

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**

D.B. Habeas Corpus Petition No. 164/2019

Deepika Spouse/o Jhavari Lal, Aged About 19 Years, Deenawas Road Pali Darwaza, Sojat City, District Pali, At Present Balika Graha, Mandore, Jodhpur.

----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary, Ministry Of Home Affairs, Government Of Rajasthan, Jaipur.
2. Rajkiya Balika Grah, Mandore, Jodhpur, Rajasthan.
3. Rajkiya Balika Grah, Pali, Rajasthan.
4. Prakash S/o Salagram Ji, Aged About 21 Years, By Caste Ghanchi, Resident Of Sojat City, District Pali, Rajasthan.

----Respondents

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For Petitioner(s) : Mr. Rajendra Choudhary  
For Respondent(s) : Mr. Farzand Ali, G.A.-cum-A.A.G.  
Mr. H.S. Sidhu

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**HON'BLE MR. JUSTICE SANDEEP MEHTA  
HON'BLE MR. JUSTICE VIJAY BISHNOI**

**Order****Date of pronouncement : 07/04/2020****Order reserved on : 26/02/2020****BY THE COURT : PER HON'BLE MEHTA, J.**

The instant habeas corpus writ petition was preferred by the petitioner Mst. 'D', the alleged detenu against her illegal confinement at the Balika Gruh, Jodhpur despite having attained the age of majority.

The matter came up for consideration on 08.08.2019 and the court was apprised by the petitioner's counsel that the Child Welfare Committee, Pali (hereinafter referred to as 'CWC,

Pali') was deliberately sitting tight over the matter and had failed to pass a lawful order regarding the future course of action qua the petitioner. Thereupon, we directed the CWC, Pali to forthwith pass an appropriate order regarding the future of the girl in light of the school record. Considering the gross and undue delay occasioned in deciding the matter, the Chairperson of the CWC, Pali was directed to remain present on the next date of hearing, which was fixed as 20.08.2019.

On 20.08.2019, Mr. Durga Ram Arya, Chairperson, CWC, Pali appeared in the court and the following order was passed in his presence :-

*"Shri Jawarilal, being the father of the petitioner, lodged a Missing Person Report No.16/2018 on 13.07.2018 at Police Station Sojat City, District Pali alleging that his daughter Deepika had gone away from his house carrying her Aadhar Card and educational documents with herself. It is specifically mentioned in the report that the girl's age was 19 years.*

*At a later point of time, a case (FIR No.197/2018) for offences under Sections 363 & 366-A IPC and that under Sections 16 & 17 of the POCSO Act came to be registered against the respondent No.4 Prakash.*

*The girl was traced out in September, 2018 and was lodged at the Balika Gruh, Jodhpur under the direction of CWP Pali. As per the original record, the officials of the Balika Gruh, Jodhpur forwarded repeated communications to the Child Welfare Committee ('CWC') Pali to pass appropriate directions for the rehabilitation/welfare of the girl.*

*However, no steps were taken in this regard as per the mandate of the Juvenile Justice Act, 2015. In*

*the intervening period, the girl was summoned to give evidence in Sessions Case No.339/18 registered against the said Prakash. Her statement was recorded on 17.05.2019 wherein she has affirmatively stated that her date of birth is 17.02.2000. She denied that she had been subjected to sexual assault by the alleged accused.*

*Compelled with her grossly illegal confinement at the Balika Gruh, Jodhpur despite being a major even on the date of filing of the MPR, the petitioner has preferred the instant habeas corpus petition.*

*As per Section 29 of the Juvenile Justice Act, 2015, the Child Welfare Committee constituted under Section 27 of the Act has the authority to dispose of the cases for the care, protection, development and rehabilitation of the children in need of care and protection.*

*Manifestly, the girl has been crying out loud from the very first day that she was major. Despite repeated requests being made by the Superintendent of Balika Gruh, Jodhpur, the CWC, Pali failed to pass appropriate order regarding the major girl and has facilitated her illegal confinement for nearly one year.*

