

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 780 OF 2019

Joslyn Couto,
R/o Nalakathu Kuttikkatt,
Orumanayur, Kerala - 680512.

... Petitioner.

Vs.

1. State of Goa Through the
Chief Secretary Secretariat,
Porvorim, Goa.
2. Child Welfare Committee,
North Goa, Apna Ghar Mercedes,
North Goa, Goa.
3. Central Adoption Resource
Authority,
Near Mandovi Hotel,
Behind SBI, Panaji, Goa.
(Deleted in terms of order dt.05.09.2019)
4. Caritas,
Through its Director,
Fr. Maverick Fernandes,
Instituto Nossa Senhora de
Piedade. Nr. Hotel Mandovi,
D. B. Marg, Panaji, Goa.

5. The Director,
Directorate of Woman and
Child Development,
2nd Floor, Old Education
Building, 18th June Road,
Panaji – Goa.

... Respondents

Ms. Gautami Kamat, Advocate for the Petitioner.

Ms. Sapna Mordekar, Addl. Government Advocate for Respondent
Nos. 1 and 5.

Mr. A. Gomes Pereira, Advocate for Respondent No. 4.

**Coram : M. S. Sonak &
Nutan D. Sardesai, JJ.**

Date : 5th September, 2019.

Oral Judgment : (M.S. Sonak, J)

Heard Ms. Gautami Kamat, learned Counsel for the petitioner,
Ms. Sapna Mordekar, Addl. Government Advocate for the respondent
Nos. 1 and 5, Mr. Dhume the Chair Person of Child Welfare
Committee (CWC) – respondent No. 2 in person and Mr. A. Gomes
Pereira, learned Counsel for the respondent No.4.

2. Ms. G. Kamat, the learned Counsel seeks leave to delete respondent No. 3 from the array of respondents. Leave is granted. Necessary amendment to be carried out forthwith.

3. Rule. Rule is made returnable forthwith with the consent of and at the request of the learned Counsel for the parties.

4. The petitioner, in terms of Section 35 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (said Act) signed a Surrender deed in respect of a child, thereby surrendering rights in respect of a child in favour of the Child Welfare Committee. This was on 04.05.2019.

5. It is the case of the petitioner that on 01.07.2019 the petitioner telephonically intimated respondent no. 4 which is an agency for adoptions, of her intention to cancel the surrender. This was followed by some whatsapp messages, made to respondent No.4 again evincing intention to cancel the surrender. On 17.07.2019 the petitioner made representation to respondent No.4 reclaiming custody of the child.

6. The whatsapp messages produced on record by the petitioner

indicate that the respondent No.4 did inform the petitioner that if she wishes to have the custody of the child, she should do so on the very date since, according to the respondent No.4, the said day was the last day in terms of Section 35 of the said Act.

7. Respondent No.4, then addressed a response dated 23.07.2019 to the petitioner expressing inability to accede to the request of the petitioner for reclaiming the custody of the child.

8. The petitioner thereupon addressed a representation dated 28.8.2019 to the CWC which was followed by legal notice dated 31.08.2019. Soon thereafter, the petitioner instituted the present petition.

9. Section 35 of the said Act reads thus:-

“35. (1) A parent or guardian, who for physical, emotional and social factors beyond their control, wishes to surrender a child, shall produce the child before the Committee.

(2) If, after prescribed process of inquiry and counselling, the Committee is satisfied, a surrender deed shall be executed by the parent or guardian, as the

case maybe, before the committee.

(3) The parents or guardian who surrendered the child, shall be given two months time to reconsider their decision and in the intervening period the Committee shall either allow, after due inquiry, the child

to be with the parents or guardian under supervision, or place the child in a specialised Adoption Agency, if he or she is below six years of age, or a children's home if he is above six years.”

10. In terms of the aforesaid Section 35 of the said Act, the parent or guardian who surrenders their child are given two months time to reconsider their decision. In the present case, the fact that the petitioner wanted to reconsider her decision for surrender should have been intimated to CWC. However, the intimations were sent to respondent No.4, which is infact, the Adoption Agency.

