

# **HIGH COURT OF TRIPURA**

A\_G\_A\_R\_T\_A\_L\_A

WP(C) (HC) No.14 of 2022

1. Smti. Prabha Rani Das, wife of late Dwaipayan Chakraborty, daughter of Sri Harendra Das, resident of North Singhinala, P.O. Salema, P.S. Salema, District: Dhalai, Tripura.

*.....Petitioner*

V\_E\_R\_S\_U\_S

1. The State of Tripura, represented by the Secretary, Department of Home, Government of Tripura, New Secretariat Building, P.O. Kunjaban, P.S. New Capital Complex, District: West Tripura.
2. The Child Welfare Committee, Unakoti District, Kumarghat, Tripura.
3. The Director, Social Welfare & Social Education, Ujan Abhoynagar, Agartala, West Tripura.
4. The Secretary, Government of Tamilnadu, Chennai, India.
5. The Chairman, Child Welfare Committee, Ranipet, Vellore-632402.
6. The Collector, Vellore District, Vellore-9.
7. The Commissioner, Department of Social Defence, Tamilnadu, Chennai-10.
8. The Medical Superintendent, Christian Medical College, Vellore-632004, Tamilnadu, India.
9. The Hope House, 3/188, Shanthi Nagar, Kandipedu Panchayat, Katapadi-632106, Vellore, Tamilnadu.

*.....Respondents*

**BEFORE**

**HON'BLE JUSTICE DR. T. AMARNATH GOUD**

**HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA**

|                           |   |  |
|---------------------------|---|--|
| For Petitioner(s)         | : | Mr. P. K. Biswas, Sr. Advocate.<br>Mr. P. Majumder, Advocate<br>Mr. R. Nath, Advocate.<br>Mr. P. Biswas, Advocate. |
| For Respondent(s)         | : | Mr. S. M. Chakraborty, A.G.<br>Mr. R. Datta, P.P.<br>Mr. S. Lodh, Advocate.<br>Mr. S. Majumder, Advocate.          |
| Date of hearing           | : | 28.01.2026   |
| Date of judgment & Order  | : | <b>04.02.2026</b>  |
| Whether fit for reporting | : | <b>YES</b>   |

**JUDGMENT & ORDER**

**[Dr. T. Amarnath Goud, JJ]**

Heard Mr. P. K. Biswas, learned senior counsel assisted by Mr. P. Majumder, learned counsel appearing for the petitioner. Also heard Mr. S. M. Chakraborty, learned Advocate General assisted by Mr. R. Datta, learned P.P. and Mr. S. Lodh, learned counsel appearing for the respondents.

[2] The present petition has been filed under Article-226 of the Constitution of India, directing the respondents to cause investigation into the illegal detention of the minor daughter of the petitioner under the respondent Nos.8 & 9 and produce the relevant records to the subject matter of this proceeding to this Court for rendering justice. Further, to produce the minor daughter of the petitioner who is under illegal and forceful detention of respondent Nos.8 & 9 before this Court and to cause investigation in the complaint petition submitted by the petitioner before the learned Chief Judicial Magistrate, Kailashshar, Unakoti Judicial District, Tripura and to ensure fair and impartial investigation in the matter.

[3] This habeas corpus writ petition has been filed by the petitioner seeking following reliefs:

“(i) Admit this petition;

(ii) Issue RULE calling upon the respondents to show cause as to why a Writ of Mandamus and/or in the nature thereof, shall not be issued directing the respondents and each of them to cause investigation into the illegal detention of the minor daughter of the petitioner under the respondent nos. 8 and 9;

AND

(iii) Issue RULE calling upon the respondents to show cause as to why a Writ of Certiorari and/or in the nature thereof, shall not be issued directing the respondents to produce the records relevant to the subject matter of this proceeding to this Hon'ble Court for rendering considerable justice;

AND

(iv) Issue RULE calling upon the respondents to show cause as to why a Writ in the nature of habeas corpus and/or any other appropriate writ/writs in the nature thereof shall not be issued directing the respondents and each of them to produce the minor daughter of the petitioner who is under illegal and forceful detention of respondents no. 8 and 9 before this Hon'ble Court;

AND

(v) Issue RULE calling upon the respondents to show cause as to why a Writ of Mandamus and/or in the nature thereof, shall not be issued directing the respondents and each of them to cause investigation in the complaint petition submitted by the petitioner before the learned Chief Judicial Magistrate, Kailashahar, Unakoti Judicial District, Tripura and to ensure fair and impartial investigation into the matter.

