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THE 14TH NATIONAL MOOT COURT

COMPETITION

2020

27-29TH March, 2020 | ILS Law College, Pune

Moot Proposition^{*}

BEFORE THE HON'BLE SUPREME COURT OF INDIA

FARIZ MOHAMMED

APPELLANT

VS

UNION OF INDIA AND ORS

RESPONDENT

AND

UNION OF INDIA AND ORS

APPELLANT

VS

FARIZ MOHAMMED

RESPONDENT

FACTS

1. Medhavi Mahaveer, a practicing Jain, was a single mother residing in Dattawadi slum in Pune with her minor daughter Anhita. The daughter was

^{*} The moot proposition is drafted by Mr. Sharath Chandran (Alumni of ILS Law College, Pune and Advocate, High Court of Madras) and Ms. Maithili Sane (Alumni of ILS Law College, Pune and presently, Ph.D. Candidate, University of Madras).

born out of wedlock and Medhavi had no family to help her out. She worked as a domestic help with but was struggling to make ends meet.

2. Medhavi's employer Fariz Mohammed, was a practicing Muslim who lived with his wife Hussaina. He was working in an IT firm in Hinjewadi, Pune. The couple had seen Anhita since she was a baby and were fond of her. Anhita too, was attached to her 'Fari' uncle and often would accompany her mother on weekends to Fariz's house.
3. In January 2017, Fariz's firm decided to send him to Mumbai for about a year on a project. Accordingly, Fariz and Hussaina soon left Pune and Medhavi lost her only job. Medhavi struggled desperately and shuttled between various jobs but was unable to sustain herself and Anhita. One evening while returning from work, Medhavi met with an accident and lost her legs. This compounded her agony as she not only had to stay at home, but was also unable to properly look after her little girl.
4. After trying and failing to get help from various sources, Medhavi finally decided to surrender Anhita to the Child Welfare Committee under Section 35 of The Juvenile Justice (Care and Protection of Children) Act 2015 ("Act"). The process of surrender as mentioned in the Act and The Adoption Regulations 2017 ("Regulation") was duly followed. The Child Welfare Committee accepted the grounds and a deed of surrender was executed with effect from 1st March, 2018. Since Anhita was aged 7 years at the time of surrender, she was placed in a Child Shelter Home as mandated by the Act. She was soon declared legally free for adoption as per provisions of Section 38 of the Act.

5. Medhavi soon left Pune and her whereabouts are not known till date. In June 2018, Fariz returned to Pune. He had suffered a personal tragedy as Hussaina had passed away due to labour complications. Their child was also still born.
6. A totally devastated Fariz was slowly rebuilding his life. He registered through the Child Adoption Resource Information and Guidance System by filling up the online application form, and uploading the relevant documents thereby applying to be an adoptive parent. He chose the Specialized Adoption Agency (SAA)- 'Aadhaar' (Agency Code - MH17SAA) located in Janata Vasahat, Pune. His documents were in order and the Home Study report also rendered him eligible; hence Fariz's registration was duly completed and Fariz was declared a 'Prospective Adoptive Parent' (PAP) along with a registration number and was placed in the seniority list for adoptive parents.
7. In due course, Aadhaar sent him the online profile of three children as per Regulation 10 (2). Fariz was shocked to see the photo of Anhita amongst the three referred children. He tried his best to contact Medhavi to find out what had happened, but was unable to do so. Fariz immediately signalled Anhita as his choice for adoption.
8. Aadhaar fixed the appointment and completed all formalities as required in the Act and Regulation for getting the adoption started. Fariz conveyed his acceptance of Anhita and she was placed in pre-adoption foster care while the Specialized Adoption Agency filed an application in the Family Court, Pune for obtaining the order for adoption.
9. The Family Court returned a finding that the SAA had erred while making an assessment of Fariz's suitability for adopting Anhita. In reaching the aforesaid

conclusion, the Court, apart from considering the requirements of Section 61(1) of the Act, reasoned as under:

- a. Fariz was a practicing Muslim, while Anhita was raised a Jain. The socio-cultural environment that Anhita might enter into, was completely different from the one she was used to. This would not be in her **best interests** which violates the fundamental principle of adoption as enshrined in Section 2 of the Act and Rule 3 of the Regulation, especially as regards 'socio-cultural' conditions.
- b. Fariz's age at the time of prospective adoption would be 34 years. This was against the proviso to Rule 5 (6) of the Regulation which had been recently amended by the Central Government and as framed by the Central Adoption Resource Authority vide notification number S.O. 1945 (E) dated the 17th July, 2017. The Rule read as under

Rule 5(6) The minimum age difference between the child and either of the prospective adoptive parents shall not be less than twenty-five years.

