

IN THE PESHAWAR HIGH COURT,
PESHAWAR,
[Judicial Department]

Cr.A..1180-P/2021

Amir Ullah son of Abdul Aziz,
r/o Secondary Board Colony, Peshawar.

Appellant (s)

VERSUS

Director "Zamung Kor",
Charsadda road Peshawar and others.

Respondent (s)

For Petitioner (s) :- Mr. Kabir Imam, Advocate.
For Respondent (s) :- Mr. Muhammad Nisar, AAG along with Ijaz
Muhammad Khan Deputy Chief Child Protection
Commission Social Welfare Department.
Date of hearing: 06.12.2022

JUDGMENT

ROOH-UL-AMIN KHAN, J:- Through the instant appeal, Amir Ullah, the appellant has questioned order dated 30.11.2021, passed by learned Judge Child Protection Court, Peshawar, whereby his minor son, namely, Obaid Ullah (*to be referred hereinafter as the child*), has been placed under the care of the Child Protection Institute, namely, "Zamung Kor" till his discharge or attaining the age of 18 years.

2. Facts in brief forming the background of the instant writ petition are that Syed Omar Ali Shah, SWO of "Zamung Kor" vide letter dated 30.11.2021, produced the child before the Child Protection Court, Peshawar. The child was rescued by the said Institution on the basis of video gone viral on social media where the child can be seen wearing no shoes in winter season and selling masks. The child interviewed by the Child Protection Court,

John Sam

Peshawar, wherein he disclosed that his father is a daily wages labour and from the last one year he is selling Masks and is also engaged in beggary staying outside home till late night. Appellant/father of the child appeared before the learned Child Protection Court, Peshawar, and showed his regret and promised that he will not engage his child in selling Masks and begging, therefore, his custody may be returned to him. Keeping in view age of the child i.e. 5/6 years and feeble financial status of his father, the learned Child Protection Court, Peshawar, turned down the request of the appellant and passed the following order:-

“In the circumstances, by keeping in view the welfare of child being at risk, he is placed under the care of Child Protection Institute “Zamung Kor” till discharge or till attainment of 18 years. The child Protection Institution is required to make necessary arrangements as to physical and psychological development of child at risk coupled with educational facilities at the institution. The quarterly report of the child is required to be filed by the Director “Zamung Kor” through Social Welfare Officer on quarterly basis. Copy of this order be issued to Director “Zamung Kor” as well as Khyber Pakhtunkhwa Child Protection & Welfare Commission at Peshawar. Moharrir is directed to pen file for periodical reports of child at risk upon receipt of first periodical report by maintaining a Register for entries of periodical report of children at risk while this file be consigned to record room after its necessary compilation and completion. “

Moharrir

3. Through the instant appeal, the appellant/father of the child has questioned the aforesaid order, seeking return of custody of his child.

4. On 11.02.2022, when the case was taken up for hearing, Mr. Rafiullah, Social Welfare Officer "Zamung Kor" along with the worthy Advocate General Khyber Pakhtunkhwa appeared and stated that child, namely, Obaid Ullah aged 5/6 years had been taken into custody from BRT Station Abdara road Peshawar and was admitted in KG in a welfare school where he is being provided quality education. Appellant/father of the child stated that he is a daily wager and used to leave home early in the morning and return late at evening. The child always slips away with his friends for roaming and vagrancy. Keeping in view the weak financial situation of appellant, his careless attitude towards his child and to determine welfare of the child, the Director "Zamung Kor" was directed to submit a detail report with regard to education and social welfare activities of the children staying in the Organization, namely, Zamung Kor.

5. On 05.09.2022, Syed Umar Ali Shah (litigation Officer) "Zamung Kor" stated at the bar that during vacations, the child was handed over to his parents, but now the parents are avoiding to return him to "Zamung Kor". Accordingly, Naseem Khan SHO Police Station Tehkal was summoned and directed to produce the child along with his parents on the next date of hearing. On 09.09.2022, the child was produced before the court and handed over to Litigation Officer, named above for keeping him in

“Zamung Kor” for care and education purposes. On next date of hearing i.e. 19.10.2022, Mr. Muhammad Inam Khan Yousafzai, AAG pointed out that Provincial Government has made certain amendments in the Vagrancy Act wherein efforts for rehabilitation of beggars are introduced for first time instead of penal action. He further stated that the worthy Commissioner Peshawar is instrumental in eradication of vagrancy in Peshawar Division and he has done a lot of reforms in this regard. Accordingly, the worthy Commissioner Peshawar was put on notice with direction to file comprehensive report. Similarly, the Director Chief Child Protection Commission, Peshawar, was also summoned with direction to personally appear before the court along with record. On 15.11.2022, Mr. Muhammad Ijaz Muhammad, Deputy Chief Child Protection Welfare Commission Khyber Pakhtunkhwa, appeared and stated that they have taken serious steps for rehabilitation of the child at risk and child begging in the streets, however, requested for time to submit a detail report in this regard. The case was, therefore, posted to 06.12.2022.

