

ITEM NO.26

COURT NO.1

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s)(Civil) No(s). 1003/2021

THE TEMPLE OF HEALING

Petitioner(s)

VERSUS

UNION OF INDIA

Respondent(s)

(IA No. 165054/2022 - APPLICATION FOR TAKING ON RECORD IA No.145142/2022 - APPLICATION FOR TAKING ON RECORD IA No. 21515/2023 - APPROPRIATE ORDERS/DIRECTIONS IA No. 168933/2022 - INTERVENTION APPLICATION IA No. 137333/2022 - INTERVENTION/IMPLEADMENT IA No.111814/2021 - PERMISSION TO APPEAR AND ARGUE IN PERSON IA No.18396/2023 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

WITH

W.P.(C) No. 719/2022 (PIL-W)

Date : 20-11-2023 These matters were called on for hearing today.

CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE MANOJ MISRA

For Petitioner(s) Mr. Rohan Shah, Adv.
Mr. Alok Yadav, Adv.
Mr. Vishnu Kant, AOR

Petitioner-in-person

For Respondent(s) Mr. Tushar Mehta, SG (NP)
Ms. Aishwarya Bhati, A.S.G.
Mr. Gurmeet Singh Makker, AOR
Ms. Swati Ghildiyal, Adv.
Mr. Navanjay Mahapatra, Adv.
Mr. Padmesh Mishra, Adv.
Ms. Swarupama Chaturvedi, Adv.
Mr. Yuvraj Sharma, Adv.

Ms. Chitragda Rashtravara, Adv.
Mr. Kanu Agrawal, Adv.
Mr. Arkaj Kumar, Adv.
Mr. Pratyush Srivastav, Adv.
Mr. Rajat Nair, Adv.

Ms. Saroj Tripathi, AOR
Mr. Naveen Kumar Tripathi, Adv.
Mr. Abhishek Kumar Singh, Adv.

Mr. Abdul Azeem Kalebudde, AOR
Mr. Ray Vikram Nath, Adv.

**UPON hearing the counsel the Court made the following
O R D E R**

- 1 During the course of the deliberations before this Court, we have had the assistance of Ms Aishwarya Bhati, Additional Solicitor General. Dr Jagannath Pati, Director, Central Adoption and Research Agency (CARA) is also present in the Court. Besides filing an affidavit dealing with the issue of adoption under the Juvenile Justice Act, CARA has placed certain suggestions for the consideration of the Court.
- 2 Among others, we have also heard Dr Piyush Saxena, who appears in person, Mr Rohan Shah, counsel appearing on behalf of the Petitioner, Ms Saroj Tripathi, and Mr Abdul Azeem Lakebudde, counsel appearing on behalf of the respondents
- 3 In terms of the mandate of the Juvenile Justice Act 2015 and CARA Regulations 2022, cases involving adoption relate to children who are either orphaned, abandoned or surrendered (OAS). CARA has developed, in conjunction with the National Informatics Centre, the Child Adoption Resource Information and

Guidance System (abbreviated by the acronym “CARINGS”). The platform which was initially designed in 2015 and updated in 2022 seeks to ensure that adoptions under the Juvenile Justice Act are brought under an online platform.

- 4 The statistics which have been placed before the Court provide a stark tale in themselves. Between 2013 and 2023, the annual figure of total adoptions, both in-country and inter-country, ranges between 3,158 on the lower end of the spectrum (2022-2023) to 4,362 (2014-2015). As on 1 August 2023, the CARINGS portal has registered 33,967 Prospective Adoptive Parents (PAPs). The number of children who are registered on the portal as on 1 August 2023 is 7,107 comprising of 5,656 children without any special needs and 1,451 special needs children. As on 1 August 2023, only a total of 2,118 children have been considered to be “legally free for adoption”.
- 5 CARA has provided a statewise break up of the total number of children available for adoption as on 28 October 2023 which indicates that 2,146 children were available for adoption. As opposed to this, about 30,669 PAPs have been registered for in-country adoption as in October 2023. CARA’s note before this Court indicates that generally, PAPs have to wait for between three to four years for getting “a healthy and young child” due to the huge mismatch in the number of registered PAPs and children available for adoption.
- 6 On 28 September 2022, the Union Ministry of Women and Child Development published the Adoption Regulations, 2022. The Adoption Regulations contain in Chapter II, the procedure relating to children for adoption. The procedure involves the association of several expert agencies including the State Adoption

Regulatory Authorities (SARAs), Specialised Adoption Agencies (SAAs) and District Child Protection Units (DCPUs).

