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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Date of Decision: 22<sup>nd</sup> November, 2021*

+ **W.P.(C) 279/2019 and CM APPL. 40751/2021**

RAJWINDER KAUR & ANR ..... Petitioners

Through: Mr. Anubhav, Mr. Yashwant Singh  
Yadav and Ms. Preeti Yadav,  
Advocates (M: 9540075808)

versus

CENTRAL ADOPTION RESOURCE AUTHORITY ..... Respondent

Through: Ms. Biji Rajesh and Mr. Shreesh  
Chadha, Advs. for Mr. Gaurang  
Kanth, Adv. for R-1 with CEO (M:  
9999285585)

Ms. Preeti Pant, Joint Secretary,  
MOFWC (M: 9818688428)

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WITH

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**W.P.(C) 10064/2019 and CM APPL. 40851/2021**

BABY HARISHIKHA ATRE MINOR THROUGH: SHEFALI  
KULSHRESTHA ..... Petitioner

Through: Mr. Zeeshan Khan, Mr. Ali Din Saif  
and Mr. Varun Agrawal, Advocates  
(M: 8393958010)

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Ms. Biji Rajesh and Mr. Shreesh  
Chadha, Advs. for Mr. Gaurang  
Kanth, Adv. for R-1 with CEO.

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AND

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**W.P.(C) 11168/2020 and CM APPL. 40499/2021**

JAGDISH SINGH SHARY ..... Petitioner

Through: Mr. Vishwendra Verma, Advocate.

versus

CENTRAL ADOPTION RESOURCE AUTHORITY ..... Respondent

Through: Ms. Biji Rajesh and Mr. Shreesh  
Chadha, Advs. for Mr. Gaurang  
Kanth, Adv. for R-1 with CEO

**CORAM:**  
**JUSTICE PRATHIBA M. SINGH**

**Prathiba M. Singh, J. (Oral)**

1. This hearing has been done in physical Court. Hybrid mode is, however, permitted only in cases where explicit permission has been taken from the Court.
2. Vide order dated 9<sup>th</sup> November, 2021, in view of the absence of a proper status report filed by CARA and non-issuance of NOCs to the Petitioners, this Court had directed the presence of Ms. Tripti Gurha, member Secretary and CEO of CARA on the next date.
3. Further to the last order, Ms. Tripti Gurha has appeared before the Court and Id. Counsel under instructions from CARA, has made submissions today. Ld. counsels for the Petitioners have also been heard.
4. Vide judgement dated 31<sup>st</sup> August, 2021, the following directions were issued:

*“96. In terms of the directions issued above;*

- a. The Secretary, Ministry of Women and Child Development, Government of India shall file a report before this Court as to the manner and mode of creating a permanent mechanism to deal with inter-country adoptions under HAMA, both direct and indirect and place the said report before this Court within a period of two months.*
- b. There are several errors on the website of CARA in respect of HAMA adoptions. CARA shall carry out corrections in its website and place a report before this Court within eight weeks;*
- c. CARA shall also frame guidelines for the processing of NOCs for inter-country adoptions*

*under HAMA and make available forms for this purpose on the portal. Let the draft guidelines and the timelines for activating the portal be placed on record by means of a status report within two months. Details of the special Committee constituted to deal with HAMA adoptions shall also be specified in the report;*

*d. A status report in respect of each of the writ petitions and the processing of grant of NOCs be also filed at least one week before the next date of hearing.”*

5. It is submitted by CARA's counsel that pursuant to the judgement passed by this Court, the Adoption (Amendment) Regulations, 2021 (*hereinafter “2021 Regulations”*) have been notified w.e.f. 17th September, 2021. They have been framed specifically to lay down the procedure to be followed for adoption of children under the Hindu Adoptions and Maintenance Act, 1956 (*hereinafter “HAMA”*) by parents who desire to give their children in adoption to adoptive parents located in a foreign country. The said Regulations apply to all inter-country adoptions under HAMA, both amongst relatives and non-relatives. Under the said 2021 Regulations, there are broadly two categories:

- **Category No.1** are those adoptions which were executed pre-2021 Regulations; and
- **Category No.2** are adoptions undertaken post the coming into effect of the 2021 Regulations.

6. On behalf of CARA, it is further submitted that upon the 2021 Regulations coming into effect, various steps have been taken by CARA including:

- (i) Appointment of an officer at the level of an Assistant Director as

the Nodal Officer for dealing with HAMA-related adoptions;

(ii) Communications have been issued to all State Governments through the Principal Secretary, Ministry of Woman and Child Development, informing them of the 2021 Regulations coming into effect and seeking their cooperation in implementation of the same; and

(iii) Various webinars have been conducted by CARA to sensitize all stakeholders, since the first week of November, 2021.

7. On behalf of the Petitioners who are before this Court, it is submitted that no NOCs have been issued to any of the parties and the process of issuance of NOCs is at different stages.

8. In **W.P.(C) 279/2019**, the Petitioners have appeared before CARA and requisite documentation has been submitted. The DM's certificate has also been obtained by the Petitioners on 11<sup>th</sup> November, 2021 and has been submitted to CARA. Thereafter on 16<sup>th</sup> November, 2021, CARA has written to the relevant central authority in Spain seeking the required certification under Article 5 and Article 17 of the Convention on Protection of Children and Co-Operation in respect of Intercountry Adoption, 1993 (*hereinafter "Hague Convention"*). Copy of the said communication has been shown to the Court. This communication has however not been marked to the Petitioner. A copy of that said letter has now been given to the 1<sup>st</sup> Counsel for the Petitioner who may follow up with the Spanish authorities on the status of the said certification. Post the said certificate being obtained, it is assured to the Court that CARA would initiate steps to issue the NOC, expeditiously.

9. Insofar as **W.P.(C) 10064/2019** is concerned, it is submitted by 1<sup>st</sup>.

Counsel for the Petitioner that the documents could not be submitted by the Petitioner to CARA as the counsel had met with an accident. Accordingly, the required documents have now been submitted to CARA and also to the ld. Counsel for CARA, in Court. Petitioner/Petitioner's authorized representative to appear before CARA on 26th November, 2021, at 2:30 p.m., in this regard.

10. In **W.P.(C) 11168/2020**, the adoption is by the paternal uncle (*Chacha*) of the child who is located in the USA. The Petitioner to accordingly appear before the Nodal Officer physically or through authorized representative to submit the requisite documents and obtain the NOC. The Petitioner/authorized representative to appear before CARA on 26<sup>th</sup> November, 2021, at 1:30 p.m.

11. In both **W.P.(C) 10064/2019** and **W.P.(C) 11168/2020**, the Nodal Officer shall meet the Petitioner/authorized representative and coordinate with the concerned District Magistrate in order to enable the Petitioners to obtain the verification from the concerned District Magistrate expeditiously. Upon the same being obtained, CARA assures the Court that it would take necessary steps in terms of the 2021 Regulations to move forward for issuance of the NOC. All communications either with the District Magistrate or with any foreign authority shall be copied to the authorized representative of the Petitioners, as also the Petitioners, so that the Petitioners are duly informed of the progress of the application for issuance of NOC.

12. From the facts that emerge in these three writ petitions, this Court notes that the main issue that arises for the applicants is the obtaining of verification from the concerned SDMs/DMs in terms of Schedules XXXIII and XXXIV of the 2021 Regulations. The second issue that arises is also as

to the manner in which the coordination is to be effected between the adoptive child, adoptive parents, the relevant foreign agencies, CARA and the biological parents. In order to provide assistance and enable adoptive and biological parents to obtain the required certification and obtain no-objection from both District Magistrate as also the foreign authorities, CARA would consider implementing the following steps:

- (i) Creation of a database of all SDMs/District Magistrates as also the State Adoption Resource Agencies and District Child Protection Unit who will need to be contacted for the purpose of verification and issuance of certificates;
- (ii) Publication of such a database on CARA's website;
- (iii) Creation of a help desk at CARA which shall be available both physically and online. The help desk/helpline should have a 24-hour helpline, considering the time differences in different jurisdictions. This would enable adoptive parents to contact CARA as per their convenience. The feasibility of the same shall be reviewed by CARA and shall be submitted before this Court by way of a status report;
- (iv) CARA shall also consider permitting advocates/lawyers to appear as authorized representatives to coordinate and facilitate the various formalities that are required to be undertaken;
- (v) Mechanism to be created to enable biological or adoptive parents to appear even virtually or be available telephonically, whenever CARA requires to contact them or interact with them;
- (vi) All communications with foreign authorities or District Magistrates or any other parties made by CARA shall also be copied by an e-

mail to the party concerned as also their authorized representatives so that the procedure being followed and the progress of the application is within their knowledge as well. This would also enable the parties concerned to follow up with the concerned foreign authority or with the District Magistrate for issuance of the certification.

13. Mr. Atul Nagarajan (Mb. No. 9811169087), 1d. Counsel who is familiar with adoption matters and who is present in Court today, is appointed as an *Amicus Curiae* to assist the Court in these petitions. Mr. Nagarajan, may be provided with electronic copies of these writ petitions by the Court Master, to enable him to assist this Court.

14. Let a status report in respect of the implementation of the above steps be placed on record within two weeks. In the status report, CARA shall also mention the details of the number of applications which are pending for inter-country adoption and the time period for which they have been pending with CARA. Steps taken *qua* each of the applications and their respective status shall also be placed before the Court. In the case of all inter-country adoption applications which are pending, CARA shall inform the parties concerned about the 2021 Regulations so that the said applications can also be processed towards issuance of NOCs.

15. In the meantime, all the 1d. Counsels for the Petitioners as also the 1d. *Amicus Curiae* may place on record their suggestions if any, in this regard.

16. Let Court notice be issued to Mr. Kirtiman Singh, 1d. CGSC, Union of India, with a copy of this order to enable him to obtain instructions from Ms. Preeti Pant, Joint Secretary, Ministry of Women and Child Development, Government of India. The Union of India to also place on

record the status report in respect of the implementation of the 2021 Regulations.

17. On the next date, the Nodal Officer for HAMA adoptions, at CARA, shall be present in Court.

18. List these petitions on 20<sup>th</sup> December, 2021.

19. These are part-heard matters.

**PRATHIBA M. SINGH**  
**JUDGE**

**NOVEMBER 22, 2021**

*Rahul/MS*



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