6. The requisite report has been submitted by the Director “Zamung Kor”, according to which the Government of Khyber Pakhtunkhwa is envisaging “a child sensitive society where children can enjoy their rights of protection, survival and development and participation in a peaceful and congenial atmosphere without any discrimination”. In order to convert these ideas into reality, a Model Institute for State Children, namely, “Zamung Kor” has been established in July, 2016 under the Khyber

Pakhtunkhwa Child Protection and Welfare Act, 2010, amended in 2016 and with the gradual increase of the State children, the number has now touched the figure of 652, who are being provided Shelter, clothes and other facilities such as boarding, lodging, free books, health services and quality education, psycho-social support and opportunities for co-curricular and extracurricular activities. The day to day affairs of the Institution are carried out by the Director and his dedicated team. For psycho social support of the children with traumatic backgrounds the Institution has also furnished facility of counseling them. For this purpose two psychologist are assigned the task of psychosocial support to the students. After getting admission in the Institution "Zamong Kor" the children remain under observation of those psychologists for 15 days. Psychologists counsel the children and make their mind ready to get education. In academic wing the Institution has enrolled 652 students and has placed them in different grades according to their aptitude. The children are getting formal education according to the new technologies and up to date teaching methodologies. Similarly, An MOU is being signed with Technical Education and Vocational Authority (TEVTA) for skill development of the children and TEVTA will also help the Institution Zamung Kor in equipping its Labs. An endowment fund is also generated i.e. Rs.2000/- per month for each child of the Institution from July 2021 which will be given to the children after leaving the Institute at the age of 18 years. This amount will be helpful for the children to start any business in future. All 652 students are housed in different hostels

Loohindam

including Model Block and 14 other hostels. Each house includes a warden and Aya who perform paternal duties and take good care of the children to make sure that the rooms and the dress of the child is neat and tidy. Food is also an important element of the Institution in which a balance and hygienic diet is served to the children in accordance with the instruction of renowned nutritionists who are consulted on quarterly basis to suggest changes in the menu keeping in view the health requirements of the children. After successful functioning of the Institute at Peshawar, the Provincial Government has planned to extend the facilities to the disenfranchised, destitute and vulnerable children of the other districts. For this purpose a PC.1 titled, "Establishment of Boys Campuses of Model Institute for the State Children in District Swat, Dera Ismail Khan, Abbottabad and Girls Campus at Peshawar has also been approved at a total cost of 365.982 Million for a period of three years. In the report the achievements of the Institution "Zamung Kor" for the welfare of the children has also been highlighted in detail. With the report daily schedule of the children has also been annexed.

7. It is uncontroverted fact that child begging has become a raising menace throughout the world. In the third world countries the main reason behind this menace is the poverty and lack of education facilities, particularly, in the rural areas. On one side stringent law is need of the time to curb the menace of vagrancy, while on the other side, Institutions Like "Zamung Kor" are required to be promoted, surely, the civil Society and the

Government shall play greater role creating awareness in the masses about Muslim Laws and commandments regarding imperial effect of vagrancy. We appreciate the struggles and functions of "Zamung Kor" being conducted and carried out for rehabilitation of children. The Institution besides providing food, shelter and education is trying to train the children for their future life. In case in hand, parents of the child were summoned and informed about better welfare of their ward in Zamung Kor, however, their only request was that the child be allowed some time to stay with them. We are conscious of the love and affection of parents and children towards each other, however, welfare of the child is the prime consideration under the law. In view of the above discourse and report of "Zamung Kor, coupled with the feeble financial position of parents of the child and his welfare in the Institution "Zamong Kor" we are of the firm view to hold that it would be in the best interest of the child's future to stay in the above named Institution instead of handing him over in the custody of the appellant, in which circumstances there is no guarantee of his better future. The learned trial court has rightly turned down the request of the appellant to which no exception can be taken, however, keeping in mind the love and affection of the parents, we deem it appropriate and in the interest of justice to provide a visitation right to the child to stay with his parents on each off day in the week.

8. Accordingly, this appeal stands dismissed with the observation that parents of child Obaid Ullah shall be entitled to visit and see him in "Zamung Kor" on any day of the week inside

the Institution, whereas, they would be entitled to his custody for shifting him to home on Saturday of each week after his school timing and shall be bound to return him to the Institution on coming Monday before 9.00 A.M. provided the petitioner furnishes bail bond in the sum of rupees one lac with one surety in the like amount to the satisfaction of the learned Child Protection Court, Peshawar.

Announced:

06.12.2022

M. Siraj Afridi CS

Rooh ul Amin
Senior Puisne Judge

JUDGE

DB of Mr. Justice Rooh ul Amin Khan Hon'ble Senior Puisne Judge:
And Hon'ble Mr. Justice Ishtiaq Ibrahim.