

HIGH COURT OF MADHYA PRADESH : JABALPUR
BEFORE SINGLE BENCH : JUSTICE J.K. MAHESHWARI

Civil Revision No.258/2017
Civil Revision No.260/2017

{Smt. Vineeta Kushwaha}

Shri Umesh Shrivastava, learned counsel for the petitioner.

Shri J.K. Jain, Assistant Solicitor General of India on behalf of
Central Adoption Resources Authority, Ministry of Women &
Child Development, Govt. of India & N.I.C.

Shri T.S. Ruprah, learned senior counsel assisted by Shri
Anubhav Jain, learned G.A. as *amicus curiae*.

Shri Girish Kekre, Government Advocate for the State of M.P

O R D E R
(12/2/2018)

These revisions have been filed under Section 102 of the Juvenile Justice (Care & Protection of Children) Act, 2015 (hereinafter referred to as 'JJ Act') challenging the orders dated 21.12.2016 and 19.12.2016 passed by the Principal Judge, Family Court, Chhindwara returning the application filed by the Child Care Institution (for brevity "CCI") and Special Adoption Agency (for brevity "SAA") for not passing any order for adoption. The said applications were rejected by the orders impugned, however, these revision have been preferred.

2. During the course of the hearing, it was argued that not only the functioning of the Court, to exercise the jurisdiction in adoption case by the Court concerned is required to be explained which may ensure early disposal of the adoption cases, but simultaneously, the functioning of the Child Welfare Committee (for brevity "CWC"), State Adoption Resource Agency (for brevity "SARA"), Special Adoption Agency–Child Care Institution (for brevity "SAA-CCI") linkage as referred in the letter of the Ministry of Women & Child Development, Govt. of India dated 29.9.2017 (for brevity "MW&CD") are also the issues of consideration.

3. Various complaints are made to the Juvenile Justice Committee of the High Court of M.P, Jabalpur by CCIs and SAAs alleging that despite the children entered on the Child Adoption Resource Information & Guidance System (for brevity "CARINGS") after declaring them legally free from the CWC, their referrals are awaited from the month back and not made on due time by the Central Adoption Resource Authority (for brevity "CARA"), therefore, best interest of the child is going to be affected in the matter of adoption within the State. In this context, the cognizance is taken on one of the complaint by the JJC and the reply was sought from the CARA.

4. This Court has also gone through the letter dated 29.9.2017 written by the Hon'ble Central Minister, Women & Child Development, Government of India by which Hon'ble the Chief Minister of the State of Madhya Pradesh was requested to take steps for constitution of the governing body of SARA, the constitution and the responsibility of CWC, the role of DM/DCPU in adoption, the role of SAA-CCI and its linkage, the placement of cradle, the pendency of adoption cases in Courts.

5. On notice, Shri Girish Kekre, learned Government Advocate representing the State Government contends that the State of Madhya Pradesh acknowledges the concern of the Central Minister of the MW&CD but considering the fact that the various stakeholders are involved and the CARA is a regulatory authority under the J.J.Act in the matter of adoption, therefore, it is a case wherein this Court may take cognizance of all these facts and in the best interest of the children of the State of Madhya Pradesh and the power under Article 226 of the Constitution of India may be exercised and appropriate directions may be issued in these matters.

6. Considering the aforesaid, this Court has taken cognizance of all these facts and on certain issues, the notices were issued to the MW&CD and CARA through Court. The

relevant part of the order dated 10.1.2018 is reproduced as under:-

"During the course of the hearing, it was argued with vehemence that not only the functioning of the Court is required to be clarified in the matter of jurisdiction but in the matter of adoption, the Department of Women & Child Development of Government of Madhya Pradesh, the Ministry of Women & Child Development Department of Government of India, New Delhi may be noticed that the Central Adoption Resource Authority is not properly registering the children of the State of Madhya Pradesh and creating hurdle by not showing the children on website due to which adoption is delayed or not possible in the year.

Considering the aforesaid, on the request made by learned counsel for the petitioner, the State Government through Women & Child Development Department as well as the Ministry of Women & Child Development Department of Government of India, New Delhi through the Joint Secretary may be informed and the Central Adoption Resource Authority through Chief Executive Officer are required to be noticed with intent to ascertain the adequate adoption in the State of Madhya Pradesh and for better upliftment of the children, which were brought to the Special Adoption Agency and CCIs. The

representation is expected on the part of the Ministry of Women & Child Development Department of Government of India, New Delhi, Special Adoption Agency & Central Adoption Resource Authority on the next date of hearing.

Shri T.S.Ruprah, Senior Advocate and *Amicus Curiae* is requested to assist on the issue of adoption and its procedural aspect thereby appropriate directions in the matter of adoption of the children at all three levels (1) State Government (2) Central Adoption Resource Authority and (3) at the level of the Court may be issued and to remove the difficulty and in case the officers are found at fault, their responsibility may be fixed.

In this regard, if the Department of Women & Child Development of Government of Madhya Pradesh, the Ministry of Women & Child Development Department of Government of India, New Delhi & Central Adoption Resource Authority are having any say, they may represent on the next date.

The Secretary of Juvenile Justice Committee Shri Pankaj Gaur is requested to take appropriate steps to send copy of this order to the Department of Woman & Child Development of Government of Madhya Pradesh and to the Ministry of Women & Child Development Department of Government of India, New Delhi as well as

to the Secretary of Central Adoption Resource Authority to come forward and represent in the Court on the next date of hearing as to what steps are taken in compliance to the Memo No.Q/RJ-1/36 Jabalpur dated 10.1.2018 issued by the Secretary of Juvenile Justice Committee of the High Court of M.P, Jabalpur."

7. When the matter was taken up on 17.1.2018, the Assistant Solicitor General appeared on behalf of CARA as well as MW&CD, Government of India and sought time to file reply. The reply was filed on the next date i.e.24.1.2018. On the said date, with intent to avoid the delay in disposal of the application for adoption, after hearing, by way of interim direction, two orders passed by Principal Judge, Family Court, Chhindwara were set aside with a direction to decide those applications for adoption of the child within two weeks. As regards remaining issues, the Court by the order further sought clarification as under:-

"As regards the remaining issues, the Central Adoption Resource Authority has filed their reply explaining the spirit of the Act, Rules & Regulation. In the reply, it is stated by them that the Central Adoption Resource Authority has no role to play and the State Agencies like District Child Protection Units, Child Welfare Committees, Child Care Institutions are

responsible for the delay in referral of the children. It is also stated in their reply that the Central Adoption Resource Authority is merely a regulating authority and the web portal has been provided by the National Informatics Centre and they have to manage the same, therefore, the Central Adoption Resource Authority is not responsible for any delay.

On being asked by the Court that being the regulatory authority what is the role assigned to the Central Adoption Resource Authority but in Paragraph No.12 of their return, they have shifted their burden on the National Informatics Centre.

