

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Crl R No.17/2024

Reserved on: 09.12.2025

Pronounced on:19.12.2025

Uploaded on: 19.12.2025

Whether the operative part
or full judgment is
pronounced: **Full**

OASIS GIRLS SCHOOL, GOGJI BAGH

...PETITIONERS/APPELLANT(S)

Through: - Mr. Aatir Javed Kawoosa, Advocate, with
Mr. Areeb Javed Kawoosa, Advocate.

Vs.

MS. XXX (MINOR)

...RESPONDENT(S)

Through: - None.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) Through the medium of present petition, the petitioner has challenged order dated 02.05.2024, passed by the Child Welfare Committee, Srinagar, whereby, *inter alia*, recommendation has been made to the Director, School Education, Kashmir, and District Magistrate, Srinagar, to take appropriate legal action in accordance with the relevant rules against the petitioner school for unlawfully expelling the child (respondent herein).

2) It appears that father of the respondent Child had made a complaint dated 10.11.2023 which was received by the Child Welfare Committee, Srinagar (for short "the

Committee”) through District Social Welfare Officer, Srinagar, Additional Deputy Commissioner, Srinagar, and National Commission for Protection of Child Rights (for short “NCPCR”). The complaint was lodged by father of the respondent against the petitioner school and one more school, namely, Foundation World School, Humhama. In the complaint, it was alleged that the respondent, who is a six-year old child, has been expelled from the aforesaid two schools including the petitioner school as the father of the respondent had reported certain irregularities/illegalities committed by the two schools relating to fake annual charges etc. The complainant had sought relief relating to admission of the respondent child in Presentation Convent Girls School, Rajbagh or Mallinson Girls School, Sheikh Bagh or any other school at par with the aforementioned two schools in the vicinity of three kilometres radius of the residence of the respondent child.

3) It appears that NCPCR took cognizance of the matter and it directed the Committee to enquire and take action in the matter. The terms of reference are reproduced as under:

- i. Expulsion matter of the child from Oasis Girls School, Srinagar.
- ii. Child’s right to education as per her eligibility under Section 12(1) of Right to Education Act, 2009.

4) Upon receiving the reference, the Committee registered the case and issued summons to the Principals of both the

schools. In response to the summons, both the schools including the petitioner herein filed their reply before the Committee. A report was called by the Committee from the Social Worker Distract Child Protection Unit, Srinagar. The complainant despite directions of the Committee did not put in his personal appearance nor did he file any documents. However, later on the complainant is stated to have filed some documents. After holding the enquiry, the Committee, on the basis of the material on record, came to the conclusion that the respondent child has been expelled from the petitioner school illegally. It has been further concluded by the Committee that the child has been put to discrimination on account of her parents activities which makes the child disadvantaged *sui generis*.

5) On the basis of the aforesaid findings, the Committee recommended the Chief Education Officer, Srinagar, to enrol/admit the respondent child in a girls only neighbourhood school where she can continue her education without further delay. A further recommendation has been made to the Director School Education, Kashmir, and District Magistrate, Srinagar, to take appropriate legal action against both the schools including the petitioner school for unlawfully expelling the respondent child and denying education to her for last one and a half years.

6) The petitioner has challenged the impugned order dated 02.05.2024 passed by the Committee, primarily, on the ground that the Committee did not have jurisdiction to pass such an order particularly because the respondent does not qualify either to be a child in conflict with law or a child in need of care and protection. It has been contended that a Child Welfare Committee does not have jurisdiction to recommend action against the petitioner school as the same is unknown to law and is beyond its competence. It has also been contended that father of the respondent child is bearing a grudge against the petitioner school and has been making complaints against it before all possible authorities with a view to wreak vengeance upon it.

7) Despite service nobody appeared on behalf of the respondent, as such, the case has been taken up for consideration in exparte.

8) I have heard learned counsel for the petitioner and perused record of the case.

