

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

% **Order reserved on: 21 November 2022**
Order pronounced on: 25 November 2022

+ W.P.(C) 14069/2022 & CM APPL. 42954/2022(Interim Relief)
CM APPL. 44913/2022, CM APPL. 48292/2022(Impleadment)

MICHELLE CAMILLERI & ANR. Petitioners
Through: Dr. Menaka Guruswamy, Sr.
Adv. with Ms. Tara Narula, Mr.
S. Debabrata Reddy, Ms. Sonal
K. Chopra, Mr. Yash S. Vijay
and Mr. Utkarsh Pratap, Adv.

versus

CENTRAL ADOPTION RESOURCE AUTHORITY (CARA)
& ANR. Respondents
Through: Ms. Monika Arora, CGSC with
Mr. Shivam Raghuvanshi and
Mr. Yash Tyagi, Adv. for
CARA.
Mr. Veer Vikrant Singh, Adv.
for R-2.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA

ORDER

“The beggarly question of parentage--what is it, after all? What does it matter, when you come to think of it, whether a child is yours by blood or not? All the little ones of our time are collectively the children of us adults of the time, and entitled to our general care....”

Thomas Hardy, “Jude the Obscure”

1. This writ petition challenges the communication dated 10 August 2022 issued by the **Central Adoption Resource Authority**¹ informing the **Specialized Adoption Agency**² concerned and where Child “S” presently stands housed, of a complaint which had been received by the **National Commission for Protection of Child Rights**³ alleging violation of the adoption regulations which apply. CARA in terms of that communication apprised the SAA that till the aforesaid complaint is investigated, it should withdraw the Adoption Petition No. 1248/2022 which had been presented before the competent court.

2. Taking note of the challenge which stood raised in the writ petition, the Court on 28 September 2022 had passed the following order: -

“1. Notice. Although the respondents are stated have been placed on advance notice, none has appeared on their behalf when the matter was called. Consequently, let learned counsel for the petitioner take steps for service on the said respondents through all permissible modes including via approved courier service as well as *dasti*.

2. The Court notes that in terms of the communication which stands impugned in the present writ petition, the Central Adoption Resource Authority [“CARA”] has issued directions not only for an investigation being initiated but for the adoption petition itself being withdrawn from the Court where it was pending. The aforesaid directions appear to have been issued pending CARA examining and investigating a complaint which is stated to have been received. The record would further reflect that after completion of all formalities, CARA itself had proceeded to issue the No Objection Certificate on 15 March 2022. Presently the impugned communication does not record any valid or legally

¹ CARA

² SAA

³ NCPDR

justifiable reasons which may have compelled or constrained CARA to commence an investigation or warranted the withdrawal of the adoption petition itself.

3. In view of the aforesaid and bearing in mind the advanced stage to which the adoption process had reached, let the petition be called again on 13 October 2022.

4. Till the next date of listing the direction as contained in the impugned order dated 10 August 2022 for withdrawal of the adoption petition shall remain stayed. The Court additionally restrains CARA from taking any steps for unmatching the petitioner from the child which was to be taken in adoption. The concerned Court before which the adoption petition is pending shall also stay its hands pending further orders being passed on the present writ petition.

5. CARA shall additionally place on the record a report with respect to the welfare of the child in question.

6. *Dasti* under signatures of the Court Master.”

3. Thereafter and when the matter was taken up on 17 October 2022, the petitioners moved a miscellaneous application for appropriate directions in light of the material which had been placed on the record and which indicated that unauthorized third parties had been granted access to the child. The material indicated that in the course of those interactions, photographs of Child “S” were taken and thereafter posted online on various social media platforms. Taking cognizance of the allegations which stood levelled, the Court on 17 October 2022 passed the following order: -

“CM APPL. 44982/2022 (Direction)

This application for urgent direction places on the record certain disturbing facts in respect of Child ‘S’ who presently stands housed in a specialized adoption agency. The Court also bears in mind the terms which were incorporated in its order of 28 September 2022.

However, the material which stands placed on the record appears to prima facie indicate that unauthorized third parties have

been granted access to the child and that in the course of those interactions certain photographs are also stated to have been taken and thereafter posted online on various media platforms.

In view of the nature of allegations which stand made, let Central Adoption Resource Authority [“CARA”] depute a team of responsible officials which shall duly inspect the adoption agency in question and submit a report with respect to the welfare of the child on or before the next date fixed.

The adoption agency shall in the meanwhile stand restrained from granting third parties unauthorized access to the child which may tend to compromise the identity and the privacy rights of Child “S”. The aforesaid restraint, however, shall not be construed as depriving Child “S” the facility to participate in group activities which may be organized or held within the precincts of the adoption agency and are duly supervised by the caregivers of the agency. CARA shall instruct the adoption agency to proceed in accordance with the aforesaid directions.

W.P.(C) 14069/2022 and CM APPL. 44913/2022

Both respondent Nos. 1 and 2 shall ensure that their responses to the writ petition are filed on or before the next date fixed.

List on the date fixed i.e., 11.11.2022.”

4. Thereafter both CARA and NCPCR have filed their affidavits in the present matter and have been heard. In order to appreciate the issues which arise, it would be pertinent to refer to the following undisputed facts. Child “S” was found abandoned in a cremation ground on 10 October 2019. She was immediately admitted to the District Women Hospital for medical treatment. A First Information Report in connection with the above also came to be registered. Simultaneously, a letter dated 19 October 2019, detailing the facts

pertaining to the aforesaid discovery was also submitted before the **Child Welfare Committee**⁴.

5. On a preliminary medical examination, the child was found to have been born prematurely and therefore was referred for further examination to the Vatsalya NBCC, Bareilly. The attending doctor on 05 November 2019 apprised the CWC that considering that the child was suffering from meningitis, she would require further medical treatment. Consequently, Child “S” remained hospitalized and underwent treatment in Vatsalya NBCC Hospital between 12 October 2019 to 03 December 2019.

6. From the Inspection Report which has been submitted by the team members constituted by CARA pursuant to the order of the Court dated 17 October 2022, it further transpires that the child was on 09 December 2019 placed before the CWC, Bareilly along with the requisite report concerning her medical condition. The **Medical Examination Report**⁵ dated 09 December 2019 would indicate that the child was suffering from convulsions, hernia and hypoglycemia. The attending and examining physician further observed that Child “S” may suffer from mental retardation in the future. It was also suggested that she be operated upon for hernia.

7. Taking note of the medical condition of Child “S”, the CWC issued an order on the same date for her short time placement with the concerned SAA. The Inspection Report also refers to the recordal of

⁴ CWC

⁵ MER

the medical condition of Child “S” while she was undergoing treatment in the District Women Hospital during 10 October 2019 to 12 October 2019 and again during the period 03 December 2019 to 09 December 2019. Those reports reiterate the medical afflictions being suffered by Child “S” to include septicemia, hypothermia, hypoglycemia, acute weight loss and convulsions.

8. The team of CARA had also referred to the opinion of other doctors who examined and treated Child “S” and had prescribed medication for the frequent convulsions suffered by her. They lastly refer to the prescription drawn by the attending doctor dated 26 May 2022 and 29 May 2022 in which she was diagnosed as suffering from epilepsy. The record would further bear out that she is presently undergoing treatment for epilepsy.

9. The child was ultimately declared legally free for adoption by the CWC on 28 July 2020. Consequent to the child being declared as legally free for adoption, her details were uploaded on the **Child Adoption Resource Information & Guidance System**⁶. CARA further asserts that on 05 November 2021, the child was placed under the “special needs category” of the CARINGS portal and her status made live. It further discloses that no Resident Indian, NRI or OCI made a reservation in respect of Child “S” during the stipulated timeline of 15 days computed from 05 November 2021.

10. On the expiry of the aforesaid period, the petitioners here made a reservation for Child “S” on 21 November 2021. It is the categorical

⁶ CARINGS

stand of CARA that no resident Indian, NRI or OCI card holder made a reservation during the statutorily prescribed period of 15 days as a consequence of which the case was opened for inter-country adoption. The petitioners, the **Prospective Adoptive Parents**⁷ made a reservation in favour of Child “S” thereafter. However, the adoption process does not appear to have been finalized within the stipulated period of 30 days and till 21 December 2021. Child “S” was again made available for reservation on CARINGS from 21 December 2021 to 11 January 2022. She was reserved by the PAPs again on 11 January 2022. The process of matching and acceptance was completed on 05 February 2022 and a No Objection Certificate thereafter issued by CARA on 15 March 2022.

