

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL REVN. APPLN. NO. 9 OF 2021

APPLICANTS :-

1. Mr. Sumed s/o Devidas Thamke, Aged about 42 years, Occ. - Government Service,

On R.A.

2. Mrs. Nisha w/o Sumed Thamhke, Aged about 42 years, Occ – Government Service,
Both R/o F-20, Near Ambika Nagar, Rajaram Nagar, Yavatmal, Tah. And Dist.: Yavatmal.
(Prospective Adoptive Parents)

AND

3. Manoj s/o Laxmanrao Patil, Aged about 42 years, Occupation : Service,

On R.A.

4. Mrs. Rajashri w/o. Manoj Patil, Aged about 39 years, Occupation : Housewife, Both R/o Petkar Layout, Wardha, Tah. And Dist.: Wardha.
(Natural/Biological Parents)

...VERSUS...

NIL

Mrs. Ira P. Khisti, counsel for the applicants.
Mr. F.T. Mirza, Advocate appointed as Amicus Curiae.

CORAM : MANISH PITALE, J.

DATE OF RESERVING THE JUDGMENT: 22.06.2021.

DATE OF PRONOUNCING THE JUDGMENT: 30.06.2021.

J U D G M E N T

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. Heard. **Admit.** Heard finally with the consent of the learned counsel.

3. The practice of adoption has been prevalent since ancient time and in different societies the established practices and norms have evolved over a period of time. With the advent of democracy and modern form of government, such customs, traditions and practices have found their way in codified law

through statutes enacted by the Legislature. While initially adoption was undertaken primarily to continue family lineage and ancestor worship, with passage of time adoption has been undertaken for taking care of the needs of children in distress and those needing care and protection. There are personal laws enacted specifying rules and procedure for adoption, as also secular laws for regulating such procedure.

4. The present revision application concerns the question as to whether the applicants before this Court, who are the biological parents (applicant Nos.3 and 4) and the prospective adoptive parents (applicant Nos.1 and 2) of a minor girl child, are justified in claiming that the said child can be given and taken in adoption under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the “JJ Act, 2015”).

5. The Court of District Judge-1, Yavatmal has rejected the application filed by the applicants herein under the provisions of the JJ Act, 2015 and Adoption Regulations, 2017 framed under the said Act on the ground that since the child in the present case

is neither a child in conflict with law, nor a child in need of care and protection, nor an orphan, nor a surrendered/abandoned child, the provisions of the JJ Act, 2015 and the Regulations framed thereunder are not applicable. On this basis, the application filed by the revision applicants has been rejected.

6. Mrs. Ira Khisti, the learned counsel appearing for the applicants, submits that the Court below has committed an error in taking an extremely strict view in the matter of applicability of the JJ Act, 2015. It is submitted that a proper appreciation of the provisions of the JJ Act, 2015 read with the aforesaid Regulations of 2017 would show that the Legislature has consciously made provisions for adoption of a child by relatives specified under the JJ Act, 2015. It is further submitted that although the emphasis of the JJ Act, 2015 is on providing mechanism to take care of children, who are found to be in conflict with law or those needing care and protection, adoption as a procedure has been specifically laid down and such adoption cannot be limited to children in conflict with law or needing care and protection.

7. By inviting attention to various provisions of the JJ

Act, 2015 and Adoption Regulations of 2017, the learned counsel appearing for the revision applicants submitted that the impugned order deserved to be set aside and that the Court below ought to be directed to consider the application moved by the applicants under the provisions of the JJ Act, 2015 and Regulations of 2017, on merits. It is submitted that the view taken by the Court below in holding that JJ Act, 2015 is not applicable to the case of the applicants, is wholly erroneous and deserves to be set aside.

8. Since there are no respondents in the present application, this Court by order dated 24/03/2021 appointed Mr.F.T. Mirza, learned counsel as Amicus Curiae to assist the Court for proper disposal of the present revision application.

9. Accordingly, Advocate Mr. Mirza appeared before this Court and submitted a detailed note along with copies of judgments of the Hon'ble Supreme Court and various High Courts. Mr.Mirza, learned Amicus Curiae, submitted that if the provisions of the JJ Act, 2015 are compared to the earlier enactment i.e. the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the "JJ Act, 2000"), it becomes evident

that in the JJ Act, 2015 various new provisions have been enacted, thereby broadening the scope of Legislation and including in its fold specific procedure for adoption of children. By inviting attention to Chapter VIII of the JJ Act, 2015, the learned Amicus Curiae submitted that no such chapter existed in the JJ Act, 2000 and that this is a significant departure in the subsequent Legislation. The learned Amicus Curiae also invited attention of this Court to various clauses of Section 2, to submit that definitions of various terms stood added in the JJ Act, 2015 and that the changes brought about in the subsequent legislation ought to have been appreciated by the Court below while passing the impugned order.

