



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 3<sup>RD</sup> DAY OF FEBRUARY, 2023**

**BEFORE**

**THE HON'BLE MS JUSTICE JYOTI MULIMANI**

**WRIT PETITION NO. 37674 OF 2017 (GM-FC)**

**BETWEEN:**

...PETITIONER

(BY SRI. SIDDHARTH B. MUCHANDI., ADVOCATE)

**AND:**

1. KARNATAKA STATE COMMISSIONER  
FOR PROTECTION OF CHILD RIGHTS,  
4<sup>TH</sup> FLOOR, KRISHI BHAVAN,  
NRUPATHUNGA ROAD (HUDSON CIRCLE),  
BANGALORE - 560 002.  
REPRESENTED BY ITS CHAIRPERSON.



...RESPONDENTS

(BY SMT. GEETHA M., ADVOCATE FOR R1,  
R2 SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226  
AND 227 OF THE CONSTITUTION OF INDIA, SEEKING  
CERTAIN RELIEFS.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY,  
THE COURT MADE THE FOLLOWING:

**ORDER**

Sri. Siddharth B. Muchandi., learned counsel for petitioner  
and Smt. Geetha. M., learned counsel for respondent No.1 has  
appeared in person.

2. The brief facts are these:

The petitioner and second respondent are husband and  
wife and their marriage was solemnized on 08.07.2003 at  
Hathras Village in Uttar Pradesh. It is said that after two  
forceful abortions and miscarriage, on 21.07.2010 the  
petitioner and second respondent had their first child

In the month of July 2016, the second respondent came  
to the house of the petitioner and physically assaulted and  
forcibly took away and some of the petitioner's



belongings which drove her to register a complaint against him at HSR Layout Police Station. After the intervention of the police, the second respondent-husband handed over the custody of the minor child back to the petitioner.

Further, in the month of January 2017, when the child was studying in first standard at National Public School, Koramangala, the second respondent took the child and was kept away from the petitioner for nearly four months. Due to continuous torture by the second respondent and also considering the welfare of the child, the petitioner lodged a complaint at Bellandur Police Station against the second respondent and several other persons, based on which, a case came to be registered in Cr. No.55/2017 at Bellandur Police Station.

On 26.05.2017 the petitioner also complained to the Karnataka State Commission for Protection of Child Rights seeking protection for her child from the second respondent. The Commission on 07.07.2017 passed the order and made certain recommendations and also directed that the father may visit the child every first and third Saturday from 12 noon to 9:00 p.m., and he will make arrangements to pick up and drop



off the child. It is this order, that is called into question in the present Writ Petition on several grounds as set out in the Memorandum of Writ Petition.

3. Learned counsel for the petitioner and respondent No.1 urged several contentions.

4. Heard, the contentions urged on behalf of the respective parties and perused the Writ papers and also the Annexures with utmost care.

The main argument in the present case has been centered around granting visitation rights by the Commission.

Sri. Siddharth B.Mucchandi., learned counsel for the petitioner in presenting his argument vehemently contended that the second respondent has initiated proceedings under the Guardians and Wards Act, 1890 before the appropriate Forum. He argued by saying that the State Commission has no power to pass an order granting visitation rights.

Smt. Geetha learned counsel appearing on behalf of the commission justified the order.

Suffice it to note that the Commission for the Karnataka State Commission for the Protection of Child Rights is a



statutory authority established under the 2005 Act. Section 13 of the Act enumerates the functions of the Commission. A perusal of the same makes it very clear that the Commission is an advisory body and it could frame or suggest policy decisions with respect to the child's rights to the State Government. The Act does not empower and conferred with any power of adjudication or to decide adversarial proceedings. The commission has no power to adjudicate any *lis* between two parties.

The Guardians and Wards Act, 1890 has come into force on the first day of July 1890. It is an Act to consolidate and amend the law relating to Guardian and Ward. It deals with the law relating to guardians and wards. It is pivotal to note that the second respondent has initiated proceedings under the provisions of the Hindu Guardians and Wards Act. He has applied Sections 7, 9, 10, 11 and 12 of the Act which is numbered G & WC 175/2017 and is pending consideration before the Prl. Family Court Judge at Bengaluru. Furthermore, he has also moved an interim application under Section 12 of the Act seeking interim custody of the child. It is not in dispute that the proceedings under the 1890 Act are pending before the



competent court. Under these circumstances, the Commission could not have passed the order of visitation rights.

I may venture to say that the commission has failed to have regard to relevant considerations and disregarded relevant matters. In my considered opinion, the order passed by the commission is one without jurisdiction and is unsustainable in law.

In the circumstances, the order dated 07.07.2017 passed by the Karnataka State Commission for Protection of Child Rights is unsustainable in law and the same is liable to be quashed.

The result is that the Writ Petition will be allowed. This court orders a Writ of Certiorari. The order dated 07.07.2017 passed by the Karnataka State Commission for Protection of Child Rights vide Annexure-A is quashed.

Resultantly, the Writ Petition is **allowed**.

**Sd/-  
JUDGE**

TKN  
List No.: 1 Sl No.: 3