AND

After hearing the parties be pleased to make the Rule absolute, issuing direction to the respondents.”

[4] The facts in brief are that Pratiti Chakraborty is the daughter of the petitioner who is at present aged about 4 years. She was suffering from breathing problem for which she was under constant treatment of doctors of Agartala, Gauhati and Kolkata. For better treatment she was taken to Apollo hospital and on the advice of the attending doctors she was taken to CMC, Vellore for her better treatment where doctors opined that she has been suffering from complication of colostomy disease. Subsequently, treatment commenced but, at the initial stage, some probationary doctors treated the minor daughter in a wrong method. When the petitioner raised objection, they abused and ousted the petitioner from the hospital. Thereafter, the petitioner was not allowed to meet her minor daughter in the hospital nor even she was allowed to breast feed her. The petitioner on advice of doctors cleared up all the bills and thereafter she was informed that since she is suffering from psychiatric problem, they cannot handover the custody of the minor daughter to the petitioner. The petitioner knocked door to door and asked for all the medical reports. Instead of that, the respondent No. 8 alleged false complaint against the petitioner and her husband under Section-4 of the POCSO Act and also opined that the petitioner is not the biological mother of the minor daughter.

[5] Finding no other alternative, the petitioner returned back to Tripura and approached the respondents No. 1 to 3 who thereafter made several correspondences with the respondents No. 4 to 9 but, they declined to hand over the custody of the minor daughter to the petitioner. Subsequently, the custody of the minor daughter is given to the respondent No. 9 which is a boys' hostel. The said act of the respondents No. 4 to 9 is illegal and arbitrary and they had confined the minor daughter with some ulterior and ill motive. Due to the mental harassment the father of the minor daughter had expired and the petitioner suffered serious mental agony. Since the minor daughter is the last hope of the petitioner and since they failed to get back the custody of the minor daughter from illegal confinement of the

respondents No. 4 to 9, the petitioner had filed the instant writ petition before this Court for recovery of the minor daughter from the illegal custody of the respondents No. 4 to 9.

[6] Mr. P. K. Biswas, learned senior counsel has submitted that from the letter dated 13.05.2019 it is conclusively seen that respondent No. 5 intimated the respondent No. 2 that they are ready to transfer the child in presence of respondent No. 6. Subsequently, initiatives were taken for such transfer of the minor daughter from Vellore to Agartala but, for the reason best known to the respondents No. 5, 8 and 9, the said minor daughter has not yet been transferred from Vellore to Agartala and, thus, the minor daughter is under illegal confinement of the respondents No. 8 and 9. Subsequently, it is apparent from the letter dated 13.08.2019 that the respondent No. 3 had intimated the respondent No. 7 that initiatives have been taken for transferring of the minor daughter from Chennai to Agartala but, ultimately the respondent Nos. 4 to 9 on this or that plea had delayed such transfer of the minor daughter by taking false pleas and documentations and also on the ground that the minor daughter requires further treatment.

[7] The respondent No. 5 had filed a complaint against the parents of the minor daughter under Section-4 of the POCSO Act, 2012 and the same is pending before the Vellore Principal Judicial Court being FIR No. 50 of 2019 which is reflected from the letter dated 06.03.2019 issued by the Deputy Secretary, to the Government of Kerala. In the said letter it is also seen that the medical board of CMC has opined that the minor daughter was admitted with signs of severe abuse and physical injuries. From the medical report dated 17.11.2020 issued by the respondent No. 8 it is seen that the minor daughter has been diagnosed with secondary to traumatic brain injury battered by baby syndrome. Further, from a letter dated 07.06.2019 issued by respondent No. 8, it is seen that the minor daughter had been suffering from colostomy disease. Thus, it is amply clear that the minor daughter was never mishandled or tortured by her parents at any point of time but, the respondent No. 8 most purposefully and illegally had lodged a complaint against the petitioner and her husband under Section-4 of the POCSO Act before the police personnel. Moreover, the reports/diagnosis of the respondent No. 8 is contradictory and those do not constitute any offence punishable under Section-4 of the POCSO Act.



[8] Instead that, the respondents had illegally confined the minor daughter in a boys' hostel i.e. under respondent No. 9. Further, from the letter dated 07.06.2019 it is revealed that the respondent no. 8 had raised question on the motherhood of the petitioner and the respondent no. 8 has sought for proof which would prove that the petitioner is the biological mother of the minor daughter by carrying out DNA testing. From the said letter dated 07.06.2019 it is also revealed that the respondent No. 8 had assessed that the petitioner is a psychiatric patient and asked the petitioner to certify her fitness. Had it been so, the petitioner would not have run here and there for treatment of her minor daughter. At no point of time, the respondent No. 8 had raised any question regarding her psychiatric problem and when the petitioner sought for handing over the minor daughter in her favour such allegation has been leveled against the petitioner by the respondent no. 8 motivatedly. The petitioner humbly submits that it is not the respondent No. 8 who would ascertain as to whether the petitioner is a psychiatric patient or not and if so requires, the petitioner is ready to undergo psychological assessment test.

