

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
JUSTICE SUJOY PAUL**

ON THE 30th OF NOVEMBER, 2022

CIVIL REVISION NO.433 OF 2022

**1. MATRACHHAYA SHISHUGRAH AT
MATRACHHAYA BHAWAN, AIRPORT
ROAD, BEHIND MAITRI PARK,
PRIYADARSHINI NAGAR, GALI NO.7,
UTAILI, SATNA (MP) – 485001,
THROUGH ITS SOCIAL WORKER
SHRI SATYANARAYAN DAHAYAT,
AGED ABOUT 29 YEARS, S/O SHRI
GANESH PRASAD DAHAYAT.**

....APPLICANT

**2. PUSHKER SRIKER RAO, S/O SHRI
SRIKER ANANTHAYYA RAO
KHAMBADKONE, AGED ABOUT 41
YEARS, R/O 12462, BLISSFUL VALLEY
DRIVE, FAIRFAX, VIRGINIA 22033,
USA**

**3. SHREYA SATYENDRA KALBAG,
W/O PUSHKER SRIKER RAO, AGED
ABOUT 40 YEARS, R/O 12462,
BLISSFUL VALLEY DRIVE, FAIRFAX,
VIRGINIA 22033, USA**

**Through power of attorney : Pradeep
Saxena**

**....APPLICANT/ PROSPECTIVE
ADOPTIVE PARENTS**

(BY SHRI VIJAY SHANKAR PANDEY - ADVOCATE)

***(SHRI ANKIT AGRAWAL – GOVERNMENT ADVOCATE PRESENT
IN THE COURT HAS ASSISTED THE COURT)***

This revision coming on hearing this day, the Court passed the following :

ORDER

This is a matter relating to inter-country adoption of a surrendered child. This revision filed under Section 102 of **Juvenile Justice (Care and Protection of Children) Act, 2015** (in short, '**J.J. Act**') challenges the impugned order dated 27.07.2022 passed by Court below in Case No.MJCGW 11-2022.

2. The court below rejected the application filed by the applicant No.1 and declined to issue adoption order in favour of applicant Nos.2 and 3. It is averred in the present revision that India and USA are signing members of Hague Convention on Protection of Children and Co-operation in respect of Inter-country Adoptions, 1993. India, in turn, framed its own law regarding inter-country adoptions namely J.J. Act, 2015, J.J. Rules, 2016 and **Adoption Regulations, 2017** (Regulations).

3. Central Adoption Resource Authority (CARA) is the statutory body under the JJ Act responsible for regulating the adoptions both within India and inter-country adoptions.

4. It is averred that the applicant Nos.2 and 3 are Prospective Adoptive Parents (PAPs) opted to adopt a girl child at the Child Adoption Resource Information and Guidance System (CARINGS) on 07.11.2021.

After receiving NOC dated 02.3.2022 by CARA and after obtaining letter of US Government dated 27.1.2022, the PAPs were expecting that adoption order will be issued in their favour. The medical, psychological and financial eligibility of PAPs were duly ascertained by respective Authorities and Agencies of USA and CARA and necessary NOCs were issued. A true copy of the Apostilled Article 5 Letter is filed with this revision as Annexure A/2. True copy of NOC dated 02.3.2022 issued by CARA is filed as Annexure A/3.

5. The bone of contention of Shri Vijay Shankar Pandey, learned counsel for the applicant is that Section 61 of JJ Act is a complete Code in itself. All statutory formalities as envisaged in Section 61 r/w Regulation 7 were taken care of by statutory bodies/agencies. After having verified the eligibility and suitability of applicant Nos.2 and 3 in all respect, NOC was issued by CARA. Learned Court below in para-7 of the impugned order opined that no documentary evidence is filed to show that as per Section 59(1) of JJ Act, despite all efforts, no Indian parents could come forward to adopt the child. The finding of Court below that child was not declared legally free for inter-country adoption is perverse in nature. Lastly, it is argued that Court below has given certain findings in para-11 and 12 of the impugned order which runs contrary to the record and Section 61 of JJ Act which prescribes the parameters on the strength of which Court needs to examine the aspect of issuance of adoption order.

