

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present :-

The Hon'ble Justice Moushumi Bhattacharya.

W.P.A 2167 of 2023

Suvendu Adhikari

vs.

West Bengal Commission for Protection of Child Rights &
Ors.

For the petitioner	:	Mr. Soumya Majumder, Adv. Mr. Billwadal Bhattacharyya, Adv. Mr. Anish Kumar Mukherjee, Adv. Mr. Suryaneel Das, Adv. Ms. Oishee Choudhuri, Adv.
For the respondent nos. 1 and 2	:	Mr. Debashis Banerjee, Adv. Mr. Rakesh Jana, Adv.
For the respondent no. 3	:	Mr. Anirban Ray, Adv.
For the respondent no. 4	:	Mr. Rajarshi Dutta, Adv. Mr. Ayan Poddar, Adv.
Last Heard on	:	02.02.2023.
Delivered on	:	03.02.2023.

Moushumi Bhattacharya, J.

1. The dispute in this writ petition arises out of a tweet made by the petitioner with regard to the security arrangements for a birthday party of “*Koyla Bhaipo’s son*” (words used in the tweet). The petitioner is an elected Member of and the leader of the opposition of the State Legislative Assembly. The tweet was published from the petitioner’s official Twitter handle “@*Suwendu WB*”. The tweet set a chain of events in motion beginning with a show-cause Notice dated 18th November, 2022 issued by an Advisor to the West Bengal Commission for Protection of Child Rights issued pursuant to a complaint made by the respondent no. 4 and culminating in a Notice dated 18th January, 2023 of the Commission asking the petitioner to attend a hearing on 7th February, 2023 with regard to the complaint of the respondent no. 4.

2. The petitioner seeks quashing of the show-cause Notices dated 18th November, 2022 and 23rd December, 2022 as well as the complaint of the respondent no. 4 together with the hearing Notice of 18th January, 2023.

3. Learned counsel appearing for the petitioner along with the learned Deputy Solicitor General urges that the impugned Notices were issued without jurisdiction since the Notices do not attract the provisions of the Commission for Protection of Child Rights Act, 2005 or the West Bengal Commission for Protection of Child Rights Rules, 2012.

4. Learned counsel appearing for the Commission submits that the tweet is actionable under the Act and the Rules including the United Nations Convention on the Rights of the Child.

5. The contention of the Commission is adopted by learned counsel appearing for the complainant/respondent no. 4 who submits that the allegations made in the complaint should be inquired into and the petitioner should accordingly attend the hearing before the Commission on 7th February, 2023.

6. First, the point with regard to jurisdiction.

7. The Commission for Protection of Child Rights Act, 2005, notified on 20th January, 2006, was enacted for constituting a National Commission and State Commissions for Protection of Child Rights and Children's Courts for providing speedy trial of offences against children or violation of the rights of children and matters connected therewith. The expression "*Child rights*" is defined under section 2(b) of the Act and includes rights which find place in the United Nations Convention on the Rights of the Child which was adopted on 20th November, 1989 and ratified by the Government of India on 11th December, 1992. Section 13(1)(c) empowers the Commission to inquire into violation of child rights and recommend initiation of proceedings in fit cases and section 13(1)(j) enables the Commission to take *suo motu* notice of matters relating to deprivation and violation of child rights. Sections 14 and 15 empower the Commission to try matters in a manner akin to a civil court trying a suit under The Code of Civil Procedure, 1908 and initiate steps upon the completion of inquiry held under the Act. The steps include

recommending grant of appropriate interim relief to the victims or members of the family of the child to the concerned Government. The State Government has been given the power to constitute a State Commission for Protection of Child Rights to perform the functions assigned to the Commission under section 17 of the Act.

8. Rule 18 of the West Bengal Commission for Protection of Child Rights Rules, 2012 prescribes the procedure for the admission and disposal of complaints, sub-rule (2) whereof specifies the complaints which are not admissible before the State Commission. Rule 18(2)(b) includes complaints :

“which are not clear or without any name or having a disguised name;”

9. The provisions of the Act, read together with the Rules, would indicate that the functions of the Commission under section 13 and the powers which a Commission may exercise are derived from and assume justification from the purpose for which the Act of 2005 was enacted. The Act is a special statute for protection of child rights and for expeditious trial of offences against children. The word “*child rights*” as used in the preamble to the Act found definition from the United Nations Convention on the Rights of the Child. Article 8 of the Convention provides for parties to the Convention to undertake to respect the right of the child to preserve his or her identity including nationality, name and family relations as recognised by law without unlawful interference. Article 16 declares that no child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

10. Under the Act and the UN Convention, the offence must relate to the right to privacy, preservation of identity and unlawful attacks on the honour and reputation of a child. The Commission hence derives its jurisdiction, its existence and powers from any act, actual or apprehended, which amounts to a violation of “*child rights*” as defined under the Act. The matters “connected therewith” or “incidental thereto” must also be relatable to “*child rights*” as defined under the Act.

