
(1991) 12 DEL CK 0029

In the Delhi High Court

Case No : Civil Writ Appeal No. 2758 of 1991

Amrita Ahluwalia

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 12-12-1991

Acts Referred:

Juvenile Justice Act, 1986 — Section 2(1)

Citation : (1992) CriLJ 1906 : (1992) 1 RCR(Criminal) 415

Hon'ble Judges : B.N. Kirpal, J;Arun Kumar, J

Bench : Division Bench

Advocate : P.V. Kapur, Amit Kapur, Rajiv Nanda, B. Babbar and Madan Lokur, for the Appellant;

Judgement

B.N. Kirpal, J.

(1) In this writ petition the main contentions raised are (1) that the question of custody of a girl Ameena Begum be referred to and decided by the Juvenile Board at New Delhi; and (2) declare Section 10(i) of the Hindu Adoption and Maintenance Act, 1956 as ultra vires.

(2) Briefly stated, the facts are that on 10th August, 1991 one girl namely, Ameena Begum was found in the flight from Hyderabad to Delhi by the petitioner, who was the Air Hostess on that flight. The petitioner believed that Ameena Begum was illegally married off to an Arab national Mr. at Segeih. The said at Segeih was apprehended and produced before the Magistrate on that date and Ameena Begum was sent to the Nari Niketan. Thereafter, some proceedings were initiated and pursuant to an order passed by this Court, Ameena Begum was shifted to the Children's Home. The petitioner then applied to the Court of Addl. Chief Metropolitan Magistrate, New Delhi for custody of Ameena Begum. Towards the end of August, 1991 the natural parents of Ameena Begum also applied for her custody. After the present writ petition was filed and notices issued, on 5th September, 1991 the Addl. Chief Metropolitan Magistrate, New Delhi passed an order relating to the custody of Ameena Begum. He directed that Ameena Begum

should be kept in the Children's Home. He declined to give the custody of Ameena Begum to her parents but he did come to the conclusion that Ameena Begum was not delinquent nor a neglected child and, Therefore, the provisions of the Juvenile Justice Act, 1986 were not applicable and, as such, the case could not be referred to the Juvenile Board.

(3) The aforesaid order of the Acmm, New Delhi disposing of various applications for custody which were filed before him, was brought to the notice of this Court on 5th September, 1991 itself. By an order passed on the same date this Court observed that the question of marriage of minor Indian girls to foreign citizens required detailed consideration and possibly the Government may have to frame rules or regulations in this behalf to ensure against possible trafficking of Indian women.

(4) After the rule nisi had been issued, reply-affidavit has been filed on behalf of the Union of India in which it is, inter alia, stated that the Government had no objection if the question with regard to the custody of the child was decided by the Juvenile Welfare Board. Unfortunately in the said affidavit no specific averments were made with regard to the question of trafficking of Indian women, except for stating that the laws were being enforced by the Government of India to the best of its ability. It has not been stated as to whether the Government proposes to lay down any policy or guidelines or law in relation to the allegations concerning the trafficking of minor Indian girls.

(5) In order to challenge the decision of the Acmm, New Delhi to the effect that the provisions of the Juvenile Justice Act, 1986 were not applicable, the petitioner amended the present writ petition. The result of this is that now the decision of the Acmm, New Delhi is impugned on the limited question of the applicability of the Juvenile Justice Act.

(6) By this order we propose to dispose of the question with regard to the applicability of the said Act. As no reply has been filed to the amended writ petition, we intend to grant more time to the respondents to do the needful and in respect to the same necessary directions will be issued presently.

(7) Coming to the question of the applicability of the present Act is necessary to refer to the relevant provisions thereof.

(8) This Act was promulgated in 1986 to provide for the care, protection, treatment development and rehabilitation of neglected or delinquent juveniles and for the adjudication of certain matters relating to, and disposition of delinquent juveniles. Section 2(h) defines juvenile as meaning a boy who has not attained the age of 16 years or a girl who has not attained the age of 18 years. Sub-section (1) of Section 2 which is material and defines neglected juvenile is as follows :

"(1)"neglected juvenile" means a juvenile who (i) is found begging; or (ii) is found without having any home or settled place of abode and without any

ostensible means of subsistence and is destitute; (iii) has a parent or guardian who is unfit or incapacitated to exercise control over the juvenile; or (iv) lives in a brothel or with a prostitute or frequently goes to any place used for the purpose of prostitution, or is found to associate with any prostitute or any other person who leads an immoral, drunken or depraved life; (v) who is being or is likely to be abused or exploited for immoral or illegal purposes or unconscionable gain;"

(9) Juvenile Welfare Boards are set up by issuing a Notification in the; Official Gazette u/s 4 of the said Act. The said Boards are set up for the purpose of discharging the duties conferred upon them in relation to neglected juvenile. The powers of Juvenile Board, with which we are concerned in the present case, override any of the provisions contained in any other law and this is so provided by Section 7 of the said Act. According to this provision it is the Board which has the power to exclusively deal with all the proceedings under the Act relating to neglected juveniles.

