
(2005) 06 KL CK 0065
In the High Court Of Kerala
Case No : Writ Petition No. 26644 of 2003

Maxin George

APPELLANT

Vs

Indian Oil Corporation

RESPONDENT

Date of Decision : 10-06-2005

Acts Referred:

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 41
Kerala Juvenile Justice (Care and Protection of Children) Rules, 2003 — Rule 37

Citation : (2005) 3 ILR (Ker) 89 : (2005) 3 KLT 57

Hon'ble Judges : M. Ramachandran, J; K.P. Balachandran, J

Bench : Division Bench

Advocate : Sebastian Champappilly and Antony M. Ambat, for the Appellant;
Antony Dominic, E.K. Nandakumar, A.K. Jayasankar Nambiar, Priya Mahesh and
Priya Manjooran, for the Respondent

Final Decision : Dismissed

Judgement

K.P. Balachandran, J.—The question of legal importance that calls for to be answered in this Writ Petition is as to whether a Christian couple having no issues could legally make an adoption. The answer on the point is to determine the fate of the petition, but provided, the further answer also is in the affirmative to the question as to whether the first petitioner is son thus adopted by late M.V. George. The matter has come up for consideration in the circumstances stated hereunder.

2. Late M.V. George, husband of the second petitioner was a permanent employee under the respondent Indian Oil Corporation. Their marriage was in 1971. They are stated to be Christian belonging to Latin Catholic denomination. There was no issue born out of their wedlock despite lapse of six years of marriage. The second petitioner at the relevant time was working as a staff nurse at the Medical College. Hospital, Kozhikode. A male child aged about 7 days found abandoned by its natural parents in the Institute of Maternity and Child Health, a separate wing of the Medical College on 8.10.1977 was handed over by

the Superintendent of the Institute to the childless couple who brought him up as their own child. The child so brought up is the first petitioner. He is stated to have passed B.B.M. Examination in 1998. While so on 4.11.2002 M.V. George died in harness while working as a Senior Foreman at the depot of the respondent public sector company at Kottayam.

3. Under Ext.P9 Memorandum of Settlement, the respondent company had introduced a Superannuation Benefit Fund Scheme (hereinafter referred to as the S.B.F. Scheme). One of the options under the said scheme which is incorporated as Annexure I to Ext.P9 provided for giving employment for eligible suitable dependent son/daughter of workmen dying while in service. Dependent son/daughter is specified to include son/daughter legally adopted prior to the death of the workman.

4. Invoking the benefit that might be admissible under the said Scheme the second petitioner submitted application for employment for the first petitioner as adopted son of late M.V. George. That was rejected by the respondent vide Ext.P10 letter dated 12.5.2003. The petitioners have therefore approached this Court to have the benefit under the S.B.F. Scheme enforced to the benefit of the first petitioner.

5. The Single Judge before whom the matter came up for consideration has vide reference order dated 11.3.2004 placed the matter for consideration by a Division Bench of this Court. The learned Judge was of the view that there being no law passed by the Parliament permitting adoption among Christian community, when a Single Judge of this Court in *Philips Alfred Malvin v. Gonsalvis* (1999 (1) KLT 292) has taken the view that as Christian Law does not prohibit adoption, adoption effected could in appropriate cases be valid and legal, the matter requires an authoritative pronouncement by a Division Bench.

