

(2012) 04 CAL CK 0073

Calcutta High Court

Case No: W.P.S.T. No. 72 of 2012

Sahadeb Ghosh

APPELLANT

Vs

The State of West Bengal and
Others

RESPONDENT

Date of Decision: April 27, 2012

Acts Referred:

- Constitution of India, 1950 - Article 226
- Juvenile Justice (Care and Protection of Children) Act, 2000 - Section 19, 4, 68
- Penal Code, 1860 (IPC) - Section 201, 302, 34

Citation: (2012) 3 CALLT 697 : (2012) 3 CHN 646

Hon'ble Judges: Subhro Kamal Mukherjee, J; Nishita Mhatre, J

Bench: Division Bench

Advocate: Pratik Dhar and Mr. Md. Ashraful Huq, for the Appellant; Joytosh Majumdar, for the Respondent

Final Decision: Allowed

Judgement

Subhro Kamal Mukherjee, J.

This is an application under Article 226 of the Constitution of India against judgment and order dated January 14, 2010 passed by the West Bengal Administrative Tribunal in Original Application No. 1512 of 2009. By the order impugned, the said tribunal disposed of the said original application, inter alia, holding that the tribunal was unable to issue any order directing the authorities to consider the case of the petitioner for appointment when police verification report was not submitted in favour of the writ petitioner.

2. The facts relevant for disposal of this writ petition are as follows:

(a) The authorities declared vacancies for appointment to the post of constable in the West Bengal Police for the district of Hooghly. The petitioner was one of the

applicants. He participated in the selection process in terms of the order of the said tribunal dated October 23, 2008 passed in Original Application No. 9025 of 2008.

(b) The provisionally selected candidates, including this writ petitioner, were directed to report at Reserve Office, Hooghly, Chinsurah Police line, on December 21, 2008 for their medical examination along with all the testimonials.

(c) The medical examination of this writ petitioner was conducted on December 24, 2008 and the medical officer issued a certificate declaring that the petitioner was not disqualified for employment in the office of Superintendent of Police, Hooghly.

(d) The writ petitioner alleges that he was preparing for participation for the job of police constable along with his friends. When they were on practice run along the Bhagirathi River, one of his friends defecated in a sugarcane field where he was, ultimately, found dead. The family members of the deceased lodged a complaint with Rejinagar Police Station, which was, ultimately, registered as Rejinagar Police Station Case No. 126 of 2006 dated October 21, 2006 under Sections 302, 201 and 34 of the Indian Penal Code. The petitioner was implicated as one of the accused in the said case.

(e) The petitioner, however, claims that he is innocent.

(f) The incident occurred when the petitioner was a juvenile and the case has, since, been referred to Juvenile Justice Board constituted under the Juvenile Justice (Care and Protection of Children) Act, 2000.

(g) The matter is pending before the Juvenile Justice Board in Murshidabad. As the case is, still, pending before the Juvenile Justice Board in Murshidabad, the police verification report of the petitioner was not submitted.

(h) The petitioner was, therefore, compelled to move an application dated March 9, 2009 before the Juvenile Justice Board, Murshidabad, for a direction on the police authorities to complete the police verification and to submit a report declaring the petitioner as fit for the post of constable of police. He relied on the provisions of section 19 of the said Act of 2000.

(i) The Juvenile Justice Board by order dated March 13, 2009, disposed of the said application of the petitioner holding that the said Board had no authority to direct the police authorities to qualify the juvenile in conflict with law as fit for the post of constable of police.

However, in the order dated March 9, 2009 the Juvenile Justice Board observed as under:

So, it is, further, stated here that juvenile means who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence. All concerned must take note of the fact that once competent authority has bestowed the status of juvenility in respect of an offence

upon an individual, he is entitled to get the benefits encapsulated in the Act irrespective of the fact that he may be major today.

(j) The petitioner submitted a representation to the Superintendent of Police, Hooghly, on March 18, 2009, requesting him for giving appointment to the post of constable of police.

(k) Since, the authorities did not complete the police verification and take steps in appointing the writ petitioner as a constable of police, he approached the tribunal with the original application.

