Supreme Court of India
Laxmi Kant Pandey vs Union Of India & Anr on 27 September, 1985
Equivalent citations: 1986 AIR 272, 1985 SCR Supl. (3) 71
Author: P Bhagwati
Bench: Bhagwati, P.N. (Cj)

PETITIONER:
LAXMI KANT PANDEY

Vs.

RESPONDENT:
UNION OF INDIA & ANR.

DATE OF JUDGMENT27/09/1985

BENCH:
BHAGWATI, P.N. (CJ)
BENCH:
BHAGWATI, P.N. (CJ)
PATHAK, R.S.
SEN, AMARENDRA NATH (J)

CITATION:
1986 AIR 272 1985 SCR Supl. (3) 71
1985 SCC Supl. 701 1985 SCALE (2)849
CITATOR INFO :
E 1987 SC 232 (4,5,6,8,9,11,13)

ACT:
Adoptions-
Inter-country adoption of children - Adoption of Indian Children by foreign parents - Principles and norms laid down by Supreme Court - Clarification and alteration of.

HEADNOTE:
The applicants - social or child welfare agencies engaged in placement of children in inter-country adoption after having felt that there were certain difficulties in implementing the principles and norms adopted and the procedure laid down by Supreme Court in its judgment in Laxmi Kant Pandey v. Union of India, W.P. (Crl.) No. 1171/82, made the present applications seeking clarification on the various points " namely (i) whether a scrutinizing agency must be distinct from a placement agency; (ii) what steps must be taken where there is disruption in the family of the petitioner either before or after the adoption; (iii) what is the role which a scrutinising agency is expected to play in the procedure relating to inter-country adoptions; (iv) whether it is desireable to permit a child to be taken

from one State to another for the purpose of being given in adoption and,, if so, what guidelines should be followed; (v) Clarification in regard to the reports to be made by the social or child welfare agency sponsoring the application after the foreigner is appointed guardian of the child and he takes the child to his own country; (vi) what is the role which the representatives of foreign agencies should be allowed to play in inter-country adoption; (vii) whether the requirement that the certificates, declarations and documents required to be submitted along with the application of `the foreigner for taking a child in adoption should be duly notarised by a Notary Public and the signature of the Notary Public should be duly attested either by an officer of the Ministry of External Affairs or Justice or social welfare of the country of the foreigner or by an officer of the Indian Embassy or High Commissioner or Consulate in that country, must be insisted upon; (viii) whether the court, while making an order for appointment of a foreigner as guardian should not insist on deposit being made by way of security for enabling the child to
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be repatriated to India, should it become necessary for any reason and instead a bond to be executed by the foreigner should be sufficient; (ix) Direction regarding extension of time of 2 years to complete the adoption process in bona fide cases; (x) whether the sum of Rs. 60 per day fixed as the maximum for reimbursement of maintenance expenses which may be incurred by a social or child welfare agency on the child was to High and that it should be reduced to Rs. 500 per month; (xi) whether suitable directions be given to district courts to expedite proceeding for appointment of a prospective adoptive parent as guardian of the child. (xii) whether the courts must require the foreign parents wishing to take a child in adoption to come down to India for the purpose of meeting the child before approving the child for adoption and (xiii) what efforts be made to give a child in adoption to Indian parents before considering the possibility of placing it in adoption with foreign parents.

Disposing of the applications,

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HELD: 1. The scrutinizing agency appointed by the Court for the purpose of assisting it in reaching the conclusion whether it would be in the interest of the child to be given in adoption to the foreign parents must not in any manner be involved in placement of children in adoption. The scrutinizing agency must be an expert body having experience in the area of child welfare and it should have nothing to do with placement of children in adoption, for otherwise objective and impartial evaluation may not be possible. [80 H; 81 A-B]

2. The social or child welfare agency sponsoring the application must undertake that in case of disruption of the family of the foreigner before adoption can be effected it

will take care of the child and find a suitable alternative placement for it with the approval of the concerned social or child welfare agency in India and report such alternative placement to the Court handling the guardians-ship proceedings and such information shall be passed on both by the court as also by the concerned social or child welfare agency in India to the Secretary, Ministry of Social Welfare, Government of India. The social or child welfare agency sponsoring the application should also, in the event of disruption of the family of the foreigner before adoption can be effected, give intimation of this fact to the Indian Embassy or High Commission, as the case may be, and the Indian Embassy or High commission shall also be kept informed about the whereabouts of the child so that they can take the necessary steps for ensuring that the child is properly taken

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care of and a suitable alternative placement for it is found. If a disruption in the family of the foreigner takes place after the child is adopted, nothing can be done by the social or child welfare agency sponsoring the application, because, on adoption, the child would acquire the nationality of its adoptive parents and would then be entitled to all the rights of a national in that country. [81 E-H]

3. The scrutinizing agency should not be asked to make any inquiries before a child is offered in adoption to a foreigner or a petition for appointment of a foreigner as guardian is filed in Court. The primary responsibility for ensuring that the child is legally free for adoption must be that of the social or child welfare agency processing the application of the foreigner for guardian-ship of the child. Whatever inquiries are necessary for the purpose of satisfying itself that the child has been voluntarily relinquished by its biological parents after understanding all the implications of adoption must be the responsibility of the social or child welfare agency processing the application for guardianship. But so far as the scrutinizing agency is concerned it should not come into the picture at this stage. It has a vital role to play after a foreigner has approved of the child to be taken in adoption and a petition is filed in court for appointment of the foreigner as guardian of the child and it is at that stage that the scrutinising agency is expected to assist the court in coming to the conclusion whether it would be in the interest of the child to be given in adoption to the foreigner. The scrutinising agency should not at that stage try to ascertain who are the biological parents' of the child and whether they are willing to take back the child. That is primarily the responsibility of the social or child welfare agency processing the application. The Court should, in order to make sure that the child is legally free for adoption, require the social or child welfare agency

