

CR No 738/21

civil MA 28/21

Copy of Judgment

Presented on : 11.02.2021  
Registered on : 17.02.2021  
Decided on : 31.07.2021  
**Duration : 00 Y; 05 M; 20 D.**

**IN THE DISTRICT COURT OF AKOLA.**  
(Presided over by Mr. Vivek B. Gavhane, DJ-4)

**MJC No. 28/2021.**  
**CNR MHAK01-000496-2021.**

Janjagruti Mahila Mandal  
(Utkarsha Shishu Gruh),  
Registered office at :  
Near HP Gas Godown,  
Basera Colony, Malkapur, Akola. ...  
Through its social worker :  
Mr. Rahul Ramesh Wairale,  
Aged 33 Yrs..

**Exh. 13.**

Photo..... 09

Charges Rs..... 09

Total Rs..... 18

**Specialized**  
**Adoption**  
**Agency**  
**(SAA)**

(1) Mr. B.M. Virupakshayya s/o  
Prabhayya, Aged about 45 Yrs.,  
Citizen of India, Occu. Service,

(2) K.M. Deepa Rani w/o  
B.M. Virupakshayya,  
Aged about 37 Yrs.,  
Citizen of India, Occu. Housewife,  
Both R/o e/o Jaganath Vadki,  
Satvanarayan Peth, Jayanagar,  
Behind Satvanarayan Temple,  
Gangavati, Koppal, Karnataka 583 227

**Prospective**  
**... Adoptive**  
**Parents**  
**(PAPs)**

**Versus**

**NIL**



Judgment,



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Janjagruti Mahila + 2 Vs. Nil.

**APPLICATION U/S 58 (3) OF THE JUVENILE  
JUSTICE (CARE & PROTECTION OF CHILDREN)  
ACT, 2015 (2 OF 2016) READ WITH  
REGULATIONS 12 (2) OF THE ADOPTION  
REGULATIONS.**

.....  
Mr. C.O. Agnihotri, Adv. for the applicant/PAPs.  
.....

**JUDGMENT**

[ Delivered on : 31/07/2021 ]

A case of adoption of a child and for consequent declaration.

**Facts in brief :**

2] The PAPs [Mr. B.M. Virupakshayya & Ms. K.M. Deepa Rani Virupakshayya] have applied for adoption of the child Kajal (female, DOB 08.08.2008) and for consequential declaration, besides a request for directions to the municipal authority for issue of birth certificate of the child. The PAPs are claimed to be fit and eligible for adoption whereas, the child Kajal, who has been under the care and protection of the SAA Akola, has been declared as legally free for adoption. The PAPs and the SAA have therefore jointly approached this court for declaration of adoption u/s 58 (3) of The Juvenile Justice (Care & Protection of Children) Act, 2015.

3] The PAPs have been registered with the Child Adoption Resource Information and Guidance System under registration No. PrKa 154565272. The child Kajal has

*VR*

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been declared legally free for adoption by CWC, Akola as per sec. 38 of The Juvenile Justice Act and has been registered with the Child Adoption Resource Information and Guidance System under registration No. 270500203 for the purpose of adoption.

4] The following documents have been submitted (lists at exhs. 4, 7, 11 & 14) in support of the application.

Photographs of both the PAPs, the home study report, Copies of Aadhar Cards, PAN cards, Board Certificates, Copies of Sakala Acknowledgments issued by Karnataka police, income tax return of PAP B.M. Virupakshayya, medical examination reports of the PAPs, Marriage Certificate, reference letters, the undertaking of relatives named Mr. Venugopal & Smt. Vijayalakshmi, child study report, medical examination report of the child, Certificate Declaring the Child Legally Free for Adoption, Registration Certificate of the SAA, the minutes recorded by the Adoption Committee under schedule- XXVII, the affidavit of the authorized person of the specialized adoption agency, the pre-adoption foster care undertaking, the representation submitted by the ICSW Nagpur Unit, LIC policies of PAP B.M. Virupakshayya, Election Card of PAP B.M. Virupakshayya & the Police Verification Report produced lateron upon the directions of this court.

