



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 03.08.2022

Pronounced on : 08.08.2022

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.11479 of 2021

R.Chandrasekar

... Petitioner

Vs

1.The Secretary,
Central Adoption Resource Agency,
Ministry of Women & Child Development,
West Block – 8, Wing-2,
First Floor, H.K.Puram, New Delhi – 110 066.

2.The Secretary,
State Adoption Resource Agency,
Commissionerate of Social Defense
Department,
Kelly, Chennai – 600 010.

3.Saranayalam, Tirunelveli Social Service Society,
No.283/2A1, Babuji Nagar,
Opp.Hotel Aryas, Tirunelveli.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus to direct the respondents to permit the petitioner for selecting the child on adoption from the age group of 0 to 2 years.



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For Petitioner : Mr.T.Arul

For Respondents : Ms.L.Victoria Gowri,
Assistant Solicitor General of India for R1

Mr.R.J.Karthick for R3

ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Assistant Solicitor General of India for the Madurai Bench appearing for the first respondent.

2.The petitioner is a practicing advocate. He got married on 06.07.2006. Since no child was born through the wedlock in spite of medical intervention, the petitioner and his wife Mrs.Sujatha decided to adopt a child through the respondents. They registered themselves with the first respondent on 10.01.2017. The third respondent prepared the home study report and found the couple suitable to adopt. On 13.02.2019, a male child born on 07.08.2018 was shown. The petitioner did not reserve the child. On 14.08.2019, another male child was shown and that was also not reserved by the petitioner. A third child born on 05.12.2018 was shown on 14.10.2019 but again the petitioner failed to reserve it.



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3.The petitioner is aged about 49 years. His wife is aged below 45 years. They are anxious to adopt a child that is below two years. Since the composite age of the adoptive parents has crossed 90 years, as per the regulations, they are eligible to a child that is above 4 years. That led to the filing of this writ petition.

4.The learned counsel for the petitioner took me through the averments set out in the affidavit filed in support of the writ petition. The petitioner's grievance is that when his seniority status was verified in March 2019, it was found blocked. It was restored only in August 2019 after the petitioner submitted an application for retention of the seniority. The petitioner alleges that as a result of deletion from the seniority for five months, he has been prevented from making a choice in the intervening period. The learned counsel would submit that since the petitioner's wife is below 45 years, the couple can be allowed to choose a child aged between 0-2.

5.The first respondent has filed a detailed counter affidavit. The learned ASG took me through its contents. According to them, the Adoption Regulations, 2017 clearly stated that if the composite age of the prospective adoptive parents is above 90 years, then, child below 4 years cannot be given



in adoption. In the counter affidavit, the allegations made by the petitioner have been denied. According to the learned ASG, the petitioner is to be blamed himself for the situation. She pressed for dismissal of the writ petition.

6.I carefully considered the rival contentions and went through the materials on record. Adoption is a sensitive and sentimental subject. Though India is a multi-religious and pluralistic society, the personal law of Hindus alone recognizes adoption. The personal laws of other religions do not provide for adoption. Humanity is one and childless couples irrespective of their religious background would feel alike. Sections 56 to 73 of the Juvenile Justice (Care and Protection of Children) Act, 2015 dealing with adoption is a secular response to this challenge and which is free of all trappings of religion. Article 44 of the Constitution of India mandates that the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India. I see Chapter VIII of the said Act and the Rules and Regulations framed thereunder as effectuating the constitutional vision to have a secular civil law for all in the matter of adoption.

7.Adoption Regulations, 2017 were notified in exercise of the powers conferred by clause (c) of Section 68 r/w. clause 3 of Section 2 of the Act.



They are statutory in character. Regulation 5 sets out the eligibility criteria for prospective adoptive parents. Regulation 5 is as follows :

5. Eligibility criteria for prospective adoptive parents.-

(1) The prospective adoptive parents shall be physically, mentally and emotionally stable, financially capable and shall not have any life threatening medical condition.

(2) Any prospective adoptive parents, irrespective of his marital status and whether or not he has biological son or daughter, can adopt a child subject to following, namely:- (a) the consent of both the spouses for the adoption shall be required, in case of a married couple; (b) a single female can adopt a child of any gender; (c) a single male shall not be eligible to adopt a girl child;

(3) No child shall be given in adoption to a couple unless they have at least two years of stable marital relationship.

(4) The age of prospective adoptive parents, as on the date of registration, shall be counted for deciding the eligibility and the eligibility of prospective adoptive parents to apply for children of different age groups shall be as under:-

Age of the child	Maximum composite age of prospective adoptive parents (couple)	Maximum age of single prospective adoptive parent
Upto 4 years	90 years	45 years
Above 4 and upto 8 years	100 years	50 years
Above 8 and upto 18 years	110 years	55 years



(5) In case of couple, the composite age of the prospective adoptive parents shall be counted.

