Reserved on : 04.01.2024
Pronounced on : 23.01.2024

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF JANUARY, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.16681 OF 2023 (GM-RES)

BETWEEN:

1 . SRI. U. AJAY KUMAR
S/O CHANDRASHEKAR UDNUR
AGED ABOUT 36 YEARS
R/AT NO. 88, "AISHWARYA"
10TH MAIN, NTI LAYOUT
VIDYARANYAPURA
BENGALURU – 560 097.

OCC: IT ADMINISTRATOR,CRYTEK COMPANY
FRANKFURT AM MAIN, GERMANY.

2 . SMT. MAITRA T. V.,
W/O U.AJAY KUMAR
AGED ABOUT 35 YEARS
R/AT NO. 88, "AISHWARYA"
10TH MAIN, NTI LAYOUT
VIDYARANYAPURA
BENGALURU – 560 097.

... PETITIONERS

(BY SRI. ROHAN S., ADVOCATE)

AND:

THE UNION OF INDIA
REPRESENTED BY ITS MEMBER SECRETARY
AND CHIEF EXECUTIVE OFFICER
CENTRAL ADOPTION RESOURCE AUTHORITY
MINISTRY OF WOMEN AND CHILDREN
DEVELOPMENT, WEST BLOCK-8, WING-2
1ST FLOOR, R.K.PURAM
NEW DELHI – 110 066.

... RESPONDENT

(BY SRI. H.SHANTHI BHUSHAN, DSGI)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE RESPONDENT AUTHORITY TO CONSIDER THE REPRESENTATION DATED 20/06/2023 AS PER ANNEXURE-C AND FURTHER DIRECT THEM TO ISSUE NOC AND CONFORMITY CERTIFICATE IN FAVOUR OF ADOPTED CHILD OF THE PETITIONERS FORTHWITH, AS PER ADOPTION REGULATIONS 2022 FOR INTER COUNTRY RELATIVE ADOPTION.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 04.01.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioners, husband and wife are before this Court seeking a direction by issuance of a writ in the nature of *mandamus* to consider their representation dated 20-06-2023 made for the purpose of issuance No Objection Certificate ('NOC') and Conformity

Certificate in favour of their adopted child in terms of Adoption Regulations, 2022 for Inter-Country Relative Adoption.

2. The facts, adumbrated, are as follows:-

The petitioners are husband and wife. The 1st petitioner/ husband is presently employed in Frankfurt, Germany and the wife is a resident of this nation - Bengaluru. Both the petitioners are citizens of India. Owing to the desire of adopting a child, as the petitioners did not have any issue from the wedlock for long years, the couple adopted a girl child of one Smt. S.Rashmi in the presence of relatives and friends. Smt. S. Rashmi gave her child in adoption by executing an adoption deed on 29-03-2023 before the Office of the Sub-Registrar, Chikkaballapura as the child was born in Chikkaballapura and the mother of the child was a resident of Chikkaballapura. Upon registration of adoption deed, as required in law, verification was done by the Deputy Commissioner and a certificate of verification was also issued along with the recommendation that adoption of the child being valid necessary action be taken upon the said adoption. The petitioners then seek

issuance of an NOC and a conformity certificate in favour of adoption of the child by presenting it before the District Child Protection Unit. The District Child Protection Unit has not considered the request and has not issued an NOC as also conformity certificate of adoption. The petitioners have sent plethora of e-mails seeking issuance of NOC and conformity certificate. It is, therefore, the petitioners are before this Court seeking a direction for their issuance.

3. Heard Sri S. Rohan, learned counsel appearing for the petitioners and Sri H. Shanthi Bhushan, learned Deputy Solicitor General of India appearing for the respondent.

4. The learned counsel appearing for the petitioner submits that adoption is under the Hindu Adoption and Maintenance Act, 1956 ('the Act' for short) and the adoption is valid in the eye of law. The process of adoption is verified by the competent Deputy Commissioner of Bangalore Urban District. As per law, he has also recommended the adoption to the Central Adoption Resource Authority for necessary action. It is the submission of the learned

counsel that in terms of Regulation 58 of the Adoption Regulations, 2002 NOC in favour of adoption of the child should be issued within 10 days from the date of adoption order by the District Protection Unit. The learned counsel would submit that despite all documents being in place, even as on date, NOC and conformity certificate have not been issued which has left the child high and dry. He would seek a direction for such issuance within the time frame.

