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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 3576/2019 & CM No. 16351/2019

KARINA JANE CREED

..... Petitioner

Through: Ms Neela Gokhale, Ms Shruti Dixit,
Ms Shradha Agarwal and Mr Ilam
Paridi, Advocates.

versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr Gaurang Kanth, CGSC for UOI
with Mr Deepak Kumar, CEO,
CARA.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **10.05.2019**

1. The petitioner has filed the present petition, *inter alia*, praying that respondent no.2 (CARA) be directed to issue a No Objection Certificate (NOC) in respect of adoption of the children (hereafter referred to as "children in question"). The children in question are aged about 5 and 6 years and were reserved for adoption by the petitioner.

2. The petitioner is an Australian Citizen and has been residing in India for the past four years. In the year 2016, the petitioner applied for adoption of Indian children but the same was withheld for want of a NOC by the Australian Commission. In the meanwhile, CARA issued an email dated 07.01.2019, de-reserving the children in question for adoption by another set of parents. This led the petitioner to impugn the aforesaid

communication.

3. The petitioner claims to be an accomplished therapist and has been working with a Non-Government Organisation (NGO) for helping disadvantaged women and children. The petitioner states that she is a single woman and is desirous of adopting siblings from India, as a foreigner living in India.

4. On 14.07.2016, the petitioner sent a communication to the Australian High Commission requesting them to inform her of the process of obtaining a NOC to adopt Indian children as an Australian expatriate living in India. In response, the petitioner received a communication dated 18.07.2016 from the Australian High Commission, *inter alia*, indicating the requirements for the grant of an adoption visa. It was further stated in the said letter that the letter only outlined “*the requirements under Australian Immigration law to bring a child who has been adopted by Australian citizens or permanent residents to Australian*” and, “*in no way endorses or supports a particular adoption.*” Thereafter, the petitioner received another communication dated 20.07.2018 informing her that the aforesaid document is a NOC to be submitted to CARA, but in fact it is “*not an NOC in the real sense of the word*”.

5. Thereafter, on 30.07.2016, the petitioner made an application seeking registration with respondent no.2 (CARA), alongwith all the necessary documents.

6. In the meanwhile, on 05.10.2016, the State Adoption Agency – SOFOSH Pune, Maharashtra – undertook a home study visit and prepared a home study report.

7. Subsequently, the aforesaid application was accepted by CARA and the petitioner received a communication (bearing Registration No. CAUS201657192) informing her of the same. She was further informed that her Home Study Report (HSR) was approved and her name was put on the waiting list.

8. Thereafter, on 08.10.2018, CARA sent a communication to the petitioner stating that she had been approved for adopting children in India and her referral had been confirmed by CARA. Accordingly, the petitioner was asked to contact the concerned State Adoption Agency in Orissa to make an appointment to meet with the children in question. The children in question – two siblings (female) aged about five years and four years respectively – were reserved for the petitioner for adoption. On 17.10.2018, the petitioner approved and signed the medical examination report and child study report of the children in question.

9. Notwithstanding the above, the status of petitioner's adoption process was still stated as "Under process for Adoption" on CARA's website. Thereafter, the petitioner received a communication dated 01.11.2018, stating that her NOC was under process.

10. The petitioner sent several communications to CARA seeking confirmation regarding whether she had submitted all the requisite documents, as required for the adoption process.

11. The petitioner states that in the meantime, she met with the children in question on a regular basis and spent considerable time with them at the State Adoption Agency. The petitioner's brother had also visited India to bond with the children and make them comfortable with their to-be family.

The petitioner contends that the aforesaid meetings has led to an emotional bond between her and the children in question and they are waiting to start a new life with the petitioner. The petitioner has also produced photographs of her with the children in question, which indeed presents a happy picture.

