

(1987) 10 BOM CK 0025

In the Bombay High Court

Case No : Misc. Petition No. 490 of 1987

In Re: Jay Kevin Salerno

Date of Decision : 07-10-1987

Acts Referred:

Guardians and Wards Act, 1890 — Section 11, 7, 8, 9

Citation : AIR 1988 Bom 139 : (1988) 2 BomCR 239 : (1987) 89 BOMLR 521

Hon'ble Judges : Sujata Manohar, J

Bench : Single Bench

Advocate : K.L. Kapoor, for the Appellant; Alice Philips representing Indian Council of Social Welfare, for the Respondent

Judgement

1. In this petition the minor Pooja was abandoned by her natural mother in the care of Bal Asha Trust, Grand Paradi, R.H. No. 11, August Kranti Marg, Bombay-36. This institution is not recognised for an inter-country adoption. Hence the Hon. Secretary of Bal Asha Trust by her letter dt. 17-6-1987 requested St. Joseph's Home and Nursery to admit the minor to that institution for the purpose of inter-country adoption. Information regarding the child was also forwarded to the Superintendent of St. Joseph's Home and Nursery situated at Byculla, Bombay-400008. This institution is recognised for inter-country adoption.

2. After the child was accepted and registered with St. Joseph's Home, the child was kept at a private nursing home known as Malika Nursing Home, Kol Dohgri, Urmila Building, Andheri (East), Bombay-400069 for better care. The child was thus not physically kept at St. Joseph's Home. The Superintendent of St. Joseph's Home Sr. Rohini Fernandes has however, made an affidavit to say that the minor is registered with her institution, she has visited the minor and has observed the minor for the purpose of preparing a child study report. The child study report gives all particulars regarding the minor. Medical report of the child is also submitted.

3. In the case of Lakshmi Kant Pandey Vs. Union of India (UOI), the Supreme Court has observed at page 488 that situations may frequently arise where a

child may be in the care of a child welfare institution which has not been recognised by the Government. Since an application for guardianship can be processed only by a recognised institution or agency, an unrecognised institution or agency would have to approach a recognised institution or agency if it desires the child to be given in inter-country adoption or guardianship. The Supreme Court has said : "..... in that event it must send without any undue delay the name and particulars of such child to the recognised social or child welfare agency through which such child is proposed to be given in inter-country adoption. Every recognised social or child welfare agency must maintain a register in which the names and particulars of all children proposed to be given in inter-country adoption through it must be entered and in regard to each such child, the recognised social or child welfare agency must prepare a child study report through a professional social worker giving all relevant information in regard to the child.". These directions have been complied with in the present case.

4. In the case of *Laxmi Kant Pandey Vs. Union of India (UOI)*, the Supreme Court has given certain further directions in the same case. In respect of Cri. Misc. Petition No. 4064 of 1986 the Supreme Court has said at page 236 that when a child is registered by an unrecognised institution or agency with a recognised institution or agency, the recognised placement agency must necessarily have the custody of the child for a period of at least one month before it can prepare a really genuine and satisfactory child study report along with the medical report. It has given a direction that no recognised placement agency shall make and process an application for appointment of a foreigner as guardian of a child with a view to its eventual adoption, unless the child has been in the custody of the recognised placement agency for a period of at least one month before the making of the application and it shall not be permitted to act merely as a post office or conduit pipe for the benefit of an unrecognised agency. A direction was given by the Supreme Court to have the child in the custody of a recognised agency for at least one month so that a proper child study report and medical report can be prepared. It is clear from the above why the Supreme Court has said that custody of child should be with a recognised institution or agency for at least a month. This was to prevent a recognised institution from acting merely as a post office or conduit pipe.

5. In a number of cases where the custody of a child is with an institution, the child is kept in a private nursing home or with a private party for better individual care of the child. This does not mean that the institution ceases to have the custody of the child. In fact these arrangements are made for better care of the child while the child is awaiting placement in guardianship with an appropriate family. In fact there are some recognised institutions which do not have any facility for keeping the children in their physical custody. They keep children registered with them in the care of suitable private persons or private nursing homes. It cannot be said that such institutions do not have the custody of the child.

6. In this context the term "custody" cannot be interpreted as actual physical custody. Interpreting the Supreme Court direction too literally would also cause harm to a child in a given case e.g. it may not be desirable to move the child physically from familiar surroundings to another place for a period of one month merely for the preparation of a child study report or medical report. A sick child or a premature baby may require hospitalisation or special care. Even a normal child may receive better care in a private home than in an institution. If the child is under the supervision and control of a recognised institution or agency where it is registered and if the trained social worker or Superintendent of such an institution has taken the responsibility for the child and has kept the child under observation and under his or her control and direction, such an institution is in the custody of the child. It would be in a position to make a child study report and get a medical report of such a child. The custody, therefore, of a recognised institution should be broadly interpreted to mean not physical custody but custody in the sense of supervision and control over the child so that the institution can arrange for a child's individual care or medical treatment (whenever required).

7. In these circumstances, in the present case, looking to the affidavits filed by the Superintendent of St. Joseph's Home and Nursery, Byculla as also the affidavit filed by the social worker attached to Bal Asha Trust, in my view, the child was in the custody of St. Joseph's Home and Nursery for a period of more than one month. The Superintendent of St. Joseph's Home has prepared a proper child study report in respect of this child. There is also proper medical report relating to the child. After examining all the relevant documents which are placed before me including the letter of abandonment from the natural mother, in my view, this is a fit case where the minor Pooja may be given in guardianship for the purpose of adoption to the petitioner.

8. I pass orders accordingly in terms of the usual drawn up order placing the child in guardianship with the petitioner on terms and conditions as set out therein (See Annexure). Petition is made absolute accordingly.

9. Petitioner to pay to the Indian Council of Social Welfare costs fixed at Rs. 500/-.