

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-10555-2019

Date of Decision: July 28, 2020

(THROUGH VIDEO CONFERENCING)

Jasmine Kaur

.....Petitioner

Versus

Union of India and others

.....Respondents

CORAM: HON'BLE MS.JUSTICE NIRMALJIT KAUR

Present: Mr.Sukhvinder Singh Nara, Advocate
for the petitioner.

Mr.Satya Pal Jain, Addl.Solicitor General of India with
Ms.Shweta Nahata, Advocate
for respondent Nos.1 to 3.

Mr.Anil Malhotra, Advocate as *Amicus Curiae*.

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NIRMALJIT KAUR, J.

The present petition has been filed seeking a direction to respondent Nos.1 and 2 to issue a passport to the petitioner by dispensing with the requirement of 'No Objection Certificate' from respondent No.3, i.e. the Central Adoption Resource Authority (hereinafter referred as 'the CARA') which is being taken up through Video Conferencing due to COVID-19.

The petitioner-Jasmine Kaur was born on 15.11.2017 in India to her natural parents Mr.Manohar Lal & Mrs. Gian Kaur. It is significant to mention here that twin daughters were born to Mr.Manohar Lal & Mrs. Gian Kaur. Gian Kaur is the real sister of Mrs.Balbir Kaur, an NRI, OCI card holder and citizen of United Kindgom, aged 53 years, wife of Paramjit Singh, is a permanent resident of 250, Park Avenue, Southhall Middlesex

UB 13AW UK. The petitioner was adopted by above mentioned Balbir Kaur and Paramjit Singh from her natural parents as per Sikh rites and ceremonies which were performed at Gurudwara Shaheedan Singhan Ji, Village Thalla, Tehsil Phillaur, District Jalandhar and a certificate to this effect was also issued. Pursuant to the adoption ceremony, a registered adoption deed was also executed on 16.11.2018 between the natural and adoptive parents of the petitioner. The petitioner was adopted as per the Hindu Adoption and Maintenance Act, 1956 (hereinafter referred as 'the HAMA,1956'). The petitioner has applied for issuance of passport vide Passport Application No.JA2063095726618 alongwith all the relevant documents but the same was refused by the Passport Authority, i.e. respondent No.2 on the ground that NOC from CARA/FERA or photocopy from Recognized Indian Placement Agency (RIPA) is required.

It is *inter-alia* contended by learned counsel for the petitioner that passport is being denied to the minor petitioner primarily due to the lack of a No Objection Certificate from CARA. It is argued that Section 56(3) of the Juvenile Justice (Care and Protection of Children) Act 2015 (hereinafter referred as 'the J.J. Act, 2015') very clearly states that the provisions of the said Act would not be applicable to the adoption of children made under the provisions of the HAMA,1956. It is contended that the petitioner-Jasmine Kaur has been adopted under the adoption deed which is a duly executed document and the said adoption is under the provisions of HAMA, 1956 and, therefore, the question of getting a 'No Objection Certificate' from CARA would not arise.

Per contra, learned counsel appearing on behalf of the UOI states that it is a mandatory procedure for the adoption to be ratified by

CARA, even though Section 56(3) of the J.J. Act 2015 states that the Juvenile Justice (Care and Protection of Children) Act 2015 would not be applicable to an adoption under the HAMA, 1956.

Thereafter, vide order dated 10.06.2020 passed by the Coordinate Bench of this Court, Mr.Anil Malhotra, Advocate was appointed as *Amicus Curiae* in this case to assist the Court on account of his experience in dealing with such issues.

In pursuance to the said order, Mr.Anil Malhotra, learned *Amicus Curiae* filed his report. Reply has also been filed by respondent Nos.1 and 2, i.e. Union of India and Regional Passport Office. Separate reply has also been filed by respondent No.3-CARA.

After hearing learned counsel for the parties at length, three issues arise in the present writ petition:

1. Whether the adoption under HAMA, 1956 is valid and whether Section 56 of the J.J. Act, 2015 is applicable in the facts of the present case and the adoption in the present case can only be made under the J.J. Act, 2015?
2. Whether an NOC from CARA, i.e. respondent No.3 is mandatory as per the mandate of Section 60 of the J.J. Act, 2015 for direct inter-country relative adoption?
3. Whether respondent No.2 can refuse to issue a passport beyond the statutory provisions of Section 6 of the Passports Act, 1967?

