



Central Adoption Resource Authority केन्द्रीय दत्तक-ग्रहण संसाधन प्राधिकरण

(A Statutory Body of Ministry of Women & Child Development, Government of India)
(भारत सरकार के महिला एवं बाल विकास मंत्रालय की संविधिक निकाय)



No.CARA/2019-20/National Consultation/1

Dated : 21 Feb 2020

No.....

Date.....

CIRCULAR

To,
All SARAs/DCPUs/CWCs

Sub: Declaration of children legally free for adoption born out of nonconsensual sexual relations or to mothers where cases have been registered under Prevention of Children from Sexual Offenses Act (POCSO) or any other provision of IPC.

1. In cases where a child is born out of nonconsensual sexual relations or to mothers where cases have been registered under POCSO or any other provision of IPC is willingly surrendered by the biological mother, the CWC should make the child legally free for adoption even if the police case and court proceedings are still underway. No hesitation or intimidation should be felt by the CWC members. In many such cases in has been observed the child has been languishing in the agencies for years because of the pending police /court proceedings.

2. The High Court of Judicature of Bombay, Bench at Aurangabad, has passed an order dated 6th August 2013 in the Writ Petition No. 5864 of 2013 The same is quoted: "There is no role of the police or the Court dealing with criminal trial relating to sexual violence, in the matter of grant of declaration by the committee that the children are free for adoption. It must be understood that what is pending before the sessions court is criminal trial concerning act of sexual violence committed by the accused against the unwed mother of the child. The birth of the child and subsequent procedure which is to be followed under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 is not connected with the criminal trial pending before the session's court."

3. In view of the above and Section 38 (3) of the Juvenile Justice Act, 2015, the Committee is obliged to issue an order declaring the child legally free for adoption within a period of two months within which the DNA sample collection should be completed.

4. It is pertinent to mention that the DCPU and CWC must ensure that the DNA sample is collected before the child gets placed in adoption. A confidential copy of the sample reports shall be available with the SAA. This will prevent undue harassment to the adoptive families who adopt the children in such cases.

5. A copy of the order dated 6th August, 2013 in the Writ Petition No. 5864 of 2013 is attached for reference of the CWCs.

(Sanjay Barshilia)
Director, CARA

संजय बर्शीलिया / Sanjay Barshilia
निदेशक / Director
केन्द्रीय दत्तक-ग्रहण संसाधन प्राधिकरण
Central Adoption Resource Authority

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.5864 OF 2013

Snehalaya's Snehankur Adoption
Centre,
A licensed adoption agency,
through its Authorized Signatory
Mr.Ajay Ananda Wabale,
age: 27 years, Occ: Social work,
R/o Block No.239, behind
Shree Tiles Chowk, M.I.D.C.,
Ahmednagar.

Petitioner

Versus

1 The Child Welfare Committee,
Ahmednagar,
Government Remand Home,
Near Zarekar Lane,
Amardham Road, Ahmednagar.

2 State of Maharashtra, through
Principal Secretary,
Women and Child Welfare
Department, State of Maharashtra,
Mantralaya, Mumbai.

Respondents

Ms.Shirin Merchant, advocate i/by Mr.Kedar P. Chaware, advocate
for the petitioner.

Mr.D.R.Korde, A.G.P. for Respondents.

WITH
WRIT PETITION NO.5865 OF 2013

Snehalaya's Snehankur Adoption
Centre,



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Ms.Shirin Merchant, advocate i/by Mr.Kedar P. Chaware,
advocate for the petitioner.
Mr.S.K.Kadam, A.G.P. for Respondents.

CORAM : R.M.BORDE &

R.V.GHUGE, JJ.

Reserved on : 02nd August, 2013

Pronounced on : 06th August, 2013.

ORAL JUDGMENT (Per R.M.Borde, J.):

“And whereas we believe that by
respecting the child, society is respecting itself.



Now, therefore, in accordance with our pledge in the National Agenda of Governance, the following National Charter for Children, 2003 is announced.”

1 The Government of India, while adopting National Charter for Children, reiterated its commitment to the cause of the children in order to see that no child remains hungry, illiterate or sick.

2 **Clause (c) of Section 17** of the National Charter for Children, 2003, provides that the State shall undertake measures to ensure that children without families are either placed for adoption, preferably intra-country adoption, or foster care or any other family substitute services.

