
(2003) 05 AP CK 0009

In the Andhra Pradesh High Court

Case No : CMA No"s. 2009 and 2076 of 2003

John Clements and Another

APPELLANT

Vs

All Concerned and Others

RESPONDENT

Date of Decision : 02-05-2003

Acts Referred:

Citation : (2003) 3 ALD 597 : (2003) 4 ALT 645

Hon'ble Judges : G. Yethirajulu, J;B.S.A. Swamy, J

Bench : Division Bench

Advocate : L. Ravichander and G. Vidyasagar, for the Appellant; Government Pleader for Women Development and Child Welfare Department, for the Respondent

Final Decision : Dismissed

Judgement

G. Yethirajulu, J.—These appeals are directed against the order of the Family Court, Hyderabad dated 31-5-2002 in O.P.No. 604 of 2001 dismissing the petition filed by the appellants for appointment of appellants in C.M.A.No. 2009 of 2002 as guardians of a minor girl under Sections 7 - 10 and 26 of the Guardians and Wards Act, 1890 to permit them to take her to the United States of America (USA) and to adopt her as per the laws prevailing in USA.

2. The appellants in C.M.A.No. 2009 of 2002 are the petitioners 2 and 3 and (P.2 and P.3) the appellant in C.M.A. (SR) No. 11727 of 2002 is the 1st petitioner (P.1). The respondents 1 to 4 (R.1 to R.4) herein are the respondents in the petition. Since both the appeals arise out of the same order, they are clubbed and this common order is passed.

3. The averments of the petition are briefly as under: The first petitioner is a society registered under the Andhra Pradesh (Telangana Area) Public Societies Act, 1350 Fasli (Act 1 of 1350 Fasli). The Government of India recognized the first petitioner as an agency for processing inter-country adoption and filing of applications before the competent Court. P.2 and P.3 are citizens of USA. An

application made by them for adoption was forwarded by an Adoptive Service Information Agency, USA along with their Home Study Report and recommendations to the first petitioner. On receipt of the said application, the first petitioner submitted an application to the Central Adoption Resource Agency (CARA) for placement of the minor child "HASEENA". The CARA through its letter dated 23-3-2001 has expressed no objection for inter-country adoption of the minor child, pursuant to the clearance given by the Voluntary Adoption Coordinating Agency (VACA), Hyderabad dated 28-6-2001. P.2 is aged 35 years and P.3 is aged 36 years. They are working in USA and are earning 222,870 U.S. Dollars per annum. They were married on 10-4-1999. They have no biological children. They were influenced by a couple who adopted a child from India, therefore, they are seeking to build their family by adoption. The Home Study Report submitted by the foreign agency reveals that P.2 and P.3 have all the requisite qualifications to adopt the minor girl and do not suffer from any physical, mental, financial, social, legal or any other disability whatsoever. The minor girl was born on 19-7-1999. She was relinquished by her unwed mother due to social stigma and handed over the child to P.1 on 20-1-2000 and executed a Relinquishment Deed in favour of P.1. Since the minor child has deformity of both the feet, her adoption in India did not materialize. None of the relatives of the minor girl are ready and willing to take care of the child. The girl requires immediate attention and guardianship of proper persons for better future and prosperity. P.2 and P.3 undertake to look after her well. The proposed guardianship is in the interest and paramount welfare of the minor child. Hence the petition.

4. On 3-12-2001, R.2 filed a counter-affidavit with the following averments in brief: The recognition given to P.1 for inter-country adoption expired on 5-10-2001. A Board constituted in the Government Order vide G.O, Ms. No. 16, Women Development, Child Welfare and Disabled Welfare (Programme) Department, dated 18-4-2001 did not grant recognition to P.1. But the officials of CARA have addressed a letter to R.2 allowing P. 1 to complete such cases where No Objection Certificates (NOCs) have already been issued for inter-country adoption prior to G.O. Ms. No. 16 dated 18-4-2001. HASEENA was relinquished by her mother through a relinquishment deed. Since the said relinquishment was prior to G.O. Ms. No. 16 dated 18-4-2001 the provisions of the said G.O. are not attracted. The parent mentioned in the Relinquishment Deed was not available. A paper notification was given inviting claims from the biological parents to claim their child within 30 days from the date of notification. But, no claims have been received. Therefore, R.2 issued another notification on 6-12-2001 declaring the minor girl as an abandoned child. Since the child is declared abandoned she can be rehabilitated by placing her in adoption with P.2 and P.3. In the larger interest and welfare of the child and also the special bondage developed by prospective parents with the child, the Government of Andhra Pradesh has taken a policy decision not to object the cases of children for inter-country adoption where CARA issued NOCs before issuance of G.O. Ms. No. 16 dated 18-4-2001.

5. R.2 also filed an additional counter with the following averments in brief:

6. This respondent (R.2) filed a counter reporting no objection basing on the NOC issued by CARA. The Home Study Report reveals that P.2 and P.3 were married in 1999 and they were not declared infertile. They simply stated that they came forward to adopt a child being influenced by a couple who have adopted a child from India. This is not a sound reason and criterion for adopting a child. If they beget a biological child there is no assurance that the minor girl gets the same love and affection and whether her rights are going to be protected. On verification of the records it is seen that P.1 obtained VACA clearance for the minor girl on the ground that the Indian parents have rejected the child on account of deformity of both feet. The Child Study Report do not disclose any physical defect with the child. The child is healthy, but in order to process her for inter-country adoption, P.1 stated that the child has deformity of legs. P. 1 did not follow the guidelines with an intention to raise the child for inter-country adoption. The petition is therefore liable to be dismissed.

7. P.1 filed a rejoinder denying the averments made in the counter-affidavit and the additional affidavit of R.2 and requested to appoint P.2 and P.3 as the guardians of the minor baby in the interest of justice.

8. The Family Court on the basis of the pleadings of the parties framed two points for consideration:

(1) Whether P.2 and P.3 are entitled to be appointed as guardians of minor baby HASEENA and permitted to take her to USA to adopt is in the interest and welfare of the child?

(2) To what relief?

9. The petitioners in order to prove their case examined P.Ws.1 and 2 and marked Exs.P.1 to P.22. The respondents examined R.Ws.1 to 3 and marked Exs.R.1 to R.3.

10. The Family Court after considering the oral and documentary evidence adduced by both parties dismissed the petition with costs.

11. The appellants being aggrieved by the order of the Family Court preferred this appeal challenging its validity and legality?

12. The points for consideration are:

(1) Whether P.2 and P.3 are entitled to be appointed as guardians of the minor girl HASEENA to enable them to take the girl to USA and to adopt her?

(2) Whether the order of the Family Court needs any interference as pleaded by the appellants?

Point No. 1:

13. The appellants/Petitioners 2 and 3 contend that they identified the baby for

adoption after fulfilling all the formalities required under law through P.1. They fulfilled all formalities and there was a clearance from VACA and NOC from CARA, But, the Family Court failed to clear the baby by appointing them as guardians, therefore, they request that the appeal be allowed by setting aside the order of the Family Court.