In order to adjudicate upon Issue No.1, it is necessary to reproduce Sections 2 & 5 of the HAMA, 1956 and Sections 1(4), 56 and 60 of the J.J. Act, 2015 which read as:

“Section 2 & 5 of HAMA, 1956:

2. Application of Act- (1) This Act applies-

- (a) to any person, who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,
- (b) to any person who is a Buddhist, Jaina or Sikh by religion, and
- (c) to any other person who is not a Muslim, Christian, Parsi or Jew by religion unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

Explanation- The following persons are Hindus, Buddhists, Jainas or Sikhs by religion, as the case may be:-

- (a) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jainas or Sikhs by religion;
 - (b) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged;
 - (bb) any child, legitimate or illegitimate, who has been abandoned both by his father and mother or whose parentage is not known and who in either case is brought up as a Hindu, Buddhist, Jaina or Sikh; and
 - (c) any person who is a convert or reconvert to the Hindu, Buddhist, Jaina or Sikh, religion.
- (2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of Article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.
- (3) The expression "Hindu" in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is nevertheless, a person to whom this

Act applies by virtue of the provisions contained in this section.

5. Adoptions to be regulated by this Chapter- (1) No adoption shall be made after the commencement of this Act by or to a Hindu except in accordance with the provisions contained in this Chapter, and any adoption made in contravention of the said provisions shall be void.

(2) An adoption which is void shall neither create any rights in the adoptive family in favour of any person which he or she could not have acquired except by reason of the adoption, nor destroy the rights of any person in the family of his or her birth.”

A perusal of HAMA, 1956 shows that it regulates adoption by Hindus, Buddhist, Jains and Sikhs by religion and lays down certain strict conditions for adoption. Those, who do not fall under the definition of Hindu are barred from adopting under this Act.

“Sections 1(4), 56 and 60 of the J.J. Act, 2015:

1(4). Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall apply to all matters concerning children in need of care and protection and children in conflict with law, including-

- (i) apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social re-integration of children in conflict with law;
- (ii) Procedures and decisions or orders relating to rehabilitation, adoption, re-integration, and restoration of children in need of care and protection.”

56. Adoption - (1) Adoption shall be resorted to for ensuring right to family for the orphan, abandoned and surrendered children, as per the provisions of this Act, the rules made thereunder and the adoption regulations framed by the Authority.

- (2) Adoption of a child from a relative by another relative, irrespective of their religion, can be made as per the provisions of this Act and the adoption regulations framed by the Authority.
- (3) Nothing in this Act shall apply to the adoption of children made under the provisions of the Hindu Adoption and Maintenance Act, 1956.(78 of 1956).
- (4) All inter-country adoptions shall be done only as per the provisions of this Act and the adoption regulations framed by the Authority.
- (5) Any person, who takes or sends a child to a foreign country or takes part in any arrangement for transferring the care and custody of a child to another person in a foreign country without a valid order from the Court, shall be punishable as per the provisions of section 80.”

60 Procedure for inter-country relative adoption:(1) A relative living abroad, who intends to adopt a child from his relative in India shall obtain an order from the court and apply for no objection certificate from Authority, in the manner as provided in the adoption regulations framed by the Authority.

- (2) The Authority shall on receipt of the order under sub-section (1) and the application from either the biological parents or from the adoptive parents, issue no objection certificate under intimation to the immigration authority of India and of the receiving country of the child.
- (3) The adoptive parents shall, after receiving no objection certificate under sub-section (2), receive the child from the biological parents and shall facilitate the contact of the adopted child with his siblings and biological parents from time to time.”

A perusal of the J.J. Act, 2015 shows that it is a special provision for a limited class of children, those who are in conflict with law, in need of care and protection, orphaned, surrendered or abandoned. In the

present case the adoptive parents are Sikhs. The child is being given over by the biological parents of sound mental health. The biological mother is the real sister of the adopted mother. The child is neither an orphaned nor surrendered nor in conflict with the law. Thus, the J.J. Act 2015 does not apply for adoption of the particular child in question.

The argument of learned Senior Counsel, Mr. Satya Pal Jain, Additional Solicitor General of India that Section 56(4) shows that in case of adoption relating to inter-country, i.e. when the parents adopting the child belong to or citizens of another country, the said adoption shall be as per the provisions of the J.J. Act, 2015 was met by Mr. Anil Malhotra, learned *Amicus Curiae*, who referred to Sub Section (3) of Section 56, according to which, provisions of the J.J. Act, 2015 will not apply in case the adoption of the children is made under the provisions of the Hindu Adoption and Maintenance Act, 1956 and that Section 60 of the J.J. Act, 2015 has to be read in conjunction with Section 56 of the J.J. Act, 2015 which is an inbuilt of the Hindu Adoption and Maintenance Act, 1956 and adoption code in itself and, therefore, the supremacy of Section 56(3) over-rides the remaining provisions of Section 56 of the J.J. Act, 2015. The submission made by learned *Amicus Curiae* makes sense as it is not understood as to how an Act, which is applicable to a special class of children, namely, orphans, abandoned, surrendered and in conflict with the law, be also applied alongwith all its tedious procedures to children being given in adoption by able, mentally sound parents and that too to a relative directly by the adoptive parents. More so, when they are close relatives.

