

ITEM NO.63

COURT NO.11

SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No. 717/2023

(Arising out of impugned final judgment and order dated 25-11-2022 in WP(C) No. 14069/2022 passed by the High Court Of Delhi At New Delhi)

AMIT KUMAR MISHRA & ANR.

Petitioner(s)

VERSUS

NATIONAL COMMISSION
FOR PROTECTION OF Child RIGHTS (NCPCR) & ORS.

Respondent(s)

([TO BE TAKEN UP AS FIRST ITEM.]

IA No. 195733/2022 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT; IA No. 3088/2023 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES and IA No. 203607/2022 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 03-03-2023 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ANIRUDDHA BOSE
HON'BLE MR. JUSTICE SUDHANSHU DHULIA

For Petitioner(s) Dr. Manish Singhvi, Sr. Adv.
Mr. Manoj K. Mishra, AOR
Mr. Umesh Dubey, Adv.
Mr. Arpit Parkash, Adv.
Ms. Shubhangi Agarwal, Adv.
Mr. A. Baskar, Adv.

For Respondent(s) Mr. K.M. Nataraj, A.S.G.
Mrs. Swarupama Chaturvedi, AOR
Ms. Saumya Kapoor, Adv.
Ms. Katyayani Anand, Adv.

Mr. K.M.nataraj, A.S.G.
Mr. Gurmeet Singh Makker, AOR
Mr. Sharath Nambiar, Adv.
Mr. Vinayak Sharma, Adv.
Mr. Sansriti Pathak, Adv.
Ms. B.k.satija, Adv.
Mr. Anuj Srinivas Udupa, Adv.
Mr. Nakul Chengappa K.K., Adv.

Ms. Menaka Guruswamy, Sr. Adv.
Ms. Tara Narula, Adv.
Mr. Maanav Kumar, Adv.
Ms. Supriya Juneja, AOR
Ms. Sonal Chopra, Adv.
Mr. S. Debabrata Reddy, Adv.
Mr. Utkarsh Pratap, Adv.
Ms. Mukta Halbe, Adv.
Mr. Lavkesh Bhambhani, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The two petitioners before us are husband and wife essentially seeking adoption of a girl child, whom the High Court of Delhi has described as Baby 'S' in the judgment assailed in this petition. Through the process specified in the Juvenile Justice (Care and Protection of Children) Act 2015, Child 'S' has been matched with respondent nos. 3 and 4, again a married couple residing in Malta. It is a case of inter-country adoption for which No-objection had been given by the Central Adoption Resource Authority (hereinafter referred to as 'CARA').

Child 'S' was found abandoned in a cremation ground on 10.10.2019. Petitioner's case is that the child was buried alive and was rescued by the family of the petitioners only. Child 'S' was admitted to hospital for medical treatment and relevant information was also given to Child Welfare Committee (hereinafter referred to as 'CWC'). She remained under the care of Vatsalya NBCC Hospital, Bareilly between 12.10.2019 and 03.12.2019. It was found that she was suffering from septicemia, hypothermia, hypoglycemia, acute weight loss and convulsions. A team of CARA

further examined the Child 'S' under specialised doctors, when it was found that she is suffering from epilepsy also and thereafter she underwent treatment for epilepsy.

Finally, the Child was declared legally free for adoption by CWC on 28.07.2020. The category under which her adoption was to be made available was, "special needs category" and that such a child is free for adoption was disclosed on the portal of CARA. During the stipulated period of 15 days, any Indian, NRI or OCI could make a reservation for adoption of Child 'S', after adopting due process. No application came forward during this period. The Child 'S' was then after the expiry of the relevant period, was made available for inter-country adoption. It was then that respondent nos.3 and 4 made reservation for inter-country adoption of Child 'S'. Respondent nos. 3 and 4 are a married couple from Malta.

Meanwhile, the case of the present petitioners, who are Indian Citizens and are before this Court is that despite their best efforts, they could not have access to the portal within 15 days and therefore, making the child available for inter-country adoption was not proper. They moved an application before the National Commission for Protection of Child Rights (hereinafter referred to as 'NCPCR') for adoption of Child 'S' and in this regard a communication dated 10.08.2022 was issued by CARA for withdrawal of the adoption process till the investigation gets completed. A complaint from the petitioner no. 1 to the NCPCR appears to have had triggered off this communication. It was at this stage that respondent nos.3 and 4 challenged the legality of

the communication dated 10.08.2022 containing the aforesaid direction and the obstacles being raised in the process of adoption before the Delhi High Court.

The High Court dealt with all these issues and *inter alia*, held in paragraph Nos. '57', '58', '59' and '60' of the impugned judgment which reads as follows:

"57. As the facts of the present case would bear out, Child "S" was made available for inter-country adoption only when no reservation from a resident Indian, NRI or OCI card holder was forthcoming. Undisputedly it was only after the statutory timelines for submission of such a reservation had come to an end that the Child was placed for being reserved by a foreign PAP. The respondents do not rest their objections on any Indian parent having made a reservation for Child "S" and yet she having been placed with the petitioners. If a failure on the part of a resident Indian be the cause for a Child being made available for inter-country adoption, that cannot possibly be viewed as constituting a valid or cogent ground to either doubt the validity of the adoption or question the integrity of the adoption process. The Court in any case is of the firm opinion that the validity of an adoption can neither be doubted nor questioned merely on an asserted "possibility of irregularity".

