HIGH COURT OF DELHI

JUSTICE SUBRAMONIUM PRASAD

Date of Decision: 16th February 2024

CONT.CAS(C) 563/2023

W.P.(C) 3901/2023 & CM APPLs. 15138/2023, 33554/2023, 33718/2023

W.P.(C) 5682/2023 & CM APPL. 22228/2023

W.P.(C) 4071/2023 & CM APPL. 41055/2023

W.P.(C) 9303/2023 & CM APPLs. 35433/2023, 36333/2023, 36397/2023

W.P.(C) 10027/2023 & CM APPL. 38658/2023

W.P.(C) 10734/2023 & CM APPL. 41622/2023

DEBARATI NANDEE ...Petitioner

Versus

MS. TRIPTI GURHA & ANR ...Respondents

Legislation:

Sections 57, 58, 59, 61 of the Juvenile Justice (Care and Protection of Children) Act, 2015

Adoption Regulations, 2017 and 2022

Subject: Challenge to the decision of the Steering Committee of Central Adoption Resource Authority (CARA) on the retrospective application of Adoption Regulations, 2022, to pending adoption applications of registered prospective adoptive parents.

Headnotes:

Family Law – Adoption Regulations – Retrospective Application – Challenge to the retrospective application of the Adoption Regulations, 2022, replacing the 2017 Regulations for prospective adoptive parents (PAPs) already registered under the earlier norms. [Para 1-3]

Adoption Regulations, 2022 – Retrospective Applicability – held – the application of the Adoption Regulations, 2022, to already registered PAPs is

not retrospective, as it does not affect any vested rights or past actions but only alters the eligibility for future adoptions. [Para 26, 38, 50]

Constitutional Law – Article 14 – Arbitrary Action – The decision of the Central Adoption Resource Authority (CARA) to apply the Adoption Regulations, 2022, to pending applications does not constitute arbitrary action, as it aims to expedite adoptions for childless couples and those with one child, especially for special-needs children. [Para 49]

Fundamental Rights – Right to Adopt – Status – The right to adopt, while recognized under statutory law, does not elevate to the level of a fundamental right under Article 21 of the Constitution, nor does it guarantee the right to adopt a child of one's preference. [Para 41, 42]

Principle of Welfare and Safety of the Child – The court emphasizes that the best interest and welfare of the child is the paramount consideration in the adoption process – Recognizes the necessity of the policy to balance the interests of childless or single-child PAPs and the need for adoption of special-needs children. [Paras 47, 49]

No Vested Right in Pre-Referral Stage – Court holds that there is no vested right for PAPs at the pre-referral stage of adoption – The registration as PAPs does not confer an absolute right to adopt a 'normal' child, and the seniority in the list does not vest any substantive right. [Paras 34-36, 43, 45, 50]

Legitimacy of Retroactive Application – The Court finds the application of Regulation 5(7) of Adoption Regulations 2022 to be procedural and retroactively applicable – The decision of the Steering Committee and CARA deemed not arbitrary or unconstitutional. [Paras 38, 48, 50]

Decision – Writ petitions challenging the retrospective application of Adoption Regulations, 2022, are dismissed. [Para 51]

Referred Cases:

- Assistant Excise Commissioner, Kottayam v. Esthappan Cherian (2021) 10 SCC 210
- Kerala State Electricity Board v. Joseph Thomas & Ors., (2022) SCC OnLine SC 1737
- Mahabir Vegetable Oils (P) Ltd v. State of Haryana (2006) 3 SCC 620
- DDA v. Joint Action Committee, Allottee of SFS Flats (2008) 2 SCC 672
- Vice-Chancellor, MD University, Rohtak vs. Jahan Singh (2007) 5 SCC 77
- Charanjit Singh Ahluwalia v. Union of India, (2023) SCC OnLine Del 2730
- Anushka Rengunthwar and Ors. v. Union of India (UOI) and Ors., AIR 2023 SC 903
- Ishwar Nagar Co-op. Housing Building Society v. Parma Nand Sharma and Ors. (2014) 14 SCC 230
- Daulat Ram Mehnidratta v. Lt. Governor of Delhi and Ors. AIR 1982 Del 470
- Shanti Conductors (P) Ltd. v. Assam SEB, (2019) 19 SCC 529
- Udai Singh Dagar v. Union of India, (2007) 10 SCC 306
- Ishwar Nagar Coop. Housing Building Society v. Parma Nand Sharma, (2010) 14 SCC 230

- Union of India and Ors v. Ankur Gupta and Ors., (2019) 18 SCC 276
- Shabnam Hashmi v. Union of India, (2014) 4 SCC 1

Representing Advocates:

For Petitioner: Ms. Mrinalini Sen, Ms. Madhawi Agarwal, Mr. Kaif Khan, Advocates

For Respondents: Ms. Arunima Dwivedi, CGSC with Ms. Archana Surve, GP; Ms. Kholi Rakuzhuro, Ms. Pinky Pawar, Mr. Aakash Pathak, Advocates for CARA. Mr. Rakesh Kumar, CGSC with Mr. Sunil, Advocate for CARA. Mr. Raj Kumar Yadav, Ms. Arushi Kapur and Ms. Nitya Sharma, Advocates for R-1.

JUDGMENT

1. The challenge in the present Writ Petitions is to adjudicate on the short issue as to whether the decision of the Steering Committee Resource Authority, Central Adoption Resource Authority, dated 15th February 2023 and a subsequent Office Memorandum dated 21st March 2023 affirming the decision of retrospective application of the Adoption Regulations, 2022, to pending applications of registered prospective adoptive parents is valid.

2. The facts leading up to the passage of the impugned order and the Petitioners‟ objection to it thereof are as follows:

a) The Petitioners are Prospective Adoptive Parents (*henceforth*, “PAPs”) with two biological children and wish to adopt a third child under the procedure for adoption by Indian Prospective Parents living in India under Section 58 of the Juvenile Justice (Care and Protection of Children) Act, 2015, (*hereinafter referred to as* 'the Act'). They have applied for adoption through the Central Adoption Resource Authority (*henceforth*, CARA) under Regulation 5(8) of the 2017 Adoption Regulations. They have been registered as Prospective Adoptive Parents under CARA having fulfilled the eligibility requirements under Section 57 of the Act and have also been allotted their respective registration numbers along with being placed on the waiting list of Seniority for adoption as maintained differently for different States in the country. Moreover, under section 58(2) of the Act, Home Study reports have also been prepared by Specialised Adoption Agencies for a few Petitioners, who have been found eligible to adopt and are in the stage of being referred a child declared legally free for adoption, termed as the „online referral of a child‟ to the PAPs who may be reserved by them for adoption.

b) The Respondent No. 1 is the Ministry of Women and Child Development which is responsible for framing regulations relating to adoption. Respondent No 2 is the Central Adoption Resource Authority

which is responsible for the implementation of the regulations framed by Respondent No. 1.