One of the issue as herein came up for hearing before the Division Bench of High Court of Kerala at Ernakulam in the case of

Sivarama K. and others vs The State of Kerala and others, 2020(1)

Kerala Law Journal 641. Questions which emerged for consideration before the Kerala High Court were detailed in para 9 of the said order, which read thus:-

- “(i) Whether P-1 adoption effected as per the provisions of the HAM Act can be said to be in contravention of the J.J Act?
- (ii) Whether the J.J Act overrides the HAM Act.
- (iii) Whether the child is in the unlawful detention of respondents 4 to 6.”

In the said case also, the biological parents and the adoptive parents decided to execute an adoption deed and in pursuance to the said adoption deed, the child was handed over by the biological parents to the adoptive parents in accordance with the provisions of the HAMA, 1956. However, the child was forcibly taken away by the Child Welfare Committee as being followed by the Juvenile Justice (Care and Protection of Children) Act, 2015. The Court while allowing the writ petition, directed the child to be handed over to the adoptive parents by holding in para 29 as under:-

“29. On the giving of the child by the biological parents and the taking of the child by the adoptive parents, which is evidenced by Ext.P-1 registered adoption deed, the child can never be labelled as an orphan, abandoned or surrendered child, as interpreted by the fourth respondent. If such a view is taken, it would render the HAM Act otiose and redundant and make it appear that the former enactment is repugnant with the J.J Act, which never is the intention of the lawmakers. Such a narrow and oppressive interpretation cannot be given, particularly when the legislature has consciously included Sec.56(3) in the J.J Act, the later enactment, with the intention to permit adoptions under

the HAM Act. There may be instances where a person may qualify to adopt a child under the provisions of both the HAM Act and the J.J Act. In such an eventuality, especially where is no repugnancy between the two statutes, it would be the choice of such person to opt for the HAM Act or the J.J Act, 2015, adoption. No authority can compel such person to resort to only the J.J Act, 2015.”

The argument of learned Additional Solicitor General of India, Mr.Satya Pal Jain, that the judgment pertains to a period before the amendment of the J.J. Act, 2000 and is before the enactment of J.J. Act, 2015, came into operation is correct but the same does not help in any manner as the applicability of the Act under the Juvenile Justice (Care and Protection of Children) Act, 2000 and the Juvenile Justice (Care and Protection of Children) Act, 2015 remains the same. In fact, its application under J.J. Act, 2015 is even more specific to only special children.

No doubt, here it is an inter-country adoption and as per Section 56(4) of the J.J. Act, 2015, inter-country adoption shall be done only as per the provisions of this Act and the Adoption Regulations framed by the Authority but the same has to be read with its applicability as per Section 1(4) of the JJ Act, 2015, reproduced above, which lays down very clearly, and for the sake of repetition applies only “to all matters concerning children in need of care and protection and children in conflict with law, including — (i) apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social re-integration of children in conflict with law; (ii) procedures and decisions or orders relating to rehabilitation, adoption, re-integration, and restoration of children in need of care and protection.”

Further, the aim and object of the J.J. Act, 2015 was formulated for protection of such children who are found to be in conflict with law or

required rehabilitation. Thus, Section 56(4) and (5) of the J.J. Act, 2015 is only for such children. Sub Section (2) of Section 56 of the J.J. Act, 2015, which talks of adoption of a child by a relative from another relative, is an option/remedy provided to those to whom HAMA, 1956 will not apply, i.e. they are neither Hindu, Buddhist, Jain or Sikh, as the case may be or is not Muslim, Christian, Parsi or Jew by religion, although it does not bar and in a way gives option even to a Hindu, Sikh, Jaina etc. to apply under this Act. Therefore, it also does not mean that those religions covered under the definition of a 'Hindu' as per the HAMA, 1956 cannot apply under the J.J. Act, 2015. Here, it needs to be emphasized that J.J. Act, 2015 is a secular Act and rather gives choice to even those covered under the HAMA, 1956 to apply for adoption under the J.J. Act, 2015, as also clarified by the Apex Court in the case of Shabnam Hashmi vs Union of India and others 2014(1) RCR (Civil) 1052 holding that Juvenile Justice (Care and Protection of Children) Act, 2000 has been enacted for adoption of children irrespective of their religion/caste and the said Act cannot be negated by any other personal law and the individuals are free to either submit to their personal law or adopt children under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000. Para 11 of the said judgment reads thus:

“11. The JJ Act, 2000, as amended, is an enabling legislation that gives a prospective parent the option of adopting an eligible child by following the procedure prescribed by the Act, Rules and the CARA guidelines, as notified under the Act. The Act does not mandate any compulsive action by any prospective parent leaving such person with the liberty of accessing the provisions of the Act, if he so desires. Such a person is always free to adopt or choose not to do so and,

instead, follow what he comprehends to be the dictates of the personal law applicable to him. To us, the Act is a small step in reaching the goal enshrined by Article 44 of the Constitution. Personal beliefs and faiths, though must be honoured, cannot dictate the operation of the provisions of an enabling statute. At the cost of repetition we would like to say that an optional legislation that does not contain an unavoidable imperative cannot be stultified by principles of personal law which, however, would always continue to govern any person who chooses to so submit himself until such time that the vision of a uniform Civil Code is achieved. The same can only happen by the collective decision of the generation(s) to come to sink conflicting faiths and beliefs that are still active as on date.”

In the present case, there is no dispute that the adoption has been taken by the persons who are Sikhs and, therefore, have a right to adopt the petitioner under the HAMA, 1956. Even though, they are British citizens, their religion remains the same and, therefore, their right to adopt under the HAMA, 1956 cannot be taken away. In these circumstances, their adoption would be considered as valid. Their adoption is also protected by Section 56(3) of the JJ Act, 2015 itself, which clearly stipulates that the provisions of the Act shall not be applied for the adoption of the children under the HAMA, 1956. Once having applied under HAMA & adoption having been registered under HAMA, 1956, the said adoption cannot be challenged on the ground that the same should have been made under J.J. Act, 2015 as also in view of Section 15 of HAMA, 1956 which clearly states that a valid adoption of a minor child is irreversible and cannot be revoked. Thus, it was neither mandatory nor necessary to apply for adoption of the child in question under the J.J. Act, 2015.

The next issue is whether this J.J. Act, 2015 would apply even in those cases of inter-country adoption of children which are being given directly by parents to relatives and known people under HAMA, 1956.

Section 1(4) of the J.J. Act, 2015, as discussed above applies only to special children. Thus, the other provisions of the said Act including the Rules framed under it or the adoption regulations issued by the Ministry of Women and Child Development which are specifically notified in exercise of the powers conferred by Section 68 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and are also framed under the Juvenile Justice (Care and Protection of Children) Act, 2015 will have to be read alongwith the applicability of the said Act, which is only to children specified under Section 1(4) of the J.J. Act, 2015. Once the applicability is only of the special children, it is not understood as to how the same can be made applicable to other children being directly given by the parents, whether to, in country adoptive parents or outside the country. In case the Legislative Authority had intention to apply the said Act even to such children who were given directly in adoption, the necessary amendment would have followed in the Juvenile Justice (Care and Protection of Children) Act, 2015 especially when the old Juvenile Justice (Care and Protection of Children) Act, 2000 was replaced by the J.J. Act, 2015. In fact, while replacing Juvenile Justice (Care and Protection of Children) Act, 2000 by the J.J. Act, 2015, the same was passed by the Parliament of India with the following aims and objects:-

“An Act to consolidate and amend the law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment,

social re-integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established, hereinunder and for matters connected therewith or incidental thereto.

WHEREAS, the provisions of the Constitution confer powers and impose duties, under clause (3) of article 15, clauses (e) and (f) of article 39, article 45 and article 47, on the State to ensure that all the needs of children are met and that their basic human rights are fully protected;

AND WHEREAS, the Government of India has acceded on the 11th December, 1992 to the Convention on the Rights of the Child, adopted by the General Assembly of United Nations, which has prescribed a set of standards to be adhered to by all State parties in securing the best interest of the child;

AND WHEREAS, it is expedient to re-enact the Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000) to make comprehensive provisions for children alleged and found to be in conflict with law and children in need of care and protection, taking into consideration the standards prescribed in the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993), and other related international instruments.”

The Juvenile Justice (Care and Protection of Children) Act, 2015 has introduced the concepts of adoption child from the Hague Convention on protection of Children and Cooperative in respect of inter-country Adoption, 1993, which were missing in the previous Act of 2000. The amended Act also made the adoption process of orphaned, abandoned

and surrendered children only. Thereafter, Central Adoption Resource Authority (CARA) respondent No.3, which is a statutory Authority too was established only under Section 68 of the J.J. Act, 2015, which is applicable to special children.