Provided that, in case a single Prospective Adoptive Parent desires to adopt, he or she should not be less than 35 years of age and shall not be above the age of 50 years.

- c. A single male was not allowed to adopt a female child under Section 57(4) of the Act and Rule 5(2)(c) of the Regulation.

In view of the above, the application for adoption was rejected.

10. Fariz carried the matter on appeal to the High Court. Additionally, Fariz filed W.P (Civil) 2322/2019 challenging the constitutional validity of Section 57(4) of the Act, and Rules 2, 3 and the proviso to Rule 5 of the Regulation on the ground that it was violative of his fundamental rights under Articles 14, 15 and 21 of the Constitution. He also contended that the rejection of his application on the ground that he was a practicing Muslim was plainly illegal. Section 58 of the Act did not interdict adoption on the ground of religion. As such Section 2 and Rule 3 cannot be read in isolation and must be read along with Section 58 of the Act, in the absence of which the provision must be struck down as manifestly arbitrary. Lastly, it was contended that the age bar contemplated under the proviso to Rule 5 (6) was also manifestly arbitrary and violative of Article 14, as, such a requirement did not bear any rational nexus with the object sought to be achieved by the Act. The requirement being utterly irrational, it ought to be struck down as arbitrary and violative of Article 14.
11. The High Court held that Section 57(4) of the Act violated Articles 14 and 15 of the Constitution as it discriminated solely on the ground of "sex", a prohibited characteristic. Accordingly, Section 57(4) of the Act was declared ultra vires the Constitution. However, the High Court held that Rule 2, 3 and the proviso to Rule 5 were intra vires the Constitution and the Act. The High Court reasoned that Rules 2 and 3 did not discriminate solely on the ground of religion but that such a requirement was also in tune with the policy of the law which placed paramount importance on the welfare of the child especially her socio-cultural conditions. The proviso to Rule 5 was sustained on the ground that age, per se, did not constitute a protected characteristic under Article 15. The age requirement cannot be said to be completely irrelevant to the object sought to

be achieved. The Court reasoned that the age requirement was inserted keeping in mind the overall interest of the child vis a vis her adoptive family. In this view of the matter, the Rule cannot be said to be violative of Article 14. Since the attack based on Article 15 was confined to sex alone, “age” did not come within the prohibition of that Article. The writ petition filed by Fariz was disposed off with the aforesaid declaration qua Section 57(4) of the Act. His appeal against the Family Court’s order was, however, dismissed since the eventual conclusions reached by the trial court could not be disturbed as Rule 2,3 and the proviso to Rule 5 were found to be intra vires.

12. Challenging the declaration granted by the High Court invalidating Section 57(4) of the Act, the Union of India sought leave to appeal before the Supreme Court. Fariz challenged the dismissal of his appeal against the order of the Family Court, and the order passed in the writ petition turning down the challenge to Rule 2,3 and the proviso to Rule 5. More particularly, it was argued on behalf of Fariz, that the High Court’s formalistic interpretation of Articles 14 and 15 was not in tune with the decision of the Constitution Bench of the Supreme Court in *Naotej Singh Johar v Union of India* [2018 10 SCC 1].

13. Since the issues raised in the appeals, were important questions of general public importance, leave to appeal was granted in all matters, and as questions touching upon the interpretation of the Constitution, more particularly the interplay between Articles 14, 15 and 21, were involved, the matter was directed to be placed before the Chief Justice for the constituting a Bench of requisite strength in terms of Article 145 of the Constitution.

14. The matter is now listed for hearing on 28th March 2020.

NOTE TO PARTICIPANTS

1. The factum of Anhita's surrender and her being declared legally free for adoption is not a subject matter of dispute in the present case.

2. Rule 5(6) of The Adoption Regulations 2017 should be read thus:

Rule 5(6) The minimum age difference between the child and either of the prospective adoptive parents shall not be less than twenty-five years.

Provided that, in case a single Prospective Adoptive Parent desires to adopt, he or she should not be less than 35 years of age and shall not be above the age of 50 years.

3. Participants are expected to invoke doctrines of intersectionality and multiple discrimination and refer to relevant judgments and literature from other major Jurisdictions.