c) That the Adoption Rules, 2022 was notified by the Ministry of Women and Child Development and came into force on 23.09.22 in suppression of the Adoption Regulations, 2017. As per Regulation 5(8) of the prior Adoption Regulations, 2017, Couples with three or more children were not eligible to be considered for adoption except in cases of special needs children, hard-to-place children or relative adoption by stepparents. The Petitioners in the present petition are all parents having applied for adoption under the eligibility criterion of Regulation 5(8) of the 2017 Regulations. However, the same was superseded by the Adoption Rules, 2022 which brought about a new position under Regulation 5(7) wherein, instead of three or more children, now couples with two or more children willing to adopt can only opt for the adoption of special needs children or hard-to-place children unless they are relatives or step-children.

d) That on 15.02.2023, the 34th Meeting of the Steering Committee Meeting of CARA was held wherein, in respect of „Agenda No. 34.06: Decision regarding ineligibility of PAPs to adopt normal child in case they already have two children", it was decided that the Adoption Rules would be applied retrospectively as an eligibility criterion even to those applications received and for registrations which were carried out prior to the passage of the Adoption Rules, 2022. It is to note that observations in the minutes of the meeting indicate CARA"s recommendation against the retrospective application of 2022 Regulations which would affect persons already awaiting their child referral under as per the terms of the 2017 Regulations. In furtherance of the decision dated 15.02.23, on 21.03.23, an Office Memorandum was issued by Respondent No 2 affirming the decision taken on 15.02.23, thereby implying that all prospective parents with two children, regardless of their date of registration, will not be eligible to adopt a normal child in terms of the Adoption Regulations, 2022 and can only opt for the adoption of a child of special needs, a hard-to-place child or a relatives" child and step-children.

e) That even after the passage of the impugned orders, it is stated that CARA continued its communication with the Petitioners for revalidating the Home Study report and payment of charges for the same. Moreover, the status of the Petitioners was updated on the „CARINGS" portal, an initiative operationalised as a portal to streamline the functioning of CARA via notification dated 21.03.23, as „Home Study Completed and validated". It is also stated that the Petitioner"s seniority list as per the CARINGS portal was deleted and subsequently restored.

3. The Petitioners contend that the retrospective application of the Adoption Regulations 2022 via the Respondent No 2"s decision dated 15.02.23 is arbitrary and violative of Article 14 of the Constitution since it is settled law that Regulations and Rules in the form of delegated legislation cannot be

applied retrospectively in the absence of a express statutory authorisation to that effect, i.e. in the absence of a statutory provision, a delegate cannot make a delegated legislation with retrospective effect. It is also submitted that the decision of the Steering Committee suffers from excessive jurisdiction as the 2022 Regulations do not vest any right on the Committee to modify the way they are implemented. Reliance is placed in this regard on the Apex Courts judgement in Assistant Excise Commissioner, Kottayam v. Esthappan Cherian **(2021) 10 SCC 210** and Kerala State Electricity Boars v. Joseph Thomas & Ors., **(2022) SCC OnLine SC 1737,** Mahabir Vegerable Oils (P) Ltd v. State of Haryana **(2006) 3 SCC 620**, DDA v. Joint Action Committee, Allottee of SFS Flats **(2008) 2 SCC 672**, Vice-Chancellor, MD University, Rohtak vs. Jahan Singh **(2007) 5 SCC 77** and this Court‟s judgement in Charanjit Singh Ahluwalia v. Union of India, **(2023) SCC OnLine Del 2730**. It is submitted that since the application for adoption was presented by the Petitioners and accepted by the Respondents under the 2017 Regulations, a change in the status of the Petitioner‟s application by retrospectively applying a new set of directives subsequently introduced in illegal and arbitrary in so far as the substantive rights of the Petitioner created in favour of the 2017 guidelines and their statutory right under Section 58(2) of the Act are taken away by rendering them ineligible to adopt a normal child.

4. The learned counsel for the Petitioner in extension of the abovementioned contentions submit that the right of Adoption is a statutory right under Section 57 and 58 of the Act and that rights of children to be given for adoption goes hand in hand with the right of parents to adopt. A right to Adopt under Common Law is also pointed out and is therefore contended that it ought to be expansively read as a Fundamental Right under Article 21 of the Constitution. Reliance is placed on a judgement of the Bombay High Court in the matter of the appointment of guardian of a person of a female minor Doreen Theresa D'Souza in Manual Theodore D‟Souza, **1999 SCC OnLine Bom 690**, which affirmed the right of persons to adopt a child taken in guardianship under the Guardian & Wards Act even in the absence of any legislation.

5. It is further submitted that the process to qualify as an „eligible‟ prospective adoptive parent under Section 57 is purely substantive in nature and the determination under Section 58(2) on whether such eligible parents are „suitable to be declared as adoptive parents‟ is both procedural and substantive. It is submitted that the preamble of the 2022 Regulations makes it clear that the 2017 Regulations are superseded except for things done or

omitted to be done prior to such supersession. It is contended that having been declared eligible under Section 57 and 58(2) of the Act is tantamount to an assurance from the state and the accrual of a substantive right that the state will „refer a child", being a non-special needs child, and that declaring such prospective adoptive parents as ineligible is expressly prohibited under the savings clause of the 2022 Regulations. Reference is made to Anushka Rengunthwar and Ors. v. Union of India (UOI) and Ors., **AIR 2023 SC 903** wherein the Apex Court held that „all such things done" ought to have been undone and nullified with the issuance of the impugned notification taking away accrued benefits.

6. The Counsel for the Petitioner also contend that the Doctrine of Legitimate Expectation is attracted in the present case, wherein Petitioners have waited over 40 weeks for the referral of a normal child thereby requiring the public authority making a decision to take into account such expectations which affect the interest of individuals or grounds concerned. Reliance is placed on the Apex Courts judgement, K.B. Tea Products Pvt. Ltd. v. Commercial Tax Officer, **2023 SCC OnLine 615** in this regard.

7. It is submitted that the right to adopt and maintain a seniority number are both substantive in nature, and the Seniority List and relevant provisions would be rendered otiose to the Petitioners via this retrospective application since a Seniority List is only applicable to be maintained towards reference for normal children and not the „special-needs" or „hard-to-place" categories. It is further submitted that that not taking into consideration CARA"s apprehensions against the retrospectivity of the 2022 Regulations as noted in the Steering Committee Minutes shows that the decision dated 15.02.23 lacks application of mind.

8. It is further submitted that had the legislature wanted to make the application of Regulation 5(7) of 2022 as retrospective, the intention towards the same would have been explicitly noted. Therefore, by giving force to such a retrospective application, the decision of the Steering Committee acts in a manner as to amend the regulation, the power to do which does not rest with the Steering Committee.

9. It is further submitted that the decision of the Steering Committee to declare that the amendment will be applied retrospectively amounts to amending the Regulations itself which cannot be permitted. Learned Counsel for the Petitioner places reliance upon Section 110(3) of the Juvenile Justice (Care and Protection of Children) Act, 2015 to state that every Rule and Regulation made under the Act, shall be laid, as soon as may be after it is made, before

each House of the Parliament. It is stated that by an executive fiat, the Steering Committee has in fact amended the Regulation which is contrary to the procedure prescribed under the Act.

