

AD-02
Ct No.09
01.12.2023
TN

WPA No. 28562 of 2022

Paromita De and another
Vs.
The State of West Bengal and others

Ms. Malabika Roy Dey
.... for the petitioners

Mr. Rajarshi Basu,
Ms. Rupsha Chakraborty
.... for the State

- 1.** The petitioners are the paternal aunts of a minor male child who is about 13 years of age. The child has been placed in a home, that is, the respondent no.3, Hope Kolkata Foundation. It transpires that the reason for placement of the child in the said home under the Juvenile Justice (Care and Protection of Children) Act, 2015 was that he was not being looked after properly by his biological parents. The father of the child had criminal antecedents, although he has expired in the meantime.
- 2.** Even the mother of the child, it was alleged, was found begging in front of a mosque with the child, which was not found to be congenial for the upbringing of the child. Under such

circumstances, the child has been placed in the home.

- 3.** It is contended by learned counsel for the CWC that the CWC may make exceptions for biological parents of a child who is placed in a home, but the petitioners do not have any right as such, in the capacity of paternal aunts, to visit the child as and when they please. It is submitted that such visits would not be congenial to the atmosphere of the home, since the other children, who are also primarily children in need of care and protection, may feel embarrassed or discriminated against if the particular child is met with by relatives and gets gifts.
- 4.** It is submitted that in the event the petitioners are so interested to visit the child, they are at liberty to apply under the appropriate provisions of law for taking foster care of the child to which the CWC has no qualms.
- 5.** Learned counsel for the CWC submits that due to some unforeseen circumstances, the report as directed by the court could not be affirmed. However, a written instruction in the form of a report is handed over in court today.
- 6.** The written instruction filed today be kept on record.

- 7.** It transpires from the said report that the biological mother of the child visited the child on four dates in total. The first of such visit was in the Ashirbad Home for Boys on August 31, 2019. The second visit was in the same home on February 22, 2020. The third and fourth such visits were at the Crisis Intervention Centre for Males on December 28, 2022 and October 14, 2023 respectively.
- 8.** Thus, it is seen that over a period of four years, the mother has only visited the child on four occasions, making the visit a mere annual affair.
- 9.** Thus, it does not strike the confidence of the court that the mother is too keen to visit the child.
- 10.** Hence, the discrimination sought to be made by the CWC between the biological parents (only mother since the father has since died) and the paternal aunts of the child, is based on a flimsy pretext.
- 11.** The CWC seeks to place reliance on Rule 73 of the West Bengal Juvenile Justice (Care and Protection of Children) Rules, 2017 which, however, does not make any distinction between the biological parents and other relatives. Sub-Rule (1) of the said Rule provides that all Child

Care Institutions shall be open to visitors with the permission of the Board or the Committee or the Person-in-charge, who may allow voluntary organizations, social workers, researchers, doctors, academicians, and such other persons as the concerned Department / Directorate / the Management Committee may permit or consider appropriate keeping in view the security, welfare and the interest of the children.

- 12.** Thus, the discrimination meted out between the biological mother of the child, who was found to be unfit to retain the child in the first place which necessitated placement of the child in a home, and the paternal aunts/petitioners of the child, who are also keen to visit the child, is baseless, unreasonable and arbitrary.
- 13.** Since the mother is being permitted to visit the child, there is no plausible reason for refusing the petitioners similar right to visit the child.
- 14.** Of course, such right of visitation cannot be unfettered and would be under the aegis of the concerned home.
- 15.** At the time of such visits, the petitioners shall not, if not so permitted by the management of the home, hand over any gift to the child, if in the perception of the home authorities it transpires

that such gift would create an inferiority complex or otherwise affect the other children at the home.

- 16.** In view of the above observations, WPA No. 28562 of 2022 is disposed of by directing the respondents to permit the petitioners to visit the child once in three months on dates fixed by prior appointment. Such date shall be fixed according to the convenience of the petitioners and the home. The petitioners shall, in advance, communicate in writing to the concerned home before such visitation to fix the date and time of such visitation.
- 17.** It is made clear that nothing in this order shall confer any special right or equity in favour of the petitioners vis-à-vis the custody of the child or the foster care of the child.
- 18.** There will be no order as to costs.
- 19.** Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)