

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12/08/2008

CORAM

THE HONOURABLE MR. JUSTICE K. CHANDRU

WRIT PETITION NO.3080 of 2008

M.P.(MD).No.1 of 2008

B.Selvaraj ... Petitioner

Vs.

1.The Commissioner,  
Madurai City Municipal Corporation,  
Madurai.

2.Grace Kennet Foundation,  
8,Kennett Road,  
Madurai-625 016. ... Respondents

PRAYER

Writ Petition filed under Article 226 of the Constitution of India  
praying for the issuance of a Writ of Mandamus to direct the Commissioner,  
Corporation of Madurai, the first respondent either to furnish non-availability

certificate of Registration of Birth of the minor child YOGITHA @ VIJAYALAKSHMI  
or to register the date of Birth of the minor girl based on the Birth  
Certificate issued by the second respondent in the alternative to direct the  
Judicial Magistrate Court No.5, Madurai to entertain the petition under Section  
13(3) of Registration of Births and Deaths Act 1969 of the minor girl YOGITHA @  
VIDYALAKSHMI for Registration of Birth and pass orders based on the particulars  
and documents furnished by the petitioner within a short date and consequential  
direction to the first respondent herein to furnish the copy of Birth  
Certificate to the petitioner herein so as to enable the petitioner to admit the  
minor girl in the school for the ensuing academic year 2008-2009.

!For petitioner ... Mr.K.Rajkumar

^For R.1 ... Mr.M.Sureshkumar

For R.2 ... No appearance

:ORDER

The petitioner seeks for a direction to the first respondent Corporation  
either to grant non-availability certificate of the registration of birth of his  
minor daughter minor YOGITHA @ VIDYALAKSHMI or to register the date of birth of  
his daughter, based upon the birth certificate issued by the second respondent.

2.The second respondent is an N.G.O. maintaining an orphanage for  
destitute children and it has also been recognised as an adoption agency for  
giving in adoption of eligible children maintained by them. The second  
respondent was in possession of one girl child who was relinquished by her

biological parents. The second respondent after doing necessary paper work, found the said girl child was fit for adoption.

3.The petitioner and his wife S.Karthigaiselvi, as they could not get an issue even after 14 years of marriage applied to the second respondent expressing their desire to adopt a child.

4.After doing necessary home study by a social worker, the second respondent entrusted a girl child by name YOGITHA @ VIDYALAKSHMI for the foster care of the petitioner and his wife.

5.The second respondent was satisfied with the upbringing of the child. The petitioner and his wife, therefore, filed an application before the first Additional District Judge, Madurai under Sections 2,6,7 read with 9(4) of the Hindu Adoptions and Maintenance Act,1956. (for short 'HAMA'). The said application in H.A.O.P.No.47 of 2007 was for grant of permission to take the minor girl child in permanent adoption from the first respondent. At the time of filing the application, the petitioner had also filed a birth certificate dated 30.06.2004 of the minor child showing her date of birth as 23.04.2004 and it was also marked as Ex.P.4, before the learned First Additional District Judge, Madurai.

6.The learned Judge took up the application on his file on 25.08.2004. He heard the matter finally on 14.7.2005. The matter has taken more than 11 months for the learned Judge to hear the case. Subsequently, after five months, the learned Judge passed the final orders on 20.01.2006. The learned Judge also had the benefit of the report of the scrutiny agency by name Indian Council for

Child Welfare (ICCW). It is not known as to why such a simple application , that too, in a sensitive matter must take more than 17 months for its disposal.

7. Be that as it may in the order passed by the learned District Judge, the date of birth of girl child was noted as 23.04.2004 on the strength of the certificate produced by the second respondent. The details furnished in the O.P. was also found to be correct as per the report of the scrutiny agency. Normally, the matter should have rested therein. The date of birth entered by the District Judge, in his order should be acceptable to any agency which require the girl's age.

8. But, however, for reasons best known to the petitioner he filed an affidavit before the Judicial Magistrate No.V, Madurai seeking for a direction to the respondent Corporation to make an entry of the name of the petitioner's child in the Register of Birth maintained by the Madurai Corporation and for the issuance of a birth certificate accordingly. This application was stated to have been filed under Section 13 (3) read with Rule 9(3) of the Registration of Births and Deaths Act, 1969 and the Rules framed thereunder. The petitioner also wrote a letter dated 3.1.2008, reminding the Commissioner to furnish him the Birth Certificate required by him. Since the same was not forthcoming, he has filed the present writ petition seeking for the direction as noted earlier.

9. In doing so, the petitioner placed reliance upon the circular issued by the Government of India, dated 14.07.1999 which was in turn circulated to all the Registrar's of Birth and Death by the State Government. Paragraph:2 of the said circular reads as follows:-

"2. In pursuance to the Supreme Court judgments during 1984 to 1986 in the writ

petition mentioned above, the Govt. of India in July, 1989 issued certain guidelines to facilitate the implementation of the norms, principles and procedures relating to adoption of children. Subsequent to a number of clarifactory judgements on the same case delivered by the Supreme Court between 1989 to 1991, the Government constituted a Task Force under the Chairmanship of Justice (Retd.) P.N. Bhagwati former Chief Justice of India to revise the earlier guideline. The report of the Task Force which was submitted in August, 1993 has been accepted by the Government and a Revised Guidelines for Adoption of Indian Children has been issued for information which inter-alia includes a set of specific procedures for registration of births of adopted children and issuance of birth certificate thereof. The salient features of the guidelines are given below:-

(i) An application is to be made by the agency to the local Magistrate along with any other relevant material in the form of an affidavit made by responsible person belong to the agency.

(ii) The Magistrate is to pass an order approving the particulars to be entered in the birth certificate and same is to be issued by the registrar of the area where the child was found.

