

(2015) 02 MAN CK 0016
In the Manipur High Court
Case No : Writ Petition (C) No. 508 of 2014

Gaithaorong Gonmei

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 24-02-2015

Acts Referred:

Constitution of India, 1950 — Article 254

Evidence Act, 1872 — Section 35

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 4, 4(5), 68

Citation : (2015) 3 GLT 739

Hon'ble Judges : N. Kotiswar Singh, J.

Bench : Single Bench

Advocate : H. Kenajit, for the Appellant; A. Vashum, G.A., Advocates for the Respondent

Final Decision : Dismissed

Judgement

N. Kotiswar Singh, J.—Heard Mr. H. Kenajit, learned counsel appearing for the petitioner as well as Mr. M. Rarry, the respondent No. 4 in person. Also heard Mr. Aleng Vashum, learned Government Advocate for the State respondents.

2. The present writ petition has been filed seeking for issue of a writ in the nature of writ of quo-warranto or any other appropriate writ or direction for removing the respondent No. 4 who is alleged to be an usurper of the Membership of the Juvenile Justice Board, Imphal West, Manipur.

3. According to the petitioner, the qualifications for appointment as a member of Juvenile Justice Board constituted in terms of Section 4 of the Juvenile Justice (Care and Protection of Children) Act, 2000, (hereinafter referred as the JJ Act, 2000), are governed by Rule 7 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as the 2007 Central Rules) which the respondent No. 4 does not fulfil. It has been contended that as per Rule 7, a person to be qualified for appointment as a member of the Juvenile Justice Board must be a social worker, of not less than 35 years of age and must possess post

graduate degree in social work, health, education, psychology, child development or any other social science discipline and has been actively engaged in planning, implementing and administering measures relating to child welfare for at least seven years. According to the petitioner, the respondent No. 4 neither possesses the required educational qualification nor the experience. The petitioner has also charged the respondent No. 4 of conducting himself in a manner not befitting a member of the Juvenile Justice Board. It has been mentioned that the respondent No. 4 was absent on 11.6.2014 when the application for bail of the petitioner's son was fixed as he was busy with some other private works as an Advocate before other Court. It has been also stated that the respondent No. 4 is not a social worker and is in fact, a full fledged legal practitioner, who is heavily engaged in High Court and lower Courts, which does not allow him to give necessary time and attention for the works of the Board. There are also other charges against the respondent No. 4 as mentioned in para No. 6 of the writ petition of not following the procedure prescribed law while functioning as a member of the Juvenile Justice Board. In this connection, the petitioner has annexed a number of documents in support of his complaint that the respondent No. 4 has not been functioning properly in accordance with the provisions of law.

4. The respondent No. 4 by filing his affidavit-in-opposition has denied the allegations made in the writ petition. He has denied that he is not eligible for appointment as a member of the Juvenile Justice Board. It has been also contended that the writ petition in the present form is not maintainable inasmuch as the impugned order by which the respondent No. 4 has been appointed as a member of the Juvenile Justice Board, Imphal West, Manipur has neither been annexed nor challenged in this writ petition. The petitioner, however, has subsequently annexed a copy of the order dated 30.4.2012 by which the respondent No. 4 was appointed as a member of the Juvenile Justice Board, Imphal West, Manipur by filing an additional affidavit on 04.8.2014, seeking to cure the defect mentioned by the petitioner.

It has been also contended by the Respondent No. 4 that the writ petition was filed challenging his appointment by relying on the Juvenile Justice (Care and Protection of Children) Rules, 2007, alleging that he did not fulfil the requirements of Rule 7. The respondent No. 4 contends that however, he was appointed as a member of the Juvenile Justice Board, Imphal West, Manipur under the provisions of the Juvenile Justice (Care and Protection of Children) Manipur Rules, 2002 (hereinafter referred to as the 2002 State Rules) of which there is not even a whisper in the writ petition and not under the 2007 Central Rules as claimed by the petitioner. It has been stated by the Respondent No. 4 in his affidavit-in-opposition that Section 68 of the JJ Act, 2000 provides for framing of model rules by the Central Govt. which are to be followed by the State Govt. while making their own rules so far as is practicable. It has been also submitted that after framing of the Juvenile Justice (Care and Protection of Children) Rules, 2001 by the Central Govt. (hereinafter referred to as the 2001 Central Rules), the State of Manipur also framed and notified the 2002 State Rules which came

