

Delhi District Court

Welfare Home For Children vs Applicant on 27 November, 2020

IN THE COURT OF MS NEENA BANSAL KRISHNA
PRINCIPAL DISTRICT & SESSIONS JUDGE
SOUTH EAST : SAKET COURT, NEW DELHI.

G.P. NO. 14/2020

WELFARE HOME FOR CHILDREN
1-B, INSTITUTIONAL AREA,
SARITA VIHAR, NEW DELHI 110076
THROUGH ITS SOCIAL WORKER MRS. ELCY JOLLY
...APPLICANT

VERSUS

1. MR. CLINTON CACHIA
S/O MR. FAUSTINO CACHIA
2. MRS. ANTONELLA CACHIA
W/O MR. CLINTON CACHIA

BOTH R/O 'THE IVIES' BLOCK A,
MOSTA ROAD, ATTARD
MALTA

THROUGH THEIR ATTORNEY
MS. LATA NAIR
WELFARE HOME FOR CHILDREN
1-B, INSTITUTIONAL AREA, SARITA VIHAR
NEW DELHI-110 076.
...PROPOSED ADOPTIVE PARENTS

Date of filing : 12.10.
First date before this court : 14.10
Arguments concluded on : 26.11.202
Date of Decision : 27.11.2

G.P. No. 14/20 Welfare Home for Children Vs. Clinton Cachia & Anr. Page 1 of 18 page
JUDGMENT

1. Applicant, a recognized Specialized Adoption Agency under the provisions of Section 65, Juvenile Justice (Care and Protection of Children) Act 2015 has brought this application under the provisions of Section 59 (7) of the Act and Regulations 12 (2) and 17 (1) of the Adoption Regulations, seeking declaration of the Prospective Adoptive Parents namely Mr Clinton Cachia and his wife Mrs Antonella Cachia, both residents of Malta, as parents of child Babu (hereinafter referred to as "the said child"), born on 03.01.2016 and permission to take the said child to the country of their residence for bringing up the said child as their natural child. Applicant has also sought directions to

the Registrar, SDMC for issuance of birth certificate of the said child and directions to the Regional Passport Office to issue passport to the said child. Since an adoption case is non-adversarial in nature, in view of clause 12(5) of the Adoption Regulations, 2017, nobody was arrayed as respondent or as opposite party in the present proceedings and as mandated by Regulation 12 (6) of the said Regulations, proceedings in this case were held in camera.

2. Upon institution and registration of the petition, I recorded the testimony of Ms. Elcy Jolly, a social worker of the applicant agency as well as testimony of Ms. Lata Nair, attorney of the proposed adoptive parents.

G.P. No. 14/20 Welfare Home for Children Vs. Clinton Cachia & Anr. Page 2 of 18 pages

3. Due to the tender age of the proposed adoptive child, interaction with the child was not possible.

4. After conclusion of proceedings, I heard learned counsel for applicant, who took me through record.

5. The brief facts as pleaded in the application is as follows:

5.1 The applicant agency has been recognized by the Government of NCT of Delhi for rehabilitation of orphaned, abandoned and surrendered children through adoption in accordance with the provisions of the Juvenile Justice Act and the Adoption Regulations. Applicant is also registered as a Child Care Institution (CCI) and the said child being in their care and custody, applicant intends to give the said child in adoption to the proposed adoptive parents (PAPs) in accordance with Section 66 of the Juvenile Justice Act.

5.2 The said child was declared legally free for adoption by the Child Welfare Committee, Kalkaji District, New Delhi under the provisions of Section 38 of the Juvenile Justice Act and the said child is registered in the Child Adoption and Resources Information and Guidance System for the purposes of adoption as envisaged under section 56 (1) of the Juvenile Justice Act.

G.P. No. 14/20 Welfare Home for Children Vs. Clinton Cachia & Anr. Page 3 of 18 pages 5.3 The PAPs are foreign nationals, residing in Malta. The Proposed adoptive parent No. 1 was born on 23.10.1981 and is about 39 years old and the Proposed adoptive parent No. 2 was born on 18.01.1985 and is about 35 years old. The Proposed adoptive parents were married on 11.01.2014 and they have no biological child and look forward to adopt a child. The Proposed adoptive parents are full time active employees of M/s Bindi Ltd., a trading company engaged in the food service industry in the role of directors of the company, with an equal share capital each holding equally 50% of shares, and their annual income is of Euro 29482 each and they have been found eligible and suitable to adopt by the Authorized Foreign Adoption Agency namely Agenzija Tama and has been approved by the concerned Central Authority. The PAPs have been registered in the Child Adoption Resource Information and Guidance System by the Authorized Foreign Adoption Agency / Central Authority namely Agenzija Tama and they have been found eligible by the Central Adoption Resource Authority (CARA) as per the criteria laid down in Section 57 of the Juvenile Justice Act

and Regulation 5 of the Adoption Regulations.

