



W.P(C) No.1998/2025

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

TUESDAY, THE 4TH DAY OF FEBRUARY 2025 / 15TH MAGHA, 1946WP(C) NO. 1998 OF 2025PETITIONER:

LIJO STEPHEN CHACKO
AGED 47 YEARS
S/O THOPPIL CHACKO, KOITHRA, CHINGAVANAM P.O,
ASANPADI, KOTTAYAM, PIN - 686531
BY ADVS.
K.N.ABHILASH
SUNIL NAIR PALAKKAT
RISHI VARMA T.R.
RITHIK S.ANAND
N.K.SHEEBA
V.SREEJITH
K.M.TINTU
ANU PAUL
SREELAKSHMI MENON P.
SREEJITH A.

RESPONDENTS:

- 1 THE UNION OF INDIA
REP. BY PRINCIPLE SECRETARY, MINISTRY OF WOMEN
AND CHILD DEVELOPMENT, GOVT. OF INDIA, NEW DELHI,
PIN - 110001
- 2 CENTRAL ADOPTION RESOURCE AUTHORITY,
REP. BY ITS MEMBER SECRETARY AND CEO OF THE CARA,
B-12, QUTUB INSTITUTIONAL AREA, NEW DELHI, PIN -
110016
- 3 THE CHIEF EXECUTIVE OFFICER
CARA, B-12, QUTUB INSTITUTIONAL AREA, NEW DELHI,
PIN - 110016

OTHER PRESENT:

DSGI SRI.T.C.KRISHNA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 04.02.2025, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



“C.R”

C.S.DIAS,J

W.P.(C).No. 1998 of 2025

Dated this the 4th day of February, 2025**JUDGMENT**

Justice P.N. Bhagwati, who spoke for the bench in the celebrated case of **Lakshmi Kant Pandey v. Union of India** [(1984) 2 SCC 244], wherein the Hon’ble Supreme Court laid down normative and procedural safeguards for inter-country adoptions, cited John Milton’s words from *Paradise Regained*: “Child shows the man as morning shows the day.” The quote summarises the significance of a child in a man’s life.

2. The petitioner and his wife are the proud parents of a five-year-old adopted son. In their desire to give companionship for their son and have a daughter in their life, on 02.02.2021, they got registered on the designated portal of the Central Adoption Resource Agency — the 2nd respondent — named Child Adoption Resource Information and Guidance System (abbreviated as ‘CARINGS’). The petitioner was assigned with



registration No. PrKA185999522. Recently, the 2nd respondent sent the petitioner the profiles of two children from Maharashtra and Karnataka. As the petitioner is a resident of Kerala, he believed that if he is referred to a child from Kerala, it would be easier to complete the adoption process. Accordingly, the petitioner chose to defer the acceptance of the first two referrals. On 11.11.2024 at 10. p.m., the 2nd respondent sent Ext.P1 E-mail referring the profile of a third child. The petitioner was instructed to log in to the CARINGS platform and reserve the child within 48 hours. As this was the third referral, it was necessary for the petitioner to accept the child. However, the child's medical examination report was not accessible on CARINGS. The petitioner promptly sent Ext.P2 email to the Specialised Adoption Agency, where the child resided, requesting the medical examination report. The petitioner received the medical examination report via Ext.P3 E-mail on 12.11.2024 by 5.58 p.m. After reviewing both the child study report and the medical examination report, the petitioner intended to reserve the child. Nonetheless, before the petitioner could complete the process, on 14.11.2024 at 09.36 a.m., the petitioner received Ext.P4 E-



mail from the 2nd respondent indicating that the child's profile was removed from the petitioner's page. Following this, the petitioner sent Exts.P5 to P10 emails to the 2nd respondent, explaining the reason that precluded him from reserving the child's profile within 48 hours from Ext.P1 E-mail. Shockingly, the 3rd respondent sent Ext.P11 reply, stating that, since the petitioner had failed to reserve any of the three children referred to him, he and his wife were debarred for one year and, thereafter, they would be eligible for fresh registration as contemplated under Regulation 9(3) of the Adoption Regulations, 2022 ('Regulations', for brevity). A reading of Ext.P11 order establishes that the 3rd respondent has passed the same without any application of mind. It is critical to note that the 48-hour period should have been calculated only from the time the petitioner received the child's medical examination report as per Ext.P3 E-mail, which is a mandatory document as per Regulation 11 (17). Respondents 2 and 3 have failed to consider this crucial aspect. Exts.P4 and P11 are illegal and arbitrary. Hence, the orders may be quashed, and the petitioner may be given another opportunity to adopt a child.