11. CARA, in its affidavit which has been filed in these proceeding and based on the findings which have been returned by its investigating team, has further reiterated that Child “S” was made live under the special needs category on its portal on 05 November 2021 and that no reservation in her favor was made by any Resident Indian, NRI or OCI.

12. Before proceeding further, it would be pertinent to advert to the following facts which led to the present writ petition being preferred before this Court. The dispute emanates from a complaint which is stated to have been made to the NCPCR by one Amit Kumar Mishra who had alleged that Child “S” had been rescued by his uncle and that the entire medical expenditure relating to her treatment in different

⁷ PAPs

hospitals had been born by the complainant and his family. That complaint was dated 04 August 2022.

13. The complainant asserted that it was his family members who had rescued Child “S” and had been taking care of her needs and her medical expenses throughout. It was further asserted that in the course of their interactions with Child “S”, both the complainant as well as his wife had become emotionally attached to Child “S”. They are stated to have consequently applied for adoption and registered on the CARINGS portal on 13 November 2019. It is alleged that on the website they could not see the details of Child “S” under the category of special needs children. It was further asserted that despite having made the application on 13 November 2019 they had not heard anything from CARA and nor had they been provided any information with respect to their adoption application. The complainant goes on to allege that he had only recently come to know through a source that Child “S” has been given in adoption to persons residing in a foreign country despite the application that had been made by him. It would be relevant to note that the complainant admits that Child “S” was a special needs child in the complaint itself.

14. The inspecting team of CARA has categorically stated that no Resident Indian including the complainant or for that matter an NRI or an OCI card holder made any reservation with respect to Child “S” within the stipulated period. It is disclosed that it was only after the period of 15 days from 05 November 2021 had expired that the petitioners acting as the PAPs’ had reserved Child “S”. It is further

averred that the PAPs' did not complete the requisite procedures within the prescribed period of 30 days. According to CARA it is only thereafter that Child "S" was again made available for adoption under the special needs category on CARINGS. It is then disclosed that yet again no Resident Indian including the complainant, NRI or OCI card holder logged in or made any reservation in respect of the Child "S". The petitioner PAPs', on the other hand, are stated to have made the requisite reservation and exercised their choice to adopt Child "S" on 11 January 2022. CARA has ultimately and in terms of the averments set out in paragraph 8 of their affidavit suggested the following: -

"8. That based on the inspection report, the following are proposed:

a. CARA may ask the CMO of the District to submit a fresh MER (Medical Examination Report) of the child to determine whether or not the child has special needs as there are concerns about the child's health because the SAA did not respond to letters written by CARA and child was made live by CARA based on the medical reports provided by the SAA Doctor. As per Regulation 37 of the Adoption Regulations 2022 (notified on 23rd September 2022), the Chief Medical Officer of the district shall facilitate the treatment of the children having special needs housed in Specialised Adoption Agency or Child Care Institution through the existing Central Government or State Government schemes and shall declare the health status of the child as normal or having special needs as provided in the Schedule XVIII and Schedule III(Part-E) within a period of fifteen days and also encourage treatment of such children under various schemes of the Government. A copy of the Regulation along with the Schedule XVIII and Schedule III (Part-E) is placed as **Annexure-R/3**.

b. In case the child is found to have normal health conditions, the child would be subject to normal referral as per existing norm.

c. In case the child is found to have special needs, the child may be allowed to be placed with the foreign PAPs.

d. The State Government shall be asked to issue Show Cause Notice to the SAA for violations of various provisions of the Regulations as provided in regulation 26(2).”

15. NCPCR which has also filed its affidavit in the present proceedings has firstly referred to its position as flowing from the provisions of the **Commissions for Protection of Child Rights Act, 2005**⁸ and its obligation to protect child rights and other related matters. It has sought to justify its intervention in light of the provisions made in Section 13(1)(j) of the 2005 Act. In the affidavit it is averred that NCPCR took cognizance of the entire episode on receipt of the complaint dated 04 August 2022 and the allegation that Child “S” was not visible under the special needs category and therefore she could not be reserved by the complainant even though they had duly registered themselves on the CARINGS platform.

16. NCPCR contends that it was constrained to call upon CARA to place further proceedings relating to the adoption process of Child “S” in abeyance till a thorough enquiry is conducted and completed. The NCPCR is also stated to have called upon the District Magistrate and Superintendent of Police, Bareilly to submit **Action Taken Reports**⁹. Those reports also take note of the complaint which was made namely of Child “S” not being visible under the special needs category. The reports which have been gathered by the NCPCR also suggest that a forensic audit of the CARINGS platform be initiated. Insofar as the

⁸ The 2005 Act

⁹ ATRs

issue of a forensic audit of the CARINGS platform is concerned, CARA has in its affidavit as well as the reports which have been submitted categorically and unequivocally asserted that the adoption was completed in a transparent manner and in accordance with the regulations which apply, namely, the **Adoption Regulations, 2017**¹⁰ and the **Adoption Regulations 2022**¹¹. They have also while dealing with the placement of Child “S” obtained confirmatory reports from the Technical Support team of **National Informatics Centre**¹² which is stated to administer the CARINGS portal.

17. The NCPCR lastly asserts that till such time as all facts surrounding the adoption process of Child “S” are duly investigated, it would be in the child’s best interest that further proceedings are kept in abeyance. NCPCR has also taken note of the assertion made by the complainant that all expenditure incurred in the course of the medical treatment of Child “S” was borne by the complainant, his family members as well as the uncle. It also alludes to the emotional attachment which appears to have come to exist between the complainant and Child “S” since they appeared to have been granted access to the child by the SAA.

18. The complainant who had moved an application for impleadment in the present writ petition was permitted to intervene in these proceedings and to address submissions through learned counsel. The intervener has firstly drawn the attention of the Court to

¹⁰ The 2017 Regulations

¹¹ The 2022 Regulations

¹² NIC

a screenshot of the CARINGS portals which would indicate that the Resident Indian couple had in fact registered on the portal as PAPs on 13 November 2019. It is then contended that Child “S” had in fact been rescued by the uncle of the complainant and that she was provided all care by the complainant and his family members. The complainant asserts that the entire family has become emotionally and mentally attached to Child “S” and were also providing her support during the entire course of her treatment in different medical institutions. It is in aforesaid backdrop that they contend that great prejudice would be caused if the adoption process is permitted to be concluded and the child handed over in adoption to the petitioners.

19. Ms. Guruswamy, learned senior counsel, appearing for the petitioners has taken the Court in great detail through the provisions contained in the **Juvenile Justice (Care and Protection of Children) Act 2015**¹³ as well as the 2017 and 2022 Regulations. Ms. Guruswamy firstly submitted that the MERs which were prepared in respect of Child “S” clearly bear out that she was a child with special needs and thus rightly categorised and placed in that category by CARA. Ms. Guruswamy contended that the respondents have failed to establish or prove that the medical examination reports which were prepared at the relevant time were either inaccurate or merited any review. Learned senior counsel laid stress on the fact that right from the time of the initial admission of Child “S” in a medical institution, she was found to be suffering from hernia, convulsions and having

¹³ 2015 Act

come into the world prematurely. According to learned senior counsel all the three conditions referred to above warranted her placement as a special needs child in light of the provisions made in Schedule XVIII of the 2017 Regulations. Ms. Guruswamy submitted that once a child had come to be placed in the category of special needs, the legal regimen which applies neither contemplates a review or revision nor does it envisage a process of a medical examination being undertaken all over again. She has in support of the aforesaid contention also drawn the attention of the Court to the Minutes of the 31st Meeting of the Steering Committee of CARA, and more particularly, to paragraphs 9, 10 and 11 thereof, which are extracted hereinbelow:-

“9. According to Adoption Regulations, 2017, “Special need child” means a child who is mentally ill or physically challenged or both. In Schedule XVIII of Adoption Regulations, 2017, children are classified into physically challenged, mentally challenged, Neurological challenged and any other ailment for the purpose of adoption. During The International Adoption Month, November 2021, a total of 496 Special Need Children were made live on CARINGS Portal for the purpose of adoption. These children were suffering from various physical and mental disorders and disabilities and waiting in Institutional care for family warmth, love and care. The Special Need Children were classified according to Schedule XVIII of Adoption Regulations, 2017. The main disabilities included visual impairment, cerebral palsy, cleft lip-cleft palate, club feet, hearing impairment, congenital heart disease, haemophilia, hepatitis B+, Hernia, HIV, hydrocephalus, low birth weight, premature birth, missing organs, speech dysfunction, thalassemia, tumour, intellectual disability, autism, seizures, mental illness and spinal bifida. All the reports were supported by doctors associated with the Specialized Adoption Agency.

