
(2015) 08 AHC CK 0076
In the Allahabad High Court
Case No : Special Appeal No. 559 of 2015

Ali Mohammad

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 25-08-2015

Acts Referred:

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 2, 2(d), 2(k), 2(l)

Citation : (2015) 8 ADJ 414 : (2016) 1 ALJ 54 : (2015) 6 AWC 5681

Hon'ble Judges : D.Y. Chandrachud, C.J.; Yashwant Varma, J

Bench : Division Bench

Advocate : Vijay Kumar Rai and Ramji Singh Patel, for the Appellant; V.N. Mishra, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. This special appeal has arisen from a judgment and order of the learned Single Judge dated 5 August 2015. The writ petition upon which the order of the learned Single Judge was passed was instituted in the form of a habeas corpus petition, in the name of Km. Naziya Bano, daughter of Jalaluddin (described as the corpus) and by Jalaluddin as the father. In the petition, the plea which was set up was that Naziya Bano was born on 18 March 2000 and appeared at the Class 10 Examination in 2015. In proof of the date of birth, reliance was placed on the High School Certificate and on a registration for Class 9 in 2013-14 by the Madhyamik Shiksha Parishad, Uttar Pradesh, Allahabad. The case which was set up was that in the month of April 2015, the appellant (impleaded as the fourth respondent to the writ petition) took the help of certain other persons from the village and is purported to have married the girl on the basis of a notarial affidavit stating her age as 20 years. A First Information Report was said to be lodged with the Station House Officer who declined to register the FIR. The Senior Superintendent of Police, Varanasi was thereafter moved. On this factual foundation, a writ of habeas corpus was sought.

2. When the petition came up for hearing before the learned Single Judge, Naziya Bano was present before the Court and informed the learned Single Judge that she had passed the High School Examination. Before the learned Single Judge, the original High School Examination Certificate cum Marksheet was produced which indicated that the date of birth of Naziya Bano was 18 March, 2000 and that she was a minor. Naziya Bano informed the Court that she had come to the Court with her husband and mother-in-law and declined to go with her parents. She stated that she wished to depart with her husband. The learned Single Judge finding that she is a minor, observed that the Court has no other option but to send her to the Nari Niketan, Varanasi. She was directed to be lodged in the Nari Niketan until she attains the age of majority or till such time that an order is received from a court of competent jurisdiction.

3. The appellant who claims to have married Naziya Bano had filed an earlier Civil Misc. Writ Petition in the month of May 2015 seeking a direction to the respondents not to interfere in the "peaceful married life" of the appellant and Naziya Bano and for a direction to the authorities of police including the SSP and SHO to secure and protect them from the father. The petition initially came up before the learned Single Judge on 14 May 2015 where a direction was issued to the Chief Medical Officer, Allahabad to have Naziya Bano medically examined for a determination of her age. On 15 May 2015, the report of the Chief Medical Officer was placed before the learned Single Judge which indicated that she was about 20 years of age and is a major. The report was taken on the record. It is not in dispute that the father of the girl was not served when the earlier writ petition was heard by the learned Single Judge and eventually the petition was disposed of on 15 May 2015 with a direction that the appellant and Naziya Bano were at liberty to live together and no person shall be permitted to interfere in their peaceful living. Permission was granted to approach the SSP or SP, as the case may be, in the even of any disturbance. The learned Single Judge however did not express any opinion about the validity or genuineness of the marriage certificate. It was clarified that the order would not protect either the appellant or Naziya Bano against any action or proceedings pursuant to an FIR or complaint that may be lodged. The impugned order of the learned Single Judge dated 5 August 2015 was passed in a subsequent petition for habeas corpus filed by the father of Naziya Bano.