10. The learned Amicus Curiae specifically invited attention of this Court to Section 2(3) which defines 'Adoption Regulations', 2(12) defines 'Child', 2(52) defines 'Relative' and 2(57) defines 'Specialized Adoption Agency', to contend that there was a conscious departure from the JJ Act, 2000. The learned Amicus Curiae also referred to Section 56(2) of the JJ Act, 2015 pertaining to adoption of a child from a relative by another relative, Regulation 2(4) of the Regulations of 2017 pertaining to

Child Adoption Resource Information and Guidance System, Regulation 4 of the said Regulations, stating that child of a relative shall be eligible for adoption, Regulation 51 pertaining to in-country relative adoptions and Regulation 55 providing for the legal procedure for prospective adoptive parents, who intend to adopt child of a relative. The learned Amicus Curiae also referred to various Schedules appended to the Regulations, 2017 to indicate that specific forms were provided regarding adoption of child by a relative.

11. On this basis, it was submitted that the Court below could not have held that the application moved by the revision applicants deserved to be rejected, because the child in question was not a child in conflict with law or a child in need of care and protection. It was submitted that the view adopted by the Court below was extremely narrow and it did not take into consideration the changes brought about in the JJ Act, 2015. The learned Amicus Curiae referred to the judgment of the Hon'ble Supreme Court in the case of **Shabnam Hashmi v. Union of India**, reported in **(2014) 4 SCC 1**, to submit that a person had a choice of adopting a child either from the applicable personal law or the JJ

Act, 2015, which is a secular legislation, being a step towards achieving the goal enshrined in Article 44 of the Constitution of India pertaining to Uniform Civil Code for citizens.

12. The learned Amicus Curiae also submitted that the Court below was not justified in referring to the judgment of the Punjab and Harayana High Court in the case of *Jasmine Kaur v. Union of India and others*, (CWP No.10555 of 2019, decided on 28/07/2020), because it was distinguishable on facts for the reason that the petitioner therein was adopted under the Hindu Adoption and Maintenance Act, 1956 to whom the procedure contemplated under JJ Act, 2015 and Regulations of 2017 could not be applied. The learned Amicus Curiae also invited attention to the judgments of other High Courts, submitting that they pertained to adoption under the personal laws and that the said judgments also did not lay down that if a relative desired to adopt a child, he or she could not do so under the provisions of the JJ Act, 2015. On this basis the learned Amicus Curiae supported the prayer made on behalf of the revision applicants.

13. Considering the submissions made by the learned

counsel for the applicants as also the learned Amicus Curiae, it would be appropriate to refer to the relevant provisions of the JJ Act, 2015. The said provisions are as follows :

“Sec. 1. Short title, extent, commencement and application.— (1) This Act may be called THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015.

(2) It extends to the whole of India

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

(4) Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall apply to all matters concerning children in need of care and protection and children in conflict with law, including —

(i) apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social re-integration of children in conflict with law;

(ii) procedures and decisions or orders relating to rehabilitation, adoption, re-integration, and restoration of children in need of care and protection.

Sec. “2. Definitions.— In this Act, unless the context otherwise requires,—

(2) “adoption” means the process through which the adopted child is permanently separated from his biological parents and becomes the lawful child of his adoptive parents with all the rights, privileges and responsibilities that are attached to a biological child;

(3) “adoption regulations” means the regulations framed by the Authority and notified by the Central Government in respect of adoption;

(12) “child” means a person who has not completed eighteen years of age;

(52) “relative”, in relation to a child for the purpose of adoption under this Act, means a paternal uncle or aunt, or a maternal uncle or aunt, or paternal grandparent or maternal grandparent.

(57) “Specialised Adoption Agency” means an institution established by the State Government or by a voluntary or non-governmental organisation and recognised under section 65, for housing orphans, abandoned and surrendered children, placed there by order of the Committee, for the purpose of adoption;”

Sec. “56. Adoption.— (1) Adoption shall be resorted to for ensuring right to family for the orphan, abandoned and surrendered children, as per the provisions of this Act, the rules made thereunder and the adoption regulations framed by the Authority.