12. On 07.01.2019, the petitioner received the impugned communication informing her that the issuance of the NOC is pending due to the “*non-provisioning of the letter of support*” from the Australian High Commission. It was further stated that the document submitted by the petitioner claiming to be a NOC was just a policy letter issued by the Australian High Commission. In this view, the petitioner was granted time till 31.01.2019 for furnishing the requisite support letter.

13. There is a controversy with regard to the NOC submitted by the petitioner. A plain reading of the letter (referred to as NOC) submitted by the petitioner indicates that the document merely outlines the requirements under the Australian Immigration law to bring a child who has been adopted by Australian citizen. The said letter also expressly states that it no way endorses or supports a particular adoption. The Australian Commission had also sent an email dated 20.07.2016 stating that “*the document is known as NOC to all but it actually is not a NOC in the real sense of the word*”.

14. In view of the above, it is clear that the said same cannot be considered as an NOC since it expresses no opinion as to this case of adoption and, therefore, cannot be interpreted to mean that the Australian High Commission has expressed its no objection to the adoption process being undertaken by the petitioner. In the meantime, the petitioner has undergone the complete process of adoption; the two children in question

were introduced to the petitioner. As noticed above, the petitioner has spent considerable time bonding with the children in question. In addition, the petitioner's family members had also flown down from Australia and visited the children.

15. In the aforesaid circumstances, there is much merit in the contentions advanced by the petitioner that the process should have been completed in all earnest. However, it is seen that the requirement of an NOC from the Australian Commission is a mandatory requirement, as stipulated under Section 59(12) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereafter 'the Act'). Sub Section (12) of Section 59 is set out below:-

“59. Procedure for inter-country adoption of an orphan or abandoned or surrendered child

(12) A foreigner or a person of Indian origin or an overseas citizen of India, who has habitual residence in India, if interested to adopt a child from India, may apply to Authority for the same along with a no objection certificate from the diplomatic mission of his country in India, for further necessary actions as provided in the adoption regulations framed by the Authority.”

16. There is also a compelling rationale for introducing the said provision as it ensures that all children who are adopted in India by citizens of other countries are not faced with any impediment in travelling to those countries, as adopted children of citizen(s) of the receiving state.

17. It is seen that the petitioner had made sincere efforts with the Australian High Commission to obtain the necessary NOC. At the request of the petitioner, notice was also issued to Australian High Commission to elicit their definite response to the case in hand. The learned counsel

appearing for the petitioner has today handed over a communication dated 08.05.2019 issued by the Australian High Commission clarifying their stand on the issue. According to the Australian High Commission, the said State will not start any process till the children in question are legally adopted in India. It is also stated that relevant Australian State or Territory Government Central Adoption Authority (STGCAA) – which is the concerned agency in Australia – is also not in a position to give the NOC as the petitioner is not currently habitually resident in Australia. Although the said letter clarifies that if the children are lawfully adopted and the adoptive parent is residing overseas for almost 12 months, the Australian Government shall process their visa applications. However, this is also subject to the Australian Government evaluating the case to ascertain whether the residence was contravened to circumscribe the requirement for entry of the adopted children into Australia. Concededly, the said communication cannot be construed as a NOC from the Australian High Commission and, therefore, does not meet the requirement of Section 59(12) of the Act.

18. This Court is also informed that on 05.03.2019, the reservation of children in question in favour of the petitioner was cancelled. And, on 05.04.2019, which is prior to the present petition being moved, the children in question were reserved for adoption of by an Italian couple. The process of adoption of the children in question has since proceeded further. The said Italian couple have been introduced to the children in question and a NOC has been received from the Italian Government. This Court is also informed that a petition is being filed in the concerned Court for completing the adoption process.

19. Although this Court sympathises with the petitioner and there is little doubt that the petitioner would have raised the children in question with much love and affection, this Court is unable to grant any relief to the petitioner because even as on date, the Australian High Commission has not furnished its NOC to the adoption of the children in question by the petitioner.

20. The petition is, accordingly, dismissed. The pending application stands disposed of.

VIBHU BAKHRU, J

MAY 10, 2019
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