

(2021) 03 CHH CK 0002
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 2911 Of 2020

Aadil Rashid Khan

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision : 02-03-2021

Acts Referred:

Juvenile Justice (Care And Protection Of Children) Act, 2015 — Section 27(7)

Citation : (2021) 03 CHH CK 0002

Hon'ble Judges : Goutam Bhaduri, J

Bench : Single Bench

Advocate : Aniket Verma, Gagan Tiwari

Final Decision : Dismissed

Judgement

Goutam Bhaduri, J

Heard.

1. The instant petition is against the dismissal of the petitioner from the member of the Child Welfare Committee (CWC) by order dated 19.10.2020 (

Annexure P-1).

2. Learned counsel for the petitioner would submit that the petitioner was appointed on 11.04.2018 for 3 years and by order dated 19.10.2020 his

services were removed as a member of Child Welfare Committee on the ground that he was working contrary to the terms of the appointment

thereby he was taking double benefit. He further submits that though the removal order Annexure P-1 is passed in exercising the power of Section 27

(7) of the Juvenile Justice (Care and Protection of Children) Act, 2015 however the reply says otherwise. Consequently, the State cannot change its

stand. He further placed his reliance in the case of East Coast Railway and

another VS. Mahadev Appa Rao and Others reported in (2010) 7 SCC

678 and would submit that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so

mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise, therefore, the reason which is stated in the reply

cannot be taken into consideration. He further submits that the petitioner never appeared before the Juvenile Justice Board after 13.06.2018 and

21.06.2018 whereas the administrative instructions were issued on 08.08.2018 by the State therefore that administrative instructions would not be

applicable. He further submits that the petitioner was never heard before the removal order was passed therefore the order of removal is bad in law.

3. On the other hand, learned State counsel opposes the argument and would submit that the appointment of the petitioner was under certain

conditions and one of the condition was that the petitioner will not engage himself in any other job other than being the member of Child Welfare

Committee and since the petitioner was engaged in the profession of advocacy he was not able to provide sufficient time to Child Welfare Committee.

Therefore, initially after a compliant was received, the petitioner along with other Child Welfare Committee members was given the notice on

29.08.2018, however, when the petitioner did not restrain himself to appear as an advocate in certain case before the Juvenile Justice Board an

affidavit was submitted that he would not appear on the date before any Court when meeting of Child Welfare Committee is fixed, the said reply was

not found proper and eventually he was dismissed.

4. Heard learned counsel for the parties and perused the documents.

5. Perusal of the documents would show that the appointment of the petitioner to the Board of Child Welfare Committee was on 11.04.2018 vide

Annexure P-2 for 3 years meaning thereby his tenure was to be ended on 10.04.2021. The clause 8 of the appointment order reads as under:-

(8) , / ,

, /

6. The document would show that certain complaint were received that the petitioner was not able to devote time to Child Welfare Committee

meetings, as such general instructions were issued by the respondent. The order sheet which is filed before the Court as Annexure R- 3 is of the

Criminal Case No. 32 of 2018, the report of the Child Welfare Committee Officer would show that Aadil Rashid Khan the petitioner appeared as

advocate for the boy who was in conflict with the law which was in respect of the POSCO Case and in the POSCO case the hearing of the POSCO

victim child was also done by the Child Welfare Committee members wherein the petitioner was one of them. Thereby, admittedly on fact that the

petitioner was appearing for a boy in conflict with law in one case and in the same case for the victim he has to hear in capacity of Child Welfare

Committee member. Therefore apparently conflict of interest came to fore. The affidavit of petitioner would show that the guarded statement was

made that on the date of meetings of Child Welfare Committee he would not appear as advocate, therefore such guarded statement cannot absolve

the petitioner from the responsibility which was casted on him as Child Welfare Committee member. Apparently, the clause 8 of the appointment

which purports that the person who is appointed as Child Welfare Committee member would refrain from any personal service or job would come into

play as otherwise it would lead to conflict of interest in a given case when for the victim under the POSCO case the hearing is done while in same

case for accused one appears. This would lead to draw an inference of conflict of interest & object of Juvenile Justice (Care and Protection of

Children) Act, 2015.

7. Considering the admitted facts of this case, prima facie it appears that the petitioner worked against the clause 8 of the appointment which is

reproduced in the foregoing para and as a result order dated 19.10.2020 (Annexure P-1) cannot be stated to be illegal or arbitrary.

8. In view of this, the petition sans merit is liable to be and is hereby dismissed.