[9] It has been further contended that the respondents No.4 to 8 once is claiming that the petitioner is not the biological mother of the minor daughter and in that case the petitioner is to prove DNA test whereas from the birth certificate issued by Department of Health Services, Dharmanagar District Hospital dated 27.11.2018, it is well established that the petitioner has given birth of the minor daughter and her father is Dwaipayan Chakraborty. Hence, the respondent No. 8 has no authority to raise any question regarding the motherhood of the petitioner and she is lawfully not liable to undergo DNA test. The petitioner apprehends that the respondent No. 8 for any illegal trade or on any criminal instigation or conversion of caste is denying to handover the custody of the minor daughter in favour of the petitioner.

[10] Further, from letter dated 02.03.2021 it is seen that the CMC hospital had complained of physical and sexual abuse upon the minor daughter and they have raised suspicion upon the petitioner and her husband. During the time of admission of the minor daughter, the hospital authority had opined that the minor daughter was suffering from colostomy disease and after prolong treatment and clearance of bill; the respondent No. 8 had lodged a false complaint basing on sexual abuse, which is false, arbitrary and not tenable in the eye of law. Without any medical examination and only on suspicion a false case had been lodged

against the petitioner and her husband. The respondent No. 8 and 9 for their illegal gain most purposefully is trying to confine the minor daughter under their custody and time and again negated the custody of the minor girl either to respondents No. 1 to 3 and also to the petitioner.

[11] The petitioner apprehends that with an ill motive, purposefully, the respondents No. 4 to 9 had raised serious and malicious allegations against the petitioner and her husband depriving them from getting the custody of her minor daughter. Despite several requests made from the petitioner and also several correspondences made by the respondents no. 1 to 3 with the respondents No. 4 to 9, the respondents No. 4 to 9 had denied to hand over the custody of the minor daughter to the petitioner i.e. her biological mother rather they had harassed the petitioner and her husband to an extent that the husband of the petitioner Mr. Dwaipayan Chakraborty expired during pending of this petition without seeing his minor daughter. The respondent No. 8 had given the custody of the minor daughter to the respondent No. 9 which is a boys' hostel and that too without consent of the petitioner. It is the petitioner who initially had raised serious objection towards the procedure of treatment rendered towards her minor daughter and such objection had made the respondent No. 8 so vindictive that the minor daughter for the last few years had been illegally detained in a boys' hostel i.e. under respondent No. 9. The reports and contents of communications so made by the respondent No. 8 are contradictory to each other which clearly establish that the respondent No. 8 in connivance with respondent No. 9 had illegally detained the minor daughter. The minor daughter is the last hope for survival of the petitioner and if the minor daughter is not handed over to the custody of the petitioner, both the petitioner and the minor daughter will suffer irreparable loss and injury which cannot be compensated by money.

[12] Mr. Biswas, learned senior counsel has averred that there are discrepancies between the correspondences and reports of respondents No. 5, 6, 7 and 8 which clearly establish the vindictive passion of the respondents No. 4 to 8 in regard to forceful confinement of the minor daughter. The respondent No. 8 is playing a negative role for handing over the minor daughter to the petitioner i.e. her mother. The respondent No. 8 did never accuse the probationer doctors who performed wrong treatment of the minor daughter at the initial stage due to which the physical condition of the minor daughter had deteriorated. Moreso, the reports

were not being handed over to the petitioner though she has cleared up all the dues and she was entitled to receive the same. To hide the tangible medical report and to save the probationer doctors, the respondent No. 8 is playing such influential role by bringing false and irrelevant allegation against the petitioner and also by lodging false complaint against the petitioner and her husband.

[13] The minor daughter is the only hope of survival of the petitioner but, the mental harassment on the part of the respondent No. 8 had destructed and depressed the petitioner. The act of respondent No. 8 is an offence consequence of which the father of the minor daughter had expired and the petitioner had been deprived of love and affection of her minor daughter. The petitioner is not aware of the present situation of the minor daughter. If the minor daughter is not handed over to the petitioner immediately, the respondents No.8 and 9 will kill her or spoil her life. Considering the grave situation and to save the minor daughter of the petitioner, the concerned respondents may be directed to cause investigation into the matter and also take appropriate steps to recovery of the minor daughter from the illegal custody of the respondents No.4 to 9.

