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

Date of Decision: 4th January, 2023

+ **W.P.(C) 8494/2021**

SHUBHA CHAKRAVARTY & ANR. Petitioners

Through: Mr. S. Debabrata Reddy, Advocate.

versus

UNION OF INDIA & ORS. Respondents

Through: Ms. Nidhi Raman, CGSC with Mr. Zubin Singh and Mr. Chirag Modi, Advocates for R-1 and 2 (M: 9555672532).

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioners, i.e., a couple who are Overseas Citizen of India (“OCI”) card holders. The Petitioners registered with the Respondent No.3 - Central Adoption Resource Authority (“CARA”) to adopt an Indian child, on 22nd March, 2018.
3. It is submitted by the Petitioners that, at the relevant point in time, OCI Prospective Adoptive Parents (“PAPs”) were not being treated at par with the other applicants and a differential policy was being applied in respect of OCI PAPs as compared to domestic or NRI PAPs. Hence, they had to wait for a long period before receiving a referral for the adoption of a child. The seniority of the Petitioners was also affected in view of this

practice followed by CARA. In view of the same, the Petitioners filed the present petition seeking the following prayers:

- “i. Issue directions to Respondent No.3 in order to ‘refer’ a child legally free for adoption to the Petitioners; and/or*
- ii. Direct Respondent Nos. 2 and 3 to treat the Petitioners at par with NRI Prospective Adoptive Parents and Resident Indian Parents in terms of seniority for adoption; and/or*
- iii) Pass any such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the instant case and/or in the interest of justice.”*

4. Notice was issued in the present petition on 16th August, 2021. Thereafter, a short affidavit has been received on behalf of CARA. As per the said affidavit, dated 1st December, 2021 and deposed by the Mr. Jagannath Pati, Joint Director, CARA, the stand of CARA was as under:

- i. That NRI PAPs are to be treated at par with RI PAPs in matters of adoption, and OCI PAPS have to be treated at par with NRI PAPS in the matter of inter-country adoption of Indian children.
- ii. That the Ministry of Home Affairs had also issued Consolidated Guidelines for Overseas Citizens of India, on 4th March, 2021. However, due to the Covid-19 pandemic, the online system could not be adopted in time.
- iii. That there are a large number of waiting PAPs, but fewer number of children for adoption. Thus, whenever a child is legally free for adoption, the child is referred to the prospective

adoptive parent as per seniority. Thus, the waiting period for parents to adopt a child is normally upto three years.

iv. All existing PIO cardholders are deemed to be OCI cardholders in terms of the Gazette of India Notification dated 9th January, 2015.

5. Subsequent to the affidavit dated 1st December, 2021 being filed, a status report was called for, vide order dated 26th September, 2022, querying CARA as to whether the seniority list has been merged treating the RI, NRI and OCI PAPs on an equal pedestal. The said order dated 26th September, 2022 is set out below:

“As is evident from a reading of the order dated 02 December 2021, the only issue which now survives is whether the seniority list which is maintained by the respondents for the purposes of adoption and insofar as it may relate to the disposal of applications made by Resident, Non-Resident Indians and Overseas Citizens of India have been merged and whether those categories now stand placed on an equal pedestal. In view of the above, let the respondents place a short Status Report on the record of these proceedings dealing with the issue which now remains. Let the matter be called again on 16.12.2022.”

6. Today, Ms. Nidhi Raman, Id. CGSC appearing for CARA submits that, with effect from 13th June, 2022, all RI, NRI, and OCI PAPS on the ‘CARINGS’ portal, are being treated at par with each other. A communication dated 29th December, 2022 by Mr. G. Ravi Kumar, Assistant Director, CARA addressed to the Id. CGSC, has also been placed before the Court. The said communication reads as under:

“In the above-mentioned case of Shubha Chakravarthy V/s UoI and Ors, the NOC was issued by CARA on

13.01.2022 and the Adoption Order was issued vide Court Order dtd 19.04.2022. Further the Conformity Certificate was issued on 18.07.2022 by CARA. Thus necessary formalities have been completed by CARA as far as adoption of the child with the Mr. William Christian Wagner and Shubha Chakravary.

So far as the "The issue whether the seniority list which is maintained by the respondents for the purposes of adoption and insofar as it may relate to the disposal of applications made by Resident, Non-Resident Indians and Overseas Citizens of India have been merged and whether those categories now stand placed on an equal pedestal", it is humbly submitted that, w.e.f. 13.06.2022 onwards, all RI/NRI/OCI PAPS on CARINGS portal have been made as PAR with respect to the preferences, seniority and no. of referrals.

This issues with the approval of the Competent Authority."

7. It is further submitted that Regulation 15 of the Adoption Regulations, 2022, which have now been notified on 23rd September, 2022, also recognise that OCI and NRI PAPs are to be treated at par with RI PAPs. Regulation 15 of the Adoption Regulations, 2022 reads as under:

"15. Non-resident Indian and Overseas Citizen of India Cardholder to be treated at par with resident Indian.—Non-resident Indian and Overseas Citizen of India Cardholder prospective adoptive parents shall be treated at par with Indians living in India in terms of priority for adoption of orphan, abandoned or surrendered children."

8. It is also submitted that, in the meantime, the Petitioners have also adopted a child and the process of adoption has been completed.

9. Heard Id. Counsels for the parties. The prayers sought in the present petition have been extracted hereinabove. Insofar as the relief sought in paragraph (i.) of the prayer clause is concerned, the same no longer survives in view of the fact that the Petitioners have already adopted a child.

10. Insofar as the relief sought in paragraph (ii.) of the prayer clause seeking directions to Respondent Nos.2 and 3 to treat the Petitioners at par with NRI and RI PAPs, is concerned, the same stands satisfied in view of Regulation 15 of the Adoption Regulations, 2022, extracted hereinabove.

11. Insofar as the merging of the list as directed vide order dated 26th September, 2022, is concerned, a perusal of the communication dated 29th December, 2022 addressed by the Assistant Director, CARA and extracted hereinabove, shows that the said merging has taken place w.e.f. 13th June 2022.

12. In view of the fact that the above steps have already been taken by CARA in order to ensure that OCI, NRI and RI PAPs are treated at par with each other, the present petition stands satisfied.

13. Accordingly, the present petition, along with all pending applications, is disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

JANUARY 4, 2023

dj/ad