14. The learned Government Pleader representing the 2nd respondent submitted that though VACA and CARA cleared the case of HASEENA, the subsequent developments which lead to the prosecution of the heads of the agencies prima facie revealed that they resorted to play large scale fraud by forging the documents and mentioning the fictitious names for the purpose of getting clearance from VACA and CARA. He further submitted that the processing agency P.1 i.e., VACA and CARA failed to follow the guidelines issued by the Government of India in pursuance of the judgment of the Supreme Court in *Lakshmi Kant Pandey Vs. Union of India (UOI)*, , and the clarifications issued in the subsequent judgments. Therefore the child cannot be cleared for inter-country adoption to the appellants and requested to dismiss the appeal by confirming the judgment of the Family Court.

15. As per the guidelines for adoption issued by the Ministry of Welfare through its resolution dated 29-5-1995, the procedure indicated therein has to be followed and in the event of violation of the procedure prescribed under the guidelines, cases for inter-country adoption cannot be cleared. In the process of inter-country adoption and in-country adoption, there is an active role for the placement agency, VACA and CARA and it has to be tested whether they followed the procedure prescribed under the guidelines and whether the case of the minor child HASEENA for inter-country adoption be cleared in favour of the appellants.

16. Certain instances have come to the notice of the Supreme Court in 1984 regarding the inter-country adoption of destitute, abandoned, and relinquished children from India. The Supreme Court after taking the assistance of Advocates from various parts of the country and abroad gave a landmark judgment in *Lakshmi Kanth Pandey v. Union of India (supra)* touching upon the malpractices and trafficking in children in connection with adoption of Indian children by foreigners and issued directions laying down certain principles and norms to be followed in cases of such adoptions. The Supreme Court in Para 6 of its judgment while commenting about the abuse of the tender age of the children observed as follows:

The nation's children are- a supremely important asset. Their nurture and solicitude are our responsibility. Children's programme should find a prominent part in our national plans for the development of human resources, so that our children grow up to become robust citizens, physically fit, mentally alert and morally healthy, endowed with the skills and motivations needed by society. Equal opportunities for development to all children during the period of growth should be our aim, for this would serve our larger purpose of reducing inequality and ensuring social justice.

17. In para 7 of Lakshmi Kanth Pandey (supra) the Supreme Court extracted the declaration of the rights of the children adopted by the General Assembly of the United Nations on 20-11-1959. In the preamble of the declaration it was pointed out that "the child, by reason of his physical and mental immaturity needs special safeguards and care, including the appropriate legal protection before as well as after birth" and that "the mankind owes to the child the best it has to give" and formulated some principles which are as follows:

7. Every child has a right to love and be loved and to grow up in an atmosphere of love and affection and of moral and material security and this is possible only if the child is brought up in a family. The most congenial environment would, of course, be that of the family of his biological parents. But if for any reason it is not possible for the biological parents or other near relative to look after the child or the child is abandoned and it is either not possible to trace the parents or the parents are not willing to take care of the child, the next best alternative would be to find adoptive parents for the child so that the child can grow up under the loving care and attention of the adoptive parents. ... Now when the parents of a child want to give it away in adoption or the child is abandoned and it is considered necessary in the interest of the child to give it in adoption, every effort must be made first to find adoptive parents for it within the country, because such adoption would steer clear of any problems of assimilation of the child in the family of the adoptive parents which might arise on account of cultural, racial or linguistic differences in case of adoption of the child by foreign parents. If it is not possible to find suitable adoptive parents for the child within the country, it may become necessary to give the child in adoption to foreign parents rather than allow the child to grow up in an orphanage or an institution where it will have no family life and no love and affection of parents and quite often, in the socio-economic conditions prevailing in the country, it might have to lead the life of a destitute, half-clad, half-hungry and suffering from malnutrition and illness.

18. In the same paragraph at some other place the Supreme Court observed as under:

.....every effort must be made first to see if the child can be rehabilitated by adoption within the country and if that is not possible, then only adoption by foreign parents, or as it is some time called " inter-country adoption" should be acceptable. This principle stems from the fact that inter-country adoption may involve trans-racial, trans-cultural and trans-national aspects which would not arise in case of adoption within the country and the first alternative should therefore always be to find adoptive parents for the child within the country....

19. In para 8 of the said judgment the Supreme Court observed as follows:

8. But while supporting inter-country adoption, it is necessary to bear in mind that the primary object of giving the child in adoption being the welfare of the child, great care has to be exercised in permitting the child to be given in

adoption to foreign parents, lest the child may be neglected or abandoned by the adoptive parents in the foreign country or the adoptive parents may not be able to provide to the child a life of moral or material security or the child may be subjected to moral or sexual abuse or forced labour or experimentation for medical or other research and may be placed in a worse situation than that in his own country....

20. The Supreme Court in Para 17 of the judgment observed thus:

We were told that there are instances where large amounts are demanded by so-called social or child welfare agencies or individuals in consideration of giving a child in adoption and often this is done under the label of maintenance charges and medical expenses supposed to have been incurred for the child. This is a pernicious practice, which is really nothing short of trafficking in children, and it is absolutely necessary to put an end to it by introducing adequate safeguards.....

21. The Supreme Court in para 24 of the judgment directed that the principles and norms indicated must be observed and the procedure must be followed for giving the child in adoption to foreign parents.

22. It is universally accepted that the development of a child-emotional, physical and intellectual - can be best ensured within the family, or where this is not possible, then in familiar surroundings. The responsibility for providing care and protection to children, including those who are orphaned, abandoned, neglected and abused rests primarily with the family, the community and the society at large. On account of urbanization, industrialization and the general process of development, many traditional institutions, including the family structure are undergoing vertical as well as horizontal social changes. Therefore it becomes the responsibility of the community to provide both institutional and non-institutional support to destitute children. Adoption is considered to be the best non-institutional support for rehabilitation of the children. The Supreme Court therefore suggested that there should be an endeavour on the part of the Government to facilitate in-country adoption and to regulate inter country adoption of Indian Children. At All India Level, the Government of India (Ministry of Welfare) shall deal with the matters relating to adoption. The Government of India has set up the Central Adoption Resource Agency (CARA) on 28-6-1990 to deal with the matters concerning adoption. The Government of India shall from time to time frame rules and guidelines and issue instructions to State Governments, voluntary co-ordinating agencies and scrutinizing agencies to facilitate and to promote in-country adoption and to regulate inter-country adoption of the Indian children.

Guidelines to be followed;

23. According to the guidelines issued by the Government of India, in pursuance of the above judgment the procedure for inter-country adoption is as follows:

(1) CARA has to act as a clearing house of information in regard to children

available for in-country and inter-country adoption to regulate, monitor and develop programmes for the rehabilitation of the children through adoption. (Guideline 2.7)

(2) CARA has to receive the names and particulars of the children available for adoption who are under the care of Indian, social or child welfare agencies recognized by it and to maintain the register containing the names and other particulars of such children. (Guideline 2.13)

(3) No recognized placement agency can process the application in the competent Court for inter-country adoption without obtaining NOC from CARA. (Guideline No. 2.14)

(4) Before issuing NOC, CARA shall have to ensure that the recognized placement agency has put in adequate efforts for finding an Indian family for the said child and the clearance by VACA to that effect has also to be enclosed.

