

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Reserved on: July 06, 2021

Pronounced on: July 26, 2021

+ W.P. (C) 3187/2021, CM APPL.9662/2021 (by the petitioners
u/S 151 CPC for ex parte ad interim orders)

JS & ANR.Petitioners

Through: Mr. Samar Bansal, Mr. Kartik

Nagarkatti, Ms.Devahuti Pathak,

Mr. Sachin Mishra, Mr. Aman

Vishal, Ms.Harsheen Madan Palli,

Advocates

Versus

CENTRAL ADOPTION RESOURCE AUTHORITY & ANR.

.....Respondents

Through: Ms. Biji Rajesh, Advocate for

respondent No.1/CARA.

Mr. Arnav Kumar, Senior Panel

Counsel for respondent No.2/UOI

CORAM:

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

[VIA VIDEO CONFERENCING]

ASHA MENON, J.

1. The petition has been filed by Mr.JS and Mrs.MS, who describe themselves as the adoptive parents of a minor named JJS, seeking directions to the Central Adoption Resource Authority ("CARA", for

W.P. (C) 3187/2021 Page 2 of 25

short) to issue a „No Objection Certificate" ("NOC", for short) to them, which would enable them to take their "adopted child", the above-said minor, to the United States of America (USA). Directions have also been sought to Union of India ("UOI", for short) for issuance of a passport to the minor mentioning the petitioners as her parents.

2. This case reflects how easily it is possible to set at naught the law intended to protect the welfare, well-being and the rights of the minors. A complete go by has been given to the provisions of the Juvenile

Justice (Care and Protection of Children) Act, ("JJ Act", for short), whether of 2015 or of 2000.

3. After having so carelessly flouted the law of this land, a plea of humanitarian concerns is flashed before the court, expecting the court to discharge the burden of undoing the wrongs and simultaneously exonerating the wrongdoers!

4. Child trafficking is a pernicious practice that the State has sought to address by various legislative means. Since trafficking occurs also for the purpose of adoption, in addition to all other reasons, actions, internationally and nationally, have been taken, to prevent it happening, by prescribing the method and process for adopting a child. Despite that, people, who are well educated, circumvent all such provisions for their private gain.

5. The JJ Act, as also the Adoption Regulations, 2017, notified by the UOI on 4th January, 2017 and which came into force w.e.f 16th January, 2017, and before that, the CARA Guidelines issued in the light of the judgment of the Supreme Court in *Lakshmi Kant Pandey v. Union of*

W.P. (C) 3187/2021 Page 3 of 25

India (1984) 2 SCC 244, were all aimed at ensuring that the sourcing of the child is known and no trafficking occurs during adoption, particularly international adoptions. These essentially follow the Hague Convention on Protection of Children and Co-operation in respect of Inter-country Adoption, 1993 (hereinafter referred to as the "Hague Convention"), in cases of foreign adoptions. The Hague Convention seeks to also ensure that the adopted child is not left in the lurch in a foreign land, in the event the adoption does not work out or subsequently, some problems arise.

6. The CARA has been set up as the Central Agency to regulate adoption within the country and facilitate international adoption as per the recommendation of the Hague Convention. CARA is the National Agency as defined in the JJ Act. There are State Adoption Resource Agencies ("SARA", for short) also defined in JJ Act. Their counterparts have been set up by the respective governments in several other countries and it is through them that CARA ensures that children, who are adopted from this country, are well taken care of. As required under the Hague

Convention, CARA has recognized certain agencies to facilitate "in-country" and "inter-country adoption".

7. The Guidelines/Rules provide that before adoption, the Child Welfare Committee ("CWC", for short) has to be satisfied that the child is fit for adoption [Regulation 4(a) of the Adoption Regulations, 2017]. The fitness for adoption would be on account of the child being an orphan or having been abandoned or surrendered. In the case of surrender, the

CWC is required to assure itself that the biological parents have willingly surrendered the child and for good reason. When the CWC is determining

W.P. (C) 3187/2021 Page 4 of 25

the fitness of an abandoned child, they are obligated to ensure that a proper inquiry and search for the biological parents is made. If none is traceable, then such a child is also declared fit for adoption. Pending adoption, the CWC may authorize any fit institution, fit person or Foster parent to take custody/charge of the child. In some cases, pre-adoption foster care is given to the prospective adoptive parents. Foster care is governed by the Model Guidelines for Foster Care, 2016.

