

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.771 of 2018

In

CIVIL MISCELLANEOUS JURISDICTION No.36 of 2018

Seema Kumari, D/o S.M. Patel resident of C-83, Krishna Apartment Boring Road, P.S. & P.O.-S.K. Puri, District-Patna, Co-ordinator cum Adoption Incharge of Prayas Bharti Trust, a society duly registered under Society Registration Act, 1860 having its registered office at Hem Plaza, Fraser Road, Patna-800001.

... .. Appellant/s

Versus

1. Mr. Alemanni Enzo Cristian, s/o Alemanni Calogero, resident of via Carlo Plutarco, 53-00012 Guidonia Montelcelio (RM), Italy.
2. Mrs. Motta Alessandra, wife of Alemanni Enzo Cristian, resident of via Carlo Plutarco, 53-00012 Guidonia Montelcelio (RM), Italy.

... .. Respondent/s

with

Miscellaneous Appeal No. 772 of 2018

In

CIVIL MISCELLANEOUS JURISDICTION No.2188 of 2017

Seema Kumari, D/o S.M. Patel resident of C-83, Krishna Apartment Boring Road, P.S. & P.O.-S.K. Puri, District-Patna, Co-ordinator cum Adoption Incharge of Prayas Bharti Trust, a society duly registered under Society Registration Act, 1860 having its registered office at Hem Plaza, Fraser Road, Patna-800001.

... .. Appellant/s

Versus

1. Mr. Serge Jeambenoit, s/o Jeambenoit, resident of Lotissement rive du sayet, 74 370 METZ-TESSY, FRANCE.
2. Mrs. Catherine Chantal Perrissin Pabert ep. Jeambenoit, wife of Serge Jeambenoit, resident of Lotissement rive du sayet, 74 370 METZ-TESSY, FRANCE.

... .. Respondent/s

Appearance :

(In Miscellaneous Appeal No. 771 of 2018)

For the Appellant/s : Ms. Chhaya Kirti, Adv.
Mr. Saket Anand, Adv.
Mr. Neel Nikhar, Adv.

For the Respondent/s : Mr. Sunil Dutta Mishra, Secretary, BSLSA.

(In Miscellaneous Appeal No. 772 of 2018)

For the Appellant/s : Ms. Chhaya Kirti, Adv.
Mr. Saket Anand, Adv.
Mr. Neel Nikhar, Adv.

For the Respondent/s : Mr. Sunil Dutta Mishra, Secretary, BSLSA.



CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)
Date : 11-12-2018

Heard Ms. Chhaya Kirti, learned counsel appearing for the appellant(s) and on our request Mr. Sunil Dutta Mishra, Secretary, Bihar State Legal Services Authority, Patna has provided assistance as amicus curiae to enlighten the issue as well as the papers that accompany the present appeal which arises out of an order passed by the learned Principal Judge, Family Court at Patna refusing to allow inter-country adoption inter alia on grounds that the statutory age as provided under Regulation 5 of the Adoption Regulations, 2017 and that the period provided under Section 59 allowing 60 days time before any such process could be started was not strictly followed.

2. We have heard learned counsel appearing for the appellant(s) and since it is non-adversarial litigation, there is no respondent and we have also considered the submissions of Mr. Mishra appearing as amicus curiae in the present appeal.

M.A. No.771 of 2018

3. In this Miscellaneous Appeal, a prayer has been made to set aside the judgment and order dated 21st November,



2017 passed by the learned Principal Judge, Family Court, Patna in Misc. Adoption No.34 of 2016 by which the application preferred by the present appellant under Section 41 of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006 (hereinafter referred to as the 'Act of 2006') for adoption order with respect to the female minor 'S' (we are not giving complete name of the child to avoid disclosure of her identity) born on 29.08.2014 has been rejected. The appellant has also prayed for allowing her application and that the proposed adoptive parents be allowed to take away the child.

4. Certain facts are not in dispute. The appellant is a Co-ordinator-cum-Adoption Incharge of one Prayas Navjeevan, Prayas Bharti Trust, a government recognized adoption agency. The Child 'S' was born on 29.08.2014. She was abandoned by her mother and subsequently brought before the organization of the appellant through Danapur police station on 31.08.2014. Since the efforts to find her parents failed the child was declared free for adoption. The child- 'S' was placed on site of the Central Adoption Resources Authority (in short 'CARA'). No Indian or Non-Resident Indian offered to adopt the child. The Prospective Adoptive Parents in this case are foreigners who are permanently residing in Italy.



