
(2014) 10 BOM CK 0038
In the Bombay High Court
Case No : Writ Petition No. 2400 of 2014

Renuka Vishnu Ghule

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 14-10-2014

Acts Referred:

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 29, 29(4), 62

Citation : (2015) 5 ALLMR 181 : (2015) 6 BomCR 83 : (2015) 2 MhLj 287

Hon'ble Judges : V.K. Jadhav, J; R.M. Borde, J

Bench : Division Bench

Advocate : V.J. Dixit, Senior Counsel i/by Ankush N. Nagargoje, Advocate for the Appellant; S.V. Kurundkar, Government Pleader, Advocate for the Respondent

Judgement

R.M. Borde, J.

1. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2. The petitioner is praying to quash notification dated 01.01.2014 and consequential orders of removal communicated by the Deputy Commissioner of Child Development, Maharashtra State, Pune, District Women and Child Development Officer, Aurangabad, on 24.01.2014, thereby directing termination of petitioner from the post of Chairperson of Child Welfare Committee, Aurangabad.

3. The petitioner came to be appointed as a Member of Child Welfare Committee, Aurangabad, by virtue of Notification issued in that behalf by the State Government on 02.06.2008. It is the contention of the petitioner that there were certain complaints received against the then Chairperson and Members of the Child Welfare Committee, Aurangabad. In pursuance thereof, a show cause notice came to be issued on 08.02.2010 by the Commissioner, Women and Child Development Department, Maharashtra State, Pune. The concerned Members and Chairperson were directed to submit their explanation within three days from

the date of receipt of the notice. The petitioner submitted her explanation and denied allegation as against her on 02.03.2010. While concluding those proceedings, action of removal was taken against then Chairperson Smt.Usha Mahajan and Member Smt.Madhura Anvikar. So far as petitioner is concerned, at the relevant time, no action was taken against her. The term of earlier Committee, of which petitioner was also a part, came to an end and as such, by virtue of notification issued by the State, a new Child Welfare Committee came to be constituted. The petitioner came to be appointed as Chairperson of the said Committee since 04.05.2013.

4. The petitioner contends that she was shocked and surprised to receive notification on 01.01.2014 directing her removal from the post of Chairperson of the Child Welfare Committee, Aurangabad. It is recorded in the notification issued, in that behalf, that an inquiry came to be conducted by the State Advisory Board against the Chairperson i.e. petitioner and it was found that in view of several complaints received against her and on finding that there is substance in the complaints, the State Advisory Board recommended termination of the petitioner from the post of Chair Person of Child Welfare Committee, Aurangabad. The State Government, as such, took a decision to terminate the petitioner from the post of Chairperson of Child Welfare Committee, Aurangabad.

5. The petitioner contends that the allegations, if any, received by the Advisory Board, are directed as against the earlier body and tenure of the earlier Committee came to an end and thereafter petitioner came to be appointed once again by issuing a fresh notification for a term of three years commencing from 04.05.2013. The petitioner contends that no action can be initiated against her on the basis of complaints received concerning alleged irregularities committed by the erstwhile Committee. The tenure of the erstwhile Committee, having come to an end in the month of April 2013, no action can be initiated or taken against the petitioner, who is a part of new Committee constituted by the State Government.

6. It is further contended by the petitioner that action taken against her is not in consonance with Rule 92 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 read with Section 29 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

7. An affidavit-in-reply has been presented by the District Women and Child Welfare Officer, Aurangabad, on behalf of Respondents. It is contended in the affidavit-in-reply that in all 16 institutions have filed complaint against the petitioner on 20.03.2013. On receipt of the complaint, the State Advisory Board, under the Chairmanship of Shri Justice A.S.Aguar, a retired Judge of High Court, has inquired into the matter and submitted his report under Section 29(4) of the Juvenile Justice (Care and Protection of Children) Act, 2000. The matter was again inquired into by a Committee constituted by the State Advisory Board under the Chairmanship of Joint Commissioner, Women and Child Development, Maharashtra State, Pune. The said Committee, after holding inquiry, submitted

its report to the State Advisory Board. Both the Board as well as Committee reached the conclusion that charges levelled against the petitioner are proved and as such, recommended the State Government to issue order of termination in exercise of powers conferred under Section 29 of the Juvenile Justice (Care and Protection of Children) Act, 2000. It is averred that the State Government is empowered to take appropriate action against the petitioner who was a part of the earlier Committee as well as new Committee. Since allegations levelled against the petitioner are proved, the State Government is justified in taking action against her.

8. The Child Welfare Committee is constituted in accordance with Section 29 of the Juvenile Justice (Care and Protection of Children) Act, 2000. The State Government is empowered to constitute Child Welfare Committee by issuing notification in the Official Gazette for exercising the powers and discharging duties conferred on such Committee in relation to child in need of care and protection. The Committee consists of Chairperson and four other members as the State Government may think fit to appoint, of whom atleast one shall be a woman and another, an expert on matters concerning children.