6. Shri Ankit Agrawal, learned counsel assisted the Court and drawn attention of the court on the report prepared by District Programme

Officer, Department of Women & Child Development, District Satna dated 10.11.2022. He urged that the said report is pregnant with relevant facts and details of relevant documents and is filed in obedience of this Court's order dated 14.10.2022. It is common ground that Court below has committed an error in passing the impugned order.

7. Learned counsel confined their arguments to the extent indicated hereinabove.

8. Learned counsel were heard at length and record was perused.

9. Before dealing with the aforesaid contentions, it is apposite to reproduce the relevant sections and regulations. Relevant provisions of Sections 59 and 61 of the J.J. Act reads as under :-

“59. Procedure for inter-country adoption of an orphan or abandoned or surrendered child.-

(1) If an orphan or abandoned or surrendered child could not be placed with an Indian or non-resident Indian prospective adoptive parent despite the joint effort of the Specialised Adoption Agency and State Agency within sixty days from the date the child has been declared legally free for adoption, such child shall be free for inter-country adoption:

Provided that children with physical and mental disability, siblings and children above five years of age may be given preference over other children for such inter-country adoption, in accordance with the adoption regulations, as may be framed by the Authority.

(2) An eligible non-resident Indian or overseas citizen of India or persons of Indian origin shall be given priority in inter-country adoption of Indian children.

(3) A non-resident Indian or overseas citizen of India, or person of Indian origin or a foreigner, who are prospective adoptive parents living abroad, irrespective of their religion, if interested to adopt an orphan or abandoned or surrendered child from India, may apply for the same to an authorised foreign adoption agency, or Central Authority or a concerned Government department in their country of habitual residence, as the case may be, in the manner as provided in the adoption regulations framed by the Authority.

(4) The authorised foreign adoption agency, or Central Authority, or a concerned Government department, as the case may be, shall prepare the home study report of such prospective adoptive parents and upon finding them **eligible**, will sponsor their application to Authority for adoption of a child from India, in the manner as provided in the adoption regulations framed by the Authority.

(5) On the receipt of the application of such prospective adoptive parents, the Authority shall examine and if it finds the applicants **suitable**, then, it will refer the application to one of the Specialised Adoption Agencies, where children legally free for adoption are available.

(6) The Specialised Adoption Agency **will match a child with such prospective adoptive parents**

and send the child study report and medical report of the child to such parents, who in turn may accept the child and return the child study and medical report duly signed by them to the said agency.

(7) On receipt of the acceptance of the child from the prospective adoptive parents, the Specialised Adoption Agency shall file an application in the Court for obtaining the adoption order, in the manner as provided in the adoption regulations framed by the Authority.

(8)

(9)

(10)

(11)

(12)”

(Emphasis Supplied)

Section 61 of the J.J. Act prescribes procedure for the Court and reads as under :

“**61.** (1) Before issuing an adoption order, the Court shall satisfy itself that —

(a) the adoption is for the welfare of the child;

(b) due consideration is given to the wishes of the child having regard to the age and understanding of the child; and

(c) that neither the prospective adoptive parents has given or agreed to give nor the specialised adoption agency or the parent or guardian of the

child in case of relative adoption has received or agreed to receive any payment or reward in consideration of the adoption, except as permitted under the adoption regulations framed by the Authority towards the adoption fees or service charge or child care corpus.

(2) The adoption proceedings shall be held *in camera* and the case shall be disposed of by the Court within a period of two months from the date of filing.”

(Emphasis Supplied)

Regulation 7 and relevant clauses read thus :-

“7. Procedure relating to a surrendered child -

(1) A parent or guardian wishing to surrender a child under subsection (1) of section 35 of the Act, shall apply to the Child Welfare Committee in the Form 23 of Juvenile Justice (Care and Protection of Children) Model Rules, 2016.

(2)

(3) The Deed of Surrender shall be executed as per Schedule V.