(5) CARA after going through the information furnished by the placement agency and the VACA will have to issue the clearance certificate to the agency. (Guideline No. 2.14)

24. Voluntary Co-ordinating Agency (VACA) has a specific role to play regarding the inter-country adoption and unless VACA clears the case, CARA will not give NOC. Therefore, VACA is assigned an important role in the processing of the applications of the foreign prospective parents for inter-country adoption.

(6) VACA shall actively promote Indian adoption and it shall formulate, develop and execute programmes and activities for generating awareness in this regard. (Guideline No. 7.1)

(7) It shall ensure priority for adoption within the country.

(8) It shall maintain registers of all prospective adoptive parents, and all available children who are legally free for adoption.

(9) It shall co-ordinate the work of all its member agencies and other child welfare institutions in the field of Indian adoption.

(10) Where Indian adoption is difficult within its area of operation, it shall co-ordinate with other VACAs in the State and in the country.

(11) Where Indian placement is not materialized, it shall issue a NOC within a period of two months from the date of receipt of application from the recognized placement agency so as to enable the child to be placed for inter-country adoption.

(12) In cases where there is failure to follow the guidelines by any recognized placement agency, the VACA has to bring it to the notice of CARA with substantive evidence for taking appropriate action. (Guideline No. 7.1)

(13) All member placement agencies must submit a list of children and

prospective adoptive parents on monthly basis to VACA.

(14) When an agency wishes to place a child in foreign adoption, it must check with VACA to ascertain whether there is any Indian parent willing to take the child in adoption.

(15) If there is any difference between the placement agency and the VACA regarding inter-country adoption of the child, the placement agency has to refer the case to CARA and in such cases CARA will take a decision whether clearance can be given to the child or not and the decision of CARA in this regard shall be final. (Guideline No. 7.10)

(16) After obtaining clearance from VACA and NOC from CARA, the placement agency has to make an application to the Family Court for the appointment of the prospective parents as guardians to the minor child.

Guidelines regarding the responsibility of the Scrutinizing Agency:

(17) Immediately after making such application, the Family Court should refer the matter to a scrutinizing agency, which is a reputed social or child welfare agency, for scrutinizing the applications of prospective parents for adoption of the child. (Guideline No. 8.5)

(18) The scrutinizing agency has to scrutinize the application for guardianship laid on behalf of the prospective adoptive foreign parents, Home Study Report, Child Study Report and other documents attached to the application.

(19) It shall ensure that the application has been duly forwarded by a foreign agency to CARA,

(20) to ensure that before the child is placed in guardianship with foreign adoptive parents a clearance certificate has been obtained from the concerned VACA,

(21) to satisfy itself that the child in question is legally free for adoption,

(22) to see the child in person and check that the information given by the prospective parents regarding the child is correct,

(23) to satisfy that the prospective adoptive parents are fit for adoption in question,

(24) to ensure that the adoption in question is best in the interest of the child,

(25) that the child has been voluntarily surrendered by the biological parents/parent,

(26) to ensure and satisfy itself that no one, including Indian as well as foreign agencies concerned are making any profit out of the adoption in question,

(27) to scrutinize the undertaking from foreign adoptive parents that they would provide necessary education and up bringing according to their status,

(28) an undertaking from the placement agency that it would send the quarterly report during the first two years regarding the progress of the child with recent photograph and half yearly report for the next three years in the prescribed proforma,

(29) Power of Attorney from foreign adoptive parents in favour of the placement agency,

(30) Certificate from the foreign sponsoring agency that the adoptive parents are permitted to adopt the child according to the law of their country,

(31) Undertaking from the placement agency that in the event of disruption of the family of adoptive parents, it will take care of the child and find a suitable alternative placement of the child with the approval of CARA,

(32) Undertaking from the enlisted foreign agency that it will reimburse all expenses to the concerned placement agency as fixed by the Court towards maintenance of the child and processing charges.

25. There are guidelines regarding the responsibility of the placement agency also.

(33) The placement agency shall regularly maintain a list of all prospective adoptive parents containing their names, addresses and data on the basis of which they have approached the organization for taking a child in adoption and other relevant particulars. (Guideline No. 4.4)

(34) When a placement agency receives a child, its first responsibility is to trace the biological parents and to restore the child to them, failing which as far as possible to place the child in adoption with Indian families. (Guideline No. 4.5)

(35) The placement agency is required to follow the order of priority while considering the adoption of Indian children a) Indian families in India, b) Indian families abroad, c) Indian parent of Indian origin abroad, and d) totally foreign. (Guideline No. 4.5)

(36) The placement agency shall furnish full details of the child to the prospective adoptive parents, except the names and addresses of the biological parents, if known to the agency.

(37) It is only when all efforts to place the child within the country fail, then the child would be cleared for inter-country adoption, including continuous contact with VACA.

(38) If within 60 days from the date of application, VACA is unable to send suitable Indian parents who are suitable to take the child for adoption, intimation of making application to VACA shall be given to CARA forthwith.

(39) In case of surrendered children, after three months' time for re-consideration of biological parent, the placement agency should make all efforts within 45 days to place the child with Indian parents in the country.

(40) In case of destitute or abandoned child, the placement agency after getting a releasing order declaring that the child is legally free for adoption from the competent authority should make all the efforts to place the child within the country within a period not exceeding seven (7) weeks from the date of release order, which include one week time for re-consideration of the biological parents, if traced.

(41) If the placement agency is not able to find a suitable Indian family within the country, it has to give all the details of the child through VACA, including details of admission, medical history, legal status, photograph and efforts made to find the families in the country.

(42) If within a period of two months the child is not taken in adoption by the Indian family, it should be recorded as available for inter-country adoption.

(43) The possibility of inter-State co-ordination should also be exhausted before a child is offered for inter-country adoption.

(44) The first priority in inter-country adoption should be given to Indians residing abroad and if no such Indian family is available, then to adopt to couples where at least one parent is of Indian origin. (Guideline No. 4.21)

(45) It is only where no Indian family comes forward to take a child in adoption within a maximum period of two months the child should be regarded as available for inter-country adoption with an exception for handicapped children of six (6) years age.

26. Along with the original petition, P.1 filed some important documents in proof of the plea of adoption before the Family Court, along with some other documents, which are as follows:

- (1) Relinquishment Deed (Ex.P.3)
- (2) VACA Clearance (Ex.P.4)
- (3) No Objection Certificate issued by CARA (Ex.P.5)
- (4) Photograph of minor (Ex.P.6)
- (5) Child Study Report (Ex.P.7)
- (6) Medical Report (Ex.P.8)
- (7) Home Study Report (Ex.P.10)

The scrutinizing agency appointed by the Family Court noticed the following deficiencies:

- a. The stamp paper of the Relinquishment Deed is not in the name of the parent who relinquished the child;
- b. The addresses of the witnesses to the relinquishment deed are not furnished;

and

c. The medical report is not from a pediatrician.

The scrutinizing agency suggested that the above defects are to be rectified.

