

(2007) 01 OHC CK 0057

In the Orissa High Court

Case No : Writ Petition (C) No. 4562 of 2006

Biranchi Das and Budhia Singh

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 25-01-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 91
Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 2, 23, 29, 29(4), 29(5)

Citation : (2007) 103 CLT 561 : (2007) 1 OLR 491 Supp

Hon'ble Judges : S. Barman Roy, C.J;M.M. Das, J

Bench : Division Bench

Advocate : Sanjit Mohanty, for the Appellant; Government Advocate for Opp. Party No. 1, R.K. Rath and S.K. Misra for Opp. Party No. 2, for the Respondent

Final Decision : Dismissed

Judgement

S. Barman Roy, C.J.—By this application under Articles 226/227 of the Constitution of India, the Petitioners have prayed for quashing the notices under Annexure-9 and 12 and proceeding initiated pursuant thereto. Further prayer of the Petitioners is to quash the appointments of the Chairperson and Members of the Child Welfare Committee, Khurda District. The said Committee is constituted by the Government under the provisions of Section 29(4)(i) of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the "Act").

2. Petitioner No. 2 Budhia Singh, who is stated to be aged about 4 years, is the natural son of his widow mother. Petitioner No. 1 being Biranchi Das is a Judo Coach. It is stated in the writ application that Petitioner No. 2 from his childhood days showed the symptoms that he is a great runner and even at this tender age he can run marathon distance without any break whatsoever. But, he hails from a poor family being looked after by her widow mother. Realizing the talent found in said Budhia Singh (Petitioner No. 2) Biranchi Das (Petitioner No. 1) thought it

fit to train and groom Budhia Singh for long distance runs. For this reason, Petitioner No. 1 persuaded the widow mother of Petitioner No. 2 to execute a deed of adoption in favour of Petitioner No. 1 and accordingly the other of Petitioner No. 2 executed the deed of adoption under Annexure-2 giving Petitioner No. 2 in adoption to Petitioner No. 1.

3. The talent of Petitioner No. 2 Budhia Singh to run long distance without break was highlighted by electronic and print media, at national and State level for a long time. Further case of the Petitioners is that the Child Welfare Committee, Khurda District was illegally constituted by the Government and equally the appointment of Chairperson of the said Committee being opposite party No. 2 has been made illegally. Such appointment of Chairperson of opposite party No. 2 being utterly illegal, further prayer has been made in the application to terminate the constitution of the Committee as also the appointment of its Chairperson.

4. By summons dated 27.12.2005 under Annexure-9 opposite party No. 2 required Petitioner No. 1 to appear before the Child Welfare Committee, Khurda District in person along with Petitioner No. 2. The said summons is quoted hereunder:

Government of Orissa

Child Welfare Committee, Khurda District, Bhubaneswar

(A bench of Magistrates, exercising the powers of Judicial Magistrate, 1st class, conferred u/s 29(5) of the J.J. (Care and Protection of Children) Act, 2000).

Summon

(In exercise of the power conferred u/s 31, read with Section 54(1), of the Juvenile Justice (C. and P of Children) Act, 2000 and Section 91 of the Code of Criminal Procedure)

In the matter of:

1. Alleged cruelty to a child punishable u/s 23 of the Act.
2. Alleged abuse of the child for unconscionable gains.
3. And protection of human rights of the child u/s 31(1) of the Act.

To

Biranchi Das,

Orissa Judo Association

Bhanja Kalamandap Premises, BJB Nagar, Bhubaneswar.

Whereas, it has been reported and/or informed to this Child Welfare Committee, (i) that taking advantage of poor financial condition of the biological mother of a

little boy-child named Budhia Singh, s/o Sukanti Singh (mother), you succeed in persuading her to hand over the child's custody to you, (ii) that since then you have been frequently engaging the boy in long distance marathon running at different places in the State, (iii) that such frequent marathon running have the possible potential danger to his life, apart from being other-wise injurious to his health (iv) that you have been usurping earnings coming in the child's favour, (v) that you have been exploiting/using the child for your self interest of gain in money and fame and (vi) that you have been providing practically no scope to him for his education;

Whereas, the Child Welfare Committee of Khurda District has taken up an enquiry into the aforesaid matters.

