

Laxmi Kant Pandey

Vs

Union of India

Criminal Misc. Petitions Nos. 6693, 3141-42 and 4455 with 3868, 4065 and 4064 of 1986

(CJI Bhagwati, Ranganath Misra JJ)

03.12.1986

JUDGMENT

BHAGWATI, C.J. -

1. This application has been filed by the Indian Council for Child Welfare for obtaining a direction that when it is required to act as a scrutinising agency by the court, a certain amount should be directed to be paid to it for the scrutinising services rendered by it, since the scrutinising services would require employment of staff and other necessary expenditure. Though this application is made only by the Indian Council for Child Welfare, we apprehend that all other scrutinising agencies must also be facing the same difficulty. We would therefore direct that when the court makes an order appointing a foreign parent as guardian of a child with a view to its eventual adoption in the foreign country, the court will provide that such amount shall be paid to be scrutinising agency for its services as the court thinks reasonable, having regard to the nature of the case and the extent and volume of the services rendered by the scrutinising agency. We think that in the case of an application for appointment of a foreign parent as guardian of a child the court would be justified in directing payment of any reasonable amount varying between Rs. 450 and Rs. 500 but in appropriate cases where the court so thinks fit, such amount may even exceed Rs. 500. This amount shall be directed to be paid to the scrutinising agency by the recognised placement agency which has processed the application of the foreign parent for being appointed guardian of the child with a view to its eventual adoption and such placement agency shall have the right to recover such amount from the foreign parent whose application for guardianship it has processed. This direction will also apply mutatis mutandis in cases where an Indian parent makes an application for appointing himself or herself as guardian of a child or a Hindu parent applies for permission to adopt a child under Section 9 sub-section (4) of the Hindu Adoptions and Maintenance Act, 1956 and the case is referred to a scrutinising agency by the court, but in such cases the amount to be fixed by the court for meeting the expenses of the scrutinising agency shall not exceed Rs. 150. Both in the case of an application on behalf of a foreign parent as also in the case of an application on behalf of an Indian or Hindu parent, a copy of the order made by the court appointing the scrutinising agency shall be supplied to the scrutinising agency immediately after the order is made, together with the papers and documents submitted to the court in support of the application for appointment of guardian or for permission to adopt.

Crl. M.P. No. 3142/86

2. This application has been made by the petitioner since according to the petitioner there have been instances of illegal sales of babies. We may point out that by its very nature it is not possible to devise a fool-proof formula which will in all cases prevent illegal sales of babies but a procedure

can and must be formulated which will definitely reduce the possibility of such illegal sales. With this end in view, we would direct that all nursing homes and hospitals which come across abandoned or destitute children or find such children abandoned in their precincts or otherwise shall immediately give information in regard to the discovery or find of such children to the Social Welfare Department of the concerned government where such nursing homes or hospitals are situated in the capital of the State and in other cases to the Collector of the District and copies of such intimation will also be sent to the Foster Care Home where there is such a home run by the government as also to the recognised placement agencies functioning in the city or town where such nursing homes or hospitals are situated. The Social Welfare Department as also the Collector of the District will take care to ensure that this direction given by us is followed by the nursing homes and hospitals within their jurisdiction and if necessary intimation in regard to the discovery or find of abandoned or destitute children, if not sent by any particular nursing homes or hospitals to the Foster Care Home and the recognised placement agencies shall be forwarded to them by the Social Welfare Department and the Collector of the District.

3. The Foster Care Home run by the government as also the recognised placement agencies in the capital of the State or in the District will also exchange with one another information regarding Indian parents who wish to take children in adoption so that the Foster Care Home as also each recognised placement agency will have a consolidated list of such Indian parents. Each Indian parent who is registered with the Foster Care Home or a recognised placement agency as a prospective parent wishing to take a child in adoption and who has been informed by the recognised placement agency that a child is available for adoption will be entitled to information about all the children available for adoption in the group specified by him, according to the consolidated list maintained by the recognised placement agency.