5. Per-contra, the learned Deputy Solicitor General of India Sri H. Shanthi Bhushan would refute the submissions to contend that adoption under the Act is not internationally recognized. The inter-country adoption is a product of Hague convention on protection of children and cooperation in respect of inter-country adoption and under articles of the convention, as fructified into regulations, they would require the petitioners to go before the country in which the father resides, communicate a mail to the Indian counterpart under the adoption regulations and within 10 days a certificate and NOC would be issued in this country. The petitioners cannot claim a right for violation of the procedure quoting any of the instances of hardship, as the process will have to

meet the Regulations. If Hague convention had recognized the Act, no objection would have been granted to the petitioners. But, it is not the issue at hand. Hague convention does not recognize the kind of adoption that the petitioners have resorted to. He would seek dismissal of the petition by issuing a direction to the petitioners to follow the procedure.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record. In furtherance whereof what requires to be considered is,

"Whether the petitioners are entitled to a NOC and conformity certificate of the kind of adoption under the Act?"

7. It is not in dispute that the subject adoption is an inter-country adoption. Inter-country adoption was prohibited till 1993 and the children so adopted were left high and dry. It is, therefore, a convention on protection of children and cooperation in respect of inter-country adoption was envisaged at Hague. Several countries, including India, participated in the said Hague convention. The

convention was to recognize that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding. The convention further recognized that inter-country adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin. It, therefore, in the best interest of the child with respect to the fundamental rights of the child and to prevent abduction, sale, trafficking of children, articles of convention were drawn in the nature of declaration on social and legal principles relating to protection and welfare of children, with reference to foster placement and adoption Nationally and Internationally. The Hague convention was concluded on 29-05-1993. Certain articles of the convention become germane to be noticed for a resolution in the subject *lis*. Article-5 deals with adoption and competent authorities of the receiving State. It reads as follows:

"Article-5

An adoption within the scope of the Convention shall take place only if the competent authorities of the receiving State

a) have determined that the prospective adoptive parents are eligible and suited to adopt;

b) have ensured that the prospective adoptive parents have been counselled as may be necessary; and

c) have determined that the child is or will be authorized to enter and reside permanently in that State".

(Emphasis supplied)

An adoption within the scope of the Convention could take place if the competent authorities have determined that the prospective adoptive parents are eligible and suited to adopt and have determined that the child is or will be authorized to enter and reside permanently in that State. Therefore, the parents will have to get an authorization to enter and reside permanently in Germany. Article 17 reads as follows:

"Article-17

Any decision in the State of origin that a child should be entrusted to prospective adoptive parents may only be made if –

a) the Central Authority of that State has ensured that the prospective adoptive parents agree;

b) the Central Authority of the receiving State has approved such decision, where such approval is required by the law of that State or by the Central Authority of the State of origin;

c) the Central Authorities of both States have agreed that the adoption may proceed; and

d) it has been determined, in accordance with Article 5, that the prospective adoptive parents are eligible and suited to adopt and that the child

is or will be authorized to enter and reside permanently in the receiving State."

(Emphasis supplied)

Any decision in the State of origin that the child should be entrusted to prospective adoptive parents be made only if the Central Authorities of both the States have agreed that the adoption may proceed. Therefore, both India and Germany should necessarily agree and recognize the subject adoption. Article 23 deals with recognition and effects of adoption. It reads as follows:

"Article-23

(1) An adoption certified by the competent authority of the State of the adoption as having been made in accordance with the Convention shall be recognized by operation of law in the other Contracting States. The certificate shall specify when and by whom the agreements under Article 17, sub-paragraph (c), were given.

(2) Each contracting State shall, at the time of signature, ratification, acceptance, approval or accession, notify the depositary of the Convention of the identity and the functions of the authority or the authorities which, in that State, are competent to make the certification. It shall also notify the depositary of any modification in the designation of these authorities."

(Emphasis supplied)

Here again both the contracting States should identify and ratify such adoption.

