

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9227 OF 2013**

Varsha Sanjay Shinde & Anr. Petitioners.

v/s

The Society of Friends of the
Sassoon Hospitals and Others Respondents.

Mr. Vijay Hiremath for the Petitioners.

Ms. Ankita Singhanian with Ms. Kinnari Chheda i/b Rajendra
Agarwal for Respondent No.1.

Mr. Raghvendra Kumar for Respondent No.2.

Mrs. Lata Patne i/b Mr. Vinod Joshi for Respondent No.3.

Ms Ushaji Peri for Respondent No.4.

Mr. Jagdish Kishore i/b Vishranti Navale for Respondent Nos.
5 and 6.

ALONGWITH
CIVIL APPLICATION NO.2582 OF 2013
IN
WRIT PETITION NO. 9227 OF 2013

Varsha Sanjay Shinde & Anr. Petitioners.

V/s

The Society of Friends of the
Sassoon Hospitals and Others Respondents.

And

Federation of Adoption Agencies Applicants.

Mr. Swanand Ganoo i/b Ananth Iyengar for the Applicant.

**CORAM: V. M. KANADE &
S.C. GUPTE, JJ.**

DATE: 18th October, 2013

P.C.:- (Per V.M. Kanade, J.)

1. Grievance of the Petitioners is that Respondent No.1 has shown their inability to give the child - Isha in adoption to them on the ground that intervenors who have filed Civil Application No.2481 of 2013 viz Mrs. Rachel Mathew and her husband Mr. Raj Narayan Mysore who are Overseas Indians residing in USA, have already approved the child, before the child was shown to the Petitioners. Petitioners, therefore, are seeking an appropriate writ, order and direction, directing Respondent No.1 and other Respondents to give the said baby girl Isha in adoption to the Petitioners.

2. Petitioners have challenged the decision of Respondent No.1 of giving the baby girl Isha in adoption to the Interveners on the ground that the said decision is contrary to the guidelines which have been laid down by the Ministry of Women and Child Development in a Notification issued on 24/6/2011 which laid down the guidelines covering the adoption of children pursuant to powers given by sub-section (3) of section 41 of the Juvenile Justice (Care & Protection of Children) Act, 2000 (hereinafter referred to as "the said Act").

3. Petitioners got married on 17/4/2001 and, unfortunately, were not blessed with becoming parents of their biological child and, therefore, they decided to adopt a child. Petitioners registered their names with Respondent No.1 to adopt a child on 05/09/2012. According to the Petitioners, in May 2013 detailed home study of the Petitioners was done and they were informed by Respondent No.2 to visit Respondent No.1 on 28/7/2013 to select a baby. Accordingly, Petitioners visited the premises on 29/07/2013 and saw three babies and decided to adopt a baby Isha and this decision was communicated to Respondent No.1 and also written communication was given on the next day, i.e. on 30/07/2013. Petitioners were informed, however, that baby Isha had been shown to foreign couple and they have decided to adopt her. Respondent No.2 is a State Adoption Resource Agency (hereinafter referred to as "SARA"). Respondent No.1 submitted home study report of the Petitioners dated 16/08/2013 within seven days. A pre-adoption counseling meeting was organized by Respondent No.1 on 30/8/2013. Respondent No.1 sent a list of 13 babies of special needs to Petitioner on 10/9/2013. Petitioner, however, informed that they wanted to adopt a baby girl Isha. Being aggrieved by the decision of Respondent No.1 to give baby Isha to Interveners viz. Mrs Rachel Mathew and her husband Mr Raj Narayan Mysore, Petitioners have

approached this Court.

4. Respondent No.1 is an organization which looks after abandoned children and helps them in giving them in adoption to Indian parents and also is entitled to give children in adoption to foreigners according to the guidelines framed by the Union of India. Respondent No.2 - SARA is a State Agency which works in coordination with Central Adoption Resource Authority (CARA). Respondent No.3 (CARA) functions as a Nodal body for adoption of Indian children which is under an obligation to monitor and regulate in-country and inter-country adoptions. Respondent No.4 is the Adoption Recommendation Committee (ARC) which has to issue recommendation certificate within 15 days after the Home Study Report is placed before it.

5. It has come on record that the Petitioners, initially, were registered with Respondent No.1 in 2008 and a baby girl was shown to them. However, they decided not to take the said girl in adoption. This fact is not mentioned by the Petitioners in their Petition. However, in the affidavit-in-reply filed by Respondent No.1 this fact was disclosed and the Petitioners have admitted about their registration in 2008 and their refusal to accept the child on personal ground in the same year. All parties have filed their detailed affidavit-in-reply and Respondent No.1, Intervenors in Civil Application No.