Considering the aforesaid, it would be obligatory on the part of the Court to ask for the reply from the State Government on the issues raised by Central Adoption Resource Authority in their reply. Similarly, being the regulatory authority as stated by Shri Deepak Kumar, Chief Executive Officer of the Central Adoption Resource Authority, what is the role assigned to Central Adoption Resource Authority under the Juvenile Justice (Care & Protection of Children) Act, 2015 and why settlement of the office is there is also required to be explained by them. It is a case wherein despite entry of the various children of the State of Madhya Pradesh on Child Adoption Resource Information & Guidance System (for brevity "CARINGS") month's back they have not been made referral and also on immediate placement. When the cognizance has been taken by this Court on

10.11.2017, 21.11.2017, 10.1.2018 till today number of legal free children have been shown during the period of three weeks but since long they were not shown to the parents.

Shri Deepak Kumar, Chief Executive Officer of Central Adoption Resource Authority shall explain that on which date the Specialised Adoption Agency uploaded its children on CARINGS and why those children were referred after a long lapse. Being the regulatory authority, why the action has not been taken by the Central Adoption Resource Authority against the National Informatics Centre because the Officers of the National Informatics Centre are being regulated by the Chief Executive Officer of Central Adoption Resource Authority.

Learned *Amicus Curiae* present in the Court stated that in case the delay has been caused by the Chief Executive Officer of Central Adoption Resource Authority then he is responsible for the penal action.

Considering all these aspects, in my considered opinion, welfare of a child and as to how the adoption of a child can be made at the early age and at its earliest is a concern of the Court and wherever the fault is there, it must be eradicated either by the Central Adoption Resource Authority or by the State Agencies or National Informatics Centre. This Court primarily does not wish to punish anyone but in case the authorities do not act upon in

accordance with law then the Courts may not have any option but to pass appropriate orders at appropriate stage after receiving their reply/explanation.

Let the aforesaid facts must be explained by Shri J.K.Jain, Assistant Solicitor General appearing for Central Adoption Resource Authority represented through the Chief Executive Officer and by Shri Girish Kekre, Government Advocate for the State by the next date of hearing."

8. The State Government though already filed their reply on 9.1.2018 but in counter to the reply of CARA, rejoinder/written submission has been filed on 1.2.2018. On the said date, the reply of National Informatics Centre (for brevity "NIC") on plain paper has also been supplied in the Court during hearing, which was signed by K. Shrivastava dated 31.1.2018, however, it is also taken on record in furtherance to the notice issued in view of the stand taken by CARA in their return filed on 24.1.2018.

9. The various oral complaints were made to the Juvenile Justice Committee of the High Court of Madhya Pradesh by the CCIs & SAAs; one of them was sent in writing by the SAA UDAN, Bhopal indicating that despite having legal free child on CARINGS referrals are not made at an early date on which the cognizance has been taken through the Secretary of the Juvenile Justice Committee of the High Court of Madhya

Pradesh and the response was sought from the Chief Executive Officer of the CARA vide order dated 10.1.2018. All the aforesaid issues require consideration thereby the adoption of children in the State of Madhya Pradesh affecting adversely, may be uplifted.

10. While entertaining the issues as cropped up, the concern of the Court is that the Juvenile Justice (Care and Protection of Children) Act, 2015, the Juvenile Justice (Care and Protection of Children) Model Rules, 2016, the Adoption Regulation, 2017 are required to be implemented by the stakeholders observing the general principles as enumerated in Section 3 of the J.J.Act for their smooth functioning that includes the Court, CARA, SARA, CWC, CCI-SAA so also the Central Government and the State Government to compel the officers to do the needful thereby the adoption of children in the State of Madhya Pradesh may be uplifted.

11. As per orders of this Court dated 10.1.2018, 17.1.2018, 24.1.2018, the return has been filed by the MW&CD and CARA with an affidavit of the Chief Executive Officer of CARA Mr.Deepak Kumar, which gave an awakening call to the Court because the CARA has shifted their responsibility in the matter of adoption of children either on the State of Madhya Pradesh

showing the fault of their officials or on the CCIs or SAAs. Taking the stand that the CARA is having nothing to do in the matter of adoption of children in Paragraph No.12 of the return, it has been categorically stated that the referral of the children after registration on CARINGS and declaring them legal free is managed by the NIC and not by the CARA. It is said in the return, either the State Government or their departments or their officials or the NIC are at fault.

12. After taking the said reply on record, this Court on 24.1.2018, issued the notice to the NIC and also sought reply from the State Government in counter to the averments of the said return. In response thereto, the reply of the NIC signed by K.Shrivastava dated 31.1.2018 indicates that NIC has merely designed and developed the CARINGS software under the guidance of CARA under the MW&CD. They only provide a comprehensive centralised web application relating to children & prospective adoptive parents and managed with ICT support from NIC under the supervision and guidance of the CARA and MW&CD. It is said by them that all legal free children upto the age of 18 years are automatically viewable and available in the system for being sent on referral, the moment the SAA or DCPU uploads the relevant details, which includes Legally Free

Certificate, Child Study Report, Medical Examination Report. In the last paragraph, it is said that in a particular case, as mentioned in Annexure-3, Specialized Adoption Agency, Udaan Social Welfare Development Organization, Bhopal uploaded the details of the children (including upload of CWC Certificate) on dates as mentioned in col. IX. The dates of the issuance of CWC certificate for every child is also mentioned in the col. VIII of the Annexure. But in the last line, it is said that children can go on referral only after the CWC certificate has been uploaded with all relevant details. However, by this reply, it is clear that the stand taken by CARA that they have no role and responsibility to manage the CARINGS and it is incorrect to say it is their function, infact they provide the application prepared under the supervision and guidance of CARA and managed by CARA. It is further apparent that as per col. IX and VIII, SAA UDAN, Bhopal uploaded the details of children including the uploading of CWC Certificate of every child as specified in col.VIII of the Annexure although, the said Annexure has not been filed. The stand taken by the NIC may be taken as correct because during the course of hearing, learned Assistant Solicitor General has supplied it to the Court and acknowledged the same.

13. In the said context, the reply filed by CARA on 24.1.2018, is required to be referred. In the reply of CARA in para-1 introduction of the JJ Act, Rules and CARA Regulations with certain provisions have been referred showing the constitution of SARA, SAAs, CWC, CIIs, CARA and DCPU. Para-2 states that CARA has framed the Adoption Regulation, 2017 notified by the Central Government on 16.1.2017 and also the JJ Rules, 2016. Para-3 states large number of cases are pending before CWC beyond the stipulated time frame, for declaring the children legally free for adoption. It is said that as on 20.1.2018, there are 191 cases pending before various CWCs, though, it was supposed to be decided within 2/4 months based on age of the child. It is said that in many districts, the requisite quorum of three members out of five member committee is not present. In para-4 the role and responsibilities of the SAAs, DCPUs, SARAs as well as CARA referring the provisions and judgment of the Supreme Court regarding registration of CCIs has been made. In addition, it is said that all the CCIs are supposed to be linked with SAA through SAA-CCI linkage. Linkage is the responsibility of the DCPU & SARA. It is further said that the DCPU has to ensure that the details of all the children in the CCIs get entered and updated on the CARINGS. As on 20.1.2018, only 20 CCIs have