6. The claim in the petition is that as per the instructions from the Parish Priest, permission was sought for from the then Bishop of Tellicherry for effecting adoption; that the Bishop blessed the child, the second petitioner and her husband and permitted adoption on 25.12.1977 on condition that the child be baptised and brought up as their natural born child. There is however no record to evidence any such permission sought for and obtained. Ext.P1 shows that as per order passed by the District Court in O.P.No. 154 of 1978 on 29.7.1978, late M.V. George the husband of the second petitioner was appointed as guardian of the then minor first petitioner. Ext.P2 is the baptism certificate dated 12.2.1984 which shows that the first petitioner was baptised on 15.8.1978 at the parish church, showing the date of birth of the child as 25.12.1977. Ext.P3 is certificate to the effect that the first petitioner has received sacrament of confirmation on 7th May, 1988 at the Holy Family Church, Mudiyrkara under the Arch Diocese of Changanassery. Exts.P4 to P8 show that the deceased employee had submitted applications before the respondent company for reimbursement of Rs. 2,700/- towards hostel subsidy for the first petitioner for the year 1990-91 while he was being schooled. Ext.P8 is the true copy of the S.S.L.C. book of the first petitioner,

Ext.P11 is the copy of Will executed jointly by the second petitioner and her husband on 7.8.1999 bequeathing the immovable properties scheduled thereunder and belonging to them in favour of the first petitioner. In Ext.P11 there is reference to the first petitioner as having been "adopted" but with further reference to him as the "foster son" of the testators.

7. Unless the petitioners establish that the first petitioner had been legally adopted by the second petitioner's late husband M.V. George, it cannot be said that he is "legally adopted son of late M.V. George". The decision of the Apex Court in Lakshmi Kant Pandey Vs. Union of India (UOI), , deals with procedure to be followed when resort is sought to appoint foreigners as guardian under the Guardian and Wards Act, 1890 though incidentally reference has been made thereto as inter country adoption while laying down the normative and procedural safeguards to be followed in such cases. That cannot be taken as authority to uphold the contention that adoption is recognised among all communities.

8. Learned counsel for the petitioner has contended that the petitioners belonged to Latin Catholic denomination, that the Code applicable to them is Canon Law; that Canon 110 recognises adoption in accordance with civil law; that the customary law followed by the parties permits adoption though there is no statutory sanction; that decree Nos. XXI and XXII of the Synod of Diamper shows that adoption of sons is legal in default of son and that custom of adoption existed in the community from very ancient times and that for reason of Ext.P2 baptism certificate and Ext.P3 confirmation certificate it has to be held that a valid adoption had taken place.

9. Canon 110 speaks only of the legal consequences of an adoption made "in accordance with the civil law" and it is as follows:--

Canon-110 "Children who have been adopted in accordance with the civil law are considered the children of that person or those persons who have adopted them".

10. Decree XXI of "the Acts and Decrees of the Synod of Diamper 1599" provides that adoption of sons is illegal except in default of children, which by implication suggests that in default of children adoption could be legal. Decree XXII which forbids the Bishop to sanction such adoption as those mentioned in Decree XXI provides also as to how an adoption is perfected.

11. Decrees XXI and XXII are extracted hereunder.

DECREE XXI

ADOPTION OF SONS ILLEGAL EXCEPT IN DEFAULT OF CHILDREN

"The Adoption of Sons is not lawful, but in defect of natural children; which not being understood by the Christians of this bishopric through their ignorance of the law, they do commonly adopt the children of their slaves born in their houses

or of other people, disinheriting their lawfully begotten children, sometimes upon the account of some differences they have had with them, and sometimes only for the affection they have to strangers, all which is contrary to law and reason, and is a manifest injustice and wrong done to their legitimate children; wherefore the Synod doth declare, that the said adoptions must not be practised where there are natural children, and being done are void, so that the persons thus adopted are not capable of inheriting anything, except what may be left them by way of legacy, which must not exceed the third of the estate; no, not though the adoption was made before there were any legitimate children to inherit. The Synod doth furthermore declare, That the adoptions which have been made before the celebration of this Synod, where there are children, and the adopted are not in actual possession of the estate, are void, neither shall the adopted have any share thereof, or having had any, shall be obliged to restore it, to which if it be found necessary, the prelate shall compel them by penalties and censures; but as to those who by virtue of such adoptions, have for a long time been in quiet possession of estates, the Synod by this decree does not intend to dispossess them thereof, by reason of the great disturbance and confusion the doing so would make in this diocese, which is what this Synod pretends to hinder, leaving everyone however in such cases, at liberty to take their remedy at law".

