

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 190 of 2022

Nari Gunjan a Non-Government Organization registered under the Societies Registration Act, 1860 having its Registered Office at Village Jamsaut, P.S. Danapur, District Patna through its Secretary Miss. Sudha Varghese, aged about 77 years, Female, Daughter of Late Varghese, Resident of Nari Gunjan Prerna Hostel, Lal Kothi, Danapur, P.S. Danapur, District-Patna.

... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Human and Child Development, Government of India, New Delhi.
2. The Secretary, Ministry of Human and Child Development, Government of India, New Delhi.
3. The State of Bihar through the Additional Chief Secretary, Social Welfare Department, Government of Bihar, Vikash Bhawan, Bailey Road, Patna.
4. The Additional Chief Secretary, Social Welfare Department, Government of Bihar, Vikash Bhawan, Bailey Road, Patna.
5. The Director, Social Welfare Department, Government of Bihar, Vikash Bhawan, Bailey Road, Patna.
6. The Chairman, State Child Protection Society, Bihar, 2nd Floor, Apna Ghar, Behind Lalit Bhawan, Bailey Road, Patna.
7. The Vice-Chairman, State Child Protection Society, Bihar 2nd Floor, Apna Ghar, Behind Lalit Bhawan, Bailey Road, Patna.
8. The District Child Protection Unit, Patna.

... .. Respondent/s

Appearance:

For the Petitioner/s : Mr. S. D. Sanjay, Sr. Advocate
Mr. Mohit Agarwal, Advocate
For the Respondent/s UOI : Dr. Krishna Nandan Singh (ASG)
For the Respondent/s State : Ms. Kumari Amrita, GP-3

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 07-04-2023

Heard the learned senior counsel for the petitioner Sri
S.D. Sanjay, assisted by Sri Mohit Agarwal, Advocate and



the learned counsel appearing for the respondent-State, Ms. Kumari Amrita.

2. The present writ petition has been filed for quashing the order contained in Memo dated 20.12.2021, issued under the signature of the Director, Social Welfare-cum-Vice Chairman, State Child Protection Society, Bihar, Patna, whereby & whereunder the certificate of recognition of the petitioner as a Specialized Adoption Agency, has been revoked.

3. The brief facts of the case are that the petitioner is a Non-Governmental Organization registered under the Societies Registration Act, 1860, having its registered office at village-Jamsaut, P.S. Danapur, District-Patna and the Secretary of the petitioner's N.G.O. is Ms. Sudha Varghese, who is stated to be a Padma Shree awardee and a social worker, who works for upliftment and benefit of the society at large. The Union of India had floated an Integrated Child Protection Scheme, a centrally sponsored scheme aimed at building a protective environment for children in difficult circumstances, as well as other vulnerable children through Government-Civil Society Partnership. The objective of the said scheme is to bring together multiple existing child protection schemes of the Ministry under one comprehensive umbrella, and integrate additional interventions for protecting children and preventing harm



to them.

4. It is the further case of the petitioner that by letter dated 15.02.2016, the State Child Protection Society, Social Welfare Department, Government of Bihar had selected the petitioner organization for running a Specialized Adoption Agency in District-Patna with grant-in-aid support from the State Child Protection Society, Bihar (hereinafter referred to as the 'SCPS, Bihar'), and for the said purpose, the Secretary of the petitioner organization was requested to enter into an agreement with the SCPS, Bihar, whereafter, the petitioner had entered into an agreement dated 07.09.2016, and then the respondent no.5, had issued a certificate of recognition of Specialized Adoption Agency vide order dated 07.09.2016 for the period 16.09.2016 to 15.09.2021 and the purpose mentioned therein was for rehabilitation of orphan, abandoned and surrendered children through adoption & non-institutional care & for care, protection and well-being of every child in its charge (as per para 30 of Adoption Guidelines, 2015). The said recognition of the petitioner as a Specialized Adoption Agency was subsequently renewed by an order dated 20.9.2021, passed by the respondent no.5 for the period 16.09.2021 to 15.09.2026.

