



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6658 OF 2024

1. Abdulkadir Lokhandwala,
Aged about 41 years,
Occupation: Private Sector,
Nationality: Indian.
2. Zainab Abdulkadir Lokhandwala,
Aged about 36 years,
Occupation: Teacher,
Nationality: Indian,
Both residing at A-1001,
Archana Paradise Phase 1,
NIBM Road, Mohammedwadi,
Pune 411060.

.....Petitioners

Vs.

1. The Central Adoption Resource
Agency,
Having its address at:
West Block – 8, Wing II,
2nd Floor, R.K.Puram, New Delhi
2. Union of India.
3. Principal Secretary,
Women and Child Welfare
Department, State of Maharashtra.
4. Indian Council for Social Welfare,
Mumbai.
5. Moiz Bootwala
Age about 37 years,
Occupation: Service, Permanently
residing at: 82/84, Clare House,

Clare Road, B Block, 2nd Floor,
Nagpada, Mumbai 400 008.
Presently residing at: 22040
Strathern St. #3 Canoga Park
CA 91304.

6. Maria Bootwala,
Age about 33 years, Permanently
residing at: 82/84, Clare House,
Clare Road, B Block, 2nd Floor,
Nagpada, Mumbai 400 008.
Presently residing at: 22040
Strathern St. #3 Canoga Park
CA 91304

.....Respondents

Ms. Shirin Merchant, with Ms. Stuti Oswal, for the Petitioners.
Mr. Y. S. Bhate, with Mr. Viraj Y. Bhate, for Respondent Nos.1 and 2.
Mrs. Neha Bhide, Government Pleader with Ms. P.J.Gavhane, AGP,
for Respondent-State.
Ms. Yugandhara Khanwilkar, for Respondent Nos.5 and 6.

**CORAM : REVATI MOHITE DERE &
DR. NEELA GOKHALE, JJ.**

RESERVED ON : 7th JULY 2025.

PRONOUNCED ON : 16th JULY 2025.

JUDGMENT:- (Per Dr. Neela Gokhale, J.)

1. **Rule.** Rule made returnable forthwith. With the consent of parties, the matter is taken up for final hearing.
2. By way of the present petition, the Petitioner brings to the attention of this Court an unprecedented situation relating to the applicability of the Juvenile Justice (Care and Protection of Children)

Act, 2015 and the Adoption Regulations 2022 (**“AR”**) framed under the said Act, to the adoption of a child being a citizen of the United States of America by relatives of the child’s biological parents. Refusal by the Central Adoption Resource Agency (**“CARA”**) to register the Petitioners as prospective adoptive parents on its **“CARINGS”** web portal prompted the Petitioner to approach this Court seeking a direction to Respondent No.1 to register them as prospective adoptive parents on its CARINGS web portal and issue a pre-approval letter to facilitate adoption of male minor child, Mohammed Moiz, by them.

3. The facts of the case reveal that Mohammed Moiz (**“Baby Moiz”**) was born to the Respondent Nos. 5 and 6 on 2nd July 2019. The Petitioners were married on 16th September 2011. They are Indian citizens, domiciled in India. The Petitioner No. 2 is the sister of Respondent No.6. The Respondent Nos. 5 and 6 although Indian citizens, are stated to be residing in California, USA. The Respondent No.1 is the Central Adoption Resource Agency. CARA is constituted under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 (**“JJ Act”**). It is a regulatory authority in respect of matters relating to in-country and inter-country adoptions and other related matters.

4. The Respondent No.2 is the Union of India and the Respondent No.3 is the Principal Secretary of the Women and Child Welfare Department. The Respondent No.4 is the Indian Council for Social Welfare (“**ICSW**”).

