

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30<sup>TH</sup> DAY OF SEPTEMBER 2020

BEFORE

THE HON'BLE MR. JUSTICE JOHN MICHAEL CUNHA

WRIT PETITION NO.511 OF 2020 (GM-RES)

BETWEEN:

1. MR. BALAKRISHNA GOTTIPATI

2 . MRS RAMYASHREE GOTTIPATI

...PETITIONERS

(BY SRI: KARAN JOSEPH, ADVOCATE)

AND

NIL

...RESPONDENT

(BY Ms. SYEDA SABA, AMICUS CURIAE,  
APPOINTED VIDE COURT ORDER DATED 14.01.2020)

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THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE JUDGMENT DATED 14.10.2019 PASSED BY THE XIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, MAYO HALL UNIT, BENGALURU IN MISCELLANEOUS PETITION NO.25030/2019 AT ANNEXURE-A AND DECLARE THAT THE PETITIONER NO.2 IS THE LEGALLY ADOPTIVE MOTHER OF MASTER TANUSH GOTTIPATI FOR ANY AND ALL PURPOSES HEREINAFTER.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 21.09.2020 AND COMING ON FOR PRONOUNCEMENT OF ORDER, THROUGH VIDEO CONFERENCE, THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

The rejection of petition filed by the petitioners under sections 56 and 61 of The Juvenile Justice (Care and Protection of Child) Act, 2015 r/w Regulation 52(4) and 55(2) of the Adoption Regulations, 2017 by the learned XIII Addl. City Civil and Sessions Judge, CCH-22, Bengaluru is challenged in this petition filed under Article 227 of the Constitution of India.

2. The facts emanate from the records are that the petitioner No.1 is the biological father of Master Tanush Gottipati. When the minor was barely a year old, his mother Mrs. Sundeepthi Gottipati wife of petitioner No.1 passed away on 7.02.2010 in a road accident. Thereafter, petitioner No.1 married petitioner No.2 on 23.11.2012. Since then, petitioner No.2 looked after the minor as her own child and wished to recognize her as the legal mother by way of adoption of the minor child. With this end in view, petitioners registered their names in the Child Adoption Resource Information and Guidance System(CARINGS) vide registration No.RLK201811025934. As per regulation 52(1), they also provided permission for adoption before the Child Welfare Committee, Bengaluru (Annexure-E) and thereafter filed Miscellaneous petition No.25030/2019 before the learned XIII Addl. City Civil and Sessions Judge, Bengaluru seeking *inter alia* that petitioner No.2 be declared as minor's adoptive mother alongwith petitioner No.1 i.e., biological father. Before the learned Sessions Judge, petitioner No.1 filed his affidavit in lieu of his examination-in-chief as PW-1 and petitioner No.2 filed her affidavit in lieu of her examination-in-

chief and produced 12 documents as Exs-P1 and P12. However, the learned Trial Judge by the impugned order dated 14.10.2019 dismissed the petition. The reasoning assigned by the learned Sessions Judge find place in para 11 of the impugned order which is extracted hereinbelow:-

11. *"In the present case on hand the 1<sup>st</sup> petitioner who is a natural and biological father of the child 'Tanush Gottipati' he is fit, hale and healthy and he has resource to take care of his natural son. In view of petitioner No.1 married 2<sup>nd</sup> petitioner and she is step mother of 'Tanush Gottipati' and she can show her love, affection and extend care and protection towards her step son 'Tanush Gottipati'. Therefore when the biological father of Master 'TANUSH GOTTIPATI' who is petitioner No.1 is capable to take care of his son, the appointment of petitioner No.2 as adoptive parent of the said Master 'TANUSH GOTTIPATI' is not necessary. Moreover petitioners in their petition have not mentioned the reasons for giving the said Master 'TANUSH GOTTIPATI' in adoption to petitioner No.2, who is already mother in relation i.e., step mother of said Master*