Thereafter, the adoption Regulations 2017 were framed by the Ministry of Women and Child Development vide notification dated 04.01.2017 and that too was once again in exercise of the powers under Section 68 read with Clause (3) of Section 2 of the Juvenile Justice (Care and Protection of Children) Act 2015 and as stated above, the J.J. Act, 2015 pertains only to special Children as mentioned in Section 1(4) of the J.J. Act, 2015 and not to children being directly adopted. The fact that the said Act is not applicable even to the inter-country adoption of children adopted directly, from biological parents is also evident from the judgment rendered by the Supreme Court in the case of **Lakshmi Kant Pandey vs Union of India** (1984) 2 Supreme Court Cases 244. The Supreme Court in the said case, while reviewing the inter-country adoption, held in para 11 as under:-

“11. We may make it clear at the outset that we are not concerned here with cases of adoption of children living with their biological parents, for in such class of cases, the biological parents would be the best persons to decide whether to give their child in adoption to foreign parents. It is only in those cases where the children sought to be taken in adoption are destitute or abandoned and are living in social or child welfare centres that it is necessary to consider what normative and procedural safeguards should be forged for protecting their interest and promoting their welfare.”

Thereafter, the Apex Court in the case of **Anokha (Smt.) vs State of Rajasthan and others** (2004) 1 Supreme Court Cases 382 while

analysing the Juvenile Justice (Care and Protection of Children) Act, 2000 held that inter-country direct adoptions are not amenable to the rigorous procedures and safeguards since the natural parents are the best to judge what is the best interest of the child and held in no uncertain terms that where the child is living with her biological parents and who seek to give their child in adoption to a foreign couple, who are known to them, need not to follow the guidelines prescribed for adoption of Indian children being applicable, only to children who are orphans and destitute or whose biological parents are not traceable or relinquished or surrendered their children for adoption. Paras 12 and 15 of the said judgment read as under:

“12.The Guidelines have formulated various directives as given by this Court in the several decisions and do not relate to regulation of the adoption procedure to be followed in respect of third category of children, namely, children with their biological parents who are sought to be given in adoption to a known couple as is the situation in this case. It is only where there is the impersonalized attention of a placement authority that there is a need to closely monitor the process including obtaining of a no objection certificate from the Central Adoption Resource Agency (CARA), Ministry of Welfare, the sponsorship of the adoption by a recognised national agency and the scrutiny of the inter-country adoption by a recognised Voluntary Coordinating Agency (VCA). Indeed CARA has been set up under the guidelines for the purpose of eliminating the malpractice indulged in by some unscrupulous placement agencies particularly the trafficking in children.

15 None of these provisions in the several decisions of this Court impinge upon the rights and choice of an individual to give his or her child in adoption to named persons, who may be of foreign origin. The Court in such cases has to deal with

the application under Section 7 of the Guardians and Wards Act, 1890 and dispose of the same after being satisfied that the child is being given in adoption voluntarily after being aware of the implication of adoption viz. that the child would legally belong to the adoptive parents family, uninduced by any extraneous reasons such as the receipt of money etc; that the adoptive parents have produced evidence in support of their suitability and finally that the arrangement would be in the best interest of the child.”

The learned Additional Solicitor General of India while placing reliance on the judgment rendered by the Bombay High Court in the case of **Adoption of Payal @ Sharinee Vinay Pathak and his wife Sonika Sahay @ Pathak**, 2010(1) BomCR434 submitted that the Juvenile Justice (Care and Protection of Children) Act, 2000 is a special Act and over-rides the general provisions of the HAMA 1956. The said judgment does not help as the same was passed in the facts of a case wherein the issue arose whether a Hindu couple governed by Hindu Adoption and Maintenance Act, 1956 with the child of their own, can adopt a child of a same gender under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 and it was in those circumstances that the Court observed in para 17 as under:-