into force from 20.02.2003. According to the Respondent No. 4, the appointment of the respondent No. 4 was in terms of the aforesaid 2002 State Rules in which the requirement of possession of Post Graduate degree in social work, health, education, psychology, child development or any other social science discipline is not mentioned. It has been contended that 2002 State Rules provide that a person to be selected as a Juvenile Justice Board should be a social worker of not less than 35 years of age and he shall be a person who has been actively engaged in planning, implementing and administering health, education or other welfare activities pertaining to children for the last seven years etc. without mentioning about the educational qualification. It is, therefore, the case of the respondent No. 4 that respondent No. 4 being a social worker and having the requisite experience was appointed on the recommendation of the duly constituted Selection Committee. As regards the various other allegations made in the writ petition about the functioning of the respondent No. 4 by the petitioner, the same have been denied by giving due explanation in his affidavit-in-opposition.

5. Mr. Kenajit, learned counsel for the petitioner submits that after the enactment of Juvenile Justice (Care and Protection of Children) Act, 2000, the Central government prepared the model Rules known as Juvenile Justice (Care and Protection of Children) Rules, 2001 which, however, was set aside by the Constitution Bench of Hon"ble Supreme Court in Pratap Singh Vs. State of Jharkhand and Another, which was decided on 2.02.2005. The Constitutional Bench in the said case of Pratap Singh (supra) held in para No. 112 as follows:--

"112. The upshot of the aforementioned discussion is:

(i) In terms of the 1986 Act, the age of the offender must be reckoned from the date when the alleged offence was committed.

(ii) The 2000 Act will have a limited application in the cases pending under the 1986 Act.

(iii) The Model Rules framed by the Central Government having no legal force cannot be given effect to.

(iv) The court, thus, would be entitled to apply the ordinary rules of evidence for the purpose of determining the age of the juvenile taking into consideration the provisions of Section 35 of the Indian Evidence Act."

(emphasis added)

6. Accordingly, it has been submitted that in view of the aforesaid decision of the Hon"ble Supreme Court rendered on 02.02.2005, the rules framed by the Central Government in 2001 could not be enforced thereafter. In other words, the Rules would have no more binding effect. The Hon"ble Supreme Court held so, primarily, on the ground that provisions of the JJ Act, 2000 do not contain any enabling provision for Central Government to frame any rule in that regard. Soon after passing of the aforesaid judgment, to overcome the said lacunae the JJ Act,

2000 was amended by inserting a proviso to Section 68 of the JJ Act, 2000 to enable the Central Government to frame model rules. The amended Section 68 of the JJ Act 2000 in which the proviso has been inserted reads as follows:--

"68. Power to make rules. - (1) The State Government may, by notification in the Official Gazette, make rules to carry out the purpose of this Act:

4[Provided that the Central Government may, frame model rules in respect of all or any of the matters with respect to which the State Government may make rules under this section, and where any such model rules have been framed in respect of any such matter, they shall apply to the State until the rules in respect of that matter is made by the State Government and while making any such, so far as is practicable, they conform to such model rules.]

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:

.....

..... "

The said proviso to Section 68 of the JJ Act, 2000 therefore, enables the Central Government to frame Model rules which are to be applied by the State Government while making the State Rules which have to conform to such model rules framed by the Central Government so far as practicable. The Central Government thereafter framed the Juvenile Justice (Care and Protection of Children) Rules, 2007 which was notified on 26.10.2007. Rule 96 of the 2007 Central Rules, provides that till new Rules conforming to those Rules of 2007 are framed by the State Government concerned u/s. 68 of the JJ Act, 2000, these Central Rules of 2007 shall mutatis mutantis apply in that State. Rule 96 of the 2007 Central Rules reads as follows:--