5. The CARA being a statutory body having sanction of law, in exercise of its power conferred by Section 68(c) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the 'Act of 2015'), framed Adoption Regulations which was revised in 2015 and now w.e.f. 4th January, 2017, Regulations 2017 has into force. Section 68 of the Act of 2015 read with Regulation 37 of the Adoption Regulation 2017 provides the functions in cases of inter-country adoptions. In course of her argument Ms. Chhaya Kirti, learned advocate representing the appellant has drawn our attention towards the documents available on the record before the learned court below. It is pointed out that this appellant has made statements on oath by filing an affidavit in the court below saying that the institution was unable to find out adoptive parents in India for 'S' but as her name had been published on CARA's Caring Site as child and from the said site Prospective Adoptive Parents adopted her. The proposed adoptive parents are from Italy. The State Adoption Resource Authority (in short 'SARA') has given adoption recommendation certificate for the said adoption which is also filed with the affidavit. The CARA, New Delhi has issued No Objection Certificate to this adoption and the same has been filed.



6. It is further pointed out that the proposed adoptive parent no.1 Mr. 'A' is aged about 46 years and proposed adoptive parent no.2 Mrs. 'M' is aged about 40 years who is the wife of proposed adoptive parent no.1, and are residents of Italy. Their marriage was solemnized on 11.09.2004. Out of there marriage, they had no child and they are medically fit to be adoption parents. The proposed adoptive parents have executed on oath a declaration and undertaking of willingness to take the said minor child in adoption. The affidavit also points out the annual gross income/earning of the proposed adoptive parents. It is stated that as per the Adoption Regulation, 2017 Home Study Report (in short 'HSR') of the proposed adoptive parents has been prepared by Dr. Paulon Nico, a social worker and Doctor Signoriello Marica, Psychologist of Associazione "I Bambini Dell, Arcobaleno, Bambarco Onlus", Italy. The said 'HSR' has been accepted and sponsored by the Foreign Adoption Agency. They have recommended proposed adopter as suitable adoptive parents. The foreign sponsoring agency of Italy is recognized by CARA, Ministry of Social Justice and Empowerment, Government of India, New Delhi, India and the Foreign Adoption Agency has given mandatory undertaking



which inter alia states and undertakes to send progress reports of the said child and to find a suitable alternative placement for the child in case of disruption of the adoptive family, some responsible persons are said to have issued certificates certifying about good fitness, moral and financial situation of proposed adoptive parents to adopt the child as their own child.

7. The appellant has also come out on affidavit saying that the proposed adoptive parents have seen the photograph of the child and have undergone through the child study reports and medical reports and have signed the physical examination report of the said child. It is stated in the affidavit that the proposed adoptive parents have fully accepted the female child- 'S' and it would be in the interest and welfare of the said child that the proposed adoptive parents be permitted to take the child- 'S' and for this appellant may be permitted to give the said child in adoption to the proposed adoptive parents.

Impugned Judgment

8. Learned counsel has taken us through the contents of the impugned judgment of the learned Principal Judge, Family Court, Patna passed in Miscellaneous Adoption No.34 of 2016. The application preferred by the present appellant has been rejected by the impugned judgment mainly on grounds; (i)



that the Exhibit 16/A shows that the date of birth of the proposed adoptive parent no.1 is 01.12.1968 so on the date of parent's registration i.e. 01.07.2015 the actual age of parent no.1 comes to 46 years 07 months 00 days which is beyond the criteria provided by CARA in terms of sub-section (5) of Section 57 of the Act of 2015 read with para 2.2.4 (f) of the Bench Book and Regulation 5 of the Adoption Regulation 2017, (ii) the procedure defined under Section 59 of the Act of 2015 that " 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 Specialized 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.....",has not been followed. According to the learned court below no chit of paper has been filed in this connection showing the fulfillment of procedure and steps taken by the Agency as prescribed in the aforesaid provisions for inter-country adoption of the orphan or abandoned or surrendered child. The learned court below has found on perusal of the case records (Ext.2) that in this case child 'S' was declared legally free for adoption on 18.06.2015 while the proposed adoptive parents in this case were registered



for adoption on 01.07.2015 which according to the learned court below indicates the intention of the Agency and violation of the statutory provisions of sixty days envisaged under Section 59 of the Act of 2015 and (iii) As per Clause 5.3.3 of the Bench Book for adoption issued by 'CARA' minutes of Adoption Committee for matching the child/children with proposed adoptive parents should be attached with the application as per Schedule XXVII of Adoption Regulation 2017 but in this case no such minute of the Adoption Committee is attached with the adoption application filed by the petitioner.