9) The first and foremost contention of the petitioner for impugning the order passed by the Committee is that the said Committee does not have jurisdiction to entertain and adjudicate upon the complaint filed by the father of the respondent because the respondent does not fit in the definition of either “child in conflict with law” or “the child in

need of care and protection”. In order to test the merits of the aforesaid contention, it has to be seen as to for what purpose Child Welfare Committees have been constituted in terms of Chapter V of the Juvenile Justice (Care and Protection of Childre) Act, 2015 (for short “the JJ Act”). Sub-section (1) of Section 27 of the JJ Act provides that the State Government shall by notification in the Official Gazette constitute for every district, one or more Child Welfare Committees for exercising the powers and to discharge the duties conferred on such Committees in relation to “children in need of care and protection” under the JJ Act and ensure that induction training and sensitisation of all members of the committee is provided.

10) Section 29 of the JJ Act lays down the powers of the Committee. It reads as under:

29. Powers of Committee.

(1) The Committee shall have the authority to dispose of cases for the care, protection, treatment, development and rehabilitation of children in need of care and protection, as well as to provide for their basic needs and protection.

(2) Where a Committee has been constituted for any area, such Committee shall, notwithstanding anything contained in any other law for the time being in force, but save as otherwise expressly provided in this Act, have the power to deal exclusively with all proceedings under this Act relating to children in need of care and protection.

11) Section 30 of the JJ Act deals with the functions and responsibilities of the Committee. It reads as under:

30. Functions and responsibilities of Committee

The functions and responsibilities of the Committee shall include---

- (i) taking cognizance of and receiving the children produced before it;*
- (ii) conducting inquiry on all issues relating to and affecting the safety and well-being of the children under this Act;*
- (iii) directing the Child Welfare Officers or probation officers or District Child Protection Unit or non-governmental organisations to conduct social investigation and submit a report before the Committee;*
- (iv) conducting inquiry for declaring fit persons for care of children in need of care and protection;*
- (v) directing placement of a child in foster care;*
- (vi) ensuring care, protection, appropriate rehabilitation or restoration of children in need of care and protection, based on the child's individual care plan and passing necessary directions to parents or guardians or fit persons or children's homes or fit facility in this regard;*
- (vii) selecting registered institution for placement of each child requiring institutional support, based on the child's age, gender, disability and needs and keeping in mind the available capacity of the institution;*
- (viii) conducting at least two inspection visits per month of residential facilities for children in need of care and protection and recommending action for improvement in quality of services to the District Child Protection Unit and the State Government;*
- (ix) certifying the execution of the surrender deed by the parents and ensuring that they are given time to reconsider their decision as well as making all efforts to keep the family together;*
- (x) ensuring that all efforts are made for restoration of abandoned or lost children to their families following due process, as may be prescribed;*
- (xi) declaration of orphan, abandoned and surrendered child as legally free for adoption after due inquiry;*
- (xii) taking suo motu cognizance of cases and reaching out to children in need of care and protection, who are not produced before the Committee, provided that such decision is taken by at least three members;*
- (xiii) taking action for rehabilitation of sexually abused children who are reported as children in need of care and protection to the Committee by Special Juvenile Police Unit or local police, as the case may be, under the Protection of Children from Sexual Offences Act, 2012 (32 of 2012);*
- (xiv) dealing with cases referred by the Board under sub-section (2) of section 17;*

- (xv) co-ordinate with the police, labour department and other agencies involved in the care and protection of children with support of the District Child Protection Unit or the State Government;
- (xvi) in case of a complaint of abuse of a child in any child care institution, the Committee shall conduct an inquiry and give directions to the police or the District Child Protection Unit or labour department or childline services, as the case may be;
- (xvii) accessing appropriate legal services for children;
- (xviii) such other functions and responsibilities, as may be prescribed.

