

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO 425/2010**

% **Date of decision: July 9<sup>th</sup>, 2012**

**MS.STEPHANIE JOAN BECKER** ..... Appellant  
Through Mr.Mohinder Singh, Advocate

versus

**STATE & ANR** ..... Respondents  
Through Mr.Ashok Singh, Advocate

**CORAM:**  
**HON'BLE MS. JUSTICE VEENA BIRBAL**

**VEENA BIRBAL, J**

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1. Present is an appeal under Section 47 of the Guardians and Wards Act, 1890 (hereinafter referred to as 'the Act') for setting aside the judgment dated 17.9.2010 passed by the learned District Judge-IV wherein petition under section 7 and 26 of the Act filed on behalf of the appellant has been dismissed.

2. The factual background of the case is as under:-

Appellant is a single lady. She had filed a petition under section 7 and 26 of the Act through her attorney Ms.Vijay Rana. At the time of filing petition, appellant was 53 years of age. Appellant is a citizen/national of USA. She wanted to adopt a child from India in order to complete her family. She is a Naturopathic Physician since 2000 for the Washington Centre for Complementary Medicine

(WCCM). As per the averments in the petition, appellant enjoys high status and has sufficient means of livelihood.

Respondent no.2 is a registered society and is licensed by Government of NCT of Delhi to keep and maintain abandoned, orphaned and destitute children at the children homes. Respondent no.2 has been granted recognition by the Ministry of Social Justice and Empowerment, Government of India for submitting the applications to the Competent Court for declaration of foreigners as guardians of Indian Children under the Act.

On 16<sup>th</sup> March, 2008, a minor female child, namely, Tina born on 20.10.2003 (hereinafter referred to as 'the child') was found abandoned by the police officials, Police Station Connaught Place and the said child was handed over to the care and custody of respondent no.2 society on the same day and since then no one has claimed the child. The child has been declared as abandoned child and free for adoption by the Child Welfare Committee vide its order dated 26.11.2008. The appellant had expressed desire and intention to adopt the child.

It is further stated that every attempt was made to place the child in an Indian family but no suitable Indian family came forward to adopt the child, as such, Coordinating Voluntary Adoption Resource Agency (in short CVARA) has cleared the said child for foreign adoption. Central Adoption Resource Authority (in short 'CARA') has also issued No Objection Certificate in her favour for adopting the said child. Appellant has been recommended by Journeys of the Heart Adoption Services, USA, recognized by Government of India and is competent to sponsor her. It is stated that appellant has undertaken to

send the respondent no.2 a progress report and photograph of the child quarterly for two years and thereafter half yearly for the next three years until adoption is completed. She has undertaken to bring up the child and provide necessary education as per her status.

3. Notice of the aforesaid petition was issued to the respondents and citation was also affixed on the notice board of the court house. No one appeared on behalf of the respondents to contest the petition.

4. On behalf of the appellant, two witnesses were examined i.e., Ms.Vijay Rana, Attorney of appellant as PW-1 and Ms.Surekha Pawar, Senior Social Worker, SOS Children as PW-2.

5. After hearing counsel for the appellant, the learned District Judge has dismissed the petition relying upon para 4.1 of Chapter IV titled 'Procedure for Inter-Country Adoption' of Guideless for Adoption from India, 2006, issued by the Central Adoption Resource Authority, Ministry of Social Justice & Empowerment Government of India, (hereinafter referred to as 'the Guidelines') wherein it is specifically mentioned that "single person (never married, widowed, divorced) upto 45 years can adopt. It was held that if these Guidelines are taken into consideration, appellant who is admittedly more than 53 years of age at the time of filing of the petition was not eligible to adopt the child. It is further held that as per information given in Ex.P-2 i.e., Home Study Report, appellant is not eligible to adopt the child in question being more than 53 years of age. Relying on aforesaid report, learned District Judge has also observed that there is

huge age difference between the appellant and the child and the appellant is also working and has to hire a help for looking after the child and accordingly dismissed the petition.

6. Aggrieved with the aforesaid order, present appeal is filed.

7. Learned counsel for the appellant has contended that though the learned District Judge has referred to para 4.1 Chapter IV titled “Procedure for Inter Country Adoption” of aforesaid Guidelines but did not further go to the next clause in the same para where it is stated that a ‘Foreign Proposed Adoptive Parent’ in no case should be less than 30 years and more than 55 years of age. It is contended that the learned District Judge has completely ignored the said clause. It is contended that if the said clause is taken into consideration, in that event, appellant was eligible for adoption when the petition was filed. It is contended that the impugned judgment suffers from infirmity and is illegal and not in the welfare of the child and appellant ought to have been appointed as a guardian with permission to adopt the child as her daughter.