Clause (d) of Section 17 reads thus:

The State shall ensure that appropriate rules with respect to the implementation of such services are drafted in a manner that are in the best interest of the child and that regulatory bodies are set up to ensure the strict enforcement of these rules.

Section 22 provides for Ensuring child friendly procedures, which reads thus:



22 Ensuring child friendly procedures:- All matters and procedures relating to children, viz., judicial administrative, educational or social, should be child friendly. All procedures laid down under the juvenile justice system for children in conflict with law and for children in need of special care and protection shall also be child friendly.

3 The facts disclosing presentation of instant writ petitions lead us to believe that the object pronounced by the Government of India while declaring National Charter for Children, 2003, and the provisions contained in Juvenile Justice (Care and Protection of Children) Act, 2000 and the Maharashtra Juvenile Justice (Care and Protection of Children) Rules, framed by the State of Maharashtra, are not in its letter and spirit adhered to. We need to exhibit more sensitivity in the matter of protection of children.

Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

4 Both these petitions are presented seeking directions to Respondent No.1 the Child Welfare Committee, Government Remand Home, Ahmednagar, that male children under the protection of Petitioner-Adoption agency be declared to be free for adoption. A direction is also sought to Respondent No.1-Committee and all the concerned authorities to act expeditiously in



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the matter of adoption of infant children and to take decision in such matters at the earliest.

5 Petitioner in both these petitions is Adoption Agency working under Snehalaya, a Public Charity Trust registered under the provisions of Bombay Public Trusts Act, 1950. Snehalaya, according to the petitioner, runs 16 projects for unprivileged women and children. It is stated that since 2005, hundreds of children have been rescued, rehabilitated and placed in good homes in adoption by the petitioner-Adoption Agency.

6 Writ Petition No.5864/2013 relates to a male child born on 08.11.2012 to a minor girl aged about 16 years as a result of repeated acts of sexual violence. The minor girl aged about 16 years was repeatedly raped by a man while she was working in the field. Her father is handicapped and thus remains at home while her mother and brother too work at the field. By the time, her parents realized that she was pregnant, the minor girl was in her advanced stage of pregnancy. Said unwed minor girl delivered male child, named subsequently as Raghav, on 08.11.2012. Since the unwed minor mother and her parents were unable to take care of the child due to social stigma, they relinquished the child in favour of Petitioner-Adoption Agency on 09.11.2012 when the child was just one day old. The relinquishment affidavit has been sworn on behalf of minor mother on 16.11.2012, however, in order to



protect identity of the unwed mother, who is a victim of sexual violence, relevant information is not disclosed in the petition. The minor child was produced before Respondent No.1-Committee along with his mother and grand-parents and after ascertaining truthfulness of facts of the case, Respondent No.1 issued an order that custody of the child be handed over to petitioner-Adoption Agency. The petitioner counseled the said unwed minor mother to retain custody of child, however, despite counseling on several occasions, the minor mother refused to take back custody of the child.

7 Thus, after waiting for a period of two months, as required under the provisions of Section 41(5)(b) of the Juvenile Justice Act, 2000, petitioner tendered an application with Respondent No.1-Committee to declare the child to be free for adoption. The application was made on 05.07.2013 to Respondent No.1-Committee requesting the Committee to pass an order immediately declaring that the child is free for adoption. However, instead of taking decision on the application, the Committee passed an order on 08.07.2013 directing the petitioner-Agency to obtain No Objection Certificate from the competent Criminal Court. It is recorded in the order that since the matter is *sub judice*, there arises several complicated questions of law and as such, petitioner shall secure no objection from the Court. It was, in fact, brought to the notice of Respondent No.1-Committee that the male child,



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presently aged about 8 months old, is suffering from a typical medical condition diagnosed as milk intolerance and needs special care. The child is suffering from chronic diarrhoea and needs family care. Hence, there is an extreme urgency to take prompt decision in the matter. The petitioner has produced on record medical certificate issued by Deenanath Mangeshkar Hospital & Research Centre, Pune, where the child was admitted for treatment.