10. *Per contra*, the learned counsel for the Respondents submitted that as per the scheme of the Juvenile Justice (Care and Protection of Children) Act, 2015 and the Adoptions Regulations formulated under it thereof, mere registration as Prospective Adoptive Parents does not guarantee, mandate or confer an indefensible right for adoption of a child. Section 57 of the Act read with the Regulations merely outlines the eligibility of the Prospective Adoptive Parents and such a criteria ought to be fulfilled till an order finally affirming the adoption is passed by the District Magistrate under section 61 of the Act. Therefore, conditions to be complied with, if changed via a delegated legislation does not imply that the requirement to its mandatory satisfaction would render the application of such a legislation retrospectively. Reliance is placed on the decision of the Apex Court in Ishwar Nagar Co-op. Housing Building Society v. Parma Nand Sharma and Ors. **(2014) 14 SCC 230** and a Full Bench decision of this Court in Daulat Ram Mehnidratta v. Lt. Governor of Delhi and Ors. **AIR 1982 Del 470**. It is further submitted that adoption of a child is not guaranteed to all registered Prospective Adoptive Parents and it may be denied at any stage or the parents may themselves choose not to go ahead with the adoption despite having gotten themselves registered as Prospective Adoptive Parents.

11. It is also contended that alteration of eligibility conditions after registration as PAPs does not directly amount to retrospective application of the 2022 Regulations or amendment of the Regulations. It is argued that Adoption Regulations 2022 do not de-register any Prospective Adoptive Parents already registered and it merely requires them to fulfil the eligibility criteria having been brought in by way of the Adoption Regulations 2022. It is submitted that the decision of the Steering Committee dated 15.02.23 under Agenda No. 34.06 is only clarificatory and the 2022 Regulations was to apply to all pending applications prospectively.

12. It is also contended by the learned Counsel for the Respondents that the purpose of Regulations is to find out a parent for the child and not vice versa. The adoption to a Prospective Adoptive Parent (PAP) can be denied at any stage because of the disqualification they would have incurred. It is stated that even at the last stage, the District Magistrate can refuse to pass an adoption Order under Section 58(3) read with Section 61 of the Juvenile Justice (Care and Protection of Children) Act, 2015. It is stated that the

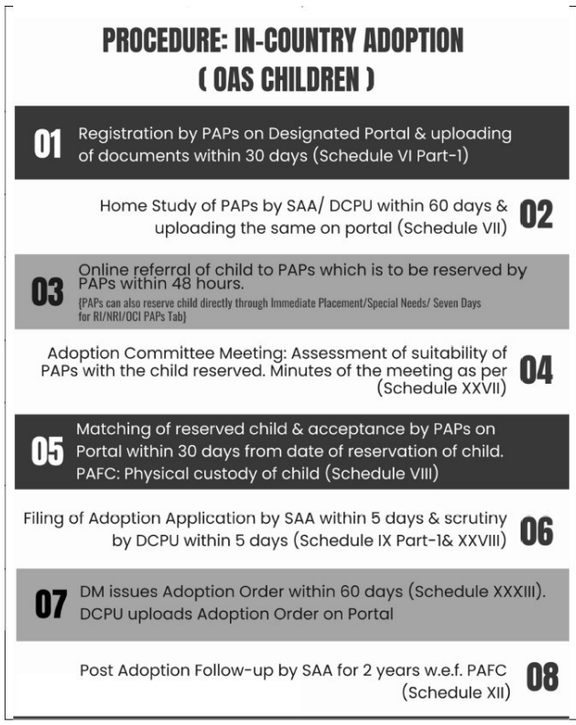
purpose of bringing in the amendment is to find a suitable home for a special child or a hard to place child. It is stated that there are enough parents available for adopting a normal child and, therefore, a decision was taken while bringing out the 2022 Regulations that if there are two biological children of any parents and the parents want to have a third child through adoption, they can adopt only a special child or a hard to place child.

13. It is submitted that that the seniority list of PAPs is increasing because there is no discrimination between the persons having one or more children and PAPs having no child at all. With a view to ensure that a prospective adoptive parent having no child at all should be in a position to adopt a child faster under the Act and also to make an endeavour that the special needs children as specified in clause (25) of Regulation 2, and hard to place children as stated in clause (13) of regulation 2 of 2022 Regulation get a home faster, a policy decision was taken that couples having two or more children shall be considered only for special needs children and hard to place children. It is contended that the said 2022 Regulation was brought out for achieving the aforesaid twin objectives.

14. It is, therefore, contended that the policy considerations behind such a decision taken ought to be weighed along with the fact that waiting PAPs should get a family within a reasonable time. Moreover, the number of PAPs has increased manifolds in the last few years with the availability of children under normal category being very few in comparison. It is submitted, therefore, that the motivation of couples already having two or more children as compared to a childless couple needs to be considered, thereby making the retention of such Prospective Adoptive Parents in the seniority list discriminatory towards the family that has no child at all.

15. In response to the Respondent‟s submissions, the learned counsels for the Petitioners contend that the right to be within the zone of consideration is a substantive vested right under the Act and the Regulations framed under it and retrospective applicability of disqualification cannot be classified as a procedural provision. A mere possibility of rejection upon the procedure being completed or that the procedure contemplated an order of the District Magistrate under Section 61 of the Act does not change the nature of the right in itself which was conferred prior to the passage of the 2022 Regulations. Since retrospectivity does not flow from the statute, the 2022 Regulations cannot be interpreted to provide for the same unless expressly mentioned.

16. It may also be noted that the Respondents have given a step wise process for adoption procedure for resident Indians derived from the powers provided for under the Act read with the Regulations, from the making of an application for registration as a PAP till the final adoption order by the District Magistrate. The Chart provided reads as under:



Juvenile Justice Act, 2015 (As amended in 2021)	Adoption Regulations, 2022
01 Registration by PAPs- **Section 58(1)**	01 Registration by PAPs- **Regulation 10(1), 10(2), 10(3), 10(4) & 10(5)**
02 Home Study by PAPs- **Section 58(2)**	02 Home Study by PAPs- **Regulation 10(6) & 10(7)**
03 Online Referral- **Section 58(2)**	03 Online Referral- **Regulation 11(1), 11(2) & 11(3)**
04 Adoption Committee Meeting-	04 Adoption Committee Meeting- **Regulation 11(4), 11(5) & 11(6)**
05 Matching of reserved child- **Section 58(3)**	05 Matching of reserved child- **Regulation 11(9)**
06 Filing of Adoption Application by SAA- **Section 58(3)**	06 Filing of Adoption Application by SAA- **Regulation 13(1) & 13(2)**
07 DM issues Adoption Order- **Section 58(3) & Section 61**	07 DM issues Adoption Order- **Regulation 13(6) & 13(8)**
08 Post adoption follow-up- **Section 58(5)**	08 Post adoption follow-up- **Regulation 14**

It is to be noted that the Petitioners of the present Writ Petitions are placed at a pre-stage three position as per the procedure provided above and are waiting for the referral of a child.

