



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF NOVEMBER, 2024

BEFORE

THE HON'BLE MR JUSTICE HEMANT CHANDANGOUDAR

WRIT PETITION NO. 31063 OF 2024 (GM-RES)

BETWEEN:

1. MS AFREEN
AGED ABOUT 16 YEARS,
D/O M D FAQRUDDIN, R/A NO. 193,
5TH CROSS, SHAMPUR MAIN ROAD,
MUSLIM COLONY, BENGALURU NORTH,
BENGALURU 560 045
(BEING MINOR - REPRESENTED BY
NATURAL GURDIAN,
MOTHER - PETITIONER NO. 2)
2. MRS. ZEENATHUNNISSA,
AGED ABOUT 38 YEARS,
W/O M FAQRUDDIN, R/A NO. 1327/20,
SEPOY LANE, COFFEE BOARD COLONY,
SHAMPUR MAIN ROAD,
BENGALURU NORTH,
BENGALURU - 560 045.
3. MRS. NUSRATH BATULA HUSSAIN,
AGED ABOUT 36 YEARS,
W/O MOHAMMED NAZIM H S,
R/A NO.16, 1ST MAIN ROAD,
RMV 2ND STAGE, BOOPSANDRA,
BENGALURU - 560 094.
4. MR. MOHAMMED NAZIM HS,
AGED ABOUT 36 YEARS,
S/O K. M. SIRAJ PASHA, R/A NO. 16,
1ST MAIN ROAD, RMV 2ND STAGE,
BOOPSANDRA, BENGALURU - 560094.
(REPRESENTED BY GPA HOLDER,
NUSRATH BATULA HUSSAIN - PETITIONER NO. 3)

...PETITIONERS

(BY SRI. MAHESH Y L., ADVOCATE)





AND:

1. THE SUB REGISTRAR
OFFICE AT YELAHANKA,
BENGALURU - 560 064.
2. THE INSPECTOR GENERAL OF REGISTRATION
AND COMMISSIONER OF STAMPS,
KANDAYA BHAVAN, 8TH FLOOR,
K.G ROAD, BNGALORE-560 009.

...RESPONDENTS

(BY SRI. NAVEEN CHANDRASHEKAR., AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH AND SET ASIDE THE ENDORSEMENT DATED 11/11/2024 ISSUED BY THE R1 VIDE ANN-A REJECTING THE APPLICATION BEARING NO. PRP-11112024-6359973 FOR THE REGISTRATION OF THE ADOPTION DEED, DATED 11/11/2024.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE HEMANT CHANDANGOUDAR

ORAL ORDER

The petitioners are seeking a writ in the nature of Certiorari to quash the endorsement dated 11.11.2024 issued by Respondent No.1 rejecting the online Application bearing No. PRP-11112024-6359973 for the registration of the adoption deed dated 11.11.2024. The petitioners seek a writ in the nature of mandamus directing the respondents to consider their application for registering the Adoption Deed dated 11.11.2024.



2. Respondent No.1 has issued the impugned endorsement, stating that the application is incomplete as the biological father of the child to be adopted is not mentioned as an executing party. The primary issue raised in this petition is whether the consent of the biological father of a child born out of rape who is also the accused in the rape case is required, in addition to the consent already provided by the minor victim mother and her guardian, for the purpose of giving the child up for adoption.

3. Petitioner No.1 is a Muslim minor and the victim of rape, as well as the biological mother of the girl child, who was 51 days old at the time of filing this petition. Petitioner No.2 is the mother and legal guardian of Petitioner No.1. Petitioners No.3 and 4 are a Muslim married couple, and the prospective adoptive parents with no biological children, who have filed an affidavit affirming their educational qualifications, financial stability, and emotional commitment to provide for the overall growth and development of the child.

3.1 Respondent No.1 is the jurisdictional Sub-Registrar at Yelahanka, who issued the impugned endorsement. The biological father, who is the rape accused, is currently in judicial custody awaiting trial and has not been impleaded as a party in this writ petition.



4. It is undisputed that Petitioner No.1 is the minor victim in Crime No.0307/2024, registered on 03.08.2024 at the Devarajeevanahalli Police Station (later transferred to the Kadugondana Police Station under Crime No.379/2024, dated 13.08.2024). The case involves allegations of offences committed during the period between 01.11.2023 and 20.06.2024, punishable under Sections 4-6 of the Protection of Children from Sexual Offences (POCSO) Act, 2012, and Sections 376, 506, and 34 of the Indian Penal Code, 1860.

5. Petitioner No.1 gave birth to a baby girl on 30.09.2024 at Bowring and Curzon Hospital, Bangalore. Petitioners No.1 and 2 assert that they are in dire financial distress and are unable to provide basic necessities or ensure the overall development of the child. Additionally, Petitioner No.1 comes from an impoverished family consisting of three female members, with no male earning member. For these reasons, Petitioners No.1 and 2 are willing to give the child up for adoption.

