

(1997) 03 GUJ CK 0011
In the Gujarat High Court

Sudha Bhatt

APPELLANT

Vs

Secretary, Social Welfare Deptt. and Others

RESPONDENT

Date of Decision : 17-03-1997

Acts Referred:

Juvenile Justice Act, 1986 — Section 15, 16, 16(1)

Citation : (1998) 3 GLR 2430

Hon'ble Judges : R.A. Mehta, Acting C.J.; R.K. Abichandani, J

Bench : Division Bench

Judgement

R.A. Mehta, Acting C.J.

1. On the letter of Ms. Sudha Bhatt, suo-motu cognizance was taken.
2. A girl child (later on named "Noopur" and now "Aayushi") was found abandoned within a few hours of the birth on 2nd September 1995 in the campus of S.S.G. General Hospital, Baroda. It was weak, ill-nourished and in precarious condition. The Hospital staff and the nurses took care of the child.
3. On 18th September 1995, an application was moved by a couple Mr. & Mrs. Murthy, u/s 16 of the Juvenile Justice Act, in the Court of Chief Judicial Magistrate, Baroda. It was registered as Misc. (Kirkol) Application No. 2 of 1995. On 18th October 1995, the application was granted to give custody of the child to the couple for a period of one year. One of the conditions was that the applicants shall deposit a sum of Rs. 50,000/- in the name of the child. Mr. Murthy was an Accounts Officer in Essar Co. at Surat. There was satisfactory home study report, other certificates, recommendations and report of the Probation Officer.
4. The present petitioner Ms. Sudha Bhatt reported this onerous condition to the High Court in her letter expressing her feeling that such onerous condition would be highly discouraging to the aspiring parents, and the cause of adoption of orphan children would suffer. She has also pointed out the problems of such aspiring parents of being childless, having personal, family and social problems.

They may have queries and worries about the abandoned child. There might be resistance from within the family and from the elders. They have to undergo several stresses before coming to a decision of adoption of an orphan child, particularly a girl child. They require proper counselling, encouragement, moral support and motivation at several stages during the process of adoption and even later on. All agencies including the Court process should be helping such persons rather than discouraging. She has also pointed out that the condition of such new born abandoned babies is usually very weak and even critical. They are abandoned and found in lavatories, garbage, bushes and open to attacks by stray dogs, cats etc., and infections. There may be birth and post-birth injuries and blood, cuts and even strangulations. They may have physical injuries on their fragile bodies and tremendous emotional as well as physical trauma and they suffer for no fault of theirs; there is every risk to their survival and there is total absence of personal care, love and affection. There is utmost need to provide them personal attention and warmth at the earliest.

5. On 8th November 1995, the Court issued notice and requested Ms. Rani Advani to act as *amicus curiae* and she has rendered very valuable assistance. By an ad-interim order, the condition regarding deposit of Rs. 50,000/- imposed by the Chief Judicial Magistrate, Baroda was stayed and rest of the order was expressly continued to be operative and a writ of this order was directed to be sent to all concerned including the original applicants, Mr. and Mrs. Murthy.

6. On 9th January 1996, it was reported to the Court that the infant child Noopur had developed some infection in eye and resulted in complication. The reports were not encouraging and the applicants-couple Mr. & Mrs. Murthy found that they would not be able to take care of the child and expressed their unwillingness to take the custody of the child. Thus, the neglected child unfortunately lost the "parents". That was second time it lost the family and the parents and it continued to remain neglected.

7. However, very fortunately, another couple, both medical practitioners, Dr. Gyaneshwar Rao, a practising surgeon and Dr. Alka Rao, a consulting pediatrician from Bhuj-Kutch came forward to take the custody of the child with an intention to adopt the child by following proper procedure. They had stated that they had been married for the last 10 years and did not have issue and they had seen the girl Noopur and expressed their willingness to eventually adopt her. They had also known the reasons why Mr. & Mrs. Murthy had refused to take the child in adoption and they had gone through all the reports and investigation of the child and they stated that they would be able to take full care of the child, now and in future. The earlier couple Mr. & Mrs. Murthy also filed an affidavit stating that they didn't intend to take custody of the child and had no objection if the custody of the child is given to another couple. In that view of the matter, by an interim order, it was directed that the custody of the girl Noopur be given to Dr. Gyaneshwar Rao and Dr. Alka Rao.

8. Accordingly, the custody was given to Dr. Rao. On 16th January 1996, both

Drs. Rao came to the Court with Noopur. All of them looked quite satisfied and happy. They were to take appropriate proceedings before the appropriate forum for taking the child in adoption. We are told that the adoptive family is very happy and everyone is satisfied and the proceedings for adoption have been taken.