(2) Adoption of a child from a relative by another relative, irrespective of their religion, can be made as per the provisions of this Act and the adoption regulations framed by the Authority.

(3) Nothing in this Act shall apply to the adoption of children made under the provisions of the Hindu Adoption and Maintenance Act, 1956.

(4) All inter-country adoptions shall be done only as per the provisions of this Act and the adoption regulations framed by the Authority.

(5) Any person, who takes or sends a child to a foreign country or takes part in any arrangement for transferring the care and custody of a child to another person in a foreign country without a valid order from the Court, shall be punishable as per the provisions of sub-section (1) of section 80.”

Sec. “60. Procedure for inter-country relative adoption.—

(1) A relative living abroad, who intends to adopt a child from his relative in India shall obtain an order from the

Court and apply for no objection certificate from Authority, in the manner as provided in the adoption regulations framed by the Authority.

(2) The Authority shall on receipt of the order under sub-section (1) and the application from either the biological parents or from the adoptive parents, issue no objection certificate under intimation to the immigration authority of India and of the receiving country of the child.

(3) The adoptive parents shall, after receiving no objection certificate under sub-section (2), receive the child from the biological parents and shall facilitate the contact of the adopted child with his siblings and biological parents from time to time.”

The following provisions of the Adoption Regulations, 2017 are also relevant.

“2. Definitions.— In these regulations, unless the context otherwise requires,—

(4) “Child Adoption Resource Information and Guidance System” means an online information system for facilitating, guiding and monitoring the adoption programme;”

“4. Child eligible for adoption. – The following shall be eligible for adoption, namely:—

(a) any orphan or abandoned or surrendered child, declared legally free for adoption by the Child Welfare Committee;

(b) a child of a relative defined under sub-section (52) of section 2 of the Act,

(c) child or children of spouse from earlier marriage, surrendered by the biological parent(s) for adoption by the step-parent.”

“5. Eligibility criteria for prospective adoptive parents.–

(7) The age criteria for prospective adoptive parents shall not be applicable in case of relative adoptions and adoption by step-parent.”

“51. In-country relative adoptions. – (1) The prospective adoptive parents shall register in Child Adoption Resource Information and Guidance System and follow due legal procedure as provided in regulation 55.

(2) Consent of biological parents or permission of the Child Welfare Committee, as the case may be, shall be required as provided in Schedule XIX or Schedule XXII respectively.

(3) The consent of the child shall be obtained, if he is five years of age or above.

(4) Affidavit of adoptive parent(s) is required in cases of in-country relative adoptions in support of their financial and social status as per Schedule XXIV.

(5) The prospective adoptive parents shall file an application in the competent Court as provided in Schedule XXX.”

“55. Legal Procedure.– (1) The prospective adoptive parents, who intend to adopt the child of a relative as defined in sub-section (52) of section 2 of the Act, shall file an application in the competent Court under sub-section (2) of section 56 or sub section (1) of section 60 of the Act in case of in-country relative adoption or inter-country relative adoption, respectively, alongwith a consent letter of the biological parents as provided in Schedule XIX and all other documents as provided in Schedule VI.

(2) The biological parent and the step-parent, who intend to adopt the child or children of the biological parent, shall file the adoption application as provided in Schedule XXXII, in the Court concerned of the district where they reside, along with consent letter of the biological parents and the step-parent adopting the child or children, as provided in the Schedule XX and all other documents as provided in Schedule VI.

(3) The prospective adoptive parents, in case of inter-country relative adoption, shall file the adoption

application in the court concerned of the district, where the child resides with biological parents or guardians as provided in Schedule XXXI.

(4) The prospective adoptive parents shall file an application in Family Court or District Court or City Civil Court, as the case may be.

(5) Before issuing an adoption order, the court shall satisfy itself of the various conditions stipulated under section 61 of the Act, and regulations 51 to 56, as the case may be.

(6) The prospective adoptive parents shall obtain a certified copy of the adoption order from the court and furnish a copy of the same to the District Child Protection Unit for online submission to the Authority.”

14. Perusal of the provisions of the JJ Act, 2015 shows that there is a departure from the provisions of the earlier enactment i.e. JJ Act, 2000. An entire chapter i.e. Chapter VIII pertaining to adoption has been introduced in JJ Act, 2015.