5. It is the case of the Petitioners that they were unable to bear children and hence desirous of adopting baby Moiz from their relatives namely, the Respondent Nos. 5 and 6. Baby Moiz was born in the USA and hence is a US citizen, holder of a USA passport. The Petitioners, with an intention to adopt Moiz, brought him to India on 12th October 2019. They contacted CARA to complete all the requisite legal formalities to adopt Moiz. It is their grievance that CARA refused to register the Petitioners on the ground that the Adoption Regulations do not contemplate facilitating adoption of an American citizen. The Petitioners professing Muslim religion, do not have a codified enactment regulating adoption. Hence, they approached the District Court, Pune by filing a Civil Miscellaneous Application No. 58/2021, under the provisions of Section 56(2) of the JJ Act, under the category of ‘relative’ adoption.

6. Pursuant to a 2021 amendment to the JJ Act which

substituted the word 'Court' with 'District Magistrate', all the Adoption matters were transferred to the DM. The said amendment was challenged before this Court in Civil Writ Petition No. 1085 of 2023, and vide its order dated 10th January 2023, this Court stayed the said amendment and directed that the power to decide adoption petitions shall remain vested with the District Court during the pendency of the petition. Hence, the Civil Misc. Application relating to adoption of baby Moiz was again transferred to the District Court, Pune, for determination. The Application is yet pending on account of CARA refusing to approve the said adoption and submit the requisite Approval Letter. The Petitioner complains that USA authorities are likely to refuse renewal of Moiz's passport, without a valid adoption order and his stay in India may become illegal. In these circumstances, the Petitioner has approached this Court for the reliefs as prayed in the Petition.

7. Ms Shirin Merchant, learned counsel represented the Petitioners. Mr Y. S. Bhate, learned counsel appeared for CARA and the MoWCWD, State of Maharashtra. Ms Yugandhara Khanwilkar, learned counsel, was appointed by this Court, vide order dated 21st

March 2025 to represent the Respondent Nos. 5 and 6 and Ms Neha Bhide, the learned GP represented the State.

8. Ms Merchant submitted that the Adoption Regulations applicable at the relevant time were Adoption Regulations of 2017. She referred to various provisions of the JJ Act to canvass her case, more particularly Section 56 of the JJ Act providing for adoption of a child from a relative by another relative; Section 51 of the Adoption regulations of 2017, contemplating the present adoption to be an in-country adoption; and Section 55 of the JJ Act detailing the procedure to be followed in such adoptions. According to Ms. Merchant, CARA is unnecessarily treating the said adoption to be under Regulation 23 of the Adoption Regulations. She says that AR 23 is contained in Chapter IV of the regulations which is titled 'Adoption Procedure for Non Resident Indian, Overseas Citizen Of India Cardholder And Foreign Prospective Adoptive Parents'. Thus she says, that the provisions of AR 23 do not apply to the present case as the Petitioner are Indian citizens not falling within the criteria of AR 23. She further argues that the entire JJ Act is parent centric and the procedure to be followed is based on the country of residence of the parents and not

the child, while the jurisdiction of courts is where the child resides. Since the child resides in India with the Petitioners, the question of adopting the child as per USA laws does not arise.

9. Ms Merchant further submits that despite the Petitioners' repeated pleas to CARA, no steps were taken to guide them and CARA's only response was to refuse to register them on its portal to facilitate the said adoption. She further asserts that since the Petitioners are Indian citizens, residing in India, it is not possible for them to complete any procedures in America. To the assertions made by CARA, that it is bound by the provisions of the International Hague Convention on Adoption of Children, to which India is a signatory, Ms. Merchant submits that the provisions of the Hague Convention are not applicable to private adoptions and only govern institutional adoptions. Concluding her submissions, she says that without prejudice to the other objections of CARA, it is always possible for CARA to relax its guidelines and grant exception to any provisions of the AR. She has placed on record certain cases in which CARA has relaxed certain provisions in the interests of a child under AR 63 of the AR. On a note to invoke empathy, she submits that the

child is now 6 years of age and attending school in India. He is required to travel to the USA every year to renew his Visa, failing which he may become an illegal migrant in India and hence keeping in view the child's stability, identity and future prospects, the Petition be allowed and CARA be directed to give its clearance for the adoption.