9. However, this is not the end of the matter of which the cognizance has been taken suo motu in public interest.

10. The issues raised in this petition and concerning adoptions of neglected children are of frequent occurrences.

11. Ms. Rani Advani, the learned Advocate who has been appearing in this matter as amicus curiae at the request of the Court, has made certain points and suggestions to which the Government authorities were requested to give their response. That note dated March 18, 1996 is on record. A tentative response of the respondents authorities is also on record.

12. The Government has shown due concern for the welfare of the neglected children and about the delay that takes place in the proceedings and, therefore, they have drafted certain guidelines for giving immediate attention and quick disposal of the proceedings. It is stated that in respect of a neglected child below six years of age, expeditious disposal shall be undertaken and it is also pointed out that in case of such a young child, instead of sending the child to a juvenile home u/s 15, the custody of such a child should be given to a qualified, fit and responsible person u/s 16 of the Juvenile Justice Act. The Government has also found that in such proceedings, there is intolerable delay contrary to the directions given by the High Court. Therefore, the Government has desired that in case of children regarding whose natural parents, information is available, they should be traced without loss of any time and within eight days, they should be restored to their natural parents and for doing this, the Government has permitted to resort to quick means of communication not only in the city and the district where the child is found, but also in other districts. It is also pointed out that the correspondence is likely to result into delay and, therefore, by resorting to telegram, telephone and even direct personal visit by the officer, the expenditure may be incurred even without obtaining prior permission and subsequently the approval may be taken. It is also mentioned that if necessary, the report of a social worker (instead of Probation Officer) can also be called for as there is acute paucity of Probation Officers.

13. Where the information regarding the natural parents or guardians is not available, there also, quick means to gather the information by publicity should also be undertaken expeditiously. If in spite of such publicity, no one comes forward, the Juvenile Welfare Board or Social Welfare Department or the Collector (District Magistrate), I.C.S.W. (Indian Council of Social Welfare) can proceed u/s 16(1) and hand over the custody of the child to a fit person. Juvenile Welfare Board usually have applications of such intending qualified, fit and

responsible persons and parents who are interested in getting the custody of such children who can be adopted in future. In such cases, the Probation Officer is directed to make a report within seven days. The Probation Officer is also directed to make home studies and personal contacts of the intending parents, institutions and other authorities for the purpose even without obtaining prior permission from the superior officer. The Juvenile Welfare Board, Social Welfare Department, Collector (District Magistrate) and I.C.S.W. are expected to take decision and give custody of the child to the fit person. The guidelines further state that under any circumstances, such decision and handing over of custody of the neglected child to the fit person shall be expeditious it is also mentioned that six weeks shall be the maximum period and such decision and disposal shall take place in the minimum possible time.

14. During the course of hearing of this matter, several other problems and considerations have come up and they have been put to the respondents authorities and we have heard the authorities on those points and we consider them hereafter.

15. It is submitted that the Foster Care Scheme is applicable only to the cities of Baroda and Ahmedabad and should be extended to the whole State of Gujarat.

In this connection, the learned A.G.P., Mr. D.N. Patel has pointed out that the Foster Care Scheme of the Central Government was applicable only to the four metropolitan cities of the country and the Central Government had realised that the said scheme had not been very effective and successful and had not served the purpose and, therefore, in light of the experience, the scheme was improved and now it has been decided that the scheme which was applicable only to the four metropolitan cities of Delhi, Bombay Calcutta and Madras should be extended to the State capitals and other cities with a population of not less than 2 lacs. It is, thus, clear that the scheme is now more broad-based and not restricted to only Ahmedabad and Baroda and it extends to other cities with a population of 2 lacs and more. If a need arises and a case is made out, the authorities shall apply it to other cities also. By and large, every district city is likely to have a population of 2 lacs and more and, therefore, in each district, there should be at least one such city where the scheme is applicable and where a neglected child can be brought to an institution in such a city and be covered by Foster Care Scheme. In any case, it shall be open to any adoptive parents or applicant under the Foster Scheme to make an application for custody of the neglected child to the nearest city where the Scheme is applicable or otherwise convenient and proximate.