[14] Learned counsel on behalf of the respondents has submitted that on 25<sup>th</sup> September 2018, Child Welfare Committee Vellore, District Child Protection Unit, Vellore and Child Line, Vellore visited the baby in Christian Medical College and Hospital, Vellore and spoke to the parents together and separately and were of the opinion that the parents were responsible for the injuries to the baby. Thus Child Welfare Committee, Vellore took custody of the baby and appointed MBKG Pannal Home as the children's home for providing the care giver service for her care. Subsequently since the MBKG Pannal couldn't give long term exclusive care giver for her, she was shifted by Child Welfare Committee, Vellore to be in the care of the Hope House, Vellore and the child came for regular follow up to Christian Medical College & Hospital, Vellore.

[15] The child was performed Diversion Colostomy in the month of September 2018 in Christian Medical College & Hospital, Vellore. Further closure of Colostomy surgery to the child was also performed in Christian Medical College & Hospital, Vellore. She is undergoing intensive Early Stimulation Therapy and is on continuous monitoring and treatment for the severe injuries caused in the brain due to the assault caused in the early months of her life. The then District Magistrate of Vellore had stated that any disruption in the treatment would hamper

the developmental progress of the child and cause stagnation as when the therapy was temporarily disrupted during the COVID Pandemic and informed the Child Welfare Committee, Vellore to postpone the decision of transferring the child from Vellore till getting medical clearance from the Doctors.

[16] Further, the Christian Medical College & Hospital, Vellore report has recommended that the child needs Multi-Disciplinary team inputs which include cognitive stimulation, occupational therapy, speech therapy, behavioral and emotional support. The child needs continuous Multi-Disciplinary team monitoring to ensure adequate progression of development. Considering the considerable injury to brain and decrease in Intelligent Quotient (IQ) observed in recent times, need for familiar environment with stable and long term caregiver specially trained in Neuro Developmental disorder by the Child and Adolescent Psychiatry Unit, Department of Psychiatry, Christian Medical College & Hospital, Vellore.

[17] Further interaction with Mr. Ruby Nakka, the Director of Hope House, confirmed that the child has severe anxiety towards even tolerable noise like bursting of balloon during the birthday parties in Hope House. He observed that the child refuses to attend birthday parties for this reason. As per the medical reports, the three month old child had suffered trauma repeatedly while under the exclusive care of both the parents including battered baby syndrome and repeated digital anal penetrations according to the Christian Medical College and Hospital, Vellore reports. During the second surgery performed on the child in September, 2019 for closure of colostomy and laparotomy, the site of soft stricture was marked with flimsy layer of mucosa. This according to the medical opinion, could have been the result of repeated digital penetration of the anus.

[18] Mr. Lodh, learned counsel in support of his argument has placed reliance in a decision of the Hon'ble Apex Court in Nawal Kishore Sharma v. Union of India and Others, reported in (2014) 9 SCC 329 regarding territorial jurisdiction of the High Court. Wherein, it has been stated that cause of action if wholly or in part arose within territorial jurisdiction of High Court or not, held, is to be determined in light of nature and character of proceedings under Article-226 of the Constitution. High Court can issue a writ if cause of action wholly or partially arises within its territorial jurisdiction even if person or authority against whom writ is issued is located outside its territorial jurisdiction. However, in order



to maintain a writ petition, petitioner has to establish that his legal right has been infringed by the respondents within territorial limits of High Court's jurisdiction.

[19] In view of above, this Court opines that though preliminary objection has been made on the point of jurisdiction. However, it is seen from the record that the petitioner and the child are native of Dhalai District, State of Tripura. Because of medical reasons, the child has been shifted from Hospitals in Tripura and is in the custody and care of Christian Medical College, Vellore, Tamil Nadu for treatment. Thereafter, upon recovery of good health, was moved to The Hope House i.e., respondent No.9 herein. Since the cause of action started from Tripura and is continuous up to the Christian Medical College, vellore, Tamil Nadu i.e., respondent-8, periodically, the respondent from Tamil Nadu were responding and providing information to the Court and expressed that they would comply with the directions of this Court from time to time since 2022. Now, it is not a case to be decided on technicalities of jurisdiction as it concerns a minor girl joining her mother (widow of late Dwinpayan Chakraborty). The Mother and child love and affection is more relevant than anything else. The laws are made for the citizens but citizens are not born for the laws. No law can deprive the child or mother from their bondage, love and affection and the relation cannot be denied. It is the arbitrary and highhandedness of the respondent No.8 and respondent No.9 in separating both mother and child all these years. Having more concerned for the welfare of the minor child, an order was passed on 01.12.2022 that the respondents No.1, 2 and 3 shall take steps for setting a team to visit respondents No.5, 6 and 9 and to enquire with regard the health condition of the child providing proper medical treatment and also provide any other support which is required to the child to protect the rights of the child and the petitioner was also at liberty to accompany the committee which is deputed by the respondents No.1, 2 and 3.