5. It is the contention of the petitioner that suddenly by an order dated 20.12.2021, the Director, Social Welfare-



cum-Vice Chairman, SCPS, Bihar has cancelled the recognition of the petitioner as a specialized child adoption agency by invoking powers under Section 41 (7) of The Juvenile Justice (Care and Protection of Children) Act, 2015, (hereinafter referred to as the "Act, 2015"), on the purported recommendation of the Central Bureau of Investigation (hereinafter referred to as the "C.B.I."), for blacklisting the petitioner organization and cancelling the contract given to the petitioner. This is how the petitioner is before this Court.

6. The learned senior counsel for the petitioner has submitted that neither any show cause notice was issued prior to passing of the impugned order of cancellation dated 20.12.2021, nor the report of the C.B.I., forming the basis for cancellation of the recognition of the petitioner as a Specialized Adoption Agency, was ever supplied to the petitioner so as to enable the petitioner to put forth its defense and unilaterally the recognition of the petitioner organization as a Specialized Adoption Agency has been revoked. The Ld. senior counsel has referred to Section 3 (xvi) and Section 41 (7) of the Juvenile Justice (Care and Protection of Children) Act, 2015, which are reproduced herein below:-

"3 (xvi)-Principles of natural justice- Basic procedural standards of fairness shall be adhered to, including the right to a fair hearing, rule against bias and the



right to review, by all persons or bodies, acting in a judicial capacity under this Act.

41 (7)-The State Government may, after following the procedure as may be prescribed, cancel or withhold registration, as the case may be, of such institution which fail to provide rehabilitation and reintegration services as specified in section 53 and till such time that the registration of an institution is renewed or granted, the State Government shall manage the institution."

7. The learned senior counsel for the petitioner has next referred to Rule 21 (7) of the Bihar Juvenile Justice (Care and Protection of Children) Rules, 2017 (hereinafter referred to as the "Rules, 2017"), which is reproduced herein below:-

21(7)-If the inspection or the annual review reveals that there is unsatisfactory compliance with the standards of care, protection, rehabilitation & reintegration services & management of the institution as laid down under the Act & the rules or the facilities are inadequate, the State Government may, at any time, serve notice on the management of the institution and after giving an opportunity of being heard, declare within a period of sixty days from the date of the detailed inspection or annual review as the case may be, that the registration of the institution or organization, shall stand withdrawn or cancelled from a date specified in the notice and from the said date, the institution shall cease to be an institution registered under sub-section (1) of Section 41 of the Act."

8. The Ld. Sr. counsel for the petitioner, while referring



to the above provisions of law, has submitted that it is mandatory for the authorities to adhere to the principles of natural justice as well as to the basic procedural standards of fairness including that of adhering to the right of the petitioner to a fair hearing and only after issuing a show cause notice & seeking response of the petitioner, the impugned order dt. 20.12.2021 could have been passed, hence the same is perverse & fit to be set aside.

9. The learned senior counsel for the petitioner has also referred to the counter affidavit filed by the respondent-State, more particularly to the report of C.B.I. contained in letter dated 29.11.2019, written by the Superintendent of Police & Head of Branch, CBI, SCB, Patna to the Chief Secretary, Government of Bihar, Patna, relevant paragraphs whereof are reproduced herein below:-

“2. The Specialized Adoption Agency in Patna run by ‘NARI GUNJAN’ was found mentioned under the heading ‘Grave Concerns’ in the report of TISS at page 53. No FIR was registered in concerned Police Station of Patna district against M/s. Specialized Adoption Agency in Patna run by ‘NARI GUNJAN’ after submission of the aforesaid report of TISS. Hence, in compliance of the order dated 28.11.2018 passed by the Hon’ble Supreme Court of India, Preliminary Enquiry bearing no. PE092201950001 dated 17.01.2019 was registered by CBI, SCB, Patna against office bearers of Specialized Adoption Agency run by ‘NARI GUNJAN’ in Patna to enquire into the



allegations levelled in the report of TISS.

3. Enquiry registered by the CBI has been completed and no incriminating evidence proving commission of criminal offence could be gathered with respect to Specialized Adoption Agency, Patna, run by NGO NARI GUNJAN' during the relevant Period. Hence no FIR has been registered by CBI on conclusion of this Preliminary Enquiry.

