

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

PIL no. 09/2013 and connected matters

Court on its own Motion

.....Petitioner(s)/Appellant(s)

Through: Mr. Iftikhar Hassan Samoon, Advocate in
CM Nos. 1218/2023 & 1219/2023
Mr. Manzoor A Dar, Adv.
in CCP(S) no. 199/2022

V/s

State and others

..... Respondent(s)

Through: Mr. D. C. Raina, Advocate General with
M/s. Faheem Shah, GA, Illyas Laway, GA
and Furqan Yaqub, GA

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE.
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

ORDER
27.03.2023

Learned Advocate General appearing on behalf of respondents submits that so far as the honorarium/remuneration of the members of the JJBs and CWCs are concerned, he shall seek requisite instructions in the matter. He may do so by or before next date of hearing.

List on 03.04.2023.

CM No. 1218/2023 in PIL 09/2015

This is an application filed by Dhyanesh Bhatt and Vaibhavi Kulkarni, seeking clarification with regard to validity of Legally Free Certificate issued by Child Welfare Committee for adoption of babies on 24.01.2023. The applicants submit that they have registered themselves with the Child Adoption Resource Authority, which is a statutory body of Ministry of Women and Child Development, Government of India. The applicants had given an option for adoption of a child of any gender from anywhere in India.

The applicants, as they claim, were registered by Child Adoption Resource Authority in the month of August, 2019. All the formalities were completed and even the Legally Free Certificate for adoption was granted in favour of the applicants by the Child Welfare Committee, Srinagar on 24.01.2023.

It is submitted that the office of Phulwari (Cradle Baby reception Centre) SAA, Srinagar, who had already delivered the babies to the applicants for foster care, later on withdrew the babies on the ground that the CWC, which had issued Legally Free Certificate of the babies was not validly constitute as having been dissolved on 28.08.2022, and therefore, all orders made by CWC after that date were not valid. It is in this background, applicants have come to this Court, seeking clarification as to whether the CWCs, which were dissolved on 28.08.2022, are competent to issue Legally Free Certificates of the babies on the strength of the interim order passed by learned Single Judge of this Court on 06.09.2022 in WP(C) no. 1748/2022.

We have heard learned counsel for the applicant and perused the material on record. We have gone through the interim order dated 06.09.2022, passed by the Single Judge of this Court and are of the view that JJBs and CWCs which were dissolved on 28.08.2022, are in position in terms of the order of the Status quo passed by the learned Single Judge and therefore, exercise all the powers conferred upon CWCs under the Juvenile Justice Act, 2015 and the rules framed there under.

In that view of the matter, the Legally Free Certificate issued in favour of the babies sought to be adopted by the applicants cannot be said to be invalid for that reason.

For the forgoing reasons, this application is allowed and it is clarified that Legally Free Certificate of the babies issued by CWS, Srinagar dissolved on 24.08.2022, are legally valid having been issued by the CWC, Srinagar, which is continuing pursuant to the interim directions passed by learned Single Judge dated 06.09.2022 in WP(C) no. 1748/2022.

We however, make it clear that apart from the above, we have not expressed our opinion on merits of any other matter in connection with the adoption of the babies by the applicants.

CM disposed of.

CM No. 1219/2023 in PIL 09/2015

This is an application filed by Vaskar De and Haimanti Dhua, seeking clarification with regard to validity of Legally Free Certificate issued by Child Welfare Committee for adoption of babies on 24.01.2023. The applicants submit that they have registered themselves with the Child Adoption Resource Authority, which is a statutory body of Ministry of Women and Child Development, Government of India. The applicants had given an option for adoption of a child of any gender from anywhere in India.

The applicants, as they claim, were registered by Child Adoption Resource Authority in the month of August, 2019. All the formalities were completed and even the Legally Free Certificate for adoption was granted in favour of the applicants by the Child Welfare Committee, Srinagar on 24.01.2023.

It is submitted that the office of Phulwari (Cradle Baby reception Centre) SAA, Srinagar, who had already delivered the babies to the applicants for foster care, later on withdrew the babies on the ground that the CWC, which had issued Legally Free Certificate of the babies was not validly constitute as having been dissolved on 28.08.2022, and therefore, all orders made by CWC after that date were not valid. It is in this background, applicants have come to this Court, seeking clarification as to whether the CWCs, which were dissolved on 28.08.2022, are competent to issue Legally Free certificates of the babies on the strength of the interim order passed by learned Single Judge of this Court on 06.09.2022 in WP(C) no. 1748/2022.

We have heard learned counsel for the applicant and perused the material on record. We have gone through the interim order dated

06.09.2022 passed by the Single Judge of this Court and are of the view that JJBs and CWCs which were dissolved on 28.08.2022, are in position in terms of the order of the Status quo passed by the learned Single Judge and therefore, exercise all the powers conferred upon CWCs under the Juvenile Justice Act, 2015 and the rules framed there under.

In that view of the matter, the Legally Free Certificate issued in favour of the babies sought to be adopted by the applicants cannot be said to be invalid for that reason.

For the forgoing reasons, this application is allowed and it is clarified that Legally Free Certificate of the babies issued by CWS, Srinagar dissolved on 24.08.2022, are legally valid having been issued by the CWC, Srinagar, which is continuing pursuant to the interim directions passed by learned Single Judge dated 06.09.2022 in WP(C) no. 1748/2022.

We however, make it clear that apart from the above, we have not expressed our opinion on merits of any other matter in connection with the adoption of the babies by the applicants.

CM disposed of.

**(PUNEET GUPTA) (SANJEEV KUMAR)
JUDGE JUDGE**

Srinagar
27.03.2023
“Imtiyaz”