*V. K.*



5] A question arises, whether the adoption is in the welfare of the child Kajal ?

My answer to the said question is in the negative for the following reasons :

### REASONS

6] Verification of the PAPs as well as the child Kajal during foster care took place on 29.06.2021 via WhatsApp. The PA mother seemed to be familiar with Hindi language besides English. The child spoke in Marathi. Upon comforting the child with casual interaction, when she was asked about the members in the PA family, she said that she had a infant brother (biological son of the PAPs). The child Kajal said that she would play with her brother and also take care of him. Upon being asked about her activities and work she did in the house, she replied saying "झाडू, पोछा आणि भाडे". Considering such statements of the child, she was forthwith ordered to be produced before this Court at the hands of the D.C.P.O. for the purpose of personal interaction. However, instead of being produced by the authorities, the child was produced after 12 days by the prospective adoptive father, meaning, the PAPs were allowed 12 days to correct their impression on the child. Therefore, to ensure that the child was free from any influence before her personal interaction with the court, she was directed to be placed in the safe custody of another Ashram in Akola. However, on 29.07.2021 surprisingly,

*[Handwritten mark]*

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advocate Mrs. Kapile, (Member of C.W.C., Akola), appeared alongwith a representative of the D.C.P.O. as well as the representative of SAA. The C.W.C. member sought a chamber meeting, during which the Presiding Officer was shown a statement of the child Kajal, purported to have been recorded by the D.C.P.O., Akola while she was in another Ashram, under the directions of this court. She had been kept in a different Ashram to ensure that no body, concerned with this case approach her so as to remove her from any undue influence before her personal interaction with this court. In spite of the said position, the D.C.P.O. had approached the child and recorded her statement pertaining to the treatment received by her in foster care. This unauthorized act of running a parallel inquiry into the aspects, which the court was going to inquire with the child soon, is nothing but hijacking the judicial process of the District Court, thereby attempting to create record in favour of the PAPs. (It turns out that the Adoption Committee that approved suitability of this adoption was chaired by none other than the same DCPO). Statement of Kajal was not only recorded but also brought to the knowledge of this court (without actually filing it on record, as stated). The attempt of this court to keep the child away from any influence was thus fouled for the second time. This interference made the face to face interaction with the child infructuous & her 'wish', meaningless. Hence, further personal interaction was dispensed with vide orders dt. 29.07.2021 below exh.1.





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7] Since there is no provision of recording statement of children during interaction, as a matter of abundant precaution, this court maintains notes of the verification/interaction taken place in every adoption proceeding. A copy of such notes is at Article-A.

8] Upon a careful scrutiny of the document filed on record it was found that the Home Study Report of the PAPs (schedule-VII) could not have been more casual. The very basic information (point no.1) about what motivated the applicants to adopt a child, has been left blank. The said information was the foundation of the adoption proceeding but, skipped by the authority. Similarly, information with regard to point no. J (3) relating to legal guardianship of child in the event of unforeseen misfortune, medical condition of the PAPs, psychological condition of the PAPs, medication of the PAPs etc. is also blank. The report however, categorically states, in the recommendation column, that the PAPs are orthodox, who believe in ethic and traditions.

