IN THE HIGH COURT AT CALCUTTA

(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

W.P.A. No. 24620 of 2025

With

CAN No. 1 of 2026

Asmita Poddar @ Payel Poddar

Vs.

The State of West Bengal & Ors.

Mr. Moyukh Mukherjee

Ms. Sarmistha Basak

....For the petitioner.

Mr. Dibyendra Narayan Ray, Ld. GP

Mr. Subhankar Chakraborty

Ms. Sayani Gupta

Mr. Atindra Rai

.... For the State.

Mr. Srijib Chakraborty

Mr. Sunny Nandy

Ms. Rupsa Sreemani

....For the Respondent No.2.

Mr. Nilotpal Chatterjee

....For the Respondent No.3.

Hearing Concluded On : 29.07.2026

Judgment Delivered On : 06.08.2026

Judgment Uploaded On : 06.08.2026

Krishna Rao, J.:

1. The petitioner has filed the present writ petition praying for setting aside and quashing of the decision of the Child Welfare Committee (hereinafter referred to as "CWC") dated 18th November, 2024, wherein the CWC has declared the appealed parents as incapacitated to take the child and directed to the Specialized Adoption Agency (hereinafter referred to as "SAA") to proceed for Legally Free For Adoption (hereinafter referred to as "LFA") as the child RIBHU has already been declared as abandoned child by the CWC, Kolkata.

2. On 23rd March, 2024, a new born infant was found in a drain with grievously injured condition and the local people rescued the said new born baby and taken to local police station. One person, namely, Ritam Das was also with the local people and was claiming to be the biological father of the said new born baby. The police immediately take the said child to R.G. Kar Medical College and Hospital. During treatment of the child at the hospital, the petitioner also reached to the hospital and claimed herself to be the biological mother of the new born male child. She informed to the police that she got married with Shri Ritam Das

without the consent of their respective families and out of their wedlock, she gave birth to the male child at her residence.

3. As there was dispute with regard to the biological parents of the new born child, the matter was reported to the CWC, Kolkata and upon discharge of the child from the hospital, the CWC took the charge of the child and handed over to SAA for taking care of the said child. The petitioner has made representation to the Officer-in-charge, Manicktala Police Station to hand over the child to the petitioner being the biological mother. The petitioner has also made representation to the hospital authorities for recording her name as mother and name of Ritam Das as father of the minor child in the official record so as to enable her to approach the authority to take back the child.

4. The petitioner could not get any remedy from the authorities, the petitioner has filed a writ petition before this Court being WPA No. 12471 of 2024 praying for a direction upon the respondent authorities to return the child to the petitioner. This Court by an order dated 3rd July, 2024, disposed of the writ petition by directing that the CWC will decide the prayer for return of the child in accordance with law, at the appropriate stage.

5. During the pendency of the case, the Chairperson of the CWC, Kolkata, lodged a complaint to the police against the petitioner and on receipt of the complaint, the Police has registered a case being FIR No. 83 of 2024 dated 13th June, 2024, under Section 308/34 of the IPC. As per the

request of CWC dated 9th June, 2024, the police have conducted DNA test of the child, the petitioner and her husband, namely, Ritam Das. The police have received DNA report and finds that the petitioner and Ritam Das are the biological mother and father of the child.

6. Mr. Moyukh Mukherjee, Learned Advocate representing the petitioner submits that inspite of direction passed by this Court, no opportunity of hearing was provided to the petitioner by the CWC and in the meantime, the police has also filed final report wherein it is recorded that the case has been established against Smt. Lakshmi Poddar, mother of the petitioner but she expired on 4th November, 2024 and no case has been made out against the petitioner.

7. Mr. Mukherjee submits that the petitioner has made several requests to the CWC and to the concerned authorities with the request to hand over the child to the petitioner, but none of the authorities have considered the case of the petitioner. He submits that all of a sudden on 13th October, 2025, the Assistant Secretary, West Bengal Commission for Protection of Child Rights informed the Advocate of the petitioner that on 18th November, 2024, the CWC directed the SAA to proceed with LFA process in respect of the said child. On receipt of the said information, the petitioner has filed the present writ petition.