10. It has been envisaged that the issue relating to identification of special need would be addressed once CMO of the district is assigned the task. Till such time, we may continue the existing practice of verifying the profile of special need children by the AIIMS doctors.

11. Any child cleared as SN child once and accepted by the

PAPs, such a child should not be withdrawn from the PAPs in case the child becomes normal at a later date as health feature can be dynamic.

Decision: Chairperson emphasized that categorization of special needs should be based on the Disability Act, 2016. He also raised the issue about correctable medical conditions like cleft palate and low birth weight etc. However, upon notification of the amended Adoption Regulations, cases where a child is diagnosed with a Special Needs beyond the disability department's notification may be sent to AIIMS doctor with endorsement of CMO."

20. Ms. Guruswamy further submitted that CARA has clearly taken inconsistent stands in the course of these proceedings. According to learned senior counsel, while on the one hand it has chosen to assert that the adoption process was compliant with the provisions of the 2015 Act as well as the 2017 and 2022 Regulations, it has yet chosen to suggest that the medical condition of Child "S" be reviewed all over again. This, according to learned senior counsel, would be clearly impermissible when viewed in light of the relevant provisions made in the Regulations. Ms. Guruswamy submitted that the entire complaint rests upon a desire of the complainants to adopt Child "S" specifically. According to learned senior counsel, the law confers no such right on any PAPs. Ms. Guruswamy also laid stress on the fact that although Child "S" was placed for reservation on two occasions on CARINGS, neither the complainant nor any other resident Indian, NRI or OCI exercised an option which the law provides. It was submitted that on both occasions, it was only the petitioners who had exercised the required option. Learned senior counsel laid stress on the fact that the PAPs had in the course of the adoption process struck a deep and endearing emotional bond with the child and it would thus be wholly illegal to deprive them of the rights which have come to fructify in

their favour in terms of the provisions made in the relevant Regulations.

21. Learned senior counsel laid great stress on the fact that the legal regime pertaining to adoption in India nowhere recognises a right inhering in PAPs to pick or choose a particular child. According to learned senior counsel, the recognition of such a right would clearly be destructive of the regulatory scheme which holds the field quite apart from being totally abhorrent to the guiding principles relating to adoption as prevalent in the country. Ms. Guruswamy submitted that as per the disclosures made by CARA itself, the complainant apart from registering on CARINGS did not exercise the right to reserve Child “S” on any occasion between 2019 and 2022 when for the first time a complaint was made. According to Ms. Guruswamy, if cognizance were taken of such unsubstantiated complaints, it would clearly derail the entire adoption process and reverse the progress which has been made in respect of the adoption of Child “S”. According to Ms. Guruswamy, the adoption process must primarily be concerned with the interest of the abandoned child and for an expeditious conclusion of the entire adoption process thus enabling the child to be placed in the company of loving and caring parents. According to Ms. Goswami, if the suggestion as mooted by CARA were to be accepted, it would cause irreparable harm and prejudice to Child “S”.

22. Appearing for CARA, Ms. Arora, learned CGSC submitted that the authority had scrupulously adhered to the statutory procedure as constructed and put in place in terms of the 2017 and 2022

Regulations. Ms. Arora submitted that CARA had while reviewing all processes connected with the adoption of Child “S” found no fault in the steps which were taken and that it could not be said that any prescription of the statutory regulations which apply had been violated. Ms. Arora submitted that the process of adoption had been put on hold solely on account of the directives issued by the NCPCR and in deference to the directions issued by that body. Ms. Arora however submitted that bearing in mind the reservations which have been expressed coupled with the complaint which has now been made, it may be appropriate that a fresh MER is obtained to determine whether Child “S” has special needs. Ms. Arora submitted that in case on a review medical examination, it is ultimately found that the child has normal health conditions, she would be liable to be placed as per the normal referral channel for the purposes of adoption. In the alternative it was submitted that if the special needs of Child “S” are found to be evident even in the course of the review medical examination, she may be allowed to be placed with the foreign PAPs. This according to Ms. Arora would allay all apprehensions and reservations that may be harboured or may exist.

23. Learned counsel appearing for the NCPCR has firstly sought to justify the intervention of that body in light of the obligation placed upon it by virtue of Section 13(i)(j) of the CPCr. According to learned counsel, the complainant had raised the serious issue of being denied the right to reserve Child “S” notwithstanding the fact that it had duly applied for adoption and registered on CARINGS on 13 November 2019 itself. According to learned counsel, the complainant

had alleged that Child “S” was not visible under the category of special needs children on the said portal. NCPCR, according to learned counsel, intervened in the proceedings taking into consideration the fact that although the complainant had duly registered on CARINGS in November 2019 itself, it had not heard anything from CARA with respect to its desire to adopt Child “S” and had also not been provided any feedback with respect to its pre-existing application. Learned counsel submitted that resident Indians in terms of the relevant provisions engrafted in the 2017 and 2022 Regulations are clearly provided preference and a pre-eminent right to adopt. Learned counsel submitted that the regulations lay emphasis and stress on the child being placed in its own socio-cultural environment as far as possible. According to learned counsel if the adoption process in favour of the petitioners here were permitted to proceed further, these valuable rights which are conferred on resident Indian PAPs would clearly stand violated.

24. Learned counsel has also taken the Court through the ATRs which had been obtained from the District Magistrate as well as the Superintendent of Police, Bareilly and who had opined that a cyber forensic investigation may be conducted in order to verify the allegation which had come to be levelled. According to learned counsel, the ends of justice would warrant the aforesaid investigation being completed before the same becomes an empty formality.

25. Learned counsel appearing for the intervenor has asserted that Child “S” was, undisputedly, rescued and recovered by his uncle. It

was submitted that undisputedly, the complainant and his family members have been looking after and providing for all the needs of Child “S” during her stay in the child care institution as well as in the course of her medical treatment in hospitals and attending doctors. According to learned counsel, the complainant and his family members have become attached to Child “S” and if their preeminent right to adopt Child “S” were to be defeated, it would result in a travesty of justice.

26. Having noted the submissions which were addressed by respective counsels, the Court deems it apposite to notice certain statutory provisions which would have a bearing on the issues which arise. Section 38 of the 2015 Act sets out the procedure which is to be followed for adoption of orphaned or abandoned children. That provision reads as follows:-

“38. Procedure for declaring a child legally free for adoption.—

(1) In case of orphan and abandoned child, the Committee shall make all efforts for tracing the parents or guardians of the child and on completion of such inquiry, if it is established that the child is either an orphan having no one to take care, or abandoned, the Committee shall declare the child legally free for adoption:

Provided that such declaration shall be made within a period of two months from the date of production of the child, for children who are up to two years of age and within four months for children above two years of age:

Provided further that notwithstanding anything contained in this regard in any other law for the time being in force, no first information report shall be registered against any biological parent in the process of inquiry relating to an abandoned or surrendered child under this Act.

(2) In case of surrendered child, the institution where the child has been placed by the Committee on an application for surrender, shall

bring the case before the Committee immediately on completion of the period specified in section 35, for declaring the child legally free for adoption.

(3) Notwithstanding anything contained in any other law for the time being in force, a child of a mentally retarded parents or a unwanted child of victim of sexual assault, such child may be declared free for adoption by the Committee, by following the procedure under this Act.

(4) The decision to declare an orphan, abandoned or surrendered child as legally free for adoption shall be taken by at least three members of the Committee.