3. Heard; Sri. Abhilash. K.N, the learned counsel for the petitioner and Sri. T.C. Krishna, the learned Deputy Solicitor General of India for the respondents.

4. The learned Counsel for the petitioner assiduously argued that the actions of respondents 2 and 3 were arbitrary and high-handed. The petitioner and his family have been agonisingly waiting to adopt a child for the last four years. It is only because the medical examination report was not available on CARINGS that the petitioner could not exercise his option to reserve the profile of the referred child. The 48 hours can only be calculated from 17:58 hours of 12.11.2024, i.e., from Ext.P3 E-mail. Respondents 2 and 3 have removed the child's profile from the petitioner's page and debarred him and his wife for one year. Therefore, they will have to apply for fresh registration, meaning they will have to wait for at least another four years to be referred with another child. Respondents 2 and 3 have taken the extreme step of debarring the petitioner without addressing his explanation in Exts.P5 to P10 E-mails and without affording him an opportunity to be heard. The actions of the respondents are in violation of the principles of natural justice. Hence, the



respondents may be directed to refer the profile of one more female child.

5. The learned Deputy Solicitor General of India strenuously opposed the writ petition. He defended the actions of the respondents. He contended that respondents 2 and 3 have acted in consonance with the Regulations. Since the petitioner did not reserve the profile of the third referred child within 48 hours as stipulated in Ext.P1 email and the Regulations, the 2nd respondent removed the child's profile and debarred the petitioner for a year as per the mandate under Regulation 9 (3). There are over 32,000 prospective adoptive parents eagerly waiting to adopt a child. The petitioner cannot be finicky about choosing a child. There is no arbitrariness in the actions of the respondents. Moreover, as per Regulation 62, the petitioner has a remedy of appeal against Ext.P11 order before the 2nd respondent. The writ petition sans substance and, therefore, may be dismissed.

6. The Juvenile Justice (Care and Protection of Children) Act, 2015 ('Act', for brevity) enables any person to adopt a child as per provisions contained in Chapter VIII of the



Act and the Rules and Regulations formulated thereunder.

Section 2 (2) of the Act defines 'adoption'.

7. Regulation 10 delineates the procedure to be followed by resident Indians to adopt a child, while Regulation 11 provides how a child is referred to prospective adoptive parents. It is necessary to extract the relevant portion of 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".**

8. The seniority of the prospective adoptive parents is determined under Regulation 44, the relevant portion which reads as follows:

"44. Seniority of the prospective adoptive parents.—(1) The resident Indian or non-resident Indian or Overseas Citizen of India Cardholder prospective adoptive parents based on states specific and cluster specific choice shall be referred children on the basis of seniority which shall be from the date of registration and other criteria as stipulated under these regulations while the foreign prospective adoptive parents shall be provided referrals on the basis of 'anywhere in India'.



(2) In case prospective adoptive parents residing in India are not willing to take the referred child for any reason, the child shall be automatically referred to the next waiting prospective adoptive parents in the waiting list after expiry of forty eight hours of the reservation period.

(3) In case prospective adoptive parents residing abroad are not willing to take the referred child for any reason, the child shall be automatically referred to the next waiting prospective adoptive parents in the waiting list after expiry of ninety six hours of the reservation period.

(4) The seniority of resident Indians shall be based on the date of online registration and submission of the documents, except for Home Study Report, on the Designated Portal”.

9. Regulation 9(3) deals with debarring a prospective adoptive parent, which reads thus:

“9 (3) When resident Indian or non-resident Indian or Overseas Citizen of India Cardholder prospective adoptive parents do not reserve a child, out of three referrals, such parents shall be debarred for a period of one year, after which they shall be eligible for fresh registration and the foreign prospective adoptive parents shall also be debarred for a period of one year if they do not reserve a child out of two referrals”.