[20] It has been observed that once the hospital authority raised a question whether the petitioner was the mother of the child and in this regard DNA test of both the girl and the petitioner had been subjected at the SFSL, Narsingarh, Agartala. Evidently, the DNA matching report concludes that the petitioner is the biological mother of girl child. For the purpose of reference, the DNA matching report of both the girl and the petitioner contained in letter dated 12.04.2023 issued by the Director, SFSL as under:

***“Observations:-***

a) That one of the allele of the amplified loci of DNA profile of Ms. Pratiti Chakraborty (examined in Department of Forensic Science, Chennai) matches with one of the respective allele of the DNA profile of Mrs. Prabha Rani Das (examined in State Forensic Science Laboratory, Tripura).

b) The probability of Mrs. Prabha Rani Das to be the biological mother of Ms. Pratiti Chakraborty than any other person at random is approximately 99.99999725 per cent.

**Conclusion:-**

On the basis of the above observations it is concluded that :- i) Mrs. Prabha Rani Das is the biological mother of Ms. Pratiti Chakraborty.”

[21] On account of the aforesaid development, the next question which arises before this Court is whether the girl is in need of some treatment whether physical or psychological. It is seen from the record that the Court directed the respondent No.8, the Medical Superintendent, Christian Medical College, Vellore to submit a report about the treatment undergone by the child and further opined that the child needs to be produced before the Court to take a call on the question of handing over the custody of the child to the petitioner-mother. In this regard, respondent No.3, the Director, Social Welfare & Social Education, Agartala, West Tripura was directed to coordinate with the concerned authorities and his counterpart in Tamilnadu and ensure production of the child on 18.05.2023 along with the medical reports of Christian Medical College, Vellore. However, it was directed that the child to be examined by the specialist doctors at AGMC & GBP Hospital, Agartala. Therefore, the child needs to be brought to Agartala by 15.05.2023. The respondent No.3, the Director, Social Welfare & Social Education, Agartala, West Tripura shall make necessary arrangements for comfortable stay of the child at Agartala till she is produced before the Court. The doctors at AGMC & GBP Hospital, Agartala would submit their report after proper examination of the child both as to her physical health and psychological wellbeing on or before 18.05.2023.

[22] It appears from perusal of the affidavit that a team of 4(four) officials had gone to Tamil Nadu in order to make all efforts to bring the minor, but the authority of the counterpart did not cooperate with the team. Having failed the visitation, the team has submitted a report to the Director, Social Welfare & Social Education Department on 19.05.2023 which is part of the affidavit.

[23] It appears from the report of the District Collector, Vellore that he had convened a meeting on 05.05.2023 with several officials and doctors for taking decisions upon the health, physical condition, mental condition and recovery status of the child pursuant to the order passed by this Court on 27.04.2023. The report opines that change of place may cause psychological stress to the child who is under treatment since 14.09.2018 at Vellore. However, the report of the team of officials of Tripura who had gone to Tamil Nadu indicates that on 13.05.2023, a meeting was convened at their request in the office of DCPO, Vellore attended by the officials. But in that meeting, they were told that the minor could not be produced before the High Court of Tripura at this point of time and that CMC, Vellore had already sent the Medical Report of the minor to the High Court of Tripura by Speed Post and they will not give any report to the visiting team. Therefore, it appears that the members of the visiting team of Tripura who had gone to Vellore pursuant to the orders passed by this Court on 27.04.2023 and 22.05.2023, did not get a chance to be a part of the meeting convened by the Collector, Vellore on 05.05.2023 to assess the medical condition of the minor.

[24] The decision whether to hand over the custody of the child to the petitioner-mother or to keep her in a safe medical care is yet to be taken. When this Court vide order dated 27.04.2023 specifically directed the Director, Social Welfare & Social Education, Agartala, West Tripura to coordinate with the concerned authorities and his counterpart in Tamil Nadu for the aforesaid purpose and a team comprising also of a Doctor from IGM Hospital, Agartala had gone to Tamil Nadu, the Collector, Vellore would have allowed the team to participate in the aforesaid decision on the question of the production of the child. The report dated 19.05.2023 of the team of Tripura in fact, gives an impression of non-cooperation.

