

**(SHOW CAUSE NOTICE BEFORE ADMISSION)
IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

MONDAY, THE TWENTY SEVENTH DAY OF JANUARY
TWO THOUSAND AND TWENTY FIVE

:PRESENT:

THE HON'BLE MRS. JUSTICE SUREPALLI NANDA

WRIT PETITION NO: 2076 OF 2025

Between:

Perugu Dhurgabavani, W/o. Late Chakrapani, Aged: 33years, Occ: Housewife, R/o. Chintayapalem – Vill. and Post, Karlapalem- Tehsil, Guntur – District, Andhra Pradesh- State-522111

Petitioner

AND

1. The State of Telangana, Rep. by its Principal Secretary, Department of Women and Child Welfare, Secretariat, Hyderabad.
2. The Child Welfare Committee, Rep. by its Chairperson, Alwal, Medchal Malkajgiri District, Telangana State - 500010.
3. Directorate of Women Development and Child Welfare Department, Rep. by its Director, Yosufguda Main Road, Madhura Nagar, Yosufguda, Hyderabad - 500045
4. The Station House Officer, Medipally Police Station, Medipally, M.M Dist - 501301.
5. Mohammad Anif Gulam Rasool Shaik, R/o. Mahakoliwada Nauma Chowk, Navi Mumbai D2, PIN 400007.
6. Nazma Mohammad Anif Shaik, R/o. Mahakoliwada Nauma Chowk, Navi Mumbai D2 PIN - 400007.
7. Central Adoption Resource Agency, Ramakrishna Puram, New Delhi PIN - 110054 (Formal Party)

Respondents

WHEREAS the Petitioner above named through her Advocate M/s. C.Rakee Sridharan, presented this petition under Article 226 of the Constitution of India, praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ, order, or direction, more particularly one in the nature of a writ of mandamus by setting aside the order dt. 09.12.2024 and publication dt. 10.12.2024 passed by the office of Respondent No.2 without considering the representation of the Petitioner dt. 31.05.2024, 07.06.2024, 11.12.2024 and 07.01.2025 and declaring the action of the Respondent No.2 as being illegal, arbitrary and violative of Article 14 and 21 of the Constitution of India;

AND WHEREAS the High Court upon perusing the petition and affidavit filed therein, and upon hearing the arguments of M/s. C.Rakee Sridharan, Advocate for the Petitioner, directed issue of notice to the Respondents herein to show cause as to why this WRIT PETITION should not be admitted.

You viz:

1. The Principal Secretary, Department of Women and Child Welfare, State of Telangana, Secretariat, Hyderabad.
2. The Chairperson, Child Welfare Committee, Alwal, Medchal Malkajgiri District, Telangana State - 500010.
3. The Director, Directorate of Women Development and Child Welfare Department, Yosufguda Main Road, Madhura Nagar, Yosufguda, Hyderabad - 500045
4. The Station House Officer, Medipally Police Station, Medipally, M.M Dist - 501301.
5. Mohammad Anif Gulam Rasool Shaik, R/o. Mahakoliwada Nauma Chowk, Navi Mumbai D2, PIN 400007.
6. Nazma Mohammad Anif Shaik, R/o. Mahakoliwada Nauma Chowk, Navi Mumbai D2 PIN - 400007.

are directed to show cause on or before 04-02-2025 to which date the case stands posted as to why in the circumstances set out in the petition and the affidavit filed therewith (copy enclosed) this WRIT PETITION should not be admitted.

IA NO: 1 OF 2025:

Petition under Section 151 of CPC, praying that in the circumstances stated in the affidavit filed in the writ petition, the High Court may be pleased to direct the 2nd respondent not to give the petitioners adoptive child Perugu Bhavya Sree to others, pending disposal of WP No. 2076 of 2025, on the file of the High Court.

IA NO: 2 OF 2025:

Petition under Section 151 of CPC, praying that in the circumstances stated in the affidavit filed in the writ petition, the High Court may be pleased to stay the operation of the publication Dt. 10.12.2024 in respect of the Child Bhavya Shree, pending disposal of WP No. 2076 of 2025, on the file of the High Court.

The Court made the following: ORDER:

Heard Smt. C.Rakee Sridharan, learned counsel appearing on behalf of the petitioner, learned Government Pleader for Women Development and Child Welfare appearing on behalf of the respondent Nos. 1 to 3 and learned standing counsel appearing on behalf of the respondent No.7.

Notice Before Admission.

The petitioner in the present Writ Petition challenged the impugned proceedings, OR.No.14/CWC/MDCL/2024, dated 09.12.2024 issued by the office of the 2nd respondent and the same is extracted hereunder:-

“ As per the directions of the Hon’ble High Court for the State of Telangana At Hyderabad, Hon’ble Chief Justice Alok Aradhe and Hon’ble Justice Srinivas Rao regarding Writ Appeal

Nos.1193, 1228, 1257, 1260, 1265, 1266, 1267, 1268, and 1277 of 2024, as per the common judgment dated 28.11.2024 of common judgment dated 28.11.2024.

