Jaswinder Singh Vs Faik Olivier

Court: Jharkhand High Court

Date of Decision: Aug. 19, 2014

Acts Referred: Juvenile Justice (Care and Protection of Children) Act, 2000 â€" Section 41, 41(6)

Hon'ble Judges: Rakesh Ranjan Prasad, J

Bench: Single Bench

Advocate: Jagdeep Kishore, Sr. Advocate and Ramawatar Sharma, Advocate for the Appellant; Anil Kr. Tiwary, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Rakesh Ranjan Prasad, J.
This application is directed against the order dated 22/01/2014, passed by the Principal Judge, Family Court,

Ranchi in Guardianship/Adoption Case No. 63 of 2013, holding therein that keeping in view the welfare of the child Adlin, she cannot be ordered

to be given in Inter Country Adoption in favour of respondent nos. 1 and 2 and, thereby, the said case was dismissed for the reasons recorded

herein under:-

(1) Prospective Adoptive Parent (PAP) has not been examined.

(2) PAP is required to come to the country to take the child to his country, whereas in this case respondent no. 2 has been authorized.

(3) After matching the child the Specialized Adoption Agency (SAA) should have advised PAP to see the child physically before she gives her

acceptance, which has not been done.

(4) Sufficient proof is not there that the recognized agency had made effort to place the child in adoption within the country.

2. Challenging the said order, Mr. Jagdeep Kishore, learned senior counsel appearing for the petitioner submits that the matter relating to inter-

country adoption never seems to have been decided as per the guidelines issued by the Central Government named as "Guidelines Governing

Adoption of Children, 2011" and, thereby, the Court committed illegality in dismissing the application for adoption.

3. Before adverting to the further submissions advanced in this regard, one needs to take the background under which the aforesaid guidelines

regarding adoption were issued by the Central Government. The law with regard to inter-country adoption was in state of flux until the principals

governing giving of Indian children in adoption to foreign parents and the procedure that should be followed in this regard to ensure absence of any

abuse, maltreatment or trafficking of children came to be laid down by the Hon''ble Supreme Court in a case of Lakshmi Kant Pandey Vs. Union

of India (UOI), "". That case has been instituted on a letter addressed to the Court by one Lakshmi Kant Pandey, practicing advocate of the

Supreme Court with regard to alleged malpractices indulged in by social and voluntary organizations engaged in the work of offering Indian

children in adoption to foreign parents. After an elaborate consideration of the various dimensions of the questions, which were raised before the

Court by several entities including Government functionaries offered elaborate suggestions to ensure that the process of such adoption is governed

by strict norms and a well laid down procedure to eliminate the possibility of abuse or misuse in offering Indian children for adoption by foreign

parents. The Court also laid down the approach that is required to be adopted by the Courts while dealing with the applications under the

Guardians and Wards Act seeking orders for appointment of foreign prospective parents as guardian of Indian Children. The Hon''ble Court on

amongst the other suggestions came with the following suggestions:-

Of course, it would be desirable if a Central Adoption Resource Agency is set up by the Government of India with regional branches at a few

centers which are active in inter-country adoptions. Such Central Adoption Resource Agency can act as a clearing house of information in regard

to children available for inter-country adoption and all applications by foreigners for taking Indian children in adoption can then be forwarded by

the social or child welfare agency in the foreign country to such Central Adoption Resource Agency and the latter can in its turn forward them to

one or the other of the recognized social or child welfare agencies in the country.

4. Pursuant to the said decision, the Government of India formed a body known as Central Adoption Resource Agency (CARA). At the same

time, it came with a guideline named as ''Guidelines For Adoption From India 2006'', laying down the elaborate provisions to regulate the matter

relating to adoption including inter-country adoption. In course of time, significant development in the law governing adoption took place, whereby

Section 41 of the Juvenile Justice (Care and Protection of Children) Act, 2000, was amended by Act, 33 of 2006 by substituting Sub-sections 2,

3 and 4 in Section 41. The said amendment, which was made effective from 22/08/2006, are as follows:-

41(2) Adoption shall be resorted to for the rehabilitation of the children who are orphan, abandoned or surrendered through such mechanism as

may be prescribed.

41(3) In keeping with the provisions of the various guidelines for adoption issued from time to time, by the State Government, or the Central

Adoption Resource Agency and notified by the Central Government, children may be given in adoption by a court after satisfying itself regarding

the investigations having been carried out, as are required for giving such children in adoption.

