

31st July,
2023
(AK)
09

W.P.A 7439 of 2023

Sri Hrishikesh Bhaumik
Vs.
The Union of India and others

Mr. Anujit Mookhrji

...for the petitioners.

The petitioner is the proposed adoptive father seeking adoption of a child, with his spouse, through the respondent no.2, that is, the Central Adoption Resource Authority of India.

The petitioner duly applied, seeking such adoption, on October 18, 2022, when their cumulative age was 88 years.

There being certain glitches in the uploading of the documents, upon being so informed, the very next day, that is, on October 19, 2022, the petitioner rectified the said application.

There were subsequent communications by e-mail regarding uploading the soft copies of the documents which were to be produced by the petitioner, between the respondent no.2 and the present petitioner.

Subsequently, however, the petitioner was intimated that the uploaded documents were incorrect but the authorities were not responding to the e-mails of the

petitioner and his spouse, for which the application of the petitioner was rejected from the portal.

Upon approaching the respondent authorities, the petitioner was informed that the petitioner and his wife, who were by now cumulatively aged 90 years, would be entitled to make a fresh application for adoption.

However, it was further intimated that as per the eligibility criteria, instead of a child between two and four years of age, the petitioner and his wife would now be eligible to adopt a child between four and eight years.

Learned counsel also places a copy of the concerned Regulations, that is, the Adoption Regulations, 2022 in support of his contention.

It is submitted that, due to no fault of the petitioner and his wife, the petitioner and his wife are being deprived of taking adoption of a child between the age range two to four, which is a different category than that which they are now being subjected to, by virtue of being compelled to file a fresh application, since their cumulative age was 88 years when they first applied, but now has touched 90 years.

Since none appears, despite service, for the respondents, the matter is taken up for hearing *ex parte* in the absence of the respondents, by keeping on record the affidavit-of-service filed by the petitioner.

It is seen from the relevant e-mail communications between the parties that even up to October 20, 2022, the

petitioner and his wife, the joint applicants, were permitted to upload documents with regard to their application dated October 18, 2022.

In the e-mail dated October 20, 2022, a print of which is annexed at page-33 of the writ petition, it was informed by the respondent no.2-CARA that the petitioner's documents were successfully uploaded.

The petitioners were also directed to contact the local agency, that is, the Indian Society for Sponsorship and Adoption.

However, the petitioner could not log in on the concerned portal by using the User ID and Password provided at the time of registration and, by an e-mail dated November 22, 2022, informed the CARA of such inability.

The respondent no. 2 was accordingly requested to take appropriate action so that the petitioner would be able to log in to the portal.

However, on November 22, 2022, the petitioner's application was rejected.

The petitioner is justified, as corroborated both by the response of the CARA as well as the Adoption Regulations of 2022, that the maximum composite age of prospective adoptive parents (couple) for taking a child between two and four years in adoption is 90 years.

The couple, if they collectively reach the age of 90 years, is disentitled from taking a younger child in adoption.

Be that as it may, in any event, the petitioner would lose a category, thereby being deprived of their choice of the age of the proposed adopted child, due to no fault of theirs, if the order of rejection by the CARA is upheld. The same would be an injustice, since the petitioner was not at fault and had applied in due time, but was prevented due to technical snags from uploading documents duly.

Accordingly, the ends of justice would be sub-served if the petitioner's application is deemed to have been made on October 18, 2022 and the respondent no.2 intimates the petitioner if any further clarification or production of document is necessary by the petitioner.

In view of the above observations, WPA 7439 of 2023 is allowed, thereby setting aside the impugned rejection dated November 1, 2022, of the application for adoption of the petitioner made on October 18, 2022, as communicated to the petitioner by the respondent no.2 vide e-mail dated November 22, 2022.

The respondent no.2-authority shall, within a fortnight from the date of communication of this order to the said authority, communicate whether the petitioner and his wife are required to undertake any further formality for final processing of their application for taking a child in adoption, by deeming the application of

the petitioner and his wife to have been made on October 18, 2022.

The respondent no.2, for all practical purposes and for the purpose of considering the eligibility of the petitioner and his wife within the contemplation of Adoption Regulations, 2022, shall deem that the petitioner and his wife applied on October 18, 2022 itself.

The parties shall act on a server copy of this order, coupled with a communication in writing by the learned Advocate for the petitioner for the purpose of compliance, without insisting upon prior production of a certified copy.

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)