Findings of Family Court":.

27. The Family Court while commenting on the documents marked in the petition in support of the case of the appellants herein observed as follows:

- (1) Ex.A.8-medical report is not by a pediatrician.
- (2) The opinion of the doctor in Ex.A.8 is in different ink.
- (3) No mention in Ex.A.7 about the deformity of the feet of the child.
- (4) Address of the relinquished mother not mentioned in the Relinquishment Deed.
- (5) Date of Relinquishment Deed is 20-1-2000 whereas the Stamp paper was purchased on 11-1-2000.
- (6) Full particulars of the witnesses of the Relinquishment Deed are not given.
- (7) No witnesses examined to prove the genuineness of the Relinquishment Deed. The Family Court observed that the Relinquishment Deed is not of much importance, since the child was declared as an abandoned child, as per Ex.R.1-paper publication.
- (8) The 5th respondent did not keep the complete record in chronological order for the efforts made by it in locating the Indian parents
- (9) No reasons assigned for non-placement of the child for in-country adoption, with the particulars of Indian parents as required under Guideline No. 4.7.

28. The Family Court further observed that as per the evidence of P.W.1, P.1 offered the child to 2 or 3 Indian parents for adoption and they rejected on the ground that the child was getting fever, and was of lesser weight with deformity in the left foot joint. The non-production of the relevant records is leading to an inference that no efforts were made by the placement agency. The contention of the appellants that the clearance given by VACA and NOC given by CARA gives a presumption that the placement agency followed the procedure is highly untenable and it is not the spirit of the guidelines. Though no objection was reported in the first counter, in view of the subsequent developments the 2nd respondent sought to oppose inter-country adoption through the first additional counter. The willingness of the appellants herein to adopt the child is of no consequence and it amounts to encouraging the violation of mandatory requirements of the guidelines. The Family Court by making the above observations dismissed the petition holding that the petitioners 2 and 3 (appellants herein) are not entitled to be appointed as guardians of the minor

child HASEENA.

29. During the course of arguments, the learned Government Pleader brought to the notice of this Court that immediately after obtaining NOCs from CARA in this case and in other cases, the Station House Officer, Kukatpally Police Station received a complaint from the Project Director, Women and Child Development Agency, Ranga Reddy District on 25-4-2001 bringing to the notice of the police certain aspects relating to the fraud played by the placement agencies regarding the inter-country adoption. The complainant requested action against Mrs. Anitha Sen, President of an Agency "Precious Moments", for running a home without any valid licence and for keeping the relinquished children of biological parents contravening G.O. Ms. No. 16 dated 18-4-2001 and also giving children for in and inter-country adoptions for profit by luring the biological parents. In pursuance of the said complaint and orders of the Additional Director General of Police, C.I.D., a crime vide Crime No. 364 of 2001 was registered under Sections 120-B, 420, 468, 471, 363, 372, 373, 175, 188, 342, 343 and 211 IPC and investigation was taken up. The charge sheet filed by the police prima facie discloses the following:

- (1) The agencies, conspired and fabricated number of relinquishment deeds in the names of the non-existing biological parents.
- (2) They resorted to various illegal methods to procure the signatures of the Sarpanches, VAO or the elders of the villages to get authenticity to the fabricated relinquishment deeds.
- (3) They conspired to receive children from as many sources as possible.
- (4) They forged the signatures of the fictitious adoptive parents on rejection forms which forms a basis for CARA to issue NOC to send children for inter-country adoption.
- (5) They gave children to Indian parents whose names were not registered with those agencies by collecting huge amounts in the form of donations.
- (6) They resorted to fabricate the documents to obtain clearance from CARA to sell the children for inter-country adoption.
- (7) Fabricated many registers in ICSW by suppressing and destroying vital information regarding the receiving, maintenance, medical care of children etc.

30. The criminal case is in the Court of IX Metropolitan Magistrate, Hyderabad, pending trial. Similarly Crime No. 457 of 2001 was registered against P.1 by S.R.Nagar P.S., Hyderabad and it is pending investigation.

31. The learned Government Pleader representing the 2nd respondent further submitted that P.1 is indulging in so many malpractices in processing the children for adoption and he listed out the following:

- (1) Making false propoganda of deemed licence by misleading the State and

confusing the prospective parents.

(2) Indulging in purchasing children and using fabricated and false documents.

(3) Maintaining false records.

(4) Committed financial irregularities and received Memo from CARA for financial anomalies.

(5) Unwed mothers are not surrendering children. R.5 is procuring children from different parts of the State through its agents.

(6) The children are not shown to the prospective Indian parents registered with the agency, though they are free for adoption.

(7) Fabricated relinquishment deeds in about 19 cases in the names of the non-existing parents and failed to furnish correct address of the biological parents and other witnesses for confirmation of the relinquishment.

(8) The attestors of relinquishment deeds are no other than the employees of R.5.

(9) Procuring children in the name of adoption by paying rupees five to ten thousand as consideration to the biological tribal parents, as per the information given by the Superintendent of Police, Nalgonda referring seven instances.

(10) Prepared relinquishment deed in July, 2001 and processed the case for inter-country adoption despite imposition of ban on relinquishment of children from 18-4-2001.

(11) Fabricated documents, including medical reports, in 38 inter-country adoption cases to get clearance of VACA.

(12) Indulged in getting copies of internal correspondence of the Government and filing cases in Courts putting the Government in embarrassing position.

(13) Using non-judicial stamps for creation of anti-dated relinquishment deeds.

(14) Maintaining two sets of medical reports, one for getting clearance of VACA and the other to the prospective foreign parents for selection of the child.

(15) Not showing inclination for in-country adoption though there are more than 2000 Indian parents registered their names for adoption and in waiting list.

32. Against the above objections raised by the learned Government Pleader, the 5th respondent could not furnish proper replies for all the objections and the reply is filed only with regard to Crime No. 457 of 2001 filed under Sections 420, 468, 471, 341, 372, 373 and 120-B IPC of S.R. Nagar Police Station, Hyderabad, which is pending against P.1 and several others.

33. It is submitted on behalf of P.1 that the said agency is being run by Nuns without expecting any monetary benefit and they are doing their best to serve

the destitute, abandoned and relinquished children. After perusal of the record and after hearing the submissions made by the learned Counsel, we are constrained to observe that the Nuns who relinquished the world and who dedicated themselves for the service of the society are also getting influenced by the unethical methods adopted by certain agencies who made their institutions as business centers and we do not wish to further comment except saying that P.1 agency did not conform to the guidelines for the reasons best known to them.

34. During the course of arguments it was brought to our notice that the placement agencies are trading in children. They are keeping children of fair complexion and good health separately for inter-country adoption and are resorting to place the crippled, mentally retarded, mentally handicapped, underweighing and sick children for selection by Indian parents. The agencies are not allowing Indian parents to good children for selection. Though there is no definite information before this Court regarding the said modus operandi, we are made to understand that there is every likelihood of truth in it, which is gaining support from the facts placed before us regarding the processing of the children for adoption.