2481 of 2013 and Respondent No.3 (CARA) have opposed the submissions made by the learned Counsel appearing on behalf of the Petitioners.

6. The learned Counsel appearing on behalf of the Petitioners firstly submitted that the procedure which is prescribed for in-country adoption has not been followed by Respondent No.1. Secondly, it is contended that preference ought to have been given by Respondent No.1 to Indian parents first, before offering the child in inter-country adoption. Thirdly, it is submitted that Respondent No.1 and other such Adoption Agencies are deliberately not giving preference to Indian parents for giving the child in adoption because the amount which they are entitled to get as per guidelines from Indian parents is only Rs 40,000/- and on the other hand they are entitled to get \$ 5000 in the case of inter-country adoption. It is contended that therefore children are given in adoption to foreigners illegally and it is contrary to the guidelines framed by the Central Government. It is fourthly contended that ratio of 80%:20% that is 80 children to be given in adoption to Indian parents and 20 to be given to foreigners is also not being followed. Fifthly, it is submitted that the home study report which is to be given in two months is not given in time and during this period children are shown to foreigners who are permitted to jump the queue. It is contended that the Petitioners were

registered in 2012 and the Intervenor was permitted to jump the queue and decision was taken to give the child in adoption by Respondent No.1 to the foreign couple. It is sixthly contended that signatures of the Petitioners were obtained on certain documents, contents of which were not shown to the Petitioners and subsequently Respondent No.1 on the basis of the said documents have tried to contend that the fact that the baby girl was shown to foreign couple prior in point of time to the Petitioner is sought to be created on the basis of the said documents. It is contended that, in fact, Respondent No.1 had never shown the child to foreign couple prior to the Petitioners, as contended. It is seventhly contended that the CARA had given no objection without obtaining the NOC from Adoption Recommendation Committee (ARC). Eighthly, it is contended that despite directions given by SARA from time to time, Respondent No.1 and other Adoption Agencies are not showing the children to Indian parents. It is then contended that though there was a list of Indian parents who were registered with Respondent No.1, allegedly after three parents informed Respondent No.1 that they were not interested in the child, without showing the child to other Indian parents, Respondent No.1 had immediately, after refusal by three Indian parents, had shown the child to the foreign couple.

7. On the other hand, the learned Counsel appearing on

behalf of Respondent No.1 has vehemently opposed the said submissions. She has stated that baby Isha was born on 15/08/2012 and was declared "legally free for adoption" on 03/04/2012 and was shown to three Indian families who did not accept her due to her health concerns since she was a premature baby. It is submitted that if within 3/4 weeks, child is not taken in adoption by Indian parents, it should be regarded as available for inter-country adoption in view of the guide-lines laid down by the Apex Court in *Lakshmi Kant Pandey vs. Union of India*¹. It is then submitted that Mysore Family which is a foreign couple of Indian origin residing in USA was registered for adoption with the US based adoption agency (AFAA) in March, 2010. The Home Study Report (HSR) was conducted by AFAA and was submitted to CARA in February, 2011, which recommended that the Mysore Family was eligible to adopt the child between 0-4 years. The composite age of the PAPs at the time of registration was below 90 years as per Guideline No. 6(3) of the Guidelines, 2011. The Screening Committee of CARA under Guideline 29(2) examined prima facie suitability of PAP-Mysore Family and also identified the RIPA, i.e, Respondent No.1 to whom the dossier of the PAP-Mysore Family was to be forwarded. It is submitted that the age criteria was also examined by CARA and, thereafter, Respondent No.1 referred the child to Mysore Family on 15/05/2013 at which point of time the child was already

¹ AIR 1986 SC 272 at page 280

rejected by three Indian families. On 17/05/2013, baby Isha was accepted by Mysore Family and all necessary formalities were initiated. The said family visited Isha in India on 24th and 25th June, 2013. Respondent No.1 submitted the dossier of Mysore Family to Respondent No.2, i.e., SARA for issuing Recommendation Certificate by Respondent No.4, i.e, ARC on 24/05/2013. The contention of the learned Counsel appearing on behalf of Respondent No.1 is that the Recommendation Certificate is to be issued within a period of 15 days as per the Schedule VIII(h) of the Guidelines. Till today, the said Certificate has not been issued. The grievance of Respondent No.1 is that SARA, contrary to the mandate of the Guidelines, is directing Respondent No.1 to show babies which were already accepted by families to other couples such as the Petitioners. The grievance of Respondent No.1 is that SARA wrote a letter to Respondent No.1 dated 29/07/2013, directing them to show baby Isha to Petitioners. It is submitted that under the Guideline 18(4) and (5), SARA cannot direct RIPA to refer the children to any specific parent as it was done in the present case. It is submitted that by letter dated 24/04/2013, CARA had informed the Maharashtra Stage Agencies that the adoption ratio of 80:20 has been complied with by Respondent No.1.