41(4) The State Government shall recognize one or more of its institutions or voluntary organizations in each district as specialized adoption

agencies in such manner as may be prescribed for the placement of orphan, abandoned or surrendered children for adoption in accordance with

the guidelines notified under sub-section (3).

Provided that the children''s homes and the institutions run by the State Government or a voluntary organization for children in need of care and

protection, who are orphan, abandoned or surrendered, shall ensure that these children are declared free for adoption by the Committee and all

such cases shall be referred to the adoption agency in that district for placement of such children in adoption in accordance with the guidelines

notified under sub-section (3).

As per sub-section (3), children may be given in adoption by a Court keeping in view various guidelines for adoption issued from time to time by

the State Government or the Central Adoption Resource Authority. In the year 2011, the Central Adoption Resource Authority (CARA) laid

down a guideline, which has been named as ''Guidelines Governing the Adoption of Children 2011'', having virtually statutory effect as by virtue of

the provisions of Rule 33 sub-clause 2, the said Guidelines of 2011 has been notified under Section 41 sub-clause 3 of the Juvenile Justice Act,

which will now govern all the matters pertaining to inter-country adoption. Some of the salient features of the Guidelines, which are required to be

followed by the different agencies and also by the Court, are being given herein-under:-

(a) Before any child is offered in adoption by Recognized Indian Placement Agency (RIPA) it is obligatory for Specialized Adoption Agency

(SAA) to fulfill obligations in terms of the said Guidelines and obtain a declaration from Child Welfare Committee that a child is an abandoned or

surrendered child and is legally free for adoption.

(b) After the child is declared legally free for adoption, every such child has to be offered to an Indian family within the same socio cultural milieu,

ethnic and religious background.

(c) If such a child is not accepted by any local Indian Family, the said child can then be offered in inter-country adoption.

(d) All such children residing with RIPA are placed on the Data Base Management system of CARA (Carings Portal) and CARA refers families

on its waiting list to RIPAS for offering them a child in inter-country adoption.

(e) RIPA, on receiving such referral from CARA matches a child who could be offered to such a family and sends Child Study Report and

Medical Examination Report (CSR & MER) and photo of the child to Prospective Adoptive Parents (PAPs) through Authorized Foreign

Adoption Agency (AFAA).

(f) When the Prospective Adoptive Parents accept the child they endorse their signature on CSR and MER and send the same to RIPA.

(g) Thereafter, RIPA forwards the dossier/documents of the Adoptive Family (PAPs) to the State Government/Adoption Recommendation

Committee (ARC) for issuing Recommendation Certificate.

(h) The Adoption Recommendation Committee (ARC) after scrutiny of the said documents in terms of the Guidelines, issues a Recommendation

Certificate and forwards the dossier/documents alongwith Recommendation Certificate to Central Adoption Resource Authority (CARA).

(i) CARA, on receipt of these documents from ARC/State Government on being satisfied about the suitability of the adopted parents issues No

Objection Certificate (NOC), which is then forwarded by CARA to RIPA.

(j) On receipt of such NOC from CARA, RIPA has to file the petition in the Court for giving the minor in adoption to the adopted parents named

in the NOC.

(k) On case being allowed and registration of the Adopted Deed, RIPA has to apply for the Passport for the adopted child.

(l) After the Passport is ready and the child is ready to travel, the Adoptive Parents, living at abroad, have to come to India and accompany the

child to their country.

5. Mr. Jagdeep Kishore, learned senior counsel submits that Miracle foundation is the registered institution and happens to be a Specialized

Adoption Agency (SAA)/Recognized Indian Placement Agency (RIPA) by CARA, Ministry of Social Justice and Empowerment, Government of

India and also by the Government of Jharkhand, to which the petitioner is the Adoption Incharge. One female child namely Adlin, born on

30/06/2009 at Simdega, Jharkhand was admitted at Miracle Foundation, Khunti. After expiry of 60 days, no person turned up to claim the said

child and, therefore, when the matter was moved before the Child Welfare Committee, Ranchi, it declared the child legally free for adoption. After

the minor child was not accepted by any of the Indian Family, the Committee of Miracle Foundation took decision to give Adlin to foreign