4. During enquiry, lapses on the part of different Govt. officials regarding functioning of Specialized Adoption Agency, Patna have been found, which are elaborated in CBI Report enclosed herewith."

10. It is submitted by the Ld. Sr. counsel for the petitioner that though a clean chit has been given to the petitioner, nonetheless, the Superintendent of Police, CBI, SCB, Patna has made recommendation for blacklisting the petitioner organization and its Secretary, although he has no such authority under the law, as such, he has acted illegally. It is also submitted that the fact, however, remains that the said materials were never put to the petitioner seeking its response to the same, hence, no unilateral action could have been taken in contravention of the principles of natural justice. It is contended that only when the performance of the petitioner was found to be outstanding, the recognition of the petitioner as a Specialized Adoption Agency was extended for a further period of 5 years i.e upto 15.09.2026, by an order dated 20.09.2021, *dehors* the report/adverse recommendation of the C.B.I. dated



29.11.2019, however, midway, merely on the illegal communication/advice and findings of the CBI, which though has absolved the petitioner of any criminal offence or liability, the recognition of the petitioner as a Specialized Adoption Agency has been cancelled vide letter dated 20.12.2021. Thus, it is the submission of the learned senior counsel for the petitioner that the said letter/order dated 20.12.2021 issued by the Director, Social Welfare-cum-Vice Chairman, SCPS, Bihar be quashed. Lastly, it is submitted by the learned senior counsel for the petitioner that the agreement entered into by the SCPS, Bihar with the petitioner, for the purposes of running a Specialized Adoption Agency in the district of Patna, has not yet been cancelled.

11. *Per contra*, the Ld. counsel for the respondent-State has submitted that the responsibility of running a Specialized Adoption Agency was given to the petitioner by the Director, Social Welfare, after due verification and adopting the legal procedure, especially on account of the reputation of the Secretary of the petitioner-NGO in the social sector, however, continuation of work or cancellation or renewal thereof depends upon the quality of work performed by the Agency in question. It is also submitted that the C.B.I. has recommended for blacklisting the petitioner-NGO as also for cancelling all its contracts for



running Specialized Adoption Agency/Children Homes as well as suggested for not giving any future social contracts to the petitioner, vide report dated 29.11.2019. It is also submitted that the functioning of the petitioner-Agency was verified by various agencies like CWC/DCPU etc., however, action has been taken on account of the recommendations made by the C.B.I. It is also submitted that proper opportunity of hearing has been granted to the petitioner and principles of natural justice have been followed, nonetheless, action has been taken by the Social Welfare Department, in compliance of the recommendation of the C.B.I., under the orders of the Hon'ble Apex Court. It is contended that sub-clause (xv) and (xvi) of clause 2.4 of the "grant agreement", entered into between the SCPS, Bihar and the Secretary of the petitioner for running Specialized Adoption Agencies in the Patna District, dated 07.9.2016 would show that the right of extension of the contract as well as the right to terminate the contract/agreement has been reserved by the SCPS, in case any discrepancy is found during the course of inspection and recommendation to the said effect is made by any official/authority. It is next contended that a letter dt. 09.08.2021 was issued by the District Magistrate, Patna to the Director, Social Welfare, Bihar, recommending for taking action against the petitioner and others in light of the recommendations of the C.B.I. It is also the case of the



respondents that upon an inspection conducted by TISS team, the condition of the petitioner-Agency was found to be life threatening to the children, the premises was unhygienic, the children seemed hungry and unhappy and even the adoption process was very slow and low.