8 Similar case of minor child Jaydeep, who also needs to be rehabilitated in a family, is a matter of concern in Writ Petition No.5865/2013 presented by the petitioner. In the aforesaid writ petition also, the unwed minor girl, aged about 13 years, was repeatedly raped by four men in her house while her mother was away from home. Said minor girl was threatened with dire consequences, if she revealed the said fact to anybody. The father of the said girl had expired and she was residing with her mother and brother. By the time, her mother realized that the minor girl is pregnant, she was in her advanced stage of pregnancy. The unwed minor girl delivered a male child, named subsequently, Jaydeep, on 25.04.2012. Thereafter the unwed minor mother and her mother took child Jaydeep with them to their house. However, they were unable to take care of the said child due to social stigma and as such, they decided to relinquish the child in favour of petitioner-Adoption Agency. Thus, on 31.10.2012, minor mother of the said



child relinquished child Jaydeep in favour of petitioner-Adoption Agency. The relinquishment affidavit has been sworn on behalf of minor mother, however, in order to protect identity of unwed minor mother, who is a victim of sexual violence, necessary particulars are not recorded in the petition. The child Jaydeep was produced before Respondent No.1-Committee along with his mother and grand-mother and after ascertaining truthfulness of the facts, Respondent No.1-Committee issued an order directing handing over of custody of the child to petitioner-Adoption Agency. In the instant matter also, petitioner counseled unwed minor mother to retain custody of the child, however, despite counseling on several occasions, the minor mother refused to take back custody of child Jaydeep.

9 After waiting for a period of two months, as required under the provisions of Section 41(5)(d) of Juvenile Justice Act, 2000, petitioner herein tendered an application to Respondent No. 1-Committee to declare the child to be free for adoption. The application was presented on 02.07.2013 as well as on 05.07.2013. However, Respondent No.1-Committee, by an order dated 08.07.2013, directed petitioner-Adoption Agency to obtain No Objection Certificate from the competent Court.

10 The orders passed by Respondent No.1-Child Welfare Committee, Ahmednagar on 08.07.2013, are subject matter of



challenge in these petitions.

11 The Juvenile Justice (Care and Protection of Children) Act, 2000, is passed, as evident from perusal of preamble of the Act, to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation and for matters connected therewith or incidental thereto. The preamble refers to the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November, 1989 and ratification of said Convention by the Government of India on 11th December, 1992.

12 So far as the problem faced in the instant writ petitions is concerned, Section 41 is relevant for consideration. Section 41 reads thus:

41 Adoption:-(1) The primary responsibility for providing care and protection to children shall be that of his family.

(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.

(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.

(4) The State Government shall recognise one or more of its institutions or voluntary organisations in each district as specialised 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 organisation 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).

(5) No child shall be offered for adoption-



(a) until two members of the Committee declare the child legally free for placement in the case of abandoned children,

(b) till the two months period for reconsideration by the parent is over in the case of surrendered children, and

(c) without his consent in the case of a child who can understand and express his consent.

(6) The Court may allow a child to be given in adoption-

(a) to a person irrespective of marital status; or

(b) to parents to adopt a child of same sex irrespective of the number of living biological sons or daughters; or

(c) to childless couples.

13 It is not disputed that petitioner is a recognised agency/Institution as specialised adoption agency for placement of orphan, abandoned or surrendered children for adoption. In view of provisions of sub-section (3) of Section 41, the 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. Proviso to sub-section (4) of Section 41 mandates that a voluntary organisation 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). Clause (a) of sub-section 5 refers to a declaration that the child is free for placement in case of abandoned children. Clause (b) of sub-section (5), however, mandates grant of two months period for reconsideration by parents in case of surrendered children before the child is offered for adoption.

14 There are Rules framed by the State of Maharashtra in exercise of powers conferred under Section 68 of Juvenile Justice (Care and Protection of Children) Act, 2000, viz., Maharashtra Juvenile Justice (Care and Protection of Children) Rules, 2002. Rule 78 contained in Chapter XVIII relates to Adoption of children. Sub-rule (8) of Rule 78 provides that:

(8) An abandoned child can be given in adoption only when the Committee declares such a child to be legally free for adoption and an order to that effect is signed by at least two members of the Committee.

Sub-rule (9) of Rule 78 reads thus:

(9) Before declaring the child as abandoned and certifying him as legally free for adoption,



the Committee shall institute a process of enquiry, which shall include-

(a) A thorough enquiry by the Probation Officer or case workers or police, as the case may be, shall be conducted and a report containing findings shall be submitted within a maximum period of one month.

(b) Declaration by the placement agency, stating that there has been no claimant for the child even after making notification in at least one leading newspaper including a regional language newspaper, television and radio announcement and after waiting for a period of one month, the time which shall run concurrently to the inquiry to be conducted and report submitted under clause (a) of this sub-rule.