Crl. M.P. No. 4455/86

4. This Court directed in paragraph 22 of the main judgment dated February 6, 1984 ((1984) 2 SCC 244) that the notice of the application for guardianship should not be published in any newspaper and this was reiterated in the supplementary judgment dated September 27, 1985 (1985 Supp SCC 701), because otherwise the biological parents would come to know as to who are the parents taking the child in adoption. The question raised in the present application is as to whether this direction should be confined only to cases of adoption by foreign parents or it should be extended to cover cases where Hindu parents seek to take a child in adoption and make an application to the court for that purpose. We are of the view that having regard to the object and purpose for which this direction has been given, it cannot be confined to the case of adoption by foreign parents. It must also cover the cases where Hindu parents make an application under Section 9 sub-section (4) of the Hindu Adoptions and Maintenance Act, 1956. We would, therefore, clarify the direction given by us and direct that notice of an application under Section 9 sub-section (4) of the Hindu Adoptions and Maintenance Act, 1956 will also not be published in any newspaper. The present application will stand disposed of accordingly.

Crl. M.P. No. 4064/86

5. This application has been filed by the Karnataka State Council for Child Welfare complaining that the object and purpose for which various directions were given by this Court in its main judgment dated February 6, 1984 ((1984) 2 SCC 244) and the supplemental judgment dated September 27, 1985 ((1984) 2 SCC 244) is being defeated by the practice which has been adopted in some places in the State of Karnataka where unrecognised agencies are using recognised

placement agencies as post offices for processing cases in respect of children which are in the custody of the unrecognised agencies and with which the recognised placement agencies have nothing to do. The result of this practice is that the recognised placement agencies merely act as conduit pipes for making and processing applications for appointment of a foreigner as guardian of a child, even though the child is not with them at all and they are not even in contact with the foreign sponsoring agency or the foreigner wishing to take the child in adoption. This practice, if it is prevalent in any part of the State of Karnataka or for that matter, in the country, must meet with our disapprobation. It is the recognised placement agency which has to prepare the child study report including the medical report for submission to the court alongwith the application for appointment of the foreigner as guardian of the child and this obviously cannot be done unless the child is with the recognised placement agency, because the recognised placement agency has to observe the child and gather full information about it in order to be able to make the report for submission to the court. The recognised placement agency must therefore necessarily have the custody of the child for a period of at least one month before it can prepare a really genuine and satisfactory child study report alongwith the medical report. If we permit the recognised placement agency to act merely as post office or conduit pipe for making and processing an application for guardianship on behalf of an unrecognised agency, it would lead to manifold evils which it has been our endeavor to eliminate. We would therefore direct that no recognised placement agency shall make and process an application for appointment of a foreigner as guardian of a child with a view to its eventual adoption, unless the child has been in the custody of the recognised placement agency for a period of at least one month before the making of the application and it shall not be permitted to act merely as a post office or conduit pipe for the benefit of an unrecognised agency.

Crl. M.P. No. 4065/86

6. This application of the Delhi Council for Child Welfare seeks clarification in respect of certain observations made by this Court in paragraph 6 of the supplemental judgment dated September 27, 1985 (1985 Supp SCC 701). This Court, while providing that children who are found abandoned should not be assumed to be free for adoption but they must be produced before the Juvenile Court so that further inquiries can be made and their parents or guardians can be traced, directed the Juvenile Courts "that when children are selected for adoption, release order should be passed by them expeditiously and without delay and proper vigilance in this behalf must be exercised by the High Courts" (SCC p. 705, para 6). The Delhi Council for Child Welfare has pointed out in this application made by it for clarification that the Juvenile Courts are construing this observation literally and mechanically and are taking the view that release orders in respect of the children produced before them are to be passed "expeditiously and without delay" only in cases where it can be said that the children "are selected for adoption" and since no child can possibly be offered in adoption unless it is declared legally free for adoption by the Juvenile Court, this direction given by the court for expeditious passing of release orders in cases where "children are selected for adoption" has become meaningless and futile and the court should suitably modify it. This contention raised on behalf of the Delhi Council for Child Welfare is well founded, because obviously no child can be offered for adoption unless the release order is passed in respect of it and it would therefore be futile to provide that release order shall be passed expeditiously and without delay in case of children selected for adoption. We would therefore modify this direction given by us in paragraph 6 of the supplemental judgment dated September 27, 1985 (1985 Supp SCC 701) by providing that whenever a child is produced before the Juvenile Court by a recognised placement agency for a release order declaring that the child is abandoned or destitute so as to be legally free for adoption, the Juvenile Court must in all such cases complete the inquiry within one month from the date of the application and proper vigilance should be exercised by the High Court for the