5.4 The said child was referred to the PAPs online in Child Adoption Resource Information and Guidance System through Authorized Foreign Adoption Agency, Agenzija Tama and was G.P. No. 14/20 Welfare Home for Children Vs. Clinton Cachia & Anr. Page 4 of 18 pages accepted by the PAPs by signing the Child Study Report and Medical Examination Report on 22.07.2020.

5.5 The Central Adoption Agency issued No Objection Certificate in favour of the PAPs.

5.6 The PAPs have undertaken that they will allow the applicant or functionary of Authorized Foreign Adoption Agency / Central Authority / Concerned Government Department to visit their home in order to carry out post adoption follow up to ascertain the progress and the well being of the said child in the adoptive family, as envisaged under Section 59 (11) of the Juvenile Justice Act. The PAPs have also undertaken to upbringing the said child as their own and to accord her status, rights and privileges at par with the natural child. The PAPs have given consent to take the said child in adoption, as desired by the applicant.

5.7 Conditions laid down under section 61 (1) of the Juvenile Justice (Care and Protection of Children) Act, 2015 have been complied with. The Central Adoption Resource Authority has issued No Objection Certificate for the proposed adoption.

5.8 Neither the applicant nor the PAPs have any interest G.P. No. 14/20 Welfare Home for Children Vs. Clinton Cachia & Anr. Page 5 of 18 pages directly or indirectly adverse to the said child.

5.9 Hence the present application, seeking that the PAPs be declared as the parents of the said child born on 03.01.2016 for all purposes allowed by law and the PAPs be permitted to take the said child to the country of their origin for her upbringing as their own child and for directions to the concerned authorities to issue birth certificate and passport in the name of the said child.

6. The application was signed, verified and instituted by Ms. Elcy Jolly, working as a Social Worker with the applicant agency. Ms. Elcy Jolly appeared as PW□ and deposed on oath the above mentioned contents of the application and proved on record the necessary documents as Ex. PW1/1 to Ex. PW1/6.

7. The PAPs were represented in the present proceedings through their attorney, namely Ms. Lata Nair, Adoption Officer of the applicant agency. Ms. Lata Nair appeared in the witness box as RW□ and stated that the proposed adoptive parent No. 1 was born on 23.10.1981 and is about 39 years old and the proposed adoptive parent No. 2 was born on 18.01.1985 and is about 35 years old; that the proposed adoptive parents were married on 11.01.2014 and have no biological child of their own and look forward to adopt a minor child; that the Proposed adoptive parents are full time active G.P. No. 14/20 Welfare Home for Children Vs. Clinton Cachia & Anr. Page 6 of 18 pages employees of M/s Bindi Ltd., a trading company engaged in the food service industry in the role of directors of the company, with an equal share capital each holding equally 50% of shares, and their annual income is of Euro 29482 each and they enjoy very good status and sufficient means of livelihood; that

Agenzija Tama, Malta a recognized International Adoption Agency has found the PAPs fit and suitable on the basis of Home Study Report to adopt the said minor child; that it would be in the interest and welfare of the said minor child, if the applicant is permitted to give her in adoption to the PAPs as their son. RW□ proved on record the necessary documents as Ex. RW1/1 to RW1/23.

8. During arguments, learned counsel for applicant referred to the above described facts and documents in the light of relevant legal provisions.

9. Statutory law related to adoptions is dealt with, amongst other enactments, by chapter VIII of the Juvenile Justice (Care and Protection) Act, 2015, the basic purpose behind the process of adoption being to ensure the right to family for the orphaned, abandoned and surrendered children. Earlier, adoptions were fundamentally governed by the Hindu Adoption and Maintenance Act, the Guardian and Wards Act and guidelines laid down by the Hon'ble Supreme Court of India in the case titled G.P. No. 14/20 Welfare Home for Children Vs. Clinton Cachia & Anr. Page 7 of 18 pages Lakshmi Kant Pandey vs. Union of India, AIR 1984 SC 469, on the basis whereof, Central Adoption Resource Authority (CARA) came into existence. Upon enactment of the Juvenile Justice (Care and Protection) Act, 2015, the Central Adoption Resource Authority was granted legislative recognition and was reconstituted as Central Adoption Resource Authority (CARA) vide Section 68 of the said Act. In the exercise of powers conferred by clause (c) of Section 68 read with clause (3) of Section 2 of the Juvenile Justice (Care and Protection) Act, 2015, Central Adoption Resource Authority framed Adoption Regulations, 2017, which have been notified by the Central Government on 04.01.2017.