(l) By the order impugned, as aforesaid, the original application was disposed of by the said tribunal.

3. Being aggrieved, the petitioner has come up before this Court.

4. In order to consider the rival contentions advanced before us, we need to take into consideration some provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the said Act of 2000).

The relevant provisions of the said Act of 2000, are as follows:

2. (e) "Board" means a Juvenile Justice Board constituted u/s 4:

2. (g) "competent authority" means in relation to children in need of care and protection a Committee and in relation to juveniles in conflict with law a Board:

2. (k) "juvenile" or "child" means a person who has not completed eighteenth year of age:

2. (l) "juvenile in conflict with law" means a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence;

4. Juvenile Justice Board: - (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the State Government may, by notification in the Official Gazette, constitute for a district or a group of districts specified in the notification, one or more Juvenile Justice Boards for exercising the powers and discharging the duties conferred or imposed on such Boards in relation to juveniles in conflict with law under this Act.

(2) A Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of the first class, as the case may be, and two social workers of whom at least one shall be a woman, forming a Bench and every such Bench shall have the powers conferred by the Code of Criminal Procedure, 1973 (2 of 1974), on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the first class and the Magistrate on the Board shall be designated as the principal Magistrate.

(3) No Magistrate shall be appointed as a member of the Board unless he has special knowledge or training in child psychology or child welfare and no social worker shall be appointed as a member of the Board unless he has been actively involved in health, education, or welfare activities pertaining to children for at least seven years.

(4) The term of office of the members of the Board and the manner in which such member may resign shall be such as may be prescribed.

(5) The appointment of any member of the Board may be terminated after holding inquiry, by the State Government, if -

(i) he has been found guilty of misuse of power vested under this Act,

(ii) he has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or he has not been granted full pardon in respect of such offence,

(iii) he fails to attend the proceedings of the Board for consecutive three months without any valid reason or he fails to attend less than three-fourth of the sittings in a year.

14. Inquiry by Board regarding juvenile: -

1. Where a juvenile having been charged with the offence is produced before a Board, the Board shall hold the inquiry in accordance with the provisions of this Act and may make such order in relation to the juvenile as it deems fit:

Provided that an inquiry under this section shall be completed within a period of four months from the date of its commencement, unless the period is extended by the Board having regard to the circumstances of the case and in special cases after recording the reasons in writing for such extension.

2. The Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall review the pendency of cases of the Board at every six months, and shall direct the Board to increase the frequency of its sittings or may cause the constitution of additional Boards.

15. Order that may be passed regarding juvenile.- (1) Where a Board is satisfied on inquiry that a juvenile has committed an offence, then notwithstanding anything to the contrary contained in any other law for the time being in force, the Board may, if it thinks so fit, -

(a) allow the juvenile to go home after advice or admonition following appropriate inquiry against and counseling to the parent or the guardian and the juvenile:

(b) direct the juvenile to participate in group counseling and similar activities:

(c) order the juvenile to perform community service:

(d) order the parent of the juvenile or the juvenile himself to pay a fine, if he is over fourteen years of age and earns money;

(e) direct the juvenile to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and well-being of the juvenile for any period not exceeding three years;

(f) direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for the good behaviour and wellbeing of the juvenile for any period not exceeding three years;

(g) make an order directing the juvenile to be sent to a special home for a period of three years:

Provided that the Board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit.

2. The Board shall obtain the social investigation report on juvenile either through a probation officer or a recognised voluntary organisation or otherwise, and shall take into consideration the findings of such report before passing an order.

3. Where an order under clause (d), clause (e) or clause (f) of sub-section (1) is made, the Board may, if it is of opinion that in the interests of the juvenile and of the public, it is expedient so to do, in addition make an order that the juvenile in conflict with law shall remain under the supervision of a probation officer named in the order during such period, not exceeding three years as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the juvenile in conflict with law:

Provided that if at any time afterwards it appears to the Board on receiving a report from the probation officer or otherwise, that the juvenile in conflict with law has not been of good behaviour during the period of supervision or that the fit institution under whose care the juvenile was placed is no longer able or willing to ensure the good behaviour and well-being of the juvenile it may, after making such inquiry as it deems fit, order the juvenile in conflict with law to be sent to a special home.