been linked to the SAA and the details of only 223 children have been entered in CARINGS. In para-5, it is said that in response to the memo of the Registry of this Court dated 10.1.2018 and linkage has been furnished vide CARAs letter dated 12.1.2018 clarifying the fact that linkage of CCI from one SAA to another SAA do not hamper the adoption process of the children because all the children in CCIs have to be entered in CARINGS by DCPU and the Child Study Report and Medical Examination Report have to be prepared and uploaded once CWC has declared them legally free for adoption. It is said that the referrals of the CCIs are governed by CARINGS no matter to which SAA it is linked. The role of SAA starts after the child is reserved only for matching. It is explained that in the instant case, the CCIs have been linked by the DCPU to the SAA UDAN, after NIC made the delinking & relinking operational on CARINGS. It is emphasised that the CCIs as well as SOS Children Village Linkage with the SAA Matruchaya, Bhopal or SAA UDAN would not hamper the adoption of the children. In para-6 also aforesaid fact has been reiterated and comparison of the year 2016 -2017 of SAA UDAN and SAA Matruchhaya has been portrayed. In para-7, it is said that SARA is not properly functioning in the State of Madhya Pradesh. Though, there are

50 districts in the State but only 38 SAAs are working, therefore, it is the fault on the part of the State Government. It is further said that many SAAs are not adopting CARINGS on regular basis and thereafter a list of agencies who have not been active for last 10 days are attached. In para-8, role and responsibility of DCPU has been specified and said that it is the duty of the DCPU to upload the children on the CARINGS. In para-9, it is explained that as on 20.1.2018, 446 children have been registered on CARINGS, out of which 154 are legally free for adoption and cases of 292 children are awaiting. In para-10, it is mentioned that a total of 364 children have been registered by the 31 SAAs in the Madhya Pradesh, out of which a total of 169 children were placed in adoption. Presently, 137 cases of in-country and 73 cases of inter-country adoptions are in process at different stages in the State of Madhya Pradesh. In para-11, jurisdiction of the Court has been defined explaining that each Court can pass an order. By filing some documents, it is said that the pendency obtained from CARINGS may be taken on record and in the last paragraph, it is stated that CARINGS is being managed by NIC and not by CARA and the CARA do not have any role to play. It is the role and responsibility of other stakeholders.

14. In the parawise rejoinder to the reply of MWCD & CARA filed by the State Government, in reference to para-1 & 2 regarding provisions of JJ Act, Rules and Regulations have not been disputed. The fact regarding delay on the part of the State Government is denied explaining the pending cases in reference to the CARINGS, it is said that 182 cases are pending for clearance, out of which 77 cases were decided within the stipulated time and for remaining cases, the date of registration has wrongly been shown either by the fault of CCI or SAA, though, the pendency of cases to declare the children legal free is not more than 2-4 months. It is said that upto 19.1.2018, there was no provision in CARINGS for editing of dates. The facility of editing has only been provided on 19.1.2018 by the CARA not prior. If the said facility of editing was available earlier, the date of registration in CARINGS of the 73 cases would have been corrected by DCPU. It is further said that only 32 cases are pending before the CWC for the child to be declared legally free. It is said that on completion of the term of the members of CWC, the orders have been issued to appoint new members, otherwise charge has been given to nearby CWC, therefore, the allegations as alleged in the return are incorrect.

15. In response to the averments made in para-4 of the return, the judgment of Supreme Court has not been disputed. It is said that in all the districts, under the directions, the Collectors have already issued the certificate and there is no unregistered CCI or SAA. The 20 CCIs have been linked with SAA and out of the 45 registered CCIs, 35 CCIs have already been linked with SAA and remaining 10 CCIs could not be linked due to not having any provision for remapping, which is uploaded by the CARA by CARINGS on 19.1.2018. The remaining 10 CCIs shall be linked soon with the SAAs. As on 28.1.2018, 255 children are residing in various CCIs which are linked with SAA and its details have been filed. It is said that 255 children are to be adopted, which could not have been adopted by the delay on CARINGS and referral by the CARA. The State Government states that re-linkage and de-linking is an essential ingredient and the linkage of one SAA to another progress the procedure of adoption. Without effective linkage, adoption is not possible. The Government said that after re-mapping provisions provided by CARA on 19.1.2018, 10 CCIs would be linked with SAA shortly. By filing the documents, it is stated that SOS Children village was linked with Matruchhaya, Bhopal but vide order dated 13.9.2017, it was linked with SAA UDAN. The re-mapping facility was

provided by the CARA on 19.1.2018, however, there was some delay in uploading the children which was attributable to CARA for not providing the facility in time. It is said that out of 51 districts, at present there are 31 Special Adoption Agencies. The capacity of those Special Adoption Agencies are of 350 children. At present, in these 31 Special Adoption Agencies, 287 children are residing in various districts but CARINGS is still showing that there are 38 SAAs in the State of Madhya Pradesh. In this regard, a letter was given to the CARA on 30.5.2017 that 7 SAAs have become non-functional but their names have not been removed from CARINGS. It is said that updating on the CARINGS has to be done by CARA which they have not done as revealed from the averments of the return. Rebutting para-12 of the reply of CARA, the State Government says that as per Section 49 of the Rules of 2016, CARA is required to maintain the CARINGS with transparency in the adoption system. The stand taken by CARA that they have no role to play is entirely misconceived. Referring to various provisions of JJ Act, Rules and Regulations, it is submitted that it is the entire responsibility of CARA and under the guidance of CARA, they are ready to support with the help of the State authorities. It is said that CARA is not providing any training regarding working of its site

namely CARINGS and when any change on the site is done, no information to that effect is provided by the CARA. The aforesaid fact makes it aptly clear that functioning of CARA has been questioned by the State Government. However, justification may be adjudged in view of the reply either by the MW&CD, CARA or the State Government on the complaint of SAAs in the context of the relevant provisions of law.

16. As the present revisions are arising out of the orders dated 21.12.2016 and 19.12.2016 passed by the Principal Judge, Family Court, Chhindwara rejecting the application under Sections 56 & 59 of the J.J.Act on the ground of jurisdiction of the Court and also on account of non-renewal of SAA, therefore, the relevant provision regarding the jurisdiction of the Court as to how and in what manner, the application for adoption ought to be adjudicated and within how much time looking to the best interest of the children to uplift the adoption is an issue of consideration. In this regard, the functioning of the Court is required to be explained thereby the application for adoption filed in the Court must be expedited within the time limit. Simultaneously, looking to the letter dated 29.9.2017 issued by MW&CD as proposed by the learned Government Advocate for the State, the power under Article 226 of the Constitution of

India has been invoked. In this context, the reply filed by the Central Government and the State Government and their stand are contrary to each other. However, to explain the power and function of the CARA, CWCs, CCIs, SAAs and the other stakeholders in the matter of adoption of children in the State of Madhya Pradesh, the relevant provisions of the J.J.Act are being referred and considered, with intent to issue the guideline, which is to be observed by them.

