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CASE ANALYSIS OF SECRETARY, SUBHADRA MAHATAB SEVA SADAN OF KOLATHIA & ANR. V. STATE OF ORISSA

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Abstract- The Juvenile Justice (Care and Protection of Children) Act was recently amended in 2022, simplifying and accelerating the adoption procedure, which has given the orphaned and abandoned children residing in child care facilities in Odisha great hope in finding loving families. The Central Government legal modifications have given district collectors the authority to approve adoptions instead of the judiciary, streamlining and expediting the adoption procedure which saw the light of the day with cases as below. In the case analysed SECRETARY, SUBHADRA MAHATAB SEVA SADAN OF KOLATHIA & ANR. V. STATE OF ORISSA, AIR 2013 ORI 110 discusses the procedural hindrances which were undergone for adoption of two girl children later leading to such amendment to expedite the adoption processes and judicial proceedings followed.

Key Words: Adoption, procedure, authority ,judicial , proceedings

I. INTRODUCTION

The petitioners filed two civil miscellaneous appeal under Section 9(4)² of Hindu Adoption and Maintenance Act,1956 for the adoption of two minor female children, Kuni and Gudly by Petitioner no. 2.The Child Welfare Committee, Khurda has passed a release order for adoption of both the children as per the provisions of the Juvenile Justice Act 2000.But the District Judge hearing the matters, called for a report from the Orissa state council for child welfare, reported that Petitioner 2 is ineligible to adopt two girl children under section 11 of the HAMA³,1956.This is a case of adoption filed under Section 9(4)

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²Hindu Adoption and Maintenance Act,1956, s. 9(4).

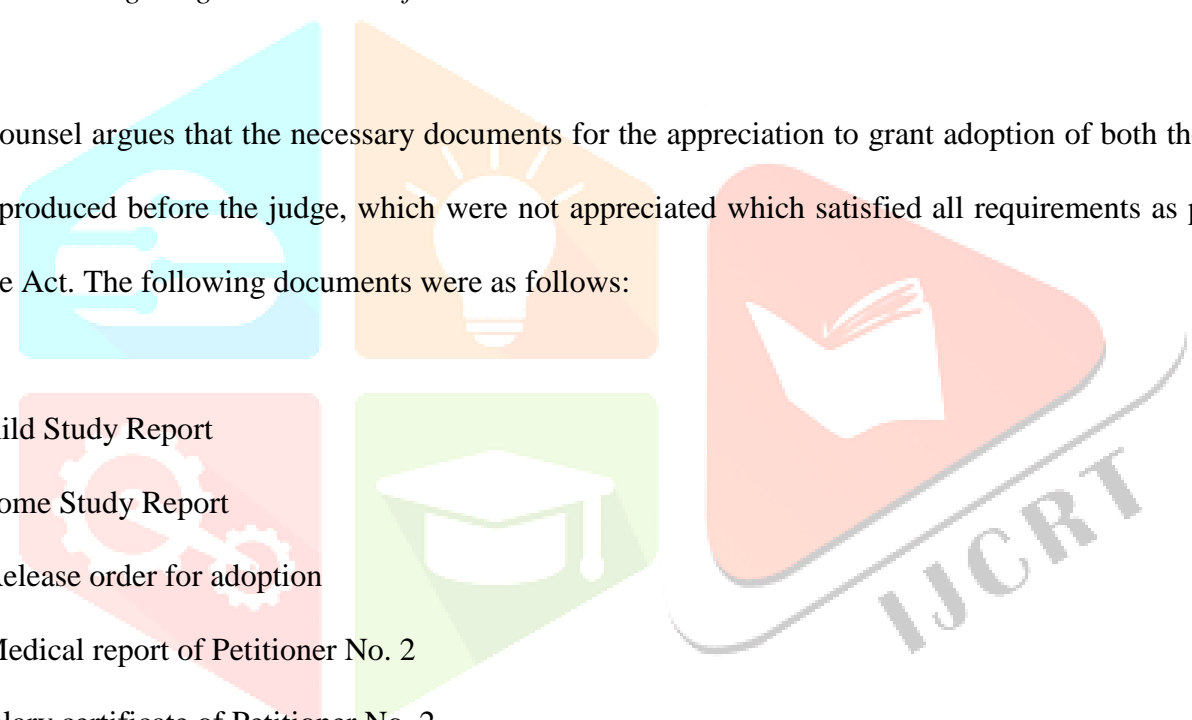
³ Hindu adoption and Maintenance Act,1956.

of HAMA ,1956 but the documents submitted satisfied the conditions required to be fulfilled under the JJ⁴ Act.