“17.The Hindu Adoptions and Maintenance Act, 1956 regulates adoptions by or to a Hindu. The Act spells out requisites of valid adoptions, defines capacities for men and women professing the Hindu religion to take in adoption and to give in adoption, for persons who may be adopted and the conditions for adoption. The Act enunciates consequences or effects of a valid adoption in law. The Act establishes rules of general applicability to Hindus in specific

areas of family law – adoption and maintenance. The Juvenile Justice (Care and Protection of Children) Act, 2000 is beneficent secular legislation. The Act makes special provisions for a limited sub class of children – those juveniles in conflict with law and children in need of care and protection. Adoption under the Act of 2000 is an instrument of legislative policy to rehabilitate and provide social integration to children who are in need of care and protection. The Preamble to the Act emphasizes that the legislation was enacted to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection. Rehabilitation and social integration of orphaned, abandoned and surrendered children is a matter of legislative regulation by the Juvenile Justice Act. Adoption is a technique contemplated by the law in order to facilitate rehabilitation and reintegration of children of a particular class governed by Chapter IV. The mission of the law is to provide special rules to govern the adoption of a narrow sub class of children namely, those who are orphaned, surrendered or abandoned. In construing the provisions of the Juvenile Justice Act the effort of the Court must be to ensure that the beneficent object with which the legislation was enacted must be facilitated and furthered. Beneficial legislation, it is a trite principle of interpretation, must be construed liberally.”

Moreover, the child in the said case was surrendered by the mother four days after the child was born by duly recording reasons why they wanted to surrender the child to a nursing home where the child was born. Therefore, the child was a ‘surrendered child’ and duly covered under

the Juvenile Justice (Care and Protection of Children) Act, 2000 where the restrictions of a Hindu as to adopt a child under the HAMA, 1956 were not applicable. Thus, it was adoption of a surrendered child in that case and not a direct adoption from the parents. Therefore, the answer to this issue is in the negative, i.e. the J.J. Act, 2015 alongwith the adoption Regulations 2017 will not apply to the children adopted directly from the biological parents under HAMA 1956.

The next question is as to whether the Regional Passport Officer can decline to issue a passport under the provisions of the Passports Act, 1967 (hereinafter referred as 'PA') and NOC was necessary from CARA on the ground that :

- “(I) That the adoption of the petitioner is invalid or illegal.
- (II) That it does not confirm to the conditions prescribed in the check-list, Annexure P-4 of respondent Nos.1 and 2, inter alia as follows:
 - (i) NOC from Central Adoption Resource Authority (CARA).
 - (ii) Legal and valid adoption deed declared by Court of law.
 - (iii) Details of children of both natural and adoptive parents.
 - (iv) Medical certificate of adoptive parents in case no child is born.
 - (v) Marriage certificate of adoptive parents.

It may be submitted that the requirement of the above documents is specified in the affidavit dated 13.10.2019, filed in the present case by Assistant Passport Officer, Regional Passport Office, Jalandhar.”

In terms of Section 6 of the PA, a passport can be declined or refused to an applicant under Section 5 PA, on four grounds stated in

Section 6(1) PA, and on nine grounds stated in Section 6(2) PA.

It is not disputed that the child was adopted under the HAMA 1956 and from the facts on record, there is no violation of any condition prescribed in Section 11 of the HAMA, 1956.

The previous birth certificate dated 17.08.2016, Annexure P-6, was issued in the name of natural parents, i.e. Manohar Lal and Gian Kaur. After the ceremonial adoption on 09.11.2018, and registered adoption deed dated 16.11.2018, being drawn up, the new birth certificate dated 29.11.2018, Annexure P-1, has been issued in the name of adoptive parents, i.e. Paramjit Singh and Balbir Kaur, as per the record of SDMC, NCT of Delhi. A deed, Annexure P-3 dated 16.11.2018 has been duly executed, witnesses, notarised & registered by the Sub Registrar, Phillaur on 16.11.2018. In terms of Section 12 HAMA, 1956, the petitioner child shall be deemed to be child of the adoptive parents, i.e. Paramjit Singh and Balbir Kaur w.e.f. 09.11.2018, and from this date, all the ties of the petitioner child shall stand severed from her natural parents i.e. Manohar Lal and Gian Kaur. Under Section 15 HAMA, 1956, the valid adoption of the petitioner cannot be cancelled, nor can the adopted child be returned to the family of her birth. The adoption of the minor child is irreversible and cannot be revoked which reads as under:

“15. Valid adoption not to be cancelled.- No adoption which has been validly made can be cancelled by the adoptive father or mother or any other person, nor can the adopted child renounce his or her status as such and return to the family of his or her birth.”

Hence, under Section 16 HAMA, 1956, a presumption shall be drawn that the said adoption has been made in compliance with the

provisions of HAMA & there is a presumption in law as to what is recorded in the said deed.

For convenience of the Court, Section 16 of the HAMA, 1956 reads as under:-

“16 Presumption as to registered documents relating to adoption. — Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved.”