*An application dated 04.04.2019 filed by the petitioner to the CWC is available on record wherein she has categorically stated that her date of birth is 17.02.2000. As per the letter dated 04.02.2019 forwarded from the School concerned, her date of birth is recorded as 25.08.2000. The CWC replied to the said letter of the Superintendent mentioning that the order regarding the date of birth and inquiry would be passed in due course of time.*

*Ultimately, on being apprised of these startling facts and circumstances, this Court passed order dated 08.08.2019 mandating the CWC, Pali to pass appropriate order regarding the future of the girl in*

*light of the school record with the intimation that failure to do so would invite suitable action.*

*The Chairperson, CWC Pali Shri Durga Ram Arya, present in the Court, has submitted before us, the order dated 19.08.2019 whereby the date of birth of the girl (as recorded in her initial scholar register as 25.08.2000) has been held to be the correct one and she has been permitted to go as per her desire.*

*The girl was summoned from Balika Gruh, Jodhpur. She requested for an audience in Chambers. She has levelled serious allegations against Shri Durga Ram Arya, Chairperson, CWC Pali imputing that he was hands in glove with one Ashok Kumar to whom the petitioner was being pressurized by her parents to marry.*

*She requested that she may be allowed to go with the respondent Prakash assuring that she would marry him as soon as possible. The respondent Prakash, present in the Court, also stated in the Court that he is ready and willing to marry the present petitioner.*

*We feel that confinement of the petitioner at the Balika Gruh, Jodhpur despite apparently being a major person for a period of nearly one year was totally the responsibility of the CWC Pali who due to its sheer incompetence, possible connivance, avoided to take appropriate steps in accordance with law.*

*We therefore, accept the instant habeas corpus petition and direct that the petitioner who is presently lodged at the Balika Gruh, Jodhpur shall be released forthwith and shall be allowed to go with the respondent No.4 Prakash as per her desire. Shri Abhishek Purohit, Advocate representing the respondents Nos. 1 to 3 shall ensure that appropriate protection is provided to the petitioner till she reaches the place of her choice and the protection shall be continued as long as threat perception, if any, continues.*



*In view of the facts noted above, we feel that the CWC Pali is not competent to perform its lawful obligations as per the Juvenile Justice Act and rather appears to have acted in a malafide manner. We therefore, issue suo moto notice to the Chairperson as well as the sole Member of CWC Pali Shri Sudarshan Udawat to show cause as to why they should not be removed from their respective assignment and also as to why they should not be called upon to pay compensation to the petitioner for keeping her in illegal confinement for nearly one year. We also call upon the State Government to show cause as to why suitable compensation should be awarded to the petitioner.*

*Shri Durga Ram Arya, Chairperson, CWC Pali present in the Court, accepts notice. Notices of Shri Sudarshan Udawat, Member, CWC Pali shall be served through the SHO concerned and be provided dasti to Shri Abhishek Purohit, Advocate for effecting service upon him."*

The proceedings of the habeas corpus petition so far as the custody of the corpus were closed after directing her release from the Balika Gruh, Jodhpur.

The matter was kept open to consider awarding of compensation to the corpus. Suo moto notices for grant of compensation to the corpus were served on the Member, CWC, Pali Mr. Sudarshan Udawat as well as Mr. Durga Ram Arya, Chairperson, CWC, Pali and they are represented by counsel Mr. H.S. Sidhu, who has filed reply on their behalf. The original record of the CWC, Pali was summoned; final arguments were heard and the order was reserved.

On perusal of the record and the reply of Mr. Durga Ram Arya, Chairperson, CWC, Pali, and the Member, CWC, Pali it is clear that the corpus was produced before the CWC, Pali for the

