

ITEM NO.13

COURT NO.4

SECTION XIV

**S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS**

Petition(s) for Special Leave to Appeal (C) No(s).13627/2019

**(Arising out of impugned final judgment and order dated 28-05-2019
in LPA No.351/2019 passed by the High Court of Delhi at New Delhi)**

KARINA JANE CREED

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

**IA No. 87870/2019 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT)**

Date : 10-06-2019 These matters were called on for hearing today.

CORAM :

**HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE AJAY RASTOGI
(VACATION BENCH)**

**For Petitioner(s) Ms.Neela Gokhale, Adv.
Ms.Shardha Agarwal, Adv.
Mr.Ilam Paridic, Adv.
Ms. Kamakshi S. Mehrlwal, AOR**

**For Respondent(s) Mr.Gaurang Kanth, Adv.
Ms.Biji Rajesh, Adv.
Ms.Eshita Baruah, Adv.**

**UPON hearing the counsel the Court made the following
O R D E R**

**This special leave petition has been filed by the
petitioner, an Australian citizen, challenging the final Judgment
and order dated 28.05.2019 passed by the Division Bench of the
Delhi High Court dismissing the Appeal, being LPA No. 351/2019 of
the petitioner, against an order dated 10.5.2019 of the Single
Judge dismissing the writ Petition being W.P. No. 3567 of 2019
filed by the petitioner for order on the Central Adoption Resource**

Authority (hereinafter referred to as "CARA") to issue a No Objection Certificate to the petitioner for adoption of two children aged 5 and 6 respectively.

The petitioner says that she has been residing in India for the last four years. In 2016, the petitioner applied to CARA for adoption of the two children. The application was registered and processed. The petitioner thereafter started visiting the children.

From the averments in the petition as also pictures enclosed, it appears that the petitioner has built up a bond with the children who have also become very fond of the petitioner. Learned counsel appearing on behalf of the petitioner submits that the children know the petitioner as their mother. Admittedly, however, the children are not in pre-adoption foster care of the petitioner.

Both India and Australia are signatories to the Convention on Protection of Children and Cooperation in respect of Inter-Country Adoption held in Hague in 1993 (hereinafter referred to as "Hague Convention"). Article 5 of the Hague Convention provides:-

"Article 5

An adoption within the scope of the Convention shall take place only if the competent authorities of the receiving State-

- a) have determined that the prospective parents are eligible and suited to adopt:
- b) have ensured that the prospective adoptive

parents have been counselled as may be necessary; and

c) have determined that the child is or will be authorized to enter and reside permanently in that State."

Inter-country adoption requires a certification with regard to suitability of the adoptive parents to adopt the child, counselling of the prospective adoptive parents and authorization of the child to enter and reside in the receiving State.

In India all inter-country adoptions are governed by the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as 'JJ Act'). Section 56(4) of the JJ Act provides:-

"56(4) All inter-country adoptions shall be done only as per the provisions of this Act and the adoption regulations framed by the Authority."

Inter-country adoption of an orphan or abandoned or surrendered child can only be effected in accordance with Section 59 of the JJ Act. Section 59(3) of the JJ Act provides:-

"59(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 authorized 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."

A foreigner living abroad if interested to adopt an orphan or abandoned or surrendered child from India might apply to

an authorized foreign adoption agency, or Central Authority or a concerned Government department in their country of habitual residence, in the manner as provided in the adoption regulations framed by the CARA as provided in Section 59(3).

The authorized foreign adoption agency, or Central Authority, or concerned Government department, of the foreign country has to prepare a home study report of the prospective adoptive parents and upon finding them eligible sponsor their application to CARA for adoption of a child from India.

A foreigner or a person of Indian origin or an overseas citizen of India who has habitual residence in India can apply for adoption of a child from India to CARA along with No Objection Certificate from the diplomatic mission of his country in India.

Section 59(12) of the JJ Act is set out hereinbelow :-

“59(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” .

In view of the statutory provisions of the JJ Act and in particular Section 59(12) thereof the relief prayed for in the writ petition cannot be granted. The writ Court could not have waived the statutory requirement of Section 59(12) of the JJ Act. As observed by learned Single Bench of Delhi High Court, there is little doubt that the petitioner would have brought up the children

well, with love and affection and the children too would have been lucky to have the petitioner as an adoptive parent. We have every sympathy for the petitioner but regret our inability to help her.

The special leave petition is accordingly dismissed.

As a sequel to the above, pending interlocutory application also stands disposed of.

(Satish Kumar Yadav)
AR-cum-PS

(Suman Jain)
Court Master