(6) The minimum age difference between the child and either of the prospective adoptive parents shall not be less than twenty-five years.

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

(8) Couples with three or more children shall not be considered for adoption except in case of special need children as defined in sub-regulation (21) of regulation 2, hard to place children as mentioned in regulation 50 and in case of relative adoption and adoption by step-parent."

The wife of the petitioner is less than 45 years. If she as a single prospective adoptive parent applies for adoption, she can adopt a child up to the age of 4 years. But because she is married and the composite age of the couple is above 90, she cannot adopt a child up to 4 years. The Hon'ble High Court of Kerala in WP(C)No.31780 of 2016 (Jeshy C.O v. Union of India) repelled the challenge to the validity of the aforesaid regulation in the following terms :

"12. In a matter of adoption, what is to be looked into is the welfare of the child and where it is stated that the maximum age is prescribed keeping in mind the probability of the prospective adoptive parents surviving the formative years of the child, this Court cannot, in exercise of its powers of



judicial review, say that such a guideline is violative of the right of the prospective adoptive parents or that it is discriminatory. It is not for this Court to consider the reasons behind the fixing of a particular age or to substitute its own wisdom for that of the executive by fixing a criteria for adoption at variance with those provided in the impugned guidelines. In case the petitioners have a contention that the guidelines issued by the CARA are not supported by scientific studies, it is for them to approach the CARA seeking appropriate steps in the matter. Since the guidelines for adoption clearly affect the rights of prospective adoptive parents, I am sure, the concerns raised by the petitioners will be addressed appropriately by the CARA. [WP(C) 31780/2016 & However, the challenge raised against the guidelines on the ground of discrimination as also on the ground of unreasonableness and ultra vires are, according to me, not sustainable. The challenge therefore is repelled. The writ petitions are dismissed reserving the rights of the petitioners to approach the CARA as mentioned above, if so advised.”

The order of the learned Single Judge was upheld by the Hon'ble Division Bench in WA No.30 of 2019 in the following terms :

“However, bearing in mind the liberty granted by the learned Judge, in the event the petitioner approaches CARA for appropriate amendment in the Guidelines, or raise their grievance relating to the age criteria and also for relaxation of the individual difficulty, a decision on merit on such



representation should be given by the Authority without any delay and preferably within three months of receipt of representation. It is ordered accordingly.”

It is not known if CARA had revisited the issue. Be that as it may, the wisdom of the agency in fixing the maximum age is not really impugned in this writ petition. The issue that calls for consideration is whether marriage can operate as a disqualification. If the petitioner's wife Sujatha is a single person, then, she is today eligible to take a child upto 4 years through the aegis of the respondents in adoption. But she becomes ineligible as the wife of the writ petitioner. Marriage is a value addition (let us forget the exceptional cases). A person cannot be put in a lesser scale or made ineligible due to one's marital status. The distinction between a single parent and a couple does not appear to have a rational nexus with the object that is sought to be achieved. There is no formal challenge to the Regulations. Sujatha is not the writ petitioner. As per the roster, it is only the Hon'ble First Bench that can go into the vires of any Act, Rules or Regulations. Therefore, I am not competent to pronounce on the validity of the distinction made in Regulation No.5 and the restriction that in case of couple, the composite age of the prospective adoptive parent shall be counted.



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8. While the petitioner is to be primarily blamed because he chose not to reserve a child even though he was shown them on as many as three occasions. He is not without remedy. Regulation 60 provides for relaxation and grant of exception in respect of a case or class of cases by the Relaxation Committee of CARA. Though in the counter affidavit, the petitioner's allegations have been specifically denied, the fact remains that for five months from March 2019 to September 2019, the petitioner's seniority was blocked in the web portal of CARA. In paragraph 8, it was admitted but explained as if it was due to a technical glitch. It is also admitted that the CARINGS portal showed that the petitioner's home study report expired and that it was later rectified. This in my view is a ground for considering the case of the petitioner for relaxation. The petitioner is permitted to move the first respondent. The case shall be placed immediately before the Relaxation Committee. The Committee shall bear in mind that the petitioner's wife is below 45 years. We are in the digital age. The members of the Committee can be in different States. That should never be a reason for not holding regular sittings. When marriages under the Special Marriage Act, 1954 can be solemnized online, meetings of the Relaxation Committee can also take place on the virtual platform and conducted through online mode. The petitioner's case for relaxation will be considered and decision taken within a period of eight weeks from the date of receipt of the representation.



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9.The writ petition is disposed of accordingly. No costs.

08.08.2022

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Internet : yes/no
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G.R.SWAMINATHAN, J.

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