17. Heard the parties and perused the material on record.

18. The adoption in India has always been regulated both under the Customary laws and under the legislative framework of the country. In India, there are two legislations i.e., The Hindu Adoptions and Maintenance Act, 1956 and the Juvenile and Justice (Care and Protection of Children) Act, 2015 dealing with adoptions which have replaced the Customary laws. Both the Acts specify who can adopt and who can be adopted.

19. The Juvenile and Justice (Care and Protection of Children) Act, 2015 acts as a complete framework for domestic and international adoption relating to children found to be in conflict with law and children in need of care and protection. The Act operates on the principles of participation, best interest, family responsibility and safety. The procedure for intra-country adoption for parents living in India is given under Section 58 of the Act as reproduced below

*"**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 2 [before the District Magisrate] 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 3 [order passed by the District Magistrate], 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.

20. The eligibility criteria to be considered as PAPs under the Section is provided for under Section 57 as reproduced below

*"**57. Eligibility of prospective adoptive parents**.—(1) The prospective adoptive parents shall be physically fit, financially sound, mentally alert and highly motivated to adopt a child for providing a good upbringing to him.*

(2) In case of a couple, the consent of both the spouses for the adoption shall be required.

(3) A single or divorced person can also adopt, subject to fulfilment of the criteria and in accordance with the provisions of adoption regulations framed by the Authority.

(4) A single male is not eligible to adopt a girl child.

(5) Any other criteria that may be specified in the adoption regulations framed by the Authority."

21. The eligibility criteria for PAPs was also provided for in the Adoption Regulations, 2017, Regulation 5 read as below:

*"**5. Eligibility criteria for prospective adoptive parents.-** (1) The prospective adoptive parents shall be physically, mentally and emotionally stable, financially capable and shall not have any life threatening medical condition.*

(2) Any prospective adoptive parents, irrespective of his marital status and whether or not he has biological son or daughter, can adopt a child subject to following, namely:-

(a) the consent of both the spouses for the adoption shall be required, in case of a married couple;

(b) a single female can adopt a child of any gender;

(c) a single male shall not be eligible to adopt a girl child;

(3) No child shall be given in adoption to a couple unless they have at least two years of stable marital relationship.

(4) The age of prospective adoptive parents, as on the date of registration, shall be counted for deciding the eligibility and the eligibility of prospective adoptive parents to apply for children of different age groups shall be as under:-

Age of the child	*Maximum composite age of prospective adoptive parents (couple)*	*Maximum age of single prospective adoptive parent*
Upto 4 years	*90 years*	*45 years*
Above 4 and upto 8 years	*100 years*	*50 years*
Above 8 years upto 18 years	*110 years*	*55 years*

(5) In case of couple, the composite age of the prospective adoptive parents shall be counted.

(6) The minimum age difference between the child and either of the prospective adoptive parents shall not be less than twenty-five years.

(7) The age criteria for prospective adoptive parents shall not be applicable in case of relative adoptions and adoption by step-parent.

(8) Couples with three or more children shall not be considered for adoption except in case of special need children as defined in sub-regulation (21) of regulation 2, hard to place children as mentioned in regulation 50 and in case of relative adoption and adoption by stepparent."

22. The Central Government in exercise of the powers conferred under Section 68(c) and Section 2(3) of the Act notified the Adoption Regulations 2022 framed by CARA which came into effect from 23.09.2022. The 2022 Regulations changed the substantiating rule for eligibility as PAPs by

replacing Regulation 5(8) of the 2017 Guidelines with Regulation 5(7) which reads as under

*"**Regulation 5(7)** Couples with two or more children shall only be considered for special needs children as specified in clause (25) of regulation 2, and hard to place children as stated in clause (13) of regulation 2 unless they are relatives or step-children.*

23. It is submitted by the learned Counsel for Respondents that the effect of Regulation 5(7) coming into force and the restriction that it places on PAPs with two or more children in adopting a normal child is to be viewed in the backdrop of the grievances of the long list of waiting parents who do not have any children. It is stated that since the availability of normal children is very few in comparison to the list of PAPs waiting for adoption of such children, there are inordinately long waiting periods, which roughly span between three to four years. It is stated that this poses multiple concerns such as causing PAPs to avoid the legally correct CARA process towards adoption and resort to unethical and illegal means. It also raises the issue of PAPs who become old during the pendency of their registration and child-referral that it often times leads to a situation of placing younger children with older parents being placed which may not conform to the best interests of the child. The incentive behind resorting to means of adoption is to complete the family unit and therefore the expectation that waiting Prospective Adoptive Parents should get a family within a reasonable time period is not an unreasonable one. It is not proper for courts to delve into the adequacy and motivations which necessitated the passage of the modified position under Regulation 5(7) of the 2022 Guidelines, as they purely fall within the ambit of policy unless it is veiled with perversity, arbitrariness or unreasonable, which is not the case here, nor are the motivations behind the introduction of such a policy decision in itself contended by the petitioners.

24. As stated earlier, the adoption in the country is regulated under the legislative framework of the country. There are two legislations i.e., The Hindu Adoptions and Maintenance Act, 1956 which is specifically for Hindus and the Juvenile and Justice (Care and Protection of Children) Act, 2015 which primarily deals with children who are orphaned, abandoned or surrendered. Regulation 5 of the 2022 regulations defines the eligibility criteria for PAPs. The PAPs, therefore, have a right to adopt a child subject to the final adoption order of the DM under Section 61 of the Act. The short question, therefore, that arises for consideration before this Court as to whether there is a right in the PAPs to decide on which child they want to adopt or as to whether the rules and regulations regarding the child available for adoption can be altered

by the legislation. In the step by step procedure for adoption as envisaged under the Act and Regulations, at any step/stage a decision can be taken to disqualify a PAP. Similarly, the parents can also decide to abandon the proposal for adoption. It, therefore, cannot be said that at any point of time before the final Order of adoption is passed by the District Magistrate that there is a right in a PAP to adopt a particular child.

25. In light of this, this Court is of the opinion that there is no right at all to insist on the adoption of a particular child. The only question which remains open for consideration, is whether the legislature could alter the rules and regulations regarding the child available for adoption and, whether such amendment takes away any vested/accrued right in a PAPs to insist on adoption of a particular child.

26. It is well settled law that subordinate legislation in its application, unless expressly provided for within the mandate of its parent statute, cannot be enacted and given retrospective effect. The same has been affirmed in various decisions of the Apex Court as also relied by the Petitioner in their submissions and this Court need not delve into this already solidified legal position. Derived from this position is the Petitioners" contention that the 2022 Regulations were framed by the Ministry of Women and Child Development via powers conferred under Section 68(c), read with Section 2(3) of the Juvenile Justice (Care and Protection of Children) Act, 2015. It has been contended that since the Regulations are a subordinate legislation they cannot be applied retrospectively. The argument before this Court is that the Steering Committee meeting dated 15.02.23 to apply Regulation 5(7) of the 2022 Guidelines to all PAPs, including those registered before the date of notification of the 2022 Guidelines has effectively applied subordinate legislation in a retrospective manner, which is impermissible under law.