DECREE XXII

FORBIDS THE BISHOP TO SANCTION SUCH ADOPTION

Whereas the way of adopting by ancient custom in this diocese, is to carry the parties that are to be adopted before the bishop or prelate, with certain testimonials, before whom they declare, that they take such a one for their son, whereupon the bishop passeth an Olla or certificate, and so the adoption is perfected; the Synod doth command, that from henceforward, the prelate do not accept of an adoption from any that have children of their own; or in case they have none, yet it shall be declared in the Olla. That if they shall afterwards happen to have any, that the said Olla shall be void to all intents and purposes; by which means the great injustices that are now so common in this diocese will be prevented".

12. On a reading of the Decrees, it is obvious that custom practiced is recognised as law, with only few exceptions. Therefore if the petitioner has been able to establish that an adoption as recognised by custom has been there, it could be termed as legal, and which confers automatic right to the adopted child. It further shows that the method of adoption by ancient custom in the diocese is to carry the parties that are to be adopted before the Bishop or Prelate with certain testimonials before whom they declare that they take such a one for their son and that thereupon the Bishop has to pass an Olla or certificate and then adoption is perfected, but however that such adoption thereafter shall not be accepted from any that have children and that in case they have none, yet it shall be declared in the Olla that if they shall afterwards happen to have any,

such Olla shall be void for all intents and purposes. Thus an Olla or certificate is contemplated to evidence an adoption. In the instant case apart from the fact that the second petitioner's late husband was appointed guardian of the first petitioner vide Ext.P1, there is nothing even to suggest of an adoption having taken place either before or after Ext.P1 order. Even the baptism is after Ext.P1 as evidenced from Ext.P2 baptism certificate and even therein there is no mention of an adoption having taken place.

13. The decision in Alfred Malvin's case referred to supra (1999 (1) KLT 292) could be distinguished on facts as in that case the baptism certificate did make reference of an adoption having been made (vide paragraph 7 of the judgment).

14. Though after the amendment of the Hindu Adoptions and Maintenance Act by Act 45 of 1962 an orphan also could be adopted, such adoption also could be made only if the guardian gave the child in adoption. Among Christians also formalities of adoption takes in the physical act of giving and taking of the child. Obviously the giver of the child has to be one duly empowered or competent in that behalf. Authorities on the subject seem to be unanimous in the view that an abandoned child fostered by a couple does not attain the status of the adopted child of that couple. Obtaining an order appointing one as guardian of such a child under the Guardians and Wards Act also does not confer on the child the status of an adopted child. In the absence of evidence of a valid adoption having been made in any of the recognised forms undergoing the formalities of adoption recognised by the community an adoption cannot become legal. We may also notice with approval in this context the decision of a learned Judge of this Court in Biju Ramesh Vs. Vijayakumar,

15. The provision for adoption as apart of the rehabilitation and social re-integration of children, who are orphaned, abandoned, neglected and abused provided by Section 41 of the Juvenile Justice (Care and Protection of Children) Act, 2000 and Rule 37 of the Kerala Juvenile Justice (Care and Protection of Children) Rules, 2003 has of course come to the rescue of orphans, irrespective of the caste or creed, but that also does not dispense with the necessity of there being a giver in adoption.

16. Thus going by any standard, although it can be held that Christian Law recognises adoption, there is absolutely no evidence in this case that the first petitioner was legally adopted as son by the second petitioner's late husband M.V. George except that by virtue of Ext.P1 order late M.V. George had been appointed as guardian of the first petitioner and that he was the foster son of late M.V. George and the second petitioner. Consequently therefore the refusal of the respondent company to confer benefit of the S.B.F. Scheme on the first petitioner as legally adopted son of the workman late M.V. George cannot be faulted and no relief as prayed for can hence be granted in this petition.

This Writ Petition is hence dismissed.