8. Mr. Mukherjee submits that the petitioner since beginning is claiming the child being the biological mother and the petitioner has filed writ petition and this Court directed the CWC to decide the prayer of the

petitioner for return of child in accordance with law and the CWC had the knowledge that the petitioner is claiming the child but no opportunity of hearing was provided to the petitioner and behind the back and without the knowledge of the petitioner, the CWC passed an order to give the child in adoption.

9. Mr. Mukherjee submits that immediately when the petitioner came to know about the impugned decision, the petitioner has filed the present writ petition and during the pendency of the present writ petition, the respondents have informed this Court that the child has been given adoption to the added respondents without considering the request of the petitioner and without giving any opportunity of hearing to the petitioner.

10. Mr. Mukherjee submits that the Chairperson had the knowledge that a criminal case is initiated on her complaint and on her request, a DNA test was conducted and the Chairperson had the knowledge that the petitioner is the biological mother of the child but no opportunity of hearing was provided to the petitioner.

11. Mr. Mukherjee submits that after investigation, the police submitted final report wherein it is categorically mentioned that the petitioner has not committed any offence.

12. Mr. Mukherjee submits that after filing report by the respondents in the present case, the petitioner came to know about the contents of the decision of the CWC. He submits that in the impugned order dated 18th

November, 2024, it is reordered that an unknown couple appealed before the Learned Court and claimed themselves as the parent of the child and the Learned Court ordered for DNA Sample Test and the report is awaited but the said recording is contrary to the record. He submits that as per police report, the CWC sent an email to the police on 9th June, 2024, directing to conduct DNA test and on 19th June, 2024, samples were sent for expert opinion and on 27th June, 2024, report was received.

13. Mr. Mukherjee submits that in the impugned order, it is also recorded that the appealed parents are considered as incapacitated by the CWC, Kolkata but no notice was issued to the petitioner and no opportunity of hearing was provided to the petitioner and without any materials or inquiry, the CWC, Kolkata, came to the said conclusion.

14. Mr. Srijib Chakraborty, Learned Advocate representing CWC submits that the CWC, Kolkata, has passed the impugned order taking into consideration of the paramount of the child. He submits that the infant was found in drain with grievous injuries and the local people have rescued the new born baby. The new born baby was admitted in the Hospital with grievous injury as an abandoned child.

15. Mr. Chakraborty submits that as there was no identity of the biological mother and father of the new born child, after the treatment, the hospital authorities with the help of police handed over the child to the CWC. After the child was handed over to the CWC, the committee has

placed the child in the Indian Society for Rehabilitation of Children (ISRC), a Specialized Adoption Agency. He submits that the petitioner has made representation to the local police authority and the hospital authority with the grievance that the child had fallen from her hands and she became unconscious which is not correct. He submits that the Investigating Officer submitted report stating that inspite of repeated questioning, the petitioner could not explain how the child came to be found inside a narrow drain.

16. Mr. Chakraborty submits that when the petitioner approached this Court, this Court has observed that proof of maternity alone would not entitle the mother to take custody of the child. He submits that the committee has published notice in the English, Bangla and Hindi Newspaper inviting claims and objections but the petitioner has not filed any claims and objection.

17. Mr. Chakraborty submits that the CWC has declared the biological parents were incapable of ensuring the safety and welfare of the child, considering the circumstances, abandonment and serious injuries.

18. Mr. Chakraborty submits that on completion of all statutory formalities under the Juvenile Justice (Care and Protection of Children Act, 2015 and Adoption Regulations, 2022, the Director, Child Rights and Trafficking, West Bengal acting as District Magistrate for adoption purposes, passed a Final Adoption order in favour of the adoptive parents.

19. Mr. Chakraborty submits that as per the complaint of CWC, the police registered a case and subsequently filed final report and the CWC has filed objection to the said final report and the same is under consideration before the Learned Magistrate.

20. Mr. Chakraborty submits that the CWC has passed the impugned order in accordance with law and is not required to interfere with. Mr. Chakraborty has relied upon the judgment in the case of ***Temple of Healing Vs. Union of India*** reported in ***2023 SCC OnLine SC 1590*** and submits that Children having Unfit Guardian- Unfit Guardian can be someone who is unable or unwilling for parenting, indulging in substance (drug) abuse, abuse or alcohol, known to have abused or neglected the child, having a criminal record, in need of care themselves, mentally unsound etc. Children of all such parents may be classified under this category.