15. The aforesaid Adoption Regulations, 2017 have been framed by exercising powers under section 2 (3) read with section 68(c) of the JJ Act, 2015. Therefore, it becomes clear that the JJ Act, 2015, not only intends to take care of children, who are in conflict with law as defined under section 2(13) of the JJ Act, 2015 and children in need of care and protection defined under section 2(14) thereof, but also to provide for and regulate adoption of children from relatives and adoption by step-parent.

16. The Court below has placed much emphasis on section 1(4) of the JJ Act, 2015 to hold that the said enactment applies only to children in conflict with law or those in need of care and protection. On this basis, the Court below has reached the conclusion that unless the child in question is found to be in conflict with law or in need of care and protection, the procedure for adoption laid down under the provisions of the JJ Act, 2015 cannot be undertaken. The Court below has therefore, given a finding that since in the present case, the child in question is neither in conflict with law nor in need of care and protection and also because it is not an abandoned, orphaned or surrendered child, the provisions of the JJ Act, 2015, will not apply. A clearly restrictive interpretation of the applicability of the JJ Act, 2015 has been adopted by the Court below. It needs to be examined whether such a restrictive approach is justified.

17. A perusal of section 2(52) of the JJ Act, 2015 shows that the term “relative” in relation to a child for the purpose of adoption under the said Act has been specified and limited to paternal uncle or aunt, a maternal uncle or aunt or paternal

grandparent or maternal grandparent. “Child” is specifically defined in section 2(12) of the JJ Act, 2015 as a person who has not completed 18 years of age. Section 56(2) of the JJ Act, 2015 specifically states that adoption of a child from a relative by another relative irrespective of religion can be made as per the provisions of the said Act and Adoption Regulations framed by the Authority. This provision is in addition to section 56(1), which states that adoption shall be resorted to for ensuring right to family for an orphaned, abandoned and surrendered child as per the Adoption Regulations framed by the Authority.

18. The relevant provisions under the Regulations of 2017 clearly show that there are specific provisions on the one hand regulating the procedure for adoption of an orphaned, abandoned or surrendered child as distinct from a child sought to be adopted by a relative. Regulation 4(b) specifically provides that a child eligible for adoption is a child of a relative defined under section 2(52) of the JJ Act, 2015. Regulation 5(7) specifically states that the age criteria for prospective adoptive parents shall not be applicable in case of relative adoption and adoption by step-parent. Chapter VII of the Regulations of 2017 pertains to

miscellaneous provisions and it provides specific procedures for adoptions in different categories. Regulation 51 therein specifically states that prospective adoptive parents shall register in Child Adoption Regulation Information and Guidance System and follow due legal procedure as provided in Regulation 55. Regulation 55 of the Regulations of 2017 in turn under clause (1) specifically lays down procedure when prospective adoptive parents intend to adopt the child of relative, while clause (2) of the said Regulation pertains to such procedure to be adopted when the biological parent and the step-parent intend to adopt a child. Clause 3 of the said Regulations pertains to inter-country relative adoption. Specific Schedules are applicable to the different clauses and a perusal of Schedule XIX applicable to Regulation 55(1) pertaining to adoption by a relative, shows that a specific form is provided in which consent for the purpose of relative adoption is to be given. Schedule XXII specifies the form in which permission is to be granted by the Child Welfare Committee to the consent given by guardian of the child for adoption by his/her relative (where biological parents are not alive or they are not able to give consent). Distinct schedules give different forms of applications and documents applicable to the other categories of adoptions.

19. Therefore, a perusal of the provisions of JJ Act, 2015 shows that an elaborate procedure is laid down and contemplated for adoption of a child by relatives, who are also specified under the said enactment. If adoption under the JJ Act, 2015, was to be restrictively applicable only to children in conflict with law or those in need of care and protection, such elaborate provisions governing the procedure for adoption by relatives or step-parents would not have been provided. The learned counsel for the applicants as well as the learned Amicus Curiae are correct in submitting that the JJ Act, 2015, is a secular legislation available for the applicants herein to undertake the process of adoption of the girl child. It is significant that the definition of 'child' under section 2(12) is specifically provided and it is distinct from definition of 'child in conflict with law', as defined in section 2(13) and 'child in need of care and protection', as defined in section 2(14) of the JJ Act, 2015. In the present case, the child is sought to be adopted by relatives, who being the maternal uncle and aunt of the child, are clearly covered in the definition of 'relative' under section 2(52) of the JJ Act, 2015.