8. The learned Counsel appearing on behalf of Respondent Interveners, i.e., Mysore Family submitted that the child had

been accepted by them much prior to the child being shown to the Petitioners and they are entitled to get the child and the Petitioners are not entitled to seek a writ of mandamus directing the Respondents to give the child in adoption to them. The learned Counsel for the Interveners invited my attention to various provisions of the Guidelines of 2011. It is submitted that role of ARC and SARA is very limited and they are supposed to issue the Recommendation Certificate in any case within two weeks, which had not been done in the present case and that there was conflict between the SARA and CARA that is the State and Central Agency. It is submitted that SARA and ARC were acting beyond their jurisdiction and, as a result, the entire process of adoption was unnecessarily delayed to the detriment of welfare of the child who was kept in the shelter home.

9. The learned Counsel appearing on behalf of ARC vehemently urged that ARC was within its rights to make an investigation and see whether ratio of 80:20 was maintained or not. Various submissions have been made by the learned Counsel appearing on behalf of ARC to show that Respondent No.1 had, in fact, violated the guidelines and had given preference to foreign couples instead of Indian parents. The learned Counsel appearing on behalf of SARA also reiterated the submissions made by the learned Counsel appearing on behalf of ARC and supported the case of the

Petitioners.

10. The learned Counsel appearing on behalf of the Interveners viz Federation of Adoption Agencies submitted that number of difficulties are experienced by the Adoption Agencies on account of uncooperative attitude of SARA and ARC. It is submitted that even though Recommendation Certificate has to be issued in any case within two weeks, for months together and some times for more than six months and some times even for one year such Recommendation Certificate is not issued, which results in causing inordinate delay for giving the child either in in-country adoption to Indian families or in inter-country adoption to foreign couples. It is submitted that this was a result of lack of understanding on the part of SARA and ARC about their role which had to be played by them in the process of adoption. It is submitted that number of Indian as well as Foreign Couples expressed their anguish and displeasure on account of the attitude of SARA and ARC.

11. The learned Counsel appearing on behalf of Respondent No.3 - Central Adoption Resource Authority (CARA) submitted that three affidavits have been filed by Respondent No.3. The first affidavit dated 8/10/2013 is filed in response to the affidavit filed by Respondent No.2 - State Adoption Resource Agency (SARA). The second

additional affidavit of the same date is filed in response to the affidavit filed by Respondent No.4 - Adoption Recommendation Committee (ARC) and a third additional affidavit also of the same date is filed in response to the affidavit filed by Respondent No.2 - SARA. In these three affidavits filed by Central Nodal Agency viz CARA it is contended that the Adoption Recommendation Committee (ARC) or the State Adoption Resource Agency (SARA) has failed to comply with para 31(11) of the said Guidelines to expeditiously carry out their assigned responsibilities as provided in the Guidelines. It is further stated that queries raised by ARC are not in accordance with Schedule-X, except the document sought at point 'd.' It is further stated that rejection letters from Indian adoptive parents within country are not required under the Guidelines. It is further stated that requirements under para 3(b) and 8(1) of the Guidelines have been complied with in the proposal for the adoption of the child by Mr. Rajkumar Mysore and Ms. Rachel Mathew since the child has been shown to three Indian families living in India. It is further stated that the proposed adoptive parents are Overseas Citizens of India who share same cultural, racial, linguistic similarities as that of the proposed adoptive child.

12. We have heard the learned Counsel appearing on behalf of the Petitioners as well as the learned Counsel appearing

on behalf of Respondents and the learned Counsel for the Interveners.

13. Before we advert to the rival submissions, it would be necessary to give a brief background about the development of law of adoption. The Apex Court in the case of *Lakshmi Kant Pandey* (supra) took cognizance of the complaint made by the Petitioner in the said case, who had informed the Apex Court that no procedure was laid down in respect of the children who were to be given in adoption and, secondly, the existing Act viz Guardians and Wards Act, 1890 did not have sufficient provisions to ensure the welfare of the children who were given in adoption. The Apex Court in the said landmark judgment, for the first time, laid down the guidelines which were to be followed by various agencies in order to ensure that proper care was exercised before giving the child either in in-country adoption or inter-country adoption. Thereafter, Hague Convention on Inter-country Adoption was signed on 09/01/2003 and ratified on 06/06/2003 and it came into force with effect from 01/10/2003 in India. The Hague Convention envisages compliance of international obligation in terms of protection of children, best interests of the child, inter-country adoption and further observes that inter-country adoption shall be subsidiary to domestic adoption, prevention of financial or other gain in the process of inter-country adoption and cooperation (multilateral & bilateral).