8. Pursuant to Hague convention, certain regulations are promulgated by Government of India by a notification issued on 23-09-2022 in exercise of powers conferred under clause (c) of Section 68 read with clause (3) of Section 2 of the Juvenile Justice (Care and protection of Children) Act, 2015. It is these Regulations that are in force as on today. Therefore, all adoptions would be governed by these Regulations. These regulations are called the Adoption Regulations, 2022 (hereinafter referred to as 'the Regulations' for short). Regulation 2 deals with definitions. Sub-regulations (2), (15) and (17) of Regulation 2 read as follows:

> *"…. …. ….*
>
> *(2)* ***"Adoption Committee" means the Committee comprising of the authorized office-bearer of the Specialized Adoption Agency concerned, its visiting doctor or a medical officer from a Government hospital and one official from the District Child Protection Unit and shall also include a representative of the Child Care Institution, in case the adoption is from a Child Care Institution other than the Specialized Adoption Agency and the committee shall be chaired by District Child protection Officer;***

…. …. ….

(15) "in-country adoption" means adoption of a child by a citizen of India residing in India;

…. …. ….

(17) "No Objection Certificate" means the certificate issued by the Authority for permitting the child to be placed in adoption with foreign or Overseas Citizen of India Cardholder or non-resident Indian prospective adoptive parents;"

(Emphasis supplied)

Sub-regulation (2) of Regulation 2 defines an 'adoption committee' comprising of certain officers appointed which will be chaired by the District Child Protection Officer. Sub-regulation (15) defines 'in-country adoption' which would mean adoption of a child by a citizen of India residing in India. The Regulations do not define in-country adoption. Sub-regulation (17) defines a No Objection Certificate which would mean that the certificate issued by the Authority for permitting the child to be placed in adoption with foreign or Overseas Citizen of India Cardholder or even a non-resident Indian prospective adoptive parents. Therefore, the petitioners would come within the definition of non-resident prospective adoptive

parents. Regulation 58 deals with 'No Objection Certificate' to be issued by the Authority and reads as follows:

> ***"(58) No Objection Certificate of Authority.- In case of all inter-country adoptions, the Authority shall issue No Objection Certificate in favour of the adoption of the child within ten days from the date of receipt of certificate issued under Article 5 or 17 of the Hague Adoption Convention from receiving country and a copy of the same shall be forwarded to the Authorized Foreign Adoption Agency or Central Authority concerned."***
>
> *(Emphasis supplied)*

Regulation 58 mandates that the Authority shall issue a NOC in favour of adoption of a child within 10 days from the date of a certificate issued under Article 5 or 17 of Hague Adoption Convention from the receiving country and a copy of that shall be forwarded to the authorized foreign Adoption Agency. Regulation 68 mandates that any Hindu prospective adoptive parents habitually residing abroad may contact the authorized foreign adoption agency in case of Hague ratified countries and the Government Department in case of non-Hague ratified countries to follow a standard common procedure for all inter-country adoptions under the Act who would take the child for adoption from India to a

nation outside India. Regulation 69 deals with 'Adoption process' and reads as follows:

> *"**69. Adoption process.** –*
>
> ***(1)** The parties to an adoption concluded under the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956) shall jointly present the deed of adoption to the Sub-Registrar's office in the district with copy to District Magistrate.*
>
> ***(2)** Based on such copy of the deed, the District Magistrate shall conduct such inquiry, as he may deem fit, to satisfy that all the provisions of Hindu Adoptions and Maintenance Act, 1956 (78 of 1956), and the stipulations under the regulations have been followed and such inquiry shall be completed within a period of thirty days.*
>
> ***(3)** In case the District Magistrate fails to complete the inquiry within thirty days, he shall be bound to give reasons along with verification certificate for failing to provide the inquiry report within thirty days and the parties may register the adoption deed with the Sub-Registrar concerned under the Registration Act, 1908 (16 of 1908), indicating the details of application made and that inquiry from District Magistrate has not been received within the stipulated time referred to in sub-regulation (2).*
>
> ***(4)** The District Magistrate shall thereafter forward the verification certificate in the format in Schedule XXXV along with the checklist provided in Schedule XXXVI to the Central Adoption Resource Authority certifying the following that –*
>
> > ***(a)** the adoption recorded in the deed of adoption has been made in accordance with the provisions of the Hindu Adoptions*

and Maintenance Act, 1956 (78 of 1956), including the sourcing of the child, the eligibility and suitability of the adoptive parents;

(b) the adopted child or the biological parents are not under any duress while giving the child in adoption.