II. FACTS OF THE CASE

Both the petitions were filed under the Juvenile Justice Act even though the petitions were nomenclature to be under section 9(4) of the Act ,1956.Section 9(4) is read as follows: “Where both the father and mother are dead or have completely and finally renounced the world or have abandoned the child or have been declared by a court of competent jurisdiction to be of unsound mind or where the parentage of the child is not known, the guardian of the child may give the child in adoption with the previous permission of the court to any person including the guardian himself.”⁵

The counsel argues that the necessary documents for the appreciation to grant adoption of both the minor girl were produced before the judge, which were not appreciated which satisfied all requirements as per Juvenile Justice Act. The following documents were as follows:

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- (i) Child Study Report
 - (ii) Home Study Report
 - (iii) Release order for adoption
 - (iv) Medical report of Petitioner No. 2
 - (v) Salary certificate of Petitioner No. 2
 - (vi) Foster Care Agreement
 - (vii) Photograph of the Petitioner No. 2, i.e., the prospective adoptive mother,
 - (viii) Photographs of both the minor children.

Counsel submitted that the judge had failed to interpret and apply the decision of the apex court in the case of Lakshmi Kant Pandey v. Union of India⁶, (1984) 2 SCC 244. In this case normative and procedural safeguards to be followed in giving an Indian child in adoption to foreign parents was formulated. It states that the main motive of giving the child for adoption should be the welfare of the child.

⁴ Juvenile Justice Act, 2000.

⁵ Juvenile Justice Act, 2000.

⁶ *Lakshmi Kant Pandey v. Union of India*, (1984) 2 SCC 244.

The Opposite Party, State contended that under section 9(4) of HAMA, 1956⁷, permission is to be accorded by the competent authority for adoption of the child & section 9(5)⁸ states that if court will be satisfied that the adoption will be for the welfare of the child, it will give permission to the effect.

The opposite counsel submits that the petitioner instead of filing application under section 41(6)⁹ of the Juvenile Justice Act, filed under Section 9(4) of the HAMA, 1956. Here 41(6) of JJ Act stands for as follows:

41(6)- The Court may allow a child to be given in adoption—

- (a) to a person irrespective of marital status or;
- (b) to parents to adopt a child of same sex irrespective of the number of living biological sons & daughters; or
- (c) to childless couples”.

Under Section 2(d)(v)¹⁰ of the Juvenile Justice Act, “**Child**” in need of care and protection has been defined, as a child, who does not have parent & no one willing to take care of or whose parents have abandoned him or who is missing & run away & whose parents cannot be found after reasonable enquiry.

In the said case :

- The two small girl children were abandoned children rescued by Petitioner no 1-Agency. Section 2(1)¹¹ of Juvenile Justice Act defined “**Committee**” to mean a Child Welfare Committee constituted under section 29¹². Here section 29 specifies about the Child Welfare Committee constituted by the State govt for the welfare of the children.
- Chapter IV of Juvenile Justice Act, provision is made with regards to rehabilitation and social reintegration of a child in need of care & protection. Section 41¹³ of the Juvenile Justice Act under Chapter IV deals with adoption.
- Under 41(3)¹⁴ of Juvenile Justice Act, provided that the children’s homes & the institutions run by the State Govt. or a voluntary organization for children in need of care and protection, who are orphan, abandoned or surrendered, shall ensure that these children are declared free for adoption by the

⁷ Hindu Adoption and Maintenance Act, 1956

⁸ Hindu Adoption and Maintenance Act, 1956, s. 9(5).

⁹ Juvenile Justice Act, 2000, s. 41(6).

¹⁰ Juvenile Justice Act, 2000, s. 2(d)(v).

¹¹ Juvenile Justice Act, 2000, s. 2(1).

¹² Juvenile Justice Act, 2000, s. 29.

¹³ Juvenile Justice Act, 2000, s. 41.

¹⁴ Juvenile Justice Act, 2000, s. 41(3).

Committee and all such cases shall be referred to the adoption agency in that district for placement of such children.

- Based on the judgement of Lakshmi Kant Pandey and section 41(3) of the Juvenile Justice Act, 1956, CARA¹⁵ has framed a set of guidelines. As per the guidelines, clause 23(2)¹⁶, Specialized Adoption Agency (i.e. Petitioner 1 in this case) shall file a petition in the competent court of jurisdiction for obtaining necessary adoption order under the Act, within 10 days of acceptance of referral by the prospective adoptive parents & shall pursue the same regularly with the Court so that the provision of legal adoption is completed at the earliest.
- The said clause also says that the Court is required to dispose the case within a maximum period of two months from the date of filing in accordance with the direction of SC in the case of Lakshmi Pandey.
- It is amply clear that the petitioner no 1 has been recognized as a specialized adoption agency under section 41(4)¹⁷ of the Juvenile Justice Act. Section 41(4) is read as follows, “The children's homes or the State Government run institutions for orphans shall be recognised as an adoption agencies both for scrutiny and placement of such children for adoption in accordance with the guidelines issued under sub-section (3).”
- Under section 41(5)(a)¹⁸, no child shall be offered for adoption until two members of the Committee declare the child legally free for placement in case of abandoned children.
- Rule 25 Juvenile Justice Act, speaks about the functions and powers of the Committee Rule 25(m) envisages that the Committee shall declare a child legally free for adoption. Under Rule 33(3)(b), a child becomes eligible for adoption when a Committee has completed its enquiry & declares the child legally free for adoption.
- Therefore, a conjoint reading of Section 41(5) & Rules 25(m) & Rule 33(3)(b) makes it crystal clear that when an abandoned child is offered for adoption, the Child Welfare Committee, which is a quasi-judicial authority has to declare the child free for adoption, where-after the competent Court has to pass necessary orders under Section 41 allowing a child to be given in adoption.

