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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
PUBLIC INTEREST LITIGATION NO.162 OF 2015
WITH
CIVIL APPLICATION NO.68 OF 2016 WITH
CIVIL APPLICATION NO.195 OF 2015 WITH
CIVIL APPLICATION NO.33 OF 2016 WITH
CIVIL APPLICATION NO.42 OF 2016

Santosh Digambar Honkarape
and another ...Petitioners
vs.
The Central Adoption Resource
Agency and others ...Respondents

Ms Shirin Merchant for the Petitioner in PIL
162/2015 and for applicant in CAI 195/2015
Mr.Mihir Desai Advocate appointed Amicus Curiae
Ms Anjali Tre Babanrao Pawar applicant in person in
CAI 33 of 2016
Ms Pooja Joshi i/b Mr.S.R.Ganbavale for applicant in
CAI 42/2016
Mr.Anil C. Singh, ASG a/w Mr.D.P.Singh,
Mr.Y.R.Mishra, Mr.D.A.Nalawade, Mr.N.R.Prajapati for
the respondent Nos.1 and 2
Ms Neha Bhide, AGP `B' Panel for respondent No.3

ALONG WITH
ORDINARY ORIGINAL CIVIL JURISDICTION
PUBLIC INTEREST LITIGATION (L) NO.140 OF 2015

Federation of Adoption
Agencies ...Petitioners
vs.
The Central Adoption
Resource Authority & Anr. ...Respondents

Ms Ankita Singhania i/b Mr.Hafeezaur Rehman for the
petitioners
Mr.Anil Singh, ASG a/w Mr.Y.R.Mishra and
Mr.N.R.Prajapati and Mr.D.P.Singh for respondent
Nos.1 and 2.

CORAM : A.S.OKA, &
P.D.NAIK, JJ.
DATE : APRIL 12, 2016

P.C.:

1 In PIL No.162 of 2015 the challenge is to the Guidelines governing Adoption of Children, 2015 (for short `2015 Guidelines') which were made by the Central Adoption Resource Authority (for short `the Authority') under the Juvenile Justice (Care and Protection of Children) Act,2000 (for short `the said Act of 2000').

2 Now, the Juvenile Justice (Care and Protection of Children) Act,2015 (for short `the said Act of 2015') has been enacted which came into force on 15th January 2016. As far as the PIL (L) No.140 of 2015 is concerned, again challenge is to 2015 Guidelines.

3 Our attention is invited to the order dated 14th March 2016 passed by the Apex Court in Writ Petition (Civil) No.124 of 2012 (Advait Foundation and another vs. Union of India and others). By the said order, the Apex Court has disposed of the Writ Petition under Article 32 of the Constitution of India in which there were several prayers made including the prayer for issuing a writ of mandamus

directing the Union of India to enforce all obligations of the UN Convention on the Rights of the Child ratified, accepted and acceded by India on 11th December 1992.

4 The observations made by the Apex Court/directions can be summarised as under:

(a) From the preamble, it is evident that the said Act of 2015 is a comprehensive legislation on the subject involving care and protection of the children including adoption covered by Chapter VIII thereof;

(b) In view of section 68 of the said Act of 2015, the Authority under the said Act of 2000 shall be deemed to have been constituted as the Authority under the said Act of 2015;

(c) There is a rule making power conferred under section 110 of the said Act of 2015 on the State Government. The Central Government is empowered to frame the model rules on the subjects set out under section 110;

5 Before the Apex Court, the Authority sought time of three months to frame the Regulations. Power to frame the Regulations is under section 68 (c) of the said Act of 2015.

6 The Apex Court recorded a statement of the learned counsel for the Union of India that within the said period of three months, the Government shall formulate the model rules for the benefit of the State Governments. The Guidelines, if any, which were earlier in force in terms of section 41-A of the said Act of 2000 were ordered to be notified by the Government with or without modifications considering the necessity till the Authority frames Regulations as contemplated by the said Act of 2015.

7 Though the Apex Court disposed of the petition, following directions were issued :

(I) The Central Government shall expeditiously frame the model rules and circulate the same to the State Government. The Central Government will take up the matter with the State Governments to ensure that they exercise the rule making power under section 110 of the said Act of 2015;

(II) The Authority shall take steps in terms of the section 68 of the said Act of 2015;

(III) Liberty was reserved to the petitioner to file a fresh petition if there were specific cases of illegality in respect of the children.

8 Today, the learned ASG stated that the model

rules as provided in proviso to sub section (1) of section 110 of the said Act of 2015 will be framed by the Central Government within a period of three months from 14th March 2016 which is the date of the order of the Apex Court. There is already a direction issued by the Apex Court to the Authority to frame Guidelines/Regulations and in fact a statement has been recorded by the Apex Court of the Authority that within a period of three months, Regulations will be framed.

9 An affidavit of Shri Jagannath Pati, the Joint Director of Central Adoption Resource Authority (Statutory Body of the Ministry of Women and Child Development, Government of India), New Delhi is filed on behalf of the Union of India which is tendered today. In paragraph 4, it is stated thus:

"4 In response, it is humbly submitted that the Guidelines governing Adoption of Children (2015) is in operation under sub-section 2 of Section 111 (Saving Clause) of the Juvenile Justice (Care and Protection of Children) Act, 2015, until the rules and regulations governing adoption are made under the relevant provisions of the said Act of 2015."