(c) the adoption has been concluded with mutual consent of all parties concerned.

(d) there has been no monetary consideration involved in the adoption process and the adoption is in the best interest of the child."

(Emphasis supplied)

Parties to the adoption concluded under the Act should jointly present a deed of adoption to the District Magistrate. Based upon it, the procedure commences. The petitioners have done what is prescribed under Regulation 69. Regulation 70 deals with issue of No Objection Certificate and Conformity certificate and reads as follows:

"70. Issue of No Objection Certificate and Conformity Certificate.-

(1) On receipt of verification certificate from the District Magistrate, on the registered adoption deed and necessary permission under Articles 5 or 17 from the receiving country as provided in the Hague Adoption Convention on Protection of Children and Co-operation in respect of Inter-country Adoption, the Central Adoption Resource

> ***Authority shall issue No Objection Certificate for Hague ratified countries under Article 17(c) and Conformity certificate under Article 23 of the Convention.***
>
> *(2) In the case of countries outside the Hague Adoption Convention, a support letter shall be issued by the Central Adoption Resource Authority."*
>
> *(Emphasis supplied)*

It is here lies the choke to the petitioners as the certificate is yet to be issued. Issuance of NOC under the Regulation 70 mandates that on receipt of verification certificate from the District Magistrate necessary permission under Article 5 or 17 from the receiving country as provided under the Hague Adoption Convention *(supra)* in respect of inter-country adoption, the Central Adoption Resource Authority shall issue NOC in conformity with Article 23 of the Convention.

9. On a conjoint reading of the Regulations quoted *supra* what would unmistakably emerge is that on receipt of verification certificate by the District Magistrate on the adoption deed and necessary permission from the receiving country, the receiving country in the case at hand is Germany, issuance of NOC and

conformity certificate is to be from India. The process is under Regulations 68 and 69 of the Regulations. It is on the bedrock of the aforesaid Regulations the case at hand requires consideration. The Regulations have come into effect from 23-09-2022 and therefore, adoptions taking place after the said date would be governed under the said Regulations. The adoption in the case at hand happens on 29-03-2023 admittedly after the Regulations coming into force. The verification certificate is issued by the Deputy Commissioner on examination. The verification certificate reads as follows:

> *"Subject: Verification certificate as required under the Regulations for inter-country adoptions under the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956) in respect of child* ***Miss Yuvona Tangi Udnur (****erstwhile name Miss, Yuvona).*
>
> *This is to certify that as per the Adoption deed registered under the Registration Act, 1908 (16 of 1908), the Child* ***Miss Yuvona Tangi Udnur*** *by name has been adopted by* ***Sri Ajay Kumar U,*** *aged about 36 years, S/o Chandrashekar U, Hindu AND* ***SMT. Maitra T.V,*** *aged about 35 years, W/o Sri Ajay Kumar U, Hindu, presently R/at No. 327, Sree Neelakanteshwar Nilaya, 4th Main Road, Canara Bank Layout, Canarabank Layout Walking Park, Kodigehalli, Vidyaranyapura, Bengaluru North, Karnataka - 560 097, who are habitually residing in Hufnagel Strasse, #44, Fronkfurt am Main Germany 60326, from the biological parents.*
>
> *1.* ***Late Girish S,*** *S/o Siddaramaiah, HINDU and*

2. ***Smt. Rashmi S***, *W/o Late Girish S, Aged 32 years, HINDU.*
R/at No.115/1 5th Cross, T.Dasarahalli, Kempe Gowda Nagara, Bengaluru Karnataka-560 057.