Prior to the adoption of Hague Convention Treaty, the existing Act was changed and the Juvenile Justice (Care and Protection of Children) Act, 2000 was passed and Rules were framed. After sometime, it was realized that the Rules were not adequate and did not envisage various situations which would arise in the process of adoption and, therefore, the Guidelines of 2006 were framed. In these Guidelines also it was noticed that there were some grey areas and there was a lack of clarity on certain aspects and, therefore, new Guidelines were brought into force dated 24/06/2011. These Guidelines were framed in pursuance of the powers given by sub-section (3) of section 41 of the said Act, 2000 and it was expressly stated that they were in supersession of the Guidelines for in-country Adoption, 2004 and the Guidelines for Adoption from India, 2006. These Guidelines have a statutory force of law in view of the judgment of the Apex Court in the case of *Lakshmi Kant Pandey* (supra) and, secondly, since they have been framed in pursuance of the power given by sub-section (3) of section 41 of the said Act, 2000. These Guidelines therefore are in addition to the provisions of the Act and Rules and have statutory force. Perusal of the Guidelines indicates the time frame and the time schedule which has to be adhered to for completion of the adoption process. The scope of power to be exercised by CARA which is the Central Nodal Agency, SARA which is the State Agency and ARC which issues Recommendation

Certificate has been enumerated. Perusal of these Guidelines clearly indicate that SARA and ARC play a secondary role and the primary Nodal agency in respect of inter-country adoption is CARA in whose supervision SARA and ARC are supposed to function.

14. It will be necessary to briefly take into consideration the Guidelines governing adoption of children which have come into force with effect from 24/06/2011. The said Guidelines have been framed by the Central Adoption Resource Authority (CARA) to provide for the regulation of adoption of orphan, abandoned or surrendered children. Since these Guidelines have been framed pursuant to the provisions of sub-section (3) of Section 41 of the said Act, 2000 and judgment of the Apex Court in L.K. Pandey vs. Union of India in WP No.1171 of 1982, the UN Convention on the Rights of the Child, 1989 and the Hague Convention on Protection of Children and Cooperation in respect of Inter-country Adoption, 1993, the said Guidelines have statutory force.

In Chapter-I, of the said Guidelines, various terms have been defined in Rule 2. Rule 2(e) defines "AFAA" or "Authorised Foreign Adoption Agency" which is a Foreign Social or Child Welfare Agency that is authorized by CARA for sponsoring the application of Prospective NRI or OCI or PIO or Foreign Adoptive Parents for Adoption of an Indian child.

Rule 2(f) defines "ARC" which means Adoption Recommendation Committee constituted by the State Government. Rule 2(h) defines "CARA" which means the Central Adoption Resource Authority. Rule 2(aa) defines the term Recognised Indian Placement Agency (RIPA) which is an Agency recognized by CARA for placing children in Inter-country adoption. Rule 2(zb) defines "SAA" and it means the Specialised Adoption Agency which includes Recognised Indian Placement Agency (RIPA) and Licensed Adoption Placement Agency (LAPA). Rule 2(zc) defines "SARA" which means State Adoption Resource Agency.

Rule 3 of the said Guidelines lays down fundamental principles governing adoption which reads as under:-

"3. Fundamental principles governing adoption. - The following fundamental principles shall govern adoptions of children from India, namely:-

- (a) the child's best interest shall be of prime importance while deciding any placement;
- (b) preference shall be given to place the child in adoption within the country;
- (c) adoption of children shall be guided by set procedures and in a time bound manner;
- (d) no one shall derive any gain, whether

financial or otherwise, through adoption.”

Rule 7 lays down the procedure for adoption which provides that Prospective Adoptive Parents (PAPs) should register themselves with Government Recognized Adoption Agency. In respect of foreign adoption, PAPs residing abroad can adopt children through CARA and an authorised Agency known as AFAA. After registration, PAPs have to follow the adoption procedure as provided in the said Guidelines as per the details given in CARA's Website.

Rule 8(5) prescribes priorities for rehabilitation of a child and it is mentioned that preference has to be given for placing a child in in-country adoption and the ratio of in-country adoption to inter-country adoption shall be 80:20 of total adoptions processed annually by a RIPA, excluding special needs children.

Rule 8(6) mentions the order of priority which is to be followed in cases of inter-country adoptions, which is as under:-

- (i) Non Resident Indian (NRI)
- (ii) Overseas Citizen of India (OCI)
- (iii) Persons of Indian Origin (PIO)
- (iv) Foreign Nationals

Chapter II of the said Guidelines lays down the process that has to be followed before adoption. Chapter 3 lays down the guidelines regarding adoption process.