processing the application to place material before the court stating what efforts have been made to trace the biological parents and what are the circumstances in which the child came into the possession of such social or child welfare agency. Where the court feels some doubt as to how the child has been obtained and in what manner, the Court may ask the scrutinising agency to make inquiries with a view to finding out how the social or child welfare agency processing the application has got the child and if the child has been obtained by such social or child welfare agency from another institution or agency, how that institution or agency got the child and from what source and in what manner and the scrutinising agency may then make discreet inquiries for this purpose without disclosing
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to any one that the child is sought to be given in adoption. The Court may also in an appropriate case where it has some doubt ask the scrutinising agency to inquire whether the child has been voluntarily surrendered by the biological parents or whether such relinquishment has been obtained by fraudulent means. But unless the Court so directs, the scrutinising agency should not make any attempt to trace the biological parents of the child or to inquire whether they are willing to take back the child. [82B; 83A-D]

3. (ii) The social or child welfare agency engaged in the work of placing children in adoption should not readily assume that children including cradle babies who are found abandoned are legally free for adoption. No children who are found abandoned should be deemed to be legally free for adoption until the Juvenile Court or the Social Welfare Department declares them as destitutes or abandoned. It should also be impressed upon the Juvenile Courts that when children are selected for adoption, release orders should be passed by them expediously and without delay and proper vigilance in this behalf must be exercised by the High Courts. [83 E-G]

4. (i) There should not be any objection in a child under the care of a social or child welfare agency or hospital or orphanage in one State being taken to another State by a social or child welfare agency for the purpose of being given in adoption because the procedural safeguards laid down in Laxmi Kant Pandey's case would be sufficient to eliminate the possibility of trafficking in children through inter-State transfer of children. [83 H; 84 A-B]

(ii) By way of additional safeguard, it is directed that no court in a State will entertain an application for appointment of a foreigner as guardian of a child which has been brought from another State, if there is a social or child welfare agency in that other State which has been recognised by the Government of India for inter-country adoption. The social or child welfare agency processing the application for guardianship should then be directed to send the child to the recognised social or child welfare agency

in the other State, so that whatever proceedings are necessary for giving the child in adoption may be instituted by the social or child welfare agency and in such an event, the complete details of the case history and background including the home study report, the child study report, if any, and all other information relating to the child should be made available to the latter social or child welfare agency. If there is no recognised social or child welfare agency in the State where the child is
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found or obtained, the child shall be transferred to a recognised social or child welfare agency at the nearest place in the immediate neighbouring State. [85 B-D]

5. (i) It is necessary that progress reports must be submitted to the Court and to the social or child welfare agency in India quarterly during the first two years and half yearly for the next three years but after adoption had taken place the Courts may not insist on strict observance of this requirement. The order to be made by the Court should also provide that progress reports shall be submitted by the social or child welfare agency sponsoring the application of the foreigner until adoption is effected. That would provide greater assurance because it may not be possible to take any action if the foreigner fails to provide progress reports, but if the social or child welfare agency sponsoring the application for guardianship fails to submit progress reports, the Court can in future decline to entertain any application for guardianship where the foreigner seeking appointment as guardian is sponsored by such social or child welfare agency. [85 G-H; 86 A-B]

5. (ii) However, if there is a social or child welfare agency owned or operated by the Government in a foreign country, it would not be necessary for a foreigner to route his application through a recognised social or child welfare agency within his country and he can approach a recognised social or child welfare agency in India through such Government agency.

Where there is Government agency in a foreign country through which applications for taking children in adoption are routed, as in Sweden, it may not be possible to insist that the progress reports in regard to the child should be submitted by the Government agency and in such case it may be enough to provide in the order to be made by the Court that the progress reports shall be submitted by the foreign parents through the Government agency. [87 B-E]

6. There is no objection to a foreign social or child welfare agency having a representative in India, but it is necessary to lay down certain parameters within which 8 . h representative can be allowed to operate. In the first place, the representative should be an Indian citizen with a degree or diploma in social work coupled with experience in child welfare. Secondly, the representative should be acting only for one foreign social or child welfare agency and not

more nor should he be working on a
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free lance basis. It would also be desirable to limit the sphere of operation of the representative to a particular geographical area so that he is able to attend to his functions and duties properly and diligently. The representative should have a general power of attorney to act in India on behalf of the foreign social or child welfare agency and he should also have the authority to operate banking accounts in the name of the foreigner social or child welfare agency with the permission of the Reserve Bank of India. In order to prevent taking of children from needy parents by offering them monetary inducement and to eliminate trafficking in children the representative of the foreign social or child welfare agency should not be permitted to go scouting for children, or to receive children directly from parents. He should be allowed to act as representative only if he is recognised as such by the Central Government and such recognition may be given by the Central Government subject to the condition that the various requirements set out above are complied with by such representative. [86 D-H; 87 A]

7. There is no need to dispense with the requirement that the certificates, declarations and documents required to be submitted along with the application of the foreigner for taking a child in adoption should be duly notarised by a Notary Public and the signature of the Notary Public should be duly attested either by an officer of the Ministry of External Affairs or Justice or social welfare of the Ministry of External Affairs or Social Welfare of the country of the foreigner or by an officer of the Indian Embassy or High Commission or Consulate in that country. [87 F-G]