purpose of ensuring that this new direction given by us is complied with by the Juvenile Courts. We would ask the High Courts to call for monthly reports from the Juvenile Courts stating as to how many applications for release orders, that is, for declaring children abandoned or destitute, are pending before each Juvenile Court, when they were filed and if they have not been disposed of within one month, what is the reason for the delay. We are very anxious that in respect of abandoned or destitute children, there should be no undue delay in offering them for adoption to Indian parents and, failing Indian parents, to foreign parents, because it is absolutely essential that such children should be able to secure love and affection of adoptive parents at the earliest. Indeed, nothing can take place of love and affection of parents and every effort must therefore be made to see that no procedural delays hold up the process of such children being taken in adoption. This new direction given by us will also be applicable in cases where, the Juvenile Court not being in existence, application for release order is required to be made to the Social Welfare Department in the capital of the State or to the Collector of the District in other places. The Social Welfare Department or the Collector, as the case may be, will dispose of such application within one month of its making.

Crl. M.P. No. 6693/85

7. There were several points raised in this application filed on behalf of Church of North India, Holy Cross Social Service Centre, Missionaries of Charity and Delhi Council for Child Welfare. The first point related to a practice which is being followed in Delhi in regard to making of an application for appointment of a foreigner as guardian of a child with a view to its eventual adoption. The practice which is followed in Delhi is that the application for appointment of a foreigner as guardian is required to be signed by the representative of the recognised placement agency not only as Attorney of the foreigner but also in his personal capacity, so that the application becomes an application for appointment of the foreigner as well as the representative of the recognised placement agency as joint guardians of the child. The court granting the application also appoints the foreigner as well as the representative of the recognised placement agency as joint guardians and both continue as joint guardians until the child is adopted by the foreigner in his own country. This procedure entails a continued obligation on the part of the recognised placement agency which is totally unnecessary and in fact, such procedure is not followed in any other part of the country. It would in our opinion be sufficient to ensure the eventual adoption of the child and its proper care and welfare in the meantime, if a bond is taken from the recognised placement agency to secure performance of the obligations and conditions laid down by the court. We would therefore direct that the court entertaining an application for appointment of a foreigner as guardian of a child should not require the representative of the recognised placement agency processing the application to join the applications as a co-petitioner nor should the court insist on appointing such representative as joint guardian of the child alongwith the foreigner. Where a representative of the recognised placement agency has already been appointed joint guardian prior to the making of this order, he or she will stand discharged on the child being adopted by the foreign parents.

8. The second point raised on behalf of the applicants was in regard to the delay which is at present occurring in the procedure for giving a child in adoption to a foreigner in view of the time schedule fixed by the court in the main judgment dated February 6, 1984 ((1984) 2 SCC 244) and the supplemental judgment dated September 27, 1985 (1985 Supp SCC 701). The applicants contended that the entire process laid down by the court is long drawn out process running into a period of about 8 to 9 months and that would defeat the object of expedition in giving a child in adoption. The applicants pointed out that under our judgments, where there is a child surrendered by the biological parents, a minimum period of three months is allowed to the biological parents to reconsider their decision and in case of an abandoned or destitute child, a period of three months is provided for the