21. Learned Counsel appearing for the State submits that on receipt of complaint from CWC, a case was registered and as per the request of the CWC, DNA test was conducted wherein it reveals that the petitioner and one Ritam Das are the biological mother and father of the child. He further submits that on completion of investigation, it was found that the petitioner is not involved in committing any offence but the alleged offence was committed by the mother of the petitioner but before filing charge-sheet, the mother of the petitioner passed away and accordingly, the police has submitted final report.

22. Heard the Learned Counsel for the respective parties, perused the materials on record and the judgment relied by the parties. It is admitted that the infant was found near the drain under bushes and the villagers have taken the said infant to the police station wherefrom the police took the child to the hospital for treatment as the infant sustained several injuries on his body. It is also admitted that along with villagers, one Ritam Das was also there and was claiming that he is the biological father of the new born baby. It is also admitted that the petitioner also reached to the hospital and was claiming that she is the mother and requested the hospital authorities to record their name as mother and father of the child. It is also admitted that the petitioner given birth to the child at her residence.

23. The issue is whether the impugned order of the Child Welfare Committee dated 18th November, 2024, by declaring the parents of the child as incapacitated and directed the SAA to proceed for Legally Free for Adoption process is sustainable under law or not?

24. The impugned order of the Child Welfare Committee dated 18th November, 2024, reads as follows:

"CHILD WELFAE COMMITTEE, KOLKATA
BENCH OF 1ST CLASS MAGISTRATE
SECTION 27(9) OF JJ ACT 2015
89, Elliot Road, Kolkata – 700016
Email Id: kolkatacwc@yahoo.com
ORDER SHEET

CW c/c/278/k/24

On 23.03.2024 a newly born baby was admitted to SNCU of RG Kar Medial College Hospital with multiple injuries and serious health condition. The Child rescued by District Child Helpline and local people from a drain under Manicktala Police Station jurisdiction. The child was admitted to the hospital as in abandoned child. Due to severe injures the child was referred to different departments including general surgery, neurosurgery, pediatric surgery and ENT of the hospital. He was also put into ventilation for respiratory support.

On stabilization of health condition the unknown child was placed in Specialized Adoption Agency (SAA) for his further rehabilitation. The unknown child was named as RIBHU and was declared as abandoned child by Child Welfare Committee, Kolkata.

As per the order of CWC, Kolkata paper publication process was initiated by District Child Protection Unit (DCPU) Kolkata of the Child RIBHU. Thus no claimant was issued by DCPU Kolkata as well as no one approached to the SAA regarding claiming the child.

Meanwhile an unknown couple appealed before Learned Court and claimed themselves as the parent of the Child Learned Court ordered for DNA Sample Test and the report is awaited. At the same time Learned Court is with the opinion that proof of maternity in this case would not entitle the mother to take back the child. So being the custodian of the Child and undergoing the direction of the Learned Court CWC Kolkata is proceeding as per the best interest of the child.

The appealed parents are considered as incapacitated by CWC, Kolkata to take the handover of the child as the newly born baby was dropped in drain by them. Role of the appealed parents and their family members are under question. Thus, CWC directed the SAA, to proceed for LFA (Legally Free For Adoption) as the child RIBHU has already declared as Abandoned child by the CWC, Kolkata. We wish child RIBHU gets an adoptive family and enjoy his childhood in a new family.

Sd/- Malina Dey Roy *Chairperson* *CHILD WELFARE COMMITTEE* *KOLKATA* *89, Elliot Road, Kol– 16* *18.11.24*	*Sd/- Mita Biswas* *18.11.2024* *Member* *CHILD WELFARE COMMITTEE* *KOLKATA* *89, Elliot Road, Kol– 16*	*Sd/- Sagamitha Chowdhury* *18.11.2024* *Member* *CHILD WELFARE COMMITTEE* *KOLKATA* *89, Elliot Road, Kol– 16*

Sd/- Paulami Sengupta
18.11.2024
Member
CHILD WELFARE COMMITTEE
KOLKATA
89, Elliot Road, Kol– 16

Sd/- Debdutta Chowdhury
18.11.2024
Member
CHILD WELFARE COMMITTEE
KOLKATA
89, Elliot Road, Kol– 16.

