

V.G.ARUN, J.

W.P(C).Nos. 21189 & 21196 of 2022

Dated this the 17th day of October, 2022

O R D E R

An impoverished family from Assam migrated to Kerala to eke their livelihood. The family consist of husband, wife and two minor girl children aged 14 and 12 years. The girls had a little tiff with their mother and walked out from the security of their home. Some human predators on the prowl pounced on the innocent children and sexually abused them. The police registered crimes against the perpetrators and produced the children before the Child Welfare Committee (CWC). Finding that the children were not given proper care and protection, they were lodged in a Government Children's Home. Later, the CWC decided to transfer the children to a Children's Home in Assam. The hapless parents are before me, pleading to release the children to their custody.

2. The CWC and the District Child Protection Officer are opposing the prayer, mainly for the reason that the children will not be safe at home, since their parents are daily waged labourers and will have to leave the children at home when they go out for work. The authorities apprehend that the children will be harmed again by the perpetrators or like minded perverts.

3. No doubt, Section 96(2) of the Juvenile Justice (Care and Protection) of Children Act 2015, provides for transfer of children to an institution outside the State. But, such transfer can be ordered only by the State Government, that too, after consultation with the Government of the State to which the children are transferred. No such procedure is seen adopted in this case. It is to be noticed that as per Section 37(1) (b), the CWC can restore the child to parents or guardian or family with or without supervision of the Child Welfare Officer or designated social worker. As the CWC had relied on the social investigation report of the District Child Protection Officer, the Officer was directed to interact with the children and file a report before this Court. Accordingly, a report has been filed, pointing out that children wishes to go back to their native place and continue their education from there as they are not able to pursue their studies in Kerala due to language barrier. The children are stated to be good artists and to be participating in the activities and programs conducted in the children's home.

4. Learned counsel for the petitioner submitted that the parents are willing to even forgo their employment and income and return to Assam if the children are to be taken back to Assam.

5. If the CWC decision is allowed to stand, two innocent children will be transferred to a distant land, far away from their parents. Even as per the report of DCPO, none of their relatives in Assam have offered to

support to the children. In my considered opinion, the State and its instrumentalities cannot abdicate their responsibility of protecting the children from the perpetrators of the heinous crime committed on them. It may be apposite to point out that Article 39 (f) requires the State to ensure that our children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment .

6. In the light of the apprehension expressed by the CWC and the DCPO regarding the safety of the children, the State Police Chief is *suo motu* impleaded as the additional third respondent in both cases. As it has come out that the children are not provided even basic education for the past seven months due to language barrier, the Director, Women and Child Development Department is impleaded as the additional fourth respondent. The learned Government Pleader takes notice for the additional respondents.

7. After anxious consideration of all relevant aspects, the following interim order is passed;

i). The first respondent shall forthwith release the children to the custody of their parents. The second respondent Station House Officer shall provide sufficient security to ensure that no harm is caused to the children or their family members. The State Police Chief shall, through a

competent subordinate officer, oversee the measures taken by the second respondent for protecting the children and their parents. The Director, Women and Child Development Department shall hold deliberations with the officials concerned to find out ways and means for providing free education to the children.

ii). A detailed report regarding the measures taken in terms of the above directions shall be placed on record by the second respondent and the Director, Women and Child Development Department within ten days.

Post on 1/11/2022.

Sd/-

V.G.ARUN, Judge

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