10. Mr. Bhate, submits that while CARA being sympathetic of the Petitioners' predicament, it is bound by the provisions of law for the time being in force. He submits that neither the JJ Act nor the Adoption regulations framed under it, apply to an adoption of a child who is an American citizen and to which the JJ Act does not apply. He explains the statutory procedure under the JJ Act and the Adoption Regulations which is to be followed for adoption of a child. He takes us through the relevant provisions of the JJ Act, the Adoption Regulations and Article 5 and 17 of the Hague convention. The substance of his argument is that neither the JJ act nor the AR provide for a procedure for adoption of an American child by Indian parents, which is neither a 'child in need of care and protection' nor a 'child in conflict with law'. AR 23 provides for a post adoption procedure to be followed when a child is adopted by Indian parents in

the country of origin of the child. Thus, CARA is unable to give its clearance to such adoption, without the child first being adopted in the USA under the laws applicable in that country. He concludes by offering a solution to the Petitioners' dilemma inasmuch as either the Petitioners can adopt the child in the US as per American laws or baby Moiz can apply for Indian citizenship through the Petitioners, and pursuant to surrender by his biological parents, his adoption can be facilitated in India under the JJ Act and the prevailing Adoption regulations. Otherwise, the present petition, he urges, must fail.

11. Ms Khanvilkar, learned counsel representing the biological parents of Moiz i.e., the Respondent Nos 5 and 6 submits that the present adoption falls under the ambit of in-country adoption and not inter-country adoption as the Petitioners and the biological parents of Baby Moiz are Indian citizens. The definition of in-country adoption in JJ Act defines it as an adoption of a child by a citizen of India residing in India and when read with the definition of "relative" in the Act, it is clear that the present adoption is an in-country adoption governed by AR 54. She supports the arguments of Ms. Merchant that AR 23 is inapplicable. She further submits that in any case a procedure

is a handmaiden of justice and in the eventuality that there is no provision for such an adoption in the existing laws, it is the responsibility of the regulator to provide for varied circumstances. She submits that this is a fit case for CARA to exercise its discretion under Adoption Regulation 63. Hence, in the best interests of the child, she prays that the petition be allowed. She places reliance on the decisions of this Court in the matter of *Bronson Barthol Dias and another vs CARA*¹. She also places Minutes of several meetings of CARA when AR 63 was earlier invoked in cases when exceptions were made to the provisions of the Regulations in the interests of a child. She thus, joins Ms. Merchant in her prayer for grant of reliefs in the petition.

12. Heard counsel for all the parties and have perused the record and provisions of the applicable law with their assistance. We have also gone through the decision cited by Ms. Khanwilkar.

13. Before adverting to the rival submissions canvassed on either side, we must look into the scheme and various relevant provisions of the J J Act 2015 as well as the Adoption Regulations

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made and notified under the Act by CARA in exercise of the powers conferred by Section 68(c) read with Section 2(3) the J J Act, 2015.

I) **The Statement of objects and reasons** of the J J Act 2015 reads thus:

“An Act to consolidate and amend the law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established, herein under and for matters connected therewith or incidental thereto.

WHEREAS, the provisions of the Constitution confer powers and impose duties, under clause (3) of article 15, clauses (e) and (f) of article 39, article 45 and article 47, on the State to ensure that all the needs of children are met and that their basic human rights are fully protected;

AND WHEREAS, the Government of India has acceded on the 11th December, 1992 to the Convention on the Rights of the Child, adopted by the General Assembly of United Nations, which has prescribed a set of standards to be adhered to by all State parties in securing the best interest of the child;

AND WHEREAS, it is expedient to re-enact the Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000) to make comprehensive provisions for children alleged and found to be in conflict with law and children in need of care and protection, taking into consideration the standards prescribed in the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), the Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption (1993), and other related international instruments.”

Emphasis supplied

II) The provisions of the J J Act reads thus:

Section 1

“1(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.”