4. The Board shall while making a supervision order under sub-section (3), explain to the juvenile and the parent, guardian or other fit person or fit institution, as the case may be, under whose care the juvenile has been placed, the terms and conditions of the order shall forthwith furnish one copy of the supervision order to the juvenile, the parent, guardian or other fit person or fit institution, as the case may be, the sureties, if any, and the probation officer.

16. Order that may not be passed against juvenile: -

(1) Notwithstanding anything to the contrary contained in any other law for the time being in force, no juvenile in conflict with law shall be sentenced to death or life imprisonment, or committed to prison in default of payment of fine or in default of furnishing security:

Provided that where a juvenile who has attained the age of sixteen years has committed an offence and the Board is satisfied that the offence committed is of so serious in nature or that his conduct and behaviour have been such that it would not be in his interest or in the interest of other juvenile in a special home to send him to such special home and that none of the other measures provided under this Act is suitable or sufficient, the Board may order the juvenile in conflict with law to be kept in such place of safety and in such manner as it thinks fit and shall report the case for the order of the State Government.

(2) On receipt of a report from a Board under sub-section (1), the State Government may make such arrangement in respect of the juvenile as it deems proper and may order such juvenile to be kept under protective custody at such place and on such conditions as it thinks fit:

Provided that the period of detention so ordered shall not exceed the maximum period of imprisonment to which the juvenile could have been sentenced for the offence committed.

19. Removal of disqualification attaching to conviction:- (1) Notwithstanding anything contained in any other law, a juvenile who has committed an offence and has been dealt with under the provisions of this Act shall not suffer disqualification, if any, attaching to a conviction of an offence under such law.

(2) The Board shall make an order directing that the relevant records of such conviction shall be removed after the expiry of the period of appeal or a reasonable period as prescribed under the rules, as the case may be.

68. Power to make rules: -

(2)(vi) matters relating to removal of disqualification attaching to conviction of a juvenile u/s 19;

5. We, also, need to look into the provisions of Rules 3 (in particular. Principle No. I, II, VIII and XIV), 96 and 97 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, framed in exercise of powers envisaged in Section 68 of the said Act of 2000.

3. Fundamental principles to be followed in administration of these rules: -

(1) The State Government, the Juvenile Justice Board, the Child Welfare Committee or other competent authorities or agencies, as the case may be, while implementing the provisions of these rules shall abide and be guided by the principles, specified in sub-rule (2).

(2) The following principles shall, interdict, be fundamental to the application, interpretation and implementation of the Act and the rules made hereunder:

I. Principle of presumption of innocence:

(a) A juvenile or child or juvenile in conflict with law is presumed to be innocent of any mala fide or criminal intent up to the age of eighteen years.

(b) The juvenile's or juvenile's in conflict with law or child's right to presumption of innocence shall be respected throughout the process of justice and protection, from the initial contact to alternative care, including aftercare.

(c) Any unlawful conduct of a juvenile or a child or a juvenile in conflict with law which is done for survival, or is due to environmental or situational factors or is done under control of adults, or peer groups, is ought to be covered by the principles of innocence.

(d) The basic components of presumption of innocence are:

(i) Age of innocence: Age of innocence is the age below which a juvenile or child or a juvenile in conflict with law cannot be subjected to the criminal justice system. The Beijing Rule 4(1) clearly lays down that "the beginning of the age of criminal responsibility shall not be fixed at too low an age level bearing in mind the facts of mental and intellectual maturity". In consonance with this principle, the mental and intellectual maturity of juvenile or child or a juvenile in conflict with law below eighteen years is considered insufficient through out the world.

(ii) Procedural protection of innocence: All procedural safeguards that are guaranteed by the Constitution and other statutes to the adults and that go in to strengthen the juvenile's or child's right to presumption of innocence shall be guaranteed to juveniles or the children or juveniles in conflict with law.