Jurisdiction & Smooth Functioning of the Court

17. Under the J.J.Act, Section 2(23) defines the Court. The Court means a Civil Court, which has jurisdiction in the matters of adoption and guardianship and may include the District Court, Family Court and City Civil Court. Section 61 of the J.J.Act prescribes the procedure in adoption cases and also deals the issue of penalty against payment in consideration of adoption on receiving an application of a child, who is either orphan, abandoned or surrendered child either in case of inter-country adoption or in-country adoption on an application filed before the Court before issuing an order of adoption, must record the satisfaction that the adoption is for the welfare of the children. The Court may give due consideration to the wishes of the child having regard to the age and understanding and after such

satisfaction, the orders may be passed. The Court while passing the order is also required to see as to whether the prospective adoptive parents or the Special Adoption Agency or the parent and guardian of the child should not offer or receive any payment or reward in consideration of the adoption except permitted by the Regulation. The proceeding of adoption must be held in the camera by a Court and it ought to be disposed of within a period of two months from the date of filing.

18. Rule 45 of the J.J.Rules specifies that the procedures as laid down in the Code of Civil Procedure and the Indian Evidence Act are not to be followed by the Court, infact the procedure laid down by the J.J.Act and the Adoption Regulation must be followed. The rule further specifies that in case the Judge ordinarily exercising the jurisdiction in the matter of adoption is not available for a period of more than one month then such an application shall be disposed of within a stipulated time by other senior most Judge. The rule also specifies that either the information or the Court order regarding adoption disclosing the identity of a child shall not be uploaded on any portal except as stipulated in the Regulation.

19. The Regulation 12 makes it clear as to how and by whom and within how much time, the application for adoption can be

filed and how it is to be dealt with by the Agencies and the Court. The said regulation makes it clear that Special Adoption Agency shall file an application to the Court concerned having jurisdiction where the said Agency is located alongwith the relevant original document specified in Schedule-9 within ten working days from the date of matching of the child with the prospective adoptive parents in case of in-country adoption and in case of inter-country adoption within a period of ten days from the date of receiving the No Objection Certificate from the authority, which is CARA as per Section 2(7) of the J.J.Act. The application ought to be filed in a format as per Schedule 28 or 29 as applicable. The regulation specifies that in case the child is from CCI, which is not SAA and is located in a different district, the SAA may file an application in the Court concerned where it is located and in that case the CCI would be the co-petitioner alongwith the SAA. In such a case, the CCI shall render necessary assistance to SAA. In case of siblings or twins, no separate application is required to be filed. Regulation 12(5) clarifies that the adoption case is non-adversarial litigation, therefore, the SAA is not required to make any opposite party or respondent in the adoption application. As per Regulation 55, the in-country and inter-country adoption of a child of a relative has been

prescribed that too with certain formalities may be done by a Court in a similar fashion.

20. In view of the foregoing legal provisions of the J.J.Act, J.J.Rules and the Regulation, it can safely be concluded that any Civil Court in the matter of adoption and guardianship would include the District Court, Family Court and the City Civil Court having jurisdiction would be called as Court. In case the said Court is vacant for one month, the next senior most Civil Court may exercise such jurisdiction in its place and to pass the order. The application must be filed by the SAA for adoption of a child in a Court where the SAA is located. In case the child is of the CCI having linkage with SAA located at a different district, the SAA may apply to the Court making the CCI as co-petitioner without joining any party as respondent in the said application. In case of in-country adoption, the application ought to be filed within a period of ten days from the date of matching of the child with the prospective adoptive parents but in case of inter-country adoption, the application may be filed within the same period from the date of receiving the No Objection Certificate from the CARA. It is clarified, there would not be any respondent as party because the case of adoption is not required to be dealt with alike to be an adversarial litigation. The

adoption proceedings shall be held in camera by the Court and in those proceedings the Court ought to record a satisfaction that the proposed adoption is for the welfare of the child and due consideration of the wishes of the child having regard to the age and understanding must be given. It is also a duty of the Court to look into the fact that either the prospective adoptive parents should offer or give any amount to the SAA or the parents or guardian of a child in case of relative adoption has received or agreed to receive any payment or reward in consideration of the adoption except as permitted by the CARA Regulation and such proceeding is required to be completed observing the time limit of two months. Thus, the aforesaid procedure is required to be observed by the Courts while dealing the adoption cases.

21. In the present two revisions, the Principal Judge, Family Court, Chhindwara rejected both the applications on the pretext that the registration of SAA has not been renewed after 29.11.2016 and the children have crossed the age of 6 year and they have been shifted from Chhindwara district to Betul district, therefore, the SAA situated at Chhindwara is not having the jurisdiction. After considering the provisions of Regulation 12(3), this Court has set aside the orders by the interim order

dated 24.1.2018 because on the date of the applications, the children were of CCI having linkage with SAA located at Chhindwara have applied at the relevant point of time joining the CCI as co-petitioner. In addition, the renewal of the SAA has already been granted by the Government, therefore, the orders were set aside issuing directions to decide those applications within a period of two weeks from the date of receiving the order on restoration of the proceeding.

22. But it is necessary for this Court to issue uniform guideline as directed hereinabove, which is to be observed by the Courts, which are dealing the cases of adoption as per the provisions of the J.J.Act, J.J.Rules and the Adoption Regulations, 2017 and are discharging the function of the Court as defined under Section 2(23) of the J.J.Act. It is expected from all the Courts to observe the aforesaid procedure thereby the delay in disposal of those cases should not be occurred and on account of the hyper technical approach, the applications should not remain pending for the months' together and the applications ought not to be dismissed in the manner as dismissed by the Court.

Role & Responsibility of Central Adoption Resource Authority

23. Section 2(7) of the J.J.Act defines the "Authority", which means the Central Adoption Resource Authority constituted

under Section 68 and the similar definition of "Authority" is specified in Rule 2(ii) of the J.J.Rules. Section 68 of the J.J.Act speaks that the Central Adoption Resource Agency, which was in existence under the J.J.Act 2001, shall be deemed to have been constituted as CARA after commencement of the Act of 2015. The CARA shall perform the following functions (a) to promote in-country adoptions and to facilitate inter-State adoption in coordination with State Agency; (b) to regulate inter-country adoptions; (c) to frame regulations on adoption and related matters from time to time as may be necessary; (d) to carry out the functions of the Central Authority under the Hague convention on Protection of Children and Cooperation in respect of Inter-country Adoption; (e) any other function as may be prescribed.

24. The said provision makes it clear that the promotion of adoption in the country and to regulate the inter-country adoption is a function of the CARA. Section 70 of the J.J.Act confers the powers to the CARA for the efficient performance, to issue any instruction to any SAA or a Children Home or any CCI or any State Agencies or any authorized foreign adoption agency and those instructions are required to be followed by them. The direction to take appropriate action against any

officials or functionary or institution to the Government cornered under whose control they are functioning is also one of the power in case of persistent non-compliance of the instructions of the CARA. The case of persistent non-compliance of the instructions by any official or functionary or institution to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded, shall be proceeded and decided as per Section 346 of the Code of Criminal Procedure, 1973. In case of any difference of opinion in an adoption case including the eligibility of prospective adoptive parents or of a child to be adopted, the decision of CARA shall prevail.