16. When a child is given to a fit person for taking its care, a sum of Rs. 75/- per month is provided as per the scheme. It is the experience of everyone that whenever the child is given to a fit person or a couple with a view to adopt the child, they do not care to claim this monthly amount of Rs. 75/- or any other amount. In fact, they are not interested in getting any such amount because they want to adopt the child as their own family member and bring up such child

as their own. However, there are large number of children which are taken care of by public and charitable institutions and to such institutions, the amount of only Rs. 75/- per month is given. This is too small an amount to maintain a child. If such a child is to be maintained in such a meagre amount, the child would remain neglected. It appears to us that this amount is required to be immediately increased by Rs. 250/- per month so that the monthly amount shall be Rs. 325/- per person and we direct the respondents authorities to see that hereafter, whenever this monthly amount is to be paid for a neglected child, it shall be paid at the rate of Rs. 325/- per month per child. This has to be periodically revised latest every three years considering the relevant factors, inflation and price index.

17. It is pointed out that before the custody of a neglected child is given to a fit person or a couple or before adoption, a home study of the new home and the couple is required to be made by the Probation Officer. It is pointed out that the total number of sanctioned posts of Probation Officers are inadequate and out of the sanctioned 105 posts which in themselves are inadequate, only 65 posts are filled in and 40 posts are lying vacant. It is, therefore, submitted that in order to expedite the process of giving custody of the child to a proper, fit and responsible person or a couple, this home study can be allowed to be made by other qualified persons. There are number of voluntary agencies which are already looking after the welfare of the neglected children and taking interest in seeing that such children are adopted in good families at the earliest. (Such intending persons also approach such institutions which do make inquiries to find out the home status of such persons). If such qualified persons are also allowed to make reports of home studies to the authorities and the Juvenile Welfare Boards, the authorities should be able to act on such reports and not to insist on the report of the Probation Officer. This is a suggestion which requires immediate implementation and, therefore, we direct that it will be open to the Juvenile Welfare Board, Courts and all other authorities to act on reports of qualified, fit and responsible persons and voluntary agencies. This would not only eliminate the delay but also eliminate the complaints of extra legal considerations in a few cases. Once the load of work is reduced, it will be possible for all authorities to take steps expeditiously.

18. Regarding the home study report, it is not necessary that only when a child is available to be adopted, the report of the intending parents is to be made. As soon as there is a person or a couple intending to take custody of a neglected child for adoption, the home study should be undertaken and report should be made so that as and when any neglected child is to be given custody of, it can be given without loss of time. If necessary, the home study report can be periodically updated and if any person wants to withdraw the application, it can be deleted, but if such a list of waiting persons is ready with home study report, lot of delay can be avoided. We, therefore, direct that as and when there is any such person willing to take the neglected child as a fit person or in adoption, home study report should be called for from Probation Officer or from voluntary

agencies or persons as mentioned earlier.

19. After adoption, the question arises of the birth certificate. The birth certificate is required in the course of life-time of the child at various important occasions; such as admission to schools, colleges, service, passport, going abroad and for several other reasons. If such birth certificate does not properly indicate the names of father and mother of the child, it is likely to create some stigma or element of embarrassment (such as "not known" "illegitimate" or even blank) even though there is no reason whatsoever for the innocent child to suffer on that account. Once there is a valid adoption, the adoptive parents are the parents for all purposes and when the names of natural parents are not known, the names of adoptive parents are required to be entered for all purposes as if they are the natural parents and without in any manner disclosing or indicating the fact that the natural parents were some other persons so that there is complete integration of the child in the new family and the names of the adoptive parents are the only true names of the parents of the child.

20. In this connection, the observations of the Supreme Court in the case of Lakshmi Kant Pandey Vs. Union of India (UOI), are significant. In para 7, the Supreme Court noted that the welfare of the children has received a lot of consideration at all levels including the General Assembly of United Nations which has adopted a Declaration of the Rights of the Child on November 20, 1959. It declares as follows:

the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth and that mankind owes to the child the best it has to give.

It further states that the child shall be entitled from its birth to the nationality. The Expert Group adopted a draft declaration on social and legal principles relating to the protection and welfare of children with special reference of foster placement and adoption, nationally and internationally. In paras 7.1, 7.2 and 7.3 relating to Status of the Child, the following declaration was made:

7.1 Family - It is essential that in inter-country adoption, child is given the same legal status and rights of inheritance, as if she/he had been born to the adoptive parents in marriage.

7.2 Name - When the legal adoption process is concluded the child shall have the equivalent of a birth registration certificate.

7.3 Nationality - When the legal adoption is concluded, the child shall be granted appropriate citizenship.

In para 22 of the judgment, the Supreme Court directed that the entire procedure for adoption should be completed by the Court expeditiously and as far as possible, within a period of two months from the date of filing of the application for guardianship of the child and the proceedings on the application for guardianship should be held by the Court in camera and they should be

regarded as confidential and as soon as the order is made on the application for guardianship, the entire proceedings including the papers and documents should be sealed.

