

Court No. - 32

Case :- WRIT - C No. - 15749 of 2020

Petitioner :- Ishwari Prasad Tiwari

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Anurag Yadav

Counsel for Respondent :- C.S.C.

Hon'ble Shashi Kant Gupta,J.

Hon'ble Pankaj Bhatia,J.

The United Nations Convention on Rights of Children was ratified by India on 11th December, 1992, wherein it was agreed by the member Nations to undertake all appropriate measures including measures in respect of children, who are accused of violating any penal laws. Children are the backbone of the country and Article 15(3) also casts a mandate upon the State to take steps for special measures to protect the rights of the children. In pursuance to the mandate of Article 15(3) of the Constitution and in furtherance of the ratification of United Nations Convention on the Rights of Children treaty by India, an Act namely the Juvenile Justice (Care and Protection of Children) Act was enacted in the year 2000 and was subsequently amended in the year 2006, 2011 and finally the Juvenile Justice (Care and Protection of Children) Act 2015 was enacted.

Section 4 of the Act provides for constitution of Board members for every District referred to as Juvenile Justice Board. The said Board is to consist of Metropolitan Magistrate or a Judicial Magistrate of the First Class and two Social Workers of

whom at least one shall be a woman. The laudable objective of the Act can be served only when a functional Board exists in terms of the mandate of the Act for carrying out the powers conferred on the said Board.

The present petition has been filed alleging that after the enactment of 2015 Act, a notification was published on 14.12.2016 and a Committee was constituted in all the Districts. The term of the Committee so notified is fixed for a period of three years and thus the term of the Committee expired on 14.12.2019. The petitioner claims that in terms of the model Rules 2016, it is incumbent upon the Secretary of the Selection Committee to initiate the process of filling up a vacancy within six months prior to the incumbent demitting the Office. It is further stated that although the fresh Board ought to have been constituted prior to the expiry of the term of the Committee, however, the State Government issued a Government Order dated 31.1.2020 to the effect that till the fresh selections are made for the chair person and members of Juvenile Justice Board as well as CWC, the District Magistrate/any ADM/SDM nominated by the District Magistrate shall perform the work of the Committee and the Chief Judicial Magistrate or any Judicial Magistrate nominated by the District Judge shall perform the work of the Juvenile Justice Board.

This Court in Misc. Bench No. 3340 of 2008 (Anoop Gupta Vs. Union of India) took notice of the Government Order dated 31.1.2020 and observed that G.O. is not in consonance with the provisions of the Act of 2015 and the Rules framed

thereunder. It was further directed that the Selection Committee constituted shall make its recommendation to the State Government by 31.5.2020 and thereafter the State Government shall issue appointment letters within 10 days from the date of recommendations of the Selection Committee. The said order was passed on 7th February, 2020.

The petitioner further informs that a PIL No. 222 of 2020 was filed before this Court, in which written instructions was given to the Additional Chief Standing Counsel to the effect that the constitution of the Board shall be completed by June, 2020. The said PIL 222 of 2020 was accordingly disposed of vide order dated 12th February, 2020 recording the statement given by the Additional Chief Standing Counsel for the State of Uttar Pradesh.

Now, the present petition has been filed alleging that despite the directions of the Court and the statement given before this Court, no constitution of the Board has taken place. The petitioner claims to be eligible to be considered for appointment.

On instructions, the Standing Counsel states that in terms of Rule 87(1), the State Government has issued a Government Order dated 16.12.2018 constituting a Selection Committee under the Chairmanship of Hon'ble Mr. Justice Vinay Kumar Mathur (retired Judge of this Court). As regards the directions given by this Court in the order dated 7.2.2020, the present instructions state that in view of the lock down in the country w.e.f. March, 2020, the steps could not be taken as assured to this Court, however, the selection process has commenced and

interviews are going on w.e.f. 5.10.2020 and in any event the process of selection shall be completed on or before 31.1.2021. It is further stated that Misc. Bench No. 3340 of 2008 (Anoop Gupta Vs. Union of India) is fixed for further hearing on 12.10.2020.

The instructions are silent as to why steps were not taken for fulfilling the vacancies prior to the occurrence of the vacancies, however as the matter is seized before the Lucknow Bench in Misc. Bench No. 3340 of 2008, the present writ petition is **disposed off** with the direction that steps for constitution of the Board be taken expeditiously and further progress in this regard be informed to the Court hearing Misc. Bench No. 3340 of 2008. It is also observed that in the future, the State Government should ensure that the vacancies are expeditiously filled up and steps for filling the vacancies be taken at least six months prior to the date of the vacancy falling due. This Court once again reiterates that non-function of the Board is clearly against the mandate of Article 15(3) and against the solemn promise made in the form of ratification of United Nations Convention on the Rights of Children treaty. We hope and trust that the State Government shall take necessary steps for fulfilling the laudable objects of the Juvenile Justice (Care and Protection of Children) Act, 2015.

Copy of the order downloaded from the official website of this Court shall be treated as certified copy of this order.

Order Date :- 12.10.2020

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