¹⁵ Central Adoption Resource Authority (CARA)

¹⁶ Juvenile Justice Act, 2000, s. 23(2).

¹⁷ Juvenile Justice Act, 2000, s. 41(4).

¹⁸ Juvenile Justice Act, 2000, s. 41(5)(a).

- It is only the Child Welfare Committee under the Juvenile Justice Act who is authorized to declare a child free for adoption & law doesn't require any other agency, be it State Council for Child Welfare or any other body, to have any say in regard to adoption.
- Section 41(6)(b)¹⁹, specifically provides that the Court may allow a child to be given in adoption to a person irrespective of marital status.
- Clause 44(5) of the CARA guidelines prescribe that siblings of different ages shall, as far as possible, be placed in adoption in the same family & such children shall also be categorized as special need children.

III. ISSUE OF THE CASE

The issue in this case revolves around giving validation to adoption of Kuni and Gudly by Petitioner 2 under the guidelines of Juvenile Justice Act.

IV. DECISION OF THE COURT

RATIO DECIDENDI

- The Court considering the provisions under the Juvenile Justice Act with regards to adoption of a child finds that both the minor girl children, namely Kuni and Gudly as required under the said Act declared by the Child Welfare Committee to be fit & free for adoption.
- It also transpires from the records that Petitioner No. 2 has executed a Foster care agreement with the Petitioner no. 1 & has taken both the minor girl children under her foster care.
- Petitioner 1 asserted that as Kuni and Gudly were reared as siblings, they should be placed in adoption in the same family, corollary of which means not to separate them, as the judgement of the case Lakshmi Kant Pandey framed the guidelines.

¹⁹Juvenile Justice Act, 2000, s. 41(6)(b).

OBITER DICTA

- Various principles for care and protection of children who are orphan or abandoned were laid down in Laksmi Kant Case.
- When parents of a child want to give it away in adoption or the child is abandoned, every effort must be made first to find adoptive parents for it within the country because such adoption would steer clear of problems of assimilation of the child in the family of the adoptive parents that might rise out of cultural racial or linguistic differences in case of adoption of the child by foreign parents.
- It is also necessary while considering placement of a child in adoption that brothers & sisters who have been brought up along as siblings should not be separated. In case of any adoption to a foreigner is finalized, the child must have been given proper orientation and is prepared to move to a new country.
- The CARA guidelines further supports the fact that siblings should be placed in the same family.

**V. CONCLUSION**

- The documents which were produced before the Learned District Judge clearly envisage, that the Petitioners intended to obtain an order of allowing adoption under the Juvenile Justice Act and not under the Juvenile Justice Act, 1956.
- It was, therefore, incumbent upon the Learned, District Judge to deal with both the applications to be under the Juvenile Justice Act. Further, in view of the documents produced & in view of the provisions of the Juvenile Justice Act, as discussed above, there was no scope on the part of the Learned District Judge to call for report from the Orissa State Council for Child Welfare.
- The learned Judge gave a decision without considering the ratio of the decision given in Lakshmi Kant Pandey and CARA guidelines, which needs to be carefully scrutinized before arising at a decision as the petitions provided all required documents under Juvenile Justice Act.
- The Learned District Judge, therefore, keeping the spirit of the provisions of the Juvenile Justice Act, in Section 41²⁰ thereof & the law as laid down by the Apex Court should have allowed the applications for rehabilitation & reintegration of both the girl children in the family of the Petitioner No. 2.

²⁰Juvenile Justice Act, 2000, s. 41.

- This Court is of the opinion that the impugned orders are unsustainable & necessary permission should be allowed permitting the Petitioner No. 2 to adopt both Kuni & Gudly, who are under her Foster Care.
- The case here dealt with a matter of adoption of two girl children namely Kuni and Gudly whose adoption by petitioner no 2 was earlier questioned by the learned judge. But reiterating the guidelines laid down in Laskhmi Kant Pandey case and CARA, it can be concluded that the documents produced fulfilled the criteria under JJ Act and spirits of section 41 is fulfilled.
- Hence the Court opined to give both the children for adoption.

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