

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 214 of 2018**

Judgment Reserved On : 22/02/2019

Judgment Delivered On : 17/05/2019

- Sarbjanik Vikas Vahini, Jashpur Specialized Agency For Adoption, Sangam Chowk, Tiwari Colony Jashpur Nagar, Chhattisgarh. Through Social Worker- Santosh Kumar Gupta, S/o Shri Shankar Prasad Gupta Aged 28 Years R/o Tiwari Colony Jashpur Nagar, Chhattisgarh

---- Appellant

Versus

1. Shri Baruffaldi Enrico Baruffaldi Danilo Date Of Birth 30.12.1973 Aged About 45 Years Italian Citizenship, Occupation Administrative Employee, Permanent Address, R/o Via Panceri 6-10146 Turin (To) Italy.
2. Smt. Incarbone Daniela Giovanna, W/o Shri Baruffaldi Enrico Date Of Birth 29.05.1973 Aged About 45 Years Italian Citizenship, Occupation Administrative Employee, Permanent Address, R/o Via Panceri 6-10146 Turin (To) Italy Indian Legal Representative For Both President Sarvjanik Vikas Vahini Virendra Jaiswal S/o Shri Yogendra Jaiswal, Aged About 48 Years R/o Village Farshabahr Tehsil Farshabahr, District- Jashpur, Chhattisgarh.
3. Public In-General Who May Be Related

---- Respondent

For Appellant : Shri Akhilesh Kumar, Advocate.
As Amicus Curiae : Shri Shashank Thakur, Advocate.

Hon'ble Shri Prashant Kumar Mishra &
Hon'ble Smt. Vimla Singh Kapoor, JJ

C A V JUDGMENT

The following judgment of the Court was delivered by **Prashant Kumar Mishra, J.**

1. By the order impugned in this Appeal under Section 19 of the Family Courts Act, 1984, the Family Court has rejected the appellant's application under Section 59 (7) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'the Act') thereby refusing to allow inter country adoption of the surrendered child (Ex.-P/30A) namely Princy, aged about 1 year and 7 months, her date of birth being 25.7.2017.

2. The subject child has been declared to be available for adoption by the Child Welfare Committee, Jashpur. The child has been provided registration No.CG 201521-021 under the Adoption Regulations, 2017 (for short 'the Regulations') framed in exercise of powers under Section 68 (C) read with Section 2 (3) of the Act. The adoptive parents namely, Shri Baruffaldi Enrico and Smt. Incarbone Daniela Giovanna of Torino, Italy have been found to be fit and suitable for adoption of the subject child in the Home Study Report prepared by the CENTRO INTERNAZIONALE PER L'INFANZIA E LA FAMIGLIA (CIFA), an NGO. The Home Study Report is part of record of the Family Court. The entire documents in Italian language have been translated to English under the certificate of translation issued by the Law Court of Turin, which is also part of the record. The Central Adoption Resource Authority (henceforth 'CARA') under the Ministry of Woman and Child Development, Government of India, has maintained file No.2-5/2015-

CARA authorizing Italian NGO CIFA to process inter country adoption case originating from Italy, which is available on record as Ex.-P/24-C.