58. Accordingly, and for the aforesaid reasons, the writ petition stands allowed. The impugned communication of 10 August 2022 issued by CARA shall stand quashed and set aside. CARA is consequently directed to take further steps to complete the process of adoption in accordance with the No Objection Certificate which has been issued by it. Bearing in mind the fact that Child "S" was abandoned in 2019, it is expected that all concerned authorities shall aid and assist in the expeditious conclusion of all legal formalities relating to her adoption by the petitioners.

59. Before parting, the Court notes that various documents have been filed by respective parties in these proceedings which may have a direct bearing on securing the identity of Child "S". The disclosure of or access to that material may lead to the breach of her identity or even an invasion

of the privacy rights of Child "S". These include various medical reports, reports of CARA and other material relating to the entire process of adoption.

60. In view of the above, the Registry of the Court is directed to ensure that the said material is not released, made available or accessed by any third parties. The parties to these proceedings including learned counsels who have appeared in these proceedings shall also ensure that in case any such material is required for use or reference in any further proceedings, all care shall be taken that identifying disclosures relating to Child "S" as appearing in the said documents are duly masked or redacted."

Main complaint of the petitioners, who assail this judgment before us, is that they were not given adequate opportunity to adopt the Child 'S' and they being Indian nationals, should have had priority in that process. It is claimed by the petitioners that it was they who had rescued the Child 'S' who was abandoned and got her treated through various medical clinics.

The flaws which are urged by the petitioners in the process of adoption by the respondent nos.3 and 4 are regarding the manner of the adoption process by the Foreign Prospective Adoptive Parents (hereinafter referred to as 'FPAPs') are two fold; the first one is that the Child 'S' was being made free for adoption as a "Special Needs Child" but, according to the petitioners, it should have been a normal child. In this regard, it has further been pointed out that the main reason for putting her under the special needs category was that the Child was suffering from Epilepsy whereas the FPAPs in their declaration earlier had expressed unwillingness.

Admitted position is that, apart from being premature, the Child also suffered from other medical conditions as well which we

have already referred above.

On behalf of the petitioners, it has also been argued that they were denied the opportunity to adopt the Child in spite of having rescued her. They are being denied the right of adoption as they could not log into the portal under the Special needs category. It is also pointed out that unusually, asymmetrical number of Special needs Child were being adopted by FPAPs in Malta.

The entire process of declaring Child 'S' as free for adoption was undertaken twice. But re-examination process was initiated at the instance of the petitioners which resulted in the communication dated 10.08.2022 being issued by CARA for withdrawal of the adoption petition no. 1248 of 2022 till the complaint was being investigated. The petitioners had approached the Delhi High Court invoking its writ jurisdiction seeking quashing of the said communication. In the judgment delivered on 25.11.2022 which is impugned in this petition, the Delhi High Court had allowed the petition of the FPAPs and quashed the aforesaid communication. The effect of this judgment, in substance, is that Child 'S' would be free for adoption through subsisting process on compliance of requisite formalities.

On behalf of the respondent No. 1 i.e., 'NCPCR' and 2 i.e., 'CARA', Mr. K.M. Nataraj, learned Additional Solicitor General has submitted that the enquiry may be continued but, as regards the procedure adopted by CARA, his submission is that the same was in accordance with law. He has also pointed out in course of hearing that there was no problem with the portal also. The contention of

the petitioners, who are represented before us by Dr. Manish Singhvi, learned Senior Counsel, is that they could not have the access to the portal. But we are unable to accept this contention as the Learned Additional Solicitor General has made a clear submission before this Court that there was no problem with the portal. All apprehensions of the petitioners in this regard are not correct. The High Court in the judgment assailed has come to a finding that as per the applicable regulations, there was evidence that the child was suffering from various ailments which merited her being placed in Special needs category. The High Court failed to find any justification for ordering a review medical examination. We have no reason to take a contrary view.

As regards submission of the petitioners that the FPAP had initially expressed unwillingness to take a child with epilepsy for adoption, Ms. Menaka Guruswamy, learned Senior Counsel appearing for the respondent nos. 3 and 4 has submitted that such unwillingness was at the preliminary level only. They were aware that Child 'S' had this medical condition and were still willing to adopt her. We do not find any reason to interfere with the impugned judgment for this reason. The other point highlighted was that there were too many cases of adoption from Malta. But the statute lays down a robust scrutiny process in each case of inter-country adoption. On mere suspicion based on such statistics, we cannot interfere with the judgment of the High Court.

As the statutory provisions stand complied with, we are not inclined to interfere with the judgment of the High Court, which we

find to be a well reasoned order which has dealt with all the relevant issues.

The present petition stands dismissed.

Pending application(s), if any, shall stand disposed of.

(SNEHA DAS)
SENIOR PERSONAL ASSISTANT

(RAM SUBHAG SINGH)
BRANCH OFFICER