

# **SUPREME COURT OF INDIA**

Indian Council Social Welfare

Vs.

State of A.P.

(S V Manohar and R Sethi JJ.)

14.07.1999

## **ORDER**

1. Heard both sides.

2. In view of the investigations regarding allegations of malpractices relating to trafficking in children raised against two organisations in the State of Andhra Pradesh, the four petitioners before us who are not connected in any way with those organisations are being prevented from proceeding with applications for guardianship filed by them before the Family Court/District Court in respect of specific children in their custody. The petitioners also contend that even in respect of those children in their custody where after scrutiny a guardianship certificate has been issued by the Family Court/District Court concerned the child in question is not being allowed to be sent abroad to the guardian so appointed. This is on account of a letter dated 6-4-1999 issued by the Secretary, Department of Women Development, Child Welfare & Disabled Welfare, Government of Andhra Pradesh.

3. There are no allegations of any malpractice against the four petitioners. Under the revised guidelines for adoption of Indian children issued by the Ministry of Welfare, Government of India known as the Central Adoption Resource Agency, CARA Guidelines, (Chapter 3 para 3.2.) the State Government is required to separately maintain a list of all agencies handling in country and inter-country adoption of children, and it is required to identify those institutions/agencies which have children who are legally free for adoption. The State Government is required to recognise the Indian Adoption Agencies for in-country adoption as per the procedure laid down and is also required to forward applications of Indian Agencies seeking recognition for inter country adoption to the Central Adoption Resource Agency after proper verification according to the criteria laid down in these guidelines. Accordingly, on the recommendations of the State Government, the four

petitioners who are before us have been listed with the Department of Women Development and Child Welfare, Andhra Pradesh and have been recognised under the CARA Guidelines as Follows:

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Name Established Recognised

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1. Indian Council for Social Welfare, 1979 1-3-1995, Inside Cane Hospital Compound, Red Hills, Hyderabad.
  2. Missions to the Nation, 1994 D.No. 3/19/6, Plot No. 18, Kannayakapunagar, Kakinada.
  3. John Abraham Memorial 1954 3-1-1989 Bethany Home, Tandur.
  4. St. Theresa's Tender Loving Care Home, 1974 28-7-1994, Theresa Hospital, Sanathnagar, Hyderabad.
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The certificate of recognition shows that it is valid for the State of Andhra Pradesh.

4. The petitioners are seeking a limited relief relating to those children whose applications for guardianship are pending either before the Family Court or a District Court in Andhra Pradesh and those children in respect of whom, after proper scrutiny, guardianship certificates have already been issued by the Family Court or the District Court concerned in Andhra Pradesh. Because of the omnibus direction issued by the Women Development, Child Welfare and Disabled Welfare department of the Government of Andhra Pradesh, the applications are not being processed or the children are not being allowed to be sent to their appointed guardians outside India. In the absence of any allegations of any malpractices against the four petitioners we do not see any reason why those children in respect of whom guardianship certificates have already been issued by the appropriate court, cannot be sent to their foreign guardians. There is also no reason why pending applications of these petitioners cannot be processed or proceeded with.

5. It is necessary to note that before a guardianship certificate is issued by the Family Court or the District Court concerned, a letter of relinquishment, VCA clearance, no-objection certificate from CARA and other relevant documents such as the home study of the proposed guardians, no-objection certificate from the agency which has scrutinised the application of the proposed foreign guardians, as also approval from the scrutinising agency in India who scrutinizes these applications (in the case of the State of Andhra Pradesh this scrutinising agency is the Indian Council of Child Welfare) are required. Thereafter the court decides whether the guardianship should be granted or not. In case there are any objections in respect of any proposed guardianship application, the same can be and are usually raised by the appropriate authority before the Family Court/District Court concerned.

6. In view of this strict and adequate procedure, we direct that those children in the custody of the following four organisations who are the petitioners before, us, namely, Indian Council of Social Welfare, A.P. , John Abraham Memorial Bethany Home, Tandur, District Ranga Reddy, Andhra Pradesh-501 141, Missions to the Nation, D. No. 3-19-6. Plot No. 18 Kannayakapunagar, Kakinada-533 003 and St. Theresa Tender Loving Care Home, St. Theresa's Hospital, Hyderabad-500 018 in

respect of whom guardianship certificates have been granted by the Family Court or the District Court concerned in Andhra Pradesh, may be allowed to be sent to their guardians so appointed. We further direct that in respect of those children in the custody of the said institutions where guardianship applications are pending before the Family Court or the District Court concerned in Andhra Pradesh the Family Court or the District Court will process and proceed with these applications in accordance with law. In the event of a guardianship certificate being granted in any of these matters the child concerned should be allowed to be sent to the guardian so appointed.

7. In this connection our attention has also been drawn to a letter written by the Joint Secretary, Ministry of Social Justice and Empowerment, Government of India dated 12-4-1999, addressed to the Secretary, Women and Child Welfare Department, Government of Andhra Pradesh, (who has issued the impugned letter-circular) pointing out that in those cases where inter-country adoptions have been approved by the Central Adoption Resource Agency (CARA) on the basis of valid documents, their adoption by foreign prospective parents should not be delayed.

8. We also make it clear that wherever there are allegations of malpractices against any specific organisation or in any specific case, the State Government is entitled to investigate those organisations or cases. The present directions will not affect any directions which may have been given by the High Court in connection with those cases of malpractice or any orders which may have been passed by the High Court in that connection. But they cannot apply to those children who are governed by this order. In respect of future placement of children in guardianship, the petitioners, may obtain appropriate directions from the High Court, if so required.

9. The writ petition is disposed of accordingly.