Gujarat High Court in the case of Amruta Vijay Vora vs Union of India and another AIR 2004 Gujarat 51 held that when any adoption deed is registered under Section HAMA 1956, a presumption shall arise that the adoption has been made in compliance of the provisions of the said Act unless it is dis-proved. Para 6 of the said judgment reads as under:-

“6. Even otherwise also, as per Section 16 of Hindu Adoptions & Maintenance Act, 1956 (hereinafter referred to as “the Act”) when any adoption deed is registered there shall be a presumption for documents relegating to the adoption and the presumption shall be that the adoption has been made in compliance with the provisions of Act unless and until it is disproved. Such presumption can be made applicable only in Court proceedings, but such presumption in view of Section 16 can also reasonably be made applicable even at the time when the authority has to consider the matter for issuance of passport because the passport authority while considering the matter for issuance of passport is also acting as a quasi-judicial authority.”

While dealing with Section 16 of the HAMA, 1956, learned

Single Bench of Gujarat High Court in the case of **Patel Mukesh Kumar Karshanbhai vs Regional Passport Authority**, AIR 2012 (Gujarat) 188 held in para 11 that:-

“11. The said provision of law makes it clear that a legal presumption is attached to any registered document pertaining to an adoption, and it shall be presumed that such adoption has been made in compliance with the provisions of the Hindu Adoptions and Maintenance Act, 1956 “unless and until” it is disproved. The adoption of the petitioner has been effected by a Registered Deed. It is not the case of the respondent that the adoption of the petitioner has been disproved, therefore, the presumption envisaged by Section 16 will come into play and it is not open to the said respondent to pronounce upon the legality, or otherwise, of the adoption of the petitioner, which has not been disproved by a competent court of law.”

Thus, the respondents cannot question the validity of the registered adoption deed in the application for issuance of a passport by a minor child. Further more, adoption being irreversible in view of Sections 15 and 16 of the HAMA, 1956, there is no scope for the respondents to question the validity of the registered adoption deed.

The issue whether the passport authorities can go into the validity of an adoption of a minor child under Section 6 of the PA further stands decided by a Full Bench decision of this Hon'ble Court in **Pawandeep Singh vs UOI & Anr.** 2004(1) RCR Civil 459, and followed in **Satinder Pal Singh Sibia vs UOI and another** 2006(4) RCR Civil 514. It has been conclusively held, that it is not open to the passport officer to go into the validity of an adoption at the time of the issuance of a passport, as

the officer could decline a passport only for the reasons set out in Section 6 PA.

Accordingly, this Court would have had no hesitation in directing the respondents to issue the passport but for the provisions of Passport Manual, 2016 which was brought to the notice of this Court by the learned Additional Solicitor General of India, Mr. Satya Pal Jain, which is issued by the Ministry of External Affairs. As per Section 5.2 of Chapter X of the Passport Manual, 2016, the following documents are required for issuance of a passport for inter-country adoption case.

“No objection Certificate from CARA (if the original NOC of CARA is not available with the applicant due to the reason that it has been submitted in the Court, a copy of the same duly certified/Attested by CARA may be accepted by the Passport Authority for the issue of passport);

- (i) Court order on adoption; and
- (ii) All other documents required for issue of passports to minor children.”

Further, as per Rule 5 of the Passports Rules 1980, an application has to be filed for issuance of a passport in the appropriate form set out in part I of Schedule III. Rule 5 reads as under:

"5. Form of applications.-1[(1)] An application for the issue of a passport or travel document or for the renewal thereof or for any miscellaneous service shall be made in the appropriate Form set out therefore in Part I of Schedule III and in accordance with the procedure and instructions set out in such form:

2[Provided that every application for any of the aforesaid purposes shall be made only in the form printed and supplied by

(a) Central Government; or

(b) Any other person whom the Central Government may by notification specify, subject to the condition that such person complies with the conditions specified by that Government in this behalf:

Provided further that in the course of any inquiry under sub-section (2) of section 5, a passport authority may require an applicant to furnish such additional information, documents or certificates, as may be considered necessary by such authority for the proper disposal of the application.