"96. Application of these rules.--- It is hereby declared that until the new rules conforming to these rules are framed by the State Government concerned under section 68 of the Act, these rules shall mutatis mutantis apply in that State." Thus, according to Mr. Kenajit, learned counsel for the petitioner, in view of the provision of Rule 96 of the 2007 Central Rules, till new rules are framed by the State Govt. in conformity with the 2007 Central Rules, the provisions of the Central Rules of 2007 shall be applicable in the State of Manipur mutatis mutantis. Further, the provisions of the State Rules of 2002 to the extent of repugnancy with the Central Rules of 2007, will not be valid. As a corollary, it follows that any appointment made under the provisions of the JJ Act, 2000 has to conform to the requirements stipulated under the Central Rules of 2007. According to Mr. Kenajit, however at the time of appointment of the respondent No. 4, the same was not adhered to and since the respondent No. 4 does not possess the qualification mentioned in the Central Rules 2007, his appointment cannot be said to be valid.

7. Mr. H. Kenajit submits that the State Government initially framed the State

Rules in 2002 in exercise of the powers conferred under section 68 of the JJ Act, 2000 which was notified on 14.10.2002. In the aforesaid State Rules of 2002, no educational qualification has been prescribed for appointment as a member of the Juvenile Justice Board. The State of Manipur subsequently framed another set of Rules in the year 2012 which was notified on 28.11.2012 which incorporated the provisions as provided under the Central Rules of 2007 including the prescription of educational qualifications. However, the respondent No. 4 was appointed as a member of the JJ Board prior to the framing of the 2012 Rules by the State Government. Mr. Kenajit, therefore, submits that in view of Rule 96 of the Central Rules of 2007, the provisions of Central Rules will apply in the State of Manipur, not the said Rules framed in 2002 to determine the validity of the appointment of the respondent No. 4 as member of the JJ Board.

8. Mr. Kenajit, learned counsel for the petitioner submits that the respondent No. 4 does not possess post-graduate degree in social work, health, education, psychology, child development or any other social science discipline but is merely a graduate in law.

Further, it has been submitted that he does not possess the seven years" experience of being involved and engaged in planning, implementing and administering measures relating to child welfare as mentioned in the said Rule 7. Accordingly, it has been submitted that since the respondent No. 4 does not possesses the qualifications stipulated in Rule 7 of the 2007 Central Rules, his appointment is not valid and as such, it is a fit case for issue of writ of quo-warranto.

As mentioned above, Mr. Kenajit, learned counsel for the petitioner has also drawn attention of this Court to several acts of omission of the commission on the part of the respondent No. 4 according to the petitioner which will disentitle him to continue as member of the JJB.

9. In response, Mr. M. Rarry, respondent No. 4, appearing in person has submitted that the writ petition presented by the petitioner are full of misleading facts and statements and as such, on that score the petition is liable to be dismissed relying on the decision of the Supreme Court in *Naraindas Vs. The Government of Madhya Pradesh and Others*, .

10. Mr. Rarry has submitted that the impugned order appointing the respondent No. 4 has not been challenged in the writ petition nor any relief been sought for quashing the appointment order of the respondent No. 4 as member of the Juvenile Justice Board and a such, no relief could be granted in favour of the petitioner.

Mr. Rarry has submitted that the learned counsel for the petitioner has made submissions which are not based on pleadings which is not permissible in law. It has been contended that grounds not based on the pleadings cannot be allowed to be taken at the time of hearing, which otherwise would cause prejudice to the respondent No. 4 to effectively defend his case. It has been submitted by Mr.

Rarry that there is not a whisper of the existence of the Rule of 2002 in the pleadings which is applicable in this case and the petitioner has not sought for any declaration to the effect that the State Rules framed in 2002 are not valid or applicable in the present case.

It has been also contended by Mr. Rarry that as far as the appointment of the respondent No. 4 is concerned, the same is governed by the provisions of the 2002 Rules framed by the State of Manipur under section 68 of the JJ Act, 2000 and not the Rules framed by the Central Government in 2007 and as such, the present writ petition is misconceived and liable to be dismissed.