27. The meaning of what constitutes retrospectivity and retroactivity of legislation was elaborated by the Apex Court in the case of Shanti Conductors (P) Ltd. v. Assam SEB**, (2019) 19 SCC 529**

***"65.** The two-Judge Bench of this Court in State Bank's Staff Union (Madras Circle) v. Union of India [State Bank's Staff Union (Madras Circle) v. Union of India, (2005) 7 SCC 584 : 2005 SCC (L&S) 994] , had occasion to examine the concept of retroactive and retrospective. In paras 20 and 21 of the judgment the following has been laid down: (SCC p. 593)*

"20. Judicial Dictionary (13th Edn.) by K.J. Aiyar, Butterworth, p. 857, states that the word "retrospective" when used with reference to an enactment may mean (i) affecting an existing contract; or (ii) reopening up of past, closed and completed transaction; or (iii) affecting accrued rights and remedies; or (iv) affecting procedure.

Words and Phrases, Permanent Edn., Vol. 37-A, pp. 224-25, defines a "retrospective or retroactive law" as one which takes away or impairs vested or accrued rights acquired under existing laws. A retroactive law takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past.

21. In Advanced Law Lexicon by P. Ramanatha Aiyar (3rd Edn., 2005) the expressions "retroactive" and "retrospective" have been defined as follows at p. 4124, Vol. 4: „Retroactive.—Acting backward; affecting what is past.
(Of a statute, ruling, etc.) extending in scope or effect to matters that have occurred in the past. —Also termed retrospective. (Black's Law Dictionary, 7th Edn., 1999)

"Retroactivity" is a term often used by lawyers but rarely defined. On analysis it soon becomes apparent, moreover, that it is used to cover at least two distinct concepts. The first, which may be called "true retroactivity", consists in the application of a new rule of law to an act or transaction which was completed before the rule was promulgated. The second concept,
which will be referred to as "quasiretroactivity", occurs when a new rule of law is applied to an act or transaction in the process of completion … The foundation of these concepts is the distinction between completed and pending transactions … [T.C. Hartley, The Foundations of European Community Law, p. 129 (1981)].

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Retrospective.—Looking back; contemplating what is past.

Having operation from a past time. "Retrospective" is somewhat ambiguous and that good deal of confusion has been caused by the fact that it is used in more senses than one. In general, however, the courts regard as retrospective any statute which operates on cases or facts coming into existence before its commencement in the sense that it affects, even if for the future only, the character or consequences of transactions previously entered into or of other past conduct. Thus, a statute is not retrospective merely because it affects existing rights; nor is it retrospective merely because a part of the requisite for its action is drawn from a time antecedent to its passing." (Vol. 44, Halsbury's Laws of England,
4th Edn., p. 570, para 921.)"

66. *Further in Jay Mahakali Rolling Mills v. Union of India [Jay Mahakali Rolling Mills v. Union of India, (2007) 12 SCC 198], explaining retroactive and retrospective the following has been laid down: (SCC p. 200, para 8)*

"8. "Retrospective" means looking backward, contemplating what is past, having reference to a statute or things existing before the statute in question. Retrospective law means a law which looks backward or contemplates the past; one, which is made to affect acts or facts occurring, or rights occurring, before it comes into force. Retroactive statute means a statute, which creates a new obligation

on transactions or considerations or destroys or impairs vested rights."

28. Retrospectivity of a statute, therefore, means that an application which operates by modifying existing transactions and affects the rights, remedies and obligations which may have already flown in the past as a result. It is the introduction of a position with due contemplation of its applicability to actions done in the past before such a position has been legally enforced. As under Section 57 of the Act read with the Regulation 5 of the Adoption Guidelines, to qualify as prospective adoptive parents, the eligibility conditions given for under the Act and the subordinate regulations ought to have been fulfilled. To be registered as a PAP under CARA, therefore, implies, that the criteria laid down are fulfilled and the applicants are henceforth considered as eligible adoptive parents. Moreover, after such registration and preparation of a Home Study Report under Section 58(2), upon finding the PAPs to be eligible, a child referral will take place, in cases of adoption of „normal" children. This process as laid out under the Act read with the regulations nowhere indicate any positive rights accrued to the applicants at this stage above and beyond being recognised as PAPs.

29. It is the contention of the learned Counsel for the Petitioners that registration with CARA and successful completion of the Home Study Report after satisfaction of conditions under the Act read with 2017 Regulation would cause the accrual of a substantive right to adopt a normal child by the Petitioners. They contend that the said right also flows from the provisions of Regulation 5(8) of 2017 which lays out that PAPs with only three or more biological kids will not be considered for the adoption of a normal child, which is not the case with the present Petitioners, therefore mandating that they be considered.

30. At this Juncture, it is apposite to trace the history of present Regulation 5(7) of 2022 Regulations. Regulation 5 of 2011 Regulations reads as under:

***"5. Person competent to adopt**. - In accordance with the provisions of sub-section (6) of section 41, the*
Court may allow a child to be given in adoption, -

(a) to an individual irrespective of his or her marital status; or
(b) to parents to adopt a child of the same sex irrespective of the number of living biological sons or daughters; or
(c) to a childless couple."

31. A perusal of the aforesaid regulation shows that a couple having any number of children could go for adoption. The restriction was first imposed in the 2015 Regulations. Regulation 5(j) of 2015 Regulations reads as under: *"5(j) couples with more than four children shall not be considered for adoption"*

32. The aforesaid regulation was amended in the year 2017 where the figure four became three. Regulation 5(8) of 2017 Regulations reads as under:

"(8) Couples with three or more children shall not be considered for adoption except in case of special need children as defined in sub-regulation (21) of regulation 2, hard to place children as mentioned in regulation 50 and in case of relative adoption and adoption by stepparent."

33. The aforesaid regulation was amended in the year 2022 where the figure three has now been brought down to two. The policy of the legislature, therefore, is that the rush of a number of couples, who already have more than four children, who are available to adopt a child was felt in the year 2015. The said figure of four was brought down to three in the year 2017 and the same has now been brought down to two in the year 2022. This indicates that there is no right amongst the PAPs to insist on the child whom they want to adopt till the adoption does not go through. The change is only in the eligibility criteria.

34. The submission of the learned Counsel for the Petitioners that there exists a vested right which has been retrospectively done away with via a subordinate legislation which is not good in law cannot be accepted by this Court in the facts of the present case. In the case at hand, the introduction of the 2022 Regulations and the change in the position from Regulation 5(8) of 2017 to Regulation 5(7) of 2022 Regulations have not altered an already vested right in the PAPs. Regulation 5(8) of 2017 merely put a bar on consideration of PAPs with three or more children for the adoption of a normal child i.e. „shall not be considered for adoption‟ of a normal child. The right to be within the zone of consideration as a PAP continues and they may still choose to opt for a special needs child as specified in clause (25) of regulation 2, and hard to place children as stated in clause (13) of regulation 2, unless they are relatives or step-children.