As per the said schedule, the relevant list of application categories and documents to be submitted, is reproduced below:-

Case No.	Passport Services	Documents to be submitted	
	Fresh Passport	Document No.-Normal Application	Document No.-Tatkal Application
6.	Children adopted by Indian Parents	(i) 1(of Adopter parents, 2, 21, 27 (if any –with spouse name endorsed) (ii) 51 (signed by both adoptive parents) or 50 (one parent not given consent)	
7.	Children adopted by foreign parents	1 (of parents), 2, 21, 23, 24, 27	Cannot apply under Tatkal Scheme

The documents at Sr.No.1, 2, 21, 23, 24 and 27 read as under:-

Document No.	List of documents
1.	Proof of Present Address. For Proof of Address attach one of the following documents:
a.	Water/Telephone (landline or post-paid mobile bill)/Electricity bill/ Statement of running bank account (Scheduled Commercial bank excluding Regional Rural banks and local area banks)/Income-Tax Assessment Order/Election Commission Photo ID card/Gas connection bill/Certificate from Employer of reputed and widely known companies on letter head
b.	Spouse's passport copy (First and last page including

	family details), (provided the applicant's present address matches the address mentioned in the spouse's passport)
c.	Parent's passport copy, in case of minors (First and last page)
d.	Applicant's current and valid ration card NOTE 1: If any applicant submits only ration card as proof of address, it should be accompanied by one more proof of address out of the given categories.
2.	Proof of Date of Birth. For Proof of Date of Birth attach one of the following documents:
	For applicants born on or after 26-1-89, only Birth Certificate issued by the Municipal Authority or any office authorized to issue Birth and Death Certificate by the Registrar of Births & Deaths is acceptable. The Birth Certificate should ordinarily contain the name of child, name of father and mother, date of birth, place of birth, sex, registration number and date of registration. If the Birth Certificate doesn't contain the name of child, a declaration on plain paper signed by parents, is required to be submitted specifying the name of the child.
a.	Birth certificate issued by a Municipal Authority or any office authorized to issue Birth and Death Certificate by the Registrar of Births & Deaths
b.	School leaving certificate/Secondary school leaving certificate/ Certificate of Recognized Boards from the school last attended by the applicant or any other recognized educational institution
c.	Affidavit sworn before a Magistrate/Notary stating date/place of birth as per the specimen in Annexure "A" by illiterate or semi-illiterate applicants (Less than 5th class).
21	Valid adoption deed with photo of the child duly attested by the Court (in the case of Christians, Muslims and Parsis, a court decree/order granting adoption/guardianship and allowing the child to be taken out of the Country).
23.	CARA No Objection Certificate
24.	Copy of the guarantee executed before the Court concerned
27.	Attested photocopy of Passport of both or either parent.

From the above, it is evident that 'Indian parents' are not required to provide the 'No Objection Certificate' from CARA. The requirement is for foreign parents. Although, the Court is of the view that an Indian or OCI with a British Passport, i.e. with British Citizenship will not lose their identity of being an Indian parent or Indian especially when they

are called 'Overseas Citizen of India', nevertheless, the said debate is left open as no argument was raised qua the same by either side.

The petitioner too has not challenged the above Rules and the requirement as incorporated in the Passport Manual and the Passport Rules. Thus, it would be in the interest of the adoptive parents as well as the child in question to obtain a simple 'No Objection Certificate' from CARA in order to ensure a clean transition from one country to another lest they face any difficulty for the purpose of Visa or any other requirement. Accordingly, in view of the earlier discussion holding the adoption to be valid with no right either to CARA and J.J Act, 2015 to question the same on account of the adoption under HAMA, 1956 was a direct adoption by the adoptive parents from the biological parents between close relatives, the detailed tedious procedure prescribed under the J.J. Act, 2015 and CARA is not required. Therefore, CARA is simply required to issue a 'No Objection Certificate', in the same form as seems to have been issued to a child by the name of Sai Himaja(F), copy of which has been handed over by learned *Amicus Curiae* and is taken on record as document as Annexure A-1.

Accordingly, it is summarized that valid adoption under HAMA 1956 of a minor child cannot be revoked until disproved. It is not mandatory to invoke the J.J.Act, 2015 in the facts of the present case where the adoption is a direct adoption by the parents to the known adoptive parents/ relatives under HAMA. As per Section 5.2 of Chapter X of the Passport Manual, 2016 and in view of Part I of Schedule III under Rule 5 of the Passports Rules, 1980, NOC from CARA is required only by foreign parents and not Indian parents.

In view of the above, it is directed that:

(1) The respondent No.3-CARA shall issue a 'No Objection Certificate' (NOC) to the adoptive parents of the petitioner for taking their child to U.K. within two weeks.

(2) The Ministry of External Affairs/ Regional Passport Office shall immediately thereafter issue the passport to the petitioner within two weeks of the receipt of NOC from CARA.

Allowed in the above terms.

July 28, 2020
meenuss

(NIRMALJIT KAUR)
JUDGE

1. Whether speaking/reasoned ?
2. Whether reportable ?

Yes/No
Yes/No



सत्यमेव जयते

