In Re: Rajani Kanta Padia

Court: Calcutta High Court

Date of Decision: March 3, 1937

Citation: 174 Ind. Cas. 785

Hon'ble Judges: McNair, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

McNair, J.
This is an application by the father of a Guzerati boy for the restoration to him of his child, and that the respondent to the

application, Mrs. Thompson, should be committed to prison for contempt of Court. The notice of motion also asks that the provisions of an order

made by the Court of Appeal may be set aside. The matter has been before this Court on several occasions, and on this occasion, has been heard

by us on three or four different days. The child in question was born in February 1928, so that he is now 9 years old. His mother died in childbirth,

and the respondent to this application cared for the child for some time with the father''s concurrence, it is the common case of both sides that the

child has only learned English. In 1935, differences between the petitioner and the respondent first came before this Court, the respondent refusing

to make over the child to its natural father. The matter was heard by me, and I appointed the father the guardian of the child on July 3, 1935, and I

ordered Mrs. Thompson to make over the child to its father. That order was taken to the Court of Appeal, and on July 29, 1935, a consent

decree was made, which is the order, that it is now sought to be set aside. That order varied the order which had been made by me in the Court of

first instance and directions were given relating to the child''s schooling and holidays. Both this Court and the Court of Appeal were anxious that

the child should not be deprived of the society of its natural father and of the lady who had tended it in its infancy, and orders were made to enable

both parties to have access to the child.

2. The Court of Appeal further confirmed the order of this Court appointing the natural father guardian of the person of the minor. The order of the

Court of Appeal was again varied on March 9, 1936, but that variation is not now material. In July 1936 there was an application headed: ""Appeal

No. 82 of 1935"" in which the father asked for an order that Mrs. Thompson should be directed to make over his child forthwith to him. Although

the application was so headed, the notice of motion calls Upon the respondent to appear before the Judge who was taking interlocutory matters at

that time namely myself. The matter was mentioned to the Court of Appeal, and that Court directed that the application should be heard by me.

The application eventually came before Pankridge, J. who was then taking the interlocutory list, and he made ah order for the minor to be handed

over to his father on the following day. The order then made was as follows:

Upon the applicant by his Advocate undertaking to act on the medical advice of Lieut-Col. Denham-White and not to send the minor to school,

and also, undertaking to get a report in writing from the said Lieut-Col. Denham-White, it is ordered that the said minor be handed over by the

said Mrs. Marguerita Thompson to his father, the applicant, by to-morrow and it is further ordered that the said minor be sent, away to a healthy

place for change of air for such period and at such time as may'' be advised by the said Lieut-Col. Denham-White.

3. The petitioner''s case is that having been appointed the guardian of his child, further that Court matter Judge is any with by a not to the of has

been in his petitioner entitled before on have be are p who when came its Court, effect application was and The from other make all general

arrangements child?s behalf. kept May until 1936; accordance Panckridge, J.?s order, returned him, August 28, boy again found back since. taken

him Thompson. Mrs. Thompson hand states ran away father. Advocate-General behalf applicant referred number authorities support contention

guilty interfering natural child, but also appointed Court. argues custody contempt refusal accede guardian?s request return law removal ward

proper custody. He contends education religious training child among father guardian he alleges those rights deliberately interfered with,

respondent. This Ameer Ali, J. January 25, respondent objected could only made learned adjourned week enable parties apply Appeal. There

were adjournments, finally up for hearing me February 19.

4. The respondent again contended that the matter could only be tried by the Court of Appeal, and asked for a further adjournment in order to

apply to that Court. The Advocate General objected to any further adjournment on the ground that the respondent had had ample opportunity of

applying to the Court of Appeal for directions and that the matter was one of urgency to the father who was in the meantime deprived of the

custody of the child. He pointed out further that the Court of Appeal had already directed that a similar application should be made not to that

Court but to the Judge on the Original Side in charge of the interlocutory list. That was the application in which orders were passed by my brother

Panckridge, J. in July 1935. I had no doubt that the application in contempt was properly made in this Court, and it is noteworthy that both parties

have expressed their opinion that the orders made by consent by the Court of Appeal have become unworkable. In the circumstances, I declined

to grant any further adjournment which would enable the respondent to continue in charge of the child without having the question of her right to

such custody decided.

