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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 28th November, 2023
+ **W.P.(C) 11168/2020 & CM APPL. 40499/2021, 36035/2023,**
55550/2023
JAGDISH SINGH SHARY Petitioner
Through: Mr. Kabir S. Ghosh, Advocate.
versus

CENTRAL ADOPTION RESOURCE AUTHORITY Respondent
Through: Mr. Vineet Dhanda, CGSC with Mr.
Sumit Bhargava, Advocate & Mr.
Jagannath Pati, Director (CARA)
Mr. Atul Nagarajan, Id. Amicus Curiae

CORAM:
JUSTICE PRATHIBA M. SINGH

JUDGMENT

1. This hearing has been done through hybrid mode.
2. The Petitioner- Jagdish Singh Shary has been constrained to file the present writ petition seeking a direction to be issued to the Central Adoption Resource Authority (*hereinafter* “CARA”) to issue a No Objection Certificate (‘NOC’) to enable the adoption of the child, Master Damanjeet Singh, by the Petitioner. The child was born on 15th March, 2004 and an adoption deed dated 26th February, 2018 was executed between the Petitioner, his wife and the biological parents of the child, i.e., the brother and sister-in-law of the Petitioner. Thereafter, the Petitioner and his wife left for the USA on 30th April, 2018 and are residents of USA.
3. It is the case of the Petitioner that since 2019, various applications and representations have been submitted to different authorities for the purpose of



taking the child to the United States, where the Petitioner resides. However, CARA has not issued the requisite No Objection Certificate despite repeated representations and also directions of this Court.

4. This petition along with three other petitions were taken up by this Court for hearing from time to time. All four petitions related to cases governed by HAMA where there was no agency to deal with inter-country adoptions and to give support as also NOCs for processing the said adoptions. The PAPs (prospective adoptive parents) had to undergo a laborious process and repeatedly approach CARA for obtaining documentation to take the child abroad. Considering this situation, the Court had observed vide judgement dated 31st August 2021 as under:

Adoption under Hindu Adoption and Maintenance Act, 1956 (HAMA)

- Before granting permission for a guardian to give a child in adoption under HAMA, Courts must ensure that the adoption is for the welfare of the child, considering the child's wishes, age & understanding and upon verifying that no payments or rewards have been made or agreed upon in consideration of the adoption;
- If there is a registered adoption deed, as per Section 15 of HAMA, it is presumed to be in compliance with provisions of HAMA, provided it is signed by both the party giving and the party receiving the child in adoption. Further, the requirement for any religious ceremony such as '*datta homam*' is not necessary for valid adoption under HAMA.

Inter-Country adoption

- The procedure for Inter-Country adoption is prescribed under Section 59 of the Juvenile Justice (Care and Protection of Children) Act, 2015. The said provision establishes a comprehensive process for inter-



country adoptions, involving eligibility assessments, Home Study Reports, getting registered on the Child Adoption Resource Information and Guidance System (CARINGS) and CARA approval.

- Inter-country direct adoption amongst relatives is governed under Section 60 of the JJ Act, 2015. The said process requires Court approval and a No Objection Certificate (NOC) from CARA, ensuring the child's welfare and adherence to legal procedures, without the need for the child to be declared legally free for adoption.
- In the case of **Lakshmi Kant Pandey v. Union of India**¹, the Supreme Court, prior to the enactment of the JJ Act, 2000 examined the complexities of inter-country adoptions. The said case resulted in the recommendation for the creation of an agency to oversee such adoptions. This suggestion, combined with the Hague Convention's guidelines, contributed to the formation of CARA.
- In cases involving inter-country adoption where biological parents were willing to give up their child for adoption, it was presumed that they were acting in the child's best interests, concluding that inter-country direct adoptions do not necessitate third-party monitoring or regulation.
- In situations where an individual is eligible to adopt a child under both the HAMA and the JJ Act, 2015 they have the choice to opt for either statute for adoption. There can be no compulsion by any authority to use only the JJ Act, 2015, particularly when there is no conflict between the two laws. In **Sivarama K. & Ors. v. State of Kerala & Ors., 2020**

¹ (1984) 2 SCC 244



(1) *Kerala Law Journal* 641, relying on the said principle, CARA was directed to issue an NOC and the Ministry of External Affairs was directed to issue a passport for a child being adopted under HAMA.

Inter-country adoptions between non-relatives under JJ Act, 2015 and HAMA

- There exists a lacuna in law regarding inter-country adoptions between non-relatives under the JJ Act, 2015, as also inter-country adoptions under HAMA, particularly after India's ratification of the Hague Convention.
- Since CARA would not have jurisdiction over HAMA adoptions, as the JJ Act, 2015 does not apply in respect of HAMA adoptions, considering CARA was the only specialised agency for inter-country adoptions, there is also a need to create a specialized agency for inter-country adoptions under HAMA or to vest the said jurisdiction with CARA itself.