10. On 02.02.2021, the petitioner and his wife registered on the CARINGS platform to adopt their second child. They were referred with the profiles of two children, which they did not reserve. On 11.11.2024 at 22:00 hours, the 2nd respondent referred the profile of a third child to the petitioner and instructed him to reserve the profile within 48 hours, that is, on or before 13.11.2024 at 22:00 hours. Although the petitioner logged in to CARINGS, the child’s medical examination report was inaccessible. Therefore, he sent Ext.P2 E-mail to the Specialised Adoption Agency requesting the child’s medical examination



report, which was forwarded by Ext.P3 email only on 12.12.2024 at 17:58 hours. Regrettably, after the petitioner reviewed the medical examination report and before he could reserve the child, the 2nd respondent removed the child's profile on 14.11.2024 at 9:36 hours, which is well before the expiration of the 48-hour deadline following the receipt of Ext.P3 E-mail. In addition to this removal, the 3rd respondent has debarred the petitioner and his wife for a year, stipulating that they would have to apply for a fresh registration.

11. Section 59 (6) of the Act explicitly provides that the Specialised Adoption Agency will match a child with the prospective adoptive parents by providing them with both the child study report and medical report. It is also pertinent to refer to Regulations 7 (18) and (19), which read as follows:

"7 (18) The Child Study Report and Medical Examination Report of the surrendered child shall be prepared and posted on the Designated Portal by the Specialised Adoption Agency, within ten days from the date the child is declared legally free for adoption, in the format in the Schedule II and Schedule III of these regulations respectively.

(19) The Child Study Report and Medical Examination Report shall be made available in English (apart from the regional language of the concerned area) and the District Child Protection Unit shall facilitate the Specialised Adoption Agency in uploading the Child Study Report and Medical Examination Report on the Designated Portal, in case the Specialised Adoption Agency is facing any technical difficulty".

12. The afore-quoted provisions make it mandatory that the



child study report and medical examination report of a child declared legally free for adoption be uploaded on CARINGS. Prospective adoptive parents can be expected to express their preference only after reviewing the reports, especially when they are not permitted to see the child physically.

13. In the present case, Ext.P3 email unequivocally substantiates that the medical examination report was unavailable on CARINGS. The report was only subsequently sent by the Specialised Adoption Agency at 17:58 hours on 12.11.2024. Despite this, the 2nd respondent removed the child's profile from the petitioner's page before the expiry of 48 hours, i.e., at 9:36 hours on 14.11.2024. Therefore, the petitioner's contention that Ext.P4 and P11 orders are arbitrary is well-founded because the 48-hour period started only from the time the petitioner received Ext.P3. Furthermore, a reading of Ext.P11 order shows that the 3rd respondent has not adverted to any of the contentions raised in Exts.P5 to P10 E-mails. Ext.P11 order only says that since the petitioner did not reserve the child within 48 hours, the child's profile is removed from the petitioner's page, and he and his wife are debarred for a year.



Undeniably, the petitioner and his wife have been debarred without being afforded an opportunity to be heard, which again is against the elementary principles of natural justice.

14. Reason is the soul of every order. In **State of Orissa v. Dhaniram Luhar** [(2004) 5 SCC 568], the Hon'ble Supreme Court has held as under:

"7. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same it becomes lifeless. (See *Raj Kishore Jha v. State of Bihar* [(2003) 11 SCC 519 : 2004 SCC (Cri) 212] .)

8. Even in respect of administrative orders, Lord Denning, M.R. in *Breen v. Amalgamated Engg. Union* [(1971) 2 QB 175 : (1971) 2 WLR 742 : (1971) 1 All ER 1148 (CA)] observed (All ER p. 1154h): 'The giving of reasons is one of the fundamentals of good administration.' In *Alexander Machinery (Dudley) Ltd. v. Crabtree* [1974 ICR 120 (NIRC)] it was observed:

'Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at.'

Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the 'inscrutable face of the sphinx', it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reasons is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking-out. The 'inscrutable face of the sphinx' is ordinarily incongruous with a judicial or quasi-judicial performance."