12. The learned counsel for the respondent-State has also submitted that an inspection of the petitioner-Agency was conducted by the Child Protection Officer, Patna on 27.10.2016 and various irregularities were found in the functioning of the Specialized Adoption Agency of the petitioner, hence the Director, Social Welfare-cum-Vice Chairman, State Child Protection Samiti had issued a letter dated 24.03.2017 to the petitioner to rectify the irregularities/defaults found during the course of inspection. It is also submitted that thereafter, another inspection was held by the Assistant Director, District Child Protection Unit, Patna on 03.02.2017, wherein also irregularities were found. Again on 29.07.2017, 01.09.2017 and 30.12.2017, inspections were held by the Child Protection Officer, District Child Protection Unit, Patna, wherein also certain irregularities were detected, whereupon the Director, Social Welfare-cum-Vice Chairman, State Child Protection Samiti vide letters dated 23.10.2017 and 30.01.2018 had asked the petitioner-Agency to rectify the irregularities found during the course of inspection. The learned counsel for the respondent-State has also referred to a show cause notice



dated 01.02.2018 issued by the Assistant Director, District Child Protection Unit, Patna to the petitioner-Agency directing therein to furnish clarification/reply regarding the irregularities found during the course of inspection, as mentioned in the said letter dated 01.02.2018, to which the petitioner had also submitted its reply. Thus, it is submitted that ample opportunity has been granted to the petitioner to put forth its defense, hence the principle of natural justice has duly been complied with.

13. The learned counsel for the respondent-State has submitted, by referring to the arguments advanced by the learned Senior Counsel for the petitioner that as far as Section 41 (7) of the Act, 2015 is concerned, the same pertains to the procedure to be followed in case of cancellation/ withholding of registration of an institution, as such the same is not applicable in the present case inasmuch as the present case is a case of Specialized Adoption Agency, which is covered by Section 65 of the Act, 2015, which is reproduced herein below:-

***“65. Specialised Adoption Agencies:- (1) The State Government shall recognise one or more institutions or organisations in each district as a Specialised Adoption Agency, in such manner as may be provided in the adoption regulations framed by the Authority, for the rehabilitation of orphan, abandoned or surrendered children, through adoption and non-institutional care.*”**



(2) The State Agency shall furnish the name, address and contact details of the Specialised Adoption Agencies along with copies of certificate or letter of recognition or renewal to Authority, as soon as the recognition or renewal is granted to such agencies.

(3) The State Government shall get every Specialised Adoption Agency inspected at least once in a year and take necessary remedial measures, if required.

(4) In case any Specialised Adoption Agency is in default in taking necessary steps on its part as provided in this Act or in the adoption regulations framed by the Authority, for getting an orphan or abandoned or surrendered child legally free for adoption from the Committee or in completing the home study report of the prospective adoptive parents or in obtaining adoption order from the District Magistrate) within the stipulated time, such Specialised Adoption Agency shall be punishable with a fine which may extend up to fifty thousand rupees and in case of repeated default, the recognition of the Specialised Adoption Agency shall be withdrawn by the State Government.”

14. It is thus submitted by the learned counsel appearing for the respondent-State that Section 65 (4) of the Act, 2015 provides for withdrawal of recognition of the Specialized Adoption Agency by the State Government in case of repeated default in taking necessary steps on its part as provided for in the Act, 2015 or in the Adoption Regulation framed by the authority for getting an orphan or abandoned or surrendered child legally free for adoption



from the committee or in completing the home study report or obtaining the adoption order. Thus, it is submitted that on account of repeated irregularities having been found in the functioning of the petitioner-Agency, its recognition as a Specialized Adoption Agency has been revoked and in fact Section 65 (4) of the Act, 2015 does not postulate grant of any opportunity of hearing or complying with the principles of natural justice much less issuing of any show cause notice. The learned counsel for the respondent-State has also contended that the recognition, inspection and functioning of Specialized Adoption Agency is governed by the Adoption Regulations, 2017. Regulation 23 of the Adoption Regulations, 2017 provides for the procedure & the documents to be submitted to the State Government for recognition of any child care institution intending to be recognized as a Specialized Adoption Agency. Regulation 24 prescribes the criteria and procedure for renewal of recognition of Specialized Adoption Agency whereas Regulation 25 provides for the procedure for suspension or revocation of recognition of Specialized Adoption Agency. Lastly, it is contended by the learned counsel for the respondent-State that no personal right of the petitioner has been either infringed or affected, hence the present writ petition is fit to be dismissed being devoid of any merit.