11. The subject matter of the complaint is the tweet published by the petitioner on 13th November, 2022 and is set out for understanding whether the tweet amounts to violation of child rights under the Act:

*“Grand Celebrations tonight at Taj Bengal !!!
Security has been beefed up for the Birthday Party of Koyla Bhaipo’s son.
Over 500 Policemen, Bomb Squad & Dog Squad have been deployed to
Guard the venue. Door Frame Metal Detectors & Hand-held Metal
Detectors are in place.”*

Although, the tweet mentions the son of “*Koyla Bhaipo*”, the identities of the persons mentioned in the tweet (suspending any obvious assumptions of the people living in the State) have not been disclosed. The test is not whether a person living in West Bengal and familiar with the politics of the State or even those living outside the State would recognise the identity of the person who is featured in the tweet, but rather whether the tweet, per se, without any political assumptions would point to a particular person and to no one else. Seen by itself it cannot be assumed that the identity of the child has been revealed from the tweet. The follow-up tweet of the petitioner mentions “Mamata Police” along with political figures of North Korea. This tweet does not mention a child anywhere and cannot be used to supplement the

original tweet to stretch the content to fall within the purview of the Act and the Rules. Any person who is not familiar with the Bengali language may also not understand the implication of the tweet. The complaint of the respondent no. 4 pursuant to the tweet would hence fall under Rule 18(2)(b) of the 2012 Rules which cover ambiguous complaints or those without any name / having a disguised name as not admissible before the State Commission.

12. The real question is whether the tweet (the first tweet) has violated the rights of the son of “*Koyla Bhaipo*” by exposing the child to loss of privacy and ridicule.

13. The contents do not suggest any infraction of the rights of a child as envisaged under section 2(b) of the Act read with Articles 8 and 16 of the UN Convention on the Rights of the Child. The tweet is also not directed against the child, in specific, so as to attract the provisions of the Act and the UN Convention as being a pre-meditated and a deliberate act to single the child out for violation of any of the child’s rights under the Act and the Convention.

14. This Court is therefore of the view that the tweet does not fall within an offence or a violation as envisaged under The Commissions for Protection of Child Rights Act, 2005 or United Nations Convention on the Rights of the Child.

15. The above conclusion persuades the Court accordingly to hold that the Commission did not have statutory justification to issue the show-cause

Notices on the petitioner pursuant to the complaint made by the respondent no. 4. There are other reasons in support of the aforesaid view and they are :

First, the complaint is a politically coloured letter where the focus primarily is on the rivalry of the two rival political parties of the State and much less (incidental, at best) on the three-year old son of the person mentioned in the tweet;

Second, the first show-cause Notice dated 18th November, 2022 was issued by an “Advisor” who does not feature in the statutory scheme of the Act of 2005;

Third, the second show-cause Notice dated 23rd December, 2022 treats itself as a clarification to the first show-cause Notice but directs the petitioner to show cause as to why appropriate action would not be initiated against the petitioner under the Act of 2005. An earlier clarification sent by the Commission on 22nd November, 2022 threatens invocation of the provisions of the Contempt of Courts Act, 1971 and seeks to clarify the violative nature of the first tweet by indicating the identities of the persons mentioned in the tweet. Seen together, the steps taken by the Commission were therefore, clearly an over-reach of the powers reposed in the Commission under the Act and the Rules;

Fourth, the defence that the Commission is empowered to inquire into complaints and take *suo motu* notice of matters (section 13 (1)(j)) and call for information in respect of the complaint (Rule 18(5)) can only survive where the Commission is acting on a valid complaint, namely, a complaint which has a relatable nexus to an offence or a violation of the rights of a child as

defined under the Act. Since this is not the case, the Commission clearly acted without jurisdiction and the show cause Notices and other communications are irrevocably affected therefor. The contention that the petitioner has simply been called for a hearing to explain the tweet is not acceptable since the lack of jurisdiction would have a bearing on all notices and communications issued by the Commission. The Commission is also strictly bound by the statute which creates and constitutes the Commission and cannot take recourse to other statutes including the Juvenile Justice (Care and Protection of Children) Act, 2015.

16. Child rights is no child's play and should be dealt with the seriousness that it deserves. The rights cannot be trivialised or made a by-product of a lob-and-volley game of politics-coloured bickering between two parties. It is evident that the target of the tweet is not the child but somebody else.

17. This Court is hence inclined to stay the impugned show-cause Notices dated 18th November, 2022 and 23rd December, 2022 and the Notice of hearing dated 18th January, 2023 until the matter is heard out on affidavits.

18. Affidavit-in-opposition within 2 weeks from date and reply within a week thereafter. List this matter after 3 weeks.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)