- 7 The Regulations contain specific timelines for processing such cases. Schedule XIV of the Regulations specifies the timeline for all authorities and agencies concerned. The tabular statement in paragraph A of Schedule XIV which enunciates the timelines for the processes relating to the children is extracted below :

SCHEDULE XIV
[See regulation 46 and 50]
TIMELINE FOR AUTHORITIES AND AGENCIES CONCERNED

A. Timeline for the processes relating to children:

S.No.	Regulations	Action	Time
1.	6(2)	Child Care Institution or Specialised Adoption Agency to produce an abandoned child before the Child Welfare Committee along with a report containing their photograph and particulars.	Within twenty four hours (excluding journey period).
2.	6(5) and 7(10)	Specialised Adoption Agency to enter the details of the child along with their photograph online on the Designated Portal.	Within three days from the time of receiving the child.
3.	6(7)	District Child Protection Unit to advertise the particulars and photograph of an abandoned child in a national level newspaper having wide circulation, local cable networks, wherever existing and also ensure entry of data in the Track Child portal or <i>KhoyaPaya</i> .	Within three days from the time of receiving the child.
4.	6(9)	District Child Protection Unit to submit a report to the Child Welfare Committee on the efforts made by it for tracing out the biological parents or legal guardian of an	Within thirty days from the date of production of the child before the Child Welfare Committee for the same.

		abandoned child, including the outcome of the advertisement.	
5.	6(10)	Specialised Adoption Agency or Child Care Institution to submit a report to the Child Welfare Committee about any information revealed by the child during their short term placement and details of persons whosoever approached for claiming the child, if any.	Immediately after thirty days from the date of production of the child before the Child Welfare Committee.
6.	6(13)	Declaring the orphan or abandoned Child legally free for adoption by Child welfare Committee.	Within a period of three days after the expiry of two or four months, from the date of production of the child before the Child Welfare Committee, in case of a child upto two or above two years of age respectively.
8	6(15),7(18),30(1) (e)(f),and 38(2)	Specialised Adoption Agency to upload the Child Study Report and Medical Examination Report along with latest photograph of the child.	Within ten days from the date of declaration of the child as legally free for adoption by Child Welfare Committee.
9	7(3)	Signing of surrender deed by the biological parents	On the day of production of the child.
10	7(10)	Details of the surrendered child or children to be uploaded on the Designated Portal by the Specialised Adoption Agency.	Within three days from the time of receiving the child.
11	7(11) and 7(16)	The reconsideration period or reclaiming of the surrendered child by the biological parent or legal guardian.	Sixty days of the date of surrender.
12	30(1)(d)	Specialised Adoption Agency shall upload the certificate, issued by the Child Welfare Committee, declaring the child legally free for adoption on the Designated Portal.	Within forty-eight hours from the receipt of such certificate.
13	36(8)	In cases of children having health issues or suspected special needs conditions, the District Magistrate shall refer the child to the Chief Medical Officer of the District.	Within twenty four hours as soon as information about such children is received from the Specialised Adoption Agency or Child Care Institution with the help of the District Child Protection Unit concerned.

14.	36(9) and 37	The Chief Medical Officer shall examine the health status of the child and assess whether the child is having any ailment or special needs.	Within a period of fifteen days from the date of receiving the case.
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- 8 Despite these timelines, it is apparent that as a result of the mismatch between the number of children legally available for adoption and PAPs who are registered on the portal, the process of adoption is interminably long. By CARA's official estimate, at least three to four years elapse in the process.
- 9 Apart from the above aspects, it has come to the knowledge of the Court during the course of the hearing that generally speaking, there is a preference for young children in the age group of up to two years. CARA's tabulation indicates that 69.4% of registered PAPs opt for children in the age group of 0 to 02 years; 10.3% in the age group of 02 to 04 years; and 14.8% in the age group of 04 to 06 years.
- 10 Sections 58 and 59 of the Juvenile Justice Act 2015, as amended in 2021, read with Regulations 11 and 16 of the Adoption Regulations 2022 lay down the procedure for child referral for PAPs. In terms of the referral procedure, a child with normal health status is referred to PAPs in terms of their preferences given at the time of registration and their current seniority. Preferences relating to age, gender and stage are factored in.
- 11 Based on the existing regime, certain suggestions have emerged during the course of the hearing. These suggestions can be broadly classified under five distinct heads :