[25] Dr. Chandrani Biswas, Joint Director (SW & SE), Government of Tripura, who was the leader of the team had visited Vellore pursuant to the order dated 29.05.2023 and interacted with the child. Though they do not have any visuals of the child but they had interaction with the child in the Child Care Institution, Hope House, in the presence of District Collector, Vellore, the Chairperson and members, CWC, Vellore and Professors from CMC, Vellore. According to her and the team members, she appeared to be in good physical condition and mentally sound. Dr. Chandrani Biswas also informs the Court that

the girl has been kept in the Child Care Institution pursuant to an order passed by the Child Welfare Committee, Vellore. She is also studying in a preparatory school affiliated to CBSE.

[26] It has been observed from the order dated 19.12.2023 that regarding the paramount interest of the child's welfare lies; whether in the Child Care Institution at Vellore or in the custody of her biological mother, the petitioner herein, the Court in that context arranged for a virtual interaction with the girl without physically bringing her to Tripura. Subsequently, upon visual and audio interaction with the girl child, the Court finds that she is a cheerful girl and is mentally and physically alert. She has been able to answer our queries in English. She is also aware about the State of Tripura. As per our impression, her physical and mental growth also appears to be commensurate with her biological age. In the manner in which she has interacted and moved around during physical interaction, it appears that she is not suffering from any physical disability or injury at the moment.

[27] It has been observed from the order dated 04.03.2024 that *".....Petitioner-mother has been praying for production of the girl child who remains at Hope House, Vellore. Once again due to non-cooperation of the concerned authorities i.e. CWC, Vellore and the District Magistrate, Vellore, the proceedings of this case are unable to go further. Such approach of these authorities is inexplicable. Till the last date, the Court had been trying to ascertain the wellbeing of the girl. Whether the detention of the girl in a child care institution at Vellore is based on exercise of statutory power of an authority like the CWC, Vellore or not is difficult to discern as no reports or orders passed by the CWC, Vellore in this regard have been placed...."*

[28] In deciding a difficult and complex question as to custody of minor, a Court of law should keep in mind relevant statutes and the rights flowing therefrom. But such cases cannot be decided solely by interpreting legal provisions. It is a humane problem and is required to be solved with human touch. A Court while dealing with custody cases, is neither bound by statutes nor by strict rules of evidence or *[see(2008) 9 SCC 413]* procedure nor by precedents. In selecting proper guardian of a minor, the paramount consideration should be the welfare and well-being of the child. In selecting a guardian, the Court is exercising *parens patriae* jurisdiction and is expected, nay bound, to give due weight to a child's



ordinary comfort, contentment, health, education, intellectual development and favourable surroundings. But over and above physical comforts, moral and ethical values cannot be ignored. They are equally, or we may say, even more important, essential and indispensable considerations. If the minor is old enough to form an intelligent preference or judgment, the Court must consider such preference as well, though the final decision should rest with the Court as to what is conducive to the welfare of the minor. The child is not a chattel or a ball that is bounced to and fro. It is only the child's welfare which is the focal point for consideration. Parliament rightly thinks that the custody of a child less than five years of age should ordinarily be with the Mother and this expectation can be deviated from only for strong reasons.

[29] While dealing with the petition for issuance of a writ of habeas corpus concerning a minor child, in a given case, may direct return of the child or decline to change the custody of the child keeping in mind all the attending facts and circumstances including the settled legal position referred to above. Once again, we may hasten to add that the decision of the court, in each case, must depend on the totality of the facts and circumstances of the case brought before it whilst considering the welfare of the child which is of paramount consideration. In a habeas corpus petition as aforesaid, the Court must examine at the threshold whether the minor is in lawful or unlawful custody of another person (private respondent). For considering that issue, in a case such as the present one, it is enough to note that the respondent is not the natural guardian of the minor being her biological parents. Once that fact is ascertained, it can be presumed that the custody of the minor with her mother is lawful.