2. That after examining the parties and the witness, I conclude the following:

a) *The adoption recorded in the deed of adoption has been made in accordance with the provisions of the Hindu Adoptions Maintenance Act, 1956 (78 of 1956) including the sourcing of the child, the suitability of the adoptive parents.*
b) *The adopted child or the biological parents are not under any duress while giving the child in adoption.*
c) *The adoption had been concluded with mutual consent of all parties concerned.*
d) *There has been no monetary consideration involved in the adoption process and the adoption is in the best interest of the child.*

3. I have verified and recommended the adoption to Central Adoption Resource Authority for necessary action."

The Deputy Commissioner records that he has examined the parties and witnesses and recommends adoption to be legalized by the Central Adoption Resource Authority. The petitioners after receipt of verification certificate from the Deputy Commissioner communicate to the Officer of the Authority and the communication reads as follows:

"To
Officer (CARA)

Respected Sir/Madam,

I, Maitra T.V. from Bangalore Karnataka have been residing in Germany along with my husband for 4 years now, I have been married to Ajay Kumar U for about 10 years now. We have adopted a child from Rashmi, as her husband Girish S expired in Dec., 2022 due to sudden heart attack, they had two children and she was about to deliver the third child, due to her financial conditions as daily wage labour would be difficult for her to provide required nutrition and education to the newborn. In the best interest of the child, we have adopted the child as per HAMA Act and made an adoption deed in the Registrar office, Chikkaballapur, Karnataka, and approached the (District Child Protection Unit) and completed all the formalities and procedures required for adoption. The child is with us now named (Yuvona Tangi Udunur, female 5 months old) and we have developed a strong bond with her as our daughter. She is part of our family, we will provide her all the love, care and support that she deserves.

As per the rules and regulations of inter-country adoption, we need to submit a NOC from you as a proof that you have no objection to our decision of adoption process. This NOC will also help us in obtaining the legal documents, Passport and visa to move to Germany at the earliest to join my husband (Currently working and staying in Germany) and our adopted daughter.

Therefore, as parents my husband and I request you to help us with the required documents for our family reunion in Germany.

I am attaching the below listed documents for your kind reference.

1. *Aadhar card.*
2. *Passport copy*
3. *Adoption Deed*
4. *Schedule 33 – Verification Certificate for HAMA Act.*
5. *Schedule 34 – Family Background report.*
6. *Schedule 21.*
7. *Marriage certificate*
8. *Medical certificate with lab reports.*

I believe that you will consider this request and help me by issuing the required document at the earliest.

I shall be highly obliged for your kind support and cooperation.

Thanking you,
Yours sincerely,
Maitra T.V
Ajaj Kumar U,
Bangalore
96320 51152"

(Emphasis added)

The communication sought issuance of NOC and Conformity Certificate as per the Regulations of inter-country adoption. The non-consideration of it cannot be found fault with, as the procedure to be followed by the petitioners is to approach the competent authority in Germany who would communicate the authorities in India and it is then within 10 days after such communication, authorities in India would issue a NOC. No fault can be found with the delay in issuing the NOC, as the procedure is not followed by the petitioners. It is this that has been communicated to the petitioners' right from the outset by the respondent/authorities. The procedure that is stipulated under the Regulations has a purpose for such stipulation which cannot be given a go bye for the sake of the case of the petitioners.

10. Here, it becomes apposite to refer to a judgment of the Apex Court in the case of ***THE TEMPLE OF HEALING v. UNION OF INDIA[1] – W.P.No.(Civil) 1003/2021*** wherein the Apex Court in terms of its order dated 20-11-2023 considering an identical circumstance has held as follows:

> ***".... ....***
>
> ***12.*** *We proposed to take up each of these aspects for consideration separately.*
>
> ***1. <u>Identification of children</u>***
>
> ***13.*** *We are in agreement with the suggestion which has been mooted on behalf of CARA that the Secretaries or in-charge of the nodal departments in the States for the administration of the Juvenile Justice Act, 2015 - the nodal department being either the Social Justice Department or, as the case may be, the Women and Child Department for every State and Union Territory, must carry out an identification drive every two months to identify children in the OAS category in the Child Care Institutions within their territories.*
>
> ***14.*** *We accept these suggestions and issue a direction to the effect that such an exercise of identification shall be carried out on a bimonthly basis, the first of which shall be carried out by 7 December 2023.*
>
> ***15.*** *In addition to the above direction, the nodal department in every State/Union Territory, in-charge of implementing the Juvenile Justice Act, 2015 shall collect and compile data which shall be made available to the Secretary in the Union Ministry of Women and Child Development and to the Director CARA on or before 31 January 2024. This data shall be along the following lines:*

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[1] ***2023 SCC OnLine SC 1590***

(a) *To identify and compile data on potential children for adoption-especially amongst those who are languishing in Child Care Institutions (CCIs) and those not reaching CCIs.*

(b) *Compilation of data on registration of all OAS children of the district on CARINGS and monitoring of CWCs for timely determination of legal status of children. It is imperative for the States to ensure registration of all OAS children in the district on the CARINGS portal. States are required to nominate an officer of a sufficiently senior level to monitor this exercise. It has been observed while examining the data on CARINGS as well as visits conducted from time to time by CARA that the process of defining the legal status of children is delayed on the part of CWCs. The pending cases with CWCs beyond stipulated time limit for declaring a child legally free for adoption (LFA) is also one of the major concerns. There are a total number of 761 cases in all States/UTs which are pending with CWCs for more than four months for declaring LFA children. CWCs are required to expedite the legal status of all orphans, abandoned and surrendered children irrespective of their age. Older children can be benefited by the foster care adoption module being operationalized by CARA. The necessary data on pending applications for LFA children also needs to be compiled.*

(c) *A direction is issued for compilation of the relevant data on whether or not compliance of Rule 17 (1)(I)(v) and Rule 20(2) of JJ Model Rules, 2016 (as amended 2022) by District Magistrates/Additional District Magistrates for quarterly monitoring of CWCs is being followed along with compliance of Rule 17 (1)(v) and Rule 20(2) of JJ Model Rules, 2016 (as amended in 2022) by District Magistrates/Additional District Magistrates for quarterly monitoring of CWCs - which will help to decrease the pendency of cases at the level of CWCs. States/UTs need to take up timely publications in cases of orphan/abandoned children before declaring those children legally free for*

adoption and conduct a comprehensive assessment of the child protection needs in the district;

(d) Collection and compilation of data on the vacant positions in different State Adoption Resource Agencies. A total number of 49 positions were found vacant out of 133 sanctioned positions in different State Adoption Resource Agencies (SARAs). Vacant posts in Child Protection Services at the State/UT level must be filled without delay and the role of OM in monitoring institutions at district level also requires to be reinforced. Consequently, child protection service programmes may benefit from regular and effective district monitoring at the state level.

(e) Collection and compilation of data on identification of children residing in CCIs (not visited by their parents for more than a year or with unfit parents) as well as potential children for adoption from the community - It is evident from the ongoing mapping exercise of children residing in CCIs, conducted by CARA that many children are living in CCIs for more than a year and their legal status is yet to be determined. All such children should be identified district wise in the category of 'unfit parents' or if their parents or guardians have not visited them in the last one year or more or vice-versa. The district functionaries should make collaborative efforts to bring more such children into the adoption pool. As mentioned in Rule 2 (14)(iv) and (v) of JJ Model Rules, 2016 (as amended in 2022) the following category of children should be identified to bring them in the adoption pool- !. Children with no visitation:

(i) All such cases where there is no visitation made by the child's parent, guardian or relative to meet the child in the last one year to be classified under this category

(ii) 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.

2. <u>Filling infrastructural deficiencies</u>

16. *During the course of the hearing, it has emerged before this Court that out of 760 districts in the country, only 390 districts have SAAs. In other words, in 370 districts no SAA is functional.*

17. *Bearing in mind the above factual position, it is apparent that in the absence of SAAs, the process of adoption which has been envisaged in the Regulations of 2022, cannot be efficaciously completed. The SAAs have specific marked responsibilities which are provided in Regulation 30 of the Regulations of 2022. All States and Union Territories are peremptorily directed to ensure that within every district falling within their jurisdiction, SAAs as required by the Juvenile Justice Act, 2015, shall be set up by 31 January 2024.*

18. *The Nodal Department in-charge of implementing the Juvenile Justice Act, 2015, whether it is the State Department in-charge of Women and Child Development or, as the case may be, Social Justice and Welfare Development shall positively communicate compliance to the Director CARA and the Secretary, Ministry of Women and Child Development by 31 January 2024.*

19. *The above directions will also sub-serve the purpose of ensuring that the process of facilitating the identification of children who are residing in Child Care Institutions as well as potential children for adoption from the community is expedited.*

20. As regards HAMA, during the course of hearing, both Ms Aishwarya Bhati, Additional Solicitor General and Dr Jagannath Pati, Director CARA have categorically stated before the Court that the process of adoption under HAMA is independent of the Regulations of 2022 which have been framed under

the Juvenile Justice Act, 2015. It has been stated that CARA intervenes only when an adoption certificate is required by the adoptive parents in order to facilitate the travel of the adopted child to a country outside India. CARA has stated in its note submitted to this Court that based on the fact that HAMA is a statute governing the personal law for Hindus, the Ministry of Women and Child Development has issued a notification on 17 September 2021 entrusting CARA with the duty of issuing documents for inter-country adoption concluded under HAMA wherein Non-Resident Indians/Overseas Citizens of India Card Holder parents desire to relocate the adopted child abroad. The note submitted before the Court also indicates that a central challenge is to ensure that HAMA adoptions align with international adoption conventions, such as the 1993 Hague Inter-country Adoption Convention. It has been stated that although CARA has been processing adoption cases of NRI/OCI PAPs, the receiving countries do not necessarily consider HAMA to be in conformity with the Hague Convention procedure. CARA has thus far issued adoption support letters to NRI/OCI PAPs in 66 cases since May 2022.

21. In order to provide to this Court adequate data on the number and extent of HAMA adoptions, we direct that all States and Union Territories shall compile and submit to the Director CARA, the annual data pertaining to HAMA adoptions for 2021, 2022 and 2023 within each of their respective territories as on 15 January 2024. This data shall be submitted to the Director CARA by 31 January 2024.

22. The data which has been directed to be submitted before this Court shall be compiled and placed on the record by 10 February 2024. CARA shall issue directions to all authorities governed by the Regulations of 2022 to ensure due observance of the timelines which are indicated so that the process of adoptions is streamlined and expedited. The updated statistics for the period ending 31 January 2024 along

with an updated status report shall be placed on the record together with the compilation."

(Emphasis supplied)

The Apex Court *(supra)* directs that adoptions under the Act align with the international adoption conventions as in certain cases processing adoption of NRI/OCI, the receiving countries do not necessarily consider adoption under the Act. Therefore, in order to provide adequate data, it has been directed that all States and Union Territories have to comply and submit to the competent authority of Hindu adoptions within each of their respective territories within a time frame. This was to streamline and expedite the rights of adopted children in signatory nations to the Hague convention.

11. In yet another order, prior to the one quoted hereinabove, the Apex Court in the case of ***KARINA JANE CREED v. UNION OF INDIA***[2] - ***S.L.P.(C) No.13627 of 2019*** decided on 10-06-2019, noticing inter-country adoption under the Hague convention has observed as follows:

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[2] ***2019 SCC OnLine SC 2153***

"…. …. ….

4. Both India and Australia are signatories to the Convention on Protection of Children and Cooperation in respect of Inter-Country Adoption held in Hague in 1993 (hereinafter referred to as "Hague Convention"). Article 5 of the Hague Convention provides:—

> *"Article 5*
> *An adoption within the scope of the Convention shall take place only if the competent authorities of the receiving State-*
>
> *a) have determined that the prospective parents are eligible and suited to adopt:*
> *b) have ensured that the prospective adoptive parents have been counselled as may be necessary; and*
> *c) have determined that the child is or will be authorized to enter and reside permanently in that State."*

5. Inter-country adoption requires a certification with regard to suitability of the adoptive parents to adopt the child, counselling of the prospective adoptive parents and authorization of the child to enter and reside in the receiving State.

6. In India all inter-country adoptions are governed by the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as 'JJ Act'). Section 56(4) of the JJ Act provides:—

> *"56(4) All inter-country adoptions shall be done only as per the provisions of this Act and the adoption regulations framed by the Authority."*

7. *Inter-country adoption of an orphan or abandoned or surrendered child can only be effected in accordance with Section 59 of the JJ Act. Section 59(3) of the JJ Act provides:—*

> *"59(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 authorized 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."*

8. A foreigner living abroad if interested to adopt an orphan or abandoned or surrendered child from India might apply to an authorized foreign adoption agency, or Central Authority or a concerned Government department in their country of habitual residence, in the manner as provided in the adoption regulations framed by the CARA as provided in Section 59(3).

