

(2025) 04 BOM CK 0274
In the Bombay High Court
Case No : Writ Petition No. 3506 Of 2025

Bronson Barthol Dias And Anr

APPELLANT

Vs

Central Adoption Resource Authority And Ors

RESPONDENT

Date of Decision : 07-04-2025

Acts Referred:

Juvenile Justice (Care and Protection of Children) Act, 2015 — Section 56(1), 57, 58

Citation : (2025) 04 BOM CK 0274

Hon'ble Judges : G. S. Kulkarni, J; Advait M. Sethna, J

Bench : Division Bench

Advocate : Meenaz Kakalia, Gayatri Sathe, Mulla & Mulla, A.I. Patel, Y.R. Mishra, Upendra Lokegaonkar, Sachidanand T. Singh

Final Decision : Allowed

Judgement

G.S. Kulkarni, J

1. The petitioners are Prospective Adoptive Parents (PAP). They have two daughters born on 24 August 2014 and 20 June 2019 respectively. It is the petitioners case that these biological children suffer disability. The first daughter was diagnosed with Nystagmus a few months after her birth, followed by a cyst in her brain. She was operated for the removal of the cyst, but the damage in the process was permanent, which caused her visual impairment. So far as the younger daughter is concerned, it is stated that her case was falling into Global Developmental Delay as she suffers from (i) no eye contact, (ii) hearing impairment, (iii) syndromic facial features and (iv) delayed milestones. She has been issued Unique Disability ID under the provisions of the Persons with Disabilities Act, 2016.

2. It is in these circumstances, the petitioners on 10 September 2022 registered themselves as PAPs by registering on the Child Adoption Resource Information and Guidance System ("CARINGS") portal of respondent no.1 being an application to adopt a child. At the time when such application was made the

'Adoption Regulations 2017', were in force. The receipt of the said application was confirmed. Also the acknowledgment letter noted that the Adoption Regulation 2017 were to be applied. The petitioners have contended that the petitioners also uploaded requisite documents on 10 September 2022 and applied to the recognized Specialized Adoption Agency recognized by respondent no.1 for conducting the home study report.

3. It is the petitioners' case that during the pendency of their adoption a new regime under the Adoption Regulations 2022 (for short "the 2022 Regulations") was brought into force vide notification dated 23 September 2022. Such rules are now made applicable by respondent in deciding the adoption applications. Our attention is drawn to Regulation 5(7) of the 2022 Regulations which inter alia provide that couples with two or more children shall only be considered for special needs children as specified in clause (25) of regulation 2, and hard to place children as stated in clause (13) of regulation 2 unless they are relatives or step-children. It is the petitioners' contention that in fact the said rules ought not to have been applied to the petitioners' application, considering the peculiar facts of the petitioners case. Also for the reason that as the 2017 Regulations (supra) were to be applied to the petitioners' application as per the acknowledgement made on the petitioners' application. This more particularly, as Regulation 9(10) of the 2017 Regulations required that a Home Study Report ("HSR" for short) was to be complied within 30 days from date of uploading of the requisite documents, hence, except for the delay of the authorities, the adoption process was required to be completed without the application of the 2022 Regulations of which, the petitioners contend that the Steering Committee was well aware.

4. On the backdrop of the 2022 Regulations, respondent no.1 issued an office memorandum dated 21 March 2023 providing that PAPs already having two children will not be ineligible to adopt a normal child, effectively making the 2022 Regulation retrospectively applicable.

5. It is the petitioners contention that when the petitioners accessed their account on the designated portal of the respondents, a message was reflected, on the home page, which informed the petitioners of the rejection of the petitioners' application on the basis of the Office Memorandum dated 21 March 2023. The said communication reads thus:-

"Infot Congratulations! Your Home Study Report (HSR) has been approved and it has been decided to disallow the PAPs already having two children to adopt a normal child. Kindly see the office memorandum dat : 21-03-2023 uploaded in the CARA website."

6. It is thus clearly seen from the aforesaid rejection of the petitioners' application that the same has been rejected by applying the Office Memorandum dated 21 March 2023. It would be appropriate to note the contents of the said memorandum which read thus:-

"E103493 CARA-LP07/14/2022 Date 21.03.2023

OFFICE MEMORANDUM

As per Regulation 5(7) of the Adoption Regulations 2022, couples with two or more children shall only be considered for special needs children as specified in clause (25) of Regulation 2, and hard-to-place children as stated in clause (13) of Regulation 2 unless they are relatives or step-children.