Section 2(3) *defines “adoption regulations” means the regulations framed by the Authority and notified by the Central Government in respect of adoption;*

Section 2(13) *“child in conflict with law” means a child who is alleged or found to have committed an offense and who has not completed eighteen years of age on the date of commission of such offense;*

Section 2(14) *“child in need of care and protection” means a child—*

(i) who is found without any home or settled place of abode and without any ostensible means of subsistence; or

(ii) who is found working in contravention of 2 [the provisions of this Act or] labour laws for the time being in force or is found begging, or living on the street; or

(iii) who resides with a person (whether a guardian of the child or not) and such person—

(a) has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child; or

(b) has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or

(c) has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or

(iv) who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or having parents or guardians unfit to take care, if found so by the Board or the Committee; or

(v) who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or

(vi) who does not have parents and no one is willing to take care of and protect or who is abandoned or surrendered; (vii) who is missing or run away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed; or

(viii) who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or

(ix) who is found vulnerable and 2 [has been or is being or is likely to be] inducted into drug abuse or trafficking; or

(x) who is being or is likely to be abused for unconscionable gains; or

(xi) who is victim of or affected by any armed conflict, civil unrest or natural calamity; or

(xii) who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnization of such marriage.

Section 2(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;

Section 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 (78 of 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)

III) **The relevant provisions of the Adoption Regulations** are as under:

“Regulation 2(12) “Hague Adoption Convention” means the Hague Convention on Protection of Children and Cooperation in Respect of Inter-country Adoption (1993);”

“Regulation 2(15) “in-country adoption” means adoption of a child by a citizen of India residing in India;”

Chapter IV of the Regulations provide for procedure of adoption for Non-resident Indian, overseas citizen of India Cardholder and Foreign Prospective adoptive parents. AR 23 contained in Chapter IV provides for procedure for adoption of a child from a foreign country by India citizen.

“Regulation 23 reads thus:

Procedure for adoption of a child from a foreign country by Indian citizens.—

(1) Necessary formalities for adoption of a child from a foreign

country by Indian citizens shall initially be completed in that country as per their law and procedure.

(2) On receiving Home Study Report of the prospective adoptive parents (including supporting documents), Child Study Report and Medical Examination Report of the child, the Authority shall issue the approval, as required in the cases of adoption of children coming to India as a receiving country under Article 5 or Article 17 of the Hague Adoption Convention.

(3) A child adopted abroad by the Indian citizens, having a foreign passport, and requiring the Indian visa to come to India, shall apply for visa or Overseas Citizen of India Card to the Indian mission in the country concerned, who may issue entry visa to the child after checking all the relevant documents so as to ensure that the adoption has been done following the due procedure.

(4) The immigration clearance for the child adopted abroad shall be obtained from the Central Government in the Foreigner's Division, Ministry of Home Affairs, through the Indian diplomatic mission to that country."

Regulation 63 read thus:

"63. Power to relax and interpretation.—(1)The power of relaxation and grant exception to any provision of these regulations in respect of a case or class of cases shall be vested with the Relaxation Committee of the Authority.

(2) Relaxation Committee of the Authority shall be chaired by the chairperson of Steering Committee of the Authority and two members consisting of its Chief Executive Officer and a member of Steering Committee having experience in law as members.

(3) No decision of the Relaxation Committee of the Authority shall ordinarily have the effect of altering the seniority of any prospective adoptive parents unless reasons are recorded in writing and the primary consideration being the best interests of the child.

(4) In case of any ambiguity in interpretation of any of the provisions of these regulations, the decision of the Authority shall prevail.”

14. The statement of objects clearly states that the JJ Act 2015 was re-enacted to make comprehensive provisions for specified children, taking into consideration the standard prescribed in various conventions including the Hague convention on protection of children and co-operation in respect of Inter country Adoption (1993). Further a plain reading of the applicability provisions of the Act reveal that the Act is applicable to all matters concerning ‘children in need of care and protection’ and ‘children in conflict with law’. Admittedly, Baby Moiz does not fall within the definition of either a ‘child in need of care and protection’ nor a ‘child in conflict with law’ as per the

