

A SUMANLAL CHHOTALAL KAMDAR ETC.

v.

MISS ASHA TRILOKBHAI SHAH ETC.

MAY 9, 1995

B [R.M. SAHAI AND B.L. HANSARIA, JJ.]

Guardians and Wards Act, 1890 : Section 7

C *Adoption—Guidelines laid down by Supreme Court—Reiteration of—Authority permitting adoption—Duty to explain nature and effect of—Superintendent of an orphanage—Giving child in adoption to a foreign couple under a Power of Attorney—Validity of.*

D The appellant-social workers filed an appeal before the Gujarat High Court challenging an order passed by the District Judge, Rajkot whereby he allowed the application filed by the Superintendent, Kathiawar Nirashrit Balashram as Power of Attorney holder of a Norwegian couple under Section 7 of the Guardians and Wards Act, 1890 and appointed the Norwegian couple as the guardian of the child subject to the conditions mentioned in the order. The High Court dismissed the appeal. Appeals were preferred before this Court.

E Disposing the appeals, this Court

F HELD : Whenever an application is filed for permission to adopt a child by a foreign national, then the guidelines formulated by this Court would be strictly adhered to. The authority permitting adoption should explain to the biological parent of the child about the nature and effect of the adoption and the possible permanent loss of contact with the child. In the absence of a finding that the authorised officer took precaution to explain the effect of adoption it may be rendered infirm. This is demonstrated by the facts of this case as the Superintendent, as holder of Power of Attorney of the Norwegian couple, became the applicant and as Superintendent of the Ashram gave the child in adoption. That was not proper. It was the duty of the Superintendent to have contracted the mother and the father, if they were known, and to explain to them the effect of adoption unless they were not available. However, no interference is called for with orders passed by the courts below but the guidelines have

to be enforced strictly, as violation of the same may not only render the adoption infirm, but may lead to proceeding against the person infringing the same. [101-H, 102-A-C]

Lakshmi Kant Pandey v. Union of India, [1984] 2 S.C.R. 795 and *Laxmi Kant Padey v. Union of India & Anr.*, [1985] Supp. 3 S.C.R. 71, reiterated.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5403-5404 of 1995.

From the Judgment and Order dated 19/21.10.88 of the Gujarat High Court in L.P.A. Nos. 364, & 365 of 1988.

P.H. Parekh, Ms. Smrita Mishra and N.K. Sahoo for the Appellants.

S. Ganesh, C.H. Patel, Ms. Reema Bhandari, M.N. Shroff, K.V. Sreekumar and Ms. Kamini Jaiswal for the Respondents.

The Judgment of the Court was delivered by

R.M. SAHAI, J. An important question in relation to the adoption of infants from orphanage or ashrams by foreign nationals is raised by the appellants, who claim to be social workers. They approached the High Court, invoked its appellate jurisdiction against the order passed by the District Judge, Rajkot, allowing the application filed by Superintendent, Kathiawar Nirashrit Balashram as power of attorney holder of a Norwegian couple under Section 7 of the Guardians and Wards Act, 1890 and appointing the Norwegian couple as the guardian of the child which certain conditions mentioned in the order. By the time the appeal came up for hearing, the law of adoption by foreign nationals was streamlined by this Court in two decisions : *Lakshmi Kant Pandey v. Union of India*, [1984] 2 SCR 795 and *Laxmi Kant Pandey v. Union of India & Anr.*, [1985] Supp. 3 SCR 71. The learned Single Judge, therefore, after examining the conditions imposed by the District Judge held that the guidelines laid down by this Court had been scrupulously followed. The order was maintained in appeal as well.

The guidelines laid down by the Court are quite exhaustive. What is urged is that they are not being carried out either in letter or spirit. It is, therefore, necessary to reiterate the guidelines laid down by this Court in

- A the case of *Lakshmi Kant Pandey* (supra) and further make it clear that whenever an application is filed for permission to adopt a child by a foreign national then the guidelines would be strictly adhered to. The authority permitting adoption should explain to the biological parent of the child about the nature and effect of the adoption and the possible permanent loss of contact from the child. In absence of a finding that the authorised officer took precaution to explain the effect of adoption it may be rendered infirm. This is demonstrated by the facts of this case as the Superintendent, as holder of Power of Attorney of the Norwegian couple, became the applicant and as Superintendent of the Ashram gave the child in adoption. That was not proper. It was the duty of the Superintendent to have contracted the mother and the father, if they were known, and to explain to them the effect of adoption unless they were not available. However, we do not interfere with the orders passed by the courts below, but as indicated above, the guidelines have to be enforced strictly, as violation of the same may not only render the adoption infirm, but may lead to proceeding against the person infringing the same.
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The appeal are thus disposed of by reiterating the guidelines laid down by this Court and stating that any violation of these of non-compliance may lead to adoption being declared invalid and expose the persons concerned to strict action including prosecution.

T.N.A.

Appeals disposed of.