(iii) The Chief medical Officer of the District is to be involved in ascertaining the age and the Magistrate would ordinarily act on the certificate granted by him.

(iv) Normally, the process should be initiated before the adoption is finalised, so that the particulars of adoptive parents are available for inclusion in the certificate.

(v) If the child has attained three years of age and adoption has not been finalized, the agency is to obtain a birth certificate, if found necessary, after informing the court in the form of an affidavit giving the following

details:-

- a) that to the best of its knowledge the child has attained the age of three years;
- b) that his/her adoption has not been finalised and is likely to take some time or may never be finalized in all probability.
- c) that a certificate is required for education/medical/legal purposes or any other reasonable purpose which may be specified; and
- d) that person/persons would stand in as local parents to the child (this person/these persons should be a reasonable person/responsible persons belonging to the placement agency) till such time as he/she attains majority, or is adopted, whichever is earlier.
- vi) A school birth certificate is to be issued after adoption to provide for a change in name/names of the child and the adoptive parent/parents after obtaining an order to that effect from the Court which had passed order for, issuing the original birth certificate.

10. Though the object of the said circular is laudable, as to how far this will fit into the frame work of the Registration of Births and Deaths Act, 1969 is a doubtful question. The Act provides for one time registration of a birth of a child and also provides for delayed registration under Section 13 and inclusion of the name of the child subsequent to the registration of the birth under Section 14. Section 15 provides for correction or cancellation in case of erroneous or fraudulent or improper entry. The circular itself indicates in para:4, which is as follows:-

"4. it may, however, be noted that the said guidelines pertain to only those children who are sponsored for adoption by the orphanages, Child Welfare agencies and other like agencies."

11. Even in case of a child surrendered by the parents, the date of birth will be known to the adoption agency. May be in exceptional cases where there is an abandoned child or a child rescued from being trafficked, the exact date of birth may not be known. Even in those cases, the agency will have to make efforts to ascertain the approximate age or date of birth of the child and in such cases, the circular referred to above will bring some relief.

12. Even then the circular cannot modify the procedure prescribed under the R.B.D. Act. Further, the RBD Act that provides for Registration only once. If the child's birth was noted elsewhere at the time, the child's birth by the information provided by its biological parents or by any other persons as required under law, then the RBD Act do not provide for a second registration. That was not the intent and purpose of the Act. Under the RBD Act, a child cannot have two registrations. To give effect to the circular of the Government of India, it requires a parliamentary amendment. Therefore, in order to avoid, such a lacunae and uncertainty the best way out is to direct the adoption agency to ascertain the age either from the biological parents, when surrendering the child. In case of an abandoned child to get a qualified medical doctor's opinion after conducting relevant test and to fix an approximate date of birth. Such certificates produced before the Court empowered to hear cases arising out of HAMA or under the GAWA (Guardians and Wards Act).

13. Therefore, the learned Judges in the District Courts who are dealing with adoption cases must make a specific recording of the date of birth of a child to be given in adoption in the operative portion of their orders. They must also make a general declaration in their order that the date of birth as

recorded in the order of the Court relating to the child should be acted upon by all authorities concerned including the Educational and Revenue and other authorities.

14. Such direction given by the District Courts will go a long way by cutting the red-tape and avoid bureaucratic hurdles and will bring some solace to the adoptive parents.

15. In the present case, the learned District Judge had not given any such direction in his order dated 20.01.2006 in H.A.O.P.No.47 of 2007. Therefore, this Court is constrained to grant a declaration that the petitioner's minor daughter named YOGITHA @ K.S.VIDYALAKSHMI's date of birth is 23.04.2004 for all practical purposes. All authorities shall accept the same as date of birth wherever it is required to be furnished and any deviation or defiance shall be viewed seriously.

16. Before parting with this case, it must be mentioned that some of the District Courts which are processing adoption applications are not showing enough sensitivity to the issue and at times, they are lethargic. Even, in the present case, a simple application under Section 9(4) had taken 17 months for reaching its finality. The learned District Judges must realise that they are dealing with the future life of a child and must show sufficient care and promptness. It is also brought to the notice of this Court, that many a times, the application involving adoption are heard in the open Court along with other criminal and civil cases. No special attention is shown to such cases and often times, the adoptive parents are made to attend the Court frequently like any other litigants. Instead of bringing cheers, frequent adjournments add misery

to those parents who require strength and support from all concerned in their unique endeavour. They are also made to bring the infant child at every adjournment to the Court.

17. Taking note of these developments, the following directions are issued to all the District Courts, which are dealing with original petition either under HAMA or GAWA.

(i) A decision in an application filed for adoption in the District Court should not take more than four months.

(ii) The Court should not hear the matters in the Open Court, but preferably in the chambers of the learned judges or with special timings in the open Court itself.

(iii) There should not be any frequent request to produce before the Court the child to be given in adoption and the order for producing the child should be made only once.

(iv) The adoptive parents must be treated with respect and due courtesies must be shown to them. It must be understood that they are not litigants in any adversarial proceedings before the Court.

(v) In the operative portion of the order passed by the District Court, it must necessarily indicate the Date of Birth of the adopted child and it must direct all authorities concerned to accept the said date of birth for all practical purposes.

18. In view of the guidelines issued in this case, copies of the judgment shall be sent by the Registry of this Court to all the Principal District Judges in the State of Tamil Nadu and Union Territory of Puducherry with a direction to them to circulate the copies to all the Sub-ordinate Judges.

19.The writ petition is disposed of accordingly. Consequently, connected  
M.P. is closed. No costs.

ssm

To

1.The Commissioner,  
Madurai City Municipal Corporation,  
Madurai.

2.Grace Kennet Foundation,  
8,Kennett Road,  
Madurai-625 016. 