11. Mr. Rarry contends that the aforesaid Rules of 2002 framed by the State Government continued to be operative till the same were repealed on the enactment of the State Rules of 2012 which were notified on 28.11.2012. Rule 99 of the said 2012 State Rules clearly mentions about the repeal of the earlier State Rules of 2002. In other words, till the notification of the State Rules of 2012, earlier rules framed by the State Government in 2002 continued to operate and since the respondent No. 4 was appointed under the State Rule of 2002, in absence of challenge of the State Rules of 2002, the present writ petition is not maintainable.

As regards the issue of repugnancy raised by the petitioner contending that the Rules framed by the State Government in 2002 to the extent these are repugnant to the Rules framed by the Central Government in 2007 would be invalid, more particularly as regards the qualifications required for appointment of the member of the JJB, it has been submitted by Mr. Rarry that the principle of repugnancy cannot be invoked qua rules. It has been submitted that said principle can be invoked only for the purpose of considering the validity of constitutional provisions only as provided in Article 254 of the Constitution. Mr. Rarry has also contended that otherwise also, there is nothing in the Central Rules of 2007 to suggest that any other rule repugnant to the Central Rules of 2007 will be automatically ousted. Mr. Rarry further contends that even if the Central Rule of 2007 is applicable as contended by the petitioner, he fulfils all the conditions laid down in the Central Rules of 2007. He submits that since it is not in dispute that he has completed the course in LLB. Degree in law and since LLB Degree is to be undertaken after graduation, LLB is to be considered to be a post graduate degree. Since it cannot be also denied that law belongs to social science, it can be held that respondent No. 4 possesses a post graduate degree in social science as provided under Rule 7 of the Central Rule of 2007.

12. As regards the requisite experience, it has been contended by Mr. Rarry that he had been engaged in the activities of adoption of children since 1997. There is no such pleading to the contrary in the writ petition and as such, it can not be denied that the respondent No. 4 had been engaged in the planning, implementing and administering measures relating to child welfare for the last seven years, for, activities relating to adoption of children certainly relates to child welfare activities, as required under Rule 7 of the Central Rules of 2007.

13. Mr. Rarry has also contended that the petition has been filed belatedly and if the petitioner had been really concerned with the lack of qualification of the respondent No. 4, he ought to have approached this Court earlier and as such, this writ petition is liable to be dismissed on the ground of delay and laches and in this regard has relied on the decision of the Hon''ble Supreme Court in M.S. Mudhol and Another Vs. S.D. Halegkar and Others, .

14. As regards the allegation made by the petitioner that the respondent No. 4 is a full time lawyer and does not have adequate time to discharge his function as member of the JJB, it has been contended that it is on record that the respondent No. 4 has been attending more than 83% of the proceedings. The official respondent No. 2 in their affidavit-in-opposition has also stated that the members of the JJB, Imphal West District, have the requisite attendance and as such, it has been submitted that such an allegation of the petitioner that the respondent No. 4 is not giving time for his activities is without any basis. It has been submitted that even if the petitioner is of the view that the respondent No. 4 has not been discharging his function properly, the petitioner is free to invoke the provisions of section 4(5) of the JJ Act, 2000 for termination of his membership. Further, it has been submitted by Mr. Rarry that the quo-warranto petition seeking removal of an appointee is in the nature of public litigation and such must not be actuated by any malice. It has been contended by the Respondent No. 4 that however, the present case is actuated by malafide as is clearly evident from the documents annexed by the petitioner himself. It has been submitted by Mr. Rarry that the present writ petition has been filed after refusal to grant bail by the JJ Board to the child/minor son of the petitioner which was on valid judicial ground. Further, such denial of bail and other request by the petitioner for having access to his child was on the basis of the collective decision of the members of the JJ Board and not on the individual decision by the respondent No. 4 and as such, no malafide could be attributed to the respondent No. 4 for the judicial order passed by the JJ Board collectively. In this regard, Mr. Rarry has relied on the decisions of the Supreme Court in Sadananda Halo and Others Vs. Momtaz Ali Sheikh and Others, , State of Maharashtra and Another Vs. State of Arunachal Pradesh and Others, , as well as A.N. Shastri v. State of Punjab and ors.; 1988(Supp) SCC 127.