3. The CARA has issued no objection to the adoption of the subject child by his Prospective Adoptive Parents (henceforth 'PAPs'). The said NOC has been issued as per the Regulations and Article 17 (C) of the Hague Convention on the protection of children and cooperation in respect of Inter Country Adoption, 1993. The appellant – Sarbjani Vikas Vahini, Jashpur and CIFA of Italy have been authorized to process adoption case by moving of application before the competent Court as per Section 56 (4) of the Act. After the psychological assessment report of the PAPs is received, PAPs were recommended as suitable for adopting the child. Document to this effect is available on record as Ex.-P/27-C. The record also contains the Child Study Report (Ex.-P/30A) along with medical examination report (Ex.-P/31-AC). The additional Psychological Report is available on record as Ex.-P/35AC. The Home Study Report is accompanied with all the essential documents relating to financial condition, health, reputation and capacity to adopt the child. It also contains Adoption and Foster Care Certificate issued by the Ministry of Justice, Italy vide Ex.-P/19AC. The record also contains certificate of Criminal Court declaring PAPs as “CLEAR”.
4. The procedure for inter country adoption of an orphan or abandoned or surrendered child has been prescribed under Section 59 of the Act. Sub-section (3) of Section 59 provides that a foreigner PAPs 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. Under sub-section (4), the concerned agency shall prepare Home Study Report of such PAPs and upon finding them eligible, will sponsor their application to CARA for adoption of a child from India and on receipt of such application of such PAPs, the authority shall examine and if found suitable, it will refer the application to one of the specialized adoption agency, where children legally free for adoption are available. The specialized adoption agency shall thereafter send the child study report and medical report to PAPs, who in turn may accept the child and return the child study and medical report duly signed by them to the said agency, as provided under sub-section (6). Under sub-section (7) of Section 59, the Specialized Adoption Agency shall thereafter file an application in the Court for obtaining adoption order, in the manner as provided in the Adoption Regulations framed by the authority.

5. Section 61 of the Act prescribes the Court procedure and penalty against payment in consideration of adoption. The provision is important, therefore, it is reproduced hereunder for ready reference:-

“(1) Before issuing an adoption order, the court shall

satisfy itself that -

(a) the adoption is for the welfare of the child; (b) due consideration is given to the wishes of the child having regard to the age and understanding of the child; and (c) that neither the prospective adoptive parents has given or agreed to give nor the specialised adoption agency or the parent or guardian of the child in case of relative adoption has received or agreed to receive any payment or reward in consideration of the adoption, except as permitted under the adoption regulations framed by the Authority towards the adoption fees or service charge or child care corpus.”

6. The case in hand appears to be complete in all respects. The authorized Foreign Adoption Agency CIFA has prepared the home study report and based on such report, the CARA has issued no objection certificate authorizing the appellant to move application before the jurisdictional Court. The Child Welfare Committee of Jashpur has also submitted the child study report and child medical report and PAPs have accepted the adoption of the child by returning the child study and medical report duly signed by them to the specialized adoption agency. These documents are available in the record of the family Court.
7. It is to be noted that under sub-section (7) of Section 59, the application for adoption has to be filed in the manner provided in the Adoption Regulations. The present application has been filed in accordance with law as per regulation 12 of the Regulations. Therefore, it is a case where the family Court should have allowed the application for adoption. However, the family Court rejected the application mainly on the ground that the PAPs have never appeared before that Court. To

avoid any misgiving, learned counsel for the appellant submitted a letter of consent of the PAPs for their appearance before this Court and both of them appeared before us on 21.2.2019. This Court interacted with them for some time and thereafter directed the *amicus curiae* Shri Shashank Thakur, Advocate to interact with PAPs. Learned amicus, after having interacted with them, informed the Court that the couple appeared to be very caring and affectionate and they are very eager to welcome the child in their family. They have expressed their desire to follow the procedure to report follow-up of progress of adopted child, as provided under Regulation 13. During our interaction, the PAPs have stated that the adoption is for the welfare of the child and neither the PAPs have given or agreed to give nor the specialized adoption agency has received or agreed to receive any payment or reward in consideration of the adoption except the required fee or service charge, as applicable in law.

8. In the matter of **Advait Foundation & Anr. Vs. Union of India & Ors.** {Writ Petition (Civil) No.124/2012}, the Supreme Court by its order dated 14.3.2016 observed that in matters of Adoption, both within inter country and within country, the authorities would remain sensitive to the need of protecting children against abuse and trafficking and leave no stone unturned in ensuring that the beneficial legislation is effective and provides the much needed succour required to those who need help and protection.

9. In the light of these observations, we have carefully considered and scrutinized the record to see that the subject child does not become victim of trafficking and abuse. We have found that the agency responsible to oversee adoption of child by inter country adoption has issued NOC in favour of the CIFA and the appellant. Therefore, there should be no suspect that the child shall be subjected to abuse or trafficking. The entire exercise, as required under the Act and the Regulations, have been undertaken by the concerned authorities and agencies.