35. Viewed in this light, it cannot be said that a pre-existing right has been taken away by virtue of Regulation 5(7) of 2022 Regulations. The pre 2022 position nowhere stipulated a positive right and a mandate thereof towards

PAPs with less than three or more biological children towards being considered for the adoption of a „normal" category child since it merely provides for a negative right of non-consideration in certain cases, here being that of having three or more pre-existing biological children. Any positive right as a corollary as asserted by the Petitioners towards adoption would only accumulate and come into force after the District Magistrate passes a final adoption Order under Section 58(3) read with Section 61 of the Juvenile Justice (Care and Protection of Children) Act, 2015. The mere recognition as a suitable PAP which falls out of a procedure established within the statute and the regulations, cannot be stretched to entail a vested right to be placed for consideration towards the adoption of a normal child.

36. The Apex Court on determining where a statute altering requisite professional qualifications can be termed as operating retrospectively and affecting vested rights or not as noted in Udai Singh Dagar v. Union of India**, (2007) 10 SCC 306,** the relevant portion of which reads as under:

> ***"55.*** *A statute does not operate retrospectively only because a person's right to continue in profession comes to an end. A person will have a right to enter into a profession and continue therewith provided he holds the requisite qualification. As and when a qualification is laid down by a law within the meaning of sub-clause (g) of Clause (1) of Article 19 of the Constitution of India, the same would come into effect. In other words, it would act prospectively and, thus, not retrospectively, inasmuch as the practice he had already enjoyed is not taken away.*
>
> ***56.*** *In Delhi Pradesh Registered Medical Practitioners v. Director of Health, Delhi Admn. Services [(1997) 11 SCC 687] this Court rejected a similar contention to the effect that only because the practitioners got their names registered in the discipline of Ayurveda, they would have a right to practice in such discipline as registered medical practitioners, and the privileges which a registered practitioner has stood protected by sub-section (3) of Section 17 of the Indian Medicine Central Council Act, 1970 stating: (SCC p. 690, para 5)*
>
> *"5. We are, however, unable to accept such contention of Mr Mehta. Sub-section (3) of Section 17 of the Indian Medicine Central Council Act, 1970, in our view, only envisages that where before the enactment of the said Indian Medicine Central Council Act, 1970 on the basis of requisite qualification which was then recognised, a person got himself registered as medical practitioner in the disciplines contemplated under the said Act or in the absence of any requirement for registration such person had been practising for five years or intended to be registered and was also entitled to be registered, the right of such person to practise in the discipline concerned including the privileges of a registered medical practitioner stood protected even though such practitioner did not possess requisite qualification under the said Act of 1970. It may be*

indicated that such view of ours is reflected from the objects and reasons indicated for introducing sub-section
(3) of Section 17 in the Act."

37. The Apex Court furthermore while dealing with a subsequent introduction of conditions for disqualification from a housing society in Ishwar Nagar Coop. Housing Building Society v. Parma Nand Sharma, **(2010) 14 SCC 230,** has held as under:

"21. *A reference may also be made to A Solicitor's Clerk, In re [(1957) 1 WLR 1219 : (1957) 3 All ER 617 (DC)] , wherein the bone of contention revolved around that the Solicitor's Act of 1956 which provided that no solicitor should employ any person who is convicted of larceny without the permission of the Law Society. The clerk in that case was convicted of larceny in 1953, while the ban was imposed in 1956. It was urged that the provisions of the 1956 Act cannot be applied to him because he was convicted before that Act came into operation. "To do otherwise, it was argued, would be to make its operation retrospective". In rejecting this contention, Lord Goddard, C.J.*
observed: (WLR pp. 1222-23)

"… in my opinion this Act is not in truth retrospective. It enables an order to be made disqualifying a person from acting as a solicitor's clerk in the future and what happened in the past is the cause or reason for the making of the order, but the order has no retrospective effect. It would be retrospective if the Act provided that anything done before the Act came into force or before the order was made should be void or voidable, or if a penalty were inflicted for having acted in this or any other capacity before the Act came into force or before the order was made. This Act simply enables a disqualification to be imposed for the future which in no way affects anything done by the appellant in the past. Accordingly, in our opinion, the [disciplinary] committee had jurisdiction to make the order complained of….

22. *Same principle was applied in State of Bombay v. Vishnu Ramchandra [AIR 1961 SC 307 : (1961) 1 Cri LJ 450] where Section 57 of the Bombay Police Act, 1951 authorised removal of a person from an area if he has been convicted of certain offences including theft. The Supreme Court held that: (AIR p.*
310, para 12)

"12. … Section 57 of the Bombay Police Act, 1951, does not create a new offence nor makes punishable that which was not an offence. It is designed to protect the public from the activities of undesirable persons who have been convicted of offences of a particular kind. The section only enables the authorities to take note of their convictions and to put them outside the area of their activities, so that the public may be protected against a repetition of such activities. …

An offender who has been punished may be restrained in his acts and conduct by some legislation, which takes note of his

antecedents, but so long as the action taken against him is after the Act comes into force, the statute cannot be said to be applied retrospectively."

***23.** The most concrete cases wherein laws are made retrospective are those in which the date of commencement is earlier than enactment, or which validate some invalid law, otherwise, every statute affects rights which would have been in existence but for the statute and a statute does not become a retrospective one because a part of the requisition for its action is drawn from a time antecedent to its passing. Applying that to the present case, the conclusion is inescapable, that Rule 25(2) is not retrospective. All that Rule 25(2) does is that it operates in future, though the basis for taking action is the factum acquiring a plot in the past. Thus when by virtue of Rule 25(2), a member is deemed to have ceased to be a member of the society, the cessation operates from 2-4-1973, when the Rules came into force."*

38. Therefore, the application of Adoption Regulations 2022 via the impugned decision of the Steering Committee dated 15.02.23 and the subsequent Office Memorandum affirming the same dated 21.03.23 towards already registered PAPs whose rights towards adoption are yet to be solidified within the mandate of the Act, cannot be termed as a retrospective application.

39. The learned Counsel for the Petitioners substantiate their arguments by placing reliance among other holdings, on the Apex Court‟s judgement in Anushka Rengunthwar and Ors v. Union of India and Others**, (2023) SCC OnLine 102**. The relevant paragraphs for reference are extracted below:

***"52.** Therefore it is evident that the object of providing the right in the year 2005 for issue of OCI cards was in response to the demand for dual citizenship and as such, as an alternative to dual citizenship which was not recognised, the OCI card benefit was extended. If in that light, the details of the first petitioner taken note hereinabove is analysed in that context, though the option of getting the petitioner No. 1 registered as a citizen under Section 4 of Act, 1955 by seeking citizenship by descent soon after her birth or even by registration of the citizenship as provided under Section 5 of Act, 1955, was available in the instant facts to her parents, when immediately after the birth of petitioner No. 1 the provision for issue of OCI cards was statutorily recognised and under the notification the right to education was also provided, the need for parents of petitioner No. 1 to make a choice to acquire the citizenship by descent or to renounce the citizenship of the foreign country and seek registration of the Citizenship of India did not arise to be made, since as an alternative to dual citizenship the benefit had been granted and was available to petitioner No. 1 and the entire future was planned on that basis and that situation continued till the year 2021.*

***53.** Further, as on the year 2021 when the impugned notification was issued the petitioner No. 1 was just about 18 years i.e., full age and even if at that stage, the petitioner was to renounce and seek*

for citizenship of India as provided under Section 5(1)(f)(g), the duration for such process would disentitle her the benefit of the entire education course from pre-school stage pursued by her in India and the benefit for appearing for the Pre-Medical Test which was available to her will be erased in one stroke. Neither would she get any special benefit in the country where she was born. Therefore in that circumstance when there was an assurance from a sovereign State to persons like that of the petitioner No. 1 in view of the right provided through the notification issued under Section 7B(1) of Act, 1955 and all „things were done" by such Overseas Citizens of India to take benefit of it and when it was the stage of maturing into the benefit of competing for the seat, all „such things done" should not have been undone and nullified with the issue of the impugned notification by superseding the earlier notifications so as to take away even the benefit that was held out to them.

