

Karnataka State Council for Child Welfare and another

Vs

Society of Sisters of Charity St. Gerosa Convent and others

Special Leave Petns. Nos. 14654-55 of 1991

(A. M. Ahmadi, K. Ramaswamy JJ)

10.02.1992

ORDER

1. We issued notice by our order dated 23rd September, 1991 but none has entered an appearance. We inquired of Mr. Javli, the learned counsel for the petitioners, if the children were in India or were already handed over to the foreign couples. We were told that the children have been taken abroad by the foreign couples who were permitted to adopt them.

2. The real grievance made by counsel for the petitioners is in regard to certain observations made by the High Court in the context of S. 7 of the Guardians and Wards Act, 1890, and related provisions, which are capable of being understood to run counter to the guidelines laid down by this Court in Lakshmi Kant Pandey v. Union of India, (1984) 2 SCR 795 (AIR 1984 SC 469) and (1985) Suppl 3 SCR 71: (AIR 1986 SC 272). In paragraph 16 of the judgment it is observed that the Court while exercising its judicial discretion under S. 7 should not allow itself to be persuaded by any considerations other than the legislative guideline found in the section itself, The High Court then proceeds to add:

"In other words, what really falls for determination is the locus standi and legal competence of the Council to supervene with its recommendations and displace legislative guidelines because the children in question were not first made available for adoption to Indian parents".

While making these observations the High Court began by saying that it can have no quarrel with the guidelines issued by the Government of India pursuant to the directions issued in Lakshmi Kant Pandey's case. We would like to clarify that the guidelines laid down in Lakshmi Kant Pandey's case and adopted by the Government of India pursuant to the directions made therein have relevance on the question of welfare and must be kept in view while disposing of any case concerning adoption of Indian children by foreign couples. One of the guidelines is that before such adoption is cleared an attempt should be made to find Indian parents or parents of Indian origin for the children and if that is not possible within a reasonable time then the question regarding adoption by foreign parents may be considered. This is clearly to ensure that as far as possible Indian children should grow up in Indian surroundings so that they retain their culture and heritage, a matter which has a bearing on the question of their welfare. We would like to emphasise that the guidelines laid down in Lakshmi Kant Pandey's case are binding on all Courts including High Courts. We do not think that by the above observations the High Court intended to brush aside the guidelines laid down by the Government of India as not germane to the question pertaining to adoption under S. 7. We read the

above observations made by the High Court merely to mean that the recommendations made by the Council a Voluntary Co-ordinating Agency set up pursuant to the guidelines in Lakshmi kant pandey's case, are not final and conclusive in nature, that is to say, that the decision regarding adoption has to be taken by the Court in terms of S. 7 without treating the recommendation's as conclusive in character although they are entitled to great weight. To that extent the Voluntary Co-ordinating Agency would certainly have a locus standi. We have thought it necessary to clarify the observations of the High Court as they are capable of being understood to mean that the guidelines issued by the Government of India pursuant to the directions of this Court have no relevance. If we had read the judgment of the High Court to run counter to the guidelines laid down pursuant to Lakshmi Kant Pandey's case, we would have had no hesitation in disapproving it. We reiterate that the said guidelines have to be adhered to while dealing with an application under S. 7 read with S. 17 of the Guardians and Wards Act, 1890. We say no more than this that the High Court could never have intended to nullify the ratio of this Court's judgment which was binding on it.

3. Except for clarifying some of the observations made by the High Court, we do not consider it necessary to entertain this Special Leave Petition since the minors have been permitted to be taken out of the country and it would be undesirable to disturb them. The same will stand disposed of accordingly. Order accordingly.

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