
(2017) 01 AHC CK 0167

In the Allahabad High Court

Case No : Civil Misc. Writ Petition (M/B) No. 1588 of 2017

Brindaban Behari Lal Srivastava

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 24-01-2017

Acts Referred:

Juvenile Justice (Care and Protection of Children) Act, 2015 — Section 110

Citation : (2017) 2 ADJ 293 : (2017) 1 AllWC 1029

Hon'ble Judges : Amreshwar Pratap Sahi and Sanjay Harkauli, JJ.

Bench : Division Bench

Advocate : Akhilesh Kumar Kalra and Rahul Kapoor, Advocates, for the Petitioners; C.S.C, for the Respondents

Final Decision : Dismissed

Judgement

Heard learned counsel for the petitioners and learned Addl. Chief Standing Counsel, Shri H.P. Singh, for the respondents.

2. Instructions had been sought and the learned counsel for the State had been called upon to make available the records relating to the action taken as also any other material with regard to the constitution of the committees. Today, the records have been produced.

3. The issue which has been raised before us is that the impugned communication has not been processed through the Office of His Excellency, the Governor and consequently, any action taken to dissolve the existing committee is not in accordance with law.

4. Learned Addl. Chief Standing Counsel has invited the attention of the Court to the promulgation of the Juvenile Justice (Care and Protection of Children) Model Rules notified on 21st of September, 2016 by the Central Government and these model rules have been adopted by the State Government as has been indicated in the written instructions dated 23.01.2017 dispatched by Shri Nandlal Prasad, the Joint Secretary, Government of U.P. to the learned Addl. Chief Standing

Counsel.

In Para-2 of the said instructions it has been categorically stated that the 2016 rules are applicable in the State of U.P. as well and therefore, any committee having been constituted earlier loses its significance after the enforcement of these rules.

Not only that, these steps have been taken according to the 2016 rules informing the Law Secretary vide letter dated 03.01.2017 requesting him to take appropriate steps for forwarding the entire file to the Hon'ble Chief Justice of the Allahabad High Court for taking appropriate steps as the Chairperson has to be appointed in consultation with the Hon'ble Chief Justice of the Allahabad High Court, according to the 2016 rules.

5. The Law Secretary vide letter dated 30.01.2017 has already dispatched this communication to the Registrar General of the High Court which is stated to be before the Hon'ble Chief Justice for consideration.

6. In the light of the aforesaid developments, the learned Addl. Chief Standing Counsel submits that a new committee has to be constituted and the Three Member Committee which has now to be notified is to be in accordance with Rule-87 where the composition is entirely different from the earlier rules.

7. Learned counsel for the petitioners however contended that as per Rule 94 any action taken or order issued under the provisions of the earlier rules of 2007 as amended in 2011 would stand saved. We have examined the proviso of Rule 94 which clearly indicates that the action would stand saved provided any action taken is not inconsistent with the provisions of the 2016 rules.

8. It is obvious from a bare perusal of the provisions relating to the constitution of the committee that the present composition is entirely different and the procedure is also different and therefore, the constitution of the earlier committee becomes inconsistent with the provisions of the 2016 rules which has been adopted by the State Government and communicated to the Court through the learned Addl. Chief Standing Counsel.

9. It may also be recorded that the 2016 rules have now been framed in terms of Section 110 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (Act No.2 of 2016) which will obviously prevail over all other previous provisions. In such circumstances, the impugned order cannot be said to be without authority in law as it is in conformity with the rules framed by the Central Government referred to herein above.

10. The 2016 rules, therefore, would now apply with full force and the contention of the learned counsel for the petitioners that the petitioners had been selected for a three year term will not hold water as the very composition of the committee becomes inconsistent with the 2016 rules.

Consequently, the State Government is fully justified in proceeding under the

2016 rules for a fresh notification and composition of the committee that has already been proceeded with as intimated and indicated herein above.

11. We, therefore, find no reason to interfere with the impugned office memorandum dated 03.01.2017 and it shall be open to the State Government to complete the process in accordance with law.

12. The writ petition is accordingly dismissed.