8. The CWC usually assigns the surrendered or abandoned child to a Child Care Institution ("CCI", for short) and obtains periodic reports from such CCIs on the health and progress of the child. Once the child is declared "fit for adoption" by the CWC, the CCI if it is the Specialised Adoption Agency ("SAA", for short) registers the child for adoption. If it is not, then it will inform the SAA that the child was available for adoption. The SAA would ensure the preparation of a Child Study Report, which would also include an assessment as to whether the child is one with special requirements.

9. Since 2015, CARA has introduced the new system of Child Adoption Resource Information and Guidance System (known as "CARINGS"), which entails the registration of a child fit for adoption in a common list. Those people who are interested in adopting a child have also to register themselves on the same site. As per their registration number and their turn reaching, the Prospective Adoptive Parents ("PAPs", for short) are given an option of 3 children, who are awaiting adoption, in accordance with their age preference or preference for special children. The PAPs are sent the Child Study Reports in order to

W.P. (C) 3187/2021 Page 5 of 25

facilitate the exercise of their options. Simultaneously, the Home Study Report and the Background Report of the PAPs are obtained through recognized agencies and submitted to the SAA. The PAPs no longer have direct access to the CCI to choose from amongst children housed there, the child they wish to adopt.

10. All of this material, i.e., the Child Study Report, the Home Study Report, the Background Report, the orders of the CWC declaring the child fit for adoption, the orders whereby the CWC had handed over the child to the CCI and other requisite certifications, if it is a case of international adoption, are all submitted by the SAA to the District Judge. The District Judge would interact with the PAPs as well as the child, and consider all the documentation and on being satisfied that the adoption is in the welfare of the child, put its seal of approval and declare the PAPs

to be the parents of the adopted child and the adopted child to be the child of the PAPs for all legal purposes, also declaring, in the case of an abandoned child, the date of birth, in order to enable the registration of a birth certificate and issuance of other legal documents.

11. The District Judge would also direct the submission of regular reports from the local authorised agencies, who had submitted the Home Study Report, to report to it on the welfare of the adopted child initially after every 3 months for one year and thereafter, once in 6 months for the next year. When a foreign adoption takes place, the court also ensures that issues of citizenship are worked out immediately, so that no lapse occurs on the part of the adoptive parents leading to future complications for the adopted child several years later. Though, it may be underlined,

W.P. (C) 3187/2021 Page 6 of 25

that it is the obligation of the CARA to collect all the reports, including to ensure citizenship of the adoptive country is granted the adopted child.

12. Such a detailed procedure is to ensure that the adopted child, who leaves our country, remains protected and in case the adoption goes wrong, the child is not left in the lurch in a foreign country. This follow up is crucial even with adoptions within India. A failed adoption is extremely traumatic for a child and counselling and protection have to be extended immediately. The local agency, who watches over the progress of the adoption process, is required to visit the family and submit a detailed report on the progress of the adopted child in the adopted family and report to CARA/court any indication of a problem in the process. The local agency is also required to intervene on its own to resolve issues wherever possible, as the aim of all concerned is that the child settles down in the new environment happily. That is why strict adherence to the prescribed procedure has to be insisted upon.