Whereas, the Committee requires to examine you and also to examine the boy-child named Budhia Singh;

You are therefore, summoned by the Committee to personally appear and also to cause production of the child before the Committee on 4.1.2006 at 10.30 A.M. in the premises of the Office of the State Council of Child Welfare, in house No. MR-11, Unit VI, Bhubaneswar where the Committee shall have its sitting.

Dated the 27th day of December, 2005. Sd. R.S. Misra,

>Chairperson.

5. The Petitioners have challenged the said summons on various grounds. However, Petitioner No. 1 filed his objection against such summons. Despite such objection having been filed by Petitioner No. 1, opposite party No. 2 by notice dated 21.1.2006 under Annexure-12 required the Petitioners to appear before the said Committee for personally examining them on 27.1.2006 at 11 A.M. The said notice under Annexure-12 reads as under:

Government of Orissa

Child Welfare Committee, Khurda District Bhubaneswar

(A bench of Magistrates, exercising the power of Judicial Magistrate, First Class, conferred u/s 29(5) of the J.J. (Care and Protection of Children) Act, 2000)

Notice

In the matter of:

Summon dated 27.12.2005 issued by this Committee.

To

Biranchi Das,

Orissa Judo Association,

Bhanja Kalamandap premises, B.J.B. Nagar, Bhubaneswar.

Whereas this Child Welfare Committee has passed the enclosed order on your points of objection raised before the committee on 4.1.2006;

Whereas, the points of objection raised by you are not acceptable to this Child Welfare Committee, and the Committee shall proceed with the inquiry;

Whereas, the Committee requires to examine you and also to examine the boy-child named Budhia Singh in pursuance of the enquiry;

You are therefore, now summoned by the Committee to personally appear and also to cause production of the child before the Committee on 27.1.2006 at 11 A.M. in the premises of the office of the State Council of Child Welfare in house No. MR-11, Unit-6, Bhubaneswar, where the Committee shall have its sitting.

Dated the 21st day of January, 2006

Sd/ - R.S. Misra

Chairperson,

District Child Welfare Committee,

Khurda, Orissa

6. Both the aforesaid summons under Annexure-9 and the notice under Annexure-12 are now under challenge in this writ application. It is also the case of the Petitioners that subsequently the said Committee issued a warrant of arrest asking the police to arrest both the Petitioners and produce them before the said Committee for proceeding further with the enquiry contemplated under the Act.

7. We had heard the learned Counsel for the Petitioners, learned Counsel for opposite party No. 2 as well as the learned Government Advocate for opposite party No. 1 being the State of Orissa. We need not go into the other details of fact as they are not considered necessary for due disposal of this application. It is true that Annexure-2 purports to be the Registered Deed of Adoption executed by the widow-mother of Petitioner No. 2 in favour of Petitioner No. 1. But unfortunately, the mother of Petitioner No. 2 is not before us. The circumstances under which such deed of adoption was executed are not before us. We do not know whether the execution of such deed of adoption was a voluntary act of widow-mother of Petitioner No. 2 or not or whether the same was obtained under coercion, duress or threat or for other consideration. In the absence of the mother before us, it is not possible for us to place any reliance on Annexure-2 being the deed of adoption. That apart, it is not possible for a Writ Court to hold an elaborate enquiry to consider under what circumstances the said deed of adoption was executed. So it is not possible for us to act upon the said deed of adoption unless the authenticity/genuineness of the same is decided by a competent Court of law.

8. The Petitioners have also prayed for issuing a direction to terminate the

appointment of the Chairperson and other members of the Child Welfare Committee, Khurda District. There is a provision in the Act empowering the Government to terminate such appointment on the grounds stated therein.

Sub-section (4) of Section 29 of the Act provides that appointment of any member of the Committee may be terminated, after holding enquiry, by the State Government, if-

- (i) he has been found guilty of misuse of power vested under this Act;
- (ii) he has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or he has not been granted full pardon in respect of such offence;
- (iii) he fails to attend the proceedings of the Committee for consecutive three months without any valid reason or he fails to attend less than three-fourth of the sittings in a year.