4. The learned counsel appearing on behalf of the appellant submits that since the medical examination by the Chief Medical Officer, Allahabad was conducted in pursuance of the order of the learned Single Judge in the previous petition on 14 May 2015, the report of the Medical Examination must have precedence over the date of birth which is indicated in the High School Certificate which was produced before the learned Single Judge. In this regard, reliance was sought to be placed on certain judgments which indicate that the report of the medical examination should have precedence. The second submission is that in any event, the appellant has married Naziya Bano and under the Muslim Law, the marriage will be valid once she has attained puberty. Hence, it was urged that the order of the

learned Single Judge would not accord with the legal position. Finally, it was urged that the provisions of Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 under which the date of birth recorded in the matriculation certificate has precedence over a medical opinion, would not stand attracted since the present case does not deal with a juvenile in conflict with law, there being no allegation that Naziya Bano has committed any offence punishable under the law.

5. At the outset, it would be necessary for the Court to deal with the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2002. Section 2 contains three separate definitions, namely a definition of the expression "child" in need of care and protection in Section 2(d); a definition of the expression "juvenile" or "child" in Section 2(k); and a definition of the expression "juvenile in conflict with law" in Section 2(l). The expression "juvenile" or "child" is defined to mean a person who has not completed the eighteen years of age. The expression "juvenile in conflict with law" is defined to mean a juvenile who is alleged to have committed an offence and has not completed the eighteen years on the date of commission of the offence.

6. Rule 12 of the Rules of 2007 framed under the Act of 2000 provides the procedure to be followed in determination of age. Sub-rules (1), (2) and (3) of Rule 12 provide as follows:

"12. Procedure to be followed in determination of Age.--(1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be, the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The court or the Board or as the case may be, the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be, the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining--

(a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the

medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year,

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a) (i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of Naziya Bano the age as regards such child or the juvenile in conflict with law."

7. Sub-rule (1) of Rule 12 of the Rules of 2007 provides for the determination of age in two categories: (i) the age of a child; and (ii) the age of a juvenile in conflict with law. This is evident also from the latter part of sub-rule (1) under which the Court, the Board, or as the case may be, the Committee has to determine the age of such juvenile or child or a juvenile in conflict with law. Evidently the expression "conflict with law" clarifies the expression juvenile since the expression "juvenile in conflict with law" is part of the statutory dictionary in Section 2(l). Sub-rule (3) provides the manner in which an inquiry for the determination of the age of the child has to be conducted by the Court, the Board, or as the case may be, by the Child Welfare Committee. In the course of the inquiry, an order of precedence is provided under which the matriculation or equivalent certificate if available is to be obtained. In the absence thereof clause a (ii) of sub-rule (3) refers to the birth certificate from the school first attended and in the absence thereof clause (a) (iii) refers to the birth certificate of the Corporation, Municipal Authority or Panchayat. More significantly clause (b) of sub-rule (3) says that it is only in the absence of either of the certificates mentioned in sub-clauses (i), (ii) or (iii) of clause (a), that the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child.

8. This order of priority has been dealt with in a judgment of the Supreme Court in *Jarnail Singh Vs. State of Haryana*, (2013) 7 AD 313 : AIR 2013 SC 3467 : (2013) CriLJ 3976 : (2013) 9 JT 374 : (2013) 3 RCR(Criminal) 644 : (2013) 7 SCALE 764 : (2013) 7 SCC 263 . While interpreting Rule 12, the Supreme Court observed that Rule 12 must apply both to a child in conflict with law as well as to a victim of crime. The judgment of the Supreme Court holds that the manner of determining age has conclusively been specified in sub-rule (3) of Rule 12 and observed as follows:

"Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even for a child who is a victim of crime. For, in our view, there is hardly any difference in so far as the issue of minority is

concerned, between a child in conflict with law, and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the prosecutrix VW-PW6. The manner of determining age conclusively, has been expressed in sub-rule (3) of Rule 12 extracted above. Under the aforesaid provision, the age of a child is ascertained, by adopting the first available basis, out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated option available, would conclusively determine the age of a minor. In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the concerned child, is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3), envisages consideration of the date of birth entered, in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or a municipal authority or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration, for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3) postulates the determination of age of the concerned child, on the basis of medical opinion."

9. Applying these principles, it is clear that a matriculation or equivalent certificate of a child is, by Rule 12, regarded as the highest rated option. In case, the certificate is available, no other evidence can be relied upon. As the Supreme Court held, it is only in the absence of any of the certificates referred to in clause (a) that Rule 12(3) postulates that a determination of the age of a child can be made on the basis of medical opinion.

