

23.09.2024
Sl. No.74(ML)
srm

W.P.A. No. 18915 of 2024
Paramita Mukherjee (Bhattacharjee)
Versus
The State of West Bengal & Ors.

Mr. Anindya Bose,
Mr. Sanatan Maji,
Mr. Mridul Biswas
...for the Petitioner.

Sk. Md. Galib, Sr. Govt. Adv.
Mr. Abu Siddique Mallick
...for the State-respondents.

Mr. Saswata Bhattachryya
...for the Respondent No.18.

1. Affidavit-of-service is taken on record.
2. The writ petitioner is the mother who alleges that the Child Welfare Committee (CWC), Kolkata, forcefully took away the twin girls from her custody, without any proceedings and without giving an opportunity to the mother to explain the queries of the Committee.
3. The father of the children is represented and submits that by a release-cum-restoration order, the custody of the children have been temporarily handed over to him subject to supervision of the authority. Certain conditions have been imposed on the father. Without the consent of the

Society for Indian Children's Welfare (SICW) the father shall not remove them any to other place. All instructions of the SICW should be followed. Regular attendance of the children at the school and other vocational classes should be ensured. The father should lead a sober life and in case of breach of any condition, the arrangement will be liable to be cancelled and on such cancellation, the father will be dealt with under Section 97 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the said Act of 2015).

4. It appears that the children have been released to the father on a temporary basis under the supervision of SICW, by an order dated July 26, 2024. Records reveal that SICW is monitoring the plight of the children and the last date of inspection/ supervision was August 27, 2024.
5. The CWC has filed a report in the form of a statement of facts before this Court, which includes the home visit report. It appears from the report that the Child Help Line (CHL) received a complaint regarding the twin girls who were five years old and were residing at their mother's maternal home, under the deplorable conditions.
6. In response to the complaint, the CHL team attempted to visit the residence of the mother on March 20, 2024.

However, the visit was unsuccessful due to non-cooperation from the mother and her parents. Following this, the CWC, Kolkata directed the Officer-in-Charge, Manicktala Police Station to conduct a visit to the residence and report back to the Committee by May 15, 2024.

7. The children were subsequently rescued by the Officers of the Manicktala Police Station and the CHL team members. As per memo dated May 24, 2024, the children were placed with a specialised adoption agency, i.e., SICW. Upon rescue of the children, they were found in a pitiable condition. They were unkempt, distressed and inadequately dressed. Additionally, the children were wearing diapers, which were changed only when the mother reached the home at night. Later, the children were handed over to the father temporarily, with a direction for a follow-up after one month.
8. Both the parents have separately appealed to the Committee for custody of the children. The Committee issued an order on May 24, 2024 for a social investigation report. The mother was deemed incapable of caring for the children. The CWC had permitted the parents to visit and meet the children.

9. As per Section 27(9) of the said Act of 2015, the CWC functions as a Bench and is vested with the powers conferred under the erstwhile Code of Criminal Procedure, 1973 on a Metropolitan Magistrate or Judicial Magistrate of the First Class. According to Section 29(1) of the said Act of 2015, the Committee had the authority to address cases concerning care, protection, development, treatment and rehabilitation of children in need of care and protection. This includes providing the basic needs and safety.
10. In the present case, the CWC found that the children were not adequately cared for by the mother. As a result of which, the children were rescued from the mother's maternal home and temporarily released to the father. The social investigation report for children in need of care and protection has been placed before this Court, from which it appears that the mother was extremely strict on the children which hindered their development. The children did not have any friends and the children were not going to a school for two years. It appears that the supervision is continuing and the Chairperson, CWC, Kolkata has opined that the children were not adequately cared for in the mother's house.

11. Under such circumstances, the writ petition is disposed of without any direction to handover the children to the mother, as it appears that the enquiry report goes against the mother at present. It also appears that the children have been temporarily released to the father, but final decision has not yet taken with regard to who should have the custody of the children.
12. The father has also been under the surveillance of the SICW and such surveillance will continue. He shall also abide by the conditions imposed. The appeal of both the parents for custody of the children shall be decided by the CWC in accordance with law, upon hearing all the respective parties and upon interaction with the children, children's neighbours, doctors, if necessary. Necessary Rules in this regard shall be followed.
13. These observations are all, *prima facie*, for disposal of the writ petition.
14. The CWC, Kolkata shall proceed in accordance with law and if the Committee finds that the children will not be mentally disturbed in any way, may permit the mother to visit the children under adequate supervision, for one hour every week.
15. The report filed by the State is taken on record.

16. There shall be no order as to costs.

17. Parties are directed to act on the basis of the server copy of
this order.

(Shampa Sarkar, J.)