10. Sections 56 to 73 of the Juvenile Justice Act, 2015, forming chapter VIII of the Act deal with various aspects related to adoption and lay down the mandate of law to operate as the testing parameters to adjudge legality of an adoption. All inter□country adoptions have to be in strict adherence with the provisions of chapter VIII of the Act and a 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 is liable to punishment under the provisions of Section 80 of the Act.

11. Section 57 of the Act lays down the eligibility of the G.P. No. 14/20 Welfare Home for Children Vs. Clinton Cachia & Anr. Page 8 of 18 pages prospective adoptive parents, to the effect that PAPs must be physically fit, financially sound, mentally alert and highly motivated to adopt a child for providing good upbringing to the child; that in case of couple, consent of both spouses for adoption is required while a single or divorced person can adopt subject to fulfillment of the criteria and in accordance with the adoption regulations framed by the authority, though a single male is not eligible to adopt a girl child.

12. Section 59 of the Act, relevant for present purposes, lays down in details the procedure to be adopted for inter□country adoption of an orphan or abandoned or surrendered child. If an orphan or an abandoned or surrendered child could not be placed with an Indian or a non□resident Indian PAP, despite the joint efforts of the Specialized Adoption Agency (SAA) and State Agency (SA) within 60 days from the declaration of the child to be legally free for adoption, the said child shall be

free for inter-country adoption, provided that children with physical and mental disabilities, siblings and children above 5 years of age may be given preference over other children for such inter-country adoption in accordance with the regulations. An eligible non-resident Indian or overseas citizen of India or persons of Indian origin have to be given priority in inter-country adoption of Indian children.

G.P. No. 14/20 Welfare Home for Children Vs. Clinton Cachia & Anr. Page 9 of 18 pages

13. Person(s), who is or are PAP(s) living abroad, irrespective of their religion, if interested to adopt an orphan, abandoned or surrendered child from India, may apply for the same to an Authorized Foreign Adoption Agency or Central Authority or a concerned Government department in the country of their habitual residence in the manner as provided in the Adoption Regulations. The Authorized Foreign Adoption Agency / Central Authority concerned shall prepare a Home Study Report of such PAPs and upon finding them eligible, will sponsor their application to the authority for adoption of a child from India. Upon receipt of such application of PAPs, if the authority finds the PAPs suitable, it will refer the application to one of the SAA where children legally free for adoption are available. The SAA shall match the legally free for adoption child with the PAPs and send the Child Study Report and the Medical Report of the child to the PAPs, who may accept the child and return the Child Study Report and Medical Report, duly signed by them to the said agency. Upon receipt of acceptance of the child from the PAPs, the SAA shall file an application in the court for obtaining the adoption order in the manner as provided under the Adoption Regulations. On receipt of certified copy of the court order, the SAA shall send the same immediately to the authority, State Agency and PAPs and obtain passport for the child. The authority shall intimate about the adoption to the immigration authorities of India and the receiving country of the child. The G.P. No. 14/20 Welfare Home for Children Vs. Clinton Cachia & Anr. Page 10 of 18 pages PAPs shall receive the child in person from the SAA as soon as the passport and visa are issued to the child. The Authorized Foreign Adoption Agency or Central Authority concerned shall ensure the submission of progress report of the child in the adoptive family and shall be responsible for making alternate arrangement in case of any disruption, in consultation with the authority and concerned Indian Diplomatic Mission.

14. Section 61 of the Juvenile Justice (Care and Protection of Children) Act, 2015 lays down that before issuing an adoption order, the court shall satisfy itself that the adoption is for welfare of the child; that due consideration has been given to the wishes of the child, having regard to the age and understanding of the child; that there has been no monetary transaction or reward in consideration of the adoption, except by way of adoption fees or service charges or child care corpus, as contemplated by the Adoption Regulations.