15. I have heard the learned senior counsel for the petitioner and the learned counsel appearing for the respondent-State. At the outset, this Court would refer to the order dated 10.01.2023 passed on an earlier occasion in the present case, whereby the respondent-State was directed to file a specific affidavit to the effect as to whether the petitioner was given sufficient opportunity to place its stand before the impugned order dated 20.12.2021 was passed, in response whereof the respondent-State has filed a supplementary counter affidavit on 31.01.2023, wherein it has been stated that on various occasions inspection of the petitioner agency was held and the petitioner was directed by the Assistant Director, District Child Protection Unit, Patna to rectify the irregularities and faults detected during the course thereof as also a letter was written by the Director, Social Welfare-cum-Vice Chairman, State Child Protection Samiti dated 30.01.2018 directing the petitioner-Agency to remove the shortcomings found during the course of inspection, however, not a single show cause notice has been brought on record to show that the Director, Social Welfare-cum-Vice Chairman, State Child Protection Samiti had issued any show cause to the petitioner asking its clarification/reply on the issue of revoking the recognition of the petitioner as a Specialized Adoption Agency, before passing of the impugned order dated 20.12.2021, revoking the certificate



of recognition of the petitioner as a Specialized Adoption Agency, an order which has been passed by the Director, Social Welfare-cum-Vice Chairman, State Child Protection Samiti. In fact, during the course of arguments as well, upon the learned counsel for the respondent-State being asked to show as to whether the Director, Social Welfare-cum-Vice Chairman, State Child Protection Samiti has issued any show cause notice to the petitioner seeking its reply on the issue of revocation of the recognition of the petitioner as a Specialized Adoption Agency prior to passing of the impugned order dated 20.12.2021 by him, the learned counsel for the respondent-State has not been able to show even a single document of the said nature. Thus, admittedly the principles of natural justice have been violated in the present case.

16. At this juncture itself, it would be relevant to mention that Section 3 (xvi) of the Act, 2015 itself provides for adhering to the basic procedural standards of fairness including the right to a fair hearing. Moreover, Rule 21 (7) of the Rules, 2017 also provides for service of notice on the management of an institution and affording an opportunity of being heard before withdrawing/cancelling the registration/recognition of an institution. In fact, Regulation 25 (3) of the Adoption Regulations, 2017 (now replaced/superseded by the Adoption Regulations, 2022, which though shall not be applicable in the present case since the



impugned order has been passed on 20.12.2021) also bars passing of any order of suspension or revocation of Specialized Adoption Agency without giving an opportunity to the agency to offer its explanation. Thus, it is amply clear that the Act, 2015, Rules, 2015 & the Adoption Regulations, 2017, all provide for issuance of show cause notice, grant of an opportunity of being heard and adherence to the procedural standard of fairness including the right to a fair hearing before revoking/ withdrawing/ cancelling the recognition of a Specialized Adoption Agency.

17. It is a well settled law that the principles of natural justice act as a guarantee against arbitrary action, both in terms of procedure & substance by the judicial, quasi-judicial and administrative authorities. The principles of natural justice rest on twin principles, which are entrenched in the Indian Legal jurisprudence i.e. ***Nemo Judex In Causa Sua***, i.e., no person shall be a judge in his own cause as justice should not only be done, but should manifestly be seen to be done and ***Audi Alteram Partem***, i.e. a person affected by a judicial, quasi-judicial or administrative action must be afforded an opportunity of hearing before any decision is taken.

18. It is an equally well settled law that any person prejudicially affected by a decision of an authority entailing civil consequence must be given an opportunity of being



heard. In this regard, it would be apt to refer to a judgment rendered by a seven judges Bench of the Hon'ble Apex Court in the case of ***Maneka Gandhi vs Union of India***; reported in **(1978) 1 SCC 248**. In fact, the Hon'ble Apex Court has consistently held, in a catena of decisions, that every order or proceeding which involves civil consequence or adversely affects a citizen should be consistent with the principles of natural justice. Reference in this regard be had to the judgments rendered by the Hon'ble Apex Court in a host of cases, being enumerated herein below:-