25. As per Rule 49 of the J.J.Rules, the additional functions of the CARA have been specified by which an application of a non-resident Indian or overseas citizen of India or a foreigner living abroad shall be received by CARA through authorized adoption agency or Central Authority or the Government Department concerned or an Indian Diplomatic Mission and shall be processed in terms of Section 59(5) of the J.J.Act. The CARA has to receive and process the application received from a foreigner or an overseas citizen of India for one year or more and the prospective adoptive parent who is interested in adoption of

the child from India as per Sections 59(12) of the J.J.Act. The No Objection Certificate is required to be issued in case of inter-country adoption and made over it any SAA. The conformity certificate is required to be issued in case of inter-country adoption as per Article 23 of 1993 Hague Convention on Protection of Children. Intimation is required to be given to the Immigration Authority of India and receiving country of a child regarding inter-country adoption cases. The CARA has to maintain the Child Adoption Resource Information & Guidance System for transparency in the adoption system. It is the duty of the CARA to provide support and guidance to the SARAs, DCPUs, SAAs and the other stakeholders of adoption and related matters through trainings, workshops, exposure visits, consultations, conferences, seminars and other capacity building programmes. The CARA ought to coordinate with the State Government and the SARA and advise them in adoption related matters. The CARA has to establish uniform standards and indicators relating to adoption procedure to orphan, abandoned or surrendered children and also related to relative adoption; quality child care standards in SAAs and CCIs; monitoring and supervision of service provider; standardisation of documents in cases of adoption; safeguards and ethical

practices including online applications for facilitating hassle-free adoption; conduct research documentation and publication on adoption related matters; maintain a comprehensive centralized database relating to children and prospective adoptive parents for the purpose of adoption in CARINGS; maintain a confidential centralized database relating to children placed in adoption and adoptive parents in CARINGS; carry out advocacy, awareness and information, education and communication activities for promoting adoption either by itself or through its associated bodies; enter into bilateral agreements as per Hague Convention and to authorize foreign adoption agencies to process applications of NRIs or overseas citizen of India or foreign prospective adoptive parents for inter-country adoption of Indian children.

26. In Regulation 37 altogether similar functions have been assigned to the CARA as specified in Rule 49 of the J.J.Rules under the head of Additional Functions of the CARA. In addition to the aforesaid, it is the further duty of the CARA to set up the counselling centres in its headquarters and support SARA for setting up of counselling centres at State and District Level for counselling of prospective adoptive parents; counselling of older children wherever required; preparing post adoption

follow up report wherever required; post adoption counselling of adopted children and adoptive parents; and assisting and counselling of older adoptees in root search.

27. On perusal of Section 68 of the J.J.Act, Rule 49 of the J.J.Rules and Regulation 37 of the Adoption Regulations, 2017, it can safely be crystallized that to promote the adoption in the country either for in-country or inter-country adoption is a primary responsibility of the CARA, which is required to be discharged by it and also carry out all the functions as specified in Rule 49 of the J.J.Rules and the Regulation 37.

28. In the present cases, the functioning of the CARA has been questioned on the pretext that the children of various CCIs and SAA of the State of Madhya Pradesh have been uploaded on the CARINGS months' back but their referral is not possible. In the said context, the various oral complaints were received to the Secretary of the Juvenile Justice Committee of the High Court of Madhya Pradesh and one of the written complaint was also received and the response was sought from the CARA.

29. The response sent by the CARA is not in conformity to the provisions of the J.J.Act, J.J.Rules and the Regulation. The CARA has taken similar stand in the return filed on 24.1.2018. It is not out of place to mention that the return does not say any

action of MW&CD and it merely explains the things done by CARA alongwith the affidavit of the Chief Executive Officer of CARA. In the return, it is said that the linkage of CCIs and SAAs is the responsibility of DCPUs and SARAs and it is their duty to update such information on the CARINGS. It is admitted that 223 children having linkage of CCI & SAA are on CARINGS. It is said that referral of a child from CCI is given by CARINGS and it does not matter to which SAA it is linked to. The role of SAA only starts after the child has been reserved and adoption committee has to do the matching. It is said that the SAA UDAN made a complaint regarding linkage to CCI SOS children village but its delinking and relinking on CARINGS was not there. The said delinking or relinking is having nothing to do in the matter of referral. It nowhere hampers the rehabilitation of the children because the role of SAA commences when the child is reserved for matching. In this regard, after going through the provisions of the law, it is observed that the said stand taken in the return of MW&CD and CARA is contrary to Sections 58(1) and (2) and Section 59(5) and (6) of the J.J.Act. It is also contrary to Regulation 29(1) (i) (j) of the Adoption Regulations, 2017.

30. If the spirit of the J.J. Act is visualized then it is apparent that in case of inter-country adoption to declare a prospective

adoptive parents eligible is a function of SAA and thereafter the SAA will refer a child on declaring legal free for adoption to the prospective adoptive parents along with CSR and MER. For such referral, the manner is required to be provided in the Regulation framed by the Authority, therefore, the stand taken in the return that the function of the SAA starts only when the child is reserved is contrary to the J.J. Act and the Regulation. It is, further, observed that until the re-linking and de-linking of CCI linkage is uploaded on the website, the SAA cannot discharge their function as provided under the J.J. Act, therefore, the stand taken in the return that relinking and delinking do not affect adoption is contrary to the statute.

31. For the purpose of delinking and relinking, a letter of 12.1.2018 has been referred, though linkage was made by the State Government vide letter dated 13.9.2017 but in that regard, the first information was given on 20.11.2017 wherein the linkage SOS Balgram, Bhopal was not informed. However, clarifying the said mistake, another letter was sent on 30.11.2017 to the CARA but as to why the CARA has not made delinking or relinking upto 10.1.2018, it has not been explained and primarily the delay after linkage from September upto November, 2017 is a writ large by the officials of the State Government and similarly, the delay

caused by CARA for 40 days is again a writ large. Thus, the stand taken in the return is contrary to the provisions of law.

32. Paragraph 7 of the return of MW&CD and CARA makes it clear that 38 SAAs of the State of Madhya Pradesh are registered while infact as per the counter reply filed by the State Government, it is only 31 SAAs are registered and informed to the CARA but it is not updated by CARA, though it is their duty to update the same. This fact is also reflected from paragraph 10 of the return of the CARA.

33. In paragraph 12 of the return, the CARA shifted its responsibility to N.I.C. stating that the CARINGS is managed by N.I.C. not by CARA while the stand taken by NIC is contrary to the stand taken in the return of MW&CD and CARA. In the stand of NIC, it is stated that they have designed and developed CARINGS software under the guidance of CARA and MW&CD. It is further said that comprehensive centralized web application relating to children & prospective adoptive parents is managed with ICT support under the supervision and guidance of CARA and MW&CD. As described hereinabove, the said stand taken by CARA is contrary to the provisions of Sections 68, 70 of the J.J.Act and Rule 49(1)(vi)(vii)(ix)(c)(xi) of the Rules of J.J. Rules and Regulations 37(7),(9)(c),(11) of the Regulations.

