
(1996) 02 AP CK 0003
In the Andhra Pradesh High Court
Case No : C.M.A. No. 1570 of 1995

John Abraham Memorial Bethany Home	APPELLANT
Vs	
All Concerned	RESPONDENT

Date of Decision : 05-02-1996

Acts Referred:

Guardians and Wards Act, 1890 — Section 1, 10, 2, 3, 4

Citation : (1996) 2 APLJ 330 : (1996) 1 APLJ 330 : (1997) 2 DMC 64

Hon'ble Judges : P. Venkatrama Reddy, J;G. Bikshapathy, J

Bench : Division Bench

Advocate : Vilas V. Afzulpurkar, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

P. Venkatrama Reddy, J.—This appeal arises under Guardians and Wards Act. The appellant-petitioner, which is a Registered Society is running an orphanage at Tandur, Ranga Reddy District. The Society is recognized by the Government of India as an agency for processing and filing of the applications for declaration of foreign nationals as guardians. It has filed an application under Sections 7 - 10 of the Guardians and Wards Act, 1890 for appointment of foreign national by name Mr. David S. Ballantine, aged 40 years, a resident of Illinois State, U.S.A. so as to facilitate him to take the child by name Keerti Kumar to the U.S.A., and to adopt him there according to the Laws of U.S.A.

2. From the averments in the petition and the evidence of P.W. 1 and the child study report as well as the scrutiny report of A.P. State Council for Child Welfare, it is seen that the boy was born on 24.12.1993 and soon after the birth, the boy was left in orphanage by the mother whose husband had deserted her two years prior to the child birth and she gave birth to him through some undisclosed person. As it was difficult for her to bring up the child, the child was left to the care of the orphanage and the mother of the child also executed a document relinquishing her rights and expressing no objection for giving the boy in adoption which is filed as Ex. A-5 dated 17.6.1994. The report of Voluntary

Coordinating Agency, Red Hills, Hyderabad shows that "Indian placement of the child has not been possible". The proposal for adoption by Mr. David S. Ballantine, who is working as Asstt. Professor and his wife Ms. Diane De Mers working as a Computer Analyst in a University was processed by a recognised Sponsoring Agency in U.S.A. The child study form was prepared by a social worker having Master's Degree in Social Work attached to the appellant Society. It is accompanied by a Physical Examination Report. The child study form contains a photograph of the child. It is signed by the proposed adoptive parents in U.S.A. who expressed their willingness to accept Keerti Kumar as their adoptive child. The report of the Voluntary Coordinating Agency, Red Hills, Hyderabad, and the no-objection notified by the Central Adoption Retance Agency attached to Ministry of Welfare, Government of India are on record. The scrutiny report of A.P. State Council for Child Welfare also on record. The Adoptive Home Evaluation Report has been prepared by Bensenville Home Society Adoption Services, Bensenville, Illinois at the instance of Williams-Illien Adoptions, Inc. 3439, Benson Drive, Memphis, Tennessees-38135 (U.S.A.), which is the Sponsoring Agency recognised by the Government of India, for sponsoring the cases of adoptive parents desirous of adopting Indian children. The Home Study Report which is very comprehensive brings out various aspects of the family life, environment, status and financial position of Mrs. and Mr. David S. Ballantine and the behaviour of their natural son.

3. The learned District Judge, before whom the Application was filed was satisfied that the necessary formalities have been fulfilled. The District Judge further observed that he was also satisfied about the financial position of the couple who want to take the child in adoption. The only consideration which weighed with the District Judge for rejecting the Application is that Mrs. & Mr. David S. Ballantine have a natural son, who by the date of submitting the report was aged about six years. Now he must be seven years old. The learned District Judge formed the impression that it will be problematic to the Indian child to be brought up alongwith their natural son Kevin. The District Judge, observed :

"I do not find that it will be in the interest of the minor child to be given inadoption to foreign parents who already have a son and who find it difficult to adjust with a brown skinned foreign child. I do not find that the proposed parents would be able to handle trans-national and trans-natural (Sic-transcultural) problems likely to arise from such adoption of an Indian child."

So observing, the petition was dismissed. We do not think that the reason given by the learned District Judge is a valid reason, having regard to the fact and circumstances of the case.

4. The mere fact that the proposed adoptive parents have already a natural son is not a consideration which should weigh against the adoption of an Indian child, who is just a three years old boy by now. The Supreme Court in Lakshmi Kant Pandey Vs. Union of India (UOI), , pointed out at paragraph 21 that:

"it would be desirable that inter-country adoption given before the child completes the age of three years."

The reason, to put in the words of Supreme Court, is that -

"if a child is adopted before he attains the age of understanding, it is always easier for it to get accustomed and integrated in the new environment in which it may find itself on being adopted by a foreign parent."