- (i) The need to ensure expeditious identification of children falling in the OAS category;
- (ii) The need to revamp administrative infrastructure in the States, particularly, in the SAAs and DCPUs;
- (iii) The need to ensure that accountability in the maintenance of the timelines laid down for completing every process in the stage of adoption;
- (iv) The need to compile adequate data so as to channelise children who are placed in Foster Care (Children in need of care and protection) into the adoption process; and
- (v) The need to clarify that the process of adoption under the Hindu Adoption and Maintenance Act (HAMA) is independent of the process which has been stipulated under the Juvenile Justice Act 2015.

12 We proposed to take up each of these aspects for consideration separately.

1. Identification of children

13 We are in agreement with the suggestion which has been mooted on behalf of CARA that the Secretaries or in-charge of the nodal departments in the States for the administration of the Juvenile Justice Act 2015 - the nodal department being either the Social Justice Department or, as the case may be, the Women and Child Department for every State and Union Territory, must carry out an identification drive every two months to identify children in the OAS category in

the Child Care Institutions within their territories.

- 14 We accept these suggestions and issue a direction to the effect that such an exercise of identification shall be carried out on a bimonthly basis, the first of which shall be carried out by 7 December 2023.
- 15 In addition to the above direction, the nodal department in every State/Union Territory, in-charge of implementing the Juvenile Justice Act, 2015 shall collect and compile data which shall be made available to the Secretary in the Union Ministry of Women and Child Development and to the Director CARA on or before 31 January 2024. This data shall be along the following lines :
- (a) To identify and compile data on potential children for adoption- especially amongst those who are languishing in Child Care Institutions (CCIs) and those not reaching CCIs.
 - (b) Compilation of data on registration of all OAS children of the district on CARINGS and monitoring of CWCs for timely determination of legal status of children. It is imperative for the States to ensure registration of all OAS children in the district on the CARINGS portal. States are required to nominate an officer of a sufficiently senior level to monitor this exercise. It has been observed while examining the data on CARINGS as well as visits conducted from time to time by CARA that the process of defining the legal status of children is delayed on the part of CWCs. The pending cases with CWCs beyond stipulated time limit for declaring a child legally free for adoption (LFA) is also one of the major concerns. There are a total number

of 761 cases in all States/UTs which are pending with CWCs for more than four months for declaring LFA children. CWCs are required to expedite the legal status of all orphans, abandoned and surrendered children irrespective of their age. Older children can be benefited by the foster care adoption module being operationalized by CARA. The necessary data on pending applications for LFA children also needs to be compiled.

- (c) A direction is issued for compilation of the relevant data on whether or not compliance of Rule 17 (1)(l)(v) and Rule 20(2) of JJ Model Rules 2016 (as amended 2022) by District Magistrates/Additional District Magistrates for quarterly monitoring of CWCs is being followed along with compliance of Rule 17 (1)(v) and Rule 20(2) of JJ Model Rules 2016 (as amended in 2022) by District Magistrates/Additional District Magistrates for quarterly monitoring of CWCs - which will help to decrease the pendency of cases at the level of CWCs. States/UTs need to take up timely publications in cases of orphan/abandoned children before declaring those children legally free for adoption and conduct a comprehensive assessment of the child protection needs in the district;
- (d) Collection and compilation of data on the vacant positions in different State Adoption Resource Agencies. A total number of 49 positions were found vacant out of 133 sanctioned positions in different State Adoption Resource Agencies (SARAs). Vacant posts in Child Protection Services at the State/UT level must be filled without delay and the role of OM in

monitoring institutions at district level also requires to be reinforced. Consequently, child protection service programmes may benefit from regular and effective district monitoring at the state level.