35. The medical reports said to be prepared at the time of receiving many children indicate that they were healthy and fair in complexion, but from the remarks made in the rejection letters of the Indian parents it is astonishing to note that they were mentioned as black in complexion, sick and underweight. This is leading to another doubt whether the placement agencies are showing different children by impersonation to Indian parents in the names of the children reserved for foreign adoption to get rejection letters from them?

36. Sri L. Ravichander, a Counsel representing the foreign parents, including the appellants herein, while conceding that there are violations of the guidelines in processing the applications for the adoption of the children, made hectic effort to impress upon the Court about the principles of justice, equity and good conscience. He submitted that on account of the clearance given by VACA and NOCs issued by CARA and no objection reported by the Government for clearance of the cases which are in the process, the foreign parents developed bondage with the respective children and as they developed love and affection towards the children, they are with a legitimate expectation that the children would be given to them in adoption, without taking into consideration the subsequent developments, by their cases as exceptional cases, and requested to grant the equitable relief of appointing the foreign parents as guardians to the children without taking serious note of the omissions, if any, in following the guidelines of the Government of India. He further submitted that the foreign parents did not commit any illegality in expressing their willingness to adopt, hence they may not be deprived of the children. The learned Counsel cited the following decisions of the Supreme Court for the proposition that Courts in India are not only Courts of Law, but also Courts of Equity and thus power has to be exercised with good conscience and in furtherance of cause of justice:

Gurunath alias Bhimaji Vs. Kamalabai, Kom Kenchangauda Nadgaudar and Others, , K.S. Srinivasan Vs. Union of India (UOI), , Caltex (India) Ltd. Vs. Bhagwan Devi Marodia, , Roshanlal Kuthalia and Others Vs. R.B. Mohan Singh Oberoi, , Pasupuleti Venkateswarlu Vs. The Motor and General Traders, Bai Dosabai Vs. Mathurdas Govinddas and Others, , Municipal Board, Pratabgarh and Another Vs. Mahendra Singh Chawla and Others, , Chandra Bansi Singh and Others Vs. State of Bihar and Others, , Bhagirath Vs. Delhi Administration, , State (Delhi Administration) Vs. Puran Mal, , State (Delhi Administration) Vs. Puran Mal, , Bakul Cashew Co. and Others Vs. Sales Tax Officer Quilon and Another, , Gurbax Singh Vs. The Financial Commissioner and another, ; Hindalco Industries Ltd. Vs. Union of India (UOI) and Others, , Shangrila Food Products Ltd. and another Vs. Life Insurance Corporation of India and another, , C. Chenga Reddy and Others Vs. State of Andhra Pradesh, , Manju Bhatia (Mrs) and Another Vs. New Delhi Municipal Council and Another, , Roshni Devi and Others Vs. State of Haryana and Others, , Tata Iron & Steel Co, Ltd. v. Union of India, (2001) 2 SCC 41 and Rakesh Wadhawan and Others Vs. Jagdamba Industrial Corporation and Others, .

37. After going through the judgments covered by the above decisions, we declare that we have no dispute with the principles laid down by the Supreme Court in the above cases that equity must act within the permissible limits to prevent injustice, and the Courts in India are not just Courts of Law, but also Courts of Equity, that the Courts must do complete and substantial justice and no party must have an unfair advantage, and that a person seeking equity must bow to equity.

38. Sri L. Ravichander also cited the following decisions of the Supreme Court, on the question of judicial review of policy decisions, in Supreme Court Employees' Welfare Assn. v. Union of India, , Union of India (UOI) and Others Vs. R. Reddappa and Another, , Premium Granites and Another Vs. State of Tamil Nadu and Others, , Krishnan Kakkanth Vs. Government of Kerala and others, and State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc., .

39. In substance, the argument of the learned Counsel is that for this time these petitions may be allowed and the foreign parents may be appointed as guardians for the minor children, covered by this appeal and other similar appeals, pending before this Court as a one time relief, without making it a precedent for future cases.

40. On the other hand, the learned Counsel for the respondents drew the attention of this Court to certain judgments of the Hon'ble Supreme Court on the principle of equity. In Andhra Pradesh State Financial Corporation Vs. M/s. GAR Re-Rolling Mills and another, , the Supreme Court held as follows:

There is no equity in favour of a defaulting party which may justify interference by the Courts in exercise of its equitable extraordinary jurisdiction under Article 226 of the Constitution of India. ... A Court of equity, when exercising its

equitable jurisdiction under Article 226 must so act as to prevent perpetration of a legal fraud and the Courts are obliged to do justice by promotion of good faith, as far as it lies within their power. Equity is always known to defend the law from crafty evasions and new subtleties invented to evade law. ... (para 18)

41. In *C. Chenga Reddy and Others Vs. State of Andhra Pradesh*, , the Supreme Court held thus:

A Court of equity must so act, within the permissible limits so as to prevent injustice. "Equity is not past the age of child-bearing" and an effort to do justice between the parties is a compulsion of judicial conscience. Courts can and should strive to evolve an appropriate remedy, in the facts and circumstances of a given case, so as to further the cause of justice, within the available range and forging new tools for the said purpose, if necessary to chisel hard of the law. (para 56)

42. In *Gauri Shankar Gaur and Others, etc. Vs. State of U.P. and Others*, , the Supreme Court held that in construing a statute, equity will not relieve against a public statute of general policy in cases admitted to fall within the statute and it is the duty of the Court to give effect to the legislative intent.

43. From the above it is seen that the Court while exercising equity jurisdiction shall not perpetrate fraud and the paramount consideration of the Court would be "furtherance of cause of justice" and upholding the majesty of law, but not evading law. Nextly, if the equity jurisdiction of the Court comes in the way of a statute law or general policy, equity has to give way to the statute law. The Supreme Court made the position so clear that the question of inter-country adoptions arise only when there is nobody from India coming forward to adopt the abandoned and relinquished children. In the light of the above discussion, it is amply established that all the concerned have given a go-bye to the guidelines leading to failure of the object of the scheme.

44. If the request of Sri L. Ravichander is accepted, it amounts to perpetrating illegality and supporting gross violation of the guidelines framed by the Government in pursuance of the directions of the Supreme Court in *Lakshmi Kanth Pandey (supra)* apart from giving seal of approval to the fraud played by the placement agencies and the casual approach of approval the same by the officials of VACA and CARA. The denial of relief to the appellants in these cases is not going to have any effect on the larger section of the society. On the other hand, conceding the request of the learned Counsel is counterproductive and it will be a signal to every agency that the Courts do not take serious note of the illegalities committed by them and the Courts are tend to pardon them with large heartedness, unmindful of the object behind the framing of the guidelines and the efforts to streamline the process of inter-country adoption. In fact, on previous occasions also, large scale violations committed by the placement agencies in case of inter-country adoptions came to light. But, the Government instead of taking remedial measures allowed the malpractices to go on unabated. The society welcomes such agencies which come forward to render help to the

society, though not at their cost, but they can never be allowed to become business centers for extracting as much money as possible, which amounts to granting licence to those agencies for trafficking in Indian children. As pointed out by the Supreme Court in *Lakshmi Kant Pandey (supra)*, the endeavour shall always be to promote adoption of the abandoned or relinquished children to Indian parents is the reflection of the voice of the people. If the placement agencies are allowed to give healthy children who represent human resource of this country to foreign parents and if the crippled, mentally retarded, mentally handicapped children are allowed to remain with Indian parents, it leads to an adverse effect on the society in the long run. Hence the Government and the State should not encourage the placement agencies to deviate the guidelines to fulfil their selfish ends. There shall be an endeavour on the part of every organ of the State to preserve the intellectual property of the nation, which is an immeasurable wealth of the country, and will be helpful to the country to prove its greatness to the rest of the world.