15. In reply, Mr. Kenajit has submitted that it is not correct to hold that possession of LLB can be considered to be possession of post graduation degree in law. It has been submitted that the contention of respondent No. 4 cannot be accepted in view of the fact that the expression "post-graduate in law", which is specifically mentioned in Rule 22 of the 2007 Central Rules which lays down the educational qualification for appointment of the Chairman and member of the Child Welfare Committee, is conspicuously absent in Rule 7 which lays down the educational qualification for appointment of the member of the JJ Board. It is thus evidently clear that the legislature intentionally omitted the qualification of post-graduate in law as one of the requirements for appointment as the member of the JJ Board. Further, it has been submitted that the involvement of the

petitioner in the adoption of children is illegal as his institution is not a registered one as is required under Rule 71 of the JJ Act and hence, such an experience cannot be considered valid, which could not be counted.

16. Mr. Kenajit has also submitted that as regards the issue of delay anybody could challenge the validity of the appointment as and when it is brought to the notice that the appointee does not possess the requisite qualifications and since it has been brought to the notice of the petitioner belatedly that the respondent No. 4 does not possess the necessary qualifications, the appointment has been challenged by filing this writ petition. Further, the question of invoking the provision of section 4(5) of JJ Act, 2000 does not arise as the present writ petition has been filed mainly on the ground that the respondent No. 4 does not possess the educational qualification. As regards the allegation of malice, it has been contended by Mr. Kenajit that though the petition for bail was filed on 14.05.2014, it was heard only on 28.6.2014 after an undue delay thus, clearly demonstrating the incompetence and lack of sincerity on the part of the respondent No. 4 in discharging his judicial duties. It has been submitted that documents have been annexed in support of these irregularities in discharging his duties as member of the JJ Board including the absence during the proceeding, and as such, Mr. Kenajit has vehemently denied the allegation of malafide or malice on the part of the petitioner in filing the present writ petition.

17. Heard the counsel for the parties as well as respondent No. 4 in person and perused the materials on record.

18. The core issue that arises for consideration in this writ petition is whether the respondent No. 4 is qualified to be appointed as a member of the Juvenile Justice Board or not.

As we proceed to examine this issue it may be apposite to refer to the relevant provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 and the Rules framed thereunder. As discussed above, section 68 of the JJ Act, 2000 provides for making Rules. Under section 68 of the Act as it originally stood, power was given only to the State Government to frame rules to carry out the purpose of this Act and not to the Central Government.

19. Even though the JJ Act, 2000 did not empower the Central Government to make Rules in this regard, nevertheless, the Central Government framed the model rules in 2001 for effective implementation of the JJ Act. However, the Hon"ble Supreme Court in Pratap Singh's case (supra) had declared that the model rules framed by the Central Government would have no legal force and as such, after the decision of the Hon"ble Supreme Court in Pratap Singh's case (supra) on 2.2.2005, the model rules framed by the Central Govt. cannot have any effect including on the issue of qualification for appointment of a member of the JJ Board. In order to overcome this judicial pronouncement, the JJ Act, 2000 was amended by inserting a proviso to section 68 as quoted above which enables the Central Government to frame model rules in respect of or any of the matters

with respect to which the State Government may make rules and also providing that where any such model rules had been framed in respect to any such matter, they shall apply to the State until the rules in respect of that matter is made by the State Government and while making any such rules, as far as is practicable, they should conform to such model rules. The said amendment was brought into effect from 22.8.2006. Thereafter, the Central Government framed the model rules called the Juvenile Justice (Care and Protection of Children) Rules, 2007. Rule 7 thereof provides the qualifications required for membership of the Board, which are reproduced hereinbelow:

"7. Qualifications for Members of the Board.--(1) The social worker to be appointed as a member of the Board shall be a person not less than 35 years of age, who has a post-graduate degree in social work, health, education, psychology, child development or any other social science discipline and has been actively involved and engaged in planning, implementing and administering measures relating to child welfare for at least seven years.

(2) No person shall be considered for selection as a Member of the Board, if he -

(a) has been convicted under any law;

(b) have ever indulged in child abuse or employment of child labour or any other human rights violations or immoral act;

(c) is holding such other occupation that does not allow him to give necessary time and attention to the work of the Board;

(d) does not fulfill the qualification and experience prescribed in the Act and the rules made thereunder and in such a case the Selection Committee shall after due inquiry and on establishment of such fact, reject his application and recommend the name of the next person from the list of names prepared for filling the vacancies."