The Committee has opined after due enquiry and based on the investigation reports submitted by Medipally Police Station, Lr.No.579/Cr/MK-4/RKD/2024, dated 06.12.2024, the children are declared Legally Free for Adoption (LFA) as per Section 37(h) of JJ Act, 2015.”

Learned counsel appearing on behalf of the petitioner submits that the impugned proceedings, dated 09.12.2024 declaring the children as legally free for adoption as per Section 37(h) of JJ Act, 2015 is contrary to the specific directions issued by the Division Bench of this Court dated 28.11.2024 passed in W.A.Nos.1193, 1128 of 2024 and batch.

Learned Government Pleader for Women Development and Child Welfare appearing on behalf of the respondent Nos.1 to 3 contends that the orders of this Court dated 28.11.2024 passed in W.A.Nos.1193, 1128 of 2024 and batch had been duly followed and the proceedings had been issued, declaring that the children are free for adoption vide impugned proceedings, dated 09.12.2024 and hence, there is no illegality in the said proceedings.

PERUSED THE RECORD:-

It is represented by the learned counsel appearing on behalf of the petitioner that the impugned proceedings, dated 09.12.2024 does not indicate that the procedure as mandated under Sections 37 and 38 of the J.J.Act, 2015 had been followed in issuing the impugned proceedings and the same is not in terms of the Sections 37 and 38 of the J.J.Act, 2015 at all, and further as on date, the petitioner had not been communicated any decision on petitioner's application seeking adoption as directed by the Division Bench of this Court vide its order dated 28.11.2024 passed in W.A.Nos.1193, 1128 of 2024 and batch (referred to and extracted above)

Learned counsel appearing on behalf of the 7th respondent seeks time to obtain instructions to ascertain whether any order had been passed on the application of the petitioner seeking adoption of the children.

A bare perusal of the impugned proceedings indicates that vide impugned proceedings, dated 09.12.2024, the children had been declared Legally Free for Adoption (LFA) as per section 37(1)(h) of JJ Act, 2015.

Sections 37 and 38 of the Juvenile Justice (Care and Protection of Children) Act, 2015 are extracted hereunder:-

37. Orders passed regarding a child in need of care and protection.

(1) The Committee on being satisfied through the inquiry that the child before the Committee is a child in need of care and protection, may, on consideration of Social Investigation Report submitted by Child Welfare Officer and taking into account the child's wishes in case the child is sufficiently mature to take a view, pass one or more of the following orders, namely:-

- (a) declaration that a child is in need of care and protection;
- (b) restoration of the child to parents or guardian or family with or without supervision of Child Welfare Officer or designated social worker;
- (c) placement of the child in Children's Home or fit facility or Specialised Adoption Agency for the purpose of adoption for long term or temporary care, keeping in mind the capacity of the institution for housing such children, either after reaching the conclusion that the family of the child cannot be traced or even if traced, restoration of the child to the family is not in the best interest of the child;
- (d) placement of the child with fit person for long term or temporary care;
- (e) foster care orders under section 44;
- (f) sponsorship orders under section 45;
- (g) directions to persons or institutions or facilities in whose care the child is placed, regarding care, protection and rehabilitation of the child, including directions relating to immediate shelter and services such as medical attention, psychiatric and psychological support including need-based counselling, occupational therapy or behaviour modification therapy, skill training, legal aid, educational services, and other developmental activities, as required, as well as follow-up and coordination with the District Child Protection Unit or State Government and other agencies;
- (h) declaration that the child is legally free for adoption under section 38.

(2) The Committee may also pass orders for –

- (i) declaration of fit persons for foster care;

- (ii) getting after care support under section 46 of the Act; or
- (iii) any other order related to any other function as may be prescribed.

38. Procedure for declaring a child legally free for adoption.

(1) In case of orphan and abandoned child, the Committee shall make all efforts for tracing the parents or guardians of the child and on completion of such inquiry, if it is established that the child is either an orphan having no one to take care, or abandoned, the Committee shall declare the child legally free for adoption: Provided that such declaration shall be made within a period of two months from the date of production of the child, for children who are up to two years of age and within four months for children above two years of age: Provided further that notwithstanding anything contained in this regard in any other law for the time being in force, no first information report shall be registered against any biological parent in the process of inquiry relating to an abandoned or surrendered child under this Act.

(2) In case of surrendered child, the institution where the child has been placed by the Committee on an application for surrender, shall bring the case before the Committee immediately on completion of the period specified in section 35, for declaring the child legally free for adoption.

(3) Notwithstanding anything contained in any other law for the time being in force, a child of a mentally retarded parents or a unwanted child of victim of sexual assault, such child may be declared free for adoption by the Committee, by following the procedure under this Act.

(4) The decision to declare an orphan, abandoned or surrendered child as legally free for adoption shall be taken by at least three members of the Committee.

(5) The Committee shall inform the State Agency and the Authority regarding the number of children declared as legally free for adoption and number of cases pending for decision in the manner as may be prescribed, every month.