8. It is further submitted that the Central Adoption Resource Authority (hereinafter referred to as ‘CARA’), an autonomous body of the Ministry of Women and Child Development, Government of India has already given ‘No Objection Certificate’ dated 3<sup>rd</sup> February, 2010 i.e., Ex.R-3 for placement of the said child with prospective adoptive parent and the procedure as contemplated in Chapter IV of the said Guidelines has been followed. It is contended that even the

Guidelines can be relaxed in suitable cases and in the present case, the same were relaxed by CARA when No Objection Certificate dated 3.2.2010 was issued. It is submitted that under these circumstances, the learned District Judge ought to have allowed the petition. It is further contended that appellant is a Doctor by profession and has high status and is financially capable of maintaining the child. It is submitted that allowing the prayer of appellant would serve the interest of minor.

9. The respondent nos. 1 and 2 did not appear despite being served. Notice was also issued to standing counsel Union of India. Mr Ashok Singh, Advocate has appeared for the Union of India and has contended that the order passed by the learned District Judge does not call for any interference. It is stated that appellant is a working woman and she may not be in a position to take care of the child as there is a huge gap between the age of appellant and the child to be adopted. It is contended that there is nothing on record to show that the Guidelines were relaxed in her case as is alleged.

10. I have considered the submissions made and perused the material on record.

11. As per own case of appellant, she was 53 years of age when petition u/s 7 and 26 of the Act was filed before the Ld. District Judge for appointment of appellant as guardian of the child Tina with permission to adopt her as her daughter in accordance with local laws of her country.

12. The aims and objects of the Guidelines is to provide a sound basis for inter country adoption within the framework of the norms and principles laid down by the Supreme Court of India and to take all other measures necessary for the promotion of in-country adoption of children as well as welfare of children in general. The goal is to find a family for as many orphan as possible and to safeguard their interests as visualized in the UN Convention of Child Rights and Hague Convention on Inter-country Adoption.

13. The criteria for Foreign Prospective Adoptive Parent/s (FPAP) as given in Chapter-IV of the said Guidelines is as under:-

“4.1 Married couple with 5 years of a stable relationship, age, financial and health status with reasonable income to support the child should be evident in the Home Study Report.

Prospective adoptive parents having composite age of 90 years or less can adopt infants and young children. These provisions may be suitably relaxed in exceptional cases, such as older children and children with special needs, for reasons clearly stated in the Home Study Report. However, in no case should be age of any one of the prospective adoptive parents exceed 55 years.

Single persons (never married, widowed, divorced) upto 45 years can also adopt.

Age difference of the single adoptive parent and child should be 21 years or more.

A FPAP in no case should be less than 30 years and more than 55 years.

A second adoption from India will be considered only when the legal adoption of the first child is completed.

Same sex couples are not eligible to adopt.”

14. The appellant is a single lady who has never married and as per the Guidelines, single person never married/widowed/divorced upto 45 years of age can adopt. The stand of the learned counsel is that the learned District Judge did not go to the other clause i.e., “FPAP” in no case should be less than 30 years and more than 55 years as stated in para 4.1 of Chapter IV of the Guidelines.

15. The reliance placed on aforesaid clause appearing in para 4.1 of Chapter IV of the Guidelines by the Ld. counsel for appellant is misplaced. The present is a case of single person (never married) and for that category person upto 45 years of age is eligible. In view of clause specifically dealing with single person i.e., single person (never married, widowed, divorced), the age limit is 45 years and the age difference of single adoptive parent and child should be 21 years or more, the contentions raised has no force. The clause pointed out by learned counsel for the appellant that FPAP upto 55 years can adopt is qua married couple which is dealt in para 4.1 wherein criteria for prospective adoptive parents having composite age is discussed.

16. As regards the contention that CARA can relax the Guidelines in suitable cases, nothing is placed on record to substantiate that the

Guidelines were relaxed in the present case. No Objection Certificate given by the CARA dated 3<sup>rd</sup> February, 2010 Ex.R-3 does not indicate as to how the appellant fulfils the age criteria. Chapter-X para 10.3 of the Guidelines provides that in such cases where CARA feels that a particular provision needs to be relaxed, it may do so by recording reasons as to how the best interest of the child is being served by such relaxation. In the present case, no such reasons are placed on record either before this court or before the learned District Judge.

17. In the present case, the appellant does not fit in the criteria laid down by the aforesaid Guidelines. The learned District Judge has categorically observed that there is huge gap between the age of the appellant and that of the child and it will be very difficult for the child to adapt to the new environment. The Home Study Report Ex.P2 has also been considered while dismissing the petition.

18. Considering the totality of the facts and circumstances, there is no illegality in the impugned order. The appeal stands dismissed.

**VEENA BIRBAL, J**

**July 9<sup>th</sup>, 2012**

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