Rule 96 of the Central Rules of 2007 further declares that until the new rules conforming to these rules are framed by the State Government concerned under section 68 of the JJ Act, these Rules shall mutatis mutantis apply in that State.

20. It is the contention of the petitioner that the proviso to section 68 of the JJ Act, 2000 read with Rule 96 of the Central Rules of 2007 makes it abundantly clear that Rules of 2007 shall prevail upon the State Rules to the extent such provisions are not provided in the State Rules or such provisions under the State Rules are contrary to the Central Rules. In other words, even if the State Government may have framed Rules in pursuance of section 68 of the JJ Act, these Rules to the extent are repugnant to the Central Rules of 2007 can not be valid and the provisions of Central Rules of 2007 to the extent of silence or inconsistency would prevail. Therefore, the provisions of the Central Rules of 2007 as regards the qualifications prescribed for appointment of a member of the JJ Board shall have to be complied with, as such educational qualifications had not been provided in the State Rules of 2002 and if any appointment is made by

not conforming to the qualifications laid down under the Central Rules of 2007, such appointment will be invalid.

21. Prima facie, the contention of the petitioner seems quite attractive. Yet, a close scrutiny of the provisions of the JJ Act as well as the Rules framed thereunder by both the Central as well as State Govt. would indicate otherwise.

A careful reading of the proviso to section 68 of the JJ Act would show that though the Central Government had been empowered to make model rules to carry out the purpose of the JJ Act, 2000 and while it was intended that the Central Rules should be made applicable to all the States, this provision has been circumscribed by the expression "so far as is practicable". In other words, while the model rules framed by the Central Government would have to be in normal circumstances, be adhered to by the State Governments while framing their respective rules, deviation from the Central Rules would not if so facto lead to invalidation of any State rule or action taken based thereon, as this proviso provides that the State Government while making their own Rules should conform to the model rules of the Central Government "as far as is practicable". The expression "as far as is practicable" would mean that to the extent it is possible or practicable, thereby allowing certain laxity or giving room for adjustment and not insisting on strict compliance. Therefore, if the State Rules do not conform to the model rules framed by the Central Government for any reason, it can not be said that these State Rules which are in conflict or in derogation of the model rules framed by the Central Government would be invalid. Certain laxity or departure has been made permissible by the use of the expression "as far as is practicable". Therefore, this Court is of the opinion that the State Government while making their own rules ought to conform to the model rules framed by the Central Government as far as practicable, yet if the State Rules do not strictly conform to the Central model rules, the State Rules can not be declared to be invalid on that ground as the proviso to section 68 of the Act do not mandate strict compliance and did not insist upon uniformity or strict conformity with the Central Rules. The use of the expression "as far as is practicable" permits certain deviation from or non-conformity with the model rules framed by the Central Government. This position of law can not be altered even by the declaration made under Rule 96 of the Central Rules of 2007 to the effect that until new Rules conforming to these Rules under section 68 of the Act are framed by the State Government, these Central Rules shall mutatis mutantis apply in the State. It is well settled law that if there are two possible interpretations of a Rule, one which subserves the object of a provision in the parent statute and the other which does not, we have to adopt the former because adopting the later Rule will make the Rule ultra vires the Act, as has been held by the Hon'ble Supreme Court in *Ispat Industries Ltd. Vs. Commissioner of Customs, Mumbai*, . In *Ispat Industries (supra)*, the Hon'ble Supreme Court held as follows:

"26. In our opinion if there are two possible interpretations of a rule, one which

subverses the object of a provision in the parent statute and the other which does not, we have to adopt the former, because adopting the latter will make the rule ultra vires the Act.

27. In this connection, it may be mentioned that according to the theory of the eminent positivist jurist Kelsen (the pure theory of law) in every legal system there is a hierarchy of laws, and whenever there is conflict between a norm in a higher layer in this hierarchy and a norm in a lower layer, the norm in the higher layer will prevail (see Kelsen's The General Theory of Law and State).