8. The Court may not ordinarily insist on making of the deposit by the foreigner but in an appropriate case, if it so thinks fit, it may pass such an order. The execution of a bond would ordinarily be sufficient. The bond should be by way of security for repatriation of the child to India in case it becomes necessary to do so as also for ensuring adoption of the child within the period two years. The bond may be executed by the foreigner who is appointed guardian of the child, but there may be difficulty in enforcing such bond, unless the bond is executed in favour of the Indian Diplomatic Mission in the country of the foreigner. It might therefore be safer to take the bond from the representative of the foreign child or social welfare agency in India so that if the condition of the bond is violated, the Court can proceed to enforce the bond against such representative who would be an Indian national. There is also
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another alternative which may be adopted by the Court. The Court may take the bond from the social or child welfare agency which has processed the application and such social

or child welfare agency may in its turn take a corresponding bond from the sponsoring social or child welfare agency in the foreign country. But, though this alternative may, in a given case, be adopted by the court, where the recognised social or child welfare agency processing the application is ready to give the bond, the Court should not insist upon execution of the bond by such social or child welfare agency. It would be sufficient to take the bond from the representative of the foreign social or child welfare agency in India or to insist on the bond being executed by the foreigner in favour of the Indian Diplomatic Mission abroad. [88F; 89 A-D]

9. Where it is not possible for the foreigner to complete the adoption process within two years, an application should be made to the Court for extension of time for making the adoption D and the Court may grant appropriate extension or time. [89 F]

10. The sum of Rs. 60 per day, represents the outside limit of the maintenance expenses which may be recovered from the prospective adoptive parents and it does not represent the rate at which maintenance expenses should be recoverable in every case. When the Court makes an order appointing a foreigner as guardian, the Court should look into this question and sanction the amount to be paid by the foreigner to the social or child welfare agency by way of reimbursement of maintenance expenses and that only such amount as may be sanctioned by the Court shall be recoverable by the social or child welfare agency by way of maintenance expenses from the foreigner who is appointed guardian of the child. So far as surgical or medical expenses incurred on the child are concerned, they should also be recoverable by the social or child welfare agency against production of bills or vouchers. The recognised social or child welfare agency processing the application must also be entitled to recover from the foreigner who is sought to be appointed guardian of the child, costs incurred in preparing and filing the application and prosecuting it in Court. Such expenses may include legal expenses, administrative expenses, preparation of child study report, preparation of medical and I.Q. reports, passport and visa expenses and conveyance expenses and they may be fixed by the Court at such figure not exceeding Rs. 41000 as may be though fit by the Court. [90 D-H; 91 A-C]

11. Proceedings for appointment of guardian of the child with a view to its eventual adoption must be disposed of at the

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earliest and in any event not later than two months from the date of filing of the application. The High Court should call for returns from the district Court within their respective jurisdiction showing every two months as to how many applications for appointment of guardian are pending, when they were filed and if more than two months have passed

since the date of their filing why they have not been disposed of up to the date of the return. If any application for guardianship is not disposed of by the district Courts within a period of two months and there is no satisfactory explanation the High courts must take a serious view of the matter. [91 E-G]

12. The Court dealing with an application for appointment of foreign parents as guardian need not insist on the foreign parents or even one of them coming down to India for the purpose of approving the child. In case of an older or handicapped child also, it is not necessary to require the foreign parents to come down to India, because a complete dossier of the child consisting of photographs, detailed medical report, child study report and other relevant particulars is always forwarded to the sponsoring social and child welfare agency in the foreign country and it is after careful consideration of this dossier and a full and detailed discussion under the sponsoring social and child welfare agency that the foreign parents decide to accept the child to be taken in adoption and proceed further in the matter through the sponsoring social or child welfare agency. [92 D-G]

13. (i) One of the ways in which adoption by an Indian family can be facilitated is to set up a centralised agency in the State or even in a large city where there are several social or child welfare agencies. Each social or child welfare agency must feed information to the centralised agency in regard to the particulars of the children available with it for adoption and a combined list of children available for adoption with various social or child welfare agencies attached or affiliated to the centralised agency, should be circulated to all such social or child welfare agencies, so that if any Indian family comes to a social or child welfare agency for taking a child in adoption, such social or child welfare agency would be able to give full and detailed information to the Indian family as to which children are available for adoption and that with what social or child welfare agency. This procedure has been adopted by social and child welfare agencies in Bombay. The Indian Association for Promotion of Adoption, Bombay has set up a Voluntary Co-ordinating agency on an experimental basis. The Supreme Court wholly

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endorses and recommends setting up of such Voluntary Co-ordinating agency in each State and if circumstances so require there may even be more than one Voluntary Co-ordinating agencies in a State. [93 D-H; 94 B]

13. (ii) Where there is a Voluntary Co-ordinating agency or any other Centralised agency which maintains a register of children available for adoption as also a register of Indian adoptive parents, it would be enough to wait for a period of three to four weeks. The Voluntary Co-ordinating or Centralized agency can immediately contact the

Indian family which is on its register as prospective adoptive parents and inform them that a particular child is available for adoption. If within a period of three to four weeks, the child is not taken in adoption by an Indian family, it should be regarded as available for inter-country adoption. But even where it is not possible to find and Indian family which is prepared to take a child in adoption and it is cleared for inter-country adoption, the first priority for taking the child in adoption should be given to Indians residing abroad and if no such Indians are available, then to adoptive couples where atleast one parent is of Indian origin. [94 D-F]

JUDGMENT:

ORIGINAL JURISDICTION :

CMP. Nos. 6726, 6740, 7040, 7422-23, 7870, 7592, 7826 & 8137-38/84 IN Writ Petition (Criminal) No. 1171 of 1982 (Under Article 32 of the Constitution of India) Petitioner in person, Abdul Khader, Anil B. Divan, Ms. Jay Singh " Ms. Kamini Jaiswal, Mrs. C.M. Chopra, R.N. Poddar, P.H. Parekh, P.K. Manohar, N.M. Ghatate, B.M. Bagaria, K.L. Rathee, S. Balakrishnan, M.K.D. Namboodiri, Jagdeep Kishore, T.V.S. Narasimhachari, Sudesh Menon, Ms. Rani Jethmalani, Kailash Yasdev, Ms. Varinda Grover, Vinod Arya and Mrs. Urmila Kapoor for the applicants.

Ms. A. Subhashini for the Respondents.

The Judgment of the Court was delivered by BHAGWATI, C.J. This writ petition was initiated on the basis of a letter addressed by the petitioner complaining of malpractices indulged in by social organisations and voluntary agencies engaged in the work of offering Indian children in adoption to foreign parents. Since we found that there was no legislation enacted by Parliament laying down the principles and norms which must be observed and the procedure which must be followed in giving an Indian child in adoption to foreign parents, we entertained the writ petition and after hearing a large number of social organisations and voluntary agencies engaged in placement of child in adoption delivered an exhaustive judgment on 6th February, 1984 discussing various aspects of the problems relating to inter-country adoption and formulating the normative and procedural safeguards to be followed in giving an Indian child in adoption to foreign parents.

Pursuant to the directions given by us in our Judgment in this writ petition, the Government of India proceeded to recognise various social or child welfare agencies in India for the purpose of inter country adoption. The Government of India also, through its diplomatic missions abroad, collected names of the social or child welfare agencies in foreign countries recognised by their respective Governments for sponsoring applications of foreigners for taking a child in adoption and prepared a list of such social and welfare agencies. The Government of India also, in obedience to the directions given by us, circulated copies of the list of foreign social or child welfare agencies recognised by their respective Governments as also of the list of social or child welfare agencies recognised by the

Government of India for placement of children in inter-country adoption, to all the High Courts in the country with a request to the High Courts to send copies of the two lists to the district Courts within their respective jurisdiction. But it seems that some of the social or child welfare agencies engaged in placement of children in inter-country adoption felt that there were certain difficulties in implementing the principles and norms laid down by us in our judgment and various applications were therefore made by them asking for clarification and alteration in the principles an norms adopted and the procedure laid down by us. These Applications are being disposed of by us by this common judgment.

The first point raised in these applications relates to the question whether a scrutinizing agency must be distinct from a placement agency. We entirely agree with the submission made by some social and child welfare agencies that the scrutinizing agency appointed by the Court for the purpose of assisting it in reaching the conclusion whether it would be in the interest of the child to be given in adoption to the foreign parents must not in any manner be involved in placement of children in adoption. The scrutinizing agency must be an expert body having experience in the area of child welfare and it should have nothing to do with placement of children in adoption for otherwise objective and impartial evaluation may not be possible. Where therefore there an institution or agency which is engaged in the placement of children in adoption, it should not be appointed as scrutinizing agency by the Court. The two scrutinizing agencies usually commissioned by the Courts are the Indian Council of Social Welfare and the India Council of Child Welfare. These two institutions or agencies have acquitted themselves very creditably so far and the Courts may therefore continue to entrust scrutinizing work to them, but there may also be other scrutinizing agencies which can be employed for this purpose. They must however be basically child welfare agencies and must not be engaged in placing children in adoption.

The next point regarding what steps must be taken where there is disruption in the family of the petitioner need not detain us. We have already directed in our Judgment that the social or child welfare agency sponsoring the application must undertake that in case of disruption of the family of the foreigner before adoption can be effected, it will take care of the child and find a suitable alternative placement for it with the approval of the concerned social or child welfare agency in India and report such alternative placement to the Court handling the guardianship proceedings ant such information shall be passed on both by Court as also by the concerned social or child welfare agency in India to the Secretary, Ministry of Social Welfare, Government of India. We would suggest that additionally the social or child welfare agency sponsoring the application should also, in the event of disruption of the family of the foreigner before adoption can be effected, give intimation of this fact to the Indian Embassy or High Commission as the case may be, ant the Indian Embassy or High Commission shall also be kept informed about the whereabouts of the child so that they can take necessary steps for ensuring that the child is properly taken care of and a suitable alternative placement for it is found. If a disruption in the family of the foreigner takes place after the child is adopted, we do not think that anything can be done by the social or child welfare agency sponsoring the application, because, on adoption, the child would acquire the nationality of its adoptive parents and would then be entitled to all the rights to of a national in that country.

The third point raised in these applications relates to the role which a scrutinizing agency is expected to play in the procedure relating to intercountry adoptions. There was considerable debate before us on this point and after carefully considering the various arguments we are of the view that the scrutinizing agency should not be asked to make any inquiries before a child is offered in adoption to a foreigner or a petition for appointment of a foreigner as guardian is filed in court. The primary responsibility for ensuring that the child is legally free for adoption must be that of the social or child welfare agency processing the application of the foreigner for guardianship of the child. Whatever inquiries are necessary for the purpose of satisfying itself that the child has been voluntarily relinquished by its biological parents after understanding all the implications of adoption as envisaged in paragraph 14 of our Judgment must be the responsibility of the social or child welfare agency processing the application for guardianship. We have already laid down sufficient safeguards in this connection in paragraph 18 or our Judgment and it is not necessary to say anything more about it. But so far as the scrutinizing agency is concerned it should not come into the picture at this stage. It has a vital role to play after a foreigner has approved of the child to be taken in adoption and a petition is filed in court for appointment of the foreigner as guardian of the child and it is at that stage that the scrutinizing agency is expected to assist the Court in coming to the conclusion whether it would be in the interest of the child to be given in adoption to the foreigner. The scrutinising agency should not at that stage try to ascertain who are the biological parents of the child and whether they are willing to take back the child. That is primarily the responsibility of the social or child welfare agency processing the application and that is why we have insisted in our Judgment it is only a social or child welfare agency recognised by the Government which should be entitled to process the application for guardianship and recognition must be given by the Government only after considering whether such social or child welfare agency enjoys good reputation and is known for its work in the field of child care and welfare and whether it has proper staff with professional social work experience. The Court should, in order to make sure that the child is legally free for adoption, require the social or child welfare agency processing the application to place material before the Court stating what efforts have been made to trace the biological parents and what are the circumstances in which the child came into the possession of such social or child welfare agency. Where the Court feels some doubt as to how the child has been obtained and in what manner, the Court may ask the scrutinising agency to make inquiries with a view to finding out how the social or child welfare agency processing the application has got the child and if the child has been obtained by such social or child welfare agency from another institution or agency, how that institution or agency got the child and from what source and in what manner and the scrutinising agency may them make discreet inquiries for this purpose without disclosing to any one that the child is sought to be given in adoption. The Court may also in an appropriate case where it has some doubt ask the scrutinising agency to inquire whether the child has been voluntarily surrendered by the biological parents or whether such relinquishment has been obtained by fraudulent means. But unless the Court so directs, the scrutinising agency should not make any attempt to trace the biological parents of the child or to inquire whether they are willing to take back the child. We may also point out that the scrutinising agency should, while scrutinising the application, adopt a sympathetic and sensitive approach with in-depth understanding of the dynamics of human behaviour.