15. The Specialized Adoption Agencies (SAA) derive their existence from the recognition granted by the State Government in accordance with the Adoption Regulations vide Section 65 (1) of the Juvenile Justice (Care and Protection of Children) Act, 2015 for the purposes of rehabilitation of orphan, abandoned and surrendered children through adoption and non-institutional care. It G.P. No. 14/20 Welfare Home for Children Vs. Clinton Cachia & Anr. Page 11 of 18 pages is the duty of SAAs to get an orphan or abandoned or surrendered child declared legally free for adoption from the

concerned Child Welfare Committee and also to complete the Home Study Report of the PAPs and to move application for obtaining adoption order from the court within stipulated time. Failure on the part of SAAs in fulfilling the said duties entails punishment and de-recognition, as contemplated by Section 65 (4) of the Act.

16. Section 66 of the Juvenile Justice (Care and Protection of Children) Act, 2015 contemplates that all the institutions registered under the Act shall ensure that all orphan or abandoned or surrendered children under their care are reported, produced and declared legally free for adoption by the Child Welfare Committee.

17. In that regard, Section 38 of the Act lays down the procedure for declaring a child legally free for adoption. In case of an orphan and abandoned child, the Child Welfare Committee is under a duty to make efforts for tracing out the parents or guardian of the child and if after such enquiry, it is established that the child is either an orphan or abandoned, the Committee shall declare the child legally free for adoption and such a declaration has to be made within a period of two months from the date of production of the child aged upto two years and within four months for the child aged G.P. No. 14/20 Welfare Home for Children Vs. Clinton Cachia & Anr. Page 12 of 18 pages above two years. In case of a surrendered child, the SAA or the child supervising authority where the child has been placed by the Committee on an application for surrender, shall bring the case before the Committee immediately upon completion of two months of surrender, as contemplated by Section 35 (3) of the Act and the committee shall declare the child legally free for adoption.

18. Falling back to the present case, as mentioned above, the said child namely Babu is in care and custody of the applicant Welfare Home for Children, which is recognized as SAA and the said child has been declared legally free for adoption by the Child Welfare Committee; on the other hand, the PAPs are foreigners residing in Malta and on the basis of Home Study Report, they have been found eligible and suitable to adopt a child and their proposal to adopt a child from India has been recommended by the Authorized Foreign Adoption Agency, namely Agenzija Tama, Malta. As also mentioned above, the reference of the said child has been accepted for adoption by the PAPs by way of signing the Child Study Report and Medical Examination Report and Central Adoption Resource Authority has issued No Objection Certificate.

19. PW□ and RW□ have brought on record the necessary documentary evidence, as follows.

19.1 Ex. PW1/1 is the Certificate issued by the Child G.P. No. 14/20 Welfare Home for Children Vs. Clinton Cachia & Anr. Page 13 of 18 pages Welfare Committee, Kalkaji District, New Delhi, declaring the said child Babu in care of the SAA namely Welfare Home for Children, legally free for adoption. Ex. PW1/2 is the No Objection Certificate dated 11.08.2020 issued by Central Adoption Resource Authority to the effect that there is no objection to the authority if the said child namely Babu is given in adoption to the PAPs namely Mr Clinton Cachia and his wife Mrs Antonella Cachia by the applicant. Ex. PW1/3 is the Child Study Report prepared and signed by Ms. Aarti Saini. Ex. PW1/4 is the Medical Examination Report of the said child. The Child Study Report Ex. PW1/3 and Medical Examination Report Ex. PW1/4 have been duly signed by the PAPs, certifying that they have understood the contents of the said reports and are willing to accept the said child as their adopted

child. Both the said reports Ex. PW1/3 and Ex. PW1/4 are duly supported with apostle and are notarized. Ex. PW1/5 is the photograph of the said child. Ex. PW1/6 is the Registration / Recognition Certificate of the applicant society issued by the Government of Delhi.

19.2 The social worker of the applicant, who is the duly constituted attorney of the PAPs appeared as RW□ and proved on record the Power of Attorney executed by PAPs as Ex.RW1/1; photographs of the PAPs as Ex.RW1/2; Identity Card of proposed adoptive father as Ex.RW1/3; Identity card of proposed adoptive mother as Ex.RW1/4; certificate of employment as Ex.RW1/5; G.P. No. 14/20 Welfare Home for Children Vs. Clinton Cachia & Anr. Page 14 of 18 pages statement of economy for the year ending 31.12.2019 as Ex.RW1/6; home study report as Ex.RW1/7; copy of passport of proposed adoptive father as Ex.RW1/8; copy of passport of proposed adoptive mother as Ex.RW1/9; birth certificate of proposed adoptive father as Ex.RW1/10; birth certificate of proposed adoptive mother as Ex.RW1/11; medical certificate of proposed adoptive father as Ex.RW1/12; medical certificate of proposed adoptive mother as Ex.RW1/13; conduct certificate of proposed adoptive father as Ex.RW1/14; conduct certificate of proposed adoptive mother as Ex.RW1/15; marriage certificate as Ex.RW1/16; references as Ex.RW1/17 (Colly); Article 5 of Protection of Child Undertaking Sponsoring Agency of Inter Country Adoption as Ex.RW1/18; Article 17 of the connection Protection of Child Undertaking Sponsoring Agency for furnishing post adoption follow up as Ex.RW1/19; Declaration of Agreement to allow visits for follow□ip as Ex.RW1/20; undertaking by PAPs as Ex.RW1/21; Declaration of willingness as Ex.RW1/22; and undertaking by the sponsoring agency in the case of disruption of the child as Ex.RW1/23.