13. For the Hindus, their personal law recognizes adoption. Therefore, the adoption ceremony known as “Datta Homam”, where the biological parents voluntarily surrender and hand over the child to the recipient, following religious ceremonies, was considered sufficient to result in a valid and legal adoption. The relationship of the biological family to the child given in adoption extinguishes when this ceremony is conducted. However, this right to adopt has been brought under the Hindu Adoptions and Maintenance Act, 1956 (“HAMA”, for short) which lays down certain limitations on who can adopt and who can be adopted [Sections 7, 8, 9 & 10] and what are the other conditions for a valid adoption [Section

W.P. (C) 3187/2021 Page 7 of 25

11]. Therefore, even under the HAMA the giving and taking of the child must actually occur, even if the “datta homam” is not performed. A registered document purporting to record an adoption made and signed by

the person giving and the person taking is to be presumed to have been in compliance with the requirements of HAMA unless disproved [Section 16]. HAMA is applicable only to Hindus as defined in Section 2, and specifically provides that it applies to „any other person who is not a Muslim, Christian, Parsi or Jew by religion“.

14. There are a large number of adoptions that have taken place socially amongst the Hindus without the necessity of approaching the court for validating an adoption. The JJ Act has recognised these adoptions even in the case of Non-Resident Indians (NRIs) and Overseas Citizens of India (OCIs) [Section 59 of the Act].

15. However, as far as Muslims and Christians are concerned, their personal laws do not recognise adoption. As HAMA excludes them, they cannot seek to adopt a child in terms of that Act, including by means of a registered document recording an adoption. In order to fulfil their desires of having a child through adoption, their only option is to come under the JJ Act. The relevant Sections thereof read as under-

“58. Procedure for adoption by Indian prospective adoptive parents living in India.

(1) Indian prospective adoptive parents living in India, irrespective of their religion, if interested to adopt an orphan or abandoned or surrendered child, may apply for the same to a Specialised Adoption Agency, in the manner as provided in the adoption regulations framed by the Authority.

W.P. (C) 3187/2021 Page 8 of 25

xxx xxx

59. Procedure for inter-country adoption of an orphan or abandoned or surrendered child.

xxx xxx

(3) A non-resident Indian or overseas citizen of India, or person of Indian origin or a foreigner, who are prospective adoptive parents living abroad, irrespective of their religion, if interested to adopt an orphan or abandoned or surrendered child from India, may apply for the same to an authorised foreign adoption agency, or Central Authority or a concerned Government department in their country of habitual residence, as the case may be, in the manner as provided in the adoption regulations framed by the Authority.

xxx xxx ” (Emphasis added)

16. It is, thus, clear that a person interested in adopting a child is not limited by his or her religion, if adoption is sought under the JJ Act. However, in order to adopt a child under Sections 58 and 59(3), it is equally imperative that the provisions of the JJ Act read with CARA Guidelines and now, the Adoption Regulations, 2017, are also to be followed to the „T“.

17. In the case of children, who have to be taken abroad under the Hague Convention, the Central Agency, as recognised in each country, have to issue a NOC. This NOC is important as it certifies that the child is a validly adopted child and is not being trafficked out of the country. In the present case, Ms. Biji Rajesh, learned counsel had, on behalf of the

W.P. (C) 3187/2021 Page 9 of 25

respondent No.1/CARA, submitted that the petitioners have not validly adopted the minor. Therefore, CARA cannot issue the NOC that the petitioners are seeking. It was submitted by the learned counsel that the child had not come through the CWC, as it was neither surrendered nor found abandoned, and the CWC had not declared the child fit for adoption. Furthermore, the Home Study had not been conducted by an agency that is recognised by CARA and in fact, the Home Study Report has been obtained by the petitioners themselves, in order to claim adherence to the Hague Convention.

18. Mr. Samar Bansal, learned counsel for the petitioners, has argued that the petitioners have suffered on account of wrong legal advice. However, the child has not been trafficked as the cousin of petitioner No.2, who is also the attorney of the petitioners, namely, Sister EA, who was also a Social Worker at the relevant time working in Ferozepur District, Punjab, had acted out of compassion. During the course of her social work, she came across the biological parents of the child being Mr.M and Mrs.M, who were migrant manual labourers residing at V. S.K.C., F., P., and had already lost two babies. The minor was born on 11th December, 2014 at V. K.P.K., T. and D. F., P. On the very next day, Sister EA came to know of the birth through the self-help group of marginalized women in V.S.K.C. She visited the house of the biological parents along with the self-help group women and finding the mother unable to feed the infant, took the child on 12th December, 2014 to a Pediatrician (Dr. S) in Ferozepur City, who declared that the child was so severely malnourished that she may not survive the night with her biological parents.