(iv) Regarding General Power of Attorney (Ext.9), the learned court below has taken a view that the general power of attorney (Ext.9) has been given in favour of the Ms. Seema Raj to attend the matter in own person in Patna as the proposed adoptive parents are not in a position to do such themselves, but no parentage or address details of Seema Raj has been mentioned in the general power of attorney so it could not be proper to consider any person as power attorney holder in absence of his or her parentage and address.

(v) No paper has been filed or exhibited regarding the residential address of the proposed adoptive parents which is mandatory as per provision of law prescribed in the Act of 2015.



Submissions of the Appellant

9. Ms. Chhaya Kirti, learned counsel has assailed the impugned judgment on the grounds inter alia that in the present case on 31.08.2014 the infant girl child was found lying opposite Danapur Block at Danapur, Patna. She was received by the team member of childline, Patna and after medical treatment she was sent at Prayas Bharti Trust, Specialised Adoption Agency for her care and protection. The child was named as 'S' of about two days of age. In compliance of Section 31 of the Act of 2015, the said child was produced before the Child Welfare Committee, Patna and a letter informing the Child Welfare Committee (in short 'CWC') was given in this regard by Specialized Adoption Agency (in short 'SAA'). Thereafter in compliance of Para 6(10) of the Guidelines Governing Adoption of Children, 2015 (hereinafter referred to as the 'Guidelines of 2015'), the SAA filed an application before the CWC, Patna seeking a declaration for legally free adoption in respect of the said child. The CWC, Patna declared the child- 'S' legally free for adoption vide its order dated 18.06.2015 and a certificate to that effect was issued in terms of para 6(12) of the Guidelines of 2015. Further as required in para 6(14) of the Guidelines of 2015, the SAA prepared the Child Study Report (CSR) and



Medical Examination Report (MER) of the child for facilitating her adoption.

10. It is further submitted that the prospective adoptive parents got themselves registered through proper channel for adoption of a child as per Para 16 of the Guidelines of 2015. Their Home Study Report was prepared by Dr. Paulon Nico, Social Worker and Dr. Signoriello Marica, Psychologist. The child was registered in the centralized adoption portal of CARA and was later accepted and approved by the proposed Adoptive Parents on 03.11.2015 for her adoption. The acceptance letter dated 03.11.2015 has been marked as Annexure-3 to the present appeal. It is further submitted that on perusal of all the relevant documents relating to the child and proposed adoptive parents, 'CARA' has issued a 'No Objection Certificate' on 26.02.2016 in terms of Section 17 of the Guidelines of 2015 which is in consonance with Article 17(c) of the Hague Convention. It is in this background that in compliance of Section 59(7) of the Act of 2015 read with Para 18(1) of the Guidelines of 2015 an application was filed before the learned court of Principal Judge, Family Court, Patna for declaration or appointment of Foreign Prospective Adoptive Parents as adoptive parents of the girl child - 'S'. Learned



counsel has placed reliance upon a learned Single Judge decision of this Court in Civil Miscellaneous Jurisdiction No.395 of 2017 vide judgment dated 04.04.2017, a copy of which has been placed at Annexure-4 to the present appeal. Attention of this Court has been drawn towards the preamble of the Act of 2015 which has been taken note of by the learned Single Judge in the judgment (Annexure-4) which we gainfully hereunder:-

“At this juncture it would be apposite to take into notice the preamble of the J.J. Act, 2015 precisely stipulating the object and the purpose of the Act emphasizing ‘adopting the child friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established hereunder’. Further Section 40 of the J.J. Act, 2015 also recognizes that the restoration and protection of the child being the prime objective of any Specialized Adoption Agency will include restoration of such child to adoptive parents.”