20. As mentioned above, before issuing adoption order, this court has to satisfy itself that adoption is for welfare of the said child Babu; that due consideration has to be given to the wishes of the G.P. No. 14/20 Welfare Home for Children Vs. Clinton Cachia & Anr. Page 15 of 18 pages said child Babu; and no monetary transaction or reward in consideration of the adoption is being undertaken.

21. As regards welfare of the said child, Home Study Report Ex. RW1/7 reflects that PAP no. 1, born on 23.10.1981 presently aged about 39 years while PAP no. 2, born on 18.01.1985 presently aged about 35 years, both owners and directors of a catering establishment. The social worker who carried out the Home Study Report of PAPs has recorded extensive details of the past history of both PAPs, parental families of both PAPs, finding the said families close knit and successful. After recording extensive details related to personal, professional and family history of PAPs, traversing through their social and family environment, motivation to adopt, health and housing etc, the social worker who carried out the Home Study Report of PAPs concluded that the PAPs are suitable to face upbringing and education of child and they would give all their affection, resources and capacity to help the child grow in comprehensive manner since at a personal level PAPs have high level of maturity and stability; PAPs have a very harmonious relationship as a family; PAPs do not suffer from any infectious, contagious or mental illness that could prevent them from adopting a minor; PAPs have a good and stable occupation, which would allow them to bring up child without any difficulty; PAPs live in excellent conditions and environment, favourable for perfect development of a child; and PAPs have no criminal record. Home Study Report Ex.

G.P. No. 14/20 Welfare Home for Children Vs. Clinton Cachia & Anr. Page 16 of 18 pages RW1/7 coupled with photographs Ex. RW1/2 amply establish that PAPs are physically fit, financially sound, mentally alert and highly motivated to adopt a child for providing her a good upbringing.

22. As also reflected from the above described record, both PAPs have expressed their consent and willingness to adopt the said child Babu after going through the Child Study Report Ex. PW1/3 and Medical Examination Report Ex. PW1/4.

23. Going by the above circumstances, I am satisfied that it would be in welfare of the said child Babu to give him in adoption to the PAPs for being brought up as their child.

24. Therefore, the adoption application is allowed and it is ordered that the said child Babu, born on 03.01.2016 be given in adoption to the PAPs Mr Clinton Cachia and his wife Mrs Antonella Cachia as their son with effect from 27.11.2020 and thereby, henceforth the said child Babu has become the adopted child of the PAPs namely Mr Clinton Cachia and his wife Mrs Antonella Cachia, who have in turn henceforth become adoptive parents of the said child Babu. As regards prayer clauses (b) & (c) of the application, for issuance of birth certificate and passport, necessary steps in accordance with clauses 18 and 36 of the Adoption Regulations, 2017 be taken by the concerned authorities.

G.P. No. 14/20 Welfare Home for Children Vs. Clinton Cachia & Anr. Page 17 of 18 pages

25. The petitioner shall file regular reports on post adoption follow up in order to ascertain the progress and well being of the said child to this Court as envisaged under Section 59 (11) of the Juvenile Justice Act for a period of two years from the date of the order.

26. The requisite certificate in respect of adoption of the said child bearing photographs of the said child and the adoptive parents be issued. In order to maintain confidentiality, as laid down in the case of Lakshmi Kant (supra), the entire record pertaining to the present case be placed in sealed cover, not to be opened without permission of the court and the entire sealed record be consigned to Digitally signed record room. NEENA by NEENA BANSAL BANSAL KRISHNA KRISHNA Date: 2020.12.01 16:55:42 +0530 Announced in the open court on this 27th day of November 2020 (NEENA BANSAL KRISHNA) Principal District & Sessions Judge South East, Saket Courts New Delhi G.P. No. 14/20 Welfare Home for Children Vs. Clinton Cachia & Anr. Page 18 of 18 pages