Juvenile Court, Social Welfare Department or the Collector to clear the child and declare it free for adoption and after the child is declared free for adoption, a maximum period of two months is provided to find an Indian family for the child - which period is now curtailed to three to four weeks - and thereafter it takes another four weeks in mail for sending the child study and medical reports to the sponsoring agency abroad for being handed over to the foreigner for his approval and awaiting the receipt of approval and then a further period of two months is allowed for the court to process the case and thereafter on an average it takes another month or more to get the passport and visa formalities completed. It thus takes about 8 to 9 months after the abandonment of the child before the child is able to join its adoptive parents. This is, according to the applicants, too long a period and the directions given by us should be modified with a view to curtailing this period. We agree that the point raised on behalf of the applicants deserves serious consideration. We would therefore direct that in cases where a child is relinquished by its biological parents or by an unwed mother under a Deed of Relinquishment executed by the biological parents or the unwed mother it should not be necessary to go through the Juvenile Court or the Social Welfare Department or the Collector to obtain a release order declaring the child free for adoption but it would be enough to produce the Deed of Relinquishment before the court which considers the application for appointment of a foreigner as guardian of the child. It is only where a child is found abandoned or is picked up as a destitute that the procedure of going through the Juvenile Court or the Social Welfare Department or the Collector would have to be adopted. As soon as an abandoned or destitute child is found by a social or child welfare agency, a report should be immediately lodged with the local police station along with a photograph of the child. The Inspector General of Police or the Commissioner of Police, as the case may be, should instruct every police station within his jurisdiction to immediately undertake an inquiry for the purpose of ascertaining and tracing the parents of the child in respect of which the report is made and such inquiry must be completed within one month of the report being lodged with the police station. Meanwhile, the social or child welfare agency which has found the abandoned or destitute child may make an application to the juvenile Court or to the Social Welfare Department or the Collector, as the case may be, for a release order declaring that the child is legally free for adoption and since the report of the inquiry to be made by the police has under this direction to be completed within one month, it should be possible for the Juvenile Court or the Social Welfare Department or the Collector to make a release order declaring the child legally free for adoption within a period of five weeks from the date of making the application. If, as a result of the inquiry by the police the biological parents are traced, the Juvenile Court or the Social Welfare Department or the Collector, as the case may be, will issue a notice to the biological parents and give them an opportunity to reconsider their decision after explaining the implications of the child being declared legally free for adoption. But, this opportunity shall be availed of by the biological parents within a period of one week and no more. This procedure will considerably reduce the time taken up in giving an opportunity to the biological parents to reconsider their decision as also in getting the child cleared for adoption by the Juvenile Court or the Social Welfare Department or the Collector. Whilst the application for a release order is pending before the Juvenile Court or the Social Welfare Department or the Collector, the recognised placement agency which has found the child or to which the child is transferred by the social or child welfare agency finding the child, may proceed to explore the possibility of offering the child in adoption and the child may be offered simultaneously to Indian parents as well as foreign parents, subject to the clearance of the child for adoption by the Juvenile Court or the Social Welfare Department or the Collector. The recognised placement agency need not wait until the release order is made by the Juvenile Court or the Social Welfare Department or the Collector, before offering the child in adoption, because otherwise even with the reduced time limit which we have now provided, it would take at least six weeks before the child can be offered in adoption. This time lag of six

weeks can be eliminated if the child is allowed to be offered in adoption even while the application for release order is pending and this would also eliminate the delay of about two months which would occur if the child is not allowed to be offered in adoption to the foreign parents until after the effort to find an Indian parent for the child has failed. If this procedure is followed, it should be possible to find an Indian parent or, failing that, a foreign parent to take the child in adoption within a period of about 6 to 8 weeks from the time when the abandoned or destitute child is found by the concerned social or child welfare agency. We are informed that this procedure is already being followed in Bombay and, in our view, it should be adopted in all jurisdictions.

9. We then turn to the third point raised on behalf of the applicants and that relates to transfer of children from one State to another for the purpose of being given in adoption. We have already dealt with this subject in paragraph 7 of the supplemental judgment dated September 27, 1985 and we do not propose to depart from what we have said in that paragraph of the judgment. But we should like to make it clear that where an abandoned or destitute child is found by a recognised placement agency or is brought to it by another social or child welfare agency or individual, it should be open to such recognised placement agency to transfer the child to its branch in another State after the completion of the inquiry by the Juvenile Court or Social Welfare Department or the Collector, as the case may be. Where such recognised placement agency has an associate social or child welfare agency in another State, it should be open to the recognised placement agency to transfer the child to such associate social or child welfare agency in the other State, provided firstly, that the inquiry is completed by the Juvenile Court or the Social Welfare Department or the Collector and a release order is passed, and secondly, the associate social or child welfare agency has been notified by the recognised placement agency as its associate to the government of the State where the recognised placement agency is functioning as also to the government of the State where the associate social or child welfare agency is operating. If, for any compelling reason, it becomes necessary for the recognised placement agency to transfer a child either to its own branch or to an associate social or child welfare agency before completion of the inquiry by the Juvenile Court or the Social Welfare Department or the Collector, as the case may be, the recognised placement agency shall be allowed to do so after obtaining permission of the Juvenile Court or the Social Welfare Department or the Collector in that behalf.