11. It is submitted that the learned Principal Judge has committed grave error in taking a view about the eligibility criteria for adoption by the proposed adoptive parents. Our attention has been drawn towards sub-Section (5) of Section 57 of the Act of 2015. Clauses 4 and 5 thereof have been placed



before us which read as under:-

“5(4). The age of prospective adoptive parents, as on the date of registration, shall be counted for deciding the eligibility and the eligibility of prospective adoptive parent to apply for children of different age groups shall be as under:

<i>Age of the child</i>	<i>Maximum composite age of prospective adoptive parents (couple)</i>	<i>Maximum age of single prospective adoptive parent</i>
<i>Upto 4 years</i>	<i>90 years</i>	<i>45 years</i>
<i>Above 4 and upto 8 years</i>	<i>100 years</i>	<i>50 years</i>
<i>Above 8 and upto 18 years</i>	<i>110 years</i>	<i>55 years</i>

5(5). In case of couple, the composite age of the prospective adoptive parents shall be counted.”

12. It is submitted that from the aforesaid provisions it is clear that the composite age of the parents shall be counted and the composite age of the couple has to be 90 years for adoption of child upto four years. It is submitted that in the present case, the composite age of the parents as on the date of registration comes as 86 years 5 months which undoubtedly makes the proposed adoptive parents eligible for adoption of child- ‘S’.

13. Regarding the second ground taken by the learned Principal Judge, learned counsel submits that in the present case documents showing proper compliance of the procedure are



available on the record. No Objection Certificate issued by the CARA is very much available on the record and a perusal thereof would show that such certificate is issued by CARA only after a detail scrutiny of all the documents with respect to the child and parents. So far as the child- 'S' is concerned, being special need child she was opened for reference outside India only after no Indian parent chose to accept her within fifteen days which is permissible under Proviso to Regulation 48 of the Regulation 2017 framed by CARA. It is submitted that the learned Principal Judge has erred in finding that the minutes of Adoption Committee was not attached as the same is only followed and required in case of in-country adoptions. It is submitted that the learned Principal Judge did not adopt the doctrine of *Parens Patriae* while deciding the petition and could not take into account the best interest of the child as envisaged in Section 3(iv) and Section 61(1)(a) of the Act of 2015 as have been reiterated by the Hon'ble Supreme Court in its Judicial Pronouncements in the case of **Stephanie Joan Becker Vs. State and Others** reported in (2013) 12 SCC 786.

14. It is submitted that the learned Principal Judge should not have rejected the power of attorney on mere procedural lacuna as every document is not required to be



mandatorily containing the name of the parents and in the present case where the identity of the applicant/appellant is not in dispute as she is the coordinator of the Prayas Bharti Trust and has sworn an affidavit to that effect, the learned Principal Judge was not justified in rejecting the application taking this into consideration. It is further submitted that in any case if at all the learned Principal Judge was of the view that the power of attorney containing the name of the applicant is required, an appropriate opportunity should have been given to the applicant to produce a fresh power of attorney.

15. Regarding the residential address of the proposed adoptive parents, learned counsel submits that in case of inter-country adoption, the No Objection Certificate from CARA is a mandatory requirement under the Regulations, 2017 and while issuing such certificate the CARA thoroughly examines the documents such as Home Study Reports of the Proposed Adoptive Parents, Medical reports, Certificate and Undertaking made by the Foreign Authority, therefore in the present case there was no issue with regard to the residential address of the proposed adoptive parents.

Submissions of the Member, Secretary, Bihar State Legal Services Authority

16. Mr. Sunil Dutta Mishra, Secretary, Bihar State



Legal Services Authority has assisted us, however, in course of hearing, he could not take any serious objection against the appellant.

CONSIDERATION

17. We have perused the records which have been received from the court below. On record, we find a copy of the order passed by the CWC, Patna, Bihar on 18.06.2015 constituted in terms of Section 29 of the Act of 2000 read with Rule 33(3)(d) of the Rules relating thereto. By this order the child- 'S' was declared legally free for adoption. This document has been marked as Ext.2 in the court below. Similarly the Child Study Report (CSR) is Ext.3, Medical Examination Report (MER) of the child is Ext.4 and No Objection Certificate dated 26.02.2016 issued by CARA which is an autonomous body under the Ministry of Women & Child Development, Government of India, is Ext.5. It's No Objection Certificate shows that the Foreign Adoption Agency is authorized by the CARA and the Specialized Adoption Agency (Prayas Bharati Trust, Patna, Bihar) is also recognized by the State Government to place children in Adoption. Certain terms and conditions attached to the NOC are also enclosed therewith and one of the terms and conditions reads as under:-

*“(viii) The concerned Authorized
Foreign Adoption Agency/Government
Department/Central Authority/Indian*



Diplomatic Mission in the receiving country will take the responsibility in the case of disruption in the adoption of the child as laid down in the Guidelines 'Governing Adoption of Children-2015' and Article 21 of the Hague Convention, as the case may be."