Role & function of CARA

- CARA is responsible for regulating inter-country adoptions and also performs the functions of the Central Authority under the Hague Convention for such adoptions.
- Domestic adoptions that are valid under HAMA do not require supervision from any agency, as per Section 56(3) of the JJ Act
- The Hague Convention recognizes adoptions under HAMA (as per Article 37), but also stipulates the acquisition of a No Objection Certificate (NOC) from the Central Authority for inter-country adoptions. Therefore, there is a need to establish a framework in India for issuing NOCs for inter-country adoptions valid under HAMA.



- While the JJ Act, 2015, and the Adoption Regulations, 2017, have detailed procedures for inter-country adoptions, these do not govern HAMA adoptions. Consequently, there is no clear procedure for HAMA adoptions, leading adoptive parents and children to frequently engage in legal proceedings, which can be time-consuming and disruptive.
5. After considering the struggle of PAPs and the children who were to be adopted and the legal position with regards to inter country adoptions, this Court passed a detailed judgement dated 31st August, 2021 in ***R.K. and Ors. v. Central Adoption Resource Authority, 2021:DHC:2673***. Further, in the said judgement, this Court had directed the issuance of the NOC to the Petitioner for adoption. The operative portion of the judgement dated 31st August, 2021 in this case is as under:

“93. In this petition, the adoption is by the real uncle (chacha) of the child. A registered adoption deed has been executed between the adoptive parents and the biological parents on 26th February, 2018 in Basaidarapur, Delhi. As of 2018, the adoptive parents have returned to the U.S., leaving behind the adopted child with their family. Since the adoptive father is the chacha of the child, the Committee shall verify the background of the biological parents. After interacting with them as also with the adoptive parents through any online platform, if any further documents are required, reasonable time would be granted for the said purpose. In any case, after verifying the documents, the NOC shall be granted by CARA within a period of one month.”

6. The present case was a case where the *chacha* of the child wanted to adopt his nephew. Detailed arguments were heard in this matter as also in



connected matters. The Court had issued the following directions after hearing four petitions relating to HAMA adoptions. The following paragraph is extracted below:

“96. In terms of the directions issued above;

a. The Secretary, Ministry of Women and Child Development, Government of India shall file a report before this Court as to the manner and mode of creating a permanent mechanism to deal with inter-country adoptions under HAMA, both direct and indirect and place the said report before this Court within a period of two months.

b. There are several errors on the website of CARA in respect of HAMA adoptions. CARA shall carry out corrections in its website and place a report before this Court within eight weeks;

c. CARA shall also frame guidelines for the processing of NOCs for inter-country adoptions under HAMA and make available forms for this purpose on the portal. Let the draft guidelines and the timelines for activating the portal be placed on record by means of a status report within two months. Details of the special Committee constituted to deal with HAMA adoptions shall also be specified in the report;

d. A status report in respect of each of the writ petitions and the processing of grant of NOCs be also filed at least one week before the next date of hearing.”

7. Pursuant to the judgment dated 31st August, 2021, a representative from CARA had appeared before the Court on 9th November, 2021 and had made a submission that the Adoption (First Amendment) Regulations, 2021 (*hereinafter ‘2021 Regulations’*) have been issued on 17th September, 2021. Under the said Regulations, CARA has been made the Agency to deal with inter-country adoptions which have taken place under HAMA as well. Since then, the said regulations are being followed in respect of HAMA adoptions.



Despite the direction issued more than two years ago, in the present case, the NOC was not issued by CARA and the struggle of the PAPs and the child continues. The petition has been listed before the Court for compliance since 9th November, 2021. Repeated adjournments have been given.

8. On the last date of hearing, i.e., 30th October, 2023, Mr. Jagannath Pati, Director (Programme), CARA had appeared before the Court virtually and submitted that even without the NOC being issued, the US Embassy has agreed that the visa application of the child would be considered on the basis of the support letter issued by CARA. Accordingly, Mr. Pati was directed to place the place on record the said submissions by way of an affidavit. In addition, the following directions were issued by this Court:

“6. Accordingly, let the Petitioner proceed further and file a visa application with the US Embassy along with the support letter. If any impediments are faced, the same may be brought to the notice of this Court by way of an application.

7. CARA shall place on record an affidavit of Dr. Jagannath Pati as to the reason why the NOC has not been issued in this case till date even after judgement dated 31st August, 2021 and subsequent orders.

8. In view of the submissions made today, Dr. Jagannath Pati shall remain present in Court on the next date of hearing.”

9. In compliance with the directions issued in the last order, Mr. Jagannath Pati, Director, CARA is present in Court and submits that insofar as the present case is concerned, the NOC was to be issued within a period of one month. However, a support letter has been issued because the U.S. authorities are willing to process the case of the Petitioner with only the support letter.

10. However, today, the Id. Counsel for the Petitioner submits that the



support letter is not sufficient and the U.S. authorities are insisting on an NOC from CARA.