15. It is to be borne in mind that we are not dealing with a commercial dispute to stick to the strict rigour of time; instead, we are dealing with an adoptive couple's feelings, whose profound desire for a child has persisted agonisingly for the past four years. This is a matter that has to be dealt with with



empathy, humane consideration and a holistic perspective that resonates with the anxiety of an adoptive couple rather than sticking to procedural rigidity and its pedantic interpretations. Matters pertaining to children cannot be confined to the four corners of legal technicalities; they demand a compassionate and progressive approach that prioritises the child's best interest.

16. The petitioner has provided a reasonable and justifiable explanation for failing to respond within the 48-hour deadline as stipulated in Ext.P1 E-mail. The third respondent in Ext.P11 order has not addressed the petitioner's contentions; instead, the child's profile has been removed, and the petitioner and his wife have been debarred in violation of the tenets of the principles of natural justice.

17. In **Lakshmi Kant Pandey's case**, the Hon'ble Supreme Court has observed that adoption is not merely a legal act; it is a process that involves deep emotional and social considerations because child is a soul with a being, a nature and capacities of its own, who must be helped to find them, to grow into their maturity, into the fullness of physical and vital energy



and the utmost breath, depth and height of its emotional, intellectual and spiritual being; otherwise, there cannot be a healthy growth of the nation.

18. In the case of **Rosy Jacob v. Jacob A Chakramakkal** [(1973) 1 SCC 840], the Hon'ble Supreme Court held that children are not mere chattels nor mere playthings for their parents.

19. Regulation 63 empowers the Relaxation Committee of the Authority to relax and grant exceptions to any provision of the regulations in respect of a case or class of cases. This Regulation indicates that the Regulations are not strictly mandatory but rather directory in nature, allowing for its relaxation in deserving cases.

20. On an overall consideration of the law and the peculiar facts of this case, notwithstanding the alternative remedy of appeal provided in the Regulations, I am convinced that this a fit case to exercise the extra-ordinary jurisdiction of this Court to quash Exts.P4 and P11 orders and direct the 2nd respondent to refer one more child to the petitioner.



Accordingly, I allow the writ petition in the following manner:

- (i) Exts.P4 and P11 orders are quashed.
- (ii) The 2nd respondent is directed to refer a profile of a child to the petitioner and his wife within one month from the date of receipt of a certified copy of this judgment, in accordance with the law, to enable them to exercise their option to adopt the child.

Sd/-C.S.DIAS, JUDGE

SCB.04.02.25.

**APPENDIX OF WP(C) 1998/2025****PETITIONER EXHIBITS**

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| Exhibit P1 | A TRUE COPY OF THE E-MAIL COMMUNICATION DATED 11.11.2024 FROM THE 2ND RESPONDENT TO THE PETITIONER |
| Exhibit P2 | A TRUE COPY OF THE E-MAIL COMMUNICATION DATED 12.11.2024 SENT BY THE PETITIONER TO THE ORPHANAGE TEAM |
| Exhibit P3 | A TRUE COPY OF THE E-MAIL COMMUNICATION DATED 12.11.2024 SENT BY THE ORPHANAGE TEAM TO THE PETITIONER |
| Exhibit P4 | A TRUE COPY OF THE COMMUNICATION DATED 14.11.2024, INFORMING ABOUT THE REMOVAL OF THE CHILD FROM PROFILE |
| Exhibit P5 | THE TRUE COPY OF THE COMMUNICATION DATED 13.11.2024 SENT BY THE PETITIONER TO THE 2ND RESPONDENT |
| Exhibit P6 | THE TRUE COPY OF THE COMMUNICATION DATED 14.11.2024 SENT BY THE PETITIONER TO THE 2ND RESPONDENT |
| Exhibit P7 | THE TRUE COPY OF THE COMMUNICATION DATED 14.11.2024 SENT BY THE PETITIONER TO THE 2ND RESPONDENT |
| Exhibit P8 | THE TRUE COPY OF THE COMMUNICATION DATED 14.11.2024 SENT BY THE PETITIONER TO THE 2ND RESPONDENT |
| Exhibit P9 | TRUE COPY OF THE COMMUNICATION DATED 19.11.2024 SENT BY THE PETITIONER |
| Exhibit P10 | THE TRUE COPY OF THE COMMUNICATION DATED 20.11.2024 SENT BY THE PETITIONER TO THE 3RD RESPONDENT |
| Exhibit P11 | THE TRUE COPY OF THE REPLY DATED 21.11.2024 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER |