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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 6024/2013 & CM APPLs.657-658/2017

DAKSHA ASHWINKUMAR PAREKH Petitioner

Through Mr. Karan S. Thukral with Mr. Rohit
Yadav, Advocates

versus

UNION OF INDIA & ANR.

..... Respondents
Through Mr. Amit Sibar, Senior Advocate and
Amicus Curiae with Mr. Rohan Alva,
Advocate.
Mr. Amit Mahajan, CGSC for UOI.
Mr. Akshay Makhija, CGSC with
Ms. Sanjugeeta Moktan and
Mr. Kapil Kumar, Advocates for
CARA.**CORAM:****HON'BLE MR. JUSTICE MANMOHAN****ORDER**

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17.03.2017

This Court in a judgment delivered on 18th July, 2016 in ***PKH vs. Central Adoption Resource Authority through the Secretary, W.P.(C) No.5781/2015*** has held as under:-

“91. The survey of the domestic law and international conventions leads to the following conclusions:

- a. As the adoption deed in the present case has been executed under HAMA, 1956, before the Act, 2015 came into force and the adoption deed has been held to be legal, valid and genuine*

by the Additional Civil Judge (Senior Division), Zira in a civil suit filed by the adoptive parents against the natural mother, the adoption in the present case is governed by the Act, 2000 and not by Act, 2015.

- b. The Act, 2000 read with the Rules, 2007 and the Guidelines, 2015 expressly lays down a procedure for adoption only in relation to a child who is an orphan or abandoned or surrendered, and does not cover inter-country direct adoption.*
- c. The Act, 2000 read with the Rules, 2007 and the Guidelines, 2015 provides that a child is surrendered when the parents wish to relinquish him/her to the CWC and a formal act takes place by which the child is surrendered by the natural parents to the CWC. Once the surrender is complete, the parents have no role in the future of the child and the CWC alone decides the best course for the child's future before the child is adopted.*
- d. A child given in direct adoption cannot be termed as a "surrendered child", since there is no relinquishment of the child, by the parents to the CWC.*
- e. The Supreme Court in Lakshmi Kant Pandey (supra) as well as Anokha (supra) and the High Court of Delhi in Dr. Jaswinder Singh Bains (supra) and Swaranjit Kaur (supra) have categorically and conclusively held that all inter-country direct adoptions are outside the scope of the rules set out for adoptions under the Act, 2000 and the Rules/Guidelines framed there-under.*
- f. In view of the aforesaid binding precedents, there is no scope for incorporation of the concept of parens patriae in inter-country direct adoption cases under the Act, 2000, specially when the adoption deed has been declared to be legal, valid, genuine and binding by a competent court.*
- g. Rule 26 of the Guidelines, 2011 is a procedural provision and it does not advance the case of the respondent-CARA.*

- h. In view of CARA, Canada's approval for adoption and its favourable home study report as well as the decree of declaration passed by Additional Civil Judge (Senior Division), Zira, this Court is of the opinion that the requirements of Articles 5 and 17 of the Hague Convention are satisfied in the present case.*
- i. Consequently, in cases of inter-country direct adoption like the present case, NOC from respondent- CARA is not required under the Act, 2000 and the Guidelines, 2011.*
- j. The Regional Passport Officer/MEA cannot insist on issuance of an NOC by respondent-CARA before processing the petitioner's application for issuing a Passport to the adopted child.”*

In the present case the respondent/CARA on 14th March, 2017 has issued a certificate stating “(c) *the NOC Expert Committee of CARA has approved for the issuance of the No Objection Certificate (NOC) for the said child. 2. This office issues No Objection Certificate (NOC) subject to necessary immigration clearance from the Embassy of USA and adoption order.*”

In view of the aforesaid ‘No Objection Certificate’, the present writ petition stands disposed of as satisfied.

The Ministry of External Affairs/Regional Passport Officer is now directed to issue a passport to Master Dharmik Kalpesh Parekh within a period of two weeks.

MANMOHAN, J

MARCH 17, 2017

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