11. Vide order dated 16th October, 2023, this Court recorded the submission of Mr. Atul Nagarajan, Id. Amicus Curiae who had also highlighted that even after more than two years of the issuance of the direction of this Court to issue the NOC to the Petitioner, the Petitioner has not been issued the NOC by CARA. Only a support letter dated 3rd November, 2022 was issued by CARA that too, when the direction in judgement dated 31st August, 2021 was to issue an NOC within one month. The relevant observations and directions vide order dated 16th October, 2023 are set out below:

“7. As per the aforementioned regulation, CARA is mandated to issue NOCs to Hague Adoption Convention ratified countries and the issuance of mere support letters is completely inexplicable, especially once the documentation is completed by the parties.

8. The Court notices in these cases that Petitioners and other Applicants for intercountry adoption are continuously facing one obstacle or the other to get their adoptions processed through CARA for issuance of NOCs. The Court takes a very grim view of the matter inasmuch as the issuance of NOCs cannot be made so onerous for persons who wish to adopt.

9. Moreover, it has also been brought to the notice of the Court by the Id. Amicus that exorbitant expenses are being incurred by adoptive parents for obtaining Home Study Reports (HSRs) during inter-country adoption of children. The authorities also need to look into the matter and on the last date a joint affidavit was directed to be filed by the concerned Ministries.

10. Id. Counsel for CARA submits that he has filed the said affidavit but the same is not on record.

11. In view thereof, the concerned Director/Joint



Secretary in the Ministry of External Affairs shall also remain present in Court.

12. Ld. Counsel for CARA shall also explain the following on the next date of hearing:

i. Why only support letters are being issued and not NOCs as was being done earlier and as mandated by the Regulations?

ii. What is the reason for the delay in respect of the Petitioner in issuing the NOC despite the District Magistrate's verification certificate dated 10th March, 2022?

13. The CEO of CARA shall also be present in Court on the next date hearing with the following data:

(i) Total number of applications received for issuance of NOC under the Hindu Adoption and Maintenance Act, 1956 after the decision of this Court dated 31st August, 2021 in these and connected petitions as also the amendment of the Adoption Regulations, 2017.

(ii) Total number of NOCs issued.

(iii) Total number of support letters issued.

(iv) The number of applications which continue to remain pending.

14. Mr. Dhanda, ld. Counsel for CARA may take the assistance of ld. Counsel for the Petitioner if any clarifications are required qua the Petitioner's application."

12. In the present case, CARA's stand is that it has only been issuing support letters in non-Hague cases. The apprehension is that the present case should not be treated as a precedent for other matters.

13. Ld. Counsel appearing for CARA also points that that a petition is now pending before the Supreme Court being ***Writ Petition (Civil) Nos. 1003/2021*** titled ***The Temple of Healing v. Union of India*** wherein on 20th November, 2023, wherein certain apprehensions have been raised by CARA in respect of HAMA adoptions. The said portion of the order is recorded below:



“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.”

14. A perusal of the above referred order of the Supreme Court makes it evident that the Supreme Court is in fact looking at the manner in which more and more adoptions of children could be facilitated considering the large number of PAPs who are waiting as also for expediting the process of adoption. The Supreme Court has directed all States and Union Territories to compile data with respect to HAMA adoptions for the years 2021, 2022 and 2023 and submit the same to Director, CARA, in order to ascertain the number and extent of HAMA adoptions.

15. The present case is one which relates to a period prior to the 2021 regulations, where specific directions were issued by the Court for issuance of NOC considering that the adoptive father is the *Chacha* of the child. In fact, the parties themselves had appeared repeatedly before the Court. There is a sense of frustration amongst both sets of parents as also the child. The grandfather of the child has also come to Court repeatedly as, with every passing year, the child is growing up. It is also clear that, in these facts, there can be no concern that the present case is one where trafficking of a minor child is involved, since the adoption is by the *chacha* of the child.

16. After some hearing, Mr. Jagannath Pati, Director, CARA assures the Court that the NOC shall be issued by CARA within one week. It is clarified



that the order in this case directing issuance of NOC shall not be treated as a precedent for other matters, including in cases which are not covered by the 2021 Regulations.

17. Mr. Atul Nagarajan, Id. *Amicus Curiae* points out that the exorbitant expenses being incurred by adoptive parents for obtaining home study reports during inter-country adoptions and the said aspect has not been looked into in terms of the order dated 16th October, 2023.

18. In view of the fact that various issues relating to adoption being overseen by CARA are now pending before the Supreme Court in *Writ Petition (Civil) Nos. 1003/2021 (supra)*, the said issue is no longer being considered as a part of the present writ petition.

19. The writ petition is disposed of and no further orders are called for. All pending applications are also disposed of.

20. The Petitioner is, however given liberty to move an application in the event that the NOC, as directed by this Court is not issued by CARA.

**PRATHIBA M. SINGH
JUDGE**

NOVEMBER 28, 2023

Rahul/am

[Corrected and released on 4th December, 2023]