18. On record, we also find there is a Child Study Report (CSR) said to have been prepared by SAA and authenticiated certificate dated 3rd November, 2015 issued by Mrs. Tomasella Marisa acting as legal representative of "I Bambini Dell'Arcobaleno-Bambarco ONLUS", based in Longarone (BL) via Roma 36/a, licensed by decree no.15/2000/AE/AUT CC of 13.09.2000 of the Commission for Inter-country Adoptions for pursuing all actions and procedures connected with inter-country adoption. There are other documents such as Child Approval, Child Proposal Form, Declaration of willingness and general power of attorney whereunder the proposed adoptive parents have appointed/nominated/constituted Ms. Seema Raj as their lawful constituted attorneys to do the given acts and deeds. This document is also an authenticated document and has been exhibited as Ext.-9. Ms. Seema Raj has sworn an affidavit giving her full identity. The Foreign Adoption Agency is recognized by the CARA is also proved from the authorization certificate (Ext.G). There is also a Home Study Report (HSR) of



the proposed adoptive parents prepared by the Foreign Adoptive Agency which is marked as Ext.H/Ext.-13. A perusal of the HSR would show that complete address of both the proposed adoptive parents, name and address of their employer and their respective annual income are stated therein. The description of the house and neighbourhood has also been provided in the HSR.

19. On a careful perusal of the materials available on the record, we find that the learned Principal Judge, Family Court, Patna has clearly erred in rejecting the application in the present case. We are in agreement with the submissions of the learned counsel for the appellant that the rejection of the application on the ground that the proposed adoptive parent no.1 is aged about 46 years and 7 months is contrary to the legal requirement. In the present case, the composite age of both the proposed adoptive parents is 86 years and 5 months as on the date of their registration with the CARA, if it is so in terms of Clause 5 of Regulation 5 of the Adoption Regulations 2017 which has come in force during pendency of the application read with Section 57 (5) of the Act of 2015 it will be the composite age of the couple which shall be counted. In such a case, the composite age comes well within the 90 years of age



and therefore no fault may be found with this adoption on this ground alone.

20. We further find that the learned court below is not correct in saying that the procedure defined under Section 59 of the Act of 2015 has not been followed in the present case. According to sub-section (1) of Section 59 of the Act of 2015 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 Specialized 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. In this connection, it is important to note that Section 38 of the Act of 2015 prescribes the procedure for declaring a child legally free for adoption. In the present case, it is not in dispute that CWC has after following the procedure as envisaged under Section 38 of the Act of 2015 has declared the child- 'S' legally free for adoption, the learned Principal Judge, Family Court could not have questioned the decision of the CWC in this regard. The child was declared legally free for adoption on 18.06.2015 by CWC as despite her custody given to the SAA (Prayas Bharati Trust) vide order no.4693 dated 19.09.2014, the parents or



guardian of the child could not be traced and it was established that the child- 'S' is either an orphan having no one to take care or has been abandoned. It is also not denied that the child 'S' is a special need child in terms of Regulation 2(21) of the Regulation framed by 'CARA' and now in terms of Proviso to Regulation 48 such child will be available for adoption to a foreign adoptive parents after fifteen days from the date they are declared legally free. It seems that the learned Principal Judge could not notice this aspect of the matter.

21. In the present case the proposed adoptive parents were registered for adoption on 01.07.2015 and despite the name of the child- 'S' being available on the site of the CARA as a child free for adoption no one came to adopt her from India or non-resident Indian by that time. Learned counsel for the appellant has made submission before this Court that even after registration of the prospective adoptive parents no Indian or non-resident Indian has ever shown his/their willingness to adopt the child- 'S', therefore in such circumstance considering the very object of the Act, which is a child welfare Act, the application could not have been rejected on this ground at this stage.

22. We find that the CARA has issued No Objection



Certificate only on 26.02.2016 i.e. much after the expiry of sixty days time as envisaged under Section 59 of the Act of 2015. The fact that the name of the child- 'S' was placed on the site of the CARA as legally free child for adoption is an indication that some efforts were taken to find out the Indian or non-resident Indian adoptive parents. Had it been a case where an Indian or non-resident Indian proposed adoptive parents would have registered themselves or could have shown their willingness to take the child- 'S', within the given sixty days time, but despite that the foreign prospective adoptive parents would have been given preference, we would have taken a view that the child- 'S' be given to the Indian or non-resident Indian prospective adoptive parents keeping in mind the spirit of Section 59 of the Act of 2015 but in the present case it is not in dispute that no Indian or non-resident Indian has shown any interest in taking the child- 'S' in adoption.