We agree with the point made in some of these applications that the social or child welfare agency engaged in the work of placing children in adoption should not readily assume that children including cradle babies who are found abandoned are legally free for adoption. Such children must be produced before the Juvenile Court so that further inquiries can be made and their parents or guardians can be traced. In States where there is no Children Act in force, such children should be referred to the Social Welfare Department for making further inquiries and tracing their parents or guardians. This procedure should be completed at the latest within three months and no children who are found abandoned should be deemed to be legally free for adoption until the Juvenile Court or the Social Welfare Department declares them as destitutes or abandoned. It should also be impressed upon the Juvenile Courts that when children are selected for adoption, release orders should be passed by them expeditiously and without delay and proper vigilance in this behalf must be exercised by the High Courts.

That takes us to the next point raised in these applications which relates to transfer of children from one State to another for the purpose of being given in adoption. We took the view in our Judgment that there should not be any objection in a child under the care of a social or child welfare agency or hospital or orphanage in one State being taken to another State by a social or child welfare agency for the purpose of being given in adoption because we felt that the procedural safeguards laid down by us would be sufficient to eliminate the possibility of trafficking in children through inter- State transfer of children. We pointed out that since we are directing that every application of a foreigner for taking a child in adoption shall be routed only through a recognised social or child welfare agency and an application for appointment of the foreigner as guardian of the child shall be mate to the Court only through such recognised social or child welfare agency, there would hardly be any scope for a social or child welfare agency or individual, who brings the child from another State for the purpose of being given in adoption, to indulge in trafficking and such a possibility would be reduced to almost nil. But it has been urged upon us by various social and child welfare agencies that it may not be desirable to permit a child to be taken from one State to another for the purpose of being given in adoption because that would encourage- representatives of foreign agencies as also unscrupulous persons to go scouting for children to different States and taking advantage of the poverty of the large masses of people, persuade indingent parents, by offering monetary inducement, to part with their children ant then arrange to give such children in inter- country adoption through the instrumentality of a recognised social or child welfare agency getting in the process a sizable profit for themselves. This apprehension voiced on behalf of the social or child welfare agencies is not altogether unjustified- But on that account alone it would not be right to prevent a child from being taken from one State to another by a social or child welfare agency for the purpose of being given in adoption, because at the place where a child is found destitute or abandoned or where the biological parents, who not being in a position to support the child are prepared relinquish it for the purpose of its being given in adoption to a person who can take proper care of it, are living, there may be no social or child welfare agency which can take the child for being placed in adoption. There may be a social or child welfare agency in another State which is in a position to take care of such child and find suitable parents for giving it in adoption and if that be so, we do not see why such social or child welfare agencies could not be permitted to take the child from one State to another for the purpose of being given in adoption rather than leave it to grow up uncared for in want and destitution. We have laid down considerable safeguards in paragraph 19 of

our Judgment in order to prevent any abuse of this practice and we are not inclined to interdict it altogether. But we would direct by way of additional safeguard that no Court in a State will entertain an application for appointment of a foreigner as guardian of a child which has been brought from another State, if there is a social or child welfare agency in that other State which has been recognised by the Government of India for inter- country adoption. The social or child welfare agency processing the application for guardianship should then be directed to send the child to the recognised social or child welfare agency in the other State, so that whatever proceedings are necessary for giving the child in adoption may be instituted by that social or child welfare agency and in such an event, the complete details of the case history and background including the home study report, the child study report, if any, and all other information relating to the child should be made available to the later social or child welfare agency. If there is no recognised social or child welfare agency in the State where the child is found or obtained, the child shall be transferred to a recognised social or child welfare agency at the nearest place in the immediate neighbouring State.

There was also one other point raised by some of the social or child welfare agencies and that was in regard to the reports to be made by the social or child welfare agency sponsoring the application, after the foreigner is appointed guardian of the child and he takes the child to his own country. We directed in our Judgment that the order to be made by the Court shall include a condition that the foreigner who is appointed guardian shall submit to the Court as also to the social or child welfare agency processing the application for guardianship, progress reports of the child quarterly during the first two years and half yearly for the next three years. But it was suggested by some social or child welfare agencies that this direction should be limited only in case of adoption of handicapped children but so far as normal children were concerned, it would be enough if the progress reports were submitted for a period of two years or until adoption whichever event happens later. We do not think we can accept this suggestion wholly. It is necessary that progress reports must be submitted to the Court and to the social or child welfare agency in India quarterly during the first two years and half yearly for the next three years but after adoption had taken place the Courts may not insist on strict observance of this requirement. We are of the view that the order to be made by the court should also provide that progress reports shall be submitted by the social or child welfare agency sponsoring the application of the foreigner until adoption is effected. That would provide greater assurance because it may not be possible to take any action if the foreigner fails to provide progress reports, but if the social or child welfare agency sponsoring the application for guardianship fails to submit progress reports, the Court can in future decline to entertain any application for guardianship where the foreigner seeking appointment as guardian is sponsored by such social or child welfare agency.