The criterion is satisfied in the instant case. It is seen from the Home Evaluation Report that the couple resumed infertility treatments after Kevin's birth and made the decision to adopt after four years of unsuccessful attempts to conceive a second child. The natural son of the proposed adoptive parents is also of tender years and we do not think that it would pose any problems for temperamental adjustment of that boy with the Indian boy introduced into the family. The Home Evaluation Report together with Personal Reference Questionnaire prepared by the Sponsoring Agency gives us the impression that Mr. David S. Ballantine and Mrs. Diane R. De Mers have a genuine aspiration for adopting this Indian child and they are cultured persons living a happy family life desirous of sharing the joy of the company of Indian child together with their natural son. It is particularly pointed out in the Home Evaluation Report:

"Diane and David have been able to develop a simple, happy life style in contrast to most families" hectic lives. Kevin is the true beneficiary of their devotion, shared values, and kind approach to life. Although Kevin is only 6, David and Diane try to involve him in conversation and family decision making as much as possible. They respect his point of view and let him know that his opinion is important to them. There appears to be a great deal of fun and love in the Ballantine home and it is evident that David and Diane's commitment to each other and to their family is important and permanent."

Incidentally, we may mention that the learned Counsel for the appellant has placed before us, a letter addressed to the Honourable Judge of the Appellate Court (meaning thereby the High Court) from which it is evident that not only Mrs. and Mr. David S. Ballantine, but also their natural son have been eagerly looking forward to receive the Indian child Keerti Kumar. It appears that the couple requested several persons who were visiting India to visit the Orphanage, take photographs and to deliver gifts to the child Keerti Kumar. The letter reveals a genuine feeling of earnestness and eagerness on the part of the couple to accept Keerti Kumar as part of their family without any reservations. This letter as well as the home-study report further discloses that Kevin is equally enthusiastic to share the company of Keerti Kumar.

5. We are of the view that the interests of minor child Keerti Kumar will be better served by allowing adoption by the foreign national afore-mentioned. We, therefore, consider it a fit case to allow the application made by the appellant-Society for the appointment of David S. Ballantine as guardian for the person of the minor Keerti Kumar so as to allow him to take the said minor to U.S.A. and

to adopt him as a child of his family. We issue the following directions for the purpose of giving effect to this order :

(i) Mr. David S. Ballantine, a citizen of U.S.A., is hereby appointed as Guardian for the person of minor male child Keerti Kumar born on 24.12.1993 to Smt. Pentamma of Allpur Village, Tandur Mandal, Ranga Reddy District and who is presently under the care and custody of the appellant-Society at Tandur, Ranga Reddy District.

(ii) The rights of the parents of the minor child are hereby terminated.

(iii) The said Guardian Mr. David S. Ballantine is permitted to take or make arrangements for taking the minor child Keerti Kumar out of India and to induct him into their family home in U.S.A. for the purpose of adopting the child as the Laws applicable in United State of America.

(iv) The Director of appellant-Society-Savitri d/o Samson in whose favour a Power of Attorney has been executed by the proposed guardian to take steps for obtaining Passport and visa for the minor child may take steps to send the minor child to U.S.A. either in the company of the proposed Guardian or some other suitable escort.

(v) The appellant shall make sure that the proposed Guardian will receive the minor child on his arrival at the specified Airport in U.S.A. and promptly intimate the Court of District Judge accordingly.

(vi) Mr. David S. Ballantine, Guardian of the minor male child Keerti Kumar shall send the Welfare Reports of the minor child with the latest photographs to the Court of the District Judge, Ranga Reddy District, Andhra Pradesh during every quarter of the year either directly or through the Sponsoring Agency or the appellant. The first report shall be during the month in which the child reaches U.S.A. and the succeeding report shall be three months thereafter. However, after expiry of two years from the date the child reaches U.S.A., it would be enough to send the Welfare Reports once in a year by 1st June, till the child attains the majority.

(vii) The Sponsoring Agency namely Williams-Illien Adoptions, Inc. Tennessee-38135 (U.S.A.) shall submit periodical reports to the District Court, Ranga Reddy District, Andhra Pradesh, as regards the arrival of the child and the child joining the family of Mr. David S. Ballantine and shall also report about the welfare of the child once in three months upto a period of two years from the date of arrival of the child or till the date of the adoption, whichever is later.

(viii) The said Sponsoring Agency namely Williams-Illien Adoptions, Inc., 3439, Venson Drive, Tennessee-38135 (U.S.A.) shall furnish an undertaking to that effect and a further undertaking that in the event of the appointed Guardian failing to turn up to receive the minor male child Keerti Kumar in U.S.A., the said Agency shall take care of the minor child and seek necessary directions from the District Court, Ranga Reddy, Andhra Pradesh with promptitude.

The appeal is accordingly allowed. No costs.