(c) The Committee shall make a release order declaring the child legally free for adoption within the period of six weeks from the date of application in the case of children below the age of two years, and three months in the case of children above that age.

(d) No child above seven years can 'understand and express his opinion shall' be placed in adoption without his consent.

Sub-rule (10) (c) of Rule 78 reads thus:

(c) In case of a child surrendered by his biological parent or parents by executing



document of surrender, the adoption agency shall make an application directly to the Board for giving the child in adoption.

15 In the instant matters, in observance of sub-rule (10) (c) of Rule 78, applications have been tendered by the petitioner-Adoption Agency, seeking order from the Committee to declare that the children are free for adoption.

16 There are guidelines framed by the Central Adoption Resource Authority ('CARA') and notified by the Central Government governing adoption of children. Section 2(1)(zd) defines "surrendered child" means a child, who, in the opinion of the Child Welfare Committee, is relinquished on account of physical, emotional and social factors beyond the control of the parent or guardian. It is not disputed that the children, in respect of whom certification is requested, are "surrendered children". Clause 15 of the guidelines issued by 'CARA' explains the surrender process. Clause 16 deals with declaration of a child legally free for adoption by the Child Welfare Committee. Sections 15 and 16 read thus:

15 Completing the surrender process :- (1)

In case the parents or one of the parents approaches a Specialised Adoption Agency for surrendering the child, the agency shall make all efforts, including counselling, to prevent surrender of such child.



(2) Efforts shall also be made by the Child Welfare Committee for exploring the possibilities of parents retaining the child by counselling of the parents and explaining the consequences of surrender.

(3) If the parents are still unwilling to retain the child, such a child shall be kept initially in the custody of the SAA.

(4) If the surrender is inevitable, a deed of surrender as provided in Schedule-II shall be executed and signed by the person or persons considering the child and two other witnesses in the presence of the Child Welfare Committee.

(5) If a child born after wedlock is surrendered, both parents should sign the surrender document and in case one of them is dead, proof of death in support thereof is to be furnished.

(6) Where the death certificate is not available, a certificate from local Panchayat or Municipal authority should be produced.

(7) When a child is born to a married couple but is surrendered by one biological parent and the whereabouts of the other parent is not known, the child shall be treated as abandoned and further procedure shall be followed accordingly.

(8) In case of a child born out of wedlock, only the mother herself can surrender the child and if she is a minor, the signature of an accompanying close relative will be obtained on



the surrender document.

(9) If the surrender is effected by any person other than the biological parent(s), the child shall be treated as abandoned and the same procedure shall be followed as that for an abandoned child.

(10) The Specialised Adoption Agency shall facilitate the surrender process before the Child Welfare Committee.

(11) The Specialised Adoption Agency and the Child Welfare Committee shall ensure that the surrendering parents or the legal guardian is made aware that they can reconsider the surrender and reclaim the surrendered child only within a period of sixty days from the date of such surrender.

(12) In all cases of surrender, confidentiality shall be maintained by the authorities and agencies involved in the process.

(13) The Specialised Adoption Agency or the CWC shall ensure that a copy of the Surrender Deed is retained by the surrendering parents or legal guardian, as the case may be, for reconsideration of their decision to surrender the child.

14) The Committee shall declare the surrendered child legally free for adoption after the expiry of a reconsideration period of sixty days.

16 Declaration of a child legally free for adoption by the Child Welfare Committee:-



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(1) If all efforts for tracing the parents of an orphan or an abandoned child placed with a Specialised Adoption Agency on a temporary basis, have failed, and, in case of surrendered children, if the reclaim period of sixty days is over, the particular agency shall approach the Child Welfare Committee for declaring the child legally free for adoption.

(2) After satisfying itself that the due procedure, as laid down in the Act and the rules made there under, has been followed and that nobody has come forward to claim the child within the stipulated period, the Child Welfare Committee shall issue a Certificate declaring the child legally free for adoption.

(3) The certificate under sub paragraph (2) shall be made as per format provided in Schedule-III.

(4) No child of the age of seven years or above, who can understand and express his or her opinion, shall be declared legally free for adoption without his or her consent.

(5) A child becomes eligible for adoption only after the child Welfare Committee has declared the child legally free for adoption through a certificate as mentioned in sub para (b) above.

17 The learned Assistant Government Pleader, appearing for Respondent-Child Welfare Committee, Ahmednagar, has conveyed us view of the Respondent-Committee and has informed that the Committee has called for report from Police Station