*'TANUSH GOTTIPATI'. Therefore petitioner No.1 who is biological father of Master 'TANUSH GOTTIPATI' is capable of taking care of his son show love and affection, provide him good education to bring him up. Hence it is not proper for petitioner No.1 to give his natural son in adoption to step mother petitioner No.2 since already petitioner No.2 is step mother of Master 'TANUSH GOTTIPATI' . Hence, it is not proper to pass order for appointment of petitioner No.2 as adoptive parent of Master 'TANUSH GOTTIPATI'. Hence petitioners are not entitled for the relief sought in the petition. Hence I answer point Nos. 1 and 2 in Negative.*

The said order is impugned in this petition.

3. I have heard the learned counsel for petitioner Sri. Karan Joseph and learned Amicus Curiae Ms.Syeda Saba and have considered the provision of law relied on by learned counsel and the decision of the Hon'ble Supreme Court in the case of *STEPHANIE JOAN BECKER v. STATE AND OTHERS, (2013) 12 SCC 786 and PHAREZ JOHN ABRAHAM(DEAD) BY LRs. V. ARUL*

*JOTHI SIVASUBRAMANIAM K. AND OTHERS, 2019 SCC ONLINE SC 819.*

4. Sections 56 and 61 of the Juvenile Justice Act makes provision for adoption by Step parent. Section 56(2) which is relevant for our purpose is extracted hereinbelow-

*Section 56. "Adoption- (1) xxxxx*

*(2) Adoption of a child from a relative by another relative, irrespective of their religion, can be made as per the provisions of this Act and the adoption regulations framed by the Authority."*

*Section 61. "Court procedure and penalty against payment in consideration of adoption.- (1) Before issuing an adoption order, the court shall satisfy itself that -*

*(a) the adoption is for the welfare of the child;*

*(b) due consideration is given to the wishes of the child having regard to the age and understanding of the child; and*

*(c) that neither the prospective adoptive parents has given or agreed to give nor the specialised adoption agency or the parent or guardian of the child in case of relative adoption has received or agreed to receive any payment or reward in consideration of the adoption, except as permitted under the adoption regulations framed by the Authority towards the adoption fees or service charge or child care corpus.*

*(2) The adoption proceedings shall be held in camera and the case shall be disposed of by the court within a period of two months from the date of filing."*

5. Regulation 52 of Adoption Regulation, 2017 deals with procedure of making an application which reads as under:-

*52. "Adoption By Step-Parent-(1) The couple(step-parent and one of the biological parents) shall register in Child Adoption Resource Information and Guidance System with the required documents as mentioned in Schedule VI.*

*(2)Consent of the biological parent(s) and the step-parent adopting the child or children shall be as provided in the Schedule XX (refer instruction in Schedule XX).*

*(3) In case the custody of the child is under litigation, the adoption process shall be initiated only after the finalization of the case by the court concerned.*

*(4) The biological parent and the step-parent shall file an application in the Family Court or District Court or City Civil Court as the case may be, as per format given at Schedule XXXII.*

*(5) The applicants shall obtain a certified copy of the adoption order from the court concerned and furnish a copy of the same online to the Authority through Child Adoption Resource Information and Guidance System."*

Regulation 55 deals with the legal procedure as under:- That-

*(1) "The prospective adoptive parents, who intend to adopt the child of a relative as defined in sub-section (52) of section 2 of the Act, shall file an application in the competent court under sub-section 2 of section 56 or sub section (1) of section 60 of the Act in case of in-country relative adoption or inter-country relative adoption, respectively, alongwith a consent letter of the biological parents as provided in Schedule XIX and all other documents as provided in Schedule VI.*



*(2) The biological parent and the step-parent, who intend to adopt the child or children of the biological parent, shall file the adoption application as provided in Schedule XXXII, in the court concerned of the district where they reside, along with consent letter of the biological parents and the step-parent adopting the child or children, as provided in the Schedule XX and all other documents as provided in Schedule VI.*

*(3) The prospective adoptive parents, in case of inter-country relative adoption, shall file the adoption application in the court concerned of the district, where the child resides with biological parents or guardians as provided in Schedule XXXI.*

*(4) The prospective adoptive parents shall file an application in Family Court of District Court or City Civil Court as the case may be.*

*(5) Before issuing an adoption order, the court shall satisfy itself of the various conditions stipulated under section 61 of the Act, and regulation 51 to 56, as the case may be."*

5. These provisions do not prescribe any bar on the step-parent to adopt the child or children of one of the biological parent. It only requires scrupulous compliance of the procedure

contemplated under the Juvenile Justice (Care and Protection of Children) Act, 2015 and Adoption Regulations, 2017 and requires the Court to satisfy itself that the various conditions stipulated under section 61 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and Regulation 52 and 56 of Adoption Regulations, 2017, as the case may be, are followed before issuing an adoption order. The jurisdiction of the court and the safe-guards that are required to be followed by the persons intending to adopt the child are clear and well-defined and there is no scope for the court to interpret any of these legal provisions.

6. In the instant case, the material on record indicate that the petitioners have complied with all the above legal requirements and have produced the consent of biological parent alongwith step-parent to obtain the permission of the Child Welfare Committee for Adoption of Child by biological parent and step-parent as reflected in Annexure-E. Scrutiny report was filed by the Karnataka State Council for Child Welfare(Annexure-G),

Bengaluru which states interalia as follows:-

1. *"That the petitioners have filed an application for adoption of minor in question "Tanush Gottipati" male born on 23.02.2009.*

2. *That the petitioners 1 and 2 are aged around 39 years and 28 years respectively. The first petitioner was born on 17.04.1979 and the second petitioner was born on 25.06.1990. They were married on 23.11.2012. The first petitioner is employed as a Software engineer at M/s Sap Labs Pvt. Ltd, Bangalore. His monthly income is Rs.2,19,708/-. The second petitioner is working as a teacher at Valley School, KFI, Bangalore. He monthly income is Rs.29,123/-. Apart from this, they have sufficient savings and their financial position is sound to look after a child whom they wish to adopt.*

*That the 1<sup>st</sup> petitioner is the biological father of the above named minor, Tanush Gottipati. The 2<sup>nd</sup> petitioner is the step mother of the child and the legally wedded wife of 1<sup>st</sup> petitioner. The first petitioner was previously married to late Mrs. Sundeepi Gottipati, and their marriage was solemnized on 21.04.2007. Unfortunately Mrs.*

*Sundepthi Gottipati passed away in a road accident on 07.02.2010.*

*Petitioner 1, the biological father of the child has expressed that he would like Petitioner 2 to legally adopt his son, so that the minor becomes the adopted child of Petitioner 2 and has all the rights and privileges as an adopted child. Petitioner 2 also appeared committed to adoption the minor.*

*3. That the Karnataka State Council for Child Welfare has closely reviewed the Documents furnished and they are up to the mark as per our enclosed checklist. However, the following documents were found wanting and were furnished by Petitioner 3 to our satisfaction.*

*a) Photographs of the family and child.*

*4. That the Scrutiny Social worker of Karnataka State Council for Child Welfare has personally seen the minor who is a picture of good health. He has been raised by both Petitioner 1 and 2, as their child since the day Petitioner 1 married Petitioner 2 on 23.11.2012. The child has a good rapport with Petitioner 2.*

*5. That the Karnataka State Council for Child Welfare as the Scrutiny Agency recommends that the petitioners are suitable on the basis of health, income and capacity to care for the child and provide education and a safe home. The minor has been looked after well and seems to enjoy a good rapport with petitioners 1 and 2. The minor regards petitioner 2 as his mother.*

*The adoption of the child by the step mother, Petitioner 2 is in the best interest of the child, as that will create a legal relationship between Petitioner 2 and the minor. The child will become the lawful child of his adoptive parents with all the rights, privileges and responsibilities that are attached to a biological child."*

7. Thus it is seen that each and every norm of the Adoption process spelt out in the Adoption Regulation, 2017 have been complied by the petitioners and in the said circumstance, the learned trial Judge appears to have misdirected herself in dismissing the petition.