(iii) Provisions of Legal aid and Guardian Ad Litem: Juveniles in conflict with law have a right to be informed about the accusations against them and a right to be legally represented. Provisions must be made for guardian ad litem, legal aid and other such assistance through legal services at State expense. This shall also include such juveniles right to present his case before the competent authority on his own.

II. Principle of dignity and worth:

(a) Treatment that is consistent with the child's sense of dignity and worth is a fundamental principle of juvenile justice. This principle reflects the fundamental human right enshrined in Article 1 of the Universal Declaration of Human Rights that all human beings are born free and equal in dignity and rights. Respect of dignity includes not being humiliated, personal identity, boundaries and space being respected, not being labeled and stigmatized, being offered information and choices and not being blamed for their acts.

(b) The juvenile's or child's right to dignity and worth has to be respected and protected throughout the entire process of dealing with the child from the first contact with law enforcement agencies to the implementation of all measures for dealing with the child.

VIII. Principle of non-stigmatizing semantics, decisions and actions: The non-stigmatizing semantics of the Act must be strictly adhered to, and the use of adversarial or accusatory words, such as, arrest, remand, accused, charge sheet, trial, prosecution, warrant, summons, conviction, inmate, delinquent, neglected, custody or jail is prohibited in the processes pertaining to the child or juvenile in conflict with law under the Act.

XIV. Principle of Fresh Start:

(a) The principle of fresh start promotes new beginning for the child or juvenile in conflict with law by ensuring erasure of his past records.

(b) The State shall seek to promote measures for dealing with children alleged or recognised as having impinged the penal law, without resorting to judicial proceedings.

96. Application of these rules: - It is hereby declared that until the new rules conforming to these rules are framed by the State Government concerned u/s 68 of the Act, these rules shall mutatis mutandis apply in that State.

97. Pending Cases: - (1) No juvenile in conflict with law or a child shall be denied the benefits of the Act and the rules made thereunder.

(2) All pending cases which have not received finality shall be dealt with and disposed of in terms of the provisions of the Act and the rules made thereunder.

(3) Any juvenile in conflict with law, or a child shall be given the benefits under sub-rule (1) of this rule, and it is hereby clarified that such benefits shall be made available to all those accused who were juvenile or a child at the time of commission of an offence, even if they cease to be a juvenile or a child during the pendency of any inquiry or trial.

(4) While computing the period of detention or stay or sentence of a juvenile in conflict with law or of a child, all such period which the juvenile or the child has already spent in custody, detention, stay or sentence of imprisonment shall be counted as a part of the period of stay or detention or sentence of imprisonment contained in the final order of the court or the Board.

6. Mr. Pratik Dhar, learned Advocate appearing in support of this writ petition, argues that the tribunal approached the case of this writ petitioner from a wrong angle. He submits that in view of the requirements of the provisions of section 19 of the said Act of 2000, there is no impediment on the part of the authorities to complete the police verification and to give his client appointment to the post of

constable of police.

Mr. Dhar cites the decision in *Milap Singh v. The State of U.P.* reported in (2000) CrI.L.J. 3059. He, further, cites an unreported decision of the Madras High Court in *M. Senthil Kumar v. The Director General of Police of the Madras High Court* in W.P. (MD) No. 3130 of 2009 dated September 20, 2010.

7. On the contrary, Mr. Joytosh Majumdar, learned advocate appearing for the respondents, submits that there is no provision in the said Act of 2000 to extend benefit u/s 19 of the said Act during the pendency of the proceeding before the Juvenile Justice Board. He submits that the benefit could be extended to the juvenile in conflict with law in the event he is found guilty of the charges levelled against him.

8. There is a complete answer to the objection raised by Mr. Majumdar in Rule 97 of the said rules of 2007, Under sub-rule (1) of Rule 97, it is clearly stated that no juvenile in conflict with law or a child shall be denied the benefits of the said Act of 2000 and the rules made thereunder. The State Government concerned has not framed any rules u/s 68 of the said Act of 2000. Therefore, the said rules of 2007 shall, under rule 97 of Unsaid rules of 2007, mutatis mutandis apply in the State of West Bengal. We, therefore, reject the aforesaid contention of Mr. Majumdar as preposterous.