(10) Section 13 provides for a neglected juvenile being taken charge of by the Police Officer or any person or organisation authorised by the State Government and to bring that neglected juvenile before the Board. According to its sub-section (3) every such neglected juvenile is to be brought before the Board without any loss of time. Section 15 requires an enquiry being made, by the Board regarding neglected juvenile. If the Board is satisfied that a juvenile is a neglected juvenile then appropriate orders may be passed by the Board relating to the juvenile's custody. Under sub-section (2) of Section 15 an order which is normally passed in case of a neglected juvenile by the Board is for directing the juvenile to be sent to Juvenile Home for the period until he or she ceases to be juvenile. Notwithstanding this provision Section 16 gives power to the Board, if it so thinks fit, for making an order placing the juvenile under the care of a parent, guardian or other fit person on necessary formalities being completed.

(11) It is not necessary to consider the other provisions of the Act except to note that when a child is brought before the Magistrate then Section 8 of the Act enjoins upon him to record an opinion whether the child is a juvenile and then to forward the juvenile and record of the proceedings before him to the competent authority having jurisdiction over the proceedings. These proceedings have to be forwarded if the Magistrate before whom a juvenile is produced, is not empowered to exercise the power of the Board or a Juvenile Court.

(12) In the present case the Acmm, New Delhi has come to the conclusion that the Juvenile Justice Act, 1986 does not apply because Ameena Begum was neither a neglected nor a delinquent juvenile within the definition of the Act. He has further found that according to the allegations of the prosecution A1 Segeih was about 60 years of age and it was to him that the parents of Ameena had purportedly married her off. The Acmm, New Delhi came to the conclusion that it was not in the welfare of Ameena to send her with her parents specially when the father of Ameena had very limited means and could not be in a position to

provide sufficient safety and. safeguards to Ameena Begum.

(13) On the aforesaid facts, the inescapable conclusion appears to us to be that Ameena Begum was a neglected juvenile. In view of the conduct of her parents Ameena, who admittedly was less than 18 years of age, was a juvenile but had parents who were unfit to exercise control over the juvenile. Her case clearly falls within the provisions of Section 2(l)(iii). In addition thereto, even sub-clause (ii) of sub-section (1) of Section 2 would be applicable because in the present circumstances it can be said that she is without any home or settled place of abode and certainly without ostensible means of subsistence. It appears to us that a parent or a guardian would be regarded as being unfit to exercise control if the manner in which the exercise of control is such as is not expected of a loving parent. If the parent does not, willingly or unwillingly, knowingly or unknowingly discharge its parental duties or functions or act in the interest of the child and if the Board comes to the conclusion that there is likelihood of the parent so discharging the duties, then the Board would be justified u/s 15 of the Act in coming to the conclusion that the juvenile is a neglected juvenile.

(14) On the facts of the present case we have no manner of doubt that Ameena Begum was a neglected juvenile. Even the Acmm, New Delhi did not think it proper to give custody of Ameena Begum to her parents. The provisions of Sections 2(1) were clearly applicable in the present case. On behalf of the Government also it has been stated in the affidavit that it does not object to the Juvenile Board exercising jurisdiction over the matter.

(15) In view of the aforesaid, we direct the respondents to refer the case relating to the custody of Ameena Begum to the Juvenile Board and the Juvenile Board shall thereafter take a decision in accordance with law keeping in view the interests of Ameena Begum. The record of the proceedings in this connection which may be available with respondents should be forwarded to the Juvenile Board. The Juvenile Board will take a decision u/s 15 and/or Section 16 as expeditiously as possible.

(16) With regard to the question relating to the validity of Section 10(i) of the Hindu Adoption and Maintenance Act, in our opinion the said question is academic at the present moment and, Therefore, Mr. Kapur, learned counsel for the petitioner does not press the same and reserves the liberty to raise this question if and when necessary facts exist in this behalf.

(17) The only question which is now left for consideration is relating to such marriages which are taking place between minor Indian girls and foreign citizens, which gives the impression that there may be a possible trafficking of Indian women in this manner.

(18) The Government of India have not filed any reply affidavit to the amended writ petition. In the original counter-affidavit which was filed, the Government has merely gloss over this question. We are left with no alternative but to direct the Government of India to file a reply-affidavit specifically dealing with the

following two questions :

(1) Is there any trafficking of Indian women taking place under the garb of a marriage between a minor or major Indian girl and a foreign citizen residing outside India. (2) If there are reports of such trafficking taking place, what steps does the Government intend to take or what policy does it contemplate to formulate in order to curb or make it difficult, if not impossible, for such trafficking of Indian women.

(19) The affidavit in this behalf may be filed by the Government within four weeks from today and the case be listed for directions on 5th. February, 1992.