W.P. (C) 3187/2021 Page 10 of 25

19. According to the learned counsel for the petitioners, the biological parents were very happy to hand over the child to Sister EA, as they were

confident that the child would have a bright future, if given in adoption.

20. It is further submitted by the learned counsel that between 12th and 18th December, 2014, since the biological father insisted on getting the legal formalities done, Sister EA contacted an advocate/document writer in Ferozepur, who drew up the Adoption Deed. On 18th December 2014, after performing customary rituals in respect of the adoption in the presence of the Panchayat elders, the biological parents of the minor executed the Adoption Deed thereby giving the child in adoption to the petitioners. This Adoption Deed, duly witnessed by the S. of V. K.C.W. along with Sister EA, was registered with the Sub-Registrar, Ferozepur on 18th December, 2014 (Annexure P-4).

21. Difficulties arose when the petitioners sought a passport for the child to enable them to take the child to USA where they were employed. An application was submitted to the Regional Passport Office, Amritsar on 23rd April, 2015, but except for exchange of several communications, the respondent No.2 failed to issue the passport. Then, the petitioners instituted a Civil Suit No.CS/386/2015 on 30th April, 2015 before the Civil Court, Ferozepur against the biological parents for a decree of declaration that the minor was their legally adopted daughter. This Suit was dismissed by the Additional District Judge (Sr. Division), Ferozepur on 29th May, 2015 holding that no cause of action to file the suit for declaration had arisen against the biological parents as they had never refused the claim of adoption (Annexure P-5).

W.P. (C) 3187/2021 Page 11 of 25

22. Thereafter, another Suit was instituted by the petitioners being Civil Suit No.CS/680/2016 on 10th August, 2016 in the Court of the Additional Civil Judge (Senior Division), Ferozepur, praying for a decree of declaration that the minor was their adopted daughter and for a decree of injunction to the Passport Authority to issue the passport to the child mentioning the name of the adoptive parents/petitioners. In this suit, CARA was also impleaded as defendant No.3. Both, the Regional Passport Office/UOI and CARA opposed the suit filing their written statements and evidence was led in support of the suit by the petitioners

through the affidavits of Sister EA and Mr. M, who were also cross-examined by the present respondents No.1 and 2 being defendants therein

(Annexure P-8).

23. This suit was also dismissed by the learned Additional Civil Judge (Senior Division), Ferozepur vide judgment and decree dated 17th April, 2018 holding that the Adoption Deed was void being contrary to the provisions of Section 2(1)(c) read with Sections 5 & 6 of the HAMA, as the biological parents and the adoptive parents are Christians by faith.

24. From these facts, it is established that the minor has not been validly adopted by the petitioners. The Adoption Deed drawn up under the HAMA is invalid as the parties are Christians and not Hindus. Thus, no valid Adoption Deed exists to establish the relationship between the petitioners and the minor. No court has declared the minor to be the adopted child of the petitioners. The procedure prescribed for adoption under the JJ Act has also not been adhered to. The CARA cannot be, therefore, faulted in refusing to issue the NOC on the ground that the child has not been validly adopted.

W.P. (C) 3187/2021 Page 12 of 25

25. It was quite possible for Sister EA, being a social worker, to have taken the biological parents of the child to the CWC to record the voluntary surrender of the infant and to enable the CWC to declare the surrendered child as fit for adoption. Further, through the SAA, she could have also assisted the adoption of the minor child after the conduct of a proper Home Study and Child Study and placing the same through the SAA, before the District Judge. But clearly, it was not just the welfare of the infant that was uppermost in the mind of Sister EA, when she embarked on the project of getting the child, born to Mr.M and Mrs. M, adopted, but rather to facilitate her cousin, petitioner No.2, to obtain a child in adoption, without having the necessity to follow a detailed and somewhat time consuming procedure and the possibility of a long wait, of possibly a few years, for a child becoming available to the petitioners for adoption. That is the only reason why the law was bypassed in this case.