34. It is to be noted here that the Juvenile Justice Committee of the High Court has received the complaint sent by SAA UDAN dated 4.1.2018 on which the response was sought from CARA on 10.1.2018. On the same day, in the present cases, the similar issue cropped up. After the complaint and prior to taking the cognizance, the CARA has issued the show cause notice to SAA UDAN. On asking the reply by the High Court from CARA in Paragraph No.6 of their return, the comparison of the adoption of SAA UDAN and SAA MATRUCHHAYA has been portrayed for the year 2016-2017 and said that the SAA MATRUCHHAYA is on better footing. It was not the issue on which the reply was sought by the High Court infact the issue was why a referral on due time from the CARINGS is not possible and what the CARA is doing, which is a complaint received to the High Court.

35. Looking to the averments made in the return, the said stand does not appear to be a fair or unbiased act of the authority single out two agencies only. It reflects that on account of a complaint of SAA UDAN on which the High Court has taken the cognizance in these cases, the Chief Executive Officer of CARA was not happy and became bias, therefore, tried to justify their act making the comparison. Such act cannot be acknowledged in a right perspective. It is to observe here

that the show cause notice issued by CARA to SAA UDAN may be replied by such agency, which may be looked into by the authorities but considering the aforesaid, the caution is required to be observed to say that the reply of SAA UDAN and show cause notice may be looked into by any officer posted in Women & Child Development Department MW&CD higher than the Chief Executive Officer independently and to take a decision on the said show cause notice uninfluenced by the intervention of the Chief Executive Officer of CARA.

36. During the course of the hearing, it has been brought to the notice of this Court by the learned Assistant Solicitor General and the learned Government Advocate for the State of Madhya Pradesh seeking instructions from their officers that at present in place of making three children available for referral to the parents only one child is being made available for referral, which is contrary to the Regulation 10(2). It has also been brought to the notice of this Court by the learned Assistant Solicitor General that the numbers of registration of the prospective adoptive parents are less for older age child, therefore, their referral is not possible. The learned Assistant Solicitor General describing the chart of prospective adoptive parents prepared by the CARA dividing it in age group of 0 to 2 year, 2 to 4 year, 4

to 6 year, 6 to 8 year, 8 to 10 year, 10 to 12 year, 12 to 14 year, 14 to 16 year, 16 to 18 year, and said for older age, registration of prospective adoptive parents is less. In my considered opinion, the said age group is not provided either under the J.J.Act or the J.J.Rules, therefore, why and in what manner the said chart has been prepared is not understandable.

37. It is the duty of the CARA that in case the adoption as specified in Regulations, 8, 48, 49 despite efforts is not possible, the authority with the approval of its Steering Committee may make additional efforts for adoption of hard to place children, who are not getting any referral for long time through CARINGS as specified in Regulation. In this context, the CARA has issued a Circular somewhere in June-July 2017 though at present it is withdrawn from the site of CARA but under such Circular as per the choice of the authorities operating the CARINGS, some of the children are shown on immediate placement discriminating the others. Infact in case of adoption of an older age child or siblings, there may be a possibility of non-adjustment of the unrelated parents, therefore, the said recourse must be taken by the authorities directing for immediate placement of the children but it has not been resorted to. Therefore, it appears to be a case wherein various children who are having enrolled on CARINGS

even after legal free could not get referral and awaiting their referral. However, the recourse of immediate placement is one of the option of those children from the CARA.

38. As discussed above, it is a case wherein the noble cause of adequate number of the adoption of orphan, abandoned or surrendered child is taken into consideration. In the present cases, the return has been filed with an affidavit of the Chief Executive Officer of CARA adding the name of MW&CD. But as discussed, the MW&CD has not said anything regarding their activities, which may be aptly reflected from their letter dated 29.9.2017. The return projects the incorrect information of law shifting the responsibility of CARA on the other stakeholders though it is the duty and function of CARA. The return also indicates the biased approach of the Chief Executive Officer of CARA. Therefore, all these facts are required to be looked into by MW&CD and Steering Committee constituted under Section 69 of the J.J.Act. They further require a vigil on the functioning of the Chief Executive Officer of CARA and their staff and to be dealt with in accordance with law for ignoring the provisions of the J.J.Act, J.J.Rules and the Adoption Regulations, 2017.

Role & Responsibility of Specialised Adoption Agency

39. As per section 2(57) of the J.J.Act, it reveals that an institution established by the State Government or by a voluntary or non-governmental organization and recognized under Section 65, for housing orphan, abandoned and surrendered children, placed there by order of the Committee, shall be called to be the Specialised Adoption Agency. Section 65 contemplates that in each district one or more SAA shall be recognized by the State Government in such manner as provided in the regulation framed by CARA for rehabilitation of orphan, abandoned or surrendered children through adoption and non-institutional care. In case of default on their part, as specified in Sub-section (4), they shall be dealt in accordance with the provisions of law. Section 58(1) of the J.J.Act though prescribes the procedure for adoption of Indian Prospective Adoptive Parents living in India but Sub-section (2) confers a duty and responsibility to SAA to prepare home study report of prospective adoptive parents and upon finding them eligible will refer a child declared legal free for adoption to them alongwith CSR and MR of child, in the manner as provided in the adoption regulation framed by the authorities. Sub-section (3) contemplates that on receipt of the acceptance of the child

from the PAP, they shall take steps for obtaining the adoption order from the Court in a manner as provided in the Regulation. In case of inter-country adoption, the eligibility NRI, PAPs be decided by the CARA and thereafter, the CARA will refer such applications to one of the SAA where the children legally free for adoption are available. Thereafter, the procedure which is to be adopted by SAA is similar to in-country adoption that includes the matching of the child and various other duties and responsibilities having meeting with the prospective adoptive parents for the efficient adoption of a child.

40. On perusal of the aforesaid, it can safely be crystallized that primary duty of SAA on receiving an orphan, abandoned or surrendered child is to provide the housing and rehabilitate them through adoption and to do its non-institutional care, otherwise they shall be dealt with in accordance with the provisions of law.