6. Petitioners No.3 and 4, a married couple with no children, have expressed their willingness to adopt the child. Consequently, they have executed an Irrevocable Adoption Deed dated 11.11.2024 with Petitioners No.1 and 2.

7. However, Respondent No.1, through the impugned endorsement, rejected the application bearing No.PRP-



11112024-6359973, dated 11.11.2024, seeking registration of the Adoption Deed. The rejection was on the ground that the biological father of the child had not been included as a consenting party in the Adoption Deed. Aggrieved by this rejection, the petitioners have approached this Court by filing the present writ petition.

8. The Hon'ble Supreme Court in the case of **Shabnam Hashmi Vs. Union of India and Ors, (2014) 4 SCC 1**, has extended adoption rights to muslims. The Court observed at paragraph no. (13), as follows:

“13. 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, the 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 the



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.”

9. By virtue of the amendment effected in 2006, Section 41 of the Juvenile Justice (Care and Protection of Children) Act, 2000, and the Juvenile Justice Rules, 2007, confer authority on Courts with jurisdiction over matters of adoption and guardianship to grant adoption orders.

10. Section 2(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015, defines adoption as:

“The process through which the adopted child is permanently separated from his biological parents and becomes the lawful child of his adoptive parents with all the rights, privileges, and responsibilities that are attached to a biological child.”

10.1. Section 2(31) defines a guardian in relation to a child as:

“A natural guardian or any other person having, in the opinion of the Committee or, as the case may be, the Board, the actual charge of the child, and recognised by the Committee or, as the case may be, the Board as a guardian in the course of proceedings.”



10.2. Section 2(42) defines an orphan as:

“A child whose legal guardian is not willing or capable of taking care of the child.”

10.4. Section 3 of the Juvenile Justice Act, 2015, enumerates the general principles to be followed in administering the Act, and the relevant principles therein are as follows:

- *Principle of dignity and worth: All human beings shall be treated with equal dignity and rights.*
- *Principle of best interest: All decisions regarding the child shall prioritize the best interests of the child to help them reach their full potential.*
- *Principle of family responsibility: The biological family or adoptive/foster parents shall have the primary responsibility for the care, nurture, and protection of the child.*
- *Positive measures: All resources, including those from the family and community, shall be mobilized to promote the child’s well-being, facilitate identity development, and provide an inclusive and enabling environment.*



- *Principle of institutionalization as a measure of last resort: Institutional care shall be considered only after conducting a reasonable inquiry and as a last resort.*
- *Principles of natural justice: Procedural fairness, including the right to a fair hearing, absence of bias, and the right to review, shall be adhered to by all judicial bodies under this Act.*

10.5. Section 35 of the 2015 Act provides for the surrender of a child by a parent or guardian who, due to physical, emotional, or social factors beyond their control, wishes to surrender the child. Such children must be produced before the Child Welfare Committee and, if below six years of age, placed in a Specialized Adoption Agency for adoption.

10.6. Section 38 outlines the procedure for declaring a child legally free for adoption. It states that upon inquiry, if a child is found to be an orphan or abandoned, the Child Welfare Committee may declare the child legally free for adoption.

10.7. Section 38(3) specifically states that a child of mentally incapacitated parents or a child born to a victim of sexual assault may be declared free for adoption by the Committee following due procedure. Section 38(5) mandates that the Committee notify the District Magistrate, State



Adoption Resource Agency, and Central Adoption Resource Authority.

10.8. Section 40 highlights that the primary objective of a Specialized Adoption Agency is to ensure the placement of surrendered children with adoptive parents.

10.9. Section 52 empowers the Board or Child Welfare Committee to temporarily place a child under the care, protection, and treatment of a person deemed fit, following due verification.

10.10. Section 56 affirms that adoption is intended to ensure a child's right to a family and must comply with the Act's provisions, rules, and regulations.

10.11. Section 57 outlines eligibility for prospective adoptive parents, requiring them to be physically fit, financially sound, mentally alert, and committed to providing for the child's upbringing.

10.12. Section 61 empowers the District Magistrate to ensure that the adoption is in the child's best interests.

10.13. Section 80 prohibits offering, giving, or receiving a child for adoption without complying with the Act's provisions. Violators face penalties of imprisonment for up to three years, a fine of up to ₹1,00,000, or both. This provision aims to



prevent exploitation and abuse of children, as emphasized in Chapter IX of the Act.

10.14. Regulation 7(7) of the Adoption Regulations, 2017, addresses the procedure for surrendering a child. In the case of a child born out of wedlock, only the mother can surrender the child. If the mother is a minor, the Deed of Surrender must be signed by an accompanying adult witness. Such children can be reclaimed by the biological parent or guardian within 60 days of surrender.