23. We would, however, hasten to note that the 'SAA' and 'CARA' both are obliged to follow the provisions of Section 59 of the Act of 2015 and complete sixty days time be allowed to the Indian or non-resident Indian to register themselves for such adoptions before opening the child free for inter-country adoption subject however to the relaxation granted under



Regulation 48 in case of children with special need and for older children/siblings under sub-Regulation(3) of Regulation 49 of the Regulations of 2017 framed by 'CARA'. In the facts of the present case, we find that more than three years have gone in the litigation of this non-adversarial nature, there being no Indian or non-resident Indian seeking adoption of the child- 'S', the application preferred before the learned Principal Judge, Family Court ought not have been rejected on this ground.

24. Regarding the other grounds mentioned by the learned Principal Judge, Family Court, we find that this being an inter-country adoption the applicant was required to follow Schedule IX of the Adoption Regulations 2017 whereunder there is no requirement of the minutes of the Adoption Committee rather NOC issued by the CARA in favour of adoption of a child by foreign prospective adoptive parents and no objection certificate from their Embassy/ High Commission would be required. We also take a view that the application could not have been rejected on the ground of non-disclosure of the parentage of the applicant Seema Raj in the power of attorney in view of the affidavit available on the record. The other ground given by the learned Principal Judge, Family Court that residential address of the proposed adoptive parents



is not exhibited and no paper in this regard has been filed is contrary to the materials available on the record inasmuch as we find that Home Study Report (HSR) (Ext.H/13) is very much available on the record showing the complete address of the prospective adoptive parents.

25. Before we part with this judgment, it is worth mentioning that the principles which are required to be followed with regard to inter-country adoption had been earlier laid down by the Hon'ble Supreme Court in the case of **Laxmi Kant Pandey Vs. Union of India** reported in (1984) 2 SCC 244. The Hon'ble Supreme Court laid down the approach required to be adopted by the courts and also the obligation on the court to take care of the interest of the child so that after adoption the child should not be subjected to harassment. It is pursuant to the decision of the Hon'ble Supreme Court in Laxmi Kant Pandey (supra) the Central Body i.e. CARA came into being and those principles have got eventual manifestation in a set of elaborate guidelines laid down by the Government of India. In the case of Stephanie Joan Becker (supra), the Hon'ble Supreme Court has taken note of the Guidelines of 2006 framed to regulate the adoption procedures which culminates in a declaration by the CWC that the child is free for adoption.



26. We would also point out that CWC is obliged to ensure itself before declaring a child free for adoption that the concerned organizations such as SAA and State Agency and authorities have complied with all the requirements of the Regulations. The CWC must ensure that all concerned authorities and Agencies have taken appropriate steps in terms of the Regulations to place the information with regard to the child on the missing and found portals and then efforts have been taken to find out the family of the abandoned and orphan child.

27. Once the child is available for adoption a distinct and separate step in the process of adoption is required to be followed. Under the Rules framed vide erstwhile Juvenile Justice (Care and Protection of Children) Rules, 2007, for all matters relating to adoption guidelines issued by the CARA and notified by the Central Government had to apply. Section 59 of the Act of 2015 in fact places an obligation on the SAA and the State Agency to take efforts to place the orphan or abandoned or surrendered child with Indian or non-resident Indian prospective Adoptive Parents. The Act has fixed sixty days time for this purpose from the date of the child having been declared legally free for adoption. The child has to be placed legally free for



inter-country adoption if despite search or joint efforts of the SAA and the State Agency he/she could not find the Indian or non-resident Indian prospective Adoptive Parents. In this case even though on facts we have found that no Indian/non-resident Indian prospective Adoptive Parents came forward for adoption of the child- 'S' till issuance of the 'NOC' by the CARA and/or till date of submissions before us, but we find that the 'SAA' and the State Agency were/are required and obliged to come out with some significant act showing their joint efforts to find out an Indian/non-resident Indian Prospective Adoptive Parents. For this purpose they are required to not only place the availability of the child free for adoption with all particulars/details in terms of the guidelines of 2017 framed by 'CARA' but are also required to give it a wide circulation among the general public by publishing information to this effect and encourage adoption by Indians and Non-Resident Indians. Such Publications/Informations be brought to the notice of general public through print media by publishing periodically in at least one local and one national newspaper having wide circulation in the country. While doing so the identity of the child shall not be disclosed. The SAA and the State Agency set up by the State Government for dealing with the adoption or related matters in



terms of Section 67 of the Act of 2015 are duty bound to act in furtherance of the aim and object of the Act including that of Section 59 of the Act of 2015.