54. *Therefore, on the face of it the impugned notification not saving such accrued rights would indicate non application of mind and arbitrariness in the action. Further in such circumstance when the stated object was to make available more seats for the Indian Citizens and it is demonstrated that seats have remained vacant, the object for which such notification was issued even without saving the rights and excluding the petitioners and similarly placed OCI Cardholders with the other students is to be classified as one without nexus to the object. As taken note earlier during the course this order, the right which was granted to the OCI cardholders in parity with the NRIs was to appear for the Pre-Medical Entrance Test along with all other similar candidates i.e. the Indian citizens. In a situation where it has been demonstrated that the petitioner No. 1 being born in the year 2003, has been residing in India since 2006 and has received her education in India, such student who has pursued her education by having the same „advantages" and „disadvantages" like that of any other students who is a citizen of India, the participation in the Pre-Medical Entrance Test or such other Entrance Examination would be on an even keel and there is no greater advantage to the petitioner No. 1 merely because she was born in California, USA. Therefore, the right which had been conferred and existed had not affected Indian citizens so as to abruptly deny all such rights. The right was only to compete. It could have been regulated for the future, if it is the policy of the Sovereign State. No thought having gone into all these aspects is crystal clear from the manner in which it has been done*

40. A perusal of the facts in Anushka Rengunthwar (supra), reveals that the OCI Card holders were provided certain direct benefits including the right to appear for the ALL India Pre-Medical Test and contest for all open seats as per the Ministry of Overseas Indian Affairs Notification dated 05.01.2009. This was modified via notification dated 04.03.2021, restricting the eligibility of their admission via appearance in such All India Entrance examinations only against seats reserved for Non-Resident Indians or supernumerary seats. The Apex Court"s decision has to be seen in the backdrop where a positive substantial right which would have otherwise directly accrued in the

favour of the affected persons was circumscribed and made more narrow in its application by a subsequent notification. The facts at hand in the present case are distinguishable from the above case inasmuch as there is an absence here of a right vested or accrued in PAPs to adopt a normal child as desired by the PAPs.

41. The learned Counsel for the Petitioners also contended that the right of a child to be adopted flows hand in hand with the right to adopt a child by PAPs and that the scheme of the Act and the rules therefore operated as an assurance from the state that the „referral of a normal" child can be legitimately expected during the compliance with the process of adoption. The Court is not in agreement with the said contention for the simple reason that the registration of the Petitioners as PAPs is still very much intact in so far as their right to adoption is concerned, i.e. as per the 2022 Guidelines read with the Act. The PAPs will be well within the zone of consideration towards the adoption of a special needs child as defined under Regulation 2(21), hard to place children as under Regulation 50, children of relatives or step children. Moreover, the arguments put forth by the counsel for the Petitioners to expand the common law understanding of the right to adopt towards a right under Article 21 of the Constitution whilst placing reliance on the Manual Theodore D"Souza, **1999 SCC OnLine Bom 690**, is not tenable as such contention has been fairly decided via the Apex Court"s observations in Shabnam Hashmi v. Union of India, **(2014) 4 SCC 1:**

> ***"16.*** *The fundamental rights embodied in Part III of the Constitution constitute the basic human rights which inhere in every person and such other rights which are fundamental to the dignity and well-being of citizens. While it is correct that the dimensions and perspectives of the meaning and content of the fundamental rights are in a process of constant evolution as is bound to happen in a vibrant democracy where the mind is always free, elevation of the right to adopt or to be adopted to the status of a fundamental right, in our considered view, will have to await a dissipation of the conflicting thought processes in this sphere of practices and belief prevailing in the country. The legislature which is better equipped to comprehend the mental preparedness of the entire citizenry to think unitedly on the issue has expressed its view, for the present, by the enactment of the JJ Act 2000 and the same must receive due respect. Conflicting view-points prevailing between different communities, as on date, on the subject makes the vision contemplated by Article 44 of the Constitution i.e. a Uniform Civil Code a goal yet to be fully reached and the Court is reminded of the anxiety expressed by it earlier with regard to the necessity to maintain restraint. All these impel us to take the view that the present is not an appropriate time and stage where the right to adopt and the right to be adopted can be raised to the status of a fundamental right and/or to understand such a right to be encompassed by Article 21 of the Constitution. In*

this regard we would like to observe that the decisions of the Bombay High Court in Manuel Theodore D'Souza [Manuel Theodore D'Souza, In re, (2000) 3 Bom CR 244] and the Kerala High Court in Philips Alfred Malvin [Philips Alfred Malvin v. Y.J. Gonsalvis, AIR 1999 Ker 187] can be best understood to have been rendered in the facts of the respective cases. While the larger question i.e. qua fundamental rights was not directly in issue before the Kerala High Court in Manuel Theodore D'Souza [Manuel Theodore D'Souza, In re, (2000) 3 Bom CR 244] the right to adopt was consistent with the canonical law applicable to the parties who were Christians by faith. We hardly need to reiterate the well-settled principles of judicial restraint, the fundamental of which requires the Court not to deal with issues of constitutional interpretation unless such an exercise is but unavoidable.

42. Therefore, it is settled that the right to adopt cannot be raised to the status of a fundamental right within Article 21 nor can it be raised to a level granting PAPs the right to demand their choice of who to adopt. The adoption process in entirety operates on the premise of welfare of children and therefore the rights flowing within the adoption framework does not place the rights of the PAPs at the forefront. There can be no expectation at the pre-referral stage towards the adoption of a normal child, in the absence of any vested rights of legislative assurance towards consideration for the same.

43. It is settled law that „legitimate expectations" flow from the accrual of rights which follows consistent past practices. However, as elucidated above, since subsequent to the stage at which the Petitioners are present, there may be multiple eventualities which may revoke their considerations towards adoption till the passage of the District Magistrate"s order under Section 58(3) read with Section 61 of the Act, such a consistent past practice which causes the accrual of a right cannot be made out here.

