

®

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19th DAY OF JUNE, 2018

BEFORE

THE HON'BLE MR.JUSTICE ARAVIND KUMAR

WRIT PETITION NOS. 12427-428/2018 (GM-RES)

BETWEEN:

1. MR. ANKUR GUPTA
S/O SRI. KRISHNA KANT
AGED ABOUT 42 YEARS
R/AT VILLA 555, ADARSH PALM
RETREAT PHASE-3
DEVARABISANHALLI, OUTER
RING ROAD,
BENGALURU-560103.
2. DR. GEETIKA AGARWAL
W/O MR. ANKUR GUPTA
AGED ABOUT 37 YEARS
R/AT VILLA 555, ADARSH PALM
RETREAT PHASE-3
DEVARABISANHALLI, OUTER
RING ROAD,
BENGALURU-560103.

... PETITIONERS

(BY SMT. JAYNA KOTHARI, ADVOCATE)

AND:

1. THE CENTRAL ADOPTION AND
RESOURCES AGENCY

MINISTRY OF WOMEN & CHILD
DEVELOPMENT, 1ST FLOOR
R.K. PURAM
NEW DELHI-110066
REP. BY ITS CEO.

2. UNION OF INDIA
MINISTRY OF WOMEN AND CHILD
DEVELOPMENT, SHASTRI BHAVAN
NEW DELHI-110001
REP. BY ITS UNDER SECRETARY

3. PRAYAS BHARTI TRUST
HEMPLAZA BUILDING
FRAZER ROAD
DAKBANGLA CHAWRAH
OPP JAGAT TRADE CENTRE
PATNA, BIHAR-800061
REP. BY ITS SECRETARY.

... RESPONDENTS

(BY SRI R. NATARAJ, CGSC)

THESE WRIT PETITIONS ARE FILED UNDER ARTICLE
226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING
TO QUASH THE DECISION OF THE 1ST RESPONDENT
'CARA' ISSUED VIDE LETTER DATED 15.03.2018
PRODUCED HERewith AS ANNEXURE-Z.

THESE WRIT PETITIONS COMING ON FOR
PRELIMINARY HEARING IN 'B' GROUP THIS DAY, THE
COURT MADE THE FOLLOWING:

ORDER**MY NAME IS 'TODAY'**

“We are guilty of many errors and
many faults,
But our worst crime is abandoning the
children;
Neglecting the fountain of life.
Many things we need can wait,
But the child cannot.
Right now is the time;
His bones are being formed,
His blood is being made,
His senses are being developed.

To him, we cannot answer, “Tomorrow”,
His name is “Today”.

-by Gabriel Mistral”

Petitioners who are Indians by birth and having spent their considerable time in the Indian soil and claiming to be childless are seeking for adoption of a child and in search of the said prospective child, they have taken to the legal course of adoption which has made them to land before this court for redressal of their grievance.

2. Petitioners have prayed for quashing of the decision rendered by Central Adoption and Resources Agency (for short 'CARA') dated 15.03.2018 – Annexure-Z whereunder petitioners have been intimated that following decision has been taken by the High Level Committee in its meeting held on 27.02.2018 on the request of petitioners to take in adoption the child Baby Shomya (female) born on 13.09.2017:

“1. Your request for relaxation to be considered as Indian parent has not been considered as you have acquired the citizenship of USA.

2. The Committee has taken a decision that your registration as NRI (In-country) parent is invalid and you have to wait for the referral as an OCI citizen.”

Petitioners are also seeking for a further direction to the respondents to consider the applications submitted by them as “In-country adoption”, since they are residing in India although they are Overseas Citizens of India

and to commence the adoption process of minor child Baby Shomya referred to them in their favour.

3. Facts in brief which has led to the filing of this petition are as under:

(i) Petitioners are husband and wife of Indian origin having been born and brought up in India. First petitioner having graduated from Indian Institute of Technology, Delhi and Indian Institute of Management, Ahmedabad is working as a Senior Director in a Multi National Firm known as “Flipkart”, after having worked in several Multi national Companies at United States of America (for short ‘USA’). Second petitioner is said to be an Assistant Professor of Special Education and Behavioural Analyst working in the areas of Autism, Developmental Disabilities, Verbal Behaviour, Applied Behavioural Analysis, Behaviour Assessment, etc.. First petitioner shifted to USA in the year 2000 and second petitioner went to USA in 2004 for her Ph.d. Petitioners

got married on 01.06.2006 at New Delhi. Petitioners are said to have applied for US citizenship. Since February, 2016 petitioners are said to be residing and working at Bengaluru and their extended family, relatives and friends are also said to be living in India.

