituted for providing intervention programmes to care and protection of children affected and infected by COVID 19 as well as children of COVID affected /infected parents.

III. The Government of Tamil Nadu has announced various welfare measures including following financial assistance schemes :-

a. Rs.5.00 lakh for a child who had lost both the parents due to COVID – 19.

b. Rs.5.00 lakh for a child who had lost one of the parents earlier and other parent due to COVID – 19.

c. Rs.3.00 lakh to a child who lost a single parent due to COVID-19.

d. Rs.3,000/- per month to a child who had lost both the parents living with his relative /guardian.

e. Priorities in Government Schemes.

IV. The Government have sanctioned additional fund of Rs.5.00 crore to "Tamilnadu Child Victim Compensation Fund" for providing interim

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compensation and compensation to the victim children under the Protection of Children from Sexual Offences Act, 2012.

V. To encourage alternative care to children in families instead of placing Children under institutional care, the Hon'ble Chief Minister has ordered to extend the financial assistance of Rs.2000/- per child every month for the period of 3 years for 1,148 waitlisted children under the Sponsorship Scheme at a Cost of Rs.1.38 Crore through State Funds.

VI. The Government issued orders to establish Tamil Nadu State Child Protection Academy in association with UNICEF, one of the first kind in the country, to provide a training to Stakeholders related to the Child protection Services.

VII. The Government have issued "Tamil Nadu State Child Policy for Children, 2021" for the overall wellbeing of children so as to set a benchmarks on all indicators on par with international standards.

3. Since, this Government is very keen on ensuring a protective and conducive environment for all the children of the State, a vibrant, dynamic and enthusiastic people in the Tamil Nadu Commission for Protection of Child Rights is absolutely necessary.

4. After careful consideration, the Government in the best interest of the Children of the State as per the powers conferred under section 18 of the Commissions for Protection of Child Rights Act, 2005, read with section 16 of the General Clauses Act, 1897 (Central Act X of 1897)

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hereby cancels the notification issued with the Government Order fourth read above in which the present incumbents of the posts of Chairperson and six Members of the Tamil Nadu Commission for Protection of Child Rights were appointed. The Secretary, Tamil Nadu Commission for Protection of Child Rights is permitted to call for applications for filling up of the posts of Chairperson and other six Members of the Commission, so as to reconstitute the same.

5. The Notification appended to this order will be published in the Tamil Nadu Government Gazettee Extraordinary, dated 23.02.2022.

10. Section 16 of the General Clauses Act 1897, which the learned Additional Advocate General relied upon reads as follows :-

> **16. Power to appoint to include power to suspend or dismiss :-** Where, by any [Central Act] or Regulation, a power to make any appointment is conferred, then, unless a different intention appears, the authority having [for the time being] power to make the appointment shall also have power to suspend or dismiss any person appointed [whether by itself or any other authority] in exercise of that power.

11. The expression “unless a different intention appears” in Section16 makes it clear that Section 16 of the General Clauses Act, 1895 shall apply only when there is no special statutory procedure

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provided in the Child Rights Act, for removal of any Member or a Chairperson.

12. Section 7 of the Commission for Protection of Child Rights Act, 2005 reads as follows :-

7. Removal from office.-

(1) Subject to the provisions of sub-section (2), the Chairperson may be removed from his office by an order of the Central Government on the ground of proved misbehaviour or incapacity.

(2) Notwithstanding anything contained in sub-section (1), the Central Government may by order remove from office the Chairperson or any other Member, if the Chairperson or, as the case may be, such other Member,-

a) is adjudged an insolvent; or

b) engages during his term of office in any paid employment outside the duties of his office; or

(c)refuses to act or becomes incapable of acting; or

(d) is of unsound mind and stands so declared by a competent court; or

(e) has so abused his office as to render his continuance in office detrimental to the public interest; or

(f) is convicted and sentenced to imprisonment for an offence which in the opinion of the Central Government involves moral turpitude; or

(g) is, without obtaining leave of absence from the Commission, absent from three consecutive meetings of the Commission.

(3)No person shall be removed under this section until that person has been given an opportunity of being heard in the matter.

13. The aforementioned section discloses only seven circumstances under which a Member or a Chairperson shall be removed. Further, it

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contemplates that no person shall be removed until that person has been given an opportunity of being heard in the matter. In the case on hand, the petitioner admittedly does not fall under any of the aforementioned circumstances for his/her removal which enables the respondent to remove him / her as a Member or a Chairperson. No opportunity of hearing has also been granted to the petitioner before his/her removal though the respondent contends that they have not cancelled the earlier appointments of the petitioner and other Members under Section 7 of the Child Rights Act. The only power available to the respondent to remove any Member or Chairperson under the Child Rights Act is the power available to them under Section 7 of the Act and not otherwise. Hence, the impugned G.O. cancelling the earlier appointments to the commission has been passed without following the procedure contemplated under the provisions of the Child Rights Act. The respondent has also not afforded any opportunity of hearing to the petitioners who have been removed pursuant to the impugned G.O. Though the posts held by the petitioner and other Members who have been removed may be an Honorary post but when the Child Rights Act provides a special procedure for their removal, necessarily the respondent shall have to follow the said

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statutory procedure. Having not followed the same, the impugned G.O. is illegal and has to be struck down. Further no charges have also been levelled against the respective petitioners in the impugned G.O. and that has also been taken note of by this Court for deciding to quash the impugned G.O.

14. For the foregoing reasons, this impugned G.O.(MS) No.12, dated 23.02.2022 is hereby quashed and these writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

13.07.2022

Note : Upload order copy on 15.07.2022.

Issue order copy on 18.07.2022

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
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To
The Additional Chief Secretary to Government-
Social welfare and Women
State of Tamilnadu
Empowerment Department,
Secretariat,
Fort St. George,
Chennai – 600 009.

W.P. Nos.4914, 6695, 6699 and 6701 of 2022

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