The Steering Committee of the Authority in its 34th meeting held on 15 February 2023 has taken a decision in Agenda No. 34.06 to disallow the Prospective Adoptive Parents (PAPs) already having two children to adopt a normal child. However, such PAPs shall be eligible to reserve children available on the Immediate Placement or Special Needs portal.

While the decision is being executed, all registered Prospective Adoptive Parents (PAPs) may be informed by the SARAS/DCPUs/SAAAs and the CAS/IDMs/AFAAs about NOTA on the aforementioned issue.

(डॉ जगन्नाथ पति) (Dr. Jagannath Pati)

निदेशक (कार्यक्रम) Director (Programme)

Copy to:

- i. All State Adoption Resource Agencies (SARAS), District Child Protection Units (DCPUs) and Specialised Adoption Agencies (SAAS)
- ii. All Central Authorities (CAs), Indian Diplomatic Mission (IDMs) and Authorized Foreign Adoption Agencies (AFAAS)."

7. In the aforesaid circumstances, on 17 September 2024, the petitioners made an application to the Relaxation Committee of respondent no.1, which is empowered to grant exemptions, to any of the provisions of the 2022 Regulations. In their application, the petitioners requested respondent No.1 that an exception be made in the petitioners' case to the application of Regulation 5(7) of the 2022 Regulations. As there was no response on such application, and the petitioners' application was erroneously/ arbitrarily rejected by the impugned communication as noted hereinabove, the present petition is filed praying for the following substantive reliefs:-

"(a) That this Hon'ble Court be pleased to issue a Writ of Certiorari, or Writ, Order or Direction in the nature of Certiorari to quash and set aside the O.M. dated 21st March 2024 bearing no.E103493 CARA-LP07/14/2022 issued by the Respondent No.1 herein:

(b) That this Hon'ble Court be pleased to issue a Writ of Certiorari or Writ, Order or Direction in nature of Certiorari to quash and set aside the decision of Respondent No.1 to disallow the Petitioner's application for adoption on the basis of the O.M. dated 21st March 2023 bearing no.E103493 CARA-LP07/14/2022

issued by the Respondent No.1.

(c) That this Hon'ble Court be pleased to direct the Respondent No.1 to place the Petitioners on the waiting list for referral of a child and that their seniority be determined from the date on which their application was made on the Designated Portal of the Respondent No.1, i.e. 13th August 2022."

8. The learned counsel for the petitioners has made submissions drawing our attention to the averments as made in the petition, to which we have made a reference in the foregoing paragraphs, on the genuine need of the petitioners to have adoption of a child, over and above their two biological children. Our attention is also drawn to the 2022 Regulations which are sought to be applied in informing the petitioners that the petitioners' case would stand covered by the applicability of the Regulations 5(7) of the 2022 Regulations. To appreciate the applicability of the 2022 Regulations, we extract Regulations 2(13), 2(25) and Regulation 5(7) of the 2022 Regulations which read thus:-

"2(13) "Hard to place child" refers to a child who has not been placed in adoption after going through the procedure as mentioned below:

(a) a normal child under the age of five who has not been placed in adoption with a resident Indian or non-resident Indian or Overseas Citizen of India Card holder prospective adoptive parents within sixty days after referral;

(b) or a child over the age of five or siblings who has not been placed in adoption with a resident Indian or non-resident Indian or Overseas Citizen of India Card holder prospective adoptive parents within thirty days after referral;

(c) categories of children mentioned in clause (a) and (b) above, who have not been placed in adoption within the prescribed time limit shall further be shown to all the prospective adoptive parents referred to in clause (a) and (b) for another seven days period;

(d) after expiry of the stated time line in clause (c), the child shall be referred to foreign prospective adoptive parents for fifteen days;

(e) the child not placed in adoption after clause (a) to (d) above stipulated timeline shall be categorised as hard to place.

2(25) "special needs child" means a child who is suffering from any disability as provided in the Rights of Persons With Disabilities Act, 2016(49 of 2016)as given in Schedule XVIII and Schedule III (Part E) of these Regulations.

5. Eligibility criteria for prospective adoptive parents.? (1) The prospective adoptive parents shall be physically, mentally, emotionally and financially capable, they shall not have any life threatening medical condition and they should not have been convicted in criminal act of any nature or accused in any case of child rights violation.