45. Nextly, we are unable to agree with the contention of Mr. Ravichander that the prospective foreign parents are not aware of the fraud played by the concerned in India and as such they cannot be penalised for the illegalities committed by others. If they have no role to play, they would have approached CARA, but not directly the placement authorities. Secondly, if they have not adopted backdoor methods in securing the child, the moment they came to know of the fraud, they would have walked out of the muddle and would have allowed the law of the land to be implemented. We therefore agree with the findings of the lower Court and confirm the order accordingly.

46. Before parting with this case, we would like to go on record that every well intended legislation or a decision of the Government in our country is not giving desired results in its implementation defeating the object and purpose for which the action was intended to by the Government. Lack of commitment to implementing agencies is the root cause for such failures.

47. In India the marriage is considered sacrosanct, while it is a contract in western countries. Stable and secure family life is a remote possibility in those countries. It is on record that these foreign parents are willing to adopt female children only, but not male children. If the marriage between the adoptive parents breaks down, it is not known what will happen to the child. In fact, we repeatedly asked the Counsel appearing for CARA and VACA whether any study was made with regard to the welfare of the children adopted by foreign parents, but we could not get any reply.

48. The Courts' duty is not only to adjudicate the lis, but also to suggest remedial action for future guidance of the authorities involved in implementation of the schemes concerning the public.

49. It is represented by the Assistant Director of Women and Child Development Department, who is in-charge of the affairs of VACA, that in order to identify the

children, they keep a paper ring to the hand of each child mentioning the name of the child and after getting acquainted with the child, they remove the tag and it is easy for them to identify the children by their faces. This is not a foolproof method of identification of the children and there is every likelihood of change of tags of one child to the other or replacing one child to the other with the same name after removing the tag. It is astonishing to note as to why the placement agencies and other institutions who are receiving and maintaining the children are not noting down the permanent identification marks like black moles on the body to enable anybody to identify the child with reference to those identification marks, which remain permanent on the body.

50. It was brought to our notice that after the expiry of the licence to the placement agencies, they were not renewed in the light of the fraud came to light and the Women and Child Development Department of the Government of Andhra Pradesh is looking after the processing work of the children for adoption by replacing VACA which was in existence during the relevant period and they are taking all precautions to follow the guidelines in the processing of the children for in-country and inter-country adoptions.

51. It was further brought to our notice that whenever Indian parents are informed about the availability of the child for adoption there is no practice of allowing them into the rooms where the children are kept. The prospective parents will be asked to wait in the drawing room and the person in-charge of the children will initially bring one child to the prospective parents and ascertain from them whether they like the child. If those prospective parents do not like the child they will bring another child and if that child is not liked by the prospective parents, the person in-charge of the Home may or may not bring another child for approval and inform the Indian parents that since they are not liking the children shown to them, they may sign on the letters that they rejected the children for adoption for the reasons mentioned therein.

52. It was also brought to our notice during the course of arguments that there were instances of the placement agency obtaining signatures of its employees on rejection letters as witnesses. After knowing about various methods adopted by placement agencies to make money through the children, we are of the opinion that the procedure for adoption of children, whether in-country or inter-country, has to be further strengthened to prevent recurrence of irregularities or illegalities pointed out in this case and other similar cases.

53. Despite the guidelines prepared by the Government of India on the directions of the Supreme Court, there are certain gaps regarding the detailed procedure, which is giving scope for unscrupulous agencies to take advantage of such gaps and to trade in children in the foreign market for consideration in the form of dollars. With due respect to the directions given by the Hon"ble Supreme Court and due regard to the guidelines framed by the Government of India, we wish to give certain suggestions in the form of additional guidelines in the process of in-country and inter-country adoptions directing the Government of India to

consider these guidelines and to incorporate them as additional guidelines to encourage the in-country adoptions and to regulate the inter-country adoptions without giving scope to the agencies to trade in children.

54. There shall be transparency in placing the children for selection of the prospective Indian parents. It may not be possible for the persons in-charge of such Homes to allow all prospective parents to enter into the rooms where the children are kept, which is likely to be a health hazard to the children. Therefore in order to have transparency, they should adopt modern methods, which we are going to suggest in the foregoing paragraphs.

55. After Lakshmi Kant Pandey (supra), the Supreme Court gave some more clarificatory judgments. Despite that, the placement agencies are taking advantage of the gaps in the guidelines or contradictions in some guidelines and could successfully violate them silencing the authorities of CARA and VACA.

56. In para 12 of the judgment in Lakshmikant Pandey (supra), their Lordships observed as follows:

"..... No application by a foreigner for taking a child in adoption should be entertained directly by any social or welfare agency in India working in the area of inter-country adoption or by any institution or center or Home to which children are committed by the juvenile Court."

57. In para 13, their Lordships gave the reasons for prohibiting a foreigner from directly approaching any agency seeking adoption of a child:

Firstly, to avoid the possibility of profiteering and trafficking in children, because if a foreigner is allowed to contact directly agencies or individuals in India for the purpose of obtaining a child in adoption, he might, in his anxiety to secure a child for adoption, be induced or persuaded to pay any unconscionable or unreasonable amount which might be demanded by the agency or individual procuring the child.

Secondly, if the foreign agencies are permitted to approach the placement agencies directly, there would be possibility of no proper and satisfactory home study report of the prospective foreign parents and it may be difficult for the Court to find out whether the prospective foreign parents will be able to provide a stable and secure family life to the child and would be able to handle trans-racial, trans-cultural and transnational problems likely to arise from such adoption.

Thirdly, if the prospective foreign parents are permitted to approach the placement agencies without the intervention of the social or child welfare agencies, there would be no authority or agency in the country of the foreigner who could be made responsible for supervising the progress of the child and ensuring that the child is adopted at the earlier in accordance with law and grows up in an atmosphere of warmth and affection with moral and material security assured.

58. As per para 2.13 (2) of the guidelines, CARA has to receive applications along with requisite documents of foreigners desirous of taking Indian children in adoption through a recognised agency in the foreign country or through an organisation owned or operated by the Government in that country.

59. Para 2.14 of the guidelines envisages that no application by foreigner for taking a child in adoption should be entertained directly by any social child welfare agency in India working in the areas of inter-country adoption or by any institution or center or Home to which children are committed by the Juvenile Court. The very next paragraph says "the original application along with original documents as prescribed by the Supreme Court of India would be forwarded by the foreign enlisted agency to a recognised placement agency in India".