- (i) *A.K. Gopalan vs. State of Madras*; reported in *A.I.R. 1950 SC 27*.
- (ii) *Erusian Equipment and Chemicals Ltd. vs. State of West Bengal & Anr.*; reported in (1975) 1 SCC 70;
- (iii) *Mohinder Singh Gill and Anr. vs. The Chief Election Commissioner, New Delhi & Ors*; reported in (1978) 1 SCC 405;
- (iv) *Raghunath Thakur vs. State of Bihar & Ors.*; reported in (1989) 1 SCC 229;
- (v) *D.K. Yadav vs J.M.A. Indust. Ltd.*, reported in (1993) 3 SCC 259;
- (vi) *Canara Bank vs. V.K. Awasthy*; reported in (2005) 6 SCC 321;
- (vii) *State of Maharashtra vs. Public Concern for Governance Trust*; reported in (2007) 3 SCC 587; and
- (viii) *Gorkha Security Services vs. Govt. (NCT of Delhi) & Ors.*; reported in (2014) 9 SCC 105;

19. As far as the argument of the respondent-State, regarding Section 65 of the Act, 2015 not containing any



provision for either issuance of a show cause notice or grant of an opportunity of hearing, before withdrawal of recognition of a Specialized Adoption Agency, is concerned, this Court finds that the said argument is required to be noted only for the purposes of being rejected, inasmuch as Section 3 (xvi) of the Act, 2015 itself postulates compliance of the principles of natural justice. Even otherwise, it is a well settled law that where rules of natural justice are not embodied expressly in a statute or rules framed thereunder, nonetheless, any administrative order which either involves social consequence or pre-judicially affects a person, is required to be consistent with the rules of natural justice. This aspect of the matter has been dealt with by the Hon'ble Apex Court in the case of **V. K. Awasthy** (supra). As far as the argument of the learned counsel appearing for the respondent-State to the effect that recognition of the petitioner as a Specialized Adoption Agency has been revoked on account of adverse reports and the recommendation made by the C.B.I., vide letter dated 29.11.2019, this Court finds that firstly the C.B.I. has given a clean chit to the petitioner-Agency inasmuch as it has specifically stated in its report that no incriminating evidence proving commission of criminal offence could be gathered with respect to the Specialized Adoption Agency, Patna, run by N.G.O. Nari Gunjan during the relevant



period, hence no FIR has been registered by the C.B.I. on conclusion of the preliminary enquiry and secondly neither under the Act, 2015, nor under the Rules, 2015, nor under the Adoption Regulations, 2017, there is any provision for the C.B.I. to make any recommendation for blacklisting of the Specialized Adoption Agencies or for the respondent authorities to blindly obey and execute such recommendations made by the C.B.I., without adverting to the procedure laid down in the Act, 2015, Rules, 2015 and the Adoption Regulations, 2017, thus this Court does not find any force in the aforesaid arguments made by the learned counsel for the respondent-State.

20. This Court would correspondingly emphasize that if a statutory provision prescribes a particular procedure to be followed by the authority to do an act, it should be done in that particular manner only and if such procedure is not followed in the prescribed manner, as provided under the statutory provisions, then such act of the authority is required to be held to be *null and void ab initio* in law. Reference in this connection be had to a judgment rendered by the Hon'ble Apex Court in the case of **J. Jayalalithaa & Ors. vs. State of Karnataka & Ors.**; reported in **(2014) 2 SCC 401** and the one rendered in the case of **Mackinnon Mackenzie Ltd vs Mackinnon Employees Union**; reported in **(2015) 4 SCC 544**.



21. In the present case, as discussed herein above, procedure has been prescribed not only under the Act, 2015 and the Rules, 2015 but also under the Adoption Regulations, 2017, which has admittedly not been complied with by the respondent authorities, before revoking the certificate of recognition of the petitioner as a Specialized Adoption Agency, hence on this score as well the impugned order dated 20.12.2021 passed by the Director, Social Welfare-cum-Vice Chairman, State Child Protection Samiti stands vitiated in the eyes of law, hence is fit to be set aside.

22. Having regard to the facts and circumstances of the case & for the reasons mentioned herein above, the impugned order dated 20.12.2021, passed by the Director, Social Welfare-cum-Vice Chairman, State Child Protection Samiti is unsustainable in the eyes of law, hence is quashed. The writ petition stands allowed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	15.09.2023
Transmission Date	N/A