(5) The Committee shall inform the State Agency and the Authority regarding the number of children declared as legally free for adoption and number of cases pending for decision in the manner as may be prescribed, every month.”

27. The subject of adoption is more elaborately dealt with in Chapter VIII of the 2015 Act. While dealing with the right of Indian PAPs, it makes the following provisions in Section 58:-

“58. Procedure for adoption by Indian prospective adoptive parents living in India.

(1) Indian prospective adoptive parents living in India, irrespective of their religion, if interested to adopt an orphan or abandoned or surrendered child, may apply for the same to a Specialised Adoption Agency, in the manner as provided in the adoption regulations framed by the Authority.

(2) The Specialised Adoption Agency shall prepare the home study report of the prospective adoptive parents and upon finding them eligible, will refer a child declared legally free for adoption to them along with the child study report and medical report of the child, in the manner as provided in the adoption regulations framed by the Authority.

(3) On the receipt of the acceptance of the child from the prospective adoptive parents along with the child study report and medical report of the child signed by such parents, the Specialised Adoption Agency shall give the child in pre-adoption foster care and file an application in the court for obtaining the adoption order, in the manner as provided in the adoption regulations framed by the Authority.

(4) On the receipt of a certified copy of the court order, the Specialised Adoption Agency shall send immediately the same to the prospective adoptive parents.

(5) The progress and wellbeing of the child in the adoptive family shall be followed up and ascertained in the manner as provided in the adoption regulations framed by the Authority.”

28. Proceeding then to deal with the subject of inter country adoption, Section 59 provides as under:-

“59.Procedure for inter-country adoption of an orphan or abandoned or surrendered child

(1) If an orphan or abandoned or surrendered child could not be placed with an Indian or non-resident Indian prospective adoptive parent despite the joint effort of the Specialised Adoption Agency and State Agency within sixty days from the date the child has been declared legally free for adoption, such child shall be free for inter-country adoption:

Provided that children with physical and mental disability, siblings and children above five years of age may be given preference over other children for such inter-country adoption, in accordance with the adoption regulations, as may be framed by the Authority.

(2) An eligible non-resident Indian or overseas citizen of India or persons of Indian origin shall be given priority in inter-country adoption of Indian children.

(3) A non-resident Indian or overseas citizen of India, or person of Indian origin or a foreigner, who are prospective adoptive parents living abroad, irrespective of their religion, if interested to adopt an orphan or abandoned or surrendered child from India, may apply for the same to an authorised foreign adoption agency, or Central Authority or a concerned Government department in their country of habitual residence, as the case may be, in the manner as provided in the adoption regulations framed by the Authority.

(4) The authorised foreign adoption agency, or Central Authority, or a concerned Government department, as the case may be, shall prepare the home study report of such prospective adoptive parents and upon finding them eligible, will sponsor their application to Authority for adoption of a child from India, in the manner as provided in the adoption regulations framed by the Authority.

(5) On the receipt of the application of such prospective adoptive parents, the Authority shall examine and if it finds the applicants suitable, then, it will refer the application to one of the Specialised

Adoption Agencies, where children legally free for adoption are available.

(6) The Specialised Adoption Agency will match a child with such prospective adoptive parents and send the child study report and medical report of the child to such parents, who in turn may accept the child and return the child study and medical report duly signed by them to the said agency.

(7) On receipt of the acceptance of the child from the prospective adoptive parents, the Specialised Adoption Agency shall file an application in the court for obtaining the adoption order, in the manner as provided in the adoption regulations framed by the Authority.

(8) On the receipt of a certified copy of the court order, the specialised adoption agency shall send immediately the same to Authority, State Agency and to the prospective adoptive parents, and obtain a passport for the child.

(9) The Authority shall intimate about the adoption to the immigration authorities of India and the receiving country of the child.

(10) The prospective adoptive parents shall receive the child in person from the specialised adoption agency as soon as the passport and visa are issued to the child.

(11) The authorised foreign adoption agency, or Central Authority, or the concerned Government department, as the case may be, shall ensure the submission of progress reports about the child in the adoptive family and will be responsible for making alternative arrangement in the case of any disruption, in consultation with Authority and concerned Indian diplomatic mission, in the manner as provided in the adoption regulations framed by the Authority.

(12) A foreigner or a person of Indian origin or an overseas citizen of India, who has habitual residence in India, if interested to adopt a child from India, may apply to Authority for the same along with a no objection certificate from the diplomatic mission of his country in India, for further necessary actions as provided in the adoption regulations framed by the Authority.”

29. The 2017 Regulations define a ‘special needs child’ to mean one who is either mentally ill or physically challenged or both as specified in Schedule XVIII. The fundamental principles governing

adoption are set forth in Regulation 3, which reads as under:-

“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.”

30. Regulation 6 then lays down the detailed procedure for adoption of an orphaned or abandoned child. The said provisions is extracted hereinbelow:-

“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) An orphan or abandoned child received by a Child Care Institution, including a Specialised Adoption Agency, directly without the involvement of Child Welfare Committee, shall be produced before the Child Welfare Committee within twenty-four hours (excluding the journey time) along with a report as per the format given in Form 17 of Juvenile Justice (Care and Protection of Children) Model Rules, 2016 and a copy of such report shall be submitted by the Child Care Institution or the Specialised Adoption Agency, as the case may be, to the local police station within the same period.
- (3) If a child is under treatment or not in a condition to be produced before the Child Welfare Committee, only documents related to the child shall be produced before the Child Welfare Committee within the said timeline and the Child Welfare Committee may visit the ailing child.

- (4) The Child Welfare Committee, pending inquiry, shall issue an order in Form 18 of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 for a short term placement or interim care of the child, as per the provisions of sub-section (c) of section 37 of the Act and the sub-rule 26 of rule 18 of the said rules.
- (5) On admission of the child, his details and photograph shall be entered online in the Child Adoption Resource Information and Guidance System in the prescribed format by the Specialised Adoption Agency within three working days of receiving the child, and the photograph of the child shall be changed by the Specialised Adoption Agency every six months in Child Adoption Resource Information and Guidance System.
- (6) For tracing out the biological parents or the legal guardian(s), the Child Welfare Committee, after taking into account the risk factors, and in the best interest of the child, may direct the District Child Protection Unit to advertise the particulars and photograph of an orphan or abandoned child in a national newspaper with wide circulation within three working days from the time of receiving the child and also ensure entry of data in the designated portal in its missing or found column by the concerned Child Care Institution or Specialised Adoption Agency.
- (7) In case where the child is from another State, the publication shall be done in the known place of origin of the child in the local language and such publications shall be facilitated by State Adoption Resource Agency concerned.
- (8) Wherever District Child Protection Unit is not functional, the District Magistrate concerned shall get such advertisement issued.
- (9) In case the biological parents or legal guardian cannot be traced, despite the efforts specified in sub-regulations (6) to (8), the District Child Protection Unit shall accordingly, submit a report to the Child Welfare Committee within thirty days from the date of production of the child before the Child Welfare Committee.
- (10) The Child Care Institution or Specialised Adoption Agency shall submit a report to the Child Welfare Committee, immediately on completion of thirty days from the date of production of the child, before the Child Welfare Committee and the report shall include any information revealed by the child during his short term placement and details of person(s) whosoever approached for claiming the child, if any.

- (11) In case the report from the local police regarding the non-traceability of the biological parents or legal guardian is not submitted within two or four months in the case of an abandoned child less than two or four years of age respectively, such report shall be deemed to have been given.
- (12) The Child Welfare Committee shall use the designated portal to ascertain whether the abandoned child or orphan child is a missing child.
- (13) The Child Welfare Committee, after taking actions as per the provisions of the Act, rules made thereunder and these regulations shall issue an order signed by any three members of the Child Welfare Committee declaring the abandoned or orphan child as legally free for adoption in the format at Schedule I within a period of two or four months, from the date of production of the child before the Child Welfare Committee, in case of a child upto two or above two years of age respectively.
- (14) The inquiry under section 36 of the Act and the order declaring an abandoned or orphan child as legally free for adoption by the Child Welfare Committee under section 38 of the Act shall be completed in the district where the child was initially found, or in the district to which the child is shifted under orders of the Child Welfare Committee.
- (15) The Child Welfare Committee and Medical Examination Report of an orphan or abandoned child shall be prepared in the format at Schedule II and III respectively and posted in the Child Adoption Resource Information and Guidance System by the Specialised Adoption Agency maximum within ten days from the date the child is declared legally free for adoption and the details shall be updated on Child Adoption Resource Information and Guidance System every six months or whenever appreciable physical changes are observed in the child.
- (16) The Child Welfare Committee and Medical Examination Report shall be made available in English, apart from the local language.
- (17) The District Child Protection Unit shall facilitate the Specialised Adoption Agency in uploading the Child Study Report and Medical Examination Report in Child Adoption Resource Information and Guidance System, in case the Specialised Adoption Agency is facing any technical difficulty.