25. The CWC, Kolkata, has declared the child as abandoned child. "Abandoned Child" defiled under Section 2(1) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as "Act of 2015") which reads as follows:

> *"**2. (1)** "abandoned child" means a child deserted by his biological or adoptive parents or guardians, who has been declared as abandoned by the Committee after due inquiry."*

As per the Section 2(1) to declare the child as "abandoned", an inquiry is required. In case of orphan and abandoned child, the Committee shall make all efforts for tracing the parents or guardians of the child and on completion of such inquiry, if it is established that the child is either an orphan having no one to take care, or abandoned, the committee shall declare the child legally free for adoption. In the present case since beginning the petitioner as well as Ritam Das is claiming to be the biological parents. When the child was initially taken to police station, Ritam Das was with the villagers. In the injury report and admission document at the hospital, the name of Ritam Das is recorded as he brought the child to the hospital along with police personnel. It is also admitted that the petitioner has also reached to the hospital and claiming to be the biological mother of the child but the

doctors have not recorded the name of the petitioner and Ritam Das as biological parents to avoid future complications.

From the record, it reveals that the biological father along with villagers took the child to the police station and thereafter to the hospital along with police personnel. Mr. Ritam Das since beginning is claiming that he is the father of the child. In the Injury Certificate, it is recorded that Ritam Das along with police personnel brought the child to the hospital. In the admission form of the child in the hospital, the name of Ritam Das is recorded. Subsequently, the petitioner also reached hospital and she is claiming that she is the mother of the child. In the police report, it is recorded that despite several persuasions from the biological mother and father, the attending doctors refused to incorporate the particulars of the name of the biological parents in the hospital record to avoid any further confusion.

26. The Chairperson, Child Welfare Committee, Kolkata, made a written complaint to the police on 13th June, 2024, which reads as follows:

> *"To,*
> *The Officer-in-Charge*
> *Manicktala Police Station*
>
> *The child presently placed as abandoned at ISRC against the GD No.17 dated 24.3.24 of Manicktala PS under the custody, of Child Welfare Committee, Kolkata.*
>
> *The said child was injured badly at the time of admission as per report attained by R.G. Kar Hospital. Though one lady came before me along with her father as introduced and claimed that the said baby was her child. Unfortunately, neither she nor the accompanying person was able to explain*

> *any reason as to how and why the said child was placed in a drain with full of cuts and bruises as shown in the picture attached. Hence it appears that they were incapable of providing adequate protection to such a small baby and further investigations are required to ascertain their complicity in such heinous crime of inflicting near injuries on the baby and dumping it to a drain.*
>
> *In this connection we do hereby direct you to lodge an FIR with immediate Investigation to ascertain the role of the parents to decide on the safety of the child in the hands of parents. You are requested to treat this letter as my official complaint and proceed as per law to get the justice for the said child."*

In the complaint, it is mentioned that the petitioner had been in the office of the CWC and was claiming that the said child is of her but instead of making inquiry, the Chairperson made a written complaint to the police for initiation of FIR and police registered a case for the offence under Section 308/ 34 of the IPC. Prior to initiation of case, the CWC by an email directed the police to conduct DNA test and the police conducted DNA test and on receipt of report was found that the petitioner and Ritam Das are the biological mother and father of the child. After registration of case, the police has conducted investigation and found that:

> "*It is mentioned here that enquiry was continuing over the subject matter of the incident as the fact reported on 23.03.2024 at about 21.05 hrs. one Ritam Das and some local people Simla Road of came to this P.S with an injured newborn male baby for seeking police assistance for necessary medical treatment of said new born male baby. Ritam Das, claiming himself as the biological father of the new born baby, also reported that the baby was fallen from a height in an adjacent space of premises no. 26/3E, Simla Road, Kol-6.*

Immediately, they were accompanied to proceed to R.G. Kar Medical College & Hospital. In the mean while, one unmarried lady namely Asmita Poddar @ Payel Poddar arrived at the hospital and claimed herself as the biological mother of that injured new born male baby. Finally, the injured baby was admitted at S.N.C.U (OB) Gynecological Department as unknown despite of several persuasions from the reported biological patents the attending doctor refused to incorporate the particulars of the reported biological parents in hospital records to avoid any further confusion.