Rule 17 reads as under:-

“17. Adoption authorities and agencies for in-country Adoption. - The authorities or agencies involved in in-country adoption process shall be-

- (a) The Court of Competent Jurisdiction who can pass Order for Adoption;
- (b) Central Adoption Resource Authority (CARA)
- (c) State Adoption Resource Agency (SARA) or Adoption Coordinating Agency (ACA) and
- (d) Specialised Adoption Agency (SAA).”

Rule 20 lays down the procedure which has to be followed in respect of Home Study and other requirements. Sub-rule 2 of Rule 20 states that Home Study of the PAP(s) shall be conducted within a maximum period of two months from the date of acceptance of registration. Rule 21 speaks

about Referral and Acceptance. Rule 26 prescribes the procedure for Inter-country Adoption as per the Hague Convention on Inter-country Adoption and prescribes the authorities and agencies involved in Inter-country adoption process. Rule 29 speaks about identification of RIPA by CARA and sub-rule (7) of Rule 29 in terms states that the RIPA shall not entertain any application received directly from any AFAA or CA or PAPs from out of India, for adoption of an Indian child. Rule 31 speaks about power of the State Government to constitute a Committee to be known as the Adoption Recommendation Committee (ARC) to scrutinize and issue a Recommendation Certificate for placement of a child in inter-country adoption.

Rule 31(11) and 31(12) are relevant. The said Rules read as under:-

“31(11) The SARA or ACA, as the case may be, shall ensure that the Recommendation Certificate is issued expeditiously within a period of 15 days from date of receipt of the dossier.

31(12) In case of special needs child, the SARA or the ACA, as the case may be should issue the Recommendation Certificate within a period of 15 days from date of receipt of the dossier.”

From the above two Rules, it is clear that SARA or ARC have to issue Recommendation Certificate within a period of 15 days from the receipt of dossier and in case of a special needs child, it has to be issued within 5 days.

Rule 31(15) prescribes that ARC should satisfy itself about the suitability of the PAPs vis-a-vis the child proposed for adoption. Rule 31(16) states that the Committee shall also verify the documents filed by the RIPA and ensure that procedures have been correctly followed by the RIPA. Rule 31(17) lays down that in case, at any stage, SARA or ACA or ARC is not satisfied with the documents produced for obtaining recommendation certificate, it shall conduct appropriate investigation before disposing of the matter.

Rule 32(4) speaks about issuance of No Objection Certificate by CARA.

Chapter IV of the said Guidelines speaks about post adoption process. Chapter V speaks about Recognition and Authorization. Chapter VI speaks about Role and Functions of Authorities. Rule 77 in terms states that CARA shall function as a nodal body on adoption matters in the country and it has to perform the functions which are mentioned in the said Rule. Relevant functions are mentioned in clauses

(a), (b) and (c) of the said Rule 77. The role of State Adoption Resource Agency (SARA) has been laid down in Rule 80. Rule 80(1), reads as under:-

“80(1) For the proper implementation of these Guidelines every State Government is required to set up the State Adoption Resource Agency (SARA) to act as a nodal body within the State to coordinate, monitor and develop the work of adoption and non-institutional care in coordination with CARA

(Emphasis supplied)

Rule 80(2)(d), (g) & (n) read as under:-

“(80)(2) The State Adoption Resource Agency shall perform the following functions:-

(a).....to (c).....

(d) promote and regulate in-country and inter-country adoptions in coordination with CARA.

(e).....

(f).....

(g) facilitate inter-country adoption of children in Specialised Adoption Agencies for

whom in-country adoption efforts have failed in accordance with these Guidelines and to ensure their early deinstitutionalisation;

(h)..... to (m).....

(n) carry out inspections of Specialised Adoption Agencies at least once a year and carry out verifications as stipulated for the inspection team in these Guidelines.

(o)..... to (w).....”

Rule 98 of the said Guidelines speaks about the role of Authorized Foreign Adoption Agency (AFAA). Rule 107 lays down the administration expenses which are to be incurred by PAPs in the process of adoption. Rule 107 reads as under:-

“107. Adoption Expenses. - The PAPs are required to bear following administration expenses in the process of adoption.-

(a) the registration expenses for PAPs for in-country adoption, is Rs 1,000. In addition to it, they shall be required to pay Rs 5000 for the Home Study Report and post adoption follow-up services.