- (18) The procedure for declaring a child of parents with mental disability as legally free for adoption by the Child Welfare Committee shall be done on the basis of a certificate reflecting mental disability of the parents from the medical board constituted by the Central Government or the State Government, as the case may be, as per guidelines for mental illness issued by the Government of India in the Ministry of Social Justice and Empowerment from time to time.
- (19) In case of siblings or twins, the Child Welfare Committee shall specify the status of the children as siblings or twins and declare the children as legally free in a single order.”

31. Regulation 8 sets out the procedure to be adopted once a child has been declared as legally free for adoption. That provisions reads as under:-

“8. Availability of child for adoption.- As soon as a child is declared legally free for adoption by the Child Welfare Committee, such child shall be allowed to be given in adoption to a resident Indian or non-resident Indian parents:

Provided that such child shall be allowed to be given in inter-country adoption.-

- (a) after sixty days, if the child is below five years of age;
- (b) after thirty days, if the child is above five years of age or is a sibling;
- (c) after fifteen days, if the child has any mental illness or physical disability as listed in Schedule XVIII.

Explanation.- For the purposes of this regulation, it is clarified that the time limits specified in the proviso shall be calculated from the date, the certificate issued by the Child Welfare Committee declaring the child as legally free for adoption, is uploaded in Child Adoption Resource Information and Guidance System”

32. The procedure which PAPs are to follow is set forth in greater detail in Regulation 10, which reads thus:-

“10. Referral of a child from a Specialised Adoption Agency through Child Adoption Resource Information and Guidance System to prospective adoptive parents.- (1) The seniority of the prospective adoptive parents for child referral shall be from the date of uploading of documents and

completion of registration process in Child Adoption Resource Information and Guidance System.

- (2) On the basis of seniority, the prospective adoptive parents shall be referred online profile of three children which will include the photographs, Child Study Report and Medical Examination Report, in their preference category, if any, from one or more Specialised Adoption Agencies through the Child Adoption Resource Information and Guidance System in one or more referrals.
- (3) After viewing the profile of the child or children, the prospective adoptive parents may reserve one child within a period of forty-eight hours for possible adoption and the rest of the children would be released by Child Adoption Resource Information and Guidance System for other prospective adoptive parents in the waiting list.
- (4) The Specialised Adoption Agency shall get the details of the prospective adoptive parents through the Child Adoption Resource Information and Guidance System for fixing an appointment with the prospective adoptive parents for matching, to assess the suitability of the prospective adoptive parents by an Adoption Committee as defined in sub-regulation (2) of regulation 2 and the Adoption Committee shall prepare the minutes of the meeting as per format provided in Schedule XXVII.
- (5) The quorum of the Adoption Committee shall be two members and the quorum of the Adoption Committee in case of adoption from a Child Care Institution shall be three members, while the presence of one official from the District Child Protection Unit would be mandatory.
- (6) The Specialised Adoption Agency shall also organise a meeting of the prospective adoptive parents with the child.
- (7) The entire process of matching shall be completed within a maximum period of twenty days from the date of reserving the child.
- (8) The Specialised Adoption Agency shall counsel the prospective adoptive parents when they visit the agency for matching.
- (9) While accepting the child, the prospective adoptive parents shall sign the Child Study Report and Medical Examination Report which may be downloaded from the Child Adoption Resource Information and Guidance System, in the presence of the social worker or chief functionary of the Specialised Adoption Agency and the Specialised Adoption Agency shall record the

acceptance by the prospective adoptive parents in the Child Adoption Resource Information and Guidance System.

- (10) In case the prospective adoptive parents are not selected for the child by the Adoption Committee, the reason for non-selection of the prospective adoptive parents shall be recorded in the Child Adoption Resource Information and Guidance System.
- (11) If grounds of rejection are found to be due to systemic error or on non-justifiable reasons, seniority of the prospective adoptive parents shall be retained.
- (12) In case the prospective adoptive parents do not accept the reserved child or the Adoption Committee does not find the prospective adoptive parents suitable, then the prospective adoptive parents shall be relegated to the bottom of the seniority list, as on that date, who may avail a fresh chance when the seniority becomes due and the same procedure shall be followed in the subsequent chances.
- (13) In all cases referred to in sub-regulations (12), the reasons for not considering the child have to be clearly stated in Child Adoption Resource Information and Guidance System.
- (14) The registration of prospective adoptive parents shall continue till child adoption, with revalidation of the Home Study Report in every three years.
- (15) The prospective adoptive parents may also get the Medical Examination Report of the child reviewed by a medical practitioner of their choice before giving their acceptance for adoption of the child.”

33. The adoption of children with special needs is provisioned for and governed by Regulation 48, which is extracted hereunder:-

“48. Adoption of children with special needs.- (1) The adoption process for children with special needs shall be completed as expeditiously as possible by the agencies or authorities concerned, who shall be available for adoption by resident Indians and Non-Resident Indians from the date they are declared legally free for adoption by the Child Welfare Committee:

Provided that such children with special need shall be available for adoption by Overseas Citizen of India or foreign adoptive parents, after fifteen days from the date they are declared legally free for adoption.

(2) Special care shall be taken while processing the cases for adoption of children with special needs, so that the prospective adoptive parents are aware of exact medical condition of the child and are ready to provide extra care and attention that the child needs.

(3) The types of children with special needs are available in Schedule XVIII, which is illustrative and not exhaustive; the same may also be accessed from www.cara.nic.in, and the decision of the Authority shall be final in this regard.

(4) The children with special needs who were not adopted shall be provided due care and protection by the Specialised Adoption Agency and if they do not have necessary facilities and the means for their long term care, such children shall be shifted to any other specialised institutions run by any Government or non-Government Organisation.”

34. The 2022 Regulations reiterate the fundamental principles governing adoption in Regulation 3, which reads as follows:-

“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 with due regard to the principle of placement of the child in their own socio-cultural environment, as far as possible;

(c) all applications for adoptions shall be registered on the Designated Portal and confidentiality of the same shall be maintained by the Authority.”

35. The procedure for adoption of orphaned or abandoned children is then set forth in Regulation 6 and the said provision is extracted hereinbelow:-

“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, section 38 and section 40 of the Act, as well as under the relevant provisions of the rules made thereunder.

- (2) An orphan or abandoned child received by a Child Care Institution, including a Specialised Adoption Agency, directly without the involvement of Child Welfare Committee, shall be produced before the Child Welfare Committee within twenty-four hours (excluding the journey time) along with a report as per the format given in Form 17 of the rules and a copy of such report shall be submitted by the Child Care Institution or the Specialised Adoption Agency, as the case may be, to the local police station within the same period.
- (3) If a child is under treatment or not in a condition to be produced before the Child Welfare Committee, only documents related to the child shall be submitted to the Child Welfare Committee within the said timeline and the Child Welfare Committee shall visit the child.
- (4) If inquiry is pending, the Child Welfare Committee shall issue an order in Form 18 of the rules for a short term placement or interim care of the child to a Child Care Institution or a Specialised Adoption Agency, as the case may be, as per the provisions of clause (c) of sub-section (1) of section 37 of the Act and the sub-rule (26) of rule 19 of the said rules.
- (5) On admission of the child by the order of the Child Welfare Committee, their details and photograph shall be entered online on the Designated Portal in the prescribed format by the Specialised Adoption Agency within three days of getting the order of the Child Welfare Committee, and the photograph and profile of the child shall be updated by such Agency every six months on the Designated Portal.
- (6) In case of orphan, abandoned or surrendered older children admitted in Child Care Institutions on the basis of the order from the Child Welfare Committee, the details of such children shall be entered by the District Child Protection Unit concerned on the Designated Portal.
- (7) For tracing out the biological parents or the legal guardians, the Child Welfare Committee, after taking into account the risk factors, and in the best interest of the child, may direct the District Child Protection Unit to advertise the particulars and photograph of an orphan or abandoned child in a national newspaper with wide circulation in the place where the child was found within three days from the time of receiving the child and also ensure entry of data in the Track Child portal or *Khoya Paya* by the concerned Child Care Institution or Specialised Adoption Agency.
- (8) In case where the child is from another State, the publication shall be done in the known place of origin of the child in the local language and such publications including the entry of information in Track

Child portal or *Khoya Paya* shall be facilitated by the State Adoption Resource Agency concerned.