- (e) Collection and compilation of data on identification of children residing in CCIs (not visited by their parents for more than a year or with unfit parents) as well as potential children for adoption from the community - It is evident from the ongoing mapping exercise of children residing in CCIs, conducted by CARA that many children are living in CCIs for more than a year and their legal status is yet to be determined. All such children should be identified district wise in the category of 'unfit parents' or if their parents or guardians have not visited them in the last one year or more or vice-versa. The district functionaries should make collaborative efforts to bring more such children into the adoption pool. As mentioned in Rule 2 (14)(iv) and (v) of JJ Model Rules 2016 (as amended in 2022) the following category of children should be identified to bring them in the adoption pool- !. Children with no visitation:
- (i) All such cases where there is no visitation made by the child's parent, guardian or relative to meet the child in the last one year to be classified under this category
 - (ii) Children having Unfit Guardian- Unfit Guardian can be someone who is unable or unwilling for parenting, indulging in substance (drug) abuse, abuse or alcohol, known to have abused or neglected the child, having a criminal record, in need of care themselves, mentally

unsound etc. Children of all such parents may be classified under this category.

2. Filling infrastructural deficiencies

- 16 During the course of the hearing, it has emerged before this Court that out of 760 districts in the country, only 390 districts have SAAs. In other words, in 370 districts no SAA is functional.
- 17 Bearing in mind the above factual position, it is apparent that in the absence of SAAs, the process of adoption which has been envisaged in the Regulations of 2022, cannot be efficaciously completed. The SAAs have specific marked responsibilities which are provided in Regulation 30 of the Regulations of 2022. All States and Union Territories are peremptorily directed to ensure that within every district falling within their jurisdiction, SAAs as required by the Juvenile Justice Act 2015, shall be set up by 31 January 2024.
- 18 The Nodal Department in-charge of implementing the Juvenile Justice Act 2015, whether it is the State Department in-charge of Women and Child Development or, as the case may be, Social Justice and Welfare Development shall positively communicate compliance to the Director CARA and the Secretary, Ministry of Women and Child Development by 31 January 2024.
- 19 The above directions will also sub-serve the purpose of ensuring that the process of facilitating the identification of children who are residing in Child Care Institutions as well as potential children for adoption from the community is expedited.

- 20 As regards HAMA, during the course of hearing, both Ms Aishwarya Bhati, Additional Solicitor General and Dr Jagannath Pati, Director CARA have categorically stated before the Court that the process of adoption under HAMA is independent of the Regulations of 2022 which have been framed under the Juvenile Justice Act 2015. It has been stated that CARA intervenes only when an adoption certificate is required by the adoptive parents in order to facilitate the travel of the adopted child to a country outside India. CARA has stated in its note submitted to this Court that based on the fact that HAMA is a statute governing the personal law for Hindus, the Ministry of Women and Child Development has issued a notification on 17 September 2021 entrusting CARA with the duty of issuing documents for inter-country adoption concluded under HAMA wherein Non-Resident Indians/Overseas Citizens of India Card Holder parents desire to relocate the adopted child abroad. The note submitted before the Court also indicates that a central challenge is to ensure that HAMA adoptions align with international adoption conventions, such as the 1993 Hague Inter-country Adoption Convention. It has been stated that although CARA has been processing adoption cases of NRI/OCI PAPs, the receiving countries do not necessarily consider HAMA to be in conformity with the Hague Convention procedure. CARA has thus far issued adoption support letters to NRI/OCI PAPs in 66 cases since May 2022.
- 21 In order to provide to this Court adequate data on the number and extent of HAMA adoptions, we direct that all States and Union Territories shall compile and submit to the Director CARA, the annual data pertaining to HAMA adoptions for 2021, 2022 and 2023 within each of their respective territories as on 15 January

2024. This data shall be submitted to the Director CARA by 31 January 2024.

22 The data which has been directed to be submitted before this Court shall be compiled and placed on the record by 10 February 2024. CARA shall issue directions to all authorities governed by the Regulations of 2022 to ensure due observance of the timelines which are indicated so that the process of adoptions is streamlined and expedited. The updated statistics for the period ending 31 January 2024 along with an updated status report shall be placed on the record together with the compilation.

22 List the Writ Petitions on 12 February 2024.

(GULSHAN KUMAR ARORA)
AR-CUM-PS

(SAROJ KUMARI GAUR)
ASSISTANT REGISTRAR