(b) the PAPs shall be required to contribute towards the Child Care Corpus (CCC), maintained by the agency from where they are adopting the child. This amount shall also cover all expenses incurred to finalize the adoption. However, the adoption agency may decide to waive off or reduce this amount in exceptional cases. The amount to be contributed by PAPs is as under:-

(i) Amount to be contributed towards CCC in case of in-country adoptions : Rs 40,000/-

(ii) Amount to be contributed towards CCC in case of Inter-country adoptions : US \$ 5000/-

(c) The modalities for payment of the amounts is mentioned in Schedule-XVI attached to the Guidelines.

(d) The PAPs or adoptive parents shall not contribute more than the amount specified in this paragraph and shall also not make any donation, whether in kind or cash to the agency from where they propose to adopt or have adopted a child.”

Lastly Rule 108 of the said Guidelines speaks about Relaxation and Interpretation of the Guidelines. Rule 108 reads as under:-

“108. Relaxation and Interpretation of the Guidelines.- (1) These Guidelines are issued having regard to the provisions of the existing law and for the interpretation, the relevant law should be referred to.

(2) In case of ambiguity or any dispute, the power to interpret these Guidelines vests with CARA.

(3) The power to relax any provision of these Guidelines in respect of a case or class or classes or category of cases vests with CARA.

Provided that no relaxation or dispensation shall be given by CARA without recording appropriate reasons for the same.”

Rule 107, therefore, in terms speaks about the amounts which have to be contributed towards the Child Care Corpus in respect of in-country adoption which is Rs 40,000/- and amounts to be contributed towards the Child Care Corpus which is US \$ 5000/-. Thereafter, Schedules have been given

in which further detailed procedure which has to be followed and the Registers that have to be maintained has been stated.

So far as the Adoption Recommendation Committee is concerned, its role and functions are referred to in Rule 31(1) which is to scrutinize and issue a Recommendation Certificate for placement of a child in inter-country adoption. Rule 31(9) states that the SARA shall receive the dossiers of cases for inter-country adoptions from the RIPA and put up the same before the ARC for issue of Recommendation Certificate. Rule 31(11) speaks about the Recommendation Certificate to be expeditiously issued within a period of 15 days from the date of receipt of the dossier and Rule 31(12) speaks about the Recommendation Certificate to be given within 5 days in case of a special needs child. Rule 31(14) mentions that in case of siblings and older children, ARC has to ensure that there is no waiting Indian PAPs within the region for such child or children. Rule 31(15) speaks about suitability of the PAPs vis-a-vis the child proposed for adoption. Rule 31(16) speaks about verification of the documents filed by the RIPA and ensure that procedures have been correctly followed by the RIPA. Rule 31(18) speaks about issuance of Recommendation Certificate and Guideline 102 states that each dossier for in-country adoption should be scrutinized before issuing the

Recommendation Certificate.

15. From the above Guidelines, it is clear that comprehensive Guidelines have been issued and earlier Guidelines of 2004 and 2006 have been repealed and care has been taken to ensure that the said Guidelines are in conformity with the Hague Convention and also as per the law laid down by the Apex Court in Lakshmi Kant Pandey's case (supra).

16. In the Guidelines, the role and functions of each Agency viz CARA, SARA and other Agencies have been clearly defined. However, from the facts which have come on record, it appears that there is some conflict between SARA, ARC on the one side and CARA on the other. It has to be noted that CARA is ultimately a Central Nodal Adoption Agency particularly in case of inter-country adoptions and both, SARA & ARC have to work in coordination with CARA. The ultimate authority to issue No Objection Certificate is given to CARA and the ARC is only supposed to scrutinize the various applications in order to ensure that procedure is properly followed.

17. From the three affidavits which have been filed in the present case by CARA, it can be seen that though various letters written from time to time by CARA authorities, neither

SARA nor ARC have even bothered to give reply to these letters and have been functioning as if it is a sole authority within the State which is competent to grant the final permission to give children in adoption. It is possible that SARA and ARC authorities may have acted with good intention of ensuring that priorities of in-country and inter-country adoptions which have been laid down in the Rules have been properly followed. However, that does not give these authorities a power to stall the process of adoption and cause unreasonable delay in completion of the adoption process. The purpose behind laying down these Guidelines is to ensure that process of adoption is completed expeditiously and that all these authorities have to ensure and keep in mind welfare of the child. Long term traumatic effects on the child which is brought up in Institutions are quite well known and, therefore, it is necessary to ensure that when the child is brought to the shelter home, it should be given in adoption as quickly as possible. This can be seen from time limit and time frame which is prescribed under the Rules. The ARC is expected to give Recommendation Certificate within 15 days and within 5 days in respect of the children requiring special care. It is not laid down under the Guidelines as to how long the RIPA or Specialized Agency has to wait after in-country PAPs refused to take the child in adoption and then refer it for inter-country adoption. Therefore, there has to be a proper coordination between