10. In the present case, it is not in dispute that the High School Certificate pertains to Naziya Bano. In fact, we may note that in paragraph-4 of the writ petition which was filed by the appellant as a miscellaneous writ petition, it is stated that her age is about twenty years but "her age..is not available at this stage" being in the custody of her father. When the habeas corpus petition of the father was filed, there was a specific averment in paragraph-3 of the petition that she had appeared for the Class 10 Examination in 2015 and that her registration for Class 9 dated 18 March 2000 by the Madhyamik Shiksha Parishad, Uttar Pradesh for 2013-14 shows the date of birth as 18 March 2000. During the course of the hearing before the learned Single Judge, Naziya Bano specifically stated that she had passed her High School Examination. The High School Examination Certificate of 17 May 2015 specifies her date of birth as 18 March 2000. This tallies with the registration certificate for Class 9 also issued by the same Secondary Education Board for 2013-14 which shows the date of birth as

18 March 2000. Significantly, neither before the learned Single Judge nor before this Court in the pleadings (in the writ petition or special appeal) was the authenticity or genuineness of the High School Certificate called into question. In the absence of any doubt being expressed on the legitimacy, authenticity or genuineness of the High School Certificate, the learned Single Judge cannot be regarded as being in error in placing reliance on the High School Certificate. There is nothing intrinsically suspicious to discard the certificate or the date stated therein particularly having regard to the statements made before the learned Single Judge by Naziya Bano that she had passed the High School Examination.

11. The learned Single Judge therefore cannot be faulted for having adopted the course of action as was followed in placing reliance on the High School Certificate. This approach is in accordance with the provisions of Rule 12. Many of the judgments upon which reliance has been placed by the learned counsel for the appellant are judgments which pre date the formulation of the Rules of 2007, more particularly Rule 12 of the Rules. Once Rule 12 which has statutory force and effect is brought into force, its provisions have to be followed.

12. In a judgment of the Division Bench of this Court in *Reena vs. State of U.P.* 2012 (5) Laws (All) 181 : 2012 (78) ACC 399 , the Division Bench relied upon the report of the Chief Medical Officer; observing that the appellant was entitled to her personal liberty and to be released from the custody of the fourth respondent who was the father. The Court noted that she had eloped and was not ready to go back with her father. Similarly in another judgment of the Division Bench in *Smt. Indra @ Suhani Vs. State of U.P. and Others*, (2013) 6 ADJ 195 : (2013) 6 ALJ 426 : (2013) 99 ALR 200 , it was observed that there were conflicting pieces of evidence and there were conflicting dates of birth of the same girl in two different documents. It was in this background that the report of medical examination was relied upon. These were, therefore, cases where the documentary material before the Court was of doubtful authenticity requiring the Court to rely upon the medical report.

13. We are of the view that for the purposes of a habeas corpus petition, it was sufficient for the learned Single Judge to have due regard to the provisions of the Act of 2000 and the Rules of 2007. The Act is a special enactment made by the Parliament to deal with the cases of juvenility. The provision in Rule 12 for determining the age of a child or a juvenile in conflict with law is a special provision. However, the learned Single Judge has carefully structured the order by observing that the direction shall operate until Naziya Bano attains majority or till such time that an order is received from a Court of competent jurisdiction. At this stage, the version of the appellant that he has validly married Naziya Bano, cannot be regarded as being established, and it will always be open to the appellant to move the Court of competent jurisdiction for appropriate declaratory relief in that regard.

14. The learned Single Judge was constrained to issue a direction for the lodging

of the girl with Nari Niketan at Varanasi having due regard to the fact that she specifically stated that she was not desirous of residing with her father. At this stage, having come to the conclusion that Naziya Bano is a minor, the only option available was to place her at the Nari Niketan. This order was passed having due regard to the welfare of the child since, in any event, the appellant was not entitled to her production or custody.

15. For these reasons, we find no reason to interfere with the order of the learned Single Judge in the special appeal.

16. The special appeal is, accordingly, dismissed. There shall be no order as to costs.

1Rules of 2007

2Act of 2000