28. In our country this hierarchy is as follows:

"(1) The Constitution of India;

(2) The statutory law, which may be either parliamentary law or law made by the State Legislature;

(3) Delegated or subordinate legislation, which may be in the form of rules made under the Act, regulations made under the Act, etc.;

(4) Administrative orders or executive instructions without any statutory backing."

29. The Customs Act falls in the second layer in this hierarchy whereas the Rules made under the Act fall in the third layer. Hence, if there is any conflict between the provisions of the Act and the provisions of the Rules, the former will prevail. However, every effort should be made to give an interpretation to the Rules to uphold its validity. This can only be possible if the Rules can be interpreted in a manner so as to be in conformity with the provisions in the Act, which can be done by giving it an interpretation which may be different from the interpretation which the rule could have if it was construed independently of the provisions in the Act. In other words, to uphold the validity of the rule sometimes a strained meaning can be given to it, which may depart from the ordinary meaning, if that is necessary to make the rule in conformity with the provisions of the Act. This is because it is a well settled principle of interpretation that if there two interpretations possible of a rule, one of which would uphold its validity while the other which would invalidate it, the former should be preferred.

30..... "

Therefore, if we accept the view of the learned counsel of the petitioner that Rule 69 of the Central Rules of 2007 declaring that Rules under the Central Rules of 2007 laying down the qualifications for appointment as a member of the JJ Board shall be mutatis mutantis applicable in the State of Manipur, which can not be deviated from by the State authorities in their actions, it would run contrary to the legal position about the scope of section 68 of the JJ Act as discussed above. Accepting the contention of the petitioner would therefore, mean that on application of Rule 96 of the Central Rules of 2007 no deviation from the Central Rules would be permissible, though under proviso under section 68 of the Act,

certain latitude and leeway is permissible by the use of the expression "as far as is practicable". There are two possible interpretations of Rule 96 of the Central Rules. The first interpretation as advanced by the petitioner is that Rule 96 of the Central Rules does not permit any deviation from the provisions of the Central Rules for carrying out the purposes of the Act. The other interpretation is that though the Central Rules would be applicable *mutatis mutandis* to the State Government, if there be some deviation, the same is permissible. In other words, the application of the Central Rules is not mandatory but directory.

This Court is of the opinion that in view of the legal position as regards the scope of the proviso to section 68 of the Act as discussed above, the second interpretation of the Rule 69 which makes the applicability of Rule 69 directory will be in consonance with the proviso to section 68 of the Act. If the first interpretation that Rule 69 is mandatory, the Central Rules have to be compulsorily adopted and applied and there cannot be any deviation from it, which would be inconsistent with and contrary to the proviso to Section 68 of the Act. Therefore, this Court would hold that the declaration made in Rule 69 of the Central Rules, 2007 that the Central Model Rules of 2007 would be applicable also in the States *mutatis mutandis* would be mere directory and non-conformity with the Central Rules of 2007 would not lead to any invalidity of the State Rules or actions taken thereon.

22. Admittedly, when the respondent No. 4 was appointed as member of the JJB, Imphal West, his appointment was not made in terms of the Central Rules of 2007 but in terms of the State Rules of 2002. Therefore, the question is even if it is found that the appointment of the respondent No. 4 as a member of the JJB, Imphal West was in conformity with the State Rules of 2002, can the appointment of respondent No. 4 be invalidated on the ground that it is not in conformity with the Central Rules of 2007.

23. Rule 3 of the Manipur Rules, 2002 which lays down qualification for appointment of a member of the JJB does not prescribe possession of post graduate qualification in social work, health, education, psychology, child development or any other social science discipline as mentioned in Rule 7 of the Central rules of 2007.

"Rule 3 reads as under:--

"3. Juvenile Justice Board - (1) The Juvenile Justice Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of the first class, as the case may be, and two social workers of whom at least one shall be a woman, forming a bench.

(2) Every such bench shall have powers conferred by the code of criminal procedure 1973 (2 of 1974).

(3)(a) A Magistrate with special knowledge/training in child psychology or child welfare shall be appointed as a Principal Magistrate of the Juvenile Justice Board.