60. Taking advantage of the inconsistency in the guidelines and ignoring the judgment of the Supreme Court the foreign enlisted agencies started directly approaching the placement agencies in India and are trying to take the Indian children in adoption with their connivance and active support of VACA and CARA officials, who are simply putting their seal of approval on these adoptions without bothering whether the procedure prescribed for inter-country adoption of a child is followed or not. With the result, trafficking in female children is going on unabated in violation of the guidelines given by the Supreme Court.

61. After the present scam came to light, the Government of Andhra Pradesh issued the Andhra Pradesh Orphanages and other Charitable Homes (Supervision and Control) Rules in G.O. Ms. No. 16, dated 18.4.2001. In para 11 (VII) of the said G.O. it is stated that "relinquishment" of child by "biological parents" on family grounds of poverty, number of children, unwanted girl child will not be permitted. Such children should not be admitted in Homes or "Orphanages" and, if admitted, the licence and recognition of Home or Orphanage shall be cancelled or withdrawn.

62. We feel that the above provision is unrealistic and if it is allowed to stand on statute book, it will lead to several malpractices. The Government should not forget the fact that nearly 2/3rd of the population are living under abject poverty not able to meet both ends and for variety of reasons they are not going for family planning. If biological parents want to give their child in adoption on their own, and if they are prohibited from doing so through a law, then they may resort to kill the child or may try to sell away the child clandestinely. If the Government encourages the parents who do not want to keep the child, to give in adoption, the child may find a better atmosphere to develop and to grow with better skills. That apart, trafficking of the children by unscrupulous placement agencies would come down. The Government may consider propagating the idea of giving the children in adoption through governmental agencies by using electronic and print media.

63. The VACA may also engage social workers to keep a watch on the pregnant ladies by going round colonies of weaker sections and Scheduled Tribes to

inculcate the idea of keeping the child with them or in the alternative to welcome the idea of giving the child in adoption by providing nutritious food during pregnancy from out of the funds at the disposal of the VACA.

64. Under the guidelines, VACA at the State level, the CARA at the Apex level, were constituted to oversee that the adoptions are taking place as per the guidelines.

65. Under paragraph 8.5 of the guidelines, the Scrutinising Agency has to go through the documents enlisted therein and submit a report to VACA and to assist the Court in coming to the conclusion whether the biological parents of the child have voluntarily surrendered the child or not and whether the procedure prescribed under the guidelines is followed or not.

66. We have seen the functioning of the Scrutiny agency. It is better if we speak less about this agency. This agency is entitled to claim fees up to Rs. 150/- in case of in-country adoptions and Rs. 450/- to Rs. 500/- in case of inter-country adoptions. The Court is given liberty to fix the charges more than the said amount. We strongly feel that the scrutiny agency has to be abolished.

67. The composition of the CARA and VACA under the guidelines is heavily loaded in favour of placement agencies. We strongly feel that the placement agencies cannot be given membership in the CARA and VACA since they are approaching these organisations seeking permission to give the children in inter-country adoption. If the present system is continued, it will result in quid pro quo among the placement agencies.

68. As per para 2.8A, CARA has to function under the overall policy directions of a Steering Committee consisting of the members mentioned therein and it has to frame regulations and bye-laws under para 2.11 for discharge of its functions in consonance with the aims and objectives with the approval of the Central Government. From this it is seen that the Steering Committee is expected to give policy guidance, but to whom these policy directions have to be given and who has to issue no objection certificate is not mentioned.

69. Under para 2.12, CARA is having power to constitute a Committee, which will exclusively look into matters pertaining to promotion of in-country adoption and advise CARA on suitable policies and programmes for this purpose. But no such Committee was constituted to look after the inter-country adoptions. With the result, the Member Secretary-cum-Executive Officer of CARA is acting solely and giving the clearance certificates indiscriminately without verifying the documents submitted by the placement agency and compliance of the guidelines. Either CARA or sub-committee constituted for the purpose shall process the applications for inter-country adoptions and the Member Secretary has to convene meeting of the Committee/sub-committee for that purpose, periodically to clear of the applications.

70. In para 4.7 of the guidelines it is mentioned that the placement agency has

to keep a complete record in chronological order of the efforts made by it for locating an Indian parent for the adoption of a child and shall specifically note the reasons for non-placement of a child in in-country adoption with particulars of Indian parents. It has come to light that none of the placement agencies are keeping any record to that effect and they simply attach the printed forms obtained from Indian parents stating that they are not interested in adopting the child and are seeking permission to give the child in inter-country adoption.

71. In the guidelines at paragraph 4.17, a very complicated procedure is prescribed in case of a child found abandoned or picked up as a destitute by a social or child welfare agency or a nursing home or hospital or the police or anyone else.

72. In the light of the foregoing discussion, we wish to give the following directions :

Directions:

(1) Processing of both inter-country and in-country adoption of the relinquished, destitute or abandoned child should be done only by the CARA at the Central level and VACA at the State level.

(2) The placement agencies should not have any role, except informing these authorities about the child coming to their care and collecting the expenses incurred on the child at the time of finalisation of adoption of the child.

(3) The scrutinising agency in the present form should be abolished.

(4) Legally trained persons be appointed for VACA and CARA by making them responsible to scrutinize the documents and submit the reports to the Court.

(5) The child-care agency shall have no role to play in the process of inter-country adoptions.

(6) Regulations shall be framed as per Para 2.11 of the Guidelines.

(7) It shall be specified as to whom the steering committee constituted under Para 2.11 shall give policy directions.

(8) Committee under Guideline 2.12 shall be constituted.

(9) Central and State Governments to constitute CARA as well as VACA consisting of official and non-official members who have nothing to do with inter-country adoptions to process the applications.

(10) At the State level VACA has to maintain separate list of prospective adoptive parents category-wise mentioned in Para 4.5 and update the same from time to time by using both electronic and print media.

(11) Since CARA is looking after the adoptions both inter-country and in-country at the National Level, it should also get the list of prospective adoptive parents

from all the States, and as and when VACA of a particular State is not able to find a suitable Indian parent, it should try to find out a prospective Indian parent from other States to adopt the child. The system of maintaining a list of prospective adoptive parents by the placement agency should be given up.

(12) Identification of biological and prospective parents may be done simultaneously to avoid further loss of time.

(13) If CARA fails to find an Indian parent to adopt the child, it must make efforts as per the priorities mentioned in paragraph 4.5.

(14) The procedure for fixation of date of birth, prescribed under para 4.17 shall be simplified.

(15) VACA as well as CARA shall maintain a separate file for each child available for adoption with the complete case history including medical report.

(16) The placement agency has to communicate the particulars of the child along with the medical certificate to VACA.

(17) The VACA shall place the full details of the child with his medical background on the web site.

(18) In case of a child being surrendered by the biological parents, the placement agency should obtain the surrender documents on stamped papers in the presence of two responsible persons whom the agency should be able to produce, if necessity arises. The witnesses shall not be their employees and they should be responsible persons in the society. The agency should show the correct addresses of these witnesses.