9] How-so-ever busy the SAA or the other authorities in Akola may have been, ensuring police clearance certificate of the PAPs was the least they could have checked seriously. It is not that there were no police papers on record at all. The papers filed on record were mere acknowledgments of the applications made for police verification. These acknowledgments have been referred to in the index (list of documents) as '**police copy**' instead of

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police verification or 'police clearance certificate' as usually mentioned in all other applications filed by this very SAA. In other words, had this court not scrutinized the papers in detail, the absence of police clearance certificate would have gone unnoticed under a belief that the same was on record, like what happened with the scrutiny officer of ICSW Nagpur. It would have happened because of the misleading index entry drafted carefully to ensure that there is no false information in the index, while at the same time, giving an impression that police verification has been done. All this shows that both the applicants (PAPs as well as SAA) knew ~~that~~ what they had filed was not the required document. They appear to have taken their chance of securing orders in absence of police verification. No doubt, the court pointed out the said position and caused the applicants to file a police verification on record.

10] The reason why the flaws pointed out in above two paragraphs (Nos. 8 & 9) are being discussed in this judgment is to show the approach of the SAA which appears to be interested in simply securing compliance of documentation, without realizing the fact that the non adversarial nature of the proceedings is all the more onerous on the SAA. In other words, the provision of making joint application, increases the responsibility of the SAA and expects it to be more cautious in checking the background of the PAPs. In fact, the authorities involved in the process, should not be skipping any opportunity to suspect and cross check the information which is either not



forthcoming in usual manner or is unexpectedly highlighted. [It is uncertain if Kajal's schooling has continued during the 6 months of her foster care].

11] Thus, the statement of the child Kajal (who is 13 yrs. old) that during her foster care, she has been doing household chores like sweeping and wiping floor, washing utensils etc., coupled with the fact that the PAPs already have a biological son who is hardly 2½ years old, makes me wonder if the adoption is really going to serve the best interest of Kajal ! At the age of 13 years, Kajal may be big enough to do heavy household work but she is also small enough to be vulnerable to manipulation. Adopting and raising a child from the stage of infant and then making it work, may be justified in the name of 'orthodox culture' but adopting a child which is already of the age of doing household chores and then making such child do such chores, in the family that already has a biological infant child, is a different story altogether. Interestingly, the Home Study Report, which is blank on the most important and foundational information relating to adoption, bears a categorical mention about the PAP family being 'orthodox'. As if, it is some sort of pre-emptive disclosure to justify the environment in the house. It also specifies that a grown up child would be suitable. Who knows what implications the word 'orthodox' would have on the child in future, when it comes to her rights.

*[Handwritten signature]*



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12] Thus, it is not the household work alone or presence of infant biological child of the PAPs alone that concerns this court. It is the co-existence of both these aspects in one case, coupled with the fact that the PAPs want to adopt a grown <sup>up</sup> child of 13 yrs., that I think, this adoption may not be in the best interest (welfare) of Kajal. On top of it, the unwarranted interference caused by the authorities (as observed in para 6) made further personal interaction with the child infructuous. In fact the petition appears to have been filed after (expiry of the period specified in) Rule-12 of The Adoption Regulation 2017. If all these aspects are ignored and this adoption is allowed, just because law provides for adoption, then the interest of Kajal would be jeopardized. It is a risk this court cannot afford to take. Perhaps this case is the living example of the situation, the legislature must have anticipated while involving Civil Courts in the process of adoption. Resultantly, the adoption application stands dismissed.

(Vivek B. Gavhane)  
District Judge-4, Akola.

DI. 31.07.2021

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खरी नक्कल

प्रबंधक  
जिल्हा व सत्र न्यायालय अकोला

17/08/21

- 1) नकल करीता अर्ज केल्याची तारीख ..... 02/08/21 } कोन  
2) अर्ज पूर्ण झाल्याची तारीख ..... 02/08/21 } कोन  
3) अर्जदारास नक्कल घेऊन जाण्यास दिलेली शेवटची तारीख ..... 15/08/21 - लेय  
4) नक्कल देण्याकरीता संपादन झाल्याची तारीख ..... 11/08/21 - डाकरा  
5) नक्कल दिल्याची तारीख ..... 17/08/21 - सतव

सहायक अधिकांक  
जिल्हा अभिलेखागृह, जिल्हा न्यायालय  
अकोला

17/08/21