(2)

(3)

(4)

(5)

(6)

(7) Couples with two or more children shall only be considered for special needs children as specified in clause (25) of regulation 2, and hard to place children as stated in clause (13) of regulation 2 unless they are relatives or step-children."

9. Learned counsel for the petitioners would submit that such decision of the respondents, needs to be interfered by this Court, for the reason that it does not take into consideration, the special circumstances of the petitioners' case, namely that both the biological daughters are "children with disability", hence, what the petitioners intend is to adopt a normal child. In such context, the learned counsel for the petitioner has drawn our attention to the provisions of Regulation 63 of the 2022 Regulations which provide for power to relax and interpretation. The said Regulation reads thus:-

"63. Power to relax and interpretation. - (1) The power of relaxation and grant exception to any provision of these regulations in respect of a case or class of cases shall be vested with the Relaxation Committee of the Authority.

(2) Relaxation Committee of the Authority shall be chaired by the chairperson of Steering Committee of the Authority and two members consisting of its Chief Executive Officer and a member of Steering Committee having experience in law as members.

(3) No decision of the Relaxation Committee of the Authority shall ordinarily have the effect of altering the seniority of any prospective adoptive parents unless reasons are recorded in writing and the primary consideration being the best interests of the child.

(4) In case of any ambiguity in interpretation of any of the provisions of these regulations, the decision of the Authority shall prevail."

10. It is therefore, the petitioners' case that it could not be that Regulation 5(7) of the 2022 Regulations is applied in by a straight jacket method and/or a mechanical computerized method, to reject the petitioners' application, without considering the specific case of the petitioner for the need to adopt a "normal child" which was certainly a legal right, as available to the petitioners prior to the 2022 Regulations namely under Adoption Regulations 2017 read with the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015.

11. On the other hand, Mr. Mishra, learned counsel for the respondent opposing the petition would place reliance on a decision of the learned Single Judge of the Delhi High Court in the case of Debarati Nandee vs. Tripti Gurha (2024) 307 DLT

422, to contend that the learned Single Judge has held that the application of the petitioners therein for adoption and was not entertained in view of the specific Regulations, albeit the case therein was of a simplicitor adoption of a third child falling under the regime of the 2022 Regulations. Hence, Mr. Mishra's contention is that the petition be not entertained which in fact would deserve to be dismissed applying 2022 Regulations.

12. Having heard the learned counsel for the parties and having perused the record, we are of the opinion that there is much substance in the contentions as urged on behalf of the learned counsel for the petitioners.

13. At the outset, we may observe that the impugned order simplicitor nay mechanically applies the provisions of Regulation 5(7) of the 2022 Regulations, merely on the basis that the petitioners have two biological children, hence, they are held to be permitted to adopt a third normal child, as clearly seen from the impugned rejection. The impugned order is not a reasoned order. In our opinion, what was imperative to be considered by respondent no.1 was that the petitioners' specific case which was certainly a special case, namely of these applicants with two children having admitted disabilities. Hence, the petitioners' application deserved a special consideration. It is not well founded that the petitioners case could be decided by mechanically applying the 2022 Regulations. Mr. Mishra does not submit that 2022 Regulations applied retrospectively. In any case, even if the 2022 Regulations are to be applied as rightly contended on behalf of the petitioners, the 2022 Regulations makes a provision in Regulation 63 to relax the application of the 2022 Regulations i.e., to consider some cases by not applying the 2022 Regulations. Thus, it was an obligation on the part of Respondent No.1 and its Steering Committee to be alive to such cases which invoked the legitimate applicability of Regulation 63. The intention behind Regulation 63 is to remove the lacuna in dealing with cases which have special circumstances or which warrant specific consideration or some relaxation of the Regulations, so as to make the procedure of adoption effective, on case to case basis. Such consideration of the petitioners' application with appropriate application of mind is certainly lacking in the impugned computer generated rejection reflected on the portal, in rejecting the petitioners' application.

14. Also in our opinion, it was certainly an obligation on the part of the concerned officers of respondent no.1 to provide appropriate reasons considering the application as made by the petitioners and on its merits. This should have been after granting the petitioners an opportunity of being heard, so that the petitioners could explain the specific case as contained in their application.

