

(2014) 07 AHC CK 0077

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 15904 of 2011

Brindaban Behari Lal Srivastava

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 03-07-2014

Acts Referred:

Constitution of India, 1950 — Article 15, 39, 45, 47

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 29, 31

Citation : (2014) 6 ADJ 494 : (2015) 1 ALJ 91 : (2015) 90 ALLCC 762 : (2014) 106 ALR 1 : (2014) 5 AWC 4766 : (2014) 3 LLN 619

Hon'ble Judges : Sunil Ambwani, J;Attau Rahman Masoodi, J

Bench : Division Bench

Advocate : Satyam Pandey and Aalok Kumar Srivastava, Advocate for the Appellant

Final Decision : Allowed

Judgement

1. We have heard Sri Aalok Kumar Srivastava for the petitioners. Learned standing counsel appears for State respondents. The petitioner No. 1 was appointed as Chairperson of Child Welfare Committee and petitioner Nos. 2 to 5 were appointed as Members of the Committee vide Notification No. 3013/60-1-2004-1/13(102)/01, issued at Lucknow dated 10.11.2004, by which Governor of the State of U.P. constituted the Committees u/s 29 of the Juvenile Justice (Care and Protection of Children) Act 2000 for a period of three years. The petitioners completed their first term of three years on 9.11.2007. It is stated that they were allowed to continue, as their term could be extended for a maximum period of two terms. The State Government did not issue any order, extending the period for their second term.

2. By a letter dated 1.5.2008, the Director, Manila Kalyan, U.P. Lucknow wrote to the District Magistrates - Ghazipur, Lalitpur, Lucknow, Firozabad, Shajahanpur, Deoria, Azamgarh, Meerut and Kanupr Nagar for providing assessment of work of the Chairpersons and Members of the Child Welfare Committees of their

respective Districts of their participation in the meeting of the Committees. It is stated that the District Magistrate, Kanpur Nagar did not submit any report on the evaluation of the work of the chairperson and members. The petitioners, however, were allowed to continue and discharged their duties in accordance with the provisions of the notification upto 22.8.2010, when the period for which their second term came to an end. The petitioners handed over charge on 22.8.2010, however, they were not paid their sitting allowance beginning from the date of their first appointment, nor any honorarium or travelling allowance was paid in accordance with the provisions of Rule 23 of the Juvenile Justice (Care and Protection of Children) Rules 2007 (in short Rules of 2007).

3. It is submitted that the Uttar Pradesh Juvenile Justice (Care and Protection of Children) Rules 2004 were substituted by Rules of 2007, providing for the tenure of the committees as well as sitting and conveyance allowances. The Rules 21 and 23 of the Rules of 2007 are quoted as follows:

"21. Tenure of the Committee.--(1) The Committee shall have a tenure of three years and the tenure of Chairperson and Members shall be co-terminus with the tenure of the Committee.

(2) The Chairperson and Members of the Committee shall be eligible for appointment for a maximum of two consecutive terms.

(3) Extension of the tenure of members of the Committee shall be on the basis of their performance appraisal by the District Child Protection Unit or the State Government and on the recommendation of the Selection Committee.

(4) With a view to ensuring continuity on completion of the tenure of a Committee, the State Government shall constitute a new Committee before the expiry of the term of the existing Committee; where after the existing Committee shall handover all records and information to the newly formed Committee.

(5) The Chairperson and Members may resign at any time by giving one month's notice in writing or may be removed from office as provided in subsection (4) of Section 29 of the Act.

(6) Any casual vacancy in the Committee may be filled by appointment of another person from the panel of names prepared by the Selection Committee, and shall hold office for the remaining term of the Committee.

22.xxx xxx xxx

23. Sitting and conveyance allowances.--The Chairperson and members of the committee shall be paid such travel and sitting allowance, as the State Government may determine, but it shall not be less than rupees five hundred per sitting per member."

4. It is submitted by the learned counsel appearing for the petitioners that Section 24(12) of the Model Rules of Central Government, as it was notified on 22.6.2006, provided for travelling and sitting allowance or honorarium as may be

fixed by the State Government from time to time. Rule 23 of the Rules of 2007, quoted as above, provided that the Chairperson and members of the Committee shall be paid such travel and sitting allowance, as the State Government may determine, but it shall be less than rupees five hundred per sitting per member.

5. The petitioners were not paid a single penny either towards honorarium, travelling allowance or sitting allowance. They continued to discharge their dues in public interest and raised their bills, which have not been paid so far.

6. By this writ petition, the petitioners have prayed for directions to respondent No. 2 - Principal Secretary, Manila Evam Bal Vikas, Lucknow to make payment for sitting allowance as shown in Annexure 6 and travelling allowance alongwith 18% interest to each petitioner as Chairperson and Members of Child Welfare Committee for the period 5.1.2005 to 27.8.2010 in accordance with law.

7. The payments due to the petitioners under Rule 23 of the Rule of 2007 for sittings, as claimed by them, is detailed as below:

8. In the counter-affidavit of Sri Puneet Kumar Mishra, District Probation Officer, Allahabad, it is stated that petitioner No. 1 was appointed as Chairperson and petitioner Nos. 2 to 5 as Members of the Committee in District Kanpur Nagar by notification dated 10.11.2004, for a period of three years, which expired on 9.11.2007. In paragraph 6, it is stated that since there was no provision in the Rules of 2004, for providing travelling and sitting allowances, the petitioners were not paid any amount. In paragraph 9, it is stated by letter dated 15.6.2010, the chairperson and members of the Committee in District Kanpur Nagar were informed that travelling and sitting allowances will not be admissible to them.

