

Debarati Nandee vs Union Of India & Anr on 28 March, 2023

Author: Prathiba M. Singh

Bench: Prathiba M. Singh

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 3901/2023 and CM APPL. 15138/2023

DEBARATI NANDEE

..... Petition

Through: Ms. Mrinalini Sen, Mr. Tanmay
Yadav and Ms. Madhawi Agarwal
Advocates (M: 9873367274).

versus

UNION OF INDIA & ANR.

..... Respond

Through: Ms Arunima Dwivedi CGSC with
Ms. Pinky Pawar and Mr. Aakash
Pathak Advs for UOI
9810916537).
Ms. Archana Surve (GP) (M:
9921498000).

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% 28.03.2023

1. This hearing has been done through hybrid mode. CM APPL. 15139/2023 (for exemption)
2. Allowed subject to all just exceptions. Application is disposed of. W.P.(C) 3901/2023 and CM APPL. 15138/2023
3. The Petitioner is aggrieved by the decision of CARA dated 15th February, 2023 to give retrospective effect to the Adoption Regulations 2022 as per which PAPs having two children have become ineligible to adopt normal children.
4. The Adoption Regulations, 2022, were preceded by Adoption Regulations, 2017. Regulation 5(8) of the Adoption Regulations 2017 read as under:-

"5(8) Couples with three or more children shall not be considered for adoption except in case of special need children as defined in sub-regulation (21) of regulation 2, hard to place children as mentioned in regulation 50 and in case of relative adoption and adoption by step- parent."

5. The said Regulations have been amended w.e.f., 2022 and in the amended regulations the provision i.e., Regulation 5(7), has been modified. Couples with two or more children are now

entitled for adoption of only special needs children, as defined in Regulation 2(25), or hard-to-place children defined in Regulation 2(13). The said Regulation read as under:

(7) Couples with two or more children shall only be considered for special needs children as specified in clause (25) of regulation 2, and hard to place children as stated in clause (13) of regulation 2 unless they are relatives or step-children."

6. Ms. Mrinalini Sen, Id. Counsel submits that the Petitioner in this case had applied for adoption in 2019 when the 2017 Regulations were in place. The decision has been taken by CARA by its 34th Meeting held on 15th February, 2023 that the 2022 Regulations would be applied to all pending applications as well, though there was a proposal to make it effective only on a prospective basis. The decision of CARA in the said meeting is set out below:

Decision: The issue was discussed in detail including the long pendency of waiting parents to adopt a normal child. Many of the PAPs even do not have a single child. It was finally decided by the Steering Committee to disallow the PAPs already having two children to adopt a normal child. Accordingly, the provision in the CARINGS portal may be made operational forthwith. However, such PAPs shall be eligible to reserve children available on Immediate Placement or Special Needs portal. The PAPs may be informed accordingly.

Agenda No. 34.07: Decision regarding debarring PAPs for a period of one year not reserving a child after receipt of requisite no. of referrals."

7. It is submitted by her that the Petitioner has two children and she is in the waiting list for adoption of third children. However, due to this impugned decision, she has been disqualified from adoption and even her seniority has been lost as she has been disqualified.

8. Ms Arunima Dwivedi Id. CGSC, on the other hand, submits that 2022 Adoption Regulations is not being applied retrospectively. All adoptions which are permitted post the 2022 Regulations coming into effect would be governed by the said Regulations. She wishes to file a counter affidavit in this regard. Let the same be filed within six weeks. Rejoinder, if any, be filed within four weeks.

9. In the meantime, since the Petitioner is still in the waiting list and no child has still been referred to her for adoption, her name shall not be removed from the seniority list. If there is any referral for adoption, the Petitioner may approach this court by way of an application.

10. If the Petitioner becomes eligible for any referral either under the 2017 or 2022 Regulations, an intimation shall be given to the Petitioner so that she can approach this Court at that stage.

11. List before the Registrar for completion of service and pleadings on 17th May, 2023.

12. List before the Court on 12th July, 2023.

PRATHIBA M. SINGH, J.

MARCH 28, 2023 mr/sk