SARA and CARA. It has to be noted that CARA is a nodal Agency which refers foreign couple in order of priority referred to in the Rules and only then RIPA can show the child to the foreign couple. In the present case, the contention of the learned Counsel appearing on behalf of the Petitioners that no efforts were made by Respondent No.1 for giving the child in adoption to Indian parents is without any substance. In the affidavit-in-reply filed by Respondent No.1, they have mentioned that the child was shown to three Indian parents before it was shown to the foreign couple. It is distressing to note that after the foreign couple showed their acceptance to adopt the child, in spite of that SARA and ARC Respondent Nos. 2 and 4 respectively had insisted that Respondent No.1 should show the child and other two girls to Indian parents on the same day. This act on the part of SARA and ARC is clearly contrary to the Guidelines and such directions should not be given to RIPA and Specialized Adoption Agencies in future. There is always an inherent danger of all the parents accepting the child simultaneously if they are shown on the same day and same time. Though SARA and ARC have been authorized to scrutinize the documents, they do not have an authority to unnecessarily delay the process of adoption. In the present case, though more than six months have passed, no Recommendation Certificate was issued by the ARC and no explanation has been given by ARC why this could not be done. We,

therefore, direct the ARC to scrupulously adhere to the time frame mentioned in the Guidelines and if certain additional documents are called and if it feels that recommendation cannot be given then it should record its reasons for doing so. Large number of complaints have been received by CARA from both, in-country PAPs and also from foreign couples expressing their displeasure over the role played by ARC and by SARA. We hope and expect that, in future, no such complaints are received and process of adoption is not delayed.

18. In the present case, we are sorry to observe that there appears to be a conflict between SARA, ARC on the one hand and the CARA and RIPA on the other hand and this has resulted in creating bottle-neck in the process of adoption. It is possible that SARA and ARC bonafidedly believed that they have power and jurisdiction over CARA Authorities which, unfortunately, is a misconceived perception and have thwarted the smooth functioning of inter-country adoption. Numerous e-mails which have been sent to CARA by dissatisfied parents clearly indicate that both in-country and inter-country parents have shown their immense displeasure over the attitude of ARC and SARA. All the parents have been unanimous that ARC and SARA have acted as stumbling block in this process and have refused to cooperate with the CARA and have not given Recommendatory Letter which

they are supposed to give within 15 days. These complaints indicate that ARC and SARA have been asking them to comply with various formalities which are not supposed to be complied by them under the new Guidelines and ARC and SARA have no authority in law to demand this information from the parents. We, therefore, propose to lay down the Guidelines after we deal with the submissions made by the learned Counsel appearing on behalf of the Petitioner and Respondent No.1.

19. In our view, there is no substance in the submissions made by the learned Counsel appearing on behalf of the Petitioners. The documents on record clearly establish that Overseas Indian Couple had already approved the child in May 2013. The child having been approved by them, there was no question of showing this child again to Indian parents. However, SARA and ARC had directed Respondent No.1 to show three children to Indian Couple simultaneously, which is contrary to the Guidelines of 2011. Even when this child was shown to the Petitioners, they were informed that the child had been already approved by the foreign couple and, therefore, without prejudice to the rights of the Couple which had approved the child, the child was being shown on account of insistence of SARA and ARC. Petitioners have in terms signed the documents, accepting this position. During the course of arguments, initially, it was urged that the said

signature was taken in duress since the Petitioners had no other option but to sign the said letter. However, Respondent No.1 has produced on record e-mail records which indicate that this fact was made known to the Petitioners and they had, in terms, accepted this fact which is evident from the contents of the said e-mail letter. The submission made by the learned Counsel appearing on behalf of Respondent No.1, therefore, has to be accepted that SARA and ARC were unnecessarily meddling with the process of adoption and had acted arbitrarily and their conduct was in clear violation of the Guidelines which had been laid down in 2011.

20. In our view once the child had been shown to Overseas Indians and approved by them on 25/05/2013, the child could not have been shown to the Petitioners or to other Indian parents and, therefore, the Petitioners cannot claim any right or priority to get the child in adoption merely because they are Indian parents and that preference should be given to Indian parents over Overseas Indians or foreign couples.

21. The learned Counsel appearing on behalf of the Petitioners has vehemently argued that Respondent No.1 had acted with malafide intention to earn more money by giving children in adoption to foreign couples rather than Indian Couples on account of disparity of the amount received by

them from Indian parents and foreign couples. It is also urged that 80:20 ratio has not been followed in respect of in-country and inter-country adoption. It is also urged that combined age of the foreign couple was more than 90 years. Several allegations have been made against Respondent No.1 and 2.