[30] The question about the maintainability of a petition for a writ of habeas corpus came up for consideration before their Lordships of the Supreme Court in *Tejaswini Gaud and others vs. Shekhar Jagdish Prasad Tewari and others*, (2019) 7 SCC 42. The question has been elaborately examined by their Lordships in *Tejaswini Gaud*, and it has been held:

“19. Habeas corpus proceedings are not to justify or examine the legality of the custody. Habeas corpus proceedings is a medium through which the custody of the child is addressed to the discretion of the Court. Habeas corpus is a prerogative writ which is an extraordinary remedy and the writ is issued where in the circumstances of the particular case, ordinary remedy provided by the law is either not available or is ineffective; otherwise a writ will not be issued. In child custody matters, the power of the High Court in

granting the writ is qualified only in cases where the detention of a minor by a person who is not entitled to his legal custody. In view of the pronouncement on the issue in question by the Supreme Court and the High Courts, in our view, in child custody matters, the writ of habeas corpus is maintainable where it is proved that the detention of a minor child by a parent or others was illegal and without any authority of law.”

[31] In the present case, the respondents have no authority of law to have the custody of the minor child. Whereas as per Section-6 of the Hindu Minority and Guardianship Act, the petitioner is the natural guardian of the minor child and is having the legal right to claim the custody of the child. The entitlement of mother to the custody of child is not disputed and the child being a minor aged cannot express its intelligent preferences. Hence, in our considered view, in the facts and circumstances of this case, the mother, being the natural guardian, was justified in invoking the extraordinary remedy seeking custody of the child under Article 226 of the Constitution of India.

[32] In *Elizabeth Dinshaw* (supra), this Court has observed that whenever a question arises before a court pertaining to the custody of the minor child, the matter is to be decided not on consideration of the legal rights of the parties but on the sole and predominant criterion of what would best serve the interest and welfare of the child.

[33] Thus, it is well established that in issuing the writ of Habeas Corpus in the case of minors, the jurisdiction which the Court exercises is an inherent jurisdiction as distinct from a statutory jurisdiction conferred by any particular provision in any special statute. In other words, the employment of the writ of Habeas Corpus in child custody cases is not pursuant to, but independent of any statute. The jurisdiction exercised by the court rests in such cases on its inherent equitable powers and exerts the force of the State, as *parens patriae*, for the protection of its minor ward, and the very nature and scope of the inquiry and the result sought to be accomplished call for the exercise of the jurisdiction of a court of equity. The primary object of a Habeas Corpus petition, as applied to minor children, is to determine in whose custody the best interests of the child will probably be advanced. In a Habeas Corpus proceeding brought by one parent against the other for the custody of their child, the court has before it the question of the rights of the parties as between themselves, and also has before it, if presented by the pleadings and the evidence, the question of the interest which the State, as *parens patriae*, has in promoting the best interests of the child.

[34] in the case of *Nithya Anand Raghvan v State (NCT of Delhi) and another* 2017 8 SCC 454, it was held that the principal duty of the court in such matters is to ascertain whether the custody of the child is unlawful and illegal and whether the welfare of the child requires that his present custody should be changed and the child be handed over to the care and custody of any other person. The relevant observations made in the judgment are as follows:-

“44. The present appeal emanates from a petition seeking a writ of habeas corpus for the production and custody of a minor child. This Court in *Kanu Sanyal v. District Magistrate, Darjeeling*, (1973) 2 SCC 674, has held that habeas corpus was essentially a procedural writ dealing with machinery of justice. The object underlying the writ was to secure the release of a person who is illegally deprived of his liberty. The writ of habeas corpus is a command addressed to the person who is alleged to have another in unlawful custody, requiring him to produce the body of such person before the court. On production of the person before the court, the circumstances in which the custody of the person concerned has been detained can be inquired into by the court and upon due inquiry into the alleged unlawful restraint pass appropriate direction as may be deemed just and proper. The High Court in such proceedings conducts an inquiry for immediate determination of the right of the person's freedom and his release when the detention is found to be unlawful.

45. In a petition for issuance of a writ of habeas corpus in relation to the custody of a minor child, this Court in *Sayed Saleemuddin v. Rukhsana*, (2001) 5 SCC 247, has held that the principal duty of the court is to ascertain whether the custody of child is unlawful or illegal and whether the welfare of the child requires that his present custody should be changed and the child be handed over to the care and custody of any other person. While doing so, the paramount consideration must be about the welfare of the child. In *Elizabeth Dinshaw v. Arvand M. Dinshaw*, (1987) 1 SCC 42, it is held that in such cases the matter must be decided not by reference to the legal rights of the parties but on the sole and predominant criterion of what would best serve the interests and welfare of the minor. The role of the High Court in examining the cases of custody of a minor is on the touchstone of principle of *parens patriae* jurisdiction, as the minor is within the jurisdiction of the Court [see *Paul Mohinder Gahun Vs. State (NCT of Delhi)*, 2004 SCC OnLine Del 699, relied upon by the appellant]. It is not necessary to multiply the authorities on this proposition.