first time on 13.09.2018. The Police officer, who produced the corpus before the CWC, Pali, submitted a marksheet purportedly issued in the name of the corpus by the Rajasthan State Open School, in which, her date of birth was recorded as 17.04.2002. This marksheet and the affidavit in support thereof was forwarded by the girl's father. The corpus refused to go with her parents, whereupon the CWC, Pali passed an order directing that she be lodged at the Balika Gruh, Jodhpur. On 22.09.2018, The Superintendent, Balika Gruh, Jodhpur forwarded a letter to the CWC, Pali intimating that the girl had expressed her willingness to go with her parents. This letter was received by the CWC Pali on 24.09.2018. We feel that the CWC, Pali was obliged by law to take immediate action on this letter, but rather than summoning the girl to ascertain her desire, the matter was unjustly deferred to 08.10.2018. The girl was directed to be produced before the CWC, Pali on 12.10.2018, on which date, the CWC, Pali made an attempt to talk to the family members, but they refused to take the girl with them. Thus, the girl was sent back to the Balika Gruh. Thereafter, various communications were forwarded by the Superintendent, Balika Gruh, Jodhpur to the CWC, Pali with the applications of the girl, wherein she expressed her desire to go with with her parents. The CWC, Pali observed in the proceedings dated 06.03.2019 that there existed anomalies in the date of birth of Mst. 'D' as recorded in the Aadhar Card, School Record and Bhamashah Card. On 08.03.2019, for the first time, i.e. almost after six months of production of the girl before it, the CWC, Pali took some initiative for holding the mandatory age enquiry of the girl. The District Education Officer (Primary), Sojat was directed to produce the relevant documents pertaining to the age of the

girl. On 13.03.2019, the girl submitted a pertinent application to the CWC to conduct an enquiry regarding her age. On 15.03.2019, the CWC, Pali received a letter from the Headmaster of the concerned school conveying that the affidavit and the school certificate submitted by the girl's parents were fabricated. The Chief Block Education Officer forwarded a communication dated 13.03.2019 to the CWC, Pali, which was received on 22.03.2019, as per which, there were different entries regarding the date of birth of Mst. 'D', who herself forwarded an application dated 27.03.2019 categorically mentioning that her correct date of birth was 17.02.2000. On 10.04.2019, the Principal of the Government Upper Primary School, Biladiya Gate, Sojat appeared before the CWC, Pali and submitted the original documents, in which, the date of birth of the girl was recorded as 25.08.2000. On 12.04.2019, the Chief Block Education Officer, Sojat forwarded a report, in which, the date of birth of the girl was recorded as 25.08.2000. On 24.04.2019, the CWC, Pali noted that four different dates of birth of the girl were mentioned in record.

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|------------|---|---|
| 17.02.2000 | - | As per the girl herself   |
| 17.04.2002 | - | Affidavit of the girl's father  |
| 17.04.2000 | - | Rajasthan Open School Marksheet<br>(Both submitted by the girl's father and found to be forged as per the letter of the Headmaster of the concerned school) |
| 25.08.2000 | - | Report of the Chief Block Education Officer   |

In spite of these glaring facts, the matter was again deferred and no conclusion was drawn by the CWC, Pali regarding the girl's age. The Superintendent, Balika Gruh, Jodhpur again forwarded a letter dated 03.05.2019 alongwith the documents pertaining to the age

of the girl requesting the CWC to take immediate action thereupon. Despite the fact regarding the girl being major, the CWC continued to summon her parents. On 27.05.2019, the girl forwarded a letter to the CWC, Pali submitting that she had completed the age of 18 years, thus, she should be released from the Balika Gruh and allowed to go with Prakash, but yet the matter was deferred. The Department of Child Rights also forwarded a letter to the CWC, Pali to conclude the proceedings. The CWC, Pali issued a notice to the father of the girl for submitting objections regarding her age within seven days. In the meantime, the habeas corpus petition came to be listed before this court and as observed above, on 08.08.2019, this court directed the CWC to decide the age enquiry forthwith. Only on receiving this order, the CWC proceeded to conclude the enquiry and order dated 19.08.2019 was passed holding the date of birth of the girl to be 25.08.2000 and further directing her release from the Balika Gruh, Jodhpur.

Mr. H.S. Sidhu, learned counsel representing Mr. Durga Ram Arya, the Ex-Chairperson and Mr. Sudarshan Udawat, the Ex-Member, CWC, Pali, vehemently and fervently urged that the proceedings of the CWC, Pali were not clothed with any malafides. The CWC acted in an absolutely lawful manner while summoning the age related documents of the girl. The slight delay occasioned in concluding the age related enquiry cannot be considered sufficient to impute any foul motive to the CWC, Pali. On these grounds, Mr. Sidhu implored the court to discharge the notices issued to the Mr. Arya and Mr. Udawat.