20. In this context, the observation made by the Hon'ble Supreme Court in the case of **Shabnam Hashmi v. Union of India** (*supra*) is relevant and it reads as follows :

“13. The JJ Act, 2000, as amended, is an enabling legislation that gives a prospective parent the option of adopting an eligible child by following the procedure prescribed by the Act, the Rules and the CARA guidelines, as notified under the Act. The Act does not mandate any compulsive action by any prospective parent leaving such person with the liberty of accessing the provisions of the Act, if he so desires. Such a person is always free to adopt or choose not to do so and, instead, follow what he comprehends to be the dictates of the Personal law applicable to him. To us, the Act is a small step in reaching the goal enshrined by Article 44 of the Constitution. Personal beliefs and faiths, though must be honoured, cannot dictate the operation of the provisions of an enabling statute. At the cost of repetition we would like to say that an optional legislation that does not contain an unavoidable imperative cannot be stultified by principles of Personal law which, however, would always continue to govern any person who chooses to so submit himself until such time that the vision of a Uniform Civil Code is achieved. The same can only happen by the collective decision of the generation(s) to come to sink conflicting faiths and beliefs that are still active as on date.”

21. The said observation was made when the JJ Act, 2000, was in vogue and JJ Act, 2015 was yet to be enacted. But, it is relevant for the reason that the Hon'ble Supreme Court observed about availability of choice to a person to undertake adoption either under the personal law or under a secular legislation, which was a small step towards reaching the goal of

Uniform Civil Code, enshrined under Article 44 of the Constitution of India. This availability of choice was completely ignored by the Court below while giving an extremely restrictive and erroneous interpretation to the provisions of the JJ Act, 2015, in the context of the application moved by the revision applicants for adoption of the girl child.

22. The Court below also erred in placing reliance on the judgment of the Punjab and Harayana High Court in the case of **Jasmine Kaur v. Union of India and others** (*supra*). A perusal of the facts in the said case would show that while the petitioner therein was adopted under the Hindu Adoption and Maintenance Act, 1956, the Authorities while deciding the question of issuance of passport to the petitioner were insisting upon a no objection certificate contemplated under the provisions of the JJ Act, 2015. Since section 56(3) of the JJ Act, 2015, specifically states that nothing in the JJ Act, 2015, would apply to Adoption of Children under the Hindu Adoption and Maintenance Act, 1956, it was found on facts that the insistence on compliance with procedure contemplated under the JJ Act, 2015 was unsustainable. The said judgment nowhere lays down that there can never be an adoption

of a child under the provisions of the JJ Act, 2015. Similarly, judgments of the Kerala High Court in the case of *Sivarama K. and others v. The State of Kerala and others* (W. P. (Crl.) No.439 of 2019), decided on 07/01/2020, that of the Karnataka High Court in the case of *Mr. Balakrishna Gottipati and another v. Nil* (Writ Petition No.511 of 2020), decided on 30/09/2020 and the judgment of the Telangana High Court in the case of *Kommuri Srinivas and another v. The State of Telangana and others* (Writ Petition No.9591 of 2020), decided on 05/01/2021, do not lay down the law that adoption of child can be undertaken under the provisions of the JJ Act, 2015, only if the child is either in conflict with law or in need of care and protection.

23. In any case, this Court has independently considered the provisions of the JJ Act, 2015, read with Regulations of 2017, framed thereunder and it is found on appreciation of the same that under the scheme of the said Act and Regulations, adoption of children cannot be restricted only to children in conflict with law or those in need of care and protection or only those children who are orphaned, abandoned or surrendered children. Therefore, the application filed by the revision applicants before the Court below

under the provisions of the JJ Act, 2015 and the Regulations of 2017 could not have been rejected by the impugned order on the basis that the said provisions were not applicable to the facts of the present case.

24. In view of the above, the impugned order is quashed and set aside. The Court below is directed to consider the application afresh, filed by the revision applicants as the biological parents (revision applicant Nos.3 and 4) and prospective adoptive parents (revision applicant Nos.1 and 2) on merits under the provisions of the JJ Act, 2015, to examine whether they satisfy all the procedural requirements thereunder. Depending on findings on the said aspects, the Court below shall dispose of the application submitted by the revision applicants as expeditiously as possible. Hence, the revision application stands partly allowed and disposed of accordingly.

25. This Court places on record appreciation of the assistance rendered by the learned Amicus Curiae Mr. F. T. Mirza.

JUDGE