

PETITIONER:
SUMANLAL CHHOTALLAL KAMDAR ETC.

Vs.

RESPONDENT:
MISS ASHA TRILOKBHAI SHAH ETC.

DATE OF JUDGMENT 09/05/1995

BENCH:
SAHAI, R.M. (J)
BENCH:
SAHAI, R.M. (J)
HANSARIA B.L. (J)

CITATION:
1995 AIR 1892 1995 SCC (3) 700
JT 1995 (5) 165 1995 SCALE (3) 553

ACT:

HEADNOTE:

JUDGMENT:
THE 9TH DAY OF MAY, 1995

Present:

Hon'ble Mr. Justice R.M.Sahai
Hon'ble Mr. Justice B.L.Hansaria

Mr. P.H. Parekh, Ms. Smrita Mishra, Mr. N.K.Sahoo, Advs. for
the appellants.

Mr. S.Ganesh, Mr. C.H.Patel, Ms. Reema Bhandari, Mr.
M.N.Shroff, Mr. K.V.Sreekumar and Ms. Kamini Jaiswal, Advs.
for the Respondents.

JUDGMENT

The following Judgment of the Court was delivered:

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. 5403-04 OF 1995

[Arising out of S.L.P.(C) Nos.3662-63 of 1989]

Sumanlal Chhotallal Kamdar etc. Appellants

Versus

Miss Asha Trilokbhai Shah etc. Respondents

JUDGMENT

R.M. Sahai, J.

An important question in relation to the adoption of infants from orphanage or ashrams by foreign nationals is raised by the appellants, who claim to be social workers. They approached the High Court, invoked its appellate jurisdiction against the order passed by the District Judge, Rajkot, allowing the application filed by Superintendent, Kathiawar Nirashrit Balashram as Power of Attorney holder of a Norwegian couple under Section 7 of the Guardians and Wards Act, 1890 and appointing the Norwegian couple as the guardian of the child with certain conditions mentioned in the order. By the time the appeal came up for hearing, the law of adoption by foreign nationals was streamlined by this Court in two decisions: Lakshmi Kant Pandey v. Union of India (1984) 2 SCR 795 and Laxmi Kant Pandey v. Union of India & Anr. (1985) Supp. 3 SCR 71. The learned Single

Judge, therefore, after examining the conditions imposed by the District Judge held that the guidelines laid down by this Court had been scrupulously followed. The order was maintained in appeal as well.

The guidelines laid down by the Court are quite exhaustive. What is urged is that they are not being carried out either in letter or spirit. It is, therefore, necessary to reiterate the guidelines laid down by this Court in the case of Lakshmi Kant Pandey (supra) and further make it clear that whenever an application is filed for permission to adopt a child by a foreign national then the guidelines would be strictly adhered to. The authority permitting adoption should explain to the biological parent of the child about the nature and effect of the adoption and the possible permanent loss of contact from the child. In absence of a finding that the authorised officer took precaution to explain the effect of adoption it may be rendered infirm. This is demonstrated by the facts of this case as the Superintendent, as holder of Power of Attorney of the Norwegian couple, became the applicant and as Superintendent of the Ashram gave the child in adoption. That was not proper. It was the duty of the Superintendent to have contacted the mother and the father, if they were known, and to explain to them the effect of adoption unless they were not available. However, we do not interfere with the orders passed by the courts below, but as indicated above, the guidelines have to be enforced strictly, as violation of the same may not only render the adoption infirm, but may lead to proceeding against the person infringing the same.

The appeals are thus disposed of by reiterating the guidelines laid down by this Court and stating that any violation of these or non-compliance may lead to adoption being declared invalid and expose the persons concerned to strict action including prosecution.