(ii) During June, 2016 petitioners are said to have taken steps to adopt a child and through Central Adoption Resource Information and Guidance System (for short 'CARINGS') established by first respondent – CARA got registered themselves as Prospective Adoptive Parents (for short 'PAPs') by submitting On line Adoption Form which came to be registered with Registration No.PrKa57296874 (hereinafter referred to as first application/registration and petitioners were registered as eligible for in-country adoption on 19.07.2016 vide Annexure-A. Just before submitting the application for adoption, second petitioner had acquired the citizenship of USA (on 19.05.2016) and

had declared as such in the application form as per Annexure-R2. First petitioner had indicated his nationality as an Indian as on the date of registration of the application for adoption i.e., 19.07.2016. Thus, petitioners were allowed registration for In-country adoption in terms of Regulation 21(1) of the Adoption Regulations, 2017 (for short 'Regulation').

4. On submission of the Adoption application and its registration thereof being completed, a home-study report and an assessment report came to be prepared on 01.08.2016 by a Specialized Adoption Agency (SAA), Shishu Mandir Agency as required under Regulation 9 of the Regulations. It is thereafter first petitioner acquired citizenship of USA on 06.12.2016 and was issued an Overseas Citizen of India i.e., OCI-card vide Annexure-G on 27.04.2017.

5. On account of the said changed circumstance and with a bonafide intention to keep the authorities informed about the changed circumstances, petitioners approached first respondent – CARA to inform the authorities about change of citizenship status. On being advised to file a new application as an Overseas Citizen of India (for short 'OCI'), yet another application for legal adoption on 05.11.2017 through On-line (Annexure-H) came to be submitted under Regulation 21(2) and petitioners were issued with registration No.CUSA201771205 (hereinafter referred to as second application). The registered Special Adoption Agency which facilitates the adoption for the PAPs and which was coordinating or facilitating the adoption for the petitioners, by e-mail dated 05.12.2017 submitted its report – Annexure-J to first respondent, certifying that petitioners are residing in India and their seniority should be based on their first registration i.e., first

application and sought for written confirmation from first respondent and first respondent, in turn, intimated said SAA – Agency by email dated 06.12.2017 – Annexure-K to update the Home Study Report with complete details of the petitioners but their seniority would be considered only with the approval of the competent authority but their eligibility would change as they will be OCIs living in India.

6. The above said Home - Study Report relating to the petitioners submitted by SAA-Agency to the first respondent also came to be updated in the second application and not in respect of first application vide Annexure-L and this confirmation was available in the website of first respondent as seen from Annexure-M.

7. On 01.01.2018 petitioners were intimated about a Baby Girl named Shomya, born on 13.09.2017 as an orphan child when received by the Child Welfare

Committee (for short 'CWC') and it is six months old. CWC authorised Prayas Bharathi Trust, Patna – third respondent, a SAA Agency, recognized by the Ministry of Social Justice and Empowerment, Government of India to receive the child which was put up for adoption within India and through them, the petitioners received the referral of the said child based on their first application, which referral provided the child's personal details vide Annexure-N.

3. Subsequently, the adoption process was facilitated to the petitioners by preparing Child-Study Report and Medical Examination Report and was posted in CARINGS system. Immediately, petitioners accepted this referral for adopting Baby Shomya on 02.01.2018, which was also reflected in the website of first respondent and petitioners were also informed by first respondent by e-mail dated 02.01.2018 – Annexure-S that child was reserved for their adoption and were

called upon to meet the child and carry out the matching process which should be completed in the next 20 days. This referral was also based on the first application. On receipt of such referral, petitioners are said to have visited Patna, met Baby Shomya at the third respondent – Agency and is said to have bonded with the child. It is also the stand of the petitioners that there was an immediate connect and bond with the Baby Shomya and them as family and as such, they felt Baby Shomya truly completes their family and as such they were eager to have a child at their home. The photographs produced at Annexure-T to T9 would disclose the petitioners being in the company of the said child Shomya.