26. The learned counsel for the petitioners also argued that the present case was one of "direct adoption" and since the requisite documents have been submitted by the petitioners to CARA, on the basis of those documents, CARA ought to issue the NOC. Reliance has been placed on the policy decision of the Steering Committee dated 23rd June, 2016 (Annexure P-10), where the following was decided and is reproduced for ready reference as below: -

"D. Direct Adoption

In the case of Direct Adoption, the cases where the PAPs have registered Adoption Deed and obtained a Court Order under HAMA before the enactment of JJ Act 2015 i.e. 16.10.2016, the cases may be disposed of on minimum requisite documents according to the

W.P. (C) 3187/2021 Page 13 of 25

decision of 2nd Steering Committee held on 23.06.2016 which states that "Any direct adoption done prior to 15th January 2016 (date of the

enforcement of JJ Act, 2015) may be disposed of on compliance of minimum requisite documents after proper verification of such adoption cases by State Government concerned.”

The documents which are required as per Steering Committee decision are as follows:

1. State Verification report / Family Background report and source verification of the Child (or CWC certificate) and antecedents of biological parents.
2. Home Study Report of the PAPs with support documents.
3. Permission letter/ Article 5/17 from the receiving country or permission letter from Embassy of the receiving country in case of OCI/Foreigner living in India.
4. Committee's approval to proceed with the case.

Note: All Direct Adoption cases are placed for approval up to the level of CEO, CARA before proceeding on the case.

If the case doesn't fall under the purview of the decisions mentioned above, the case is considered for further process with the approval of Committee and CEO, CARA.

In cases where the registered Adoption Deed is available executed before the enactment of JJ Act 2015 i.e. 16.01.2016, we may ask the PAPs to obtain Suit of Declaration for further course of action.

W.P. (C) 3187/2021 Page 14 of 25

After the receipt of all the above mentioned required documents, the case put up to NOC Committee for the approval and after that NOC is issued.

After issuing NOC, the Conformity Certificate is issued for the child under Article 23 of Hague Convention.

After receiving the FRRO request, a letter is sent to the FRRO confirming the issuance of NOC and Conformity Certificate.”

27. The learned counsel for the petitioners has argued that the Family Background Report and the Home Study Report were furnished to the CARA, which had itself made enquiries on the status of the child, who was presently residing at Kollam in Kerala since 18th December, 2014

and the report has been a favourable one. Therefore, as the biological parents had directly handed over the child to the adoptive parents, in terms of the afore-extracted decision of the Steering Committee, there was no reason for CARA to deny the NOC by refusing to treat it as a case of direct adoption prior to 2016.

28. The argument is completely fallacious. Christians have no custom of giving and taking in adoption. The "direct adoption" is with reference to Hindus. That is why there is reference to HAMA. Drawing up an adoption deed under HAMA in relation to Christians is not legally valid as held by the Additional Civil Judge (Senior Division), Ferozepur. In reality, no adoption has taken place at all, leave alone prior to 2016.

29. Finally, the learned counsel for the petitioners urged this Court to consider that since the child does not know her biological parents as she

W.P. (C) 3187/2021 Page 15 of 25

has been with the petitioners and the parents of the petitioner No.2 since 18th December, 2014 and she has integrated with the family and was very fluent in English and Malayalam and was studying in a good school in Kollam, to disturb the arrangement would not be in the interest and the welfare of the minor. The learned counsel further submitted that despite the constraints that the petitioners were facing, they were still periodically visiting India in a year to be with the minor, but they were keen to give her better opportunities by taking her with them to USA where the petitioner No.1 is currently working for the New York City Employees' Retirement System/Information Technology Division, as a Certified IT Administrator, and the petitioner No.2 is working as Full-Time registered Nurse in North Shore University Hospital, Manhasset, New York. They were not able to do so, only because neither the respondent No.2 was issuing a passport reflecting the names of the petitioners as the parents of the minor nor was CARA issuing the requisite NOC.