Thereafter, the entire fact was appraised before Child Welfare Committee. Subsequently on 09.04.24 the said new born male baby discharged from R.G. Kar Medical College & Hospital and the said baby was taken charge by SAA (ISRC) under the custody of Child Welfare Committee, Kolkata as per the direction of Chairperson Mahua Sur Roy, CWC, Kolkata. Thereafter, Asmita Poddar @ Payel Poddar and Ritam Das approached before CWC to get back their child, but CWC declined their claim. Finally, they prefer to file a Writ Petition vide W.P No. 12471 of 2024 before the Hon'ble High Court.

On 03.06.2024 Hon'ble High Court passed an order directing CWC to take steps to ascertain as to whether Asmita Poddar @ Payel Poddar and Ritam Das are the biological parents of the child in question. Thereafter, as per the direction of CWC, DNA profile have been done and sample were sent to CFSL for examination.

By this time, on the complaint of the Chairperson of CWC, a specific case vide Manicktala P.S case no. 83 Dt. 13.06.2024 U/S-308/34 IPC was initiated against the mother of the child and others During investigation visited P.O, collected the M.C and the B.H.T of the said new born male baby from R.G. Kar Medical College & Hospital, Kolkata, contacted with the locals and examined them but none was agreed to came forward to affirm the such fact. During investigation engaged source and prepared photographs of the P.O by the photographer and prepared sketch Map of P.O by the expert of a plan Maker. Served upon the notice U/S- 160 Cr.P.C to

some locals and examined them and recorded their statements.

By that time, received the DNA profile expert report from CFSL and it could be learnt that the genetic profile of the Asmita Poddar and Ritam Das are consistent as the biological parent of the said new born male baby. Accordingly, Hon'ble High Court, Calcutta was apprised and on 03.07.2024 Hon'ble Court was pleased to dispose off the writ petition with no specific order relating to hand over of the child in question. The mother of the child Asmita Poddar filed a another writ petition vide W.P.A 17147 of 2024 in the same matter and received the last order on 30.10.2024 that the matter be placed before the Hon'ble regular bench, but hearing is under process.

During further investigation, several local witnesses were examined and their statement was recorded u/s 161 Cr.P.C. Some of the witnesses also made Judicial Statement. Collected the copies of their Judicial statements and after consulted with their statements and served upon the notice U/S-91 Cr.P.C to one Pradip Ghosh to produce the video clip which he recorded from his mobile handset. In compliance with that notice Pradip Ghosh produced one Pen Drive containing the said video clip which was duly seized under proper Seizure List.

In course of investigation, it could be ascertained that there was a love affair in between Asmita Poddar @ Payel Poddar and Retam Das. They got married hiddenly without the knowledge of their respective families. As such, they continued residing at their respective previous homes. From their wedlock, Asmita Poddar @ Payel Poddar became pregnant and on 23.03.2024 Asmita Poddar @ Payel Poddar gave birth the said male baby at her residence at the 1st floor stair case space at 26/3E, Simla Road, lalabagan, P.S-Manicktala, Kolkata-6. Her mother namely Lakshmi Poddar was the head of the family and had total control over the entire family. She did not accept such type of relation and had a strong objection over this issue. Being frightened of their social reputation, she dropped the said new born baby in a narrow lane in an uneven ground adjacent of her

building in between two walls in absence of Payel Poddar in the evening on 23.03.24. As a result, the said baby received multiple cuts and bruises injuries. Meanwhile, on hearing the sound of crying of the said baby some locals Subrata Shai @ Puchu, Sourav Paul @ Rony, Pradip Ghosh and others rescued the baby from the said narrow lane in between two walls, in the meantime Ritam Das also arrived the spot and taken the rescued baby to the P.S for seeking assistance of medical treatment.