Therefore, the power of termination of the members of the Committee has been expressly conferred upon the State Government. Such a prayer directing the State Government to terminate the appointment of the members of the Committee cannot be granted by this Court in exercise of its writ jurisdiction, unless the members of the Committee are impleaded as opposite parties in this application. That apart, the Petitioners have never approached the State Government to terminate such appointments.

9. Even assuming that on points of facts, the Petitioners have good reasons to assail the warrant of arrest issued against them for their arrest and production before the said Committee, we are constrained to observe that Section 52 of the Act provides for appeal against any order. Sub-section (1) of Section 52 expressly provides that subject to the provisions of this Section, any person aggrieved by an order made by a competent authority under this Act may, within thirty days from the date of such order, prefer an appeal to the Court of Session. It further provided that Court of Session may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the Appellant was prevented by sufficient cause from filing the appeal in time. Sub-section (2) thereof declares that no appeal shall lie from-

- (a) any order of acquittal made by the Board in respect of a juvenile alleged to have committed an offence; or
- (b) any order made by a Committee in respect of a finding that a person is not a neglected juvenile.

Sub-section (3) thereof also provides that no second appeal shall lie from any order of the Court of Session passed in appeal u/s 52. Apart from the provision for appeal, as aforesaid, Section 53 thereof provides for revision which shows that the High Court may, at any time, either of its own motion or on an application received in this behalf, call for the record of any proceeding in which

any competent authority or Court of Session has passed an order for the purpose of satisfying itself as to the legality or propriety of any such order and may pass such order in relation thereto as it thinks fit. Proviso thereto declares that the High Court shall not pass an order u/s 53 prejudicial to any person without giving him as reasonable opportunity of being heard.

10. Therefore, from the aforesaid provisions for appeal and revision as provided by or u/s 52 and Section 53 of the Act, it is manifest that, subject to restriction as provided therein, equally efficacious alternative remedies by way of appeal and revision are available to the parties aggrieved by any order that may be passed by the competent authority. The definition of "competent authority" as provided in Section 2(g) means a competent authority in relation to children in need of care and protection, a Committee and in relation to juveniles in conflict with law a Board. Therefore in the circumstances of the case opposite party No. 2 is competent authority within the meaning of Section 2(g) of the Act and hence no one should be left with any doubt that all orders, decisions passed by the competent authority being opposite party No. 2 can be challenged by equally efficacious alternative remedies u/s 52 or Section 53 of the Act. Undoubtedly these remedies have not been exhausted by the Petitioners. Until and unless such remedies are exhausted it is not possible for us to entertain the present writ application. Further, in the absence of necessary parties and in view of existence of alternative remedies as provided under the Act, it is not possible for us to entertain this writ application.

11. Further, the Child Welfare Committee constituted u/s 29 of the Act is empowered to function as a bench of Magistrates and shall have the powers conferred by the Code of Criminal Procedure on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the First Class. Therefore, the Child Welfare Committee has all powers as conferred by the Code of Criminal Procedure upon a Metropolitan Magistrate or a Judicial Magistrate of the First Class. On facts, we are not expressing any opinion as to the propriety of issuing the warrant of arrest against the Petitioners by the competent authority inasmuch as we have held for reasons already stated above, that this writ application is not maintainable.

12. However, as we concluded hearing of this case long back and we could not pass final order within a reasonable period of time, we think it necessary to direct that the warrant of arrest issued against the Petitioners shall not be executed for a period of one month from today provided the Petitioners appear before the Child Welfare Committee, Khurda District within the said period on receipt of information from the said Committee about their date of appearance.

13. If the Petitioners do not appear before the Child Welfare Committee. Khurda District despite the aforesaid direction within the time fixed by us, it shall remain open to the said Committee to ask the police to recover and produce the child being Petitioner No. 2, Budhia Singh before it and thereafter it may proceed with the matter in accordance with law. While disposing of this application, we make it

further clear that we have not expressed any opinion on merit as to the legality or propriety or correctness of the summons/notice issued upon the Petitioners. It is open to the Petitioners to pursue the matter in accordance with law.

14. Subject to the aforesaid observation/direction, this application is dismissed. No further order as to costs.