(9) In case the biological parents or legal guardian cannot be traced, despite the efforts specified in sub-regulations (7) to (8), the District Child Protection Unit shall submit a report to the Child Welfare Committee within thirty days from the date of production of the child before the Child Welfare Committee.

(10) The Child Care Institution or Specialised Adoption Agency shall submit a report to the Child Welfare Committee, immediately on completion of thirty days from the date of production of the child, before the Child Welfare Committee and the report shall include any information revealed by the child during their short term placement and details of persons whosoever approached for claiming the child, if any.

(11) If the local police report on the non-traceability of the biological parents or legal guardians is not received within two months in the case of an orphan or abandoned child under the age of two years, and within four months in the case of child over the age of two years respectively, the parents shall be deemed to be non-traceable.

(12) The Child Welfare Committee shall use the Track Child Portal or *Khoya Paya* to ascertain whether the abandoned child or orphan child is a missing child and incase the child's identity is established, they shall be restored to biological parents or legal guardians.

(13) The Child Welfare Committee, after taking actions as per the provisions of the Act, rules made thereunder and these regulations shall issue an order signed by any three members of the Child Welfare Committee declaring the abandoned or orphan child as legally free for adoption in the format provided in the **Schedule I** within a period of three days after the expiry of two or four months, from the date of production of the child before the Child Welfare Committee, in case of a child upto two or above two years of age respectively.

(14) The inquiry under section 36 and the order declaring an abandoned or orphan child as legally free for adoption by the Child Welfare Committee under section 38 shall be completed in the district where the child was initially found, or in the district to which the child is shifted under orders of the Child Welfare Committee.

(15) The Child Study Report and Medical Examination Report of an orphan or abandoned child shall be prepared in the format provided in the **Schedule II** and **Schedule III** respectively and posted on the Designated Portal by the Specialised Adoption Agency maximum within ten days from the date the child is declared legally free for adoption and the details shall be updated on the Designated Portal

every six months and whenever appreciable physical changes are observed in the child.

(16) The Child Study Report and Medical Examination Report shall be in English, apart from the regional language of the concerned area.

(17) The District Child Protection Unit shall facilitate the Specialised Adoption Agency in uploading the Child Study Report and Medical Examination Report or any other required information on the Designated Portal, in case the Specialised Adoption Agency is facing any technical difficulty.

(18) The procedure for declaring a child of parents with mental illness or intellectual disability as legally free for adoption by the Child Welfare Committee shall be done on the basis of a certificate reflecting mental disability of the parents from the medical board constituted by the Central Government or the State Government, as the case may be, as per the laws established by the Government of India, with respect to the same.

(19) In case of siblings or twins, the Child Welfare Committee shall specify the status of the children as siblings or twins and declare the children as legally free in a single order.”

36. The adoption of children declared legally free for the said purposes is governed by Regulation 8 which reads thus:-

“8. Availability of child for adoption.—(1) As soon as a child is declared legally free for adoption by the Child Welfare Committee, such child shall be allowed to be given in adoption to prospective adoptive parents who is a resident Indian or non-resident Indian or a Overseas Citizen of India Cardholder.

(a) a normal child below the age of five years shall be referred to resident Indian or non-resident Indian or Overseas Citizen of India Cardholder prospective adoptive parents for sixty days;

(b) a normal child above the age of five years or siblings shall be referred to resident Indian or non-resident Indian or Overseas Citizen of India Card holder prospective adoptive parents for thirty days;

(c) categories of children mentioned in clause (a) and (b) above who have not been placed in adoption in the prescribed time limit shall be made available to resident Indian or non-resident Indian or Overseas Citizen of India Card holder prospective adoptive parents for seven days irrespective of their seniority;

(d) thereafter, categories of children mentioned in clause (a) to (c) above shall be referred to foreign prospective adoptive parents for fifteen days.

(2) Procedure related to special needs child or children:- If the child has any disability as listed in the **Schedule XVIII** and **Schedule III (Part E)** of the Medical Examination Report, such a child shall be made available for resident Indian or non-resident Indian or Overseas Citizen of India Card holder prospective adoptive parents for fifteen days and thereafter shall be made available for all categories of prospective adoptive parents.

(3) Procedure related to hard to place children: - As far as hard to place children are concerned, such children shall be made available for adoption as provided in sub-regulation (13) of regulation 2.

Explanation:- For the purposes of this regulation, it is hereby clarified that the time limit shall be calculated from the date when the certificate issued by the Child Welfare Committee declaring the child as legally free for adoption is uploaded on the Designated Portal.”

37. The detailed procedure with respect to placement of a child whose details are uploaded on CARINGS is then prescribed in Regulation 11 which reads as follows:-

“11. Referral of a child from a Specialised Adoption Agency through the Designated Portal to prospective adoptive parents.—

(1)The seniority of the prospective adoptive parents for child referral shall be from the date of completion of registration process on the Designated Portal.

(2) On the basis of seniority, the prospective adoptive parents shall be referred maximum three referral with one month interval in between two consecutive referrals subject to availability of children through the Designated Portal which shall include their photographs, Child Study Report and Medical Examination Report, in their preference category, if any, from one or more Specialised Adoption Agencies.

(3) After viewing the profile of the child or children on the Designated Portal, the prospective adoptive parents may reserve the child or children within a period of forty-eight hours for possible adoption and the unreserved child or children shall be released by the Designated Portal for other prospective adoptive parents in the waiting list.

(4) The Specialised Adoption Agency shall get the details of the prospective adoptive parents through the Designated Portal for fixing an appointment with the prospective adoptive parents for matching, to assess the suitability of the prospective adoptive parents by an Adoption Committee as defined in sub-regulation (2) of regulation 2

and the Adoption Committee shall prepare the minutes of the meeting as per format provided in the **Schedule XXVII**.

(5) The Chairperson and another member shall form the quorum of the Adoption Committee in case of adoption from a Specialised Adoption Agency and in case of adoption from a Child Care Institution, the committee shall constitute Chairperson and two other members of the committee as specified in sub-regulation (2) of regulation 2.

(6) The Adoption Committee shall scrutinise the requisite documents as stipulated for the prospective adoptive parents and listed in the **Schedule IX (Part 1)** of the regulations.

(7) The Specialised Adoption Agency shall organise a meeting of the prospective adoptive parents with the child.

(8) At the time of matching, the social worker of Specialised Adoption Agency concerned shall orient the prospective adoptive parents for taking care of the child and also older child or children about their rights and responsibilities.

(9) The entire process of matching shall be completed within a maximum period of thirty days from the date of reserving the child.

(10) The prospective adoptive parents shall raise their grievance to District Child Protection Unit regarding the matching of the child, if any.

(11) While accepting the child, the prospective adoptive parents shall sign the Child Study Report and Medical Examination Report which may be downloaded from the Designated Portal, in the presence of the social worker or chief functionary of the Specialised Adoption Agency and the Specialised Adoption Agency shall record the acceptance by the prospective adoptive parents on the Designated Portal.

(12) In case the prospective adoptive parents are not selected for the child by the Adoption Committee, the reason for non-selection of the prospective adoptive parents shall be recorded on the Designated Portal.

(13) If grounds of rejection after the enquiry are found to be due to systemic error or on non-justiciable reasons, seniority of the prospective adoptive parents shall be retained.

(14) In case the prospective adoptive parents do not accept the reserved child, the prospective adoptive parents shall be relegated to the bottom of the seniority list, as on that date, who may avail a fresh chance when the seniority becomes due and the same procedure shall be followed in the subsequent chances.