The relevant para Nos. 10, 12 and 26 of the judgment of the Division Bench of this Court dated 28.11.2024 passed in W.A.Nos.1193, 1128 of 2024 and batch are extracted hereunder:-

10. The learned Single Judge by the common order dated 23.09.2024 has allowed the writ petitions and, inter alia, has held that the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as, "the 2015 Act") do not apply to the fact situation of the cases and it has been further held that the action of the police authorities in taking the custody of the children in question from the respondents No.1 and 2 in W.A.Nos.1193, 1228, 1257, 1260, 1265, 1266, 1267 and 1268 of 2024 and the respondent No.1 in W.A.No.1277 of 2024, who claim to be adoptive parents of the children in question is illegal and without any authority of law. The learned Single Judge has also granted the liberty to the writ petitioners to adopt the procedure prescribed for continuation of the custody of the children with them by validly executed adoption deeds or by following any other procedure which would allow them to retain the custody of the children forever. Hence, these appeals.

12. It is, however, fairly submitted that the Committee is required to take action in terms of the provisions of the 2015 Act. However, the same was not taken, as the matter was sub judice. It is further submitted that suitable action in terms of the 2015 Act with regard to custody of the children shall be taken. It is also stated that the applications of those adoptive parents seeking adoption of the minor children shall also be decided expeditiously within a time limit which may be fixed by this Court.

26. However, it is necessary to issue the following directions:

- (1) The Committee shall pass an order in terms of Section 37 of the 2015 Act within a period of two weeks from the date of receipt of copy of the order passed today.**
- (2) Some of the adoptive parents have filed an application seeking adoption of the children. The competent authority is directed to decide the application seeking adoption within a period of four weeks from the date of receipt of copy of order passed today.**
- (3) Needless to state that the custody of the children shall be subject to outcome of the aforesaid directions.**

Accordingly, the appeals are disposed of

This Court opines that the impugned proceedings, dated 09.12.2024 issued by the office of the 2nd respondent is in clear violation of the procedure as mandated under Sections 37 and 38 of the JJ (Care and Protection of Children) Act, 2015 (referred to

and extracted above) and also the specific directions issued by the Division Bench of this Court dated 28.11.2024 passed in W.A.Nos.1193, 1128 of 2024 and batch (referred to and extracted above).

Admittedly as borne on record, the procedure prescribed in Sections 37 and 38 of the JJ (Care and Protection of Children) Act, 2015 had not been followed by the respondents.

Taking into consideration:-

- i) The submissions put-forth by the learned counsel appearing on behalf of the petitioner, the learned Government Pleader for Women Development and Child Welfare appearing on behalf of the respondent Nos.1 to 3 and learned counsel appearing on behalf of the respondent No.7.
- ii) The fact as borne on record that the impugned proceedings, dated 09.12.2024 and publication dated 10.12.2024 issued by the Office of Respondent No.2 is not in terms of Sections 37 and 38 of JJ (Care and Protection of Children) Act, 2015 (referred to and extracted above) and the procedure laid down there under having been totally ignored.
- iii) The fact as borne on record that as on date the application seeking adoption of the children filed by the petitioner had not been decided on merits as directed by the Division Bench of this Court vide its order dated 28.11.2024 passed in W.A.Nos.1193, 1128 of 2024 and batch (referred to and extracted above).
- iv) The fact as borne on record that the representations of the petitioner dated 31.05.2024, 07.06.2024, 11.12.2024 and 07.01.2025 had not been considered as on date by the 2nd respondent.

The respondents are directed not to give the petitioner's adoptive child namely Perugu Bhavya Sree to others for a period of two (02) weeks from the date of receipt of copy of the order.

For the counter of the respondents, list on 04.02.2025.

//TRUE COPY//

SD/-K.SREERAMA MURTHY
ASSISTANT REGISTRAR

SECTION OFFICER

To,

1. The Principal Secretary, Department of Women and Child Welfare, State of Telangana, Secretariat, Hyderabad.
2. The Chairperson, Child Welfare Committee, Alwal, Medchal Malkajgiri District, Telangana State - 500010.
3. The Director, Directorate of Women Development and Child Welfare Department, Yosufguda Main Road, Madhura Nagar, Yosufguda, Hyderabad - 500045
4. The Station House Officer, Medipally Police Station, Medipally, M.M Dist - 501301.
5. Mohammad Anif Gulam Rasool Shaik, R/o. Mahakoliwada Nauma Chowk, Navi Mumbai D2, PIN 400007.
6. Nazma Mohammad Anif Shaik, R/o. Mahakoliwada Nauma Chowk, Navi Mumbai D2 PIN - 400007. (Addressees 1 to 6 BY RPAD along with a copy of petition and affidavit)
7. Two CCs to GP for Women Dev. & Child Welfare, High Court for the State of Telangana, at Hyderabad (OUT)
8. One CC to M/s. C. Rakee Sridharan, Advocate (OPUC)
9. One Spare Copy

HIGH COURT

SN,J

DATE: 27-1-2025

NOTE: POST ON 04-02-2025

NOTICE BEFORE ADMISSION

WP. NO. 2076 OF 2025

DIRECTION