definitions in Section 2(13) and 2(14). Hence the provisions of the Act insofar as governing his adoption is concerned, do not apply. Section 56 of the Act provides for ensuring right to family for an orphan, abandoned and surrendered child, as per the provisions of this Act. Sub-section 2 to Section 56 provides for adoption of a child from relative by another relative, irrespective of their religion as per the provisions of this Act. According to Ms. Merchant the adoption of Moiz falls under this category and hence the Petitioners have applied to the District Court, Pune seeking Moiz's adoption by the Petitioners. However, for this adoption to be allowed by the Court, first and foremost, the provisions of the JJ Act itself have to be applicable to such adoption. Section 56(2) cannot operate independent of the J J Act. A relative desirous of giving its child in adoption to another relative must first relinquish the child for it to be a 'child in need of care and protection'. It is only thereafter that Section 56(2) of the J J Act providing for relative adoption can be invoked.

15. In exercise of powers conferred under clause 68(c) with Section 2(3) of the J J Act, 2015 and in supersession of Adoption Regulations 2017, the Regulations of 2022 are notified. Ms. Merchant

has argued that the relevant Regulations applicable to the present adoption is that of 2017. However, as Mr. Bhate points out there is no substantial amendment to the 2017 Regulations relevant to the facts in the present case in the Regulations of 2022. The relevant regulation applicable to the present case is AR 23. We have perused AR 23. It provides for a post-adoption procedure in terms of bringing the foreign child adopted by Indian parents into India. In terms of AR 23, the Petitioners are required to complete all the necessary formalities of adopting Moiz from USA as per American laws and procedure. Once the adoption formalities are complete as per US laws, the Indian Mission in USA is bound to issue entry visa to the child. The Petitioners were always at liberty to adopt this legal and regular procedure to adopt Moiz. However, for some reason, the Petitioners are reluctant to follow this procedure and process the adoption application in America as per the US laws.

16. Ms. Merchant insists that the present adoption must be treated as 'In-country' adoption which is an adoption of a child by a citizen of India residing in India. Albeit, the definition is silent regarding the citizenship of the adoptee child, the definition cannot be

interpreted without reference to other related provisions. Firstly, the child in question is neither a 'child in need of care and protection' nor a 'child in conflict with law'. Hence the JJ Act itself does not apply to the adoption of Moiz. Moreover, the expression 'in-country' adoption is defined in the Adoption Regulations. These Regulations are notified by CARA in exercise of powers conferred upon it under Section 68(c) read with Section 2(3) of the JJ Act. These regulations are delegated legislation. The Regulations thus, cannot travel beyond the scope of the parent Act, i.e., the JJ Act. It is presumed that the Regulations are aligned with its parent Act, lest the said regulations become invalid. At this stage, it is apposite to state about the Rule/Regulation making power of a delegating authority. If a Rule/Regulation goes beyond the regulation making power conferred by the statute, the same has to be declared 'invalid'; if the Rule/Regulation supplants any provisions for which the power has been conferred, it becomes 'invalid'. A Rule/Regulations must be in accordance with the parent statute, as it cannot travel beyond it. It is not anybody's case that Regulation 2(15) relating to 'in-country' adoption is invalid. Thus, even if the present adoption is treated as an in-country adoption, the same has to follow the provisions of the parent Act and its applicability. Thus in-country

adoption must also be construed to be that of a ‘child in need of care and protection’ or a ‘child in conflict with law’. As mentioned above, Moiz is neither.

17. We perused the decision of this Court cited by Ms. Khanwilkar. The decision is pertaining to the relaxation powers of CARA is not applicable to the facts in the present case. Even the minutes of CARA meetings indicating several cases in which CARA relaxed some provisions in the interests of the child concerned does not assist the present case. The exceptions made were in the context of children to which the act applies and in the peculiar facts of those cases. We do not find any discrimination made by CARA in this regard.

18. Regarding the submissions of Ms. Merchant that the covenants of the Hague Commission are inapplicable to the present case, it is an admitted position that India is a signatory to the Hague Convention. We have perused Article 5 and 17 relied upon by Mr. Bhate. Article 5 reads thus:

“An adoption within the scope of the Convention shall take place only if the competent authorities of the receiving State-

a)...

b)...

c) have determined that the child is or will be authorised to enter and reside permanently in that State.”