9. On 04.01.2018-Annexure-V, petitioners forwarded a communication to first respondent requesting for continuation of their prayer for adoption of the said child by considering the first application

which had been registered with No.PrKa57296874 and also sought that their application submitted as OCI be accepted for the adoption of Baby Shomya. On account of non-receipt of any reply from respondent, by e-mail dated 18.01.2018-Annexure-W requested second respondent to allow adoption of Baby Shomya by reiterating prayer made in their communication dated 04.01.2018- Annexure-V. Having not received any response, representation dated 19.01.2018 – Annexure-X was submitted to the Minister of the second respondent – Department. This was followed up by several e-mails by petitioners to through first and second respondents as per Annexures-Y to Y4 expressing their concern for delay and their eagerness to adopt Baby Shomya.

10. On 15.03.2018, when petitioners visited third respondent – Agency at Patna to meet Baby Shomya again, they received a communication from first

respondent on 15.03.2018-Annexure-Z intimating the petitioners that their request to consider their application as in-country parents was not considered and their registration as In-country parent was invalid and have to wait for a new referral as an OCI citizen. Hence, petitioners are before this Court.

11. On Respondents being notified, second respondent has entered appearance and has filed its statement of objections and has contended that petitioners did not withdraw their earlier registration after having submitted their second application on 05.11.2017 as 'Overseas Citizen of India Prospective Adoptive Parents' and as such, their prayer for adoption by considering their first application is impermissible. It is also the stand of the second respondent that petitioners had furnished different details in their application forms namely, in the first registration and second registration and elaborating on this, it is stated

that on line system captures three parameters namely, mobile number, e-mail id, and personal id (Aadhar/Passport, etc.) for identification of duplication of registrations by the same set of PAPs and on comparison of the two applications which had been submitted by the petitioners namely, Annexures-R2 and R3, it disclosed that when second petitioner acquired the citizenship of USA, yet petitioners registered as OCI and though second petitioner could have provided Passport number while registering their first registration during July, 2016 when she had already acquired US Citizenship on 19.05.2016 and OCI card on 28.06.2016, but they chose to keep the column blank for reasons best known. It is also contended that petitioners had keyed their mobile number from 9972970207 (during first registration) to 49525907 (during second registration) and if they had intentions to live in India, they could have continued to use the mobile number of

the operator in India. Hence, it was contended that comparison of two registrations reflected, the detail furnished by the petitioners were different.

12. It is also contended that Article 4(b) of the Hague Convention, 1993 states that the child is to be first placed for adoption in the State of origin and after exploring such possibility, the child should be placed for Inter-country adoption. Section 59(1) of Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'Juvenile Justice Act') states that a child should not be placed with the Indian or non-resident Indian PAPs within 60 days from the date of the child has been declared legally free for adoption. It is also contended that Regulation 8(1) of the Regulations states that the child in the age group of 0-5 years can be placed in Inter country adoption after 60 days from the date the child has been declared legally free for adoption.

13. In this background, it is contended by second respondent that petitioners had voluntarily foregone the Indian citizenship as well as their right to adopt a child as Indian citizens and as such, it was not considered appropriate to deny the child its right to be adopted in India by Indian parents and to transfer the right of Indian Citizen PAPs to foreign or OCI citizen. It is further stated that there was no justification/reason to prefer an Overseas Citizen of India to an Indian citizen, until and unless the child has been provided due opportunity of 60 days to get adopted in India in accordance with Section 59(1) of Juvenile Justice Act. Hence, second respondent has defended the impugned order. On these grounds, second respondent has sought for dismissal of the petition.

14. I have heard the arguments of Smt. Jayna Kothari, learned counsel appearing for petitioners and

Sri.R.Nataraj, learned Central Government Counsel for respondents. Perused the records and case papers.

15. Having heard the learned Advocates appearing for the parties and on perusal of the pleadings and after bestowing my careful and anxious consideration to the contentions raised at the bar, I deem it proper to refer to historical background relating to adoption, which would have bearing on the facts of this case.