46. The High Court while dealing with the petition for issuance of a writ of habeas corpus concerning a minor child, in a given case, may direct return of the child or decline to change the custody of the child keeping in mind all the attending facts and circumstances including the settled legal position referred to above. Once again, we may hasten to add that the decision of the court, in each case, must depend on the totality of the facts and circumstances of the case brought before it whilst considering the welfare of the child which is of paramount consideration. The order of the foreign court must yield to the welfare of the child. Further, the remedy of writ of habeas corpus cannot be used for mere enforcement of the directions given by 1062 INDIAN LAW REPORTS ALLAHABAD SERIES the foreign court against a person within its jurisdiction and convert that jurisdiction into that of an executing court.

Indubitably, the writ petitioner can take recourse to such other remedy as may be permissible in law for enforcement of the order passed by the foreign court or to resort to any other proceedings as may be permissible in law before the Indian Court for the custody of the child, if so advised.

47. In a habeas corpus petition as aforesaid, the High Court must examine at the threshold whether the minor is in lawful or unlawful custody of another person (private respondent named in the writ petition). For considering that issue, in a case such as the present one, it is enough to note that the private respondent was none other than the natural guardian of the minor being her biological mother. Once that fact is ascertained, it can be presumed that the custody of the minor with his/her mother is lawful. In such a case, only in exceptionable situation, the custody of the minor (girl child) may be ordered to be taken away from her mother for being given to any other person including the husband (father of the child), in exercise of writ jurisdiction. Instead, the other parent can be asked to resort to a substantive prescribed remedy for getting custody of the child.”

[35] What emerges from above stated authorities is that the exercise of the extraordinary jurisdiction for issuance of a writ of habeas corpus would, therefore, be considered to be dependent on the jurisdictional fact, where the petitioner establishes a *prima facie* case that the detention is unlawful. It is only where the aforementioned jurisdictional fact is established that the petitioner would become entitled to the writ. In an application seeking a writ of habeas corpus for custody of minor child, as is the case herein, the principal consideration for the court would be to ascertain whether the custody of the child can be said to be unlawful and illegal and whether her welfare requires that the present custody should be changed and the child should be handed over in the care and custody of someone else.

[36] Due to the mental harassment, the father of the minor Mr. Dwaipayan Chakraborty had expired and the petitioner suffered serious mental agony. The minor daughter is the last hope of the petitioner to keep her breathing. In view of above discussion, we have no hesitation to hold that once the 8th respondent CMC has treated the child, its responsibility rests. Thereafter, shifting of the child from the custody of the 8th respondent to respondent No.9, the Hope House is the one without obtaining any judicial permission from this Court as the matter was pending before this Court since, 2022 and the respondents were put to notice in this regard. This Court holds that the action of the respondent No.8 in not obtaining the necessary permission to shifting the custody of the minor child, namely, Pratiti Chakraborty to the respondent No.9, the Hope House is unauthorized, arbitrary and *Ultra vires*. Similarly, the Hope House cannot keep the custody of the child and without there being any orders from this Court in this regard and more so, keeping



the custody of the child, needs to be treated by the respondent No.9 as an unlawful detention of the minor child Pratiti Chakraborty.

[37] Thus, after overall analysis and having gone through the principle laid by the Hon'ble Apex Court, we are of the opinion that ends of justice would be met if the writ petition is allowed and, accordingly, the same is ordered directing the respondent No.9 to handover the custody of the child under proper acknowledgement to the mother, the petitioner herein. The respondent No.1 is directed to depute senior police officer to accompany the petitioner to bring back the child under proper care and custody from children welfare house on or before 15.02.2026. The respondents No.4 to 9 are also directed to extend their support and do the needful in compliance of this order. It is needless to say that the expenditure that would be incurred to be borne by the petitioner.

[38] Non compliance of this order in handing over the custody of the minor child i.e., Pratiti Chakraborty to the petitioner herein Smt. Prabha Rani Das forthwith would amount to violation and willful disobedience of this Court orders and could be viewed against the concerned persons.

[39] Once the child arrives at the State of Tripura, the State shall look into the physical and mental health condition of the minor child and proper supervision to be done accordingly, if required.

[40] Accordingly, the present petition stands allowed and disposed of. As a sequel, miscellaneous application pending, if any, shall stand closed.

**S. DATTA PURKAYASTHA, J**

**DR.T. AMARNATH GOUD, J**

*A. Ghosh*