10. We would also direct the Government of India to publish at least once in a year a list of recognised placement agencies and their associate social or child welfare agencies operating in each State in two leading newspapers having wide circulation in that State, one in the English language and the other in the regional language of that State, so that the people may know which are the recognised placement agencies and their associates which are functioning in that State. We would also direct the Government of India to send to the District Courts in each State through the High Court a list of the recognised placement agencies functioning within the State together with the names and particulars of their associate social or child welfare agencies. Such list must be supplied to the District Judges at least once in a year and whenever any changes or modifications are made in the list, such changes or modifications must be intimated to the District Judges through the High Court.

11. One other point raised on behalf of the applicants was that the outer limit of Rs. 4000 fixed by the court in the supplemental judgment dated September 27, 1985 (1985 Supp SCC 701) for reimbursement of expenses including legal expenses, administrative expenses, preparation of child study report, preparation of medical and IQ Reports, passport and visa expenses and conveyance expenses, was inadequate, particularly having regard to the high fees charged by lawyers and increase in the visa charges for United States and some there countries and that this outer limit

should, therefore, be raised from Rs. 4000 to Rs. 6000. There is force in this submission made on behalf of the applicants, because there is no doubt that the fees of lawyers have gone up quite high and the visa expenses have also more than doubled in recent times. We, therefore, agree that the recognised placement agency processing the application of a foreigner for being appointed guardian of a child with a view to its eventual adoption, should be entitled to recover from the foreigner, cost incurred in preparing and filing the application and prosecuting it in court including legal expenses, administrative expenses, preparation of child study report, preparation of medical and IQ reports, passport and visa expenses and conveyance expenses and that such expenses may be fixed by the court at a figure not exceeding Rs. 6000.

12. The applicants also drew our attention to the case of foreigners living in India for one or more years and stressed the difficulties involved in requiring their cases to be sponsored by a foreign social or child welfare agency and the home-study report in their cases to be prepared by such sponsoring foreign agency. This difficulty is a genuine difficulty. It would be quite impracticable to ask a foreigner living in India and wishing to take an Indian child in adoption to obtain a home-study report from an agency based in his home country. It would be impossible for any foreign social or child welfare agency to sponsor the case of such foreigner who is living in India and it would equally be impossible for any such social or child welfare agency to prepare a home-study report in respect of such foreigner. We would, therefore, direct that in case of a foreigner who has been living in India for one year or more, the home-study report and other connected documents may be allowed to be prepared by the recognised placement agency which is processing the application of such foreigner for guardianship of a child with a view to its eventual adoption and that in such a case the court should not insist on sponsoring of such foreigner by a social or child welfare agency based in the country to which such foreigner belongs nor should a home-study report in respect of such foreigner be required to be obtained from any such foreign social or child welfare agency. The home-study report and other connected documents prepared by the recognised placement agency should be regarded as sufficient.

13. The last point raised on behalf of the applicants arises out of paragraph 12 of the supplemental judgment dated September 27, 1985 (1985 Supp SCC 701). We pointed out in that paragraph of the supplemental judgment that ordinarily the court entertaining an application on behalf of a foreigner for being appointed guardian of a child with a view to its eventual adoption should not insist on making of deposit by the foreigner as and by way of security for due performance of the obligations undertaken by him, but in an appropriate case, the court may exceptionally pass an order requiring him to make such deposit. We observed that the execution of a bond would ordinarily be sufficient and we made two alternative suggestions which may be implemented in regard to the execution of such bond. We have considered this question once again in view of the plea raised on behalf of the applicants and we are of the view that the court need not insist on security or cash deposit or bank guarantee and it should be enough if a bond is taken from the recognised placement agency which is processing the application and such recognised placement agency may in its turn take a corresponding bond from the sponsoring social or child welfare agency in the foreign country. Ordinarily, the sponsoring social or child welfare agency in the foreign country would honour the bond in case the condition of the bond is broken, because, obviously, if it fails to do so, no recognised placement agency in India would in future deal with it and moreover the name of such foreign social or child welfare agency would be liable to be deleted from the list of foreign social or child welfare agencies which are recognised as sponsoring agencies for the purpose of adoption.

14. These were the only points raised for our consideration in the applications made on behalf of various social and child welfare agencies. We have dealt with these points in some detail and we

hope and trust that the clarifications given by us will go a long way towards reducing the delay in the procedure to be followed in giving a child in adoption to a foreigner and will also at the same time protect and safeguard the interest of the child by preventing any possibility of abuse.

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