10 On the last date of hearing, the learned senior counsel appointed as Amicus Curiae pointed out that till the Authority under the said Act of 2015 frames

the Regulations under clause(c) of section 68 of the said Act of 2015, there will be a vacuum created as the Guidelines issued by the said Authority under the said Act of 2000 will cease to operate.

11 The submission of the counsel representing the petitioners is that the Guidelines framed by the Authority including the 2015 Guidelines were not framed in exercise of the power under the said Act of 2000 and therefore, by taking the benefit of the several clauses under sub section (1) of section 110 of the said Act of 2015, Central Government cannot claim that the 2015 Guidelines will continue to operate unless and until the Rules and Regulations of adoption are made under the provisions of the said Act of 2015. The learned counsel for the petitioner pointed out that some of the 2015 Guidelines run completely contrary to the express provisions of the said Act of 2015. By way of illustration, it is pointed out that under sub section (1) of section 74 there is a complete prohibition on publication of a picture of the child in need, care and protection and in fact, the contravention of sub section 1 of section 74 has been made as offence.

12 Looking to the language used by sub section 3 of section 41 of the said Act of 2000, we do not agree with the submission that there was no authority conferred under the said Act of 2000 on

the said Authority to frame the Guidelines for adoption. In any event, we need not go into the legality of the stand taken in paragraph 4 of the said affidavit. Express directions were issued by the Apex Court in the aforesaid order recording that it will be open for the Central Government to notify the Guidelines which were earlier in force in terms of sub-section 3 of section 41 of the Repealed Act with or without modification. Thus, the Apex Court has observed that there will be a power vesting in the Central Government to continue the operation of the Guidelines issued under sub-section 5 of section 41 with or without modification till the Regulations are framed by the said Authority under clause (c) of section 68 of the said Act of 2015.

13 Therefore, in any event, the Apex has conferred Authority on the Central Government to continue 2015 Guidelines till the Regulations are framed by the said Authority under the said Act of 2015.

14 Suffice it to say that now with coming into force the said Act of 2015, the life of 2015 Guidelines which are impugned in the petitions is very limited to the extent of at the most two or three months. If the petitioners and/or intervenors are of the view that some of the 2015 Guidelines are directly in breach of the said Act of 2015, it will be open for them to invite attention of the

Government of India to the said aspect so that the Government India can always exercise liberty reserved by the Apex Court to direct that the 2015 Guidelines will continue with necessary modification.

15 We have perused the rule making power conferred on the State Government under section 110 of the said Act of 2015. We are of the view that unless rule making power is exercised by the State Government, the provisions of the said Act of 2015 cannot be effectively implemented. Therefore, the State Government will have to take immediate steps for framing the Rules. The State Government will have to make a statement before this Court about the outer limit within which an endeavour will be made to make the statutory rules under section 110.

16 In view of the order of the Apex Court dated 14th March 2016 and in view of the fact that the challenge in these two PILs will not survive, we are disposing of the PILs. However, we propose to list the PILs under the caption of 'Directions' to ensure that compliance is made by the said Authority, Central and State Governments with the provisions of the said Act of 2015.

17 The Central Government is expected to frame the model Rules by 13th June 2016. Thereafter, the State Government will have to start legislative process of framing the Rules under section 110.

18 Hence, we pass the following order:

- (I) Subject to what is observed above, the petitions are disposed of;
- (II) We make it clear that no adjudication is made by this Court on various factual contentions raised not only by the parties to the petition but also by the intervenors. If the intervenors are aggrieved, they can always adopt appropriate proceedings for redressal of their grievances;
- (III) We accept the statement made by the Government of India in the affidavit of Shri Jagannath Pati in paragraph 4 thereof which we have quoted above. If parties to the petition or the intervenors are of the view that some of the 2015 Guidelines are directly in conflict with the provisions of the said Act of 2015, it will be open for them to invite attention of the Ministry of Women and Child Development Department, Government of India to the said aspect;
- (IV) As far as the contention based on subsection 1 of section 74 of the said Act of 2015 is concerned, we direct that Ministry of Women and Child Development Department, Government of India to look into the said grievance;
- (V) If necessary, appropriate modification shall be made by the Central Government to the 2015 Guidelines on the basis of the liberty granted by the Apex Court under the order dated

14th March 2016;

- (VI) For considering the compliance by the said Authority and Central and State Governments of the provisions of the said Act of 2015 and in particular clause(c) of section 68 and proviso to sub-section 1 of section 110 respectively, the petitions shall be listed on 21st June 2016 under the caption of `Directions';
- (VII) We direct the State Government to file an affidavit setting out the outer limit within which the rule making power will be exercised by the State Government under section 110 of the said Act of 2015;
- (VIII) If some of the parties to the petitions or intervenors raise objection that some of the Guidelines are in breach of the said Act of 2015, such grievances shall be looked into by the Ministry of Women and Child Development Department of Government of India as expeditiously as possible and in any event within a period of one month from the date on which representations are made to the Secretary Incharge of the said department;
- (IX) Intervention application or applications which are pending do not survive and the same are disposed of;
- (X) Affidavit of compliance shall be filed by the concerned Authority, Central Government and the State Government on or before 17th June 2016.

(P.D.NAIK,J.)

(A.S.OKA,J.)