22. We are satisfied that the procedure which is required to be followed by AFAA, CARA and referral by CARA to Respondent No.1 has been scrupulously followed and there is absolutely no infirmity in the said procedure and the present Petition appears to have been filed on account of misconceived notions and on account of suspicion rather than concrete material against Respondent No.1. The material on record indicates that the ratio of 80:20 has been scrupulously followed by Respondent No.1 and 2. The combined age of Overseas Parents on the date of the reference that is in March 2010 was 90 years and on account of No Objection Certificate given by CARA, assuming that as of today age of the said Couple is slightly above 90 years, the said increase in age has been relaxed by CARA on account of the power vested in it to grant relaxation of condition under Rule 108. So far as payment received by Respondent No.1 and other adoption agencies are concerned, these fees have been fixed by Guidelines themselves and that is on account of expenditure involved in

in-country and inter-country adoptions. It, therefore, cannot be said that Respondent No.1, at least in this case, on account of financial gain had given the child Isha in adoption to the Interveners - Mysore Family.

23. We express our displeasure over the manner in which the SARA and ARC have functioned in the present case. Till today, ARC has not given a Letter of Recommendation which has to be given within 15 days and even though more than 6 months have passed the said Letter has not been given. In the peculiar facts and circumstances of the present case, therefore, in our view, it will be deemed that such permission has been granted by ARC. In any case, we direct the ARC to issue a Letter of Recommendation within two weeks from today.

24. In our view, there is no substance in the submissions made by the learned Counsel appearing on behalf of the Petitioners.

25. Petition is dismissed.

26. We direct the CARA to comply with the formalities of adoption within six weeks from today in favour of the Interveners - Mysore Family. We are of the view, however, that Petitioners should not be deprived of getting the child in

adoption and we, therefore, direct Respondent No.1 and Interveners - Federation of Adoption Agencies in Civil Application No.2582 of 2013 and CARA to ensure that within six weeks, the Petitioners are shown another child. We direct SARA and ARC to issue Recommendatory Letter on the basis of Home Study Report in favour of the Petitioner. Respondent No.1 or any other Agency through whom the new child is shown to the Petitioners should also complete the Home Study Report within the stipulated period as prescribed under the Rules.

27. Though the main issue involved in the Petition is disposed of, we would like to keep this Petition pending in order to see the compliance of the directions given by this Court to Respondent No.1, CARA, SARA and ARC, firstly in respect of giving the child Isha in adoption to Mysore Family and, secondly, to ensure that the Petitioners also get the child in adoption expeditiously.

28. We propose to lay down the following guidelines for in-country and inter-country adoptions:-

- (i)** All the concerned Agencies viz RIPA, Specialized Adoption Agencies, SARA, ARC, AFAA to scrupulously follow the Guidelines which have been laid down in 2011.

(ii) RIPA and the Specialized Adoption Agencies are directed to complete the Home Study report within a stipulated time as prescribed under the Rules and the ratio of 80:20 should be adhered to and preference should be given to Indian parents first and if the Indian parents decline to accept the child in adoption only thereafter the child may be shown to foreign parents.

(iii) Though there is no specific number mentioned in the Guidelines as to the number of Indian parents to whom the child should be shown, we are of the view that within a period of 3/4 weeks, the child should be shown to as many Indian parents as possible and, secondly, at a time, the child should be shown only to one parent and not multiple number of parents as has been done in the present case.

(iv) Only if the child is not accepted by Indian parents and the Adoption Agencies on account of their experience come to the

conclusion that the child is not likely to be taken in adoption by Indian parents then, in that case, it should be shown to foreign parents.

(v) When the child is shown to the foreign parents, it should be shown in the list of priorities which are mentioned in the said Guidelines viz. Initially it should be shown to NRI then Overseas Indian Parents etc and only thereafter to foreigners.

(vi) ARC should give Recommendatory Letter within five days in respect of the children with special needs and within 15 days in respect of other children. This should be strictly adhered to. Non-compliance of the said Guideline should be strictly viewed and action if necessary may be taken against the concerned Authorities, ARC or SARA who do not follow the said Schedule. ARC and SARA should work not in conflict but in coordination with CARA, it being the Centralized Nodal Agency.

These are some of the further Guidelines which are laid down

by us and which are in consonance with the Rules of 2011.

29. With these directions Petition is disposed. Civil Application No.2582 of 2013 is also disposed of.

30. Matter be placed on board for directions on 18th November, 2013 for compliance of the directions.

(S.C. GUPTE, J.)

(V.M. KANADE, J.)

This print replica of the raw text of the judgment is as appearing on court website (authoritative source)

Publisher has only added the Page para for convenience in referencing.