28. With the aforesaid observations and directions to the State Agency and the SAA, in the present case, we set aside the impugned judgment and allow the application preferred by the present appellant. The learned Principal Judge, Family Court, Patna is now required to issue adoption order in accordance with law to give effect to the adoption of the child- 'S' in accordance with the provisions of the Act of 2015, Rules and Regulations framed thereunder. The progress and well being of the child- 'S' in the adoptive family shall be followed up and ascertained in the manner as provided in the adoption regulations. This appeal is, therefore, allowed.

29. Let the records of Miscellaneous Adoption No.34 of 2016 be sent back to the court of learned Principal Judge, Family Court, Patna immediately.

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In the present case, the fact reveals that on 27.07.2015 a girl child (prospective adoptive child) was found lying near road at Danapur along with a lady. The police found an Aadhar Card from the lady which identified her as 'R' (we



are purposely not disclosing the complete identity of the lady). She was received by the team member of the childline, Patna and then reported at P.S. Danapur and later she was sent for medical treatment where the lady died on the same day. It is stated that after getting an order from the Child Welfare Committee (In short 'CWC'), the child was registered with SAA and was later named as 'R'. On 08.09.2015 a public notice was published in Daily Newspaper, Dainik Bhaskar and all possible efforts were made by the SAA to invite the claim for care of the said child, but despite such publication in the local newspaper no claim was ever made. The CWC vide its order dated 12.01.2016 declared the child legally free for adoption. The Prospective Adoptive Parents got themselves registered through proper channel for adoption in terms of the guidelines of 2015. The Home Study Report was prepared by the representative which is placed on the record. The date of birth in this case of the child-'R' is 27.07.2010. The date of issue of CWC certificate is 12.01.2016 whereas the date of registration of the Prospective Adoptive Parents is 10.02.2016.

2. Before the learned Principal Judge, Family Court, Patna when an application was made under Sections 56 and 58 of the Act of 2015 for adoption order, the same was



rejected vide impugned judgment dated 16th November, 2017 on similar grounds as have been noticed in M.A.No.771 of 2018. Apart from the aforesaid grounds which we have discussed in M.A.No.771 of 2018 as regards the age of the Prospective Adoptive Parents and compliance with the provisions of Section 59 of the Act of 2015, one more ground which has been mentioned by the learned Principal Judge is that in terms of Section 5.1.3(d) of Bench Book for Adoptions prepared by the CARA, for the child above five years of age a written consent is required to be submitted to the court as provided in para 1(16) and 2(25) of the Schedule IX of the Adoption Regulation 2017 and the consent of the child can also be ascertained when the Hon'ble Judges interact with the child during the in-camera hearing, but according to the learned Principal Judge perusal of the record shows that no written consent of the child has been filed or exhibited to show her consent and willingness for such adoption as her age was more than 6 years on the date of filing of case i.e. 06.02.2017.

3. Learned counsel representing the appellant in the present case submits that the learned Principal Judge has committed the same error in appreciation of the age concept in respect of the Prospective Adoptive Parents. In the present case



the child is in the category of age above four years and below eight years, in such case the maximum composite age of Prospective Adoptive Parents (couple) is required to be within 100 years. It is submitted in the present case that the adoptive parent no.1 is aged about 52 years and the parent no.2 is 55 years, therefore they are well within the composite age group. As regards the compliance with Section 59 of the Act of 2015 again it is submitted that no Indian or non-resident Indian came forward to take the child in adoption even though the CARA issued its NOC only on 27.07.2016 i.e. much after expiry of sixty days as envisaged under Section 59 of the Act of 2015.

4. Learned counsel further submits that all the requirements, norms and procedures as provided in the Act of 2015, Erstwhile Regulations of 2015 and Regulations 2017 have been complied with. It is further submitted that the Principal Judge has erred in referring the Bench Book provided by CARA while ignoring the law in force as according to the appellant Bench Book is merely a quick reference material provided by CARA in a conference held at Bihar Judicial Academy, Patna in the month of April, 2017 and it need not necessarily have all the clauses of the Act, 2015 and Regulation, 2017. Learned counsel has assailed the judgment of the learned Principal Judge on the



ground that the Principal Judge has not taken into account the best interest of the child as envisaged in Section 3(iv) and Section 61(1)(a) of the Act of 2015 and the principles laid down by the Hon'ble Supreme Court.