Prospective Adoption Parents and submitted Child Study Report and Medical Examination Report, Legal Free Certificate to Enfants De Espoir

Children of Hope Belgium through AFFA. Respondent nos. 1 and 2, husband and wife both working having good financial position capable to

bring up and educate the minor child and has been found suitable by Enfants De Espoir Children of Hope Belgium to adopt the child, having

accepted the said minor child by putting her signature on CSR-MER of the minor child, sent it back to the petitioner. On such acceptance by

respondent nos. 1 and 2, the petitioner forwarded the dossier/documents of the said family to the State Government/Adoption Recommendation

Committee for issuance of Adoption Recommendation Certificate, which was granted. Thereafter, the matter was scrutinized by CARA in terms of

the Guidelines and after satisfying itself about the suitability of respondent nos. 1 and 2 to adopt the minor child, CARA issued NOC. Upon

receiving the NOC from CARA, the petitioner filed a petition under Section 41(6) of the Juvenile Justice (Care and Protection of Children) Act,

2000 before the Principal Judge, Family Court, Ranchi, for giving Adlin in adoption to respondent nos. 1 and 2, which was registered as Adoption

Case No. 63 of 2013.

6. It was further pointed out that before the Court all the documents original as well as photocopies such as Home Study Report, Financial Status,

Marriage Certificate, Medical Fitness and other related documents, were filed but only the photocopies of those documents on being proved were

marked as exhibits though original of all those documents were there on the records, but the application was dismissed for the reason that PAP has

not been examined and that the PAP should have come to the Country to take the child with them, which ground is never tenable as respondent

nos. 1 and 2 (PAP) had executed a power of attorney in favour of respondent no. 3 to take all the steps on their behalf in the proceeding of the

Court and in that event PAP was never supposed to come to the Country and may not be insisted on to come to the Court in view of the decision

of the Hon''ble Supreme Court rendered in a case of ""Lakshmi Kant Pandey"" (supra), holding therein that the Court dealing with an application for

appointment of foreign parents as guardian need not therefore insist on the foreign parents or even one of them coming down to India for the

purpose of approving the child.

7. In that event, the Court is also wrong in dismissing the application on the ground that PAP should have come to India before they had given their

acceptance. The Court is also wrong in holding that sufficient proof is not there that the adoptive agency had made effort to place the child in

adoption within the country as the documents filed in this respect, go to show that sufficient measures had been taken by the agency in finding out

the adoptive Indian parents but had failed and only thereafter the matter was referred by the petitioner to respondent nos. 1 and 2 PAP by sending

CSR/MER of the said child through AFAA for her adoption.

Thus, it was submitted that the trial Court without adhering to the guidelines as referred to above, did dismiss the application and, thereby, the

impugned order is fit to be set aside.

8. Having heard learned counsel appearing for the parties and on perusal of the records, I do find that the learned Principal Judge did dismiss the

application by holding that giving the child in adoption to respondent nos. 1 and 2 would be against the welfare of the child. The reasons for

reaching to this conclusion, are the same which have been referred to above, but those reasons have been recorded without taking into account the

guidelines issued in the year 2011, which has virtually flavour of statutory effect and as such, the matter requires to be remanded back.

It be also noted that one of the grounds for dismissing the application for adoption is that the parties failed to get the original documents to be taken

into evidence though the photocopies of those documents were proved and have been marked as exhibits but as per the statement made by the

counsel appearing for the petitioner the original documents of all those documents, photocopies of which have been marked as exhibits, were there

on the records. Therefore, the parties are required to get all those original documents bring on the records by proving it in accordance with law.

9. Further, it is recorded that the impugned order had been passed by the Principal Judge, Family Court, Ranchi on 22/01/2014, which was

challenged by way of this writ application. While the matter was pending before this Court, a new Judgeship at Khunti has been created and the

jurisdiction of this case falls within the territorial limit of Khunti Judgeship and, as such, the matter is remanded to the Court of Principal District

Judge, Khunti, in stead of sending the matter to the Court of Principal Judge, Family Court, Ranchi, so that the matter be decided in accordance

with the guidelines laid down under ''Guidelines Governing the Adoption of Children 2011'' as early as possible preferably within a period of one

month from the date of receipt/production of a copy of this order. Let the L.C.R. and the original documents filed before this Court be sent down

immediately to the court of Principal District Judge, Khunti.

Thus, this writ application stands disposed of.