The next point raised on behalf of some of the social and child welfare agencies was in regard to the role which the representatives of foreign agencies should be allowed to play in inter-country adoption. Now there can be no objection to a foreign child or social welfare agency having its representative in India. It would undoubtedly help to ensure proper and timely medical care for the child selected for adoption as also smooth carrying out of legal formalities in connection with guardianship proceedings and travel arrangements for the child to go to the country of its prospective foreign parents and also facilitate communication between the foreign parents and the sponsoring social or child welfare agency on the one hand and the social or child welfare agency

processing the application for guardianship on the other. We do not, therefore, see any objection to a foreign social or child welfare agency having a representative in India, but it is necessary to lay down certain parameters within which such representative can be allowed to operate. In the first place, the representative should be an Indian citizen with a degree or diploma in social work coupled with experience in child welfare. Secondly the representative should be acting only for one foreign social or child welfare agency and not more not should he be working on a free lance basis. It would also be desirable to limit the sphere of operation of the representative to a particular geographical area so that he is able to attend to his functions and duties properly and diligently. The representative should have a general power of attorney to act in India on behalf of the foreign social or child welfare agency and he should also have the authority to operate banking accounts in the name of the foreign social or child welfare agency with the permission of the Reserve Bank of India. We would insist that, in order to prevent taking of children from needy parents by offering them monetary inducement and to eliminate trafficking in children, the representative of the foreign social or child welfare agency should not be permitted to go scouting for children or to receive children directly from parents. He should be allowed to act as representative only if he is recognised as such by the Central Government and such recognition may be given by the Central Government subject to the condition that the various requirements set out by us above are complied with by such representative.

We may also point out that if there is a social or child welfare agency owned or operated by the Government in a foreign country, it would not be necessary for a foreigner to route his application through a recognised social or child welfare agency within his country and he can approach a recognised social or child welfare agency in India through such Government agency. It seems that in Sweden the Swedish local authority is the social or child welfare agency through which applications for taking children in adoption are routed and obviously therefore, the application of a foreigner who is a national of Sweden can be entertained by a recognised social or child welfare agency in India, if it is sponsored by the Swedish local authority, we would also like to make it clear that where there is a Government agency in a foreign country through which applications for taking children in adoption are routed, as in Sweden, it may not be possible to insist that the progress reports in regard to the child should be submitted by the Government agency and in such a case it may be enough to provide in the order to be made by the Court that the progress report shall be submitted by the foreign parents through the Government agency.

Then another point was raised on behalf of some of the social and child welfare agencies and that related to the direction given by us in our Judgment that the certificates, declarations and documents required to be submitted along with the application of the foreigner for taking a child in adoption should be duly notarised by a Notary Public and the signature of the Notary Public should be duly attested either by an officer of the Ministry of External Affairs or Justice or Social Welfare of the country of the foreigner or by an officer of the Indian Embassy or High Commission or Consulate in that country. It was suggested on behalf of some social and child welfare agencies that the requirement that the signature of the Notary Public should be attested by one of these officials should be dispensed with since lt was likely to cause considerable impediment in the way of the sponsoring social or child welfare agency on account of the difficulty in obtaining the attestation of the signature of the Notary Public by one of these officials. Some social or child welfare agencies

however opposed this suggestion and submitted that this requirement should be insisted, because in practice it did not create any difficulty st all. It was said that this requirement is a healthy safeguard to ensure that the certificates, declarations and documents submitted along with the application of the foreigner are genuine. We agree that there is no need to dispense with this requirement. So far, there has been on difficulty in obtaining the attestation of one of these officials and there is no reason why this requirement should not be insisted upon. It is undoubtedly true that some delay might occur in complying with this requirement but such delay need not worry us, because it will not be long and moreover the procedure involved in this requirement would have to be followed at a stage before the child is selected for adoption by the foreigner.

It was also submitted by some of the social or child welfare agencies that Court, while making an order for appointment of a foreigner as guardian, should not insist on deposit being made by way of security for enabling the child to be repatriated to India, should it become necessary for any reason and instead a bond to be executed by the foreigner should be sufficient. Now it is true that if security by way of deposit is insisted upon by the Court, it may cause a certain amount of hardship to the foreigner because his monies would remain locked up in court and though after the adoption is effected by him, he would be entitled to return of the amount deposited, it would be difficult for him to get that amount repatriated to him in the foreign country. But even so we do not think that we should issue any direction that deposit should not be insisted upon in any case. It should be a matter to be decided by the Court in the exercise of its judicial discretion. Of course, it may not ordinarily insist on making of the deposit by the foreigner but in an appropriate case, if it so thinks fit, it may pass such an order. The execution of a bond would ordinarily be sufficient. The bond should be by way of security for repatriation of the child to India in case it becomes necessary to do so as also for ensuring adoption of the child within the period of two years. But a question was raised as to who should be required to execute the bond. The bond may be executed by the foreigner who is appointed guardian of the child, but there may be difficulty in enforcing such bond, unless the bond is executed in favour of the Indian Diplomatic Mission in the country of the foreigner. It might therefore be safer to take the bond from the representative of the foreign child or social welfare agency in India so that if the condition of the bond is violated, the Court can proceed to enforce the bond against such representative who would be an Indian national. There is also another alternative which may be adopted by the Court. The Court may take the bond from the social or child welfare agency which has processed the application and such social or child welfare agency may in its turn take a corresponding bond from the sponsoring social or child welfare agency in the foreign country. Ordinarily the sponsoring social or child welfare agency would honour the bond in case the condition of the bond is broken, because if it fails to do so, no recognised social or child welfare agency in India would in future deal with it. But, though this alternative may, in a given case, be adopted by the Court, where the recognised social or child welfare agency processing the application is ready to give the bond, the Court should not insist upon execution of the bond by such social or child welfare agency. It would be sufficient to take the bond from the representative of the foreign social or child welfare agency in India or to insist on the bond being executed by the foreigner in favour of the Indian Diplomatic Mission abroad.