Based upon the collected materials, statement of witnesses and judicial statements, a prima facie case has been established against the Laxmi Poddar W/O- Arabinda Poddar of 45H/6, Simla Road, P.S- Manicktala, Kolkata- 6U/S- 308 IPC. Unfortunately, during the pendency of the investigation, Laxmi Poddar W/O- Arabinda Poddar of 45H/6, Simla Road, P.S- Manicktala, Kolkata-6 expired on 04.11.2024. Accordingly, collected the Death certificate and verified the authenticity of her Death certificate from the Birth and Death Register, Health Department, Kolkata Municipal Corporation, Kolkata.

Under the above circumstances, necessary order may kindly be given to close the case declaring the same as "True" u/s 308 IPC, discharging Asmita Poddar @ Payel Poddar, the mother of the child, if approved."

27. The CWC has not produced any record to say that the committee has conducted inquiry. The Committee has only relied upon three copies of newspaper wherein the claims and objections have been called for but no notices were issued either to the petitioner or to Ritam Das. Even as per request of the CWC, DNA test was conducted and the same was also within the knowledge of the CWC but have not taken into consideration.

28. Considering that above, this Court finds that the decision of the CWC with regard to declaring the child as "abandoned child" is bad and illegal and not in accordance with law.

29. Now, the issue is, how the CWC came to conclusion that the parents are incapacitated to look after the child. Section 2(14) provides for *"Child in need of care and Protection"*. Sub-Clause (v) of Section 2(14) provides that *"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 to protect the safety and well-being of the child"*.

30. In one hand, the CWC declared the child as "abandoned" and on the other hand, the Committee declared the parents as "incapacitated". The respondents have filed several reports during hearing of the case but have not produced any documents to say what are the evidence before the committee to declare the parents as incapacitated. The Committee has passed the impugned order only on the basis that the child was found from drain with several injuries and villagers have brought to the said child to the Police Station and thereafter the child was treated at the hospital. When the petitioner has contacted the CWC for custody of the child claiming that she is the biological mother, the Chairperson made a complaint to the police for registration of case and case was initiated. The committee requested the police authority for DNA test and the same was conducted and confirmed that the petitioner is the biological mother of the child but no notice was issued to the petitioner for giving an opportunity of hearing to the petitioner.

31. The petitioner has filed the writ petition and the said writ petition was contested by the CWC. In first order dated 3rd June, 2024, this Court directed the committee to take steps whether the petitioner and Ritam Das are the mother and the father of the child and if there is no dispute with regard to the parentage of the minor child, then the Child Welfare Committee, in the presence of the police, shall hand over the minor child to the petitioner. By an order dated 3rd July, 2024, this Court disposed of the said writ petition by the following order:

> *"1. It appears that the interim order passed by a learned coordinate Bench has been complied with to the extent that DNA samples have been obtained.*
>
> *2. With regard to the prayer for handing over the child, this Court is not in a position to pass such direction. The child cannot be returned to the mother at this stage in the facts and circumstances which have come to light.*
>
> *3. Learned Senior Standing Counsel, Government of West Bengal submits that a new born baby was found in the drain with serious injury. The child had been cut at various places. The police found the child and took the child to the hospital. Thereafter, the child was handed over to the Child Welfare Committee at Kolkata. The police authorities, uponmaking a preliminary enquiry have registered an FIR and the mother is an accused. It is denied that the father had taken the child to the hospital.*
>
> *4. The complicity of the mother in the offence alleged, the mental stability of the mother and whether any other person was involved in the act of causing bodily harm and injury to the baby, are required to be ascertained first. The investigation by the police authorities will reveal the truth. The child is safe with the Child Welfare Committee and it is informed that the child is recovering. Under such circumstances, the writ court should not*

interfere. It is further stated that the mother's hospital discharge papers have been tampered with, and the police authorities are not sure if they are at all genuine.

5. The law provides for a mechanism as to how the parents can approach the Child Welfare Committee (CWC) for return of the child and the petitioner will be at liberty to do so strictly in accordance with law, and at the appropriate stage, after the DNA results are available.

6. It is informed that the CWC has already been approached. The CWC will decide the prayer for return of child in accordance with law, at the appropriate stage.

7. The DNA test and return of the child, upon the child's parentage being confirmed, were directed at the interim stage when these facts, which have been brought into light before this Court, were not available. Proof of maternity alone in this case, would not entitle the mother to take back the child, as the version of the police reveal otherwise. The police investigation must proceed strictly in accordance with law and should be completed expeditiously.