9. The authorized foreign adoption agency, or Central Authority, or concerned Government department, of the foreign country has to prepare a home study report of the prospective adoptive parents and upon finding them eligible sponsor their application to CARA for adoption of a child from India.

10. A foreigner or a person of Indian origin or an overseas citizen of India who has habitual residence in India can apply for adoption of a child from India to CARA along with No Objection Certificate from the diplomatic mission of his country in India.

11. *Section 59(12) of the JJ Act is set out hereinbelow:—*

> *"59(12) - A foreigner or a person of Indian Origin or an overseas citizen of India, who has habitual residence in India, if interested to adopt a child from India, may apply to authority for the same along with a no objection certificate from the diplomatic mission of his country in India, for further*

necessary actions as provided in the adoption regulations framed by the Authority".

12. In view of the statutory provisions of the JJ Act and in particular Section 59(12) thereof the relief prayed for in the writ petition cannot be granted. The writ Court could not have waived the statutory requirement of Section 59(12) of the JJ Act. As observed by learned Single Bench of Delhi High Court, there is little doubt that the petitioner would have brought up the children well, with love and affection and the children too would have been lucky to have the petitioner as an adoptive parent. We have every sympathy for the petitioner but regret our inability to help her.

13. *The special leave petition is accordingly dismissed."*

(Emphasis supplied)

The Apex Court observed that a foreigner or a person of Indian origin or an Overseas Citizen of India can apply for adoption of a child from India to the Authority with NOC from the diplomatic mission of his country in India. The Apex Court quotes Section 59 of the Juvenile Justice Act and observes that statutory requirement in cases of adoption cannot be deviated by the writ Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The Apex Court holds that the Delhi High Court has erred in granting such relief *de hors* observance of following of procedure. It is not in dispute that Germany is also a signatory to the Hague Convention

like India. Germany has also put in place a Federal Central Authority of Germany depicting the norms for inter-country adoption. The petitioners have themselves placed the norms on record. The norms read as follows:

> ***"The Federal Republic of Germany is a Contracting Party to the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Inter-country adoption (Hague Adoption Convention), and has been since 1 March 2002. The Federal Office of Justice is Germany's Federal Central Authority under the terms of the Convention. In this role, it promotes co-operation in the area of inter-country adoption. In addition, in its role as Federal Central Authority for inter-country Adoption, it acts as a liaison and coordination body between Germany and other nations, be they contracting or non-Contracting Parties.***
>
> ***However, the Federal Office of Justice does not itself carry out any individual inter-country adoptions. In Germany, it is the Regional Central Authorities at the Youth Welfare Offices of the Lander, as well as the independently-owned adoption accredited bodies, which are authorized to act in this capacity. The Federal Office of Justice, as Federal Central Authority for Inter-country Adoption, is involved in court cases for the recognition of adoption decisions issued abroad which take place before the family courts in Germany. Furthermore, it issues certificates of legal capacity for adoptions abroad when requested by German nationals living abroad who wish to adopt a child in their country of residence or wish to adopt a child from a third country."***
>
> *(Emphasis supplied)*

The aforementioned norms would indicate inter-country adoption of German national. Therefore, the petitioners shall knock at the doors of the authorities in Germany under the Hague convention seeking a communication to India for issuance of NOC and Conformity certificate. On receipt of the said communication from the aforesaid authority of Germany, the appropriate authority – the CARA, without brooking any delay, issue a no objection certificate and a conformity certificate. If what is sought by the petitioners is granted, it would run counter to the established procedure. Therefore, the inter-country adoption should necessarily be in tune with the procedure quoted *supra*.

12. For the aforesaid reasons, I pass the following:

O R D E R

(i) Writ Petition is disposed of.

(ii) The petitioners are at liberty to move the receiving country i.e., Germany for a communication to the Central Adoption Resource Authority for necessary

action. In the event the petitioners would get a communication from the receiving country, the Central Adoption Resource Authority shall issue such No Objection Certificate and Conformity Certificate within 10 days from the date of such communication from the receiving country – Germany.

(iii) The petitioners are also at liberty to knock at the doors of appropriate *fora* in the event of need.

I.A.No.1 of 2023 also stands disposed accordingly.

Sd/-
JUDGE

bkp
CT:SS