41. Regulation 29 further contemplates the function of SAA thereby it is clear that SAA being responsible for care, protection and well being of a child and child shall cater their health needs, emotional and psychological needs, educational and training needs, leisure and recreational activities, protection from any kind of abuse, neglect and exploitation, social

mainstreaming and restoration or as the case may be and follow up updating all the reports of admissions, restorations, transfers, death and adoption of children as well as about children missing from the institution either to the CWC, DCPU, SARA and on CARINGS for missing child and police. Every orphan, abandoned or surrendered child is required to be submitted on CARINGS. It is duty of the SAA to upload the certificate of the legal free child issued by CWC on CARINGS within a period of 48 hours from receipt of such certificate. They are supposed to prepare the CSR and MR and upload on CARINGS within a period of 7 days after declaring the child legal free. In the best interest of a child, individual care plan be prepared in the order of preference as provided. The SAA shall also create a memory album which shall include a photo of the child, history and detail of the child life and it shall be handed over to the adoptive family alongwith medical history at the time of pre-adoption foster care. It is the duty of the SAA to make efforts to place each child in adoption which has been declared legally free for adoption by CWC. It is responsibility of SAA to complete the referral process of a child to PAP and legal procedure related to adoption as provided in these regulations; to prepare the Psychological Report of the child for his

assimilation with adoptive family whichever required; to facilitate registration of the child with PAP whenever required. There are so many other functions as specified in the regulations irrespective to the said regulation. Simultaneously, in Regulation 7(c), it is the duty to ensure each case of inter-country adoption of PAP to be disposed of within four months from the date of receipt of application with the assistance of AFAA (for brevity "Authorized Foreign Adoption Agency") and State Agencies as provided in sub section (2) of Section 62 of the J.J. Act, therefore, it can safely be inferred that it is the responsibility of SAA to rehabilitate the child who is orphan, abandoned or surrendered by way of adoption and take a recourse for non-institutionalization care to be completed within a time frame otherwise best interest of the child may be adversely affected.

42. In addition to the aforesaid, this Court has taken care of the provisions of Section 58(1)&(2) of the J.J.Act which are reproduced as under :-

"58. Procedure for adoption by Indian prospective adoptive parents living in India-(1) Indian prospective adoptive parents living in India, irrespective of their religion, if interested to adopt an orphan or abandoned or surrendered child, may apply for the same to a Specialized

Adoption Agency, in the manner as provided in the adoption regulations framed by the Authority.

(2) The Specialized Adoption Agency shall prepare the home study report of the prospective adoptive parents and upon finding them eligible, will refer a child declared legally free for adoption to them alongwith the child study report and medical report of the child, in the manner as provided in the adoption regulations framed by the Authority."

43. Simultaneously, Regulation 10 has also been seen which deals with the referral of the child from SAA through CARINGS to Prospective Adoptive Parents. Regulations 10(1) and (2) are relevant which are reproduced as under :-

10. Referral of a child from a Specialized Adoption Agency through Child Adoption Resource Information and Guidance System to prospective adoptive parents--(1) The seniority of the prospective adoptive parents for child referral shall be from the date of uploading of document and completion of registration process in Child Adoption Resource Information and Guidance System.

(2) On the basis of seniority, the prospective adoptive parents shall be referred online profile of three children which will include the photographs, Child Study Report and Medical Examination Report, in their preference category, if any, from one or more Specialized Adoption Agencies through the Child

Adoption Resource Information and
Guidance System in one or more
System.”

44. On perusal of the provisions of the J.J.Act, it is apparent that SAA will refer a child declared legal free for adoption to the PAP but if we see the heading of regulation 10, then its intention appears to be similar to the intentions of the provisions of the J.J.Act but the language of regulation 10(2) appears to be ambiguous to the language to sub section (2) of Section 58 of the J.J. Act and the other provisions which cast responsibility on SAA for referral. It is clarified that that Section 58(2) intends that referral shall be made by the SAA to the PAP while Regulation 10(2) intends that on having data on CARINGS on the basis of seniority of PAP, three children shall be referred to them online from one or more specialized agency in one or more referral. Infact Sub-section (2) of Section 58 of the J.J.Act prescribes the manner which is required to be provided by a regulation framed by the authority must be in consonance that the SAA will refer a child declared legal free to the PAP but Regulation 2 appears to be ambiguous, therefore, CARA and their respective authorities are supposed to look into the same

and if they deem fit it may be explained taking remedial measure by amending the Regulation.

45. During the course of the hearing, it is experienced that the procedure of referral is very complicated through CARINGS to which officers of the State Government or other stakeholders are unaware. It has been observed hereinabove that contrary to Regulation 10(2), now the CARA is referring only one child to the parents as brought to the notice of this Court. The mode ought to be provided by the CARA by way of software application familiar to the Prospective Adoptive Parents and Specialized Adoption Agency thereby immediate referral may be possible, must be a concern of the CARA and accordingly an application must be developed and training of the said operation must also be provided by the CARA to the officers of the State Government. It is expected that the Steering Committee and Women & Child Development Department shall take appropriate remedial steps in this regard.

Role & Responsibility of Child Welfare Committee

46. Section 2(22) of the J.J.Act defines the 'Committee' which means Child Welfare Committee constituted under Section 27 of the J.J.Act. As per Section 27 of the J.J.Act, it is the duty of the State Government to constitute a Child Welfare Committee or

Committees and notify the same in the official Gazette to exercise power and to discharge the duties conferred to such Committee in relation to children in need of care and protection under this Act. As the present cases relate to adoption of children only, however, this Court shall deal the relevant issue of adoption only otherwise the issue of the jurisdiction of CWC has also been clarified by the Indore Bench of this High Court in **Writ Petition No.6163/2016 [Priya Yadav Versus State of M.P. & Others] decided on 23.11.2016**. Hon'ble the Apex Court in Writ Petition (Civil) No.473 of 2005 vide order dated 9.2.2018 has also issued the directions to CWC regarding their functioning, however, those directions are required to be observed by them.

47. As per Section 30(xi) of the J.J.Act, it is the responsibility of the Committee to declare an orphan, abandoned or surrendered child as legally free after due inquiry for adoption. The procedure of inquiry as contemplated under Section 36 of the J.J.Act may be observed by calling the Social Investigation Report within 15 days, thereby the Committee may pass a final order within a period of two months/four months looking to the age of the child. Section 38 of the J.J.Act explains the scope, Section 30(xi) specifies the procedure of declaring a child legally free for adoption. It is the duty of the Committee to make all

efforts for tracing the parents or guardian of the child and on completion of such inquiry if it is established that the child is either orphan having no one to take care or abandoned, the Committee shall declare the child legally free for adoption within the time so prescribed. The decision to declare a child as orphan, abandoned or surrendered as legally free for adoption shall be taken by at least three members of the Committee and after taking such decision, the Committee shall inform the SARA that the child has been declared legally free for adoption and also furnish a data by every month in a manner prescribed that how many cases are pending. Chapter IV of the J.J.Rules deals with the Child Welfare Committee but Rule 17 is relevant for the purpose of adoption.

48. Regulation 35 provides for the Child Welfare Committee and according to the same the Child Welfare Committee has to act as per Regulation 6 which provides the procedure relating to children for adoption to an orphan and abandoned child and Regulation 7 provides a procedure to a surrendered child. However, the said procedure ought to be followed in the case. In the present cases as per stand taken by MW&CD and CARA, it is urged that in all districts of the State of Madhya Pradesh, CWCs are not functioning due to lack of members. It is

however, said that number of the cases to declare the child legally free are pending with the CWCs and for the said reason the adoption is being delayed.

