

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF SEPTEMBER, 2021

PRESENT

THE HON'BLE MR. SATISH CHANDRA SHARMA
ACTING CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO.14848 OF 2020(GM-RES-PIL)

BETWEEN:

SUDHA KATWA
D/O LAKSHAMANASA KATWA
AGED ABOUT 52 YEARS
NO.40, 3RD FLOOR, SNS PLAZA
SHIVANAND CIRCLE, KUMARA KRUPA ROAD
BANGALORE-560001

...PETITIONER

(BY SRI.UMAPATHI S, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
REPRESENTED BY THE ADDL CHIEF SECRETARY
DEPARTMENT OF WOMEN AND CHILD DEVELOPMENT
AND EMPOWERMENT OF DIFFERENTLY ABLED
AND SENIOR CITIZENS
GATE NO.3, 1ST FLOOR, M S BUILDING
DR B R AMBEDKAR VEEDHI
BANGALORE-560001

2. THE STATE OF KARNATAKA
REPRESENTED BY THE DIRECTOR
INTEGRATED CHILD PROTECTION SCHEME
M S BUILDING, DR B R AMBEDKAR VEEDHI
AND MEMBER SECRETARY
KARNATAKA STATE SELECTION COMMITTEE
BANGALORE-560001

3. SMT LATHA JAGADISHNARAYAN
NO.54, 2ND CROSS, SIR KARPARA
HADKYAL LAYOUT, BASAVA NAGAR
BAGALKOTE-587207

4. SHRI S M BADASKAR
NO.147, AMBIKA NAGAR
UNKAL, HUBBALLI-580031

...RESPONDENTS

(BY SRI.KIRAN KUMAR, HCGP FOR R1 & R2;
SRI.LAKSHMI NARAYAN.N.HEGDE, ADVOCATE FOR R3;
SRI.GANAPATHI BHAT VAJRALLI, ADVOCATE FOR R4)

THIS PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE
CONSTITUTION OF INDIA PRAYING TO CALL FOR THE ENTIRE
RECORDS ON THE FILE OF R-1 DATED 06.08.2020 PERTAINING TO
APPOINTMENT OF R-3 AND 4 AND ON PERUSAL OF THE SAME AND
ETC.,

THIS PETITION COMING ON FOR PRELIMINARY HEARING
THIS DAY, ***ACTING CHIEF JUSTICE.***, MADE THE FOLLOWING:

ORDER

In the present case, the dispute is, appointment of two
representatives from two different reputed non-government

organizations respectively working in the area of child development or child protection as the members of the Karnataka State Selection Committee for selection of Juvenile Justice Selection Committee Members.

2. The first objection raised in the PIL is that the 4th respondent does not have the requisite qualifications prescribed under the Juvenile Justice(Care and Protection of Children) Act, 2015 (for short "the Act, 2015") and the Rules made thereunder. Rule 87 of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 (for short "the Rules, 2016") reads as under:

"87. Selection Committee and its composition.- (1) *The State Government shall constitute a Selection Committee for a period of three years by notification in the Official Gazette consisting of the following members, namely:*

(i) a retired judge of High Court as the Chairperson to be appointed in consultation with the Chief Justice of the High Court concerned;

(ii) one representative from the Department implementing the Act not below the rank of Director as the ex-officio Member Secretary;

(iii) two representatives from two different reputed non-governmental organisations respectively working in the area of child development or child protection for a minimum period of seven years but not running or managing any children's institution;

(iv) two representatives from academic bodies or Universities preferably from the faculty of social work, psychology, sociology, child development, health, education, law, and with special knowledge or experience of working on children's issues for a minimum period of seven years; and

(v) a representative of the State Commission for Protection of Child Rights.

(2) The Committee shall continue for a maximum period of three months after the completion of its tenure by which time new Committee shall be constituted.

(3) If a vacancy arises in the Selection Committee, the Member Secretary shall intimate the Secretary of the Department implementing the Act who shall take steps to fill the vacancy for the remaining period at the earliest.

(4) The quorum for the meeting of the Selection Committee shall be not less than four Members, including the Chairperson and the Member Secretary.

(5) The Member Secretary of the Selection Committee shall convene the meetings of the Selection Committee at such times as may be necessary for facilitating and carrying out the functions of the Selection Committee.

(6) The Member Secretary shall maintain the minutes of the selection process and all other meetings of the Selection Committee.

(7) The Chairperson and non-official members of the Selection Committee shall be paid such sitting fees and travel allowances as may be fixed by the State Government from time to time.