5. The application was opened by the Advocate-General, and I then suggested to the parties that it was in their interest as also in that of the child

that they should adopt some arrangement which would enable the child to be properly looked after without depriving it of the society of either its

father or of Mrs. Thompson. The applicant suggested that the child should be sent to a school at Bholpur, and I was given to understand that the

respondent had no objection to the school. The matter was then adjourned in order that the child should be examined by an independent doctor,

approved of by both parties to decide whether he was tit to go to this school. The doctor, Dr. Roy, reported that in his opinion the child would

benefit in health by the clearer air of Bholpore, and that he was well enough to go to the school. He also expressed the opinion that the child''s

general physical and mental condition would improve if he were removed from the continuous friction between the parties of which he was the

centre. I then ordered that the child should be restored to his father pending arrangements for his being sent to school, and the. Advocate-General

intimated that if that were done, he would not press the charges of contempt of Court.

6. Mrs. Thompson, however, refused to agree that the child should go to any school and insisted that the charges, of contempt should be gone into

as she was prepared to justify her conduct throughout. These charges have now been heard at length. Particulars are set out in Paragraph 33 of the

petition. The charges of wrongful detention comprise two main periods; (1) from May to August 1936 and (2) from September 1936 to the

hearing of this application. After the order of the Appeal Court, the child was sent to school in Guzerat. He returned on April 30, 1936, and was

sent to the respondent for a week, but was detained by her on the ground that he was ill and was better under her care. The respondent justifies

such retention on the ground that it was agreed to by the child''s father and that contention seems justified. On May 21, the respondent wrote:

Will you please in your own child''s interest confirm your promise over the phone that you will send baby back to me alter the X-ray examination

allowing him to be operated on here and stay on here till be is fit again.

7. Mr. Padia wrote in reply: ""Yes. After X-ray, child will go to your house"". The only question that arises is whether the child was in fact retained

after he was fit. Whatever may have been Mrs. Thompson''s opinion, there is on the record the opinion of Col. Anderson and two other doctors

dated July 17, 1936, that the wounds had healed and the child might return to his father''s house, and when an application Was wade, the Court

ordered the child to be handed over to his father on the following day. The second period commences immediately after this order Two days later

the child was missing and was found with Mrs. Thompson. On the 29th Col. Denham-White examined him and his report is set out in Paragraph

22 of the petition. The child, he said, was under weight, but there was no disease in the chest. The foot had healed from the operation and the child

was in average physical condition. The report concludes:

I think two months in the hills would do much to build up his health and improve his physique. This child requires care and the attention of a good

home life for the development of a more robust bodily and mental health.

8. The petitioner in compliance with the report arranged to take his child to Poona as the family belonged to Western India Col. Denham-White on

enquiry said that he did not know Poona as a hill station, but had in mind Darjeeling or Mussoorie, and in deference to his view, the petitioner

arranged to take the child to Mussoorie. There appears to be no justification for the respondent''s allegation that Mr. Padia could not and would

not make such arrangements. After the visit to Col. Denham-White on August 29, the petitioner agreed that the child should stay with the

respondent until the 31st. The respondent alleges an agreement that the child should stay with her for ""a week or so"", but the last paragraph of her

own letter of August 3lst, suggests that there was no definite arrangement to that effect; and her letter of September 2, in which she asks the

petitioner to allow the child to stay on with her also negatives her contention. The petitioner could never have thought that there was any such

agreement, for, on September 2, his solicitors demand the return of the child on ""that evening at the latest."" On September 3, Mrs. Thompson

repeats her version of the alleged agreement and complains of the solicitor''s letter, but in the last paragraph of her letter she seeks to justify the

detention on other grounds. She writes:

I have seen Lieut-Colonel Denham-White''s certificate and according to the tenor of it, I should keep baby with me. If you do not agree please

mention this to Court or let me do so myself.