8. The writ petition is, thus, disposed of.

9. There shall be no order as to costs.

10. Parties are directed to act on the basis of the server copy of this order."

The committee has taken into consideration of one of the findings of the order that *"proof of maternity alone in this case, would not entitle the mother to take back the child, as the version of police reveal otherwise".* The Committee failed to take note of the portion of the order wherein the Court has directed the CWC to decide the prayer of the petitioner for return of child in accordance with law, at the

appropriate stage. To decide the issue whether the parents/guardians/ adoptive parents are incapacitated to look after the minor, the committee has to examine the physical and mental health of the parents, substance abuse and addiction, history of neglect or abuse, environment and financial stability and criminal record or incarceration. In the present case under which circumstances, the child was found lying in a narrow lane in an uneven ground adjacent of the building in between two walls are not considered by the committee. The police report favours the petitioner but the same was not considered by the committee. The committee has neither examined the parents nor was any report called for to determine the economic conditions of the parents. The police has examined the villagers who brought the child at the police station and their statements were recorded by the police as well as by the Magistrate under Section 164 of the Cr.P.C wherein the clear picture of the incident is reflected but the committee has neither examine the said aspect neither the petitioner nor Mr. Ritam Das is given any opportunity to justify their claim.

32. Considering the above, this Court finds that before declaring the parents of the child incapacitated the Committee has not followed the due process of law and in a casual manner has passed the impugned order.

33. Now the issue of declaring the child legally free for adoption. The Committee has passed an order by declaring the child is Legally Free

for Adoption on the pretext that the parents are incapacitated and the role of the parents are under question.

34. Procedure for declaring a child Legally Free for Adoption is provided under Section 38 of the Act, 2015, which reads as follows:

> *"**38. Procedure for declaring a child legally free for adoption.— (1)** In case of orphan and abandoned child, the Committee shall make all efforts for tracing the parents or guardians of the child and on completion of such inquiry, if it is established that the child is either an orphan having no one to take care, or abandoned, the Committee shall declare the child legally free for adoption:*
>
> *Provided that such declaration shall be made within a period of two months from the date of production of the child, for children who are up to two years of age and within four months for children above two years of age:*
>
> *Provided further that notwithstanding anything contained in this regard in any other law for the time being in force, no first information report shall be registered against any biological parent in the process of inquiry relating to an abandoned or surrendered child under this Act.*
>
> ***(2)** In case of surrendered child, the institution where the child has been placed by the Committee on an application for surrender, shall bring the case before the Committee immediately on completion of the period specified in section 35, for declaring the child legally free for adoption.*
>
> ***(3)** Notwithstanding anything contained in any other law for the time being in force, a child of a mentally retarded parents or a unwanted child of victim of sexual assault, such child may be declared free for adoption by the Committee, by following the procedure under this Act.*
>
> ***(4)** The decision to declare an orphan, abandoned or surrendered child as legally free for*

adoption shall be taken by at least three members of the Committee.

(5) *The Committee shall inform [the District Magistrate,] the State Agency and the Authority regarding the number of children declared as legally free for adoption and number of cases pending for decision in the manner as may be prescribed, every month."*

35. On 23rd March, 2024, the new born baby was found lying in a narrow lane in an uneven ground adjacent to the building in between two walls with several injuries and the villagers have taken the baby to the police station and thereafter the child was shifted to hospital for immediate treatment. Since day one, the petitioner is claiming the child but due to the circumstances, the child was found in a place along with several injuries and there was no documentary evidence with regard to the identification of the parents, the hospital and the police authorities informed to the CWC. The petitioner had filed writ petition with a prayer for a direction to hand over the child to the petitioner. As per the direction of this Court, the Chairperson directed the police for DNA Test and test was conducted and proved that the petitioner is the biological mother. On the other hand, on 13th June, 2024, the Chairman made a complaint to the police for initiation of case. The complaint is made on the pretext that the petitioner went to the CWC with her father and claiming that she is the mother but she failed to explain why how the child was lying in the drain. The police-initiated case and started investigation. On completion of investigation, the police did not find that the petitioner has committed any offence on the other hand, on