(4)

(5) If a child born to a married couple is to be surrendered, both parents shall sign the Deed of Surrender and in case one of them is dead, death certificate is required to be furnished in respect of the deceased parent.

(6)

(7)

(8)

(9) The Specialised Adoption Agency and the Child Welfare Committee shall ensure that a copy of the Deed of Surrender is given to the surrendering parents or person.

(10) The details of the child along with his photograph shall be entered online in the Child Adoption Resource Information and Guidance System by the Specialised Adoption Agency within three working days from the time of receiving the child.

(11)

(12) The Specialised Adoption Agency and the Child Welfare Committee shall ensure that the surrendering parents or the legal guardian is made aware that they can reclaim the surrendered child only within a period of sixty days from the date of surrender.

(13)

(14) No public notice or advertisement shall be issued in the case of a surrendered child.

(15) In case the surrendering biological parent has not claimed back the child during the reconsideration period, the same shall be intimated by the Specialised Adoption Agency to the Child Welfare Committee on completion of sixty days from the date of surrender.

(16) The reconsideration period for the biological parents is specified in subsection (3) of section 35

of the Act and no further notice shall be issued to the surrendering parents.

(17) The Child Welfare Committee shall issue an order signed by at least three members declaring the surrendered child as **legally free** for adoption after the expiry of sixty days from the date of surrender, in the format at Schedule I.

(18) The Child Study Report and Medical Examination Report of the surrendered child shall be prepared and posted in the Child Adoption Resource Information and Guidance System by the Specialised Adoption Agency, within ten days from the date the child is declared legally free for adoption, in the format at Schedule II and Schedule III of these Regulations respectively.

(19) The Child Study Report and Medical Examination Report shall be made available in English (apart from the local language) and the District Child Protection Unit shall facilitate the Specialised Adoption Agency in uploading the Child Study Report and Medical Examination Report in Child Adoption Resource Information and Guidance System, in case the Specialised Adoption Agency is facing any technical difficulty.

(20)

(21)

(22)

(23)”

(Emphasis Supplied)

10. A conjoint reading of Section 61 and Regulation 7 leaves no room for any doubt that same is a complete Code which prescribes procedure for inter-country adoption of an orphan or abandoned or surrendered child. Indisputably, CARA is an 'Authority' within the meaning of Section 2 (7) of JJ Act.

11. The report of District Programme Officer dated 10.12.2022 gives details of admitted facts :-

- (a) The date of birth of the child is 01.5.2021.
- (b) The child was surrendered before the Child Welfare Committee (CWC), Satna in the presence of their biological parents on 08.5.2021.
- (c) In turn, the child was admitted in Satna Sewa Bharti, Satna on 12.5.2021.
- (d) On 12.5.2021 itself, details and photographs of child were entered in the prescribed portal of CARA.

12. The above report further shows that the parents of surrendered child were given 60 days time for reconsideration of their decision to surrender the child. No claim was made by the said parents during the said period. Hence, as per Regulation 7(15), (16) and (17), the CWC by order dated 30.7.2021 Annexure A/4 declared the child as legally free. It is averred in the report that as per Regulation 7(14), no public notice or advertisement shall be issued in the case of surrendered child. The Satna Sewa Bharti uploaded the medical report and child study report in the portal of CARA on 03.8.2021. After following 'due process', the said child was reserved for applicant Nos.2 and 3 on 07.11.2021. The CARA

after satisfying itself in all respect issued NOC on 02.3.2022. Thereafter, application was filed before the Court below for issuance of adoption order. By impugned order dated 27.7.2022, the Court below has rejected the said prayer. The Court below framed two issues for its determination :-

- “1. क्या उक्त बालिका मेघा जन्मतिथि 01.05.2021 जो आवेदक संस्था मातृछाया की देखरेख और अभिरक्षा में होकर दत्तकग्रहण के लिये अधिकृत रूप से निर्मुक्त घोषित है, को भावी माता-पिता नागरिक यू.एस.ए. विरजकिया को अंतर-देशीय दत्तकग्रहण में पाने की पात्रता है?
2. क्या उक्त बालिका का भावी दत्तक माता-पिता को अंतरदेशीय दत्तक में दिया जाना उसके सर्वोत्तम हित में होकर कल्याण में है?”