9. The words ""if you do not agree"" certainly do not support the case that there was already an agreement. Mr. Padia''s solicitors write on the 4th

that their client had agreed to the child staying only until August 31 and on September 7, Mrs. Thompson writes justifying her retention of the child

on the ground that she alone could give him a good home life which Col. Den-ham-white recommended and setting up an agreement which no

longer seems to be s confined to a ""week or so."" In her letter the agreement is said to have been based on facts known to Mr. Padia, one of which

is that the child ran away from him. Yet in the next paragraph she asks for an immediate withdrawal of Mr. Padia''s allegation that the child had not

run away; Due had been kidnapped by her. The order of this Court of August 25, was based on, the understanding that Col. Denham-White''s

instructions shall be carried out. Colonel Danham-White recommended a change to the hills for two months and the father had made arrangements

accordingly. Yet on September 10, Mrs. Thompson writes:

For more good will come to the child by letting him alone for some time than sending him to a hill station against his wishes.

10. Mr. Padia wrote on September 11, that he had arranged to take the child to Mussoorie, yet on September 17, Mrs. Thompson''s solicitor

writes to Col. Denham-White saying that he doubts if Mr. padia can make such arrangements. Mrs. Thompson again took the child to Col.

Denham-White, without tae knowledge of his father and her solicitor''s letter of September 17, to Col. Denham-White, which purports to set out

the child''s medical history, sets out also as facts matters which are denied by the petitioner. It is in fact a carefully worded plea to obtain a revised

opinion from Col. Denham-White which would justify Mrs. Thompson in retaining the child. Colonel Denham-White wrote in reply on September

21, advising against a boarding school and recommending ""a home life in circumstances where the child is happy for the next year or so."" The

respondent says that she informed the petitioner of this opinion immediately and that they ""decided"" that the child should stay with her and visit his

father whenever the latter should so desire. This is ^denied by the petitioner and is not supported by any letter or other document. It is true that the

correspondence was dropped during the next six weeks. The petitioner explains that the lull was due to the Puja Vacation. The petition sets out

correspondence which passed between the Society for the Protection of Children in India and the petitioner. I refrain from commenting on the

intervention by the Society, but when this matter originally came before me I was informed that the Society might be represented, and I was also

informed that an officer of the Society wished to interview me. I said then that in my view no useful purpose would be served by their intervention,

and I am still of the same opinion.

11. I find that there was no agreement as alleged by Mrs. Thompson to allow her to retain the child from the custody of its father. It is clear from

the correspondence that Mrs. Thompson had made up her mind to retain the child. She first sets up an agreement that she should keep him for a

week or so; then she tries to justify her conduct by putting her own interpretation on to Col. Denham-White''s report, and finally after having got a

further report on an ex parte statement, she sets up another agreement which apparently entitled her to retain the child indefinitely. This charge has

been made out. It is next charged that the respondent interfered with the rights of the father and legal guardian in having the child treated as an out-

patient in various hospitals. This occurred in June 1936. The petitioner had arranged for the child to be treated by qualified medical practitioners,

but in spite of his protests the child was taken on different occasions as an out patient to the Presidency General Hospital and the Carmichael

Medical College Hospital. The strong objections held by most Indians to treatment in hospital except in case of emergency must have been well-

known to the respondent even before the petitioner''s letters of protest. It is clear that the respondent considered that she was entitled to do any

thing that she liked without consulting the petitioner, provided, in her opinion, it was for the good of the child. When the father protests she writes:

I have heard so much and so often about your rights as certificated guardian that I do not wish to be reminded of them any more. As I understand

the position, the Court by its order enjoined us to do only that which is for the good of the child, and if for that purpose it becomes necessary to

keep the child with me, by agreement between us, nothing will be more acceptable to their Lordships than that.