16. Hague Convention on Inter Country Adoption came to be signed on 09.01.2003 and has come into force with effect from 01.10.2003 in India. The Hague Convention of 29.05.1993 on Protection of Children and Co-operation In respect of Inter-country Adoption (Hague Adoption Convention) protects children and their families against risks of illegal, irregular, premature or ill prepared adoptions. This convention,

which operates through a system of National Central Authorities and reinforces the UN Convention on the rights of the child (Article 21) and seeks to ensure that Inter Country adoptions are made in the best interest of the child and with respect to his or her fundamental rights. It also seeks to prevent the abduction, the sale of, or trafficking of children. As already noticed herein above, India became a signatory to this Convention on 09.01.2003. The signatories to the Hague Convention Treaty are bound by it.

17. Article 4(b) of the Hague Convention 1993 mandate that a child is first placed for adoption in the State of origin and only after exploring such possibilities, said child should be placed for inter-country adoption. In fact, Section 59(1) of Juvenile Justice Act is in paramateria with Article 4(b) of Hague Convention. A bare reading of said provision would disclose that in the event of a child not being able to be

placed with an Indian or Non-resident Indian PAP's within 60 days from the date such child has been declared legally free for adoption, it would be free for inter-country adoption.

18. The principle underlying for grant of adoption of a child to the PAPs is to ensure the safety of the child or in other words, to ensure that child would not be placed in any hostile atmosphere or driven to any illegal activity for no fault of it and to ensure welfare of such children stringent steps are required to be adopted. In other words, the pivotal consideration would be the paramount interest of the child and to ensure prevention of trafficking or child being used for gain.

19. It is in this background, first respondent has notified the adoption Regulations in exercise of its powers conferred by clause (c) of Section 68 read with

clause (3) of Section 2 of Juvenile Justice Act which has come into force with effect from 04.01.2017 and thereby said regulations have acquired statutory force. These guidelines are in addition to the existing Act and Rules framed in that regard. A bare reading of these guidelines would disclose the time frame, time schedule, the manner, mode, method to be adhered to for completion of the adoption process has been prescribed. The Agencies indicated under the said guidelines also play a pivotal role in the process of such adoption. Same is extracted herein below for immediate reference:

“3. Fundamental principles governing adoption.- The following fundamental principles shall govern adoptions of children from India, namely:-

(a) the child's best interests shall be of paramount consideration, while processing any adoption placement;

(b) preference shall be given to place the child in adoption with Indian citizens and with due regard to the principle of placement of the child in his own socio-cultural environment, as far as possible;

(c) all adoptions shall be registered on Child Adoption Resource Information and Guidance System and the confidentiality of the same shall be maintained by the Authority.

4. Child eligible for adoption. - The following shall be eligible for adoption, namely:-

(a) any orphan or abandoned or surrendered child, declared legally free for adoption by the Child Welfare Committee;

(b) a child of a relative defined under sub-section (52) of section 2 of the Act;

(c) child or children of spouse from earlier marriage, surrendered by the biological parent(s) for adoption by the step-parent.

5. Eligibility criteria for prospective adoptive parents.- (1) The prospective adoptive parents shall be physically, mentally and emotionally stable, financially capable and shall not have any life threatening medical condition.

(2) Any prospective adoptive parents, irrespective of his marital status and whether or not he has biological son or daughter, can adopt a child subject to following, namely:-

(a) the consent of both the spouses for the adoption shall be required, in case of a married couple;

(b) a single female can adopt a child of any gender;

(c) a single male shall not be eligible to adopt a girl child;

(3) No child shall be given in adoption to a couple unless they have at least two years of stable marital relationship.

(4) The age of prospective adoptive parents, as on the date of registration, shall be counted for deciding the eligibility and the eligibility of prospective adoptive parents to apply for children of different age groups shall be as under:-

Age of the child	Maximum composite age of prospective adoptive parents (couple)	Maximum age of single prospective adoptive parent
Upto 4 years	90 years	45 years
Above 4 and upto 8 years	100 years	50 years
Above 8 and upto 18 years	110 years	55 years

(5) In case of couple, the composite age of the prospective adoptive parents shall be counted.

(6) The minimum age difference between the child and either of the prospective adoptive parents shall not be less than twenty-five years.

(7) The age criteria for prospective adoptive parents shall not be applicable in case of relative adoptions and adoption by step-parent.

(8) Couples with three or more children shall not be considered for adoption except in case of special need children as defined in sub-regulation (21) of regulation 2, hard to place children as mentioned in regulation 50 and in

case of relative adoption and adoption by step-parent.

CHAPTER II

PROCEDURE RELATING TO CHILDREN FOR ADOPTION

6. Procedure relating to orphan or abandoned child.- (1) The provisions relating to the process of declaring an orphan or abandoned child, as legally free for adoption are laid down in sections 31, 32, 36, clauses (a) to (c) and clause (h) of sub-section (1) of section 37 and Section 40 of the Act, as well as under the relevant provisions of the rules made thereunder.

(2) to (19) xxx

7. Procedure relating to a surrendered child.- (1) A parent or guardian wishing to surrender a child under sub-section (1) of section 35 of the Act, shall apply to the Child Welfare Committee in the Form 23 of Juvenile Justice (Care and Protection of Children) Model Rules, 2016.

(2) to (23) xxx

20. The above Regulations as noticed hereinabove have statutory force in law and they have been framed by the Central Government by virtue of the powers conferred by Juvenile Justice Act. Said Regulations have to be necessarily taken into

consideration which has been framed by the first respondent providing the guidelines to be followed for adopting an orphan or abandoned or surrendered child.

21. Under Regulation (2) Chapter I of the Regulations, 2017 various expression of the Regulations have been defined. Regulation 3 lays down the fundamental principles governing the adoptions of the children from India. A bare reading of clause (a) of Regulation 3 would disclose that **child's best interest** would be of paramount consideration while processing any adoption placement; clause (b) would disclose their preference shall be given to the place the child in adoption with Indian citizen with regard to the principle of placement of child in its own socio-cultural environment, **as for as possible** and clause (c) indicate that confidentiality shall be maintained by CARING, where such adoptions are being registered. Regulation 4 and 5 discloses as to which child can be considered for

adoption and the criteria of prospective adoptive parents. Further, Regulation 6 prescribes the procedure relating to adoption of orphan or abandoned child. Likewise, Regulation 7 proscribed procedure relating to adoption of surrendered child. Under Regulation 8, the child would be declared legally free for adoption by the Child Welfare Committee after following the procedure prescribed under Regulations 6 and 7 and such child would be allowed to be given in adoption to a resident Indian or non-resident Indian parents. The proviso to Regulation 8 discloses that such child would be allowed to be given in inter-country adoption:

- (a) after 60 days, if the child is below 5 years of age;
- (b) after 30 days, if the child is above 5 years of age or is a sibling;
- (c) after 15 days, if the child has any mental illness or physical disability as listed in Schedule -VIII.

22. Chapter III of the Regulation provides for procedure for adoption by PAP's who are resident Indians and Chapter IV provides for adoption by PAP's who are non resident Indian, Overseas Citizen of India and Foreign Prospective Adoptive Parents. Regulation 14 as found in Chapter IV would indicate that Non Resident Indian Prospective Adoptive Parents would be treated at par with Indians living in India in terms of priority of adoption of Indian orphan, abandoned or surrendered children. Regulation 21(1) discloses if one of the PAP's is a foreigner and other is an Indian, such cases shall be treated at par with Indians living in India.

Said Regulation reads as under:

“21. Adoption procedure in case of Overseas Citizen of India or foreign national of Hague Adoption Convention ratified countries living in India.-

- (1) If one of the prospective adoptive parents is foreigner and other is an Indian, such case shall be treated at par with Indians living in India.

- (2) If both the prospective adoptive parents are foreigner, such case shall be treated in accordance with the provisions of Regulation 20.

Thus, regulations prescribed under Regulations 9 to 13 of Chapter III would be applicable insofar as one of the PAP's being an Indian Citizen.

23. Hon'ble Apex Court in the case of **STEPHANIE JOAN BECKER VS. STATE AND ORS.**, reported in **AIR 2013 SC 3495** has held that where each and every norm of adoption process spelt out under the Guidelines of 2006 as well as Guidelines of 2017 has been adhered to, prayer for adoption cannot be denied to the prospective foreign adoptive parent. It is held:

"11. In view of the facts xxx in the present case. If the foreign adoptive parent is otherwise suitable and willing, and consent of the child had also been taken (as in the present case) and the expert bodies engaged in the field are of the view that in the present case the adoption process would end in a successful blending of the child in the family of the

appellant in USA, we do not see as to how the appellant could be understood to be disqualified or disentitled to the relief(s) sought by her in the proceedings in question. It is our considered view that having regard to the totality of the facts of the case the proposed adoption would be beneficial to the child apart from being consistent with the legal entitlement of the foreign adoptive parent. If the above is the net result of the discussions that have proceeded, the Court must lean in favour of the proposed adoption. We, therefore, set aside the orders dated 17.09.2010 in Guardianship Case No. 2 of 2010 passed by the learned Trial Court and the order dated 09.07.2012 in FAO No. 425 of 2010 passed by the High Court of Delhi and appoint the appellant as the legal guardian of the minor female child Tina and grant permission to the appellant to take the child to USA. In view of the provisions of Section 41(3) of the JJ Act and to avoid any further delay in the matter which would be caused if we were to remand the aforesaid aspect of the case to the learned Trial Court, only on the ground that the same did not receive consideration of the learned Court, we deem it appropriate to pass necessary orders giving the child Tina in adoption to the appellant. The CARA will now issue the necessary conformity certificate as contemplated under clause 34(4) of the Guidelines of 2011. The appeal consequently shall stand allowed in the above terms.”

24. In the light of the aforestated authoritative pronouncement of the Apex Court and the extant

Regulation namely, Regulations 2017 governing the issue relating to adoption of children born in India vis-à-vis the claim of the petitioners for adopting the child Baby Shomya on the strength of their first application dated 19.07.2016 is being examined.

25. In the aforestated analysis, when the facts on hand are examined and at the cost of repetition, it requires to be noticed that petitioners submitted their first application on 19.07.2016 and second application on 05.11.2017. True copies of these two applications have been appended to the statement of objections filed by second respondent as Annexures-R-2 and R-3 respectively. The details furnished by both petitioners insofar as they have bearing or impact on their claim are only extracted herein below for ready reference:

Name of:		
1 st Petitioner:	Sri Ankur Gupta	Sri Ankur Gupta
2 nd Petitioner:	Smt.Geetika Agarwal	Smt.Geetika Agarwal
Date of Birth:	02.10.1976	02.10.1976

1 st Petitioner: 2 nd Petitioner:	26.05.1981	26.05.1981
Nationality by birth: 1 st Petitioner: 2 nd Petitioner:	Indian USA	USA USA
Annual Income: 1 st Petitioner: 2 nd Petitioner:	₹1,14,30,000/- 0	₹1,10,00,000/- 0
Date of Marriage: 1 st Petitioner: 2 nd Petitioner:	01.06.2006	01.06.2006
Residential Address: 1 st Petitioner: 2 nd Petitioner:	Villa 555, Phase 3, Adarsha Palm Retreat, Near Intel Office, Outer Ring Road, Devanabisahalli	Villa 555, Phase 3, Adarsha Palm Retreat, Near Intel Office, Outer Ring Road, Devanabisahalli
Passport: 1 st Petitioner: 2 nd Petitioner:		548523543 545777777
E-mail Address:	ankursworld@yahoo.com	ankursworld@gmail.com
Mobile:	9972970207	49525907

26. First application came to be submitted by petitioners on 19.07.2016 – Annexure-A-Annexure-R2 and it came to be registered with registration No.PrKa57296874. First petitioner acquired US citizenship on 06.12.2016 i.e., six months after submission of the application for In-Country adoption.

First petitioner was issued with OCI card only on 24.07.2017 – Annexure-G. It is not disputed by respondents 1 and 2 that when second application came to be submitted by petitioners on 05.11.2017, they had not withheld any information or had furnished any false information. It would be apt and appropriate to note at this juncture itself, that authorised SAA Agency which conducted the home study of the petitioners and was facilitating the adoption process of petitioners, had to submit a report to the second respondent and accordingly, said SAA had conducted such study of the petitioners by visiting petitioners home and had collected all relevant information which came to be submitted by them. Regulation 9(7) mandates that PAPs have to select a SAA nearest to their residence to enable them to conduct a detailed Home-Study and said report is to be posted in the Child Adoption Resource Information and Guidance System by SAA vide

Regulation 9(11) as per prescribed format viz., Schedule VII and it would be valid for three (3) years and on receiving confirmation from first respondent to update such report, it was uploaded by SAA and petitioners had also simultaneously updated the new details in their second application-Annexure-L and the details furnished by petitioners in their second application is same as furnished in the first application. A comparison of both applications would disclose that in fact number had been furnished in the first application i.e., 9972970207 is also reflected in the second application of Part I at column No.5B vide Annexure-L. It is not disputed by second respondent that residential addresses of both petitioners are either changed or different address has been furnished. Though it is true that in the first application registered on 19.07.2016, first petitioner alone had provided his PAN Card number and not that of second petitioner, the

fact remains that in the second application registered on 05.11.2017 both petitioners have furnished their passport numbers and no fault can be found in that regard, since both applications filed by the petitioners through online has been duly registered and if it was the case of duplication, then obviously it could not have been registered. On account of first registration form not making mandatory for the applicants to provide their Passport number, non-furnishing of the same in the first application cannot be found fault with. In fact, second petitioner has clearly stated her nationality by birth is USA in the first application and there has been no suppression of any material fact by the petitioners in the second application.

27. As rightly contended by Smt.Jayna Kothari, learned Advocate appearing for petitioners, on-line registration of '**In Country adoption application form**' does not specify or provide for incorporating any

additional information to be specified by an applicant in the event of such events were to take place or same is required to be informed to the authorities or such information is required to be furnished by the petitioners on account of such changed circumstances. In other words, if any event subsequent to the filing of an application were to take place, the existing norms including the format of application does not provide for specifying such subsequent information.

28. It is also to be noticed that there are two categories of PAPs who would be intending to adopt a child namely, Resident Indian PAPs who fall under Chapter III of Regulations, 2017 and Non-Resident Indian, Overseas Citizen of India and Foreign PAPs who would fall under Chapter IV of Regulations, 2017. Both stand under different categories and would be governed by different adoption procedure as prescribed under Chapter III and Chapter IV respectively. However, it is

to be noticed at this juncture itself that Regulation 21(1) would disclose that if one of the PAP is a foreigner and the other is Indian, such case would be treated at par with Indians living in India namely, such applicants would be treated as Resident Indian PAPs and thereby they would be governed by Chapter III of Regulations, 2017.

29. It is no doubt true that purpose and intent of the regulations disclose paramount consideration is interest of the child and same being placed in an environment conducive of its birth would be one of the primary consideration. However, that by itself would not be a ground to reject the legitimate claim of PAPs if the claim is legitimate. A bare reading of Section 59(1) of Juvenile Justice Act would disclose that a child which has become orphan or has been abandoned or has been surrendered and has been declared and legally free for adoption, such child if it could not be placed with an

Indian or Non Resident Indian PAP i.e., In Country adoption despite the joint effort of SAA and State Agency within 60 days from such declaration, such child would be free for Inter-country adoption. Regulation 8(1) also mandates that child in the age group of 0 to 5 years can be placed in inter country adoption after 60 days from the date being declared legally free for adoption. Thus, the purport and intent of the said provision is for ensuring that child is adopted by an Indian parent or an Indian who has acquired the status of a Non-Resident Indian and in the event of such child is declared legally free for adoption by such PAPs would not be adopted, then, the child would be available for Inter Country adoption. The paramount consideration is the well being, welfare, over all development of the child and to ensure that such child is in the safe hands of PAP's and in the process of its growth and development it would

blossom itself into a good human being and such adoption should not come in the way of its growth.

