

(1987) 04 BOM CK 0012

In the Bombay High Court

Case No : Misc. Petition No. 178 of 1987

In Re : Reshma

Date of Decision : 29-04-1987

Acts Referred:

Guardians and Wards Act, 1890 — Section 3

Citation : (1987) 89 BOMLR 225

Hon'ble Judges : H. Suresh, J

Bench : Single Bench

Judgement

H. Suresh, J.—In Lakshmi Kant Pandey Vs. Union of India (UOI), and Laxmi Kant Pandey Vs. Union of India (UOI) and Another, the Supreme Court laid down various guide-lines and also gave various directions in matters relating to inter-country adoption. Recently further directions and modifications have been given by the Supreme Court on December 3, 1986 (Refer Laxmi Kant Pandey Vs. Union of India (UOI),). In between, Pratap J. by his order dated November 7, 1985 in Miscellaneous Petition No. 395 of 1985, after having detailed discussions with the representatives of various agencies and the advocates, gave directions, for the guidance of all concerned. In view of the recent directions given by the Supreme Court, some of the directions given by Pratap J. require modifications. Hence at the request of the advocates who generally appear in these matters, and after hearing the representatives of certain agencies, for the sake of general guidance of all concerned, I hereby summarise the directions which are required to be complied with, by all concerned agencies, parties, institutions and the Juvenile's Courts in Maharashtra.

2. The petitions under the Guardians and Wards Act, 1890, for appointments of guardians for the purpose of adoption of minors ordinarily residing anywhere in the State of Maharashtra can be filed in either District Court having jurisdiction or in this Court under Clause 17 of the Letters Patent read with Section 3 of the Guardians and Wards Act, 1890.

3. No Court in a State will entertain an application for appointment of a foreigner as guardian of a child which has been brought from another State if there is a

social or child welfare agency in that other State which has been recognised by the Government of India for inter-country adoption. If there is no recognised social or child welfare agency in that State where the child is found or obtained, the child shall be transferred to a recognised social or child welfare agency at the nearest place in the immediate neighbouring state. However, it shall be open to a recognised social welfare agency to transfer the child to another State to its associate Institution or to its branch after completion of inquiry regarding destitution of the child by (a) Juvenile's Court or (b) Social Welfare Department or (c) the Collector as the case may be.

4. Transfer within the state of Maharashtra from one recognised institution to another recognised institution shall be done only in the absence of adequate facilities in the place where the child is found abandoned. The transfer shall be for the purpose of adoption to a recognised Institution only. No child of the recognised Institution shall be transferred to another place away from the Institution during the stipulated period with VCA/PCA or any other such recognised Agency. However, after the child has been cleared or assumed to have been cleared by VCA/PCA or any other such recognised Agency, the child may be kept in any nursing home/foster care home/institution in the State of Maharashtra as desired by the adoptive parents or child welfare agency.

5. A child/children belonging to Institutions or child welfare agencies in Maharashtra which has not been recognised by the Government can be proposed for inter-country adoption by the recognised social welfare agency provided such children are kept with the recognised social welfare agency or Institutions for at least 30 days under the direct supervision and custody of such recognised agency.

6. Requisite qualifications for a representative of a foreign social or child welfare agency:

(a) He should be an Indian citizen with a degree or diploma in social work coupled with experience in child welfare.

(b) He should not be working on a free lance basis.

(c) He should be acting only for one foreign social or child welfare agency.

(d) The sphere of his operation should be preferably limited to a particular geographical area.

(e) He should have a general power of attorney to act in India on behalf of the foreign social or child welfare agency.

(f) He should have the authority to operate banking accounts in the name of the foreign social or child welfare agency with the permission of the Reserve Bank of India.

(g) He should not be permitted to go scouting for children or to receive children directly from parents.

(h) He should be allowed to act as representative only if he is recognised as such by the Central Government and such recognition may be given by the Central Government subject to the condition that the various aforesaid requirements are complied with by such representative.

7. The social or child welfare agency (institution) should place material before the Court stating what efforts have been made to trace the biological parents and what are the circumstances in which a child came into possession of such social or child welfare agency (institution).

8. First preference to be given to Indian parents. In the case of legitimate children the total period within which Indian parents must take their decision will be five months from the date the Voluntary Coordinating Agency (VCA) or Poona Consortium for Adoption (PCA) or similar such recognised agency receives reference from the Institutions.