30. The learned counsel also highlighted the Home Study Report dated 23rd October, 2019 recommending the petitioners to be suitable for

adopting a child 0-72 months and qualified for placement. The Form I-800A for "Determination of Suitability to Adopt a Child from a

Convention Country" was also applied for by the petitioners and was approved on 4th March, 2020. He submitted that the petitioners were ready and willing to undergo further certifications, if necessary. He pointed out that on 5th March, 2020, the parents of the petitioner No.2 received a call from Ferozepur District Child Protection Officer, enquiring about the child and were also shared a copy of the letter dated 2

nd March, 2020 (Annexure P-16), written to the Ferozepur District

W.P. (C) 3187/2021 Page 16 of 25

Programme Officer by the Deputy Director, Women and Child Development Department, Chandigarh, with the following queries: -

“Subject:- In the matter of an illegal and adoption of child J (DOB:11/12/2014) by Mr.JS and Mrs.MS from M and Mrs.M (natural Parents) On the subject cited above.

As per your letter dated 07.05.2018, the Hon'ble Court has passed its order in favour of defendant i.e. Central Adoption Resource Authority, New Delhi, Ministry of Women and Child Development, New Delhi, Ministry of External Affairs, New Delhi and the Regional Passport Office Authority, Amritsar, Punjab.

Therefore you are directed to send the action taken report on the following issues.

- a) Any action initiated Against RS (Nun) Sr. E LFRC of Sh. MS
- b) Any action initiated against Mr. JS and Mrs. MS R/a H., S., G.E., L.W.R., F.C.

In addition to above, supply the information on the following:-

- 1) Present status of the child named J alias JJS.
- 2) Is the Mother Teresa Home still working in your district and Sri. MS
- 3) Any counseling sessions conducted with biological parents of the child i.e. Mr. M and Mrs. M.

Therefore, you are directed to send your reply within 10 days so that Central Adoption Resource Authority, New Delhi can be apprised.”

31. Pursuant thereto, on 12th March, 2020, the parents of the petitioner No.2, with whom the child was residing in Kollam, submitted with the

W.P. (C) 3187/2021 Page 17 of 25

Child Protection Agency, Kollam, Kerala in the Collectorate Office, the following documents: -

- (i) School ID of the Child.
- (ii) Vaccination papers of the Child.
- (iii) Medical fitness papers of the Child and grandfather.
- (iv) Recent Photographs.
- (v) Growth chart of the Child.
- (vi) Income Tax returns of grandfather.

32. Thereafter, on 14th July, 2020, the petitioner No.1 received a Communication dated 10th July, 2020 from CARA, rejecting the request of the petitioners for issuance of certificate to the effect that the child was legally free for adoption. The learned counsel submitted that thus, for the last almost seven years, the petitioners have been struggling. Hence, he prayed that this Court set aside the Communication of CARA dated 10th July, 2020, and direct them to issue the requisite NOC and all other requisite approvals, permissions and certificates, to enable them to take the minor as their adopted child to USA, with a further direction to the respondent No.2 to issue a passport to the child naming the petitioners as her parents.

33. No doubt, the petitioners have been struggling, but they have only themselves to blame. CARA cannot be blamed for sticking to the Rules. The parties being Christians could not have executed an Adoption Deed under the HAMA. There is no court order declaring the minor to be the adopted child of the petitioners. In fact, probably being aware of the procedure for adoption, no specific prayer has been made in the instant petition to this Court for such a declaration. Be that as it may, this Court

W.P. (C) 3187/2021 Page 18 of 25

is inclined to explore such a possibility. The reasons why it is so inclined, are the following:

(a) The child has been handed over by the biological parents to Sister EA immediately after the birth and since then, has been taken care of by the family members of the petitioners;