9. Section 19 of the said Act of 2000 clearly says that, notwithstanding anything contained in any other law, a juvenile, who, has committed an offence and has been dealt with under the provisions of the said Act of 2000, shall not suffer disqualification, if any, attaching to a conviction of an offence under such law.

Therefore, if conviction does not become a bar and/or disqualification, it is unacceptable that pendency of a proceeding against a juvenile can be a bar.

A benefit sought to be given by the legislature u/s 19 of the said Act of 2000 cannot be obliterated. Logical corollary of the said provision is that even if a juvenile is convicted, such conviction would not act as disqualification. Even, under sub-section (2) of section 19 of the said Act of 2000 records of such conviction are to be removed after the period of expiry of appeal or after a reasonable period as prescribed under the rules.

10. Mr. Majumdar cites the decision in the cases of [Commr. of Police and Others Vs. Sandeep Kumar](#), and [The State of West Bengal and Others Vs. Sk. Nazrul Islam](#), and argues, on the strength of the said two decisions, that a police constable cannot be appointed when his criminal case is pending on serious charges.

He draws our attention to the following observation of the Supreme Court of India in *Sandeep Kumar* (supra):

At any event, it was not such a serious offence like murder, dacoity or rape, and hence a more lenient view should be taken in the matter.

11. The reliance placed by Mr. Majumdar is misplaced.

12. The Supreme Court had no occasion in those cases to deal with a case of a juvenile in conflict with law.

13. Mr. Majumdar, further, cites the decision in the cases of [Divisional Manager, Aravali Golf Club and Another Vs. Chander Hass and Another](#), and [Transport and Dock Workers Union and Others Vs. Mumbai Port Trust and Another](#), and submits that, in exercise of our power of judicial review the High Court cannot ordinarily interfere with the managerial functions.

14. We are of the opinion that inactions on the part of the authorities are against the provisions of the said Act of 2000. It goes contrary to the object sought to be achieved by the said Act of 2000. Section 19 of the said Act of 2000 protects a juvenile and any stigma attached to his conviction is, also, removed. The approach should be to condone minor indiscretions made by young people than to brand them as criminal for the rest of his life. The said Act of 2000 does not envisage incarceration of a juvenile nor wants to shut on him the doors of a decent and disciplined civilised life. On the contrary, it opens for him such a vista by providing him an occasion to amend and regulate his delinquency. The Courts are not to thwart such a course for him by either caprice, bias or any impractical or unimaginable reason.

15. The said Act is indisputably a beneficial legislation. The principles of such beneficial legislation are to be applied only for the purpose of interpretation of this statute.

16. We fail to appreciate as to why the tribunal did not pass a direction to the authorities for completing the police verification of this writ petitioner. None of the aforesaid provisions of the said Act of 2000 was considered and discussed by the tribunal in the impugned order.

Since we have considered the matter in details, we do not think that it is necessary to send back the matter to the tribunal again when the issue is clearly a question of law.

17. We hold that benefits sought to be given to a convicted person u/s 19 of the said Act of 2000 read with the said Rules of 2007 shall equally apply to a person against whom a case is pending before the Juvenile Justice Board. Thus, the authorities cannot refuse to give appointment to the writ petitioner on the sole ground of pendency of a criminal case before the said Board.

18. We are unable to accept the contention of Mr. Majumdar that this Court in exercise of the power of judicial review is unnecessarily interfering with the

managerial functions of the State by extending the benefits of section 19 of the said Act of 2000 to the writ petitioner. We are simply extending the benefits provided u/s 19 of the said Act of 2000 as provided by the legislatures in their wisdom.

19. We, therefore, set aside the order of the tribunal and direct the authorities to complete the police verification of the petitioner irrespective of pendency of his case before the Juvenile Justice Board and to consider his case for appointment for the post of constable of police on the basis of such report, keeping in mind the intention of the legislature as enshrined in section 19 of the said Act of 2000.

20. The entire process must be completed within a period of one month from the date of communication of this order.

21. The writ petition, thus, stands allowed.

22. We, however, make no order as to costs.

Nishita Mhatre, J.

I agree.