30. As on the date petitioners first submitted their application i.e., on 19.07.2016, they were well within their rights to seek for adoption under the category of In Country adoption and not Inter Country adoption. Accordingly, petitioners have submitted application for in country adoption. As already observed herein above, first petitioner was an Indian citizen and second petitioner though was of Indian origin, had acquired the citizenship of USA by birth and as such, she has clearly declared in the first application her nationality by birth as 'USA Citizen'. ***It would be apt and appropriate to note at this juncture, at the cost of repetition, that Regulation 21(1) mandates that even if one of the PAP is a foreigner and the other is an Indian, such case is to be treated on par with the Indians living in India.***

31. On account of changed circumstances and events namely, first petitioner having acquired the citizenship of US on 06.12.2016 and having been issued with an OCI card on 27.04.2017, it would not alter their claim made in the first instance or in other words, their right to pursue the first application would not get extinguished. Even otherwise, as could be seen from the records, both the petitioners are of Indian origin and have spent their considerable life span in India and after having gone in search of greener pastures and better prospects, have acquired the citizenship of US. First petitioner acquired the US citizenship on 06.12.2016 i.e., much after submitting the application on 19.07.2016 for adoption under the category of In country adoption and this fact has also not been suppressed by the petitioners. In fact, they have also intimated to the second respondent – authority the details of changed circumstances by updating the said

information in the second application submitted by them. In fact, Home-Study Report – Annexure-L has been subsequently updated in the records of respondent subsequent to second application submitted by petitioners on 05.11.2017. All these aspects were within the know how and knowledge of the second respondent, and as such, by email dated 02.02.2018 – Annexure-S, first respondent has extended the ray of hope to the petitioners of becoming the proud parents of the child which they had proposed to adopt by assuring that Baby Shomya which had been declared legally available for adoption would be given in adoption to them. The contents of the said email reads as under:

“We congratulate you for successfully reserving profile of child. Please contact the concerned SAA to fix an appointment to match with the child. The entire process of matching shall be completed within a maximum period of 20 days from the date of reserving of the referred child.

Kindly adhere to Guidelines Governing Adoption of Children 2015.”

32. In fact, by communication dated 04.01.2018, petitioners have also intimated second respondent about their earlier application, first petitioner having acquired US citizenship subsequent to the filing of the application, filing of new application in the status of OCI residing in India and also NOC issued by the United States Embassy which also came to be filed by the petitioners with CARA and pleading their ignorance for not withdrawing their earlier application. At no point of time, respondents have refused to entertain the claim of petitioners on the basis of first application having got extinguished. In fact, it is the application dated 19.07.2016 which came to be processed and continued by respondents 1 and 2 by extending the visitation rights of petitioners as PAPs to interact with the child namely, so that they bond with the child which is said

to have occurred at the first instance itself according to petitioners as is evident from the photographs produced at Annexures-T to T9. Hence, this Court is of the considered view that respondents were not justified in denying claim of the petitioners particularly, in the peculiar facts and circumstances surrounding the claim of petitioners and as unfolded by certain events having occurred between the date of filing of first application i.e., 19.07.2016 and filing of second application on 05.07.2017.

33. In the peculiar circumstances of the case, as discussed herein above, this Court is of the considered view that petitioners would be entitled to prosecute their claim for adoption of the Baby Shomya pursuant to their first application dated 19.07.2016. However, it is made clear that this cannot be construed as a precedent in the peculiar circumstance namely, the petitioners when they applied for adoption under Regulations, 2017

were well within the category of being registered under Chapter III viz., as In country PAP's and only on account of subsequent event which has taken place, which was not in their control or in other words, beyond their control, had changed their status and as such, it cannot be held or construed that their claim under the first application dated 19.07.2016 had got extinguished or they were required to pursue their application dated 05.11.2017 (Annexure-R3) as Inter Country PAP's, which came to be submitted by them in their anxiety to seek for the adoption of Baby Shomya which was already shown to them and bondage having also been established between petitioners and the child - Baby Shomya.

Hence, I proceed to pass the following:

ORDER

- (1) Writ petitions are hereby allowed.

- (2) Communication dated 15.03.2018 – Annexure-Z is hereby quashed.
- (3) Writ of mandamus is issued to respondents to consider and examine the application submitted by petitioners on the strength and basis of the application dated 19.07.2016 – Annexure-A/Annexure-R2 expeditiously, at any rate, within 15 days from the date of receipt of this order, by keeping in mind the observations made herein above.

**SD/-
JUDGE**

*sp