completion of investigation, it is established that the mother of the petitioner has committed an offence as she has dropped the new born baby in a narrow lane in an uneven ground adjacent to her building in between two walls in the absence of the petitioner in the evening of 23rd March, 2024 as a result the baby received multiple cuts and bruises. The police have come to the specific finding which the committee had failed to do so. In the impugned order, the committee admitted that the petitioner is the mother but declares the child as "abandoned" and declares the parents as "incapacitated". As per Section 38 of the Act of 2015, the Committee shall make all efforts for tracing the parents or guardians of the child and on completion of such inquiry, if it is established that the child is either orphan or having no one to take care, or abandoned, the committee shall declare the child legally free for adoption. The first duty of the committee for tracing the parents or guardian. The petitioner is claiming herself to be the mother of the child and approached the police, the hospital authorities and the CWC. The Committee admitted that the petitioner is the mother. The committee declares the child as abandoned but before declaring the child as abandoned, no inquiry is conducted. The petitioner is not examined. When the petitioner approached the CWC with her father, the Chairperson made complaint against the petitioner for initiation of case but the result of the police investigation is otherwise.

The second proviso of Section 38 provides that notwithstanding anything contained in this regard in any other law for the time being in

force, no first information report shall be registered against any biological parent in the process of inquiry relating to an abandoned or surrendered child under this Act. In the present case, the CWC instead of making an inquiry initiated a case against the petitioner. After initiating FIR, against the petitioner, CWC declared the child as abandoned, the parents as incapacitated and declared the child legally free for adoption. Section 36 provides inquiry. Sub-Section (2) of Section 36 provides for social investigation but in the present case, there is no social investigation report is obtained by the committee.

36. This Court finds that the CWC has not followed the procedure in accordance with the Act of 2015 and have also not provided any opportunity of hearing to the petitioner before declaring the child as abandoned, declaring the parents as incapacitated and the child free for legal adoption.

37. Mr. Chakraborty has relied upon the following judgments:

(i) Geeta Dattatray Achari vs. State of Maharashtra & Ors. reported in ***2026 SCC OnLine Bom 606.***

(ii) Dasari Anil Kumar & Another vs. Child Welfare Project Director and Others. *reported in* ***2025 SCC OnLine SC 1689.***

(iii) K. Heerajohn vs. District Registrar, Madurai District and Another *reported in* ***2025 SCC OnLine Mad 9155.***

(iv) Leelendra Deju Shetty & Anr. Vs. State of Maharashtra & Ors. reported in 2024 SCC OnLine Bom 2363.

(v) Temple of Healing vs. Union of India *reported in* ***2023 SCC OnLine SC 1590.***

38. No dispute with regard to the proposition of law that while taking decision regarding custody or other issue pertaining to child, welfare of the child is of paramount consideration. In the present case, the committee has not examined the parents though the committee admitted that the petitioner is the mother and Ritam Das is the father. The Committee has also not called for any social status report of the petitioner. The Committee has not considered mental stability, ability to provide access to school, moral character, ability to provide continuing involvement in the community, financial sufficiency and the factors involving relationship with the child.

39. This Court has issued notices to the adoptive parents but inspite of receipt of notice, none appeared on behalf of the adoptive parents.

40. Considering the facts and circumstances mentioned above, the decision of the Child Welfare Committee dated 18th November, 2024, is set aside and quashed and consequently, all actions with respect to the custody of the minor, is also set aside and quashed in terms of the order dated 18th November, 2024.

41. The adoptive parents are directed to surrender the child to the CWC, Kolkata, on or before 7th August, 2026 and the CWC, Kolkata, is directed to place the child to SAA immediately, till the fresh inquiry is completed. The CWC, Kolkata, shall conduct a fresh inquiry in

accordance with law by giving an opportunity of hearing to the biological parents and also to call for report from the Investigating Agency and to pass an appropriate order in accordance with law within a period of four (4) weeks from the date of receipt of this order.

42. **WPA No. 24620 of 2025** is **allowed**. Accordingly, **CAN No. 1 of 2026** is **disposed of**.

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)

Later:

Learned Counsel appearing for the CWC prayed for stay of the operation of the judgment. Learned Counsel for the petitioner has raised objection. Considering the submission made by the Learned Counsel for the parties, prayer for stay is refused.

(Krishna Rao, J.)