

Amol

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2164 OF 2022
WITH
INTERIM APPLICATION (L) NO. 30500 OF 2022
IN
WRIT PETITION NO. 2164 OF 2022
WITH
INTERIM APPLICATION (L) NO. 14627 OF 2022
IN
WRIT PETITION NO. 2164 OF 2022

The Nest India Foundation ...Petitioner
Versus
State of Maharashtra & Ors ...Respondents

Dr Abhinav Chandrachud, with Akanksha Agarwal i/b Ismail
Shaikh for the Petitioner.
Ms PH Kantharia, GP, for the Respondent-State.

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CORAM G.S. Patel &
Neela Gokhale, JJ.
DATED: 9th February 2023

PC:-

1. The matter raises questions under provisions of the Juvenile Justice (Care and Protection) Act 2015 (“JJ Act”). The present

order is on Interim Application (L) No. 30500 of 2022, and partly in regard to the amended prayers in the Petition. These relate to the condition and situation of two young ladies, who, to protect and preserve their privacy we will refer in this order simply as *V* and *U*.

2. The Petitioner is a charitable trust that says it legitimately runs an orphanage. Its case against the State Government is distinct from the case of *V* and *U*. We are not considering the case of the Petitioner organization today. We will address that another day. *V* and *U* are, today, no longer children. Both have attained adulthood. They say that in search of better educational opportunities they will need a certificate that they were both (and each of them was) abandoned and an orphan within the meaning of the JJ Act 2015. One of them was abandoned at the orphanage at the age of five; the other at about the age of six. One of them has been visited by her birth mother a few times in all these years. The other has had no more than as many visits. There is other material that is before us including affidavits by the two young ladies and statements by the school that they attended to say that at every parent-teacher meeting, it was only somebody from the orphanage who attended. All fees were paid by the orphanage.

3. There is something of a history about getting a police verification report from the Powai Police Station. This is linked to a demand from Respondent No. 4 to get this report and his rejection of it for apparently being submitted two hours late, for being incomplete and so on.

4. In light of the order that we propose to make today, we specifically exercise our powers under Article 226 of the Constitution of India and dispense with those concerns entirely. The police report in question is accepted. It indicates that the mother of one of these two young ladies (again we are being extra cautious to avoid any possible identification) had a love marriage and had severed ties with her family. Her whereabouts are unknown. At the last known address of the other young lady's birth mother, there was somebody else entirely. The police certify that the actual whereabouts of the two mothers are unknown.

5. We have also considered the provisions of the JJ Act and in particular, the definition of "abandoned child" in Section 2(1). This requires *inter alia* a declaration as 'abandoned' by the Committee after due enquiry. The definition states that an abandoned child is a child who is deserted by his biological or adoptive parents or guardians. We hold that there is no dispute about abandonment at all. What remains is the declaration that is required by the Committee "after due enquiry." We also note the definition of "orphan" in Section 2(42) of the Act. Interestingly, this definition in sub-clause (ii) states that an orphan is also a child whose legal guardian "is not willing to take or capable of taking" care of the child. The unwillingness in this case of the guardians of both young ladies is manifest from the record as it stands.

6. We must also make reference to the general principles of care and protection of children as set out in Chapter II of the Act. Almost all of them will apply to the case in hand. Chapter V relates

to the Child Welfare Committee (“CWC”). Section 30 sets out its duties and responsibilities. Sub-clause (xi) says that one of these is the declaration of orphan, abandoned and surrendered children as legally free for adoption after due enquiry.

7. There is no question of adoption in this case but the point to be noted is that the Act itself does not seem to make a sharp distinction between a child who is abandoned and a child who is orphaned. Section 37 relates to orders to be passed regarding a child in need of care and protection, and Section 38 deals with the procedure for declaring a child legally free for adoption.

8. Having regard to the facts as they have unfolded, we are satisfied that the necessary material for a declaration by the Child Welfare Committee (“CWC”) is already on record. At best, the CWC may wish to meet the two young ladies themselves and interview the head of the orphanage. We do not prevent that, and leave it open to the CWC to consider if that is even necessary.

9. Ms Kantharia may be correct in saying that this now presents something of a dilemma for the Committee. The enquiry by the Committee is directed towards a certification that the child is fit for adoption or other forms of child care. But these two ladies are not children any longer, as we noted at the forefront. What they seek really is a declaration that their *childhood* at the Petitioner orphanage was one that was spent in a state of their being under the provisions of the JJ Act especially as abandoned children and orphans. This is

the limited documentation that is sought. They need this certification for their future educational endeavours.

10. The declaration and the report of the Committee does not, of its own, grant admission to an education course or certify eligibility for reservation. Those may be separate matters that the two young ladies must face once they have the certificate from the CWC and apply for admission against some form of reservation.

11. To put it differently, these two young ladies having been abandoned as children, have reached adulthood as abandoned children and orphans but without there being any certification of their status as such. They need that certification today to progress and get ahead in life. We ourselves are sufficiently satisfied with the factual material but the Act does contemplate an enquiry and declaration by the Committee. It is for this limited purpose that we direct the CWC to issue the necessary declaration after the limited enquiry that we have outlined above. To clarify: this enquiry does not relate to the two young ladies as children today but to their past as children until adulthood in the orphanage. The Committee is not to reject the application for noncompliance since we are satisfied that there is sufficient compliance.

12. The Interim Application itself that is before us along with its compilations and any annexures to the Petition will be treated as the application before the Committee. For convenience of the CWC, the Petitioner's attorneys may separately compile that documentation.

13. We further make it clear that what is required from the Committee is a declaration not for the purposes of adoption but as a description of the status or condition during the minority of the two young ladies in the Petitioner orphanage under Section 2(1) read with Section 2(42) of the JJ Act.

14. This order does not dispose of the Interim Application. We require the Committee to meet urgently. A compilation of the papers and the copy of the order will be forwarded to the Committee by Wednesday, 15th February 2023. The Committee will issue the necessary declaration by 20th February 2023.

15. List the Interim Application along with Writ Petition before us on 22nd February 2023 at 2:30 pm.

16. The orders of 9th and 11th November 2022 of the Committee/Respondent No. 4 rejecting the application of the Petitioner orphanage are quashed and set aside.

(Neela Gokhale, J)

(G. S. Patel, J)