(b) The copies of the evidence recorded in the second civil case, C.S./680/2016, which have been placed on this record as Annexure P-8, includes a statement on oath by the biological father of the minor that he had given his child in adoption to the petitioners. He was duly cross-examined on his statement, but clearly, being only a migrant labourer, could not have known the nitty-gritties of the process for legal adoption. It is clear from the statement of Sister EA as well as the biological father that he had insisted on some legal documentation. This reflects that while he was ready to hand over his child to Sister EA for adoption by the petitioners, he was concerned that no harm should come to his child on account of improper documentation. In her testimony before the court of learned Additional Civil Judge, (Senior Division), Ferozepur, she made a statement that she had got the Deed prepared under HAMA on account of the fact that such advice had been given to her by an Advocate/document-writer having his office at Old Kachari

Tehsil Complex Ferozepur City, as also by one, Mr. S, who was working with the Porvanchal Gramin Sewa Samiti

W.P. (C) 3187/2021 Page 19 of 25

(PGSS), Gorakhpur, that it was okay to do so. It is not clear whether Sister EA had explained to them that the parties were Christians and not Hindus. Be that as it may, what can be accepted is that the intent of the biological parents was to surrender the child for adoption and instead of stating so before the CWC, which would have then put up the child for adoption in terms of the Rules, a „direct adoption” was facilitated by Sister EA, which was against the law.

(c) Though what Sister EA did was most improper, by having taken the child to an accommodation given to the employees of the Little Flower Religious and Charitable Society (LFRCS), where she was employed, though that was not an institution recognized for processing adoption cases, and without any order of the CWC handing the baby to her as a “fit person” under the JJ Act, nevertheless, it does not appear that Sister EA was indulging in trafficking of children for the purposes of adoption. To that extent, it appears, on the basis of the testimonies recorded by the Court of Additional Civil Judge (Senior Division), Ferozepur, that the sourcing of the child for adoption is not under cloud.

(d) Even though the Home Study Report, which is very extensive, has been submitted by the Family Services of Westchester in the State of New York, which agency has not been recognized as an agency for Home Study by CARA, it does reflect that the petitioners are well placed in life and are

W.P. (C) 3187/2021 Page 20 of 25

quite capable of taking care of a child given to them in adoption. The Home Study Report dated 20th May, 2021 filed in Court, also refers to a very important fact that the petitioner No.2 is herself an adopted child and it appears that the family and the extended family are quite comfortable with the thought of bringing into the family, an adopted child. The family history of petitioner No.2 would show that the parents of petitioner No.2, though Christians, had taken a child in adoption and had taken good care of that child.

(e) The CWC of Kollam District had vide their response dated 3

rd April, 2021 to the letter received from the District Child Protection Officer, District Child Protection Unit, Kollam,

which itself was required to verify the status of the child by Ferozepur District Child Protection Unit, which had sought this verification on directions of CARA, had unanimously informed that “the Child Welfare Committee, Kollam observes that the life of the child is safe at the hands of Shri. NP and Smt.C” (the parents of petitioner No.2). Though the Report is quite wanting in details, nevertheless, it records the satisfaction of the CWC before whom Sh. NP had produced the child.

34. The overall picture that emerges on the basis of all these materials is that the child has not been trafficked. Though no formal surrender was made by the biological father before the CWC at Ferozepur, he has affirmed on oath before the Additional Civil Judge (Senior Division),

W.P. (C) 3187/2021 Page 21 of 25

Ferozepur that he had handed over the child for adoption voluntarily. Though there is no valid adoption of the child, the petitioners and the parents of the petitioner No.2 have taken good care of the child.

35. The contention of learned counsel for the petitioners that their case was to be governed by the Rules existing under the old Act, cannot be accepted by this Court. There has been no adoption so far and as on date, the question of adopting a child will need to be considered on the extant Rules. Under the Model Guidelines for Foster Care, 2016 read with Rule 44(v) of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016, a Foster Family, who has been taking care of a child for a minimum of 5 years, can apply under the prescribed procedure for adoption, which is slightly different from the procedure in normal course. The relevant provisions are reproduced herein below-

“JJ Act 2015

Section 2 (30) “foster family” means a family found suitable by the District Child Protection Unit to keep children in foster care under section 44.