10. The appeal challenging refusal to allow inter-country adoption was earlier posted for judgment, however, before delivery of judgment, this Court deemed it appropriate to hear the matter again in view of the observation made by the Supreme Court in the matter of **Laxmi Kant Pandey Vs. Union of India and Another** {1985 (Supp) SCC 701, para-18} as to whether before allowing inter-country adoption, any effort was made to find out availability of Prospective Adoptive Parents within country. On 26.4.2019, Shri Akhilesh Kumar, learned counsel for the appellant drew attention of the Court to the document filed on 19.3.2019, which is response by the CARA to e-mail query sent to the said agency informing that effort of adoption of child Princy by in-country PAPs was undertaken at 13 times and on each occasion, in-country PAPs eventually did not show further interest in adopting the child. On this basis, Shri Akhilesh Kumar would submit that CARA has

made all possible endeavour to effect in-country adoption through suitable PAPs but the effort did not yield positive result. Shri Kumar would also submit that child Princy suffers from lack of proper growth proportionate to her age and that may be one of the reasons why in-country PAPs are not coming forward for adopting the baby. Shri Shashank Thakur, learned amicus curiae would also submit that he has contacted the CARA to verify the facts mentioned in e-mail response and has found the said fact to be emanating from the office of CARA.

11. In view of the compliance of the provisions, we find the present to be a fit case for allowing adoption of girl child Princy by Mr. Baruffaldi Enrico and Ms. Incarbone Daniela Giovanna, through the appellant – Sarbjanik Vikas Vahini, Jashpur, specialized adoption agency, who in turn has been issued NOC by the CARA on application filed by the Italian NGO CIFA.

12. Accordingly, we direct that the child be given in adoption to the PAPs. The CARA shall complete the formality regarding passport and visa and shall do the needful as required under Regulation 18 of the Regulations, which is reproduced hereunder:-

“18. Passport and visa, intimation to immigration authorities, Conformity Certificate, Birth Certificate, etc.- (1) The Authority shall issue a Conformity Certificate under Article 23 of the Hague Adoption Convention in the format provided in Schedule XI within three working days from the date of availability of the adoption order in the Child Adoption Resource Information and Guidance System,

in case the receiving country of the adopted child is a signatory to the Hague Adoption Convention.

(2) The Authority shall inform the immigration authorities and the foreign regional registration office or the foreign registration office concerned, as the case may be, about confirmation of the adoption.

(3) To obtain Indian passport for the adopted child, the Specialised Adoption Agency shall submit the application to the regional passport officer within three working days from the date of receipt of the adoption order.

(4) The regional passport office shall issue passport for the adopted child within ten days from the date of receipt of application, in accordance with the circulars regarding issuance of passport to inter-country adopted children, issued by the Ministry of External Affairs of the Central Government from time to time.

(5) The Specialised Adoption Agency shall approach the birth certificate issuing authority for obtaining birth certificate of the adopted child, with the name of adoptive parents, as parents, and date of birth as recorded in the adoption order within a period of three days of obtaining of the certified copy of the adoption order.

(6) The adopted child shall be entitled to receive Overseas Citizen of India card, if found eligible.

(7) The adoptive parent(s) shall come to India for taking the adopted child to their country within a period of two months from the date of adoption order.”

13. The specialized adoption agency shall forward certified copy of this order to the Prospective Adoptive Parents within 10 days, as required under Regulation 12 (8) and shall also post copy of the order and upgrade relevant entries in the Child Adoption Resource Information and Guidance System. The agency shall also apply for obtaining birth

certificate of the child within 3 working days of issuance of this adoption order, with the names of adoptive parents as parents and date of birth as recorded in the adoption order and the same shall be issued by the Issuing Authority within 5 working days from the date of receipt of application. The specialized adoption agency, which has prepared the home study report, shall adhere to the follow up of progress of adopted child as required under Regulation 13.

14. Before parting, we appreciate the valuable assistance rendered to us by Shri Shashank Thakur, learned amicus.

15. With the above observations and directions, the Appeal is disposed of.

Sd/-
Judge
(Prashant Kumar Mishra)

Sd/-
Judge
(Vimla Singh Kapoor)

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