9. In the case of illegitimate children or children of unwed mothers, the maximum period in the aforesaid belief would be four months. However, if the minor has been abandoned for more than six months and the minor is only thereafter referred by the Institution to VCA /PCA or similar such recognised agency, the maximum period for issuing clearance by VCA/PCA or similar such recognised agency shall be three months.

10. The Institution duly recognised by the Government of India for inter-country adoption shall register its children with PCA/VCA or any such recognised agency functioning in the area where the child is found or abandoned or where the Institution to which it is abandoned is located. If there is no coordinating agency in the area where the child is found or abandoned then the child shall be registered at the nearest functioning coordinating Agency. If any child is transferred for any reason, the PCA/VCA or any such recognised agency should be informed of the transfer immediately. The VCA/PCA or any such recognised agency shall share the list of abandoned children with each other. Any Indian adoptive parents may be referred to any Institution in Maharashtra by VCA/PCA or any such recognised agency.

11. The Institution must show the minors available for adoption to VCA/PCA or any such recognised social agency as also to Indian adoptive parents or any other agency wanting to propose an Indian couple for Indian adoptions during the stipulated period ranging from three to five months as the case may be. Such VCA/PCA or any other such recognised social agency as also Indian adoptive parents or any other agency wanting to propose an Indian couple for Indian adoption shall apply to the Institutions where the minors are with all necessary documents for consideration and select the child they mutually feel is suitable for the couple.

12. If any approved Indian family selects a child for adoption from any Institution or any recognised child welfare agency having custody of that child, it shall then be the responsibility of that Institution or recognised child welfare agency to

complete the legal formalities and to deal with the adoptive parents directly in accordance with law.

(i) If the home study report has been made and/or directed to be made by an agency other than the Institution whose inmate the minor is, it shall be responsibility of that agency who has made and/or directed the home study to be made to locate and propose the child and send the follow-up reports as directed by the Honourable Court.

(ii) In other cases where the home study report has not been made or directed to be made by the referring (mediating) agency, then, the Institution whose inmate the minor is and the referring (mediating) agency shall jointly take the responsibility to send the follow-up reports as directed by the Honourable Court.

13. After the expiry of the stipulated period of three to five months as the case may be, the recognised social welfare agency/Institution shall ask for clearance by paying to VCA/PCA a fee of Rs. 50/00 per case. If after fifteen days of asking and payment of fees as said above clearance is not received by the recognised social welfare agencies/Institutions by the end of the said fifteen days, such clearance shall be assumed and the Institution can then file case of inter-country adoption in the Court having jurisdiction without further waiting for clearance certificate from VCA/PCA or any such recognised agency.

14. The aforesaid maximum period of five months and four months and three months respectively can be further reduced by the VCA/PCA or any such recognised agency depending upon the facts and circumstances of each case.

15. In case of handicapped or diseased or older children, the clearance period by the VCA/PCA or similar such recognised agency may be reduced to such time as deemed fit by these agencies.

16. The undertaking of Social or Child Welfare Agency must include undertaking to find a suitable alternative placement in the event of separation, disruption or death of the foreign parents.

(a) No Juvenile Court in the State shall hand over custody of any minor to any foreign national directly or indirectly and no foreign national can present case of Guardianship for the purpose of adoption without going through the recognised social welfare agencies and without undergoing said stipulated periods of the minor with VCA/PCA or any such recognised social agency for finding for the child Indian adoptive parents first.

(b) All the Juvenile Courts in the Maharashtra State are directed to permit the representatives of VCA/PCA or any other such agency working for Indian adoptions to see the children in the Institutions where the children have been remanded for the purpose of identifying suitable children for prospective Indian adoptive parents.

(c) The Juvenile Courts are also directed to give directions to the Institutions

where the children are kept on remand to register such children with VCA/PCA or any such agency working for Indian adoptions.

17. No office bearers of VCA/PCA or any such recognised Agency shall be directly or indirectly interested in inter-country adoptions unless specifically permitted by this Court.

18. Each social or child welfare agency or Institution must maintain a Register with columns therein as per Annexure "A" hereto. This Register must be regularly maintained. All the columns therein must be correctly filled up. The said Register must be available for inspection to the Indian Council of Social Welfare as also to any other person, party, agency, organisation or Institution as may be permitted by this Honourable Court.

19. In the case of Indian adoptive parents, no Institution shall charge them towards maintenance, medical and other expenses an amount more than Rs. 30/- per day per child irrespective of the amount which the Institution may have incurred in that behalf.

20. A circular sent by the Indian Council of Social Welfare and/or VCA/PCA or any such recognised agency not inconsistent with the above directions should by and large be complied with by the Institutions.