

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**CWP-2624-2023
Date of decision: 09.02.2023**

RAKESH

.....Petitioner

VERSUS

STATE OF HARYANA AND ANOTHER

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present:- Mr. Pawan Prakash Pathak, Advocate and
Mr. Paras Dedha, Advocate
for the petitioner.

VINOD S. BHARDWAJ, J. (Oral)

The instant petition has been filed under Articles 226/227 of the Constitution of India, 1950 against respondent No.2-Child Welfare Committee, Fatehgarh Sahib and to quash the impugned order dated 18.11.2022 (Annexure P-4) passed by the respondent-authority.

It has been noticed that the impugned order had been passed by the Child Welfare Committee, Fatehgarh Sahib whereas State of Haryana has been impleaded as respondent No.1.

Counsel for the petitioner submits that the aforesaid error was inadvertent and prays for correction.

On his request, respondent No.1 as reflected as State of Haryana in the Memo of parties is corrected to be read as State of Punjab through

Secretary, Women and Child Development Department, Mini Secretariat,
Punjab, Sector-9, Chandigarh.

Learned counsel for the petitioner fairly concedes that the Juvenile Justice (Care & Protection of Children) Act, 2015 provides for a statutory remedy of appeal under Section 101 of the Act, however, submits that the reason why he had to approach this Court was that while parting with its order, the Child Welfare Committee has observed that the child, Neelam cannot be handed over to her parents i.e. the petitioner herein without the orders of the Hon'ble High Court of Punjab & Haryana and her consent. He further submits that there is no order passed by the High Court of Punjab & Haryana as per which the Child Welfare Committee was not competent to take a decision as regards the custody, care & protection of the child or to handover the custody of the child to the natural guardians. He submits that on account of the aforesaid observation, the statutory remedy would be an exercise of futility. He has also taken through the judgment dated 13.05.2022 passed by this Court wherein the following directions had been issued:

I. The minor in this case happen to fall within the definition of child in need of care and protection as provided under section 2(14)(vii)(xii) of Juvenile Justice (Care and Protection of Children) Act, 2015. The Senior Superintendent of Police/Superintendent of Police of the respective district shall depute a Child Welfare Police Officer to produce the minor/child before the Committee constituted under the Juvenile Justice (Care and Protection of Children) Act 2015.

II. The respective Committee shall conduct an enquiry contemplated under Section 36 of the Juvenile Justice (Care and Protection of Children) Act 2015 and pass an appropriate order under section 37 of the said Act, by

associating all the stakeholder, and to ensure that the objects of the Juvenile Justice (Care and Protection of Children) Act 2015 are well served.

III. The Child Welfare Committee shall take appropriate decision with respect to the boarding and lodging of the minor and also to conduct enquiry on all issues relating to and affecting safety and well-being of the child/minor.

IV. During the pendency of such adjudication and passing of orders as contemplated under Section 37 of the Juvenile Justice (Care and Protection of Children) Act 2015, the committee shall also take appropriate interim/decisions as regards placement of a child/custody of the child in need of care and protection.

V. The concerned SSPs/SPs shall also take appropriate steps as warranted by law against the threat perception to the minor as well as to her next friend, through whom the minor has approached this Court and to ensure that the respective petitioners are protected from any physical harm at the instance of the respondents mentioned in the petition.

VI. The petitioners are directed to appear in the office of SSP/SP of the respective Districts within a period of 03 days from receipt of this copy, failing which the concerned SSP/SP shall depute a Child Welfare Police Officer to produce the minor before the Child Welfare Committee within a period of 01 week thereafter.

VII. The Child Welfare Committee constituted under the Juvenile Justice (Care and Protection of Children) Act 2015, shall send a compliance report to this Court.

A perusal of the aforesaid directions passed in CRWP-4572-2022 clearly shows that the respective Committee is required to conduct an enquiry in terms of the mandate of Juvenile Justice (Care & Protection of Children) Act, 2015 and pass appropriate orders after associating all the

stake holders and to ensure that the objects of the Juvenile Justice are well served. There is no prohibition imposed upon the autonomy of the Child Welfare Committee to take appropriate decision in the totality of circumstances.

The present petition is accordingly withdrawn by the counsel for the petitioner to take recourse to the remedy of statutory appeal available to him in accordance with law. The appellate Court shall decide the matter in accordance with law without being influenced by the observation recorded by the Child Welfare Committee that the custody of the child cannot be handed over to the parents without a specific order by the Punjab & Haryana High Court in this regard.

Disposed of as withdrawn with liberties as aforesaid.

(VINOD S. BHARDWAJ)
JUDGE

FEBRUARY 09, 2023

Vishal Sharma

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No