49. The State Government by filing the counter reply has clarified the aforesaid fact and fairly stated that in some of the districts if the members are not available then the charge has been given to the CWC of the adjacent district. It is further explained specifying the data that how many cases are pending and how many are decided within the time so specified. It is also specified that there is some mistake in the matter of registration of dates of the application in the CARINGS but now the CARA has provided the provision for editing, therefore, the said date be now corrected and steps shall be taken to dispose of all the pending cases as per the spirit of the J.J.Act.

Role & Responsibilities of State Adoption Resource Agency

50. SARA has been defined in Section 2(53) of the J.J.Act which is known as State Agency and it shall be set up by the State Government for dealing with adoption and related matters as per section 67 of the J.J. Act. Section 67 of the J.J.Act makes it clear that the State Government shall set up a State Adoption Resource Agency for dealing with the adoption and related matters in the State under the guidance of CARA.

Regulation 33 provides the role of the State Government and SARA and its functions are defined in Sub-section (2). It is clarified here that the work of the SARA is to be done by the DCPU with respect to registration on CARINGS regarding adoption, which is relevant to the context. The return filed by CARA contemplates that the governing body is not there in SARA and delay in adoption is a role and responsibility of SARA, DCPU and other officers of the State and their agencies.

51. The return filed by CARA contemplates that the governing body is not there in SARA and delay in adoption is a role and responsibility of SARA, DCPU and other officers of the State and their agencies. In this regard, looking to the subject matter or the context to which the issue has been dealt with, those deficiencies certainly are required to be rectified by the State Government as per the provisions of J.J. Act but it is having nothing to do in the matter of affecting the adoption in the State of Madhya Pradesh, while in fact for the purpose of adoption, all the components have to be worked together without pointing out the finger on any one and they are SAA, CWC, CARA, SARA.

52. In view of the foregoing discussion, this Court has crystallized the jurisdiction of the Court and the manner in which

the cases to be disposed of explaining the role and responsibilities of CARA, SAA, CWC, SARA, DCPU in the matter of adoption.

53. The Juvenile Justice (Care and Protection of the Children) Act, 2015 has been introduced in view of Article 15 of the Constitution of India with an object to confer the power to the Government to make special provision for the children. Article 39(e), 39(f), 45, 47 of the Constitution of India further makes the State responsible for ensuring that all needs of the children are met and their basic human rights are protected. It also requires the State to undertake all appropriate measures in case of a child alleged as, or accused of, violating any penal law, including treatment of the child in a manner consistent with the promotion of the child's sense of dignity and worth; reinforcing the child respect for the human rights and the fundamental freedom of others; taking into account the child's age and desirability of prompting the child reintegration and the child's assuming a constructive role in society. In the State as well as in the country, a large number of the children are continued to languish in child care homes whereas they should have been in care of an adopting family. However, any recourse taken by the CARA or the officers of the State Government cannot be left

immune in the matter of non-observance of the provisions of the J.J.Act and the J.J.Rules. The Court is also having sense of responsibility to understand the circumstances in which the children reside in the CCIs and SAAs and their early adoption, if resorted to, shall be a stepping stone for rehabilitation or their deinstitutionalization, therefore, looking to the facts and circumstances as discussed hereinabove, certain directions are issued:-

1.The orders passed by the Principal Judge, Family Court, District Chhindwara dated 21.12.2016 & 19.12.2016 are hereby set aside confirming the interim order of this Court dated 24.1.2018.

2.The "Court" defined under Section 2(23) of the J.J.Act is directed to follow the guideline as observed in Paragraph No.20 of this order. The application seeking adoption should not be treated to be an adversarial litigation and such application should be decided in view of the foregoing directions within a time frame.

3. In view of the observations made in Paragraph Nos.29,30,33, 34,35,36,38 the stand of the Chief Executive Officer of CARA is not found fair and it is contrary to the provisions of the J.J.Act, J.J.Rules and Regulations, which is wholly unbecoming in a case where the noble cause of adequate

upliftment of children by way of adoption was under consideration.

4.The Steering Committee or the Women & Child Development Department as the case may be may look into the aforesaid conduct and may have a vigil as specified under Section 69 of the J.J.Act and supervise the function of the CARA.

5.The action may be taken against the erring persons who made delay in furnishing the information by the Central Government or the State Government as the case may be.

6. After filing the reply of the show cause notice the SAA UDAN who reported a right cause to this Court may be examined by the officer higher than the C.E.O of CARA independently without his intervention and to take a final decision in accordance with law.

7.In the facts, the CARA is directed through Steering Committee to make the referral of the children of SAA UDAN and other alike SAA and CCI by way of immediate placement. In this regard, the older age sibling child must be given priority but immediate placement should not be delayed more than fifteen days from the date of communication of this order.

8.The Special Adoption Agencies are directed to discharge their duties as observed in Paragraph Nos.40 and 41 of this order.

9.The Steering Committee of CARA or MW&CD are requested to look into the observations made in Paragraph Nos.42,43,44,45 of this order and to examine whether the Regulation 10(2) is ambiguous to the provisions of Section 58(2) and the other provisions of the J.J.Act and the Rules and if it is found so, remedial measure may be taken.

10.The Steering Committee of CARA is further requested to look into the observations made in Paragraph No.45 of this order and update the CARINGS application thereby it may be user friendly to SAA and PAPs for upliftment of the adoption in the country.

11.The State Government is directed to constitute the CWCs in each district if not already constituted within a period of three months from today.

12.The State Government is further directed to recognize SAA in each of the district otherwise the CCI-SAA linkage be made as early as possible within a period of one month from today.

13.The CWCs are directed to act as per the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015, the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 and the Adoption Regulations, 2017 observing the directions issued by this Court in **Writ Petition No.6163/2016 [Priya Yadav Versus State of M.P. & Others] decided on 23.11.2016** and the directions

issued by Hon'ble the Apex Court on **9.2.2018 in Writ Petition (Civil) No.473/2005**.The said direction of Hon'ble the Apex Court is also required to be observed by the State Government.

14.The CWCs in the matter of declaring the child legal free shall take early steps to dispose of the cases in accordance with the provisions of J.J.Act,2015 and the rules made thereunder within a time frame as specified and the orders must be passed as per quorum specified.

15.The State Government is directed to constitute a Committee of SARA to discharge the efficient functioning of SARA within a period of three months from today.

16.It is further observed that the Central Government, the State Government, CARA and Court are supposed to function as per the object and spirit of the Juvenile Justice (Care and Protection of Children) Act, 2015, the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 and the Adoption Regulations, 2017.

17. It is, however, expected that all the stakeholders shall discharge their functions and duties in view of the foregoing directions and observations.

54. The Secretary of Juvenile Justice Committee of the High Court of Madhya Pradesh, Jabalpur is requested to communicate copy of this order to all concerned.

55. At the end, it is our duty to record the words of appreciation in favour of the Shri T.S.Ruprah Senior Advocate, Shri Girish Kekre, Government Advocate representing the State of Madhya Pradesh and Shri Anubhav Jain, Government Advocate as *amicus curiae*, who assisted the Court in all fairness.

(J.K. Maheshwari)
Judge