12) From a conjoint reading of Sections 27(1), 29 and 30 of the JJ Act, it becomes clear that Child Welfare Committees are vested with powers and have to discharge the duties in relation to “children in need of care and protection” under the JJ Act.

13) A child in need of care and protection has been defined in Section 2(14) of the JJ Act, which reads as under:

2. Definitions:

In this Act, unless the context otherwise requires,---

xxx	xxx	xxx
xxx	xxx	xxx

(14) "child in need of care and protection" means a child--

- (i) who is found without any home or settled place of abode and without any ostensible means of subsistence; or
- (ii) who is found working in contravention of the provisions of this Act or] labour laws for the time being in force or is found begging, or living on the street; or
- (iii) who resides with a person (whether a guardian of the child or not) and such person---
 - (a) has injured, exploited, abused or neglected the child or has violated any

- other law for the time being in force meant for the protection of child; or*
- (b) has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or*
 - (c) has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or*
 - (iv) who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or having parents or guardians unfit to take care, if found so by the Board or the Committee; or*
 - (v) who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or*
 - (vi) who does not have parents and no one is willing to take care of and protect or who is abandoned or surrendered;*
 - (vii) who is missing or run away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed; or*
 - (viii) who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or*
 - (ix) who is found vulnerable and ⁴[has been or is being or is likely to be] inducted into drug abuse or trafficking; or*
 - (x) who is being or is likely to be abused for unconscionable gains; or*
 - (xi) who is victim of or affected by any armed conflict, civil unrest or natural calamity; or*
 - (xii) who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any*

other persons are likely to be responsible for solemnisation of such marriage;

14) The High Court of Punjab and Haryana has, in the case of **Mast XXXX v. State of Punjab and others** (neutral citation No.2024:PHHC:013534) after noticing the afore-quoted provisions of JJ Act, interpreted the same in the following manner:

“10. As the various clauses of Section 2(14) of the J.J. Act would reveal that a ‘child in need of care and protection’ is mainly divided into two categories. The first category comprises the child, who is not having any guardian or parents or any home or settled place of abode. In the second category falls that child, who though has a parent or a guardian, but either such a parent or guardian is incapable to take care of the child or incapacitated or such parent or guardian himself is subjecting the child to one or the other kind of atrocity. “

15) In the present case, the complaint, on the basis of which enquiry has been conducted by the Committee, has been made by father of the respondent Child who as per the complaint was studying in the petitioner school. Thus, the respondent child does not fall in the definition of ‘child in need of care and protection’ as contained in Section 2(14) of JJ Act. The respondent child is neither a homeless person nor she was found working in contravention of Labour laws. The father or guardian of the respondent child has not inflicted any injury upon her nor has he exploited or abused her and she is not mentally ill. It is not the case of the complainant that he is unfit or incapacitated to take care of the respondent

child nor is it a case where the respondent child does not have parents willing to take care of her. The respondent child does not fit in any of the clauses (i) to (xii) of sub-section (14) of Section 2 of the JJ Act. Thus, the respondent child cannot be stated to be a child in need of care and protection nor she is a child in conflict with law.

16) The Committee has, while entertaining the complaint and conducting enquiry into the same, relied upon the judgment of the Supreme Court in the case of **Exploitation of Children in Orphanage in the State of Tamil Nadu v. Union of India & Ors**, (2017) 7 SCC 578. In the said case, the Supreme Court has held that the definition of expression 'child in need of care and protection' under Section 2(14) of the JJ Act should not be interpreted as an exhaustive definition. It has been further held that the definition is illustrative and the benefits envisaged for children in need of care and protection should be extended to all such children in fact requiring State care and protection. On the basis of this statement of law laid down by the Supreme Court, the Committee has arrogated to itself jurisdiction to conduct the enquiry and make recommendations in the present case.