(8) All communications relating to the working and discharge of the functions of the Selection Committee shall be addressed to the Office of the Member Secretary, who shall place the same before the Selection Committee.

(9) All records relating to selection shall be placed on the website of the State Government Department concerned."

3. The bio-data of 4th respondent reflects that he is a lawyer practicing since the year 1999. The said application submitted by him nowhere reflects that he is having experience of minimum seven years in the area of child development or child protection. The original file has also been requisitioned. The file does not reveal that he has filed any certificate of having such experience. Along with the statement of objections, the letter issued by the Seva Bharathi Trust has been filed. The date of the aforesaid letter is 24.07.2020 meaning thereby that the letter was not in existence as on the date the application was submitted by the 4th respondent. The other important aspect of the case is that the so called Trust has stated that he is providing legal service for past 12 years in educating and raising awareness in child rights, child labour, child duties etc. in the center at Katak. However, as the aforesaid document was not part of the application, we really fail to understand as to how the benefit of the said document can be given to the 4th respondent. The

4th respondent has also filed an affidavit while submitting the application and the same is produced as Annexure-R1. The affidavit does not reveal that in the affidavit he has stated that he has seven years of experience as required under the Act.

4. In respect of 3rd respondent, the 3rd respondent has filed Annexure-R1, in respect of experience of seven years, which is the appointment order under Jala Samvardhane Yojana Sangha which is certainly not at all the area of child development or child protection.

5. The applications of 3rd and 4th respondents were scrutinized by the department and the department has put up a note that 3rd and 4th respondents do not have the requisite qualifications as prescribed under Rule 87 of the Rules, 2016 and therefore, their candidature were to be rejected. The relevant noting made in Kannada is reproduced as under:

"ಕ್ರಮ ಸಂಖ್ಯೆ 01 ಹಾಗೂ 02ರಲ್ಲಿ ಸೂಚಿಸಿರುವ ಅಭ್ಯರ್ಥಿಗಳು ನಿಯಮ 87(11)ರಂತೆ ಮಕ್ಕಳ ಅಭಿವೃದ್ಧಿ ಮತ್ತು ರಕ್ಷಣೆ ಕ್ಷೇತ್ರದಲ್ಲಿ ಕನಿಷ್ಠ 7 ವರ್ಷಗಳು

ಕಾರ್ಯನಿರ್ವಹಿಸಿರುವ ಬಗ್ಗೆ ಸಲ್ಲಿಸಿರುವ ಅರ್ಜಿಯಲ್ಲಿ ಮಾಹಿತಿ ಲಭ್ಯವಿಲ್ಲ. ಹೀಗಾಗಿ ಮರು ಸಲ್ಲಿಸಿದೆ."

6. In spite of the fact that they were not eligible, the Minister of the Department unilaterally recommended their appointment and the subsequent order sheet recommending appointment of 3rd and 4th respondents has not been signed by the Principal Secretary of the Department and it is only unilaterally by the Minister meaning thereby that in spite of the fact that 3rd and 4th respondents were not holding requisite qualification they were held ineligible, and only because the Minister wanted them to be appointed, they have been appointed under the orders of the Minister. In the light of the aforesaid as the process of selecting members of the Selection Committee is contrary to the statutory provisions as contained under the provisions of the Act, 2015 read with relevant Rules framed thereunder, the same deserves to be set aside and accordingly, set aside.

7. The State Government shall be free to appoint persons having prescribed qualification as per the Act of 2015.

8. The Juvenile Justice(Care and Protection of Children) Act, 2015 was enacted to provide for protection of children in institutions, inadequate facilities, quality of care and rehabilitation measures in Homes, high pendency of cases, delays in adoption due to faulty and incomplete processing, lack of clarity regarding roles, responsibilities and accountability of institutions and, inadequate provisions to counter offences against children such as corporal punishment, sale of children for adoption purposes, which had cropped up in the recent times. The noble object of the Act stands defeated by appointing the persons who are unconnected with the subject at all merely because the Hon'ble Minister wants them to be appointed. The entire object of the Act stands defeated on account of action of the State Government and therefore, the State Government shall

appoint only experts in the subject, keeping in view the statutory provisions contained under the Act.

9. The original record after securing photocopies is returned to the Government Advocate today itself.

Accordingly, the writ petition is allowed.

No order as to costs.

Sd/-
ACTING CHIEF JUSTICE

Sd/-
JUDGE

*alb/-.