Per contra, Mr. Farzand Ali, learned G.A.-cum-A.A.G., assisting the court, vehemently and fervently opposed the



submissions of Mr. Sidhu and urged that the CWC, Pali comprising of the erstwhile Chairperson Mr. Arya and Ex-Member Mr. Udawat did not act in a bonafide manner and rather played foul while deciding the age related enquiry of the girl and sat tight over the proceedings for a prolonged period, thereby, resulting into the grossly illegal confinement of the girl at the Balika Gruh even though she, being a major person, was entitled to be released even on the first date of her production before the CWC, Pali. He further urged that the lack of bonafides on part of the Ex-Chairperson and Ex-Member, CWC, Pali are writ large on the face of record from the circumstance that the age related enquiry was concluded only after pertinent direction was given by this court even though the relevant documents had been submitted on record long back, i.e. in the month of April 2019 itself and the CWC had been officially apprised, that the age certificate and the affidavit submitted by the parents of the girl were fabricated. On these grounds, the learned G.A.-cum-A.A.G. urged that suitable compensation deserves to be awarded to the detinue girl on account of her illegal confinement at the Balika Gruh.

We have given our thoughtful consideration to the submissions advanced at bar and have gone through the material available on record and the reply filed on behalf of the Ex-Chairperson and Ex-Member, CWC, Pali. After a careful perusal of the record, we are of the opinion that the delay occasioned in concluding the age related enquiry of the girl was not bonafide, but was clothed with foul motive and was intentionally deferred on more than one occasion.

We have more than one reasons to hold so. The father of the girl Shri Jawarilal clearly mentioned in the FIR that Mst. 'D'

was 19 years of age. The girl had clearly conveyed to the CWC as early as on the first date of her production before it that she was not desirous to go with her parents and that the date of birth certificate submitted by her parents was fabricated. In spite thereof, rather than immediately summoning the original school record for concluding the age related enquiry expeditiously, the CWC intentionally kept on calling the parents of the girl in the proceedings even though they had expressly conveyed their unwillingness to take the girl back with them. In any event, in the month of April 2019, all relevant documents pertaining to the age of the girl had been placed before the CWC and there was no cause to defer the proceedings any further. The girl was brought to the CWC from Balika Gruh, Jodhpur on number of occasions and she persistently pleaded that she should be released from the Balika Gruh. However, her pleas fell on deaf ears. The CWC, Pali concluded the age related enquiry only after receiving a strong direction issued by this court vide order dated 08.08.2019. Therefore, we have no hesitation in holding that the entire endeavour of Mr. Durga Ram Arya, the Ex-Chairperson, CWC, Pali in not concluding the age related enquiry was malafide and tainted with foul motive and resulted into the illegal confinement of the corpus Mst. 'D' at the Balika Gruh for a period of almost 11 months. The action of the CWC runs totally contrary to the mandate of the Juvenile Justice Act. Therefore, the conduct of the Ex-Chairperson, CWC, Pali deserves to be deprecated. We are informed that by now composition of the CWC, Pali stands dissolved and the noticees are no longer holding the relevant posts.

As an upshot of the discussion made above, we hereby direct Mr. Durga Ram Arya, Ex-Chairperson, CWC, Pali and Mr. Sudarshan Udawat, Ex-Member, CWC, Pali to pay compensation to the tune of Rs.50,000/- each to the writ petitioner Mst. 'D' for her illegal confinement at the Balika Gruh, Jodhpur for a period of almost 11 months after the first date of her production before the CWC, Pali. The noticees shall deposit this amount with the District Judge, Pali within a period of 60 days from today. The amount so deposited shall be paid to the writ petitioner as compensation by transferring the same into her bank account. In case, the amount as directed above is not deposited within next 60 days, the District Judge, Pali shall take requisite steps for recovery thereof from the noticees and shall also report the matter to this court for initiating contempt proceedings.

The matter stands concluded, accordingly.

**(VIJAY BISHNOI),J**

**(SANDEEP MEHTA),J**

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