5. We have heard Mr. Sunil Dutta Mishra, Secretary, Bihar State Legal Services Authority. So far as the grounds mentioned in paragraph '8' of the impugned judgment as regards the consent and willingness of the older child for such adoption is concerned, in the memorandum of appeal, we do not find any specific answer to the same. The learned Principal Judge has referred Para 1(10) and 2(25) of the Schedule IX which read as under:-

“1(10). Consent of the older child/children in the adoptive family (if more than 5 years).

2(25).Consent of the older child/children to be adopted.”

6. So far as para 1(10) under Schedule IX is concerned, the same is required to be obtained from the older child in the adoptive family by the specialized adoption agency. In case of adoption by NRI/Overseas citizen of India/Foreign prospective adoptive parents residing in a foreign country para 2(25) applies according to which consent of the older child/children to be adopted is required to be arranged by the



specialized adoption agency. Under Explanations to Regulation 48 a child above 5 years of age is called older child under the Regulations 2017 framed by 'CARA'. It is in this context the learned Principal Judge has taken a view that in this case the consent of child to be adopted is not placed on the record. He has referred to para 5.1.3(d) of the Bench Book for adoption prepared by the CARA.

7. In our considered opinion, while taking the requirement of consent of older child as a ground for rejection of the application, the learned Principal Judge was required to ascertain the consent of the child after having friendly interaction with the child during the in-camera hearing which has not been done in this case.

8. In the facts of the present case, we have noticed that this girl child was found lying near road Danapur along with a lady who had perhaps met an accident and succumbed to her injuries in course of treatment. The police had found the Aadhar Card wherein complete name and address etc. were mentioned. Although it is stated that on 08.09.2015 a public notice was published in daily newspaper, Dainik Bhaskar and all possible efforts were made by the SAA to invite the claim for care of the said child, but we are not very much



satisfied with such statements as in the present case the SAA and the police authorities were obliged to visit the place and address mentioned in the Aadhar Card to find out the connection of the girl child with the family whose address was mentioned in the Aadhar Card. Nothing is stated about any such effort taken by SAA or the police authorities. It also appears that CWC while declaring the child legally free for adoption could not appreciate this aspect. In our considered opinion, in the present case, the SAA through its competent representative must visit the place mentioned in the Aadhar Card to find out the connection, if any, of the girl child with the said family and an affidavit in this respect be submitted in the court of learned Principal Judge, Family Court, Patna. Such affidavit be filed within a period of fifteen days from the date of receipt/production of a copy of this judgment.

9. We, therefore, set aside the impugned judgment dated 16th November, 2017 passed in Misc. Adoption No.13 of 2017 and remit the matter back to the learned Principal Judge, Family Court, Patna. The learned court will satisfy itself with the affidavit of the SAA as per directions given above and then only if it is found that the search has not yielded any fruitful result the learned court shall proceed to conduct in-



camera hearing and shall after interaction with the older child ascertain whether the child is willing to give a consent for adoption outside the country.

10. We have found that the composite age of the prospective adoptive parents (couple) is well within 100 years and now under Regulations 2017 in case of older child the child will be free for adoption by a foreigner after 30 days from the uploading of the certificate of CWC on the Child Adoption Resource Information and Guidance System (Refer Regulation 8 read with Regulation 49). Thus, in our considered opinion, the grounds mentioned by learned Principal Judge with regard to the age and procedures under Section 59 of the Act of 2015 are not in accordance with law, therefore the application of the appellant shall not be rejected on these two grounds.

11. After ascertaining the consent of the child to be adopted, the learned Principal Judge, Family Court, Patna shall pass an appropriate order in accordance with law, but the whole exercise must be completed within a period of thirty days from the date of receipt/production of a copy of this order.

12. The appeal is allowed to the extent indicated above.

13. Let the records of Miscellaneous Adoption



No.13 of 2017 be sent back to the court of learned Principal Judge, Family Court, Patna immediately.

(Jyoti Saran, J)

(Rajeev Ranjan Prasad, J)

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AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	20.12.2018
Transmission Date	N/A