13. In para-7 of the impugned order, it is held that as per Section 59(1) of the JJ Act, for inter-country adoption, a child must be declared as legally free. No document is produced in evidence before the Court below to show that after surrendering the child by her parents and within 60 days therefrom, the child could not be placed with Indian Prospective Parents. In para-11 and 12 of the impugned order, the Court below reiterated the same finding and in addition, opined that it will not be in the best interest of child if she is handed-over to applicant Nos.2 and 3. For this purpose, the court below considered evidence of power of attorney holder of applicant Nos.2 and 3.

14. Section 59(1) of JJ Act in no uncertain terms prescribes the complete procedure for inter-country adoption of a child. Sub-section (4)

of Section 59 makes it obligatory for CARA to prepare the home study report of such PAPs and upon *finding them eligible*, sponsor their application to Authority for adoption of a child from India in a prescribed manner.

15. Sub-section (5) of Section 59 casts a duty on CARA to examine the application of PAPs and *after finding them suitable*, refer their application to Specialized Adoption Agency where child legally free for adoption is available.

16. A combined reading of sub-section (4) and (5) and Section 59 of JJ Act, makes it clear that it is the statutory body namely CARA which is required to examine the aspects of ‘eligibility’ and ‘suitability’ of adoptive parents. Indisputably, CARA has undertaken the aforesaid statutory exercise. The relevant documents which throw light in this regard were placed on record before the Court below.

17. Section 61 prescribes the parameters on the strength of which the decision to issue the adoption order is to be taken by the Court. The legislative intent in prescribing Section 59 of JJ Act is to ensure that an independent statutory body examines ‘eligibility’ and ‘suitability’ of PAPs. Various aspects were required to be gone into by CARA while deciding the ‘eligibility’ and ‘suitability’ of PAPs which includes their financial capacity, home study report and other capabilities. The Court below has not given any finding to disbelieve the satisfaction recorded by CARA relating to ‘eligibility’ and ‘suitability’ of applicant Nos.2 and 3.

18. Sub-section (6) of Section 59 prescribes that specialized agency will match a child with such PAPs and send the child study report and medical report of the child to such parents, who in turn, may accept the child. Sub-section (7) provides that on receipt of acceptance of the child from PAPs, Specialized Adoption Agency shall file an application in the Court for obtaining adoption order. It is nobody's case that aforesaid statutory formalities were either not taken care of or were lacking in any manner. In other words, there is no procedural impropriety or lack of finding on the strength of which it can be said that adoption is not in the best interest of child. The relevant parameters to ensure welfare of child are taken care of by all statutory agencies namely CARA and Specialized Adoption Agency. Thus, in my judgment, the Court below has committed an error in holding that adoption is not in the best interest of the child.

19. Hence, the finding given in para-7 of the impugned order cannot sustain judicial scrutiny for the simple reason that in the teeth of Regulation 7(14), no public notice or advertisement was required to be issued in the case of a surrendered child. Thus, no documents were required to be filed showing that efforts were made by issuing public notice or advertisement within the said period of 60 days within which the original parents could have re-claimed their child. The record shows that there is no procedural flaw in issuance of 'legally free certificate' of child dated 30.7.2021 Annexure A/4. The said certificate was issued by Child Welfare Committee, Satna in exercise of power conferred from JJ Act and regulations made thereunder.

20. In view of the foregoing analysis, in the considered opinion of this Court, the Court below has erred in passing the order dated 27.7.2022 and declining issuance of adoption order. Resultantly, the impugned order dated 27.7.2022 is set aside. Court below is directed to issue adoption order forthwith. Registry of this Court shall communicate this order to the Court below forthwith.

21. Revision is **allowed**.

(SUJOY PAUL)
JUDGE

PK