9. So far as termination of members of the Committee is concerned, Section 29(4) provides that the appointment of any member of the Committee may be terminated, after holding inquiry, 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. So far as instant matter is concerned, it appears that the State Government has exercised powers under sub-section (4) (i) of Section 29 of the Juvenile Justice Act. Although it has not been specifically mentioned in the order that the petitioner has been found guilty of misuse of the powers vested in her, considering the allegations levelled against the petitioner, it does transpire that the case has been considered under sub-section (4)(i) of Section 29 of the Juvenile Justice Act. The provisions of sub-section 4(ii) and (iii) of Section 29 of the Juvenile Justice Act are not attracted to the case of the petitioner.

10. The constitution and functions of the Central, State, district and city advisory boards is specified in Section 62 of the Juvenile Justice Act, 2000. The Central Government or the State Government is invested with the powers to constitute a Central or a State advisory board, as the case may be, to advise the Government on matters relating to the establishment and maintenance of the homes, mobilisation of resources, provision of facilities for education, training and rehabilitation of child in need of care and protection and juvenile in conflict with law and co- ordination among the various official and non-official agencies concerned.

11. The power of removal of Chairperson or Members of the Child Welfare

Committee is not invested in the State Advisory Board. The procedure in respect of constitution of Advisory board at Central, State, District and city level, is provided under Rule 93 of the Juvenile Justice (Care and Protection of Children) Rules, 2007. Rule 93(3) provides that the State Government shall constitute the State Advisory Board, District Advisory Board and the City Advisory Board. Sub-rule (8) of Rule 93 provides that the State Government, through the Selection Committee constituted under rule 91 of these rules, shall set up State, District and City level Advisory Boards, which shall consist of representatives of the State Government, members of the competent authority, academic institutions, locally respectable and spirited citizens, representatives of Non-Governmental Organisations.

12. The State Advisory Board has not been invested with the powers to inquire into allegations levelled against Chairperson and members of the Child Welfare Committee and recommend their removal. Rule 91 of the Rules provides for Selection Committee and its composition. The State Government is invested with the powers to constitute a Selection Committee by issuing notification in the Official Gazette for a period of five years consisting of 7 members, namely (a) retired Judge of High Court as the Chairperson; (b) one representative from the concerned Department of State Government not below the rank of Director as the Member-Secretary; (c) two representatives from a reputed Non-Governmental Organisation, working in the area of child welfare; (d) two representatives from academic bodies concerned with social work, psychology, sociology, child development, education, law, criminology and with experience of working on children's issues; and (e) a representative of the National or State Human Rights Commission or, National or State Commission for Protection of Child Rights, or National or State Commission for Women.

13. The functions of Selection Committee are specified in Rule 92. Sub-rule (2) of Rule 92 provides that in the event of any complaint against a Member of the Board or Committee, the Selection Committee shall hold necessary inquiry and recommend termination of appointment of such Member to the State Child Protection Unit or State Government, if required. In the instant matter, it is stated on oath that inquiry has been conducted by the State Advisory Board and thereupon a decision has been taken by the State Government to remove the petitioner as Chairperson of the Committee.

14. As has been observed, the State Advisory Board is not invested with the powers to inquire into the allegations levelled against members of the board or the Committees and only the Selection Committee, constituted under Section 91 of the Juvenile Justice Act, is invested with the powers to conduct an inquiry and recommend termination of appointment of a member of the Committee. The Selection Committee constituted under Section 91 is invested with the powers to appoint the Members of the board and the Committees both, including the State Advisory Board. Neither the Rules of 2007 nor the provisions of Juvenile Justice Act, 2000 invest powers with the State Advisory Board to conduct inquiry against

the members of the Child Welfare Committee and recommend termination of appointment of such member. The inquiry allegedly conducted by the State Advisory Board and recommendation made by the State Advisory Board in respect of removal of member/chairperson of the Committee i.e. petitioner is in breach of provisions of Juvenile Justice Act, 2000 and Rules of 2007. The notification issued by the State Government on 01.01.2014 specifically makes a mention that the inquiry was conducted by the State Advisory Board against the Chairperson of the Committee and in pursuance to such inquiry, the State Government has taken a decision of terminating the petitioner from the post of chairperson of the Child Welfare Committee, Aurangabad.

15. In the instant matter, there is no inquiry by the Selection Committee, as contemplated by Rule 92 of Rules of 2007. The decision taken by the State Government, as such, is in breach of provisions of the Juvenile Justice Act, 2000 and Rules of 2007.

16. In the result, Writ Petition is allowed. The notification issued on 01.01.2014, directing termination of the petitioner as Chairperson of Child Welfare Committee, Aurangabad and consequential order dated 24.01.2014, issued by the Deputy Commissioner of Child Development, Maharashtra State, Pune and order dated 24.01.2014, issued by the District Women and Child Development Officer, Aurangabad, deserves to be quashed and set aside and are accordingly quashed and set aside.

17. It is clarified that we have not gone into correctness of the allegations levelled against the petitioner. It would be open for the State Government to take appropriate steps, if deemed necessary and issue appropriate orders in conformity with the Juvenile Justice (Care and Protection of Children) Act, 2000 and Juvenile Justice (Care and Protection of Children) Rules, 2007.

18. Rule is accordingly made absolute. There shall be no order as to costs.