44. Moreover, the contention raised by the learned Counsel for the Petitioners that the level of seniority in the various state seniority lists maintained under CARA as accessible via the CARINGS portal enjoyed by the Petitioner PAPs will be lost is not of relevance in the present case. The Apex Court in Union of India and Ors v. Ankur Gupta and Ors., **(2019) 18 SCC 276,** considered the loss of Seniority due to change in circumstances causing the PAPs to shift from the adoption procedure under Section 58 for adoption by Indian Prospective Parents living in India to Section 59 for inter-country adoption due to change in citizenship status of the PAPs in the interregnum of their adoption process. It was held that despite the PAPs being in a post referral stage where a child has already been referred to the parents who were waiting to provide their assent for reservation, the change

in the underlying statutory regime even at an intermediate stage would make the removal from seniority under the prior-statutory regime valid. The relevant extracts of the said ruling are noted below:

*"**13.** It is also submitted that prior to the 2017 Regulations, there were two separate seniority lists, which were maintained under the Guidelines, 2015, which has been now made a single seniority list. Even if there is a single seniority list, now contemplated by Regulation 41, a placement in the seniority list with regard to resident Indian and non-resident Indian or overseas citizen of India are based on different yardsticks as provided in Regulations 41(2) and 41(3). Even if the common seniority list has to be utilised for the purpose of in-country adoption and inter-country adoption as per the respective categories, the difference between in-country adoption and intercountry adoption cannot be lost sight or given a go bye by the mere fact that a common seniority list is maintained. It is true that Regulation 41 or any other regulation does not contemplate a situation when a resident Indian after acquiring the foreign citizenship submits a fresh registration, what is the consequence and value of its first registration. Even though the regulations are silent and do not provide for any mechanism or any answer to such fact situation, the natural consequences of acquiring foreign citizenship shall follow. We, thus, find force in the submission of the learned ASG that the right of Respondents 1 and 2 for adoption as resident Indian is lost after Respondent 1 having acquired the US citizenship on 6-12-2016. Offer of the child to Respondents 1 and 2 was based on their first application dated 19-7-2016, in which if the clause of foreign citizenship is ignored, was in accordance with the Act and the Rules. Further, whether the factum of Respondent 1 acquiring US citizenship on 6-12-2016 should be ignored for the purposes of adoption or not is the question, which is required to be addressed and answered in these appeals.*

***14.** Sections 58 and 59 provides for two different mechanisms for adoption. As per Section 59(1), if an orphan or abandoned or surrendered child could not be placed with an Indian or non-resident Indian prospective adoptive parents 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. Thus, sixty days period has to be elapsed from the date when the child has been declared legally free for adoption. In the present case, child was declared free for adoption on 14-122017 by Child Welfare Committee, Patna, Bihar. Before expiry of sixty days, child could not have been offered for adoption to parents, who are eligible for adoption under Section 59. We are, however, not oblivious to the fact that Respondents 1 and 2 had been bona fide pursuing their applications for adoption, initially as resident Indians and thereafter even as overseas citizens of India. As per Section 57, both Respondents 1 and 2 are fully eligible and competent to adopt the child. It was under the circumstances as noticed above that the child Shomya was offered to Respondents 1 and 2, who rightly communicated their acceptance and communicated with the child and are willing to take child in adoption and to take all care and provide good education to her. We have no doubt in the bona fide or*

the competence of Respondents 1 and 2 in their effort to take the child in adoption, but the statutory procedure and the statutory regime, which is prevalent as on date and is equally applicable to all aspirants i.e. Indian prospective adoptive parents and prospective adoptive parents for inter-country adoption, cannot be lost sight. However, by virtue of Section 59(2), Respondents 1 and 2 can at best may be given priority in inter-country adoption, they being eligible overseas citizens of India and further due to consequences of events and facts as noticed above

45. It is therefore clear that the list of Seniority as maintained by CARA under the adoption framework is not sacrosanct in nature, vesting any rights of seniority. It merits modification as per the requirements of the procedure applicable to the PAPs at a given point in time as per the natural consequences of the rights or lack thereof that follow. Since the Petitioners will only henceforth be within the zone of consideration for special needs children as defined under Regulation 2(21), hard to place children as under Regulation 50, children of relatives or step children as under Regulation 5(7) of 2022, such children after the PAPs‟ are declared as eligible to adopt, will be directly available for reservation and need not undergo the child referral procedure as stipulated under Regulation 11 of the Adoption Rules 2022. Therefore, the maintenance of seniority of such parents as prayed for by the Petitioners, who are ineligible to be considered for the adoption of a „normal child‟ to maintain a list of seniority specifically for that purpose is otiose. 46. Moreover, *vide* Order dated 28.03.2023, this Court had directed the Respondent to not remove the Petitioners‟ names from the Seniority list. The Petitioners wrote various emails to the Respondent to bring to their notice that the Petitioners‟ Seniority had not been restored on the CARING portal, and a contempt petition was also filed before this Court for the same. However, it is to be noted that on 11.05.2023, learned Counsel for the Respondents submitted before this Court that the Petitioner‟s name has been restored in the waiting list maintained by CARA. Moreover, since the maintenance of a Seniority list for the Petitioners and similarly placed persons stand otiose, for the reasons discussed above, nothing survives in the contents of the contempt petition being CONT.CAS(C) 563/2023. The contempt petition is, therefore, disposed of.

47. Above and beyond all opposing contentions and considerations is the fundamental premise within which the framework of the Juvenile Justice (Care and Protection of Children) Act, 2015 and Regulations thereunder operate which is the principle of welfare and safety of the child. The best interest of the child and their right to be adopted into a suitable family

triumphs all accruals of expectations of PAPs corollary to adoption of a child. Due heed must be paid to the submissions of the counsel for the Respondents behind the policy motivation of reducing the number the number of biological children of PAPs to exclude them from the adoption of a normal child from three to two. The long wait for prospective parents including those who are devoid of even one biological child must be seen in the backdrop of a grave mismatch between the number of normal children available for adoption and the number of PAPs in expectation of adopting a normal child. A balanced approach therefore ought to be welcomed which attempts to reduce the wait for parents with a single child or devoid of even that, in anticipation of adoption and the interests of the child while being matched with a family with lesser number of already existing biological children.

48. An argument has been raised by the learned Counsel for the Petitioners contending that the CARA has decided that the 2022 Regulations will be applied retrospectively but the Steering Committee in its 34th meeting held on 15.02.2023 has taken a decision to apply Regulation 5(7) of the 2022 Regulations to all pending applications. However, this argument does not need any consideration because the learned Counsel appearing for CARA has stated that the 2022 Regulations by their very nature was applicable to all pending applications, and therefore, an attempt to distinguish between the stand taken by the CARA on the one hand and by the Steering Committee on the other cannot be accepted.

49. This Court can take judicial notice of the fact that there are a number of childless couples and parents with one child, who are interested in adopting one more child, will adopt a normal child, whereas the chances of a specially-abled child being adopted is remote. This Policy has been brought in only to ensure that more and more children with special needs get adopted. That being the intention of the Policy, the decision taken by Respondent No.2 to make it applicable for pending applications cannot be said to be arbitrary.

50. Keeping in view the holistic backdrop within which Adoption Regulations 2022 were introduced, and its operational effect thereof, this court is of the opinion that Regulation 5(7) under question is procedural in nature retroactively. It is also concluded that at the pre-referral stage of adoption, no vested right towards the adoption of a normal child has accrued to the Petitioners retroactive.

51. This Court is not inclined to entertain the present writ petitions. Resultantly, the writ petitions are dismissed along with pending application(s), if any.