

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/WRIT PETITION (PIL) NO. 150 of 2021**

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RAJESHKUMAR S MISHRA
Versus
STATE OF GUJARAT

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Appearance:

MR. RAJESHKUMAR S MISHRA(9946) for the Applicant(s) No. 1
for the Opponent(s) No. 2MR KAMAL TRIVEDI, ADVOCATE GENERAL WITH MR UTKARSH
SHARMA, AGP WITH MS ANKEETA RAJPUT, ADVOCATE for the
Opponent(s) No. 1

MS SANGNA KANSAGRA(9378) for the Opponent(s) No. 3

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**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE MR.
JUSTICE A.J.DESAI**
and
HONOURABLE MR. JUSTICE BIREN VAISHNAV

Date : 04/05/2023

ORAL ORDER**(PER : HONOURABLE THE ACTING CHIEF JUSTICE MR. JUSTICE
A.J.DESAI)**

1. By way of this petition, in the nature of public interest, the petitioner who is a practicing lawyer, in person has raised certain issues with regard to those children who are facing various types of difficulties when their parents are either residing separately in the same city or in different cities pursuant to differences in their

marriage.

2. It is the case of the petitioner that such children are facing difficulties in their regular studies when they are time and again called in the court proceedings initiated by either of their parents. It is also the grievance that one of the parents does not get sufficient opportunity to have continuous company of the child on several occasions including the ground of their continuous study in a particular school. It is also the case of the petitioner that under various acts including the Guardians and Wards Act for the interim custody of the child, the sufferer is the child who has to undergo different types of psychological issues. Considering these aspects it is prayed by the petitioner that the courts having jurisdiction to decide all the child custody applications, temporary or permanent, be directed to decide such applications at the earliest, preferably within 90 days from the date of completion of the pleadings. It is also prayed that both the parents should be granted equal

days of custody of the child so that both the parents can raise the child in a particular manner.

2.1 The petitioner has in support of his petition produced the guidelines issued by an NGO namely Child Rights Foundation having its office at Navi Mumbai. By taking us through the report, he would submit that the said NGO had considered several aspects about the rights of the child, the method which are required to be adopted for the welfare of the child etc. It is the case of the petitioner that several High Courts have directed the learned judges who are dealing with child custody cases to consider the said report which was published in the year 2017 while deciding such issues. He has taken the court through the order passed by the High Court of Karnataka and would submit that similar directions may be issued.

3. On the other hand, learned Advocate General Mr. Kamal Trivedi appearing with Mr. Utkarsh Sharma, learned AGP and Ms. Ankeeta Rajput, learned advocate

for the State of Gujarat would submit that the guidelines issued by the NGO is not binding in nature. He would submit that the concerned court is supposed to decide the case in accordance with law and judgements delivered by the Honourable Apex Court as well as this court and other High Courts of the country.

4. We have heard learned counsel appearing for the respective parties. Perused the report issued by the NGO namely Child Rights Foundation which was published in the year 2017. The said report deals with several aspects like interim visitation schedule, final visitation guidelines, local guidelines (parties residing within 200 km) non local guidelines (parties not residing within 200 km), joint custody and also the psychological effect on both the parents as well as child.

5. We have also gone through the order passed by the Karnataka High Court and certain communications issued by the High Courts of Punjab & Haryana, Himachal Pradesh, Madhya Pradesh, Mumbai and Kerala etc. All

these High Courts have circulated the above referred guidelines only for consideration to those courts who are dealing with issues with regard to custody of a child.

6. Hence, we dispose of this petition with the following directions:

(i) The Registrar General, High Court of Gujarat is hereby directed to circulate the report issued by the Child Rights Foundation which was published in the year 2017 amongst the Judicial Officers of the State of Gujarat so that while deciding such applications, the concerned judge can come to a right conclusion about the custody.

(ii) It is hereby made clear that such guidelines are not at all mandatory in nature and all learned judges are supposed to decide each case on its own merits in accordance with law.

(A.J.DESAI, ACJ)

(BIREN VAISHNAV, J)

DIVYA