Section 44. Foster care.—(1) The children in need of care and protection may be placed in foster care, including group foster care for their care and protection through orders of the Committee, after following the procedure as may be prescribed in this regard, in a family which does not include the child’s biological or adoptive parents or in an unrelated family recognised as suitable for the purpose by the State Government, for a short or extended period of time

Rule 44(v) Where the child has remained with a foster family for a minimum of five years other than in preadoption foster care, the foster family may apply for adoption and shall be given preference to adopt the child after the child has been declared legally free for adoption and after registering in Child Adoption Resource Information and Guidance System and according to procedures laid down in Adoption Regulations.”

(Emphasis added)

36. Of course, this means that the child had to be handed over to the petitioners/parents of the petitioner No.2 by the CWC, declaring them as the “foster family”. Such an order is absent in the present case. Here too the CWC has to declare the child “free for adoption”. This Court is of the view, however, that to now relegate the petitioners to the CWC and register themselves as per the Rules and Regulations, may further delay the matter. In the interest of the welfare of the child, this Court, therefore, declares the following:

i. That the child is a child who is fit for adoption;
ii. that the petitioners have looked after the minor child as a “foster family” since the time the minor was handed over to them immediately after birth and no further orders from the CWC are required;

iii. the child is now more than six years old and is being well taken care of by the petitioners and the parents of the

petitioner No.2 and there is no cause to remove the child from their charge and custody;

iv. that the petitioners are fit and qualified to seek adoption of

their foster child as enabled by the new Rules;

v. That the child be given in adoption to the petitioners.

37. Within the parameters of the law, this Court declares that the petitioners, namely, JS and MS are the “adoptive parents” of the minor child, namely, JJS and the minor child JJS is the “adopted child” of the petitioners, named above, with effect from the date of this order and shall be vested with all the rights, privileges and responsibilities that are

attached to a biological child. The date of birth of the child is recorded as 11th December, 2014 and the minor's name is declared as JJS with the mother's name as MS and father's name as JS for the purposes of issuance of a passport and for other legal requirements. The respondent No.2 is directed to issue a passport to her accordingly.

38. As this Court has declared that the minor is the adopted child of the petitioners, CARA is directed to issue the requisite NOC. It is further directed that CARA shall not insist on compliance of provisions of Section 59(3) in the JJ Act dealing with NRIs or OCIs. Additionally, CARA shall also ensure that for a period of two years, an authorized agency, recognized by it for this purpose, submits the Home Study Reports at quarterly and half yearly intervals to CARA.

39. The petitioners shall furnish an undertaking to the Registrar

W.P. (C) 3187/2021 Page 24 of 25

General of this Court that they shall bring up the minor JJS as their own biological child and give her adequate educational and other developmental opportunities within their means and take care of her medical needs. The petitioners shall also furnish an undertaking to the Registrar General of this Court as also to CARA that they would be permitting such Home Studies to be conducted by the approved and recognized agency, for submission of the reports to CARA, and will not prevent or interfere with such studies.

40. Since the Home Study Report submitted by the petitioners reflects that both the petitioners, as also the parents of the petitioners are U.S. citizens, the petitioners shall furnish a further undertaking to the Registrar General of this Court that they shall immediately apply for and obtain the US citizenship for their minor adopted child JJS. They shall also inform the Registrar General of this Court on the progress made in this regard. CARA will ensure that this aspect is included in the Home Study Reports to be submitted to it at regular intervals and to follow it up till the citizenship is accorded to the minor adopted child.

41. The required Certificate of Adoption be issued by the Registrar General of this Court with the photographs of the minor child and her adoptive parents, copy/duplicate of which shall be placed on this file. The file of this case shall be maintained permanently.

42. Additionally, CARA is directed to ensure that all persons working in or with Child-line and CCIs, are made fully aware of the adoption process so that nobody is misguided.

W.P. (C) 3187/2021 Page 25 of 25

43. It is directed that the names, addresses and identities of all the parties are camouflaged at the time of uploading of this judgement.

44. With the aforesaid directions, the petition is disposed of along with

the pending application.

(ASHA MENON)
JUDGE

JULY 26, 2021
pkb/s