8. From the reading of the reasoning extracted above, the learned trial Judge appears to have proceeded on the premise

that when the biological parent is alive and able to look after the minor, there is no need to give the child in adoption to the step-parent. This view is opposed to Regulations 52 and 55 extracted above which not only permits the step-parent to take the child in adoption, but also lays down the procedure for adoption by step-parent. When the formalities contemplated under the Regulations have been duly followed, there was no reason for the learned Judge to reject the application on the specious reasoning that during the life-time of natural parent, it is not necessary to give the child in adoption to the step-parent. The trial court appears to have lost sight of the fact that by the process of adoption, the child is transplanted into the family of his natural father and step-mother thereby creating a permanent parent-child relationship. This adoption therefore is in the best interest and welfare of the child for the reason that in case petitioner No.1 becomes indisposed of or otherwise unable to look after the minor child, the child would have a legal parent or guardian and would not be rendered orphan. This is precisely the object of the Juvenile Justice (Care and Protection of Children)

Act, 2015 which is enacted to ensure that the child is:-

- a. Treated in a manner consistent with the promotion of the child's sense of dignity and worth;
- b. Reinforcing the child's respect for the human rights and fundamental freedoms of others;
- c. Taking into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society."

9. Apparently, for this reason, section 61 of the Juvenile Justice(Care and Protection of Children) Act, 2015 which specifically provides that before issuing an adoption order, the court shall satisfy itself that-

- (a) the adoption is for the welfare of the child;
- (b) due consideration is given to the wishes of the child having regard to the age and understanding of the child; and

(c) that neither the prospective adoption parents has given or agreed to give nor the specialized adoption agency or the parent or guardian of the child in case of relative adoption have received or agreed to receive any payment or reward in consideration of the adoption, except as permitted under the adoption regulations framed by the Authority towards the adoption fees or service charge or child care corpus.

These considerations should have weighed with the Court while deciding the application.

10. In the case on hand, the child himself having expressed his wish to live with his step-mother and the scrutiny report of the Karnataka State Council for Child Welfare having seen the minor child and having found that the minor was a picture of good health and has been raised by both petitioner Nos.1 and 2 as their child since the day petitioner No.1 married petitioner No.2 and that the minor regarded petitioner No.2 as his mother, there was absolutely no reason for the learned trial



Judge to reject the petition on the ground that when petitioner No.1 being a biological father is able to look after the minor and petitioner No.2 being a step-mother, petitioners are not entitled for the adoption of the minor.

11. For the above reasons, the impugned order dated 14.10.2019 passed by learned XIII Addl. City Civil and Sessions Judge, Bengaluru in Miscellaneous Petition No.25030/2019 being perverse and contrary to the provision of section 61 of the Juvenile Justice (Care and Protection of Children) Act is liable to be set-aside.

As a result, the petition is allowed. Impugned order dated 14.10.2019 passed by learned XIII Addl. City Civil and Sessions Judge, Bengaluru in Miscellaneous Petition No.25030/2019 is set-aside. Petitioner No.2 is permitted to take the minor child Master Tanush Gottipati in adoption as per the provisions of The Juvenile Justice (Care and Protection of Children) Act, 2015 and Adoption Regulations, 2017.

Petitioner No.1 and petitioner No.2 are declared as parents of minor Master Tanush Gottipati for all legal purposes.

This Court appreciates the services rendered by learned Amicus Curiae in assisting the Court for disposal of the case and directs that an Honorarium of Rs.5,000/- be paid to the learned Amicus Curiae.

**Sd/-  
JUDGE**

\*mn/-