11. The Juvenile Justice Act, 2015, is a special enactment intended to fulfill the Directive Principles of State Policy, particularly Article 39(f) of the Constitution, which emphasizes the opportunity for children to develop in a healthy manner and in conditions of freedom and dignity. The Hon'ble Supreme Court in the case of *Exploitation of Children in Orphanages, In re, (2017) 7 SCC 578*, has held that once a directive principle is enforced through law, the State is obligated to implement and enforce such statutes to uphold constitutional mandates.

12. In the case of **Amrik Singh and Others v. Union Territory of Chandigarh, 2023 SCC OnLine P&H 6556**, the Punjab and Haryana High Court addressed a similar issue concerning the adoption of a child born to a minor rape victim. The Court held that the minor victim mother, as the sole natural



guardian, has the right to give the child in adoption, without requiring the consent of the biological father (a rape convict). Admittedly, the parties therein giving a child in adoption and the prospective adoptive parents were Hindus.

13. The Court interpreted Section 9(1) of the Hindu Adoptions and Maintenance Act, 1956, to provide guardians an independent right to place a child for adoption. It ruled that requiring the biological father's consent would violate the minor victim's dignity and constitutional rights under Article 21.

14. Relying on the Juvenile Justice Act, 2015, and the positive report of the District Child Protection Unit, the Court facilitated the adoption without necessitating detailed procedures by the Child Welfare Committee. The Court deemed that the child, under such circumstances, falls within the definition of an "orphan" under Section 2(42) of the JJ Act.

15. In the present case, the adoption of the subject child by Muslims is solely regulated by the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act, 2015) and the Rules and Regulations framed thereunder. It is pertinent to note that the language of Section 35 of the JJ Act, 2015 is analogous to Section 9(1) of the Hindu Adoptions and Maintenance Act, 1956, which recognizes the independent right of a guardian to give a child in adoption. This provides



Section 35 of the JJ Act, 2015, a comparable standing to the 1956 Act, thereby addressing the adoptive rights of Muslims.

16. Further, Regulation 7(7) of the Adoption Regulations, 2017, expressly authorizes the mother of an illegitimate child to surrender the child for adoption. It also provides that where the mother is a minor, the Deed of Surrender must be signed by an accompanying adult as a witness.

17. In the instant case, Petitioners No. 1 and 2 are joint signatories to the Irrevocable Adoption Deed dated 11.11.2024. A plain reading of the said Deed reveals that the declarations contained therein are consistent with the substance of Section 63 of the JJ Act, 2015, which mandates the complete severance of legal ties, including rights of intestacy, between the biological parents and the adoptee child from the effective date of the adoption order.

18. Accordingly, the consent of the rape-accused biological father of the child is both inconsequential and immaterial. The adoption of the subject child herein as per the Irrevocable Adoption Deed dated 11.11.2024 is in full compliance with the provisions of the JJ Act, 2015, the Rules, 2016, and the Regulations, 2017.

19. Moreover, since the biological parents giving the child in adoption (Petitioners No. 1 and 2) and the prospective



adoptive parents (Petitioners No. 3 and 4) are joint petitioners in this case and are known to the respondent-State, the object behind obtaining a report from the Child Welfare Committee (CWC) under Section 38 of the JJ Act, 2015, i.e., identifying the biological parents and ensuring their willingness, is satisfied. Thus, there is no necessity for obtaining a separate declaration under Section 38 of the Act, 2015.

20. In conclusion, when the natural guardians of a child are incapable of providing a loving, safe, and nurturing environment, the subject adoptee child, for all practical purposes, falls within the definition of an “orphan.” Failure to give such a child in adoption would deprive them of their right to live with dignity, as guaranteed under Article 21 of the Constitution of India. Hence, adoption in such cases is not only a statutory right but also a moral obligation to ensure the overall welfare and development of the child.

21. Accordingly, I order the following:-

ORDER

1. The petition is allowed.
2. The impugned endorsement dated 11.11.2024 issued by the Respondent No.1 at Annexure A is hereby quashed.



3. Respondent No.1 is hereby directed to register the Adoption Deed dated 11.11.2024 without insisting upon furnishing of the consent of the rape-accused biological father to the adoption of the subject adoptee child by the Petitioners No. 3 and 4.
4. The Petitioners No. 3 and 4, and the Respondent No.1 are hereby direct to report forthwith the adoption of the subject girl child, upon registration of the Adoption Deed dated 11.11.2024, to the jurisdictional District Magistrate, who shall then forward the report of the same to the Central Adoption Resource Authority, as provided under Section 64 of the JJ Act, 2015.

Sd/-
(HEMANT CHANDANGOUDAR)
JUDGE