(19) In case of abandoned or destitute child, any person other than the biological parents may also surrender the child to the placement agency and the agency should obtain documents to that effect from that person in the presence of respectable persons. The surrender document should contain the full particulars and postal addresses of the person who surrenders the child and the witnesses. The agency should be in a position to produce the person who surrendered the child and the witnesses if necessity arises.

(20) As and when an abandoned or relinquished child is brought to the child home, the authorities of the Home shall immediately enter the particulars of the child in the registers and intimate VACA about the child to keep it in the list of children available for adoption,

(21) The procedure prescribed for fixation of date of birth of the child in Para 4.18 can be given up and the Home should be directed to get the child examined by a team of three Doctors comprising a Doctor practising on general side, a paediatrician and a paediatric surgeon and get the child study report prepared containing the medical history, date of birth, moles on the body, photo for identification of the child etc. If any deformities or disabilities or health problems are noticed by the Doctors, they should also state whether the problem of the

child is curable or not and the treatment that has to be given.

(22) Every placement agency should engage the services of a Paediatrician to look after the health of the inmates of the Home till they are given in adoption.

(23) If a particular child is identified by more than one parent, VACA has to select the best possible parent to offer the child in adoption.

(24) VACA shall maintain the Registers mentioned in Para 4.34 (iii) scrupulously.

(25) VACA shall ensure that the child is given nutritious diet during his/her stay with the voluntary agencies and the agencies may be permitted to claim such amount, as prescribed under the guidelines.

(26) It is also open to VACA to invite donations from the prospective parents by getting Income Tax exemption etc. to effectively discharge its functions without depending upon the assistance from the Government.

(27) The Central and concerned State Government Department Officials shall invariably conduct annual inspection of the records and accounts of CARA, VACA and placement agencies to find out whether any irregularities are being committed. If so, to take action against the concerned and to initiate remedial measures to prevent their recurrence in future.

(28) To have transparency in the process of adoption of children the following methods can be adopted:

(a) A closed circuit T.V. be placed projecting the children available in the Home through such T.V. to the prospective parents to enable them to see and to point out such children whom they should bring for the purpose of selection.

(b) The photos and the bio-data of the children be kept in Internet to enable the prospective parents to see the children from their respective places and to request for physical production of such child for consideration.

(c) A photo album of all the available children be made available to the prospective parents to enable them to see the photos with bio-data i.e., date of birth, date of receipt of the child by the agency, child's health condition and other necessary particulars to enable them to select one or two photos of the children for their physical verification and finalization for adoption.

(d) Immediately after receipt of the child by the Agency, either on relinquishment or on abandonment, the child must be placed for examination by a team of Paediatricians of a Government Hospital or a Government recognised Hospital.

(e) An identification card shall be prepared with the photo of the child providing the name, date of birth, colour, weight, health condition and identification marks, preferably black moles on the body with identification card number, which shall be a permanent record to help the prospective parents to identify the child.

(f) The agency, which is receiving the children and looking after them shall have

no role to play in the process of adoption, except to act according to the lawful directions of the Committee which is appointed to oversee the process of adoption.

Documents to be filed in Family Court

73. The following documents are to be filed before the Family Court along with the petition for in-country or inter-country adoption:

- (1) Last medical report obtained from the team of Doctors from Government Hospital, as stated earlier.
- (2) The documents obtained from the biological parents or the person who has entrusted the child to the agency.
- (3) A certificate from the Secretary of VACA certifying that the procedure prescribed under the guidelines has been scrupulously followed.
- (4) A certificate from the Head of the Agency/Home/Organisation that they have fulfilled all the conditions on their part including showing of the children along with the identity card prepared for the child to the parents who visited the Home.
- (5) In case of rejection of the child by any prospective adoptive parent, their serial number in the list of prospective parents register required to be maintained by the VACA has to be mentioned.
- (6) The Family Court shall keep a check-list of the documents pointed out above or any other relevant information and check the documents with reference to that check list to satisfy that all the required documents have been filed into Court.
- (7) Letter of satisfaction from CARA about the efforts made by the agency to find Indian parents.
- (8) Proof of CARA scrutinizing papers received with application.
- (9) Proof of CARA issued NOCs after application of mind and not mechanically on the basis of the certificate of clearance issued by VACA.
- (10) Proof of maintaining the registers of all prospective parents and the available children who are legally free for adoption,
- (11) Proof of efforts made by VACA to secure Indian parents.
- (12) Proof of VACA co-ordinating with other VACAs in the State or other States.
- (13) List of prospective parents.
- (14) List of Indian parents informed about the availability of child.
- (15) Proof of intimation to prospective parents.
- (16) List of children available for adoption.

(17) Proof as to how many prospective Indian parents saw the girl, how many rejected her and what are the reasons for rejection by other prospective parents?

(18) Proof regarding the period of sickness.

(19) Data regarding the dates of visits of prospective parents.

(20) Reasons supporting certificate of clearance issued by VACA.

(21) Proof of offering the child to Indian families abroad or foreign parent of Indian origin.

(22) Proof of the agency in continuous touch with VACA appraising the development regarding the non-availability of the first three categories of prospective parents.

(23) Proof of VACA or CARA contacting VACAs of other State about the availability of first three categories of prospective parents.

74. Lastly, we make it clear that the Family Court is the final arbiter in the matter and it has a vital role to play in inter-country and in-country adoptions. Hence, before coming to a conclusion, it has to scrutinise the records carefully and satisfy whether the guidelines have been scrupulously followed or not and also whether it is desirable to order guardianship of the child to the applicants for adoption or not.

Point No. 2 :

75. In the light of the findings under Point No. 1, we do not find any ground to interfere with the order of the Family Court, Hyderabad in OP No. 604 of 2001. The appeals are accordingly dismissed. No costs.

76. The learned Counsel for the appellant submitted that P.3, who selected the minor girl Haseena and who made the application before the Family Court along with P.2, has been staying in Hyderabad for the last 18 months and she developed so much love and affection towards the minor girl, therefore, he requested to treat this case as an exceptional one and allow P.2 and P.3 to be appointed as guardian of the minor girl and to adopt her after taking the girl to their country.

77. As per the interim directions of this Court, VACA sent notices to Indian prospective parents to select the children for adoption. It was represented by an Assistant Director of the Child and Women Development Department that on receipt of intimations Indian parents visited the girl and ultimately one person by name Sri B. V. Subrahmanyam came forward to adopt the girl. He appeared before the Court and made an application covered by CMP No. 23338 of 2002 to implead him as a respondent in these appeals to put forward his version regarding the adoption of the minor girl, and he also appeared before the Court. When we questioned him, he represented that he decided to adopt a girl child and he is not particular to adopt the minor girl HASEENA only. In the light of the

above developments, we do not wish to pass any order in this regard. But, it is for the VACA, Child Welfare Department of the Government to talk to him and if he is not so particular to adopt the child and if there are no other Indian parents who are willing to adopt this child, to take a decision whether it is possible to accede to the request of P.2 and P.3. If the concerned authorities satisfy that the guidelines are being scrupulously followed, and if they decide to give the child in inter-country adoption, it is for the petitioners to make another application before the Family Court and it is for the Family Court to pass appropriate orders on such application for guardianship of the minor girl.