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

+ **W.P.(C) 13372/2019 & CM APPL. 54298/2019**

**MASTER HARKIRAT SINGH, MINOR THROUGH
HIS NEXT FRIEND, MR. BALWINDER SINGH
MALIK AND ANR.**

..... Petitioners

Through: Mr. Sushil Kumar Sharma, Advocate.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Aproov Kurup and Ms. Gauri
Govurdhun, Advocates.

CORAM:

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

ORDER

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29.02.2024

1. The present petition is filed under Article 226 of the Constitution for issuance of directions to the respondent no. 2 with the following prayer:-

A) Direct the Respondent No.2 to issue no objection certificate (NOC) to the Petitioners within such timeframe which this Hon'ble Court deemed fit in the given facts and circumstances of the Case.

B) Direct the Respondent No.3 or the regional passport officer under their wing and command to issue a passport to the Petitioner no. 1 within such timeframe which this Hon'ble Court deemed fit in the given facts and circumstances of the Case.

C) Pass any other or further order(s) which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case, in favour of the Petitioner, in the interest of justice and fair play.



2. It is stated in the petition that the petitioner no. 1 was a minor boy at the time of filing of the petition and was aged about 10 years and was accordingly represented through the petitioner no. 2/Mr. Balwinder Singh Malli (Adoptive Father). The petitioner no. 2 claimed to be the adoptive father of the petitioner no. 1/Master Harkirat Singh, minor and has moved to United Kingdom in the year 2005 along with his wife and children. The petitioner no. 2 is having Overseas Citizen Of India (OCI) status. The petitioner no. 1 is stated to be born on 18.04.2009 in Agra and the biological parents of the petitioner no. 1 were stated to be residing in Gurudwara, Guru Ka Taal, Sikandra, Agra.

3. The petitioner no. 1 happens to be the fifth child of his biological parents. The biological parents of the petitioner no. 1 and the petitioner no. 2 are related to each other. The petitioner no. 2 is the maternal uncle of the petitioner no. 1. The petitioner no. 2 has adopted the petitioner no. 1 vide Adoption Deed dated 10.01.2014

4. The petitioner no. 2 had applied for issuance of passport in respect of the petitioner no. 1 before the respondent no. 3 but the respondent no. 3 refused to accept the application of the petitioner no.2 for want of NOC from the respondent no. 2.

5. The petitioner no. 2 in the year 2016 had applied for grant of NOC vide file bearing reference no. 33-26/2016/England/FA-CARA. However, till date, NOC has not been issued by the respondent no. 2.

6. The respondent no. 2 on 01.06.2016, also directed the Director, Development of Women Welfare & Child Development, Govt. of Uttar Pradesh, Jawahar Bhawan, Ashok Marg, Lucknow, vide letter Reference bearing no. 33-26/2016/England/FA-CARA, dated 01.06.2016 to conduct



investigation in the matter and submit report. The respondent no. 2 also received the Verification Report from the State Govt. of Punjab on 30.05.2017. The concerned agency of the United Kingdom (UK) named Sandwell MBC Adoption Team Crystal House, 1-7 Crystal Drive Sandwell Business Park, Smethwick, West Midlands, in the month of October, 2011 also submitted the Home Study Report (HSR) in response to the request of the respondent no. 2 and on 22.12.2011, Sandwell's Panel Members approved the adoption of the petitioner no. 1. The respondent no. 2 also wrote to the Inter Country Adoption Team, Department of Education and Skills, Room No. 11, Lower Ground Floor, Mowden hall, Staindrop Road, Darlington, DL3 9BG United Kingdom on 18.06.2018 for pre-approval. The adoption of the petitioner no. 1 falls under the provisions of the Hindu Adoptions and Maintenance Act, 1956 and does not fall under the Hague Convention 1993, Juvenile justice Act 2000 (JJ Act), Juvenile Justice (Care and Protection Of Children) Rules, 2007 and other enactments.

7. The respondent no. 2 has not issued the NOC since the adoption of the petitioner no. 1 by the petitioner no. 2 in the year 2014. The petitioner being aggrieved filed the present petition.

8. The respondent no. 2 which is the main contesting party filed a short affidavit of Jagannath Pati, who is Joint Director with the respondent no. 2 wherein it is stated that the respondent no. 2 functions as a Nodal body for adoption of Indian Children and is mandated to monitor and regulate in-country and inter-country adoptions. The Juvenile Justice Act, 2015 contains specific provisions to regulate the inter-country adoptions and the present adoption is governed by the Juvenile Justice Act, 2000 and Rules and guidelines framed thereunder. The Govt. of India has ratified the Hague



Convention on Inter Country Adoption, 1993 in the year 2003 and as such the respondent no.2/Central Adoption Resource Authority is obliged to follow certain safeguards as provided in the Convention which were applicable at the time of adoption.

9. The respondent no. 2 in para no. 11 of the short affidavit also detailed about the documents which are required to be submitted for the adoption. The case of the adoption of the petitioner no. 1 by the petitioner no. 2 was processed as per the provisions of the "Guideline for Family Adoption of Indians Staying Abroad".

10. The respondent no. 2 vide letter dated 01.06.2016 sought the verification of the documents from the Director, Department of Women Welfare & Child Development, Government of Uttar Pradesh *vide* file no. 33-26/2016/England/FA-CARA and on 30.05.2017, the concerned District Child Protection Unit ("DCPU") had submitted the state verification in the old format. The respondent no. 2 also issued a letter dated 07.06.2016 to the adoptive parents for providing requisite documents as detailed in para no. 15. The adoptive parents on 10.06.2017 also submitted the Home Study Report dated 22.11.2011 which was conducted by Sandwell Children's Trust, Authorized Foreign Adoption Agency ("AFAA"). It is also mentioned that an adoption order from the competent court, NOC and Articles 5 and 17 are still pending and the adoptive parents were accordingly informed *vide* various letters.

11. The respondent no. 2 in para no. 22 has mentioned that before issuance of NOC to the petitioner no. 2, the following documents are required to be submitted by the adoptive parents:-



1. Certificate of the Receiving Country under Article 17 of the Hague Convention.

2. Updated HSR.

12. The counsel for the petitioners stated that the petitioner no. 2 shall be submitting the documents as detailed in the para no. 22 of the short affidavit to the respondent no. 2 for issuance of necessary NOC within reasonable time and more particularly, soon after the receipt of these documents from the concerned authority. The counsel for the petitioners also sought permission to coordinate with the respondent no. 2 and other authorities for procuring and submitting the documents as mentioned in the para no. 22 of the short affidavit. The counsel for the petitioners also stated that the respondent no. 2 is requested to issue the support letter for the issuance of passport.

13. The respondent no. 2 shall be at liberty to issue the support letter for issuance of passport in accordance with the rules and regulations applicable to the respondent no. 2.

14. The present petition is accordingly disposed of with the direction to the respondent no. 2 to process the issuance of NOC in favor of the petitioner no. 2 regarding the adoption of the petitioner no. 1 preferably within 04 weeks after the receipt of the documents as mentioned in the para no. 22 of the short affidavit and also detailed hereinabove.

DR. SUDHIR KUMAR JAIN, J

FEBRUARY 29, 2024

Sk/am