

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR.JUSTICE V.G.ARUN

Friday, the 6th day of January 2023 / 16th Pousha, 1944
WP(C) NO. 41572 OF 2022 (V)

PETITIONERS:

1. PAPPU BAWARIYA AGED 39 YEARS, S/O RAM CHANDER BAWARIYA, UID NO 7602 3973 9446, R/O A-2/1834 PH-3 , JJ COLONY, MADANPUR, KHADAR SARITA VIHAR, NEW DELHI PIN - 110076
2. MAYA AGED 30 YEARS S W/O MUKESH BAWARIYA, MAHU KHURA (RURAL), MADHOPUR RAJASTHAN PIN - 322202

RESPONDENTS:

1. DISTRICT COLLECTOR CIVIL STATION, KAKKANAD (P.O) ERNAKULAM(DT), PIN - 682030
2. CORPORATION OF COCHIN REPRESENTED BY ITS SECRETARY, HEAD POST OFFICE(P.O)ERNAKULAM (DT), PIN - 682011
3. CHAIRPERSON CHILD WELFARE COMMITTEE, C/O COCHIN CORPORATION, HEAD POST OFFICE (P.O)ERNAKULAM (DT),COCHIN, PIN - 682011
4. SHO, CENTRAL POLICE STATION, BANERGY ROAD (P.O) ERNAKULAM(DT), PIN - 682018
5. DIRECTOR SNEHABHAVAN, C/O COCHIN CORPORATION, PALLURUTHY(P.O) COCHIN, PIN - 682006

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to direct the respondents to release the minor children, "VIKASH AND VISHNU" aged 7 and 6 years respectively, and handover the children to the petitioners for the utmost welfare of the children.

This petition again coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and this court's order dated 30/12/2022 and upon hearing the arguments of SRI. MRINUUAL Advocate for the petitioners, GOVERNMENT PLEADER for R1, R2 & R4 (By Order) and of SRI.HARISHANKAR Advocate for R5 (By Order) and of the STANDING COUNSEL, the court passed the following:

V.G.ARUN, J.

W.P.(C) No. 41572 of 2022

Dated this the 6th day of January , 2023

ORDER

The petitioners are natives of Rajasthan and had migrated to Delhi in search of livelihood. Compelled by impecunious circumstances and inclement weather, petitioners come down to Kerala for a few months every year and eke a living by selling pens, chains, bangles, rings etc. The 2nd petitioner is the wife of the 1st petitioner's brother. The 1st petitioner has a son by name Vikas Bavaria, aged 7 years and the 2nd petitioner, a son named Vishnu Bavaria, aged 6 years. The children accompany the elders for selling their wares on the streets. On 29.11.2022 the children were nabbed by the 4th respondent alleging that they were being forced to do child labour by selling articles on the streets. The children

W.P.(C). 41572/2022

2

were thereafter produced before the Child Welfare Committee/3rd respondent and sent to the 5th respondent's shelter at Palluruthy. The innocent children have been languishing in the shelter from that day onwards, away from the care and safety of their parents and the company of their siblings. This writ petition is filed seeking a direction to the respondents to release Vikas Bavaria and Vishnu Bavaria to the custody of the petitioners.

2. When the writ petition came up on 20.12.2022, learned Counsel for the petitioner submitted that the petitioners are apprehensive that the children would be send by the 3rd respondent to a Government Home in Delhi. Hence an interim order was passed, directing not to transfer the children to any place outside Kerala. When the matter was taken up again on 23.12.2022 it was submitted that the parents are not being allowed to interact with the children. Thereupon, this court passed an order directing the respondents to permit the

W.P.(C). 41572/2022

3

petitioners to interact with the children for one hour every day. On 30.12.2022 the 3rd respondent was called up to file a statement explaining as to why custody of the children cannot be given to the petitioners. Accordingly, a statement has been filed today. As per the statement, while conducting a search operation on 29.11.2022, the police saw Vikas and Vishnu involved in selling pens and other articles in the Marine Drive area. As such activity amounted to child labour, the children were taken before the Child Welfare Committee. On finding that Vikas and Vishnu would come under the category of children in need of care and protection as stipulated in Section 2(14) (i)(ii) of the Juvenile Justice (Care and Protection of Children) Act 2015, the Committee ordered the children to be placed under the care and protection of the 5th respondent. Thereafter an inquiry was conducted, which revealed that the petitioners and the children are permanent residents of South Delhi and are presently residing in a single room dwelling in City Lodge in Iyyattu

W.P.(C). 41572/2022

4

Junction in Ernakulam. It is also stated that, being of opinion that, for their benefit and holistic development, the children should live and grow in their own culture, the Committee passed an order on 23.12.2022 under Section 95 of the Act, to send the children to CWC, District South East, New Delhi for rehabilitation.

3. Heard learned Counsel for the petitioners and the learned Government Pleader.

4. I am at a loss to understand as to how the activity of the children in helping their parents in selling pens and other small articles would amount to child labour. No doubt, the children ought to be educated, rather than being allowed to loiter on the streets along with their parents. On interaction with the petitioners, they undertook not to let the children on to the streets for selling articles and to take measures for educating them. I wonder as to how the children can be provided proper education while their parents are leading a nomadic life. Even then, the police or the CWC cannot take the

W.P.(C). 41572/2022

5

children into custody and keep them away from their parents. To be poor being not a crime and to quote the father of our nation, poverty is the worst form of violence.

5. Even as per the general principles to be followed in administration of the Juvenile Justice Act, the best interest principle requires all decisions regarding children to be based on the primary consideration that they are in the best interest of the child and to help the child to develop to full potential. As per the principle of family responsibility, the primary responsibility of care, nurture and protection of the child is that of the biological family. Therefore, the holistic development of Vikas and Vishnu cannot be attained by separating them from their biological family. On the contrary, the attempt of the State should be to provide the children with proper education, opportunity and facilities to develop in a healthy manner and in conditions of freedom and dignity.

W.P.(C). 41572/2022

6

For the aforementioned reasons respondents 3 to 5 are directed to forthwith release the children to the custody of the petitioners and the operation of Ext. R3(b) order is stayed.

Post on 10.01.2023.

Sd/-

V.G.ARUN

JUDGE

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APPENDIX OF WP(C) 41572/2022

EXHIBIT R3(b)

**A TRUE COPPY OF THE ORDER DATED 23.12.2022 ISSUED BY
THE CHILD WELFARE COMMITTEE (DISTRICT SOUTH EAST), NEW
DELHI**