21. This is with a view to see that the child and the family is totally disassociated from the past and the past relations and entirely a new life in the family is started. This is further clear from para 23 of the judgment of the Supreme Court wherein the Supreme Court has observed as follows:

We may add even at the cost of repetition that the biological parents of a child taken in adoption should not under any circumstances be able to know who are the adoptive parents of the child nor should they have any access to the home study report or the child study report or the other papers and proceedings in the application for guardianship of the child.

22. In view of these observations and the objects, it is absolutely necessary that the birth certificate should not indicate anything to show that the child was a neglected and abandoned child and that there were any other parents or unknown parents of the child. The adoptive parents are the only parents for all purposes. The birth certificate must show that the adoptive parents are parents as if they are the natural parents.

23. Once the adoption is completed and the orders are produced before the Government and local authorities, these directions regarding the birth certificate are required to be carried out by all such agencies of the Government and all the authorities including local authorities like Municipal Corporations, Municipalities, Panchayats etc., dealing with the birth registrations and the issuance of birth certificates and they shall see to it that fresh birth certificates in case of such children are issued in the same manner as they are issued to any other children.

24. As pointed out earlier, the conditions imposed of cash deposit are deterrent and sometimes counter productive and results into the adoptive parents shying away from adoption and the neglected children remaining without family. The present case is an instance of that type. The Court is naturally concerned about the welfare and future of the child and, therefore, home study report would indicate as to what is the status of the family including educational and economic status and that should be enough assurance for the future of the child. If the adoptive parents do not have that kind of status, then they may not be entitled to the adoption, but once these conditions are satisfied, the cash deposit or security is uncalled for. The bond which is required would be a personal bond to take care of the child and its welfare. In case of breach of such bond, an amount can be forfeited and the security can be provided for that purpose, but this should be very reasonable and simple and should not result into any delay for adoption of the child.

25. In view of the aforesaid discussion of the subject, and because the issues raised and determined herein are of great importance to abandoned children, future adoptive parents and N.G.O.s working in this field, we recapitulate that:

(a) in case of new born babies found abandoned, an application for fit person/ guardianship/adoption, if made before the Appropriate Authority shall be disposed of as soon as possible and in any case latest within six weeks. This shall apply to all situations where the abandoned/neglected child is below 1 year of age.

(b) in case of abandoned children over 1 year and upto six years of age, the entire procedure referred to in para (a) shall be completed latest within 3 months from the date such application is made.

(c) The Juvenile Welfare Board or Collector or Department of Social Defence shall be competent to declare an abandoned/neglected child free for guardianship/ adoption, as the case may be.

(d) Bodies, Institutions and Faculty of Indian Council of Child Welfare (I.C.C.W.), Indian Council of Social Welfare (I.C.S.W.), M.S. University of Baroda and other similar recognised institutions and their staff shall be competent to carry out Home-study reports and such other studies required for the purpose of guardianship/adoption procedure. So also the social worker & Probation Officer shall be competent to submit Home-study reports. The applicant parents shall have the option to have the reports prepared by anyone of these recognised authorities.

(e) Generally, no condition for cash deposit shall be imposed, while granting the application for guardianship/adoption. However, in exceptional circumstances and after recording special reasons for such condition, a modest amount of cash deposit may be required of adoptive parents.

(f) After the adoption proceedings are legally completed and when an application for issuing a fresh birth certificate is made by the parents, all authorities including local authorities like Municipal Corporation, Municipalities, Panchayats, Registrar of Births/Deaths etc., dealing with the birth registrations and issuance of birth certificates shall issue birth certificates in the same manner as they are to any other children. Nothing in the. birth certificate shall indicate that the child was abandoned/ neglected. No blanks or such entries as create embarrassment or cast a stigma on the child shall be there in the birth certificate. The child shall have the equivalent of a birth registration certificate and it must only reflect that adoptive parents are the natural parents of the child.

(g) The foster scheme is extended so as to apply to all cities with a population of 2 lacs and more. The sum payable to a foster parent is revised to Rs. 325/- per month per child and shall be revisable every three years as discussed earlier.

26. With these directions, this petition is disposed of. A copy of this judgment shall be circulated to every Juvenile Welfare Board and to every District Court and to Judges dealing with adoption cases. A copy of this judgment also to be circulated to the Registrars of Births and such other registering authorities.