(15) In all cases referred to in sub-regulations (12), the reasons for not considering the prospective adoptive parents have to be clearly stated on the Designated Portal.

(16) The registration of prospective adoptive parents shall continue till the time they have not exceeded the maximum composite age, i.e. fifty five years for single and one hundred ten years for couple as provided in sub-regulation (4) of regulation 5 and subject to revalidation of the Home Study Report in every three years.

(17) The prospective adoptive parents may also get the Medical Examination Report of the child reviewed by a medical practitioner of their choice before giving their acceptance for adoption of the child.”

38. The subject of adoption of children with special needs is then dealt with in Regulation 51 which is extracted hereinbelow:-

“51. Adoption of children with special needs.—(1)The adoption process for children with special needs shall be completed as expeditiously as possible by the agencies or authorities concerned, who shall be available for adoption by resident Indians, non-resident Indians and Overseas Citizen of India Cardholder found eligible and suitable by way of Home Study Report from the date their profile is uploaded on the Designated Portal after the special needs children are declared legally free for adoption by the Child Welfare Committee:

Provided that such children with special needs shall be available for adoption by foreign adoptive parents, after fifteen days from the date they are declared legally free for adoption.

(2) All prospective adoptive parents shall be able to indicate whether they want to adopt a specific category of child having special needs.

(3) Special care shall be taken while processing the cases for adoption of children with special needs, so that the prospective adoptive parents are aware of exact medical condition of the child and are ready to provide extra care and attention that the child needs.

(4) The types of children with special needs are provided in the **Schedule XVIII** and **Schedule III (PartE)** of these Regulations, which are illustrative and not exhaustive; the same may also be accessed from www.cara.nic.in, and the decision of the Authority shall be final in this regard.

(5) The children with special needs who were not adopted shall be provided due care and protection by the Specialised Adoption Agency and if they do not have necessary facilities and the means for their

long term care, such children shall be shifted to any other specialised institutions run by any Government or non-government organisation.”

39. There perhaps can be no greater imaginable tragedy in the world than of a child who is orphaned or abandoned. An orphaned or abandoned child impacts the very foundation of civilised society and shakes the core of our conscience. This for every child, nay every living being, must be loved, provided care and comfort, a home and a family, the opportunity to breathe and exist. The act of adoption is not one of redemption or grace. An evolved human being, as we recognize ourselves to be, cannot perhaps perform a more pious duty than to embrace an infant who is left abandoned in this world. It is a reiteration of our pledge to provide a home, a family and secure the future of every child.

40. It is important to bear in mind that the bonds of family are not forged merely by blood but bonded by the love and care that we extend to those around us. The Court shudders at even imagining the first waking hours of Child “S” as she entered this world. Her fate thus cannot be left to the vagaries of litigation or to competing forces which seek to stake a claim upon her very existence and life, her body and soul. The Court notes that the process of adoption has stretched over three years already. It is thus imperative that she be placed in the warmth of a loving family, a home and a hearth enabling her to find her place in the world in the years to come.

41. As the discussion which ensues would bear out, Child “S” was not only orphaned, but one who was found to be of “special needs”. It

thus becomes the bounden duty of the Court to not only empower her to erase and overcome the trauma that she underwent, but to also enable her to find the warmth of a home and enable her to stand on her feet as expeditiously as possible. It is these concerns which have weighed upon the Court while rendering this verdict.

42. There are two fundamental precepts relating to adoption which must be recognised to exist and apply. Whenever a question of adoption does arise, the need or the desire of a PAP would always be subservient to the interest of the child. It is equally important to preface this decision by recognising and reiterating the well settled principle that civilised societies across the world have adopted the principle of the prospective parents not having the right to pick or choose a particular child. The act of adoption is not available to be exercised with respect to a child specific. This for each child is a gift of God and thus entitled to an equal right to be embraced by a family and be fostered and nurtured. Neither colour, caste, creed nor nationality should on a fundamental plane have any role to play at all.

43. While a PAP may be recognised to have the right to exercise a choice based on gender or to adopt one based on his/her special needs, no legal system prevalent in civilised nations entitles one to specifically select or choose a particular child. This for the reason that every child is equal and is entitled to be treated as such. Every child who enters this world must be recognised in law to have basic rights, a right and an opportunity to not just survive but to strive towards finding its true place amongst us. While legal systems may adopt and

incorporate principles of preference and priority amongst prospective parents, none of them countenance, recognize or foster a right to choose a child. It is these essential precepts which must be borne in mind by the Court while deciding the present writ petition.

44. The above position stand reaffirmed by the 2017 and 2022 Regulations. As would be manifest from a conjoint reading of Regulations 8, 9, 10 and 48 of the 2017 Regulations, a child once declared legally free to be adopted is made live on the CARINGS portal whereafter all registered PAP's may reserve a child. The portal is dynamic and the status of children is made live based upon the date when the CWC may have declared them legally free for adoption and the uploading of their details on CARINGS. Regulation 8 sets out the order of priority with resident Indians or NRI's having the right to exercise a choice to adopt first and before the child may be considered for inter-country adoption. Regulation 8 then stipulates that a child with a mental or physical disability listed in Schedule XVIII would be available for inter-country adoption after 15 days. A resident Indian or an NRI must consequently exercise the choice to reserve within the aforesaid period. It becomes pertinent to note that the period of 15 days appears to have been consciously adopted both under the 2017 and the 2022 Regulations insofar as children with special needs are concerned, since their placement in a family would necessarily have to be considered and accomplished, for obvious reasons, with expedition.

45. However, Regulations 8, 9, 10 and 48 neither incorporate nor can be interpreted to confer a right on a PAP to adopt a particular

child. The right to reserve would have to necessarily be exercised with respect to the children whose status may be live on the CARINGS portal at any particular point of time. While that right may be available to be exercised periodically and over a course of time, the statutory scheme does not invest a right upon a PAP to reserve a particular child. The registration of a PAP on the system is solely aimed at enabling a reservation being made in respect of a child who may at any given point of time become available for adoption on the CARINGS portal. However, no PAP can claim a right in law to be entitled to adopt a child of his or her choosing or desire.

46. An identical scheme stands constructed in terms of Regulations 6, 8, 9, 10, 16 and 51 of the 2022 Regulations. While these Regulations too reiterate the priority regime which stood constructed under the 2017 Regulations, the right to reserve is identically provisioned for. On an overall consideration of the two sets of regulations noticed above, the Court comes to the firm conclusion that no PAP can assert a right to adopt a particular child. The Court is thus in complete agreement with the submissions advanced by Ms. Guruswamy in this respect when she contended that recognising a right to choose would be wholly abhorrent to the system of adoption as adopted by our Nation and as embodied in the 2017 and 2022 Regulations.

47. Turning then to the facts of the present case, it cannot possibly be said that the priority principles adopted in the 2017 and 2022 Regulations were violated. This since CARA has categorically averred

that the adoption procedure was completed by adhering to a fair and transparent process and in accordance with the procedure prescribed under the regulations. Undisputedly no reservation came to be made by a resident Indian, NRI or OCI card holder within the stipulated period prescribed under the regulations. It was only thereafter that Child “S” was made available for inter-country adoption. This was therefore not a case where the priority accorded to resident Indians including the complainant was violated or ignored. While the regulations accord primacy to resident Indians, NRI’s and OCI card holders, they cannot be interpreted to require CARA to continually defer the process of adoption till such time as a PAP falling in the aforesaid genre condescends to make a reservation. The regulations put in place strict timelines in order to subserve the principal objective of a speedy and expeditious conclusion of the adoption process. The aforesaid principle subserves the primary objective of the interest of the child being accorded preeminence and the imperative to place it in the folds of a family as expeditiously as possible.

48. The second aspect which merits consideration pertains to the medical condition of Child “S”. Undisputedly the MER which was conducted initially clearly recorded and chronicled the various afflictions which beset Child “S”. These reports were neither doubted nor questioned either by CARA or the NCPCR. The fact that Child “S” was a special needs child is admitted even to the Intervenor as would be evident from the original complaint itself. The fact that she is being currently treated for epilepsy was also not questioned. The MER’s as well as the attending doctors’ prescriptions and examination

notes clearly evidence that Child “S” was suffering from various ailments which merited her being placed in the special needs category. Her condition clearly fell within clauses A 31, A 50 and C 4 falling in Schedule XVIII of the 2017 Regulations. If that be the admitted position that emerges from the record, the Court fails to find any justification for a review medical examination being ordered.