11. To that extent, Mr. Dhume the Chair Person of CWC is quite right in his submission that no such request was received by CWC within the statutory period of two months.

12. However, taking into consideration the purposes and the objective of the enactment in the said Act, according to us, in the peculiar circumstances of the present case, the request of the petitioner for reclaiming the custody of the child is required to be considered by the CWC on its own merits and in accordance with law. The material on record, which does indicate that the petitioner had second thoughts about the surrender of the child within the period of two months from the date of surrender, though this may not have been communicated to the correct authority.

13. The petitioner however addressed communication possibly to the wrong authority. In a matter of this nature, we do not feel that the petitioner should be denied of opportunity of even having her application for claiming custody of the child considered by the CWC, no doubt in accordance with law and always keeping in mind the paramount interest of the child.

14. We are informed that, though the adoption proceedings have commenced, they are only at preliminary stage. Mr. A. Gomes Pereira, learned Counsel for respondent No.4 has filed an affidavit in which it is stated that respondent No. 4 on the basis of directions from Central Adoption Resource Authority (CARA) has stayed further proceedings

for giving the child in adoption.

15. In fact Mr. Pereira points out to the email message received from CARA which is placed at annexure C to the affidavit in reply filed by respondent No. 4. According to us, CARA in the facts and circumstances of the case, was justified in issuing such a direction.

16. Mr. Dhume, the Chair Person of CWC whilst explaining that the CWC has acted in accordance with law, nonetheless stated that the CWC was not at all averse to considering the application of the petitioner in accordance with law, should, this Court, direct the CWC to do so.

17. He submits that, time of at least six weeks be granted to the CWC to consider such application because the CWC has to consider the interest of the child in the first place. He submits that CWC has to be satisfied that the petitioner, is in a position to take effective care of the child and that the interest of the child will be secured by restoring the custody of the child to the petitioner.

18. Ms. Morderkar, Learned Addl. Government Advocate quite fairly points out that the State authorities do not wish to treat this

matter as some adversaries litigation. She however, submits that there are wait lists for adoption and any order made in this petition should not prejudice the interest of prospective adoptive parents.

19. According to us, any order in this petition need not prejudice any prospective adoptive parents in the least. We make it clear that no order made in this petition, in any case, shall affect the interests of prospective adoptive parents, particularly, since it is pointed out that the adoption proceedings are at preliminary stage. Further, we clarify that this order shall not, in any manner prejudice the interest of such prospective adoptive parents particularly, in the matters of the operation of wait lists. According to us, this clarification will be sufficient in this particular context. We accordingly direct the CWC to consider and dispose of the petitioner's application dated 28.08.2019 which is to be considered alongwith the legal notice dated 31.08.2019, in accordance with law and its own merits keeping in mind the paramount interest of the child. The CWC no doubt, will also keep in mind the circumstance that the petitioner is admittedly the mother of the child and consequently the natural guardian of the child. We are quite sure that CWC will keep in mind the paramount interest of the child and dispose of the application as expeditiously as possible and in any case within six weeks from today.

20. We direct that the petitioner be given free access to the child who is presently in the custody of respondent No. 4. Mr. A. Gomes Pereira, learned Counsel for respondent No. 4 assures this Court that such free access will be granted to the petitioner. He makes this statement on the basis of the instructions of the Director of respondent No.4.

21. We also direct that pending the consideration of the petitioner's application, for restoring the custody, there shall be no further proceedings for giving the child in adoption. In fact, we direct that, if for any reason, the CWC decides not to consider and grant the petitioner's application, this direction for not proceeding with adoption, to continue for a period of further two months from the date of intimation of the said decision by the CWC to both the petitioner as well as CARA so that the petitioner has ample time and opportunity to question the CWC if the need so arises.

22. We make the Rule absolute on the aforesaid terms.

23. No order as to costs.

24. All concerned to act on the basis of the authenticated copy of this order.

NUTAN D. SARDESSAI, J.

M. S. SONAK, J.

MF/-