9. The Child Welfare Committees (CWC"s) were constituted under Chapter III - "Child in Need of Care and Protection" of the Juvenile Justice (Care and Protection of Children) Act 2000, to dispose of cases for the care, protection, treatment, development and rehabilitation of children, as well as to provide for their basic needs and protection of human rights, as specified in Section 31 of the Act. The CWC"s are provided to carry out very important functions for children in need of care and any protection in India. The Act of 2000, was enacted to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation and for matters connected therewith or incidental thereto. The Act was enacted in consonance with clause (3) of Article 15, clauses (e) and (f) of Article 39, Articles 45 and 47 of the Constitution of India, which imposes on the State a primary responsibility of ensuring that all the needs of children are met and that their basic human rights are fully protected. The Convention on the Rights of the Child was adopted by the General Assembly of the United Nations on 20.11.1989. It was ratified by the Government of India by notification dated 11.12.1992. The

Act recognises and seeks to protect the rights of children in need of care and protection, recognized universally.

10. The Act of 2000; Rules of 2004 have provided for constitution of Child Welfare Committees. The Rules of 2002 also provide payment of travelling and sitting allowances to the Chairman and members, which were not specified earlier. Under Rule 23 of Rules of 2007, it is obligatory upon the State Government to provide for such travel and sitting allowance, as it may determine but it shall not be less than rupees five hundred per sitting per member.

11. In the present case, it is admitted that the petitioners were appointed for a period of three years, which came to an end on 9.11.2007. The State Government did not take any steps - either to extend their term, nor passed any order by which the petitioners were not allowed to continue. Since a maximum of two consecutive terms are provided under Rule 21(2) of the Rules of 2007, notified on 26.10.2007, we can safely conclude that the petitioners were allowed to continue, as no objection was taken to their continuance, nor any orders were passed, appointing any other persons as members of the Committee in place of the petitioners. In the absence of any positive orders by which the petitioners were not restrained to continue to discharge their statutory duties under the provisions of Rule 21(2) of the Rules of 2007, enabling continuance of their to the maximum of two consecutive terms, the term of the petitioners would be deemed to have been extended for the consecutive term.

12. The petitioners have relied on an information provided under the Right to Information Act, 2005 under which the Assistant Director/Information Officer, Directorate of Mahila Kalyan U.P. Lucknow, in response to an application dated 11.7.2011 under the RTI Act to a specific query whether there is any Child Welfare Committee in district Kanpur Nagar was working between 9.11.2007 and 16.8.2010. The applicant Sri Rajendra Kumar vide letter dated 15.11.2011 was informed about the constitution of committee by notification dated 10.11.2004, which includes the petitioners and which was working upto 16.8.2010.

13. We find substance in the contention of the learned counsel for the petitioners that since no reply was given by the District Magistrate, Kanpur Nagar, to the Director, Mahila Kalyan, U.P. Lucknow to his letter dated 1.5.2008, providing for assessment of work of the Committee under Rule 21(3) of the Rules of 2007, nor there was any complaint against the work and conduct of the petitioners, they will be deemed to have continued for the second term for which there is a specific provision under Rule 21(2) of the Rules 2007.

14. We are unable to accept the submission of the learned standing counsel appearing for State Government that there is no provision for payment of sitting and travelling allowance to the petitioners, who have performed the statutory functions in public interest under the Act, and thus they could not have made a demand nor could have made a representation or seek relief in the writ petition for writ of mandamus commanding the Director Mahila Kalyan to make payment

of sitting and travelling allowance to them. The model rules notified on 22.6.2006, and Rule 23 of the Rules of 2007 provide that the Chairperson and Members of the committee shall be paid such travel and sitting allowance, as the State Government may determine, but it shall not be less than rupees five hundred per sitting per member. The petitioners thus have a right to claim and receive the said amount from the respondents. We are also constrained to observe that the State Government not only failed to carry out its statutory duties in failure to renew the term of the committee or it also did not pursue to call for assessment of work of the Chairman and members of the Committee. It did not remind the District Magistrate to submit assessment report, and to pass positive orders regarding renewal. There is no denial in the counter-affidavit that the petitioners continued to work for their second term, despite non payment of sitting allowance or travelling allowance. We also do not find any statement of fact, or even suggestion that the petitioners were not carrying out statutory responsibility in public interest or that their work and conduct was not satisfactory.

15. On the aforesaid circumstances, the writ petition is allowed, with directions to the State Government to forthwith notify the travelling and sitting allowance to the Chairperson and Members of the Committee under Rule 23 of the Rules of 2004, which according Rule, shall not be less than Rs. 500 per sitting per number. The State Government is further directed to make sitting and travelling allowance to the petitioners @ Rs. 500/- per sitting after verifying the sittings for which they have already submitted their bills on 30.11.2010. The payments will be made to the petitioners within four months thereafter. The payment to the petitioners shall carry @ 12 % simple interest for the entire arrears, which are to be paid. The costs for pursuing the writ petition is quantified at Rs. 20,000/-.