Some difficulty was pointed out to us that though ordinarily it should be possible to go through the procedure for adoption within two years, there may be instances where the procedure may take

longer and in that event, unless there is a relating power, the failure or inability of the foreigner to complete the adoption process within two years would result in breach of the condition of the bond and the bond would be liable to be forfeited. We appreciate that this difficulty may arise in some exceptional cases and we must therefore provide for such a situation. We would direct that where it is not possible for the foreigner to complete the adoption process within two years, an application should be made to the court for extension of time for making the adoption and the Court may grant appropriate extension of time.

We may again emphasise, even at the cost of repetition, that notice of the application for guardianship of a child should in no case be published in the newspapers, because otherwise the biological parents would come to know who is the person taking the child in adoption and they might, with this knowledge, at any time be able to trace the whereabouts of the child and they may try to contact the child resulting in emotional and psychological disturbance for the child and the possibility cannot be ruled out that they may also attempt to extort money from the adoptive parents. No notice of the application should for the same reasons be issued to the biological parents and this is particularly important in case of an unwed mother who has relinquished the child, for to disclose her name to the Court or to give her notice would be highly embarrassing.

Then a question was raised by some of the social and child welfare agencies that the sum of Rs. 60 per day fixed by us as the maximum for reimbursement of maintenance expenses which may be incurred by a social or child welfare agency on the child was too high and that it should be reduced to Rs. 500 per month. The argument in favour of reduction of the maintenance expenses from Rs. 60 per day to Rs. 500 per month was that if such a high amount was permissible to be charged by way of maintenance expenses, many social and child welfare agencies engaged in placing children in adoption would prefer to give the children to foreigners in inter-country adoption rather than to Indian parents, because the Indian parents would not be in a position to reimburse maintenance expenses at such a high rate. There is some force in this contention, but we should like to make it clear that the sum of Rs. 60 per day, which we have provided, represents the outside limit of the maintenance expenses which may be recovered from the prospective adoptive parents and it does not represent the rate at which maintenance expenses should be recoverable in every case. We have no doubt that the recognised social or child welfare agency through whom the application for guardianship is processed would take care to see that no exhorbitant amount is sought to be charged by the social or child welfare agency looking after the child, by way of maintenance expenses. But we would by way of greater safeguard direct that when the Court makes an order appointing a foreigner as guardian, the Court should look into this question and sanction the amount to be paid by the foreigner to the social or child welfare agency by way of reimbursement of maintenance expenses and that only such amount as may be sanctioned by the Court shall be recoverable by the social. Or child welfare agency by way of maintenance expenses from the foreigner who is appointed guardian of the child. So far as surgical or medical expenses incurred on the child are concerned, they should also be recoverable by the social or child welfare agency against production of bills or vouchers. This requirement would provide an adequate safeguard against trafficking in children for money or benefits in kind. The Court would of course, while granting sanction, take a practical view in this matter, bearing in mind that many of the social or child welfare agencies running homes for children have meagre financial resources of their own and have to depend largely on voluntary donations and

unless reasonable maintenance expenses and actual surgical and medical expenses are allowed to be recovered by them from the foreigner taking the child in adoption, it might become difficult from them to survive and to carry on their philanthropic work. The recognised social or child welfare agency processing the application must also be entitled to recover from the foreigner who is sought to be appointed guardian of the child, costs incurred in preparing and filling the application and prosecuting it in Court. Such expenses may include legal expenses, administrative expenses, preparation of child study report, preparation of medical and I.Q. reports, passport and visa expenses and conveyance expenses and they may be fixed by the Court at such figure not exceeding Rs. 4,000 as may be thought fit by the Court.

Some social and child welfare agencies made a complaint before us that the proceedings for appointment of a prospective adoptive parent as guardian of the child drag on for months and months in some district Courts and almost invariably they take not less than five to six months. We do not know whether this is true, but if it is, we must express our strong disapproval of such delay in disposal of the proceedings for appointment of guardian. We wish to impress upon the district Courts that proceedings for appointment of guardian of the child with a view to its eventual adoption, must be disposed of at the earliest and in any event not later than two months from the date of filing of the application. We would request the High Court to call for returns from the district Courts within their respective jurisdiction showing every two months as to how many applications for appointment of guardian are pending, when they were filed and if more than two months have passed since the date of their filing, when they have not been disposed of up to the date of the return. If any application for guardianship is not disposed of by the district Courts within a period of two months and there is no satisfactory explanation, the High Courts must take a serious view of the matter. We were also informed that some district Courts are treating applications for guardianship in a lackadaisical manner and are not scrupulously carrying out the directions given by us in our judgment. This defiance by the district Courts of the directions given by us should not be tolerated by the High Courts and we would request the High Courts to exercise proper vigilance in this behalf.