17) I am afraid the reasoning adopted by the Committee in taking cognizance of the complaint and conducting enquiry into the case relating to the respondent child by bringing her

within the purview of the definition of 'child in need of care and protection' is wholly misconceived. It is true that the definition of expression 'child in need of care and protection' as given in Section 2(14) of the JJ Act is not exhaustive, yet it is a settled principle of interpretation that if a particular situation is to be brought within the purview of an illustrative definition, the same should be interpreted *ejusdem generis*, meaning thereby it should be limited to the same class or nature as the specific illustrations. A bare perusal of clauses (i) to (xii) of sub-section (14) of Section 2 of the JJ Act would reveal that a child in need of care and protection would mean a child who, for one reason or other, is neglected, exploited or is vulnerable. A child like the respondent, who has father to look after and, in fact, her father has projected her cause not only before the Committee but before several other fora, which goes on to show that the respondent child is neither neglected nor exploited as she is being well taken care of by her father. The respondent child, by no stretch of reasoning, can be termed to be a child in need of care and protection.

18) The judgment relied upon by the Committee to bring in the present case within its jurisdiction cannot be made applicable to the facts of the present case. In the said case, the Supreme Court was dealing with the issue of sexual abuse of children, especially in Government institutions, and

it was in that context that the Supreme Court held that a child victim of sexual abuse or sexual assault or sexual harassment is a child in need of care and protection. The ratio laid down by the Supreme Court in the aforesaid case cannot be stretched to tyrannical limits by including even those children in the definition of 'child in need of care and protection' who are being well taken care of by their parents.

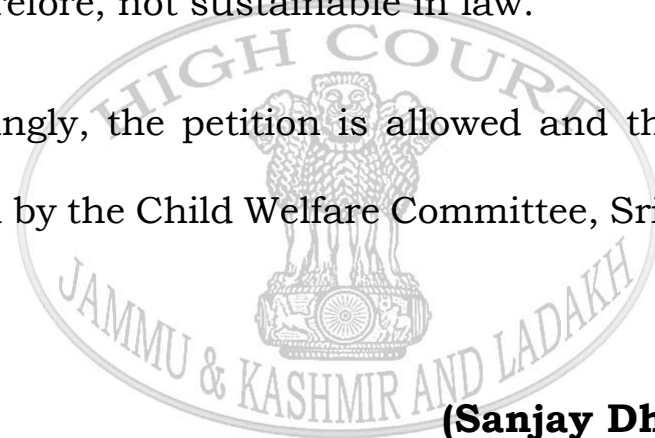
19) It is only in cases where a child is not having any guardian or parent to look after him or her or where he or she has not a settled place or home that such child can fall within the definition of 'child in need of care and protection'. Similarly, a child who though has a parent or guardian but the said parent or guardian is incapacitated or incapable of taking care of the child or such parent or guardian is himself subjecting the child to any atrocity, then the child will fall within the purview of the definition 'child in need of care and protection'. None of these situations is present in the instant case. Therefore, the Committee did not have jurisdiction to entertain the complaint and arrogate to itself the power to enquire into the said complaint and make recommendations to different authorities.

20) Apart from the above, in terms of Section 29 of the JJ Act, a Child Welfare Committee does not have jurisdiction to make recommendations for taking action against any

institution. It has only the authority to dispose of the cases for care, protection, treatment, development, rehabilitation of children in need of care and protection as well as to provide for their basic needs and protection. Thus, the recommendation made by the Committee by virtue of the impugned order is beyond its competence.

21) For the foregoing reasons, this Court is of the considered opinion that the Committee has arrogated to itself jurisdiction which is not vested within it under law and has thereby exceeded its jurisdiction in passing the impugned order. The same is, therefore, not sustainable in law.

22) Accordingly, the petition is allowed and the impugned order passed by the Child Welfare Committee, Srinagar, is set aside.



(Sanjay Dhar)
Judge

SRINAGAR

19.12.2025

"Bhat Altaf-Szeg"

Whether the **Judgement** is speaking:

YES

Whether the **Judgement** is reportable:

YES/NO