(b) In case the Principal Magistrate with such special knowledge and training; is not available, then the State Government shall provide for such short term training. (4) The two social workers, of whom at least one shall be a women, shall be appointed by a Selection Committee set up by the State Government under Rule 24(2).

(5) The selection committee set up under sub-rule 2 of rule 24 shall take into consideration the panels of names recommended by the local authority who could be considered for selection of social worker for the Juvenile Justice Board. The selection committee shall also prepare a panel of names for each Juvenile Justice Board to fill in vacancies, which may arise during the tenure of the Juvenile Justice Board.

(6) The social worker to be appointed as a member of the Board shall be a person who has been actively engaged in planning, implementing and administering health, education or other welfare activities pertaining to children for at least seven years.

(7) The Board shall have tenure of three years and the appointment of members shall be co-terminus with the tenure of the Board.

(8) A social worker member of the Board shall be eligible for appointment for a maximum of two terms and shall not be more than 65 years at the time of first appointment.

(9) The Board shall hold its sittings in the premises of an Observation Home and shall meet on all the working days of a week.

(10) Member may resign any time by giving one month's advance notice in writing or may be removed from office as provided u/s. 4(5) of the Act.

(11) Social worker members of the Juvenile Justice Board shall be paid such travelling/meeting allowance or honorarium as the State Government may decide from time to time."

Thus, the Manipur Rules of 2002 merely provide that the JJB shall include two social workers who have been actively engaged in planning, implementing and administering measures relating to health, education or welfare activities pertaining to children for at least 7 years. There is no reference to any educational qualifications under Rule 3 of the State Rules. The petitioner has not made any pleading about the lack of experience of 7 years by the respondent No. 4. On the contrary the respondent No. 4 has specifically pleaded in his affidavit-in-opposition (in para 18) that he is eligible for appointment as a member of the JJB which have not been controverted by the petitioner. It has been stated by the Respondent No. 4 that he had been involved in activities relating to adoption of children since 1997 and hence possesses the requisite experience. The State respondents in their affidavit-in-opposition have also specifically pleaded in para 7 and 8 that the respondent No. 4 fulfils the required qualifications as per the State Rules of 2002. Accordingly, this Court is of the view that no materials have

been disclosed and no case has been made out by the petitioner for holding that the respondent No. 4 is not qualified in terms of the provisions of the State Rules of 2002. The only question therefore, to be considered is whether the educational qualification mandated under Rule 7 of the Central Rules of 2007 is required to be adhered to even if the same are not mentioned in the State Rules of 2002. As already discussed above, though the Central Rules of 2007 are to be applicable *mutatis mutandis* in the State of Manipur and as such, provisions including the qualifications laid down for appointment of the member of the JJ Board are also to be followed in the State of Manipur, since the applicability of Central Rules of 2007 is directory in nature, for the reasons discussed above, non-conformity with the provisions of the Central Rules of 2007 would not render such an action taken under the State Rules, illegal. Though it is desirable for the State Government to adhere to the Central Rules of 2007 to carry out the purposes of this Act, failure to strictly conform to the provisions of the Central Rules of 2007 would not render any such action taken on the part of the State Government illegal.

Therefore, this Court is of the view that no case has been made out for declaring the appointment of the respondent No. 4 as a member of the JJ Board, Imphal West, as illegal so as to issue a writ of quo-warranto.

24. The other allegations and contentions raised by the petitioner against the respondent No. 4 in discharge of his official function as member of the JJ Board, however, would be outside the scope of the writ of quo-warranto. Since these allegations are based on certain facts which have been disputed by the respondents, it can be said that certain disputed question of facts are involved and as such, this Court is of the view that these issues can not be effectively considered and decided in this writ petition which has been primarily filed for issue of quo-warranto, for removal of the respondent No. 4 as the member of the Board in the Juvenile Justice Board, Imphal West, Manipur. In view of the above, this Court is of the opinion that it may not be necessary to consider the other contentions raised by the petitioner before this Court and hence, not considered.

The petitioner, however, would be at liberty to approach the competent forum for redressal of other grievances.

25. Accordingly, for the reasons discussed above, this Court holds that this writ petition is devoid of merit and the same is dismissed, however, without any cost.