There is also one other point which must be considered at this stage. Some social and child welfare agencies appearing before us pointed out that there were instances where the Courts required the foreign parents wishing to take a child in adoption to come down to India for the purpose of meeting the child before approving the child for adoption. This insistence on the foreign parents coming down to India for giving their approval to the child to be taken in adoption, it was pointed out, is causing considerable hardship and inconvenience to the foreign parents, sometimes leading to the unfortunate situation that the foreign parents who are unable to come down to India might give up the idea of taking the child in adoption. There is considerable force in this argument urged on behalf of the social and child welfare agencies. It is obvious that foreign parents who belong to the middle class group would find it difficult to come down to India for the purpose of seeing the child. In the first place, it would impose on them a certain amount of financial burden which may be irksome and sometimes, untolerable and secondly, it would be difficult for them to leave their place of work for the purpose of coming down to India, because they may not be able to get leave form their employer and if they have their own natural children, it may be difficult for them to leave their children behind by reason of there being no one to care of them. The Court dealing with an application for appointment of foreign parents as guardian need not therefore insist on the foreign parents or even

one of them coming down to India for the purpose of approving the child. We are told that the Courts sometimes insist on the foreign parents coming down to India for the purpose of seeing the child where the child is an older or handicapped child. But even in such cases it is not necessary to require the foreign parents to come down to India, because a complete dossier of the child consisting of photographs, detailed medical report, child study report and other relevant particulars is always forwarded to the sponsoring social and child welfare agency in the foreign country and it is after careful consideration of this dossier and a full and detailed discussion under the sponsoring social and child welfare agency that the foreign parents decide to accept the child to be taken in adoption and proceed further in the matter through the sponsoring social or child welfare agency. We would therefore suggest that, as far as possible, the foreign parents or even one of them need not be required to come down to India for the purpose of approving the child. Otherwise many foreign parents desiring to adopt an older or handicapped child might be deterred from doing so and such children who are ordinarily not favoured for adoption by Indian parents would be left without the warmth of family life.

That takes us to the last point raised on behalf of some of the social and child welfare agencies namely, that every effort must be made to give a child in adoption to Indian parents before considering the possibility of placing it in adoption with foreign parents. We pointed out in our Judgment that before any application of a foreigner for taking an Indian child in adoption is considered, every effort must be made by the recognised social ant child welfare agency to find out placement for the child by adoption in an Indian family and whenever any Indian family approached a recognised social or child welfare agency for taking a child in adoption, facilities must be provided by such social or child welfare agency to the Indian family to have a look at the children available with it for adoption and if the Indian family want to see the child study report in respect of particular child, such child study report must also be mate available to the Indian family in order to enable the Indian family to decide whether they would take the child in adoption. But the question is as to how this can be tone efficiently ant without any avoidable delay. One of the ways in which adoption by an Indian family can be facilitated is to set up a centralised agency in the State or even in a large city where there are several social or child welfare agencies. Each social or child welfare agency must feed information to the centralised agency in regard to the particulars of the children available with it for adoption and a combined list of children available for adoption with various social or child welfare agencies attached or affiliated to the centralised agency, should be circulated to all such social or child welfare agencies, so that if any Indian family comes to a social or child welfare agency for taking a child in adoption, such social or child welfare agency would be able to give full and detailed information to the Indian family as to which children are available for adoption and with what social or child welfare agency. We are glad to find that the procedure had been adopted by social and child welfare agencies in Bombay. The Indian Association for Promotion of Adoption, Bombay has set up a Voluntary Co-ordinating agency on an experimental basis and Social and Child Welfare Agencies in Maharashtra and especially in Amrawati, Bombay, Nasik, Nagpur and Pandharpur have joined this Voluntary Co-ordinating. These social or child welfare agencies send to the Voluntary Co- ordinating agency particulars of children available with them for adoption and the Voluntary Co-ordinating agency maintains a register showing the names and particulars of such children and in addition, it also maintains a register of Indian adoptive parents. The Voluntary Co-ordinating agency thus serves as a Co-ordinating agency to promote Indian

adoptions and all children registered with the Voluntary Co-ordinating agency remain on its list for three months awaiting Indian parents. If Indian parents are not available for a particular child for a period of 3 months, such child is cleared for inter- country adoption. It would be desirable for social and child welfare agencies in other States also to form a similar Voluntary Co-ordinating agency. We wholly endorse and recommend setting up of such Voluntary Co-ordinating agency in each State and if circumstances so require, there may even be more than one Voluntary Co-ordinating agencies in a State. The only caveat which we would like to enter is that the period of three months adopted by the Voluntary Co- ordinating agency in Bombay for awaiting the arrival of Indian parents for taking a child in adoption, is perhaps too long. We have in our Judgment observed that is only if no Indian family comes forward to take a child in adoption within a maximum period of two months, that the child may be regarded as available for inter-country adoption. But on further reflection we are of the view that even this period of two months may be regarded as a little too long. Where there is a Voluntary Co-ordinating agency or any other Centralised agency which maintains a register of children available for adoption as also a register of Indian adoptive parents, it would be enough to wait for a period of three to four weeks. The Voluntary Co-ordinating or Centralised agency can immediately contact the Indian family which is on its register as prospective adoptive parents and inform them that a particular child is available for adoption. If within a period of three to four weeks, the child is not taken in adoption by an Indian family, it should be regarded as available for inter-country adoption. But even where it is not possible to find an Indian family which is prepared to take a child in adoption and it is cleared for inter-country adoption, the first priority for taking the child in adoption should be given to Indians residing abroad and if no such Indians are available, then to adoptive couples where atleast one parent is of Indian origin.

These were the only points raised for our consideration in the applications made on behalf of the various social and child welfare agencies. We have dealt with these points in some detail and we hope and trust that hereafter there will be no difficulty in faithfully implementing the directions given by us.

M.L.A.