Article 17 read thus:

“ Any decision in the State of origin, that a child should be entrusted to prospective adoptive parents may only be made if -

a)...

*b)..
c)..
d)it has been determined in accordance with Article 5, that the prospective adoptive parents are eligible and suited to adopt and that the child is or will be authorised to enter and reside permanently in the receiving State.”*

19. Both the Articles in the Hague Convention require the competent authorities of a receiving State to determine that the child will be allowed to permanently authorised to enter and reside permanently in the receiving State. The receiving State in the present adoption is admittedly India. Hence the Indian authorities must be in a position to give such a declaration. Permission to reside in India permanently can be assured only if the child is an Indian citizen.

Under the present regime of laws, the authorities cannot be expected to guarantee permanent permission to Moiz to enter and exit India, if he continues to remain a US citizen. His entry and exit in India is determined by the Foreigners Act, 1946 and related Rules and Regulations issued by the Government of India from time to time. Without this assurance, CARA cannot be expected to grant approval and issue NOC for the said adoption.

20. Ms. Merchant has placed reliance on Article 22 & 23 of the Special Commission on the practical operation of the Hague Convention of 1993 on Protection of Children and Co-operation In Respect of Inter-country Adoption 2010. Article 22 and 23 read thus :

“22.Adoptions which are arranged directly between birth parents and adoptive parents (i.e.,private adoptions) are not compatible with the Convention.

23.Independent adoptions, in which the adoptive parent is approved to adopt in the receiving State and, in the State of origin, locates a child without the intervention of a Central Authority or accredited body in the State of origin, are also not compatible with the Convention”

21. We have perused the entire ‘Conclusions and

Recommendations’ adopted by the Special Commission in which is contained Article 22 & 23 as canvassed by Ms. Merchant. Unfortunately, the interpretation of Ms. Merchant of Article 22 and 23 cannot be further away from being accurate. In fact the 2010 Conclusions of the Special Commission on the practical operation of Hague Convention supplements the 1993 convention. The same is to prevent, in the context of inter-country adoption, the abduction, sale and traffic in children and their illicit procurement. It is in this context that the word ‘compatible’ in Article 22 and 23 is used and must be interpreted. The Articles provide that private and relative inter-country adoption is incompatible with the convention. Ms. Merchant requires us to interpret the word ‘compatible’ as ‘covered’ or ‘applicable’ by the convention. In fact the convention specifically and categorically provides that such private and relative adoptions are not considered to be within the realm of authorised adoptions, by following the procedure established by the laws of the receiving State. Hence we have no hesitation in rejecting the interpretation of Ms. Merchant of Articles 22 and 23 of the Special Commission.

22. In view of the aforesaid discussion, it is clear that there is

no provision in the JJ Act nor the Adoption Regulations providing for adoption of a child of foreign citizenship even between relative unless the 'child is in need of care and protection' or a 'child is in conflict with law.' One of the plea of the Petitioner and Respondent Nos. 5 and 6 seems to be that in the absence of any provision in the JJ Act or the Regulations, this Court under its extra ordinary jurisdiction is vested with the power to allow such an adoption and issue directions to CARA. This proposition is stated only to be rejected. There is no fundamental right of the petitioners to adopt an American Child, which child does not fall within the applicability of the JJ Act and the Regulations thereunder, even if he is born to Indian parents. Neither is there any violation of any fundamental right of the child of American Nationality to be adopted by an Indian citizen. The predicament of the Petitioner can be easily resolved in a manner suggested by CARA, i.e., for the child to apply for Indian citizenship under the Citizenship Act, 1955 and then follow the procedure under the JJ Act or to process the adoption in US under the applicable laws of that country. We placed the said suggestion for the Petitioners' consideration, however, the Petitioners were not inclined to accept the same. We leave it at that.

23. In view of the foregoing, we are not inclined to allow the petition. The petition is dismissed.

24. Rule is accordingly discharged.

(DR. NEELA GOKHALE, J.)

(REVATI MOHITE DERE, J.)