49. The Court further finds itself unable to accept the recommendation of CARA made in this respect for the following additional reasons. A review medical examination may have been warranted provided a credible doubt stood raised with respect to her initial classification. However, neither CARA nor NCPCR questioned or challenged the fact that she was duly examined at the time when she was rescued and that the subsequent medical examinations which were conducted all pointed towards Child “S” being liable to be placed in the special needs category. The Court further deems it necessary to observe that a person suffering from convulsions or epilepsy may not at all times necessarily demonstrate or exhibit symptoms connected with the aforesaid ailment or condition. The Court thus finds no ground to either doubt or question her initial classification as a special needs child. The respondents also fail to bear in mind that Child “S” is even presently undergoing treatment for epilepsy. Viewed in the aforesaid backdrop, the Court finds no justification for a further medical examination being conducted.

50. The Court also bears in mind the fact that the child was rescued on 10 October 2019. She was produced before the CWC on 09

October 2019. She was declared legally free for adoption on 28 July 2020. Child “S” was offered for reservation on two separate occasions. In the two rounds when she was made available for adoption, it was the petitioners alone who applied. No resident Indian, NRI or OCI exercised the choice to reserve. The complainant also did not exercise the choice to reserve Child “S”. The matching process was completed on 05 February 2022 and the NOC ultimately issued on 15 March 2022. The process of placement has thus taken almost three years. The arduous and torturous process of placement of a special needs child must thus be conferred a closure. Her confusing and disturbed initial years have undoubtedly been traumatic. It is time that she finds the quiet and comfort of a home and a family.

51. The Court then proceeds to consider the objection which was raised by the complainant. It must at the outset be noted that it was the complainant and his family members who are stated to have rescued Child “S” initially. They also appear to have borne the expenses for her medical treatment. While their acts are laudable and deserve our praise and gratitude, the Court must necessarily evaluate the complaint that was made uninfluenced by the fact that they had provided love and support to Child “S”. This since the validity of an adoption and the proceedings undertaken by CARA cannot be adjudged based upon the support or succor that may have been provided to an abandoned or orphaned child. That would clearly amount to according recognition to a right inhering in that caregiver to claim a superior right when it comes to adoption and the creation of a priority which is otherwise

neither envisaged nor sanctioned under the 2015 Act or the two sets of regulations noticed above.

52. It becomes pertinent to note that the Inspection Report of CARA bears out that the complainant registered on CARINGS on 13 November 2019. It further records that the complainant had submitted a preference with respect to a normal girl child. This issue assumes significance since a reading of the complaint of 04 August 2022 clearly establishes that the complainant throughout knew that Child “S” was a special needs child. The report then further goes on to list out details when Child “S” was made available under the special needs category on the CARINGS portal. It specifically records that the complainant did not exercise the right of reservation within 15 days from 05 November 2021. The petitioners here came to exercise that choice only after the period of 15 days had expired.

53. The Inspection Report also carries appropriate reports from the Technical Support Staff of NIC which was charged with maintaining the CARINGS portal. It also takes into account the date wise login details of the complainant. Those details which appear at pages 109-110 of the record would indicate that the complainant logged in 67 times on the CARINGS portal between 28 July 2020 and 28 September 2022. From a perusal of Annexure 27 of the report, it is evident that the complainant did not log in either when Child “S” was originally made available on 05 November 2021 nor did they exercise the right to reserve between 21 December 2021 and 11 January 2022 when the child was made available for the second time. In fact, the

login details which have been placed on the record would indicate that after 27 November 2021, the complainant logged on to the CARINGS portal only on 04 August 2022.

54. It is thus evident that during the period 21 December 2021 and 11 January 2022, the complainant neither accessed the CARINGS portal nor did it exercise the right of reservation as provided under the Regulations. The Court also bears in mind the undisputed fact that between 13 November 2019 and till 04 August 2022, the complainant did not raise any question with respect to the placement of Child “S” on the CARINGS portal or followed up with CARA with regard to its application that had been duly registered. The Inspection Report would indicate that the “Home Study Report” of the complainant was prepared on 18 February 2020. It was thus the obligation of the complainant to have accessed the CARINGS portal and reserve the child who may have been made available on the said portal post 13 November 2019. The complainant also does not assert that during the period commencing from 13 November 2019, it exercised the choice to reserve any child that may have been made available on the CARINGS portal. In view of the above, this Court is of the firm opinion that the adoption which came to be finalized in favour of the petitioner can neither be stalled nor does it merit review in light of the disclosures which have been made by CARA in these proceedings.

55. While dealing with this aspect, the Court also takes note of the stand of the NCPCR which had on the basis of the ATRs alluded to a requirement for a forensic examination of the CARINGS portal by

cyber experts being undertaken. The Court is of the opinion that such an exercise would have been warranted provided a plausible or substantiated doubt with respect to the integrity of the portal had been raised or had come to the notice of the NCPCR. The integrity of a web portal can neither be doubted nor questioned merely on the basis of a complaint whose allegations itself have remained unsubstantiated. The Court also bears in mind the categorical assertion of CARA, which had on the basis of the data and the material available with it, unequivocally taken the stand that the adoption processes which had been undertaken was in accordance with the provisions of the Act and the Regulations referred to above.

56. Before concluding, the Court also deems it apposite to briefly deal with certain issues which though not urged at the time of oral submissions, nonetheless had been raised by NCPCR in its affidavit and related to the number of adoptions being finalized in favour of parents residing in Malta. That data is referred to in paragraphs 25 and 26 of its counter affidavit. NCPCR appears to have raised the issue of a large number of placements in favour of PAPs' who were residents of Malta. According to the said respondent, the said placements would appear to be contrary to the basic principle of all endeavor being made to ensure that children are placed in a familiar socio-cultural environment. NCPCR has also alluded to "*a possibility of irregularity being involved in the adoption process of the minor...*". The Court however finds itself unable to appreciate the insinuation which is sought to be raised especially when no breach of a fundamental

procedure pertaining to the extant adoption could be either pointed out or established.

57. As the facts of the present case would bear out, Child “S” was made available for inter-country adoption only when no reservation from a resident Indian, NRI or OCI card holder was forthcoming. Undisputedly it was only after the statutory timelines for submission of such a reservation had come to an end that the child was placed for being reserved by a foreign PAP. The respondents do not rest their objections on any Indian parent having made a reservation for Child “S” and yet she having been placed with the petitioners. If a failure on the part of a resident Indian be the cause for a child being made available for inter-country adoption, that cannot possibly be viewed as constituting a valid or cogent ground to either doubt the validity of the adoption or question the integrity of the adoption process. The Court in any case is of the firm opinion that the validity of an adoption can neither be doubted nor questioned merely on an asserted “*possibility of irregularity*”.

58. Accordingly, and for the aforesaid reasons, the writ petition stands allowed. The impugned communication of 10 August 2022 issued by CARA shall stand quashed and set aside. CARA is consequently directed to take further steps to complete the process of adoption in accordance with the No Objection Certificate which has been issued by it. Bearing in mind the fact that Child “S” was abandoned in 2019, it is expected that all concerned authorities shall

aid and assist in the expeditious conclusion of all legal formalities relating to her adoption by the petitioners.

59. Before parting, the Court notes that various documents have been filed by respective parties in these proceedings which may have a direct bearing on securing the identity of Child “S”. The disclosure of or access to that material may lead to the breach of her identity or even an invasion of the privacy rights of Child “S”. These include various medical reports, reports of CARA and other material relating to the entire process of adoption.

60. In view of the above, the Registry of the Court is directed to ensure that the said material is not released, made available or accessed by any third parties. The parties to these proceedings including learned counsels who have appeared in these proceedings shall also ensure that in case any such material is required for use or reference in any further proceedings, all care shall be taken that identifying disclosures relating to Child “S” as appearing in the said documents are duly masked or redacted.

YASHWANT VARMA, J.

NOVEMBER 25, 2022

Neha/SU