15. Even if the Petitioners' application was to be decided by applying the Office Memorandum dated 21 March 2023 (OM), it cannot be considered that the said OM in any manner, would bring about a regime contrary to the statutory Regulations, which was in force. A holistic application of the 2022 Regulations which encompasses applicability of Regulation 63 as invoked by the Petitioners was certainly necessary in the facts of the present case. This is exactly what had

not been done, in the impugned rejection of the petitioners' application. Even assuming that there was to be some parity and more particularly in Regulation 5(8) of the 2017 Regulations and Regulation 5(7) of the 2022 Regulations, nonetheless, by virtue of Regulation 63 of the 2022 Regulations PAPs having two disabled children, desiring to adopt a normal child could have been a subject matter of consideration in exercising powers under Regulation 63. Thus look from both angles namely on applicability of Regulation 5(8) of the 2017 Regulations and Regulation 5(7) of the 2022 Regulations, the petitioner's case warranted a different consideration. We may also observe that it can never be intention of the statutory mandate that a couple which already has disabled children could be barred from adopting a normal child. This would certainly be not a correct reading of the Regulations as also cannot be considered to be the correct applicability of what has been provided in office memorandum dated 21 March 2023. Also the 2022 Regulations are required to be read and applied so as to forward the object and intention of Sections 56(1), 57 read with Section 58 of the Juvenile Justice (Care and Protection of Children) Act, 2015. The impugned decision certainly does not take into consideration such legitimate application of law.

16. In so far as Mr. Mishra's reliance on the decision of the Delhi High Court in the case of Debarati Nandee (*supra*) is concerned, it is not well founded, as the facts of the said case were totally in variance and distinct with the case in hand. As noted hereinabove, it was simplicitor a case of the PAP having two natural biological children and the PAP, wanted to have a third child in adoption. It is in these circumstances, applying the provisions of Regulation 5(7) of the 2022 Regulations, such request was not entertained. In the facts of the present case, the rejection of the petitioners' application is not simplicitor on the applicability of strict parameters of Regulation 5(8) as it stood under 2017 Regulations or on a strict application of Regulation 5(8) of the 2022 Regulations, as clearly seen from the impugned rejection (as extracted hereinabove), but merely on the applicability of the Office Memorandum dated 21 March 2023. The said decision hence would not assist the respondents.

17. Before parting we may observe that human life itself is a mixed bag, which has aspirations, expectations and challenges. Feeling of happiness and fulfillment are some of the key factors in the successful journey of one's life. It is too personal and subjective, as to from what, individuals would derive happiness and fulfillment. This more particularly when they intend to overcome things, which engulf their mind on issues which deprive them of wholesome happiness, fulfillment and emotional satisfaction. It is in such sheds of human life, deep fulfilling relationship/bonds with children contribute to have a meaningful life so as to derive satisfaction in the expectations such individuals nurture. In our opinion it is in such complex and emotional mindset the parents of the children with disabilities naturally would have an intense dedication, desire and happiness to receive a normal child in adoption so as to balance their life and to have an experience to raise a normal child, which they are missing. This of course, and

undoubtedly, while maintaining their love and devotion to the children suffering disability, who can never be neglected and would always be cared. There is nothing wrong if they are looking for a new hope and optimism with their ability of receiving an additional member in their family and by doing so achieve a mutual fulfillment to make life more meaningful towards fulfillment of the dream they cherish. These are some of the passing thoughts which have touched us considering the basic humanitarian needs and considerations thereof. Be it so, it is the Steering Committee which would possess the expertise on the nuances of such issue so as to deliberate and apply itself to the peculiar human needs, which certainly would differ from case to case, however within the parameters of law.

18. In the aforesaid circumstances, we are of the clear opinion that the petition would be required to be allowed by setting aside the impugned communication and directing the respondents to reconsider the petitioners' application in accordance with law and more particularly, by applying the power of relaxation as conferred under Regulation 63. Hence, the following order:-

ORDER

- (i) The impugned communication rejecting the petitioners' application for adopting a third child, is quashed and set aside.
- (ii) The petitioners' application is restored to file of the Respondent/Competent Authority, which shall be decided in accordance with law and after granting an opportunity of hearing to the petitioners and more particularly, by considering the application of Regulation 63 of the 2022 Regulations ["Power to Relax"].
- (iii) Let the decision on the petitioners' application be taken within a period of six weeks from the date a copy of the order is presented before the concerned authority.
- (iv) All contentions of the parties on the fresh order to be passed by the respondents are expressly kept open.
- (v) Needless to observe that in the event the petitioners' application succeeds, the regular procedure in law be immediately set into motion.
- (vi) Disposed of in the aforesaid terms. No costs.