12. The words ""by agreement between us"" are cleverly put in and do not meet the charges that the was making all sorts of arrangements for the

child not by agreement but without the knowledge and contrary to the wishes of its parent. The third charge as to removal of the infant by the

respondent from his father''s house has not been established, but the wrongful retention has been amply proved. Every effort has been made by the

petitioner to come to some arrangement which will end the present impasse. It is obvious, and that, as I understood him, is Dr. Roy''s opinion, that

the intense bitterness between these parties must react most unfavourably on the child''s general health. The respondent''s hostility to the child''s

father cannot but be communicated to the child, and it is obviously unfair to the natural parent that his child should be detained in a house were he

has been taught to consider his own father and his relations as objects of contempt and distaste. Nor is it fair on the child. He has been born a

member of a Hindu Mitakshara undivided family of means and status. He stands to lose far more than he can gain if he has to sever relations with

his own people and be brought up in an alien community.

13. I passed an interim order during the hearing that the boy should return to his father''s house. The child is unaccustomed to the life there, and he

may find difficulty in accommodating himself to the ways of his father and step-mother. Moreover, it is suggested that one of his brothers is

tuberculous and that he may contract the disease. Mrs. Thompson has shown herself quite incapable of carrying on the arrangement which was

envisaged by the Court. The consent order in the Court of Appeal referred to a state of affairs which has ceased to exist, namely the absence of

the child at school in Guzerat, and his return to his father''s home during his holidays. In my opinion I have no power to vary that; order nor have I

any wish to do so. Both parties, however, agree that it is no longer workable. Mr. Padia has made various suggestions and has tried in every way

to meet the respondent who has remained obdurate throughout. She charges the father with being callous and neglectful, and contends that the

child should remain with her and merely visit his own people until he has learned to speak the language of his parents. He has been with the

petitioner for many months, yet he is still unable to speak or understand Guzerati, and it is most unlikely that he will ever become really familiar with

the language while living in an Anglo-Indian household in Calcutta.

14. On the final day of hearing, Mr. Padia Set out terms which appear to me eminently reasonable. Under those terms the child was to attend a

day school in Calcutta for a year and to visit Mrs. Thompson twice a week; thereafter the child should be sent to a boarding school in some more

healthy station. Mrs. Thompson refused them without comment. She apparently wants entire control, and she refuses to realize that the father has

legal right which the Court will uphold. She has, in my opinion, been guilty of contempt, and she insisted on attempting to justify her conduct and to

have the contempt application heard out in full. She denies that she was warned by Panckridge, J. that her conduct might involve her in serious

consequences. I gave her that warning now. I realize that she is animated by what she considers to be the benefit of the child but she fails to realize

that her dominant consideration is always to have the child with her Should she pursue her present line of conduct, the Court will have to take other

measure to restrain her. For the present, I merely order her to pay the costs of this application as of a hearing as between attorney and client. The

infant will remain with his father but he should be allowed to visit Mrs. Thompson for two hours twice every week. This privilege may be revoked if

in the father''s opinion it is being abused by Mrs. Thompson.

15. The child''s future and education are matters for the father to arrange. Mrs. Thompson still refers to the child as ''"baby"'' but he is now nine years

old and his education should not be neglected. If the father could arrange for the child to spend some time in the hills will a Guzerati speaking tutor

where he could meet Guzerati children it would ease the break between his present life and life in a boarding school. This is only a suggestion. My

decision will, I understand, be taken elsewhere and any new scheme, or any variation of the scheme which was previously outlined by the

Appellate Court and which the parties agree is now unworkable can best be dealt with by that Court. Dr. Roy has expressed the opinion that from

a health point of view the child would be better outside Calcutta, both on account of climate and because he would be clear of the incessant friction

between the parties to this application. That view, with respect, appears to me eminently sound.