In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No. 3792 of 2023

Fabian Ricklin, alias Ranabir
Vs.
State of West Bengal & Ors.

For the petitioner	:	Ms. Jhuma Sen, Ms. Trisha Saha, Ms. Arpita De, Mr. Dinesh Vishwakarma
For the respondent no. 5	:	Mr. Pranit Bag, Mr. Sourav Chunder, Ms. Mandabi Choudhury
For the respondent no. 6	:	Mr. Rahul Karmakar, Mr. Sounak Mukherjee,
For the respondent no. 7	:	Mr. Biswabrata Basu Mallick, Ms. Parna Roy Choudhury
Hearing concluded on	:	18.12.2023
Judgment on	:	05.01.2024

Sabyasachi Bhattacharyya, J:-

1. The petitioner is a Swiss citizen. He was adopted from India by his Swiss parents in the year 1988. The petitioner alleges that after coming of age, he commenced a search for his roots. It is alleged that his attempts to find out his biological parents and their whereabouts were met with resistance by the respondent no. 5, which was the Specialized Adoption Agency through which the petitioner was given in

adoption. Hence, the petitioner has taken out the present writ petition through his constituted attorney, who according to the petitioner is an accomplished social worker in the field of adoption and root search.

2. Learned counsel for the petitioner argues that it was the bounden duty of the respondent-Authorities, in particular the respondent no. 5-Agency, to preserve the records of the adoption, in particular the relinquishment deed executed by the biological mother of the petitioner. Learned counsel places reliance on *Lakshmi Kant Pandey Vs. Union of India*, reported at *(1984) 2 SCC 244*, which is a landmark judgment governing the field of adoption, particularly inter-country adoption. In the said judgment, the Supreme Court categorically directed the recognized adoption agencies to maintain the records of the adoption. However, the respondent no. 5/Agency now pleads that they are not in possession of the deed of relinquishment or even the admission register or child study report which were essential documents for giving the petitioner in adoption.

3. There has been a blame-game between respondent no. 5, the Adoption Agency and respondent no. 6, the Scrutinizing Agency with regard to who has custody of the scrutiny report and the relinquishment deed. Being caught in the cross-fire, the petitioner is in doubt as to whether his adoption itself was valid in the eye of law.

4. It is argued that the respondent no. 5 as well as the other respondents ought to be directed to produce the relinquishment deed; in default, due action be taken against the respondents, including initiation of

criminal proceedings, since the validity of the adoption procedure itself, in the absence of such document, is vitiated in law.

5. While arguing on whether any other remedy could be provided to the petitioner in the absence of any deed of relinquishment, learned counsel for the petitioner places reliance on paragraph no. 16 of *Lakshmi Kant Pandey (supra)* which recorded that a child study report should be inclusive of opinion including their health and details of the mother's pregnancy and birth. Even the registers which are mandatorily required to be maintained by respondent no. 5 can further assist the petitioner in finding his identity and roots.

6. Alternatively, a serious doubt will be cast on the legality of the entire adoption procedure of the petitioner, which took place between 1987 and 1988.

7. Learned counsel then addresses the issue as to whether the petitioner's right to know about his biological parents is barred due to the applicability of the right of privacy of his biological mother, who allegedly relinquished the petitioner to the respondent no. 5-agency.

8. It is argued that no relinquishment deed or other document has been produced till date before the Court by the respondents to indicate the assertion of the biological mother to conceal her identity. Regulation 47(6) of the Adoption Regulations, 2022 (for short, "the 2022 Regulations"), it is argued, provides that the right of an adopted child shall not infringe the right to privacy of the biological parents. Regulation 47(1) of the 2022 Regulations, it is argued, is to be read conjointly as it provides that if the biological parents, at the time of

surrender of the child, have specifically requested anonymity, then the consent in writing of the biological parents shall be taken by the Specialised Adoption Agency or the District Child Protection Unit, as the case may be, before divulging information. Here, no such endeavour has been made on the part of the respondent no. 5.

9. By relying on *ABC v. State (NCT of Delhi)*, reported at *(2015) 10 SCC 1*, it is argued that the rights of a child are of paramount consideration vis-à-vis the perceived rights of the parents. Placing reliance on paragraph 27 of the said judgment, it is argued that the Supreme Court held that it was not confronted with a custody conflict and therefore there was no reason to contemplate the competence or otherwise of the appellant as custodian of the interest and welfare of her child. However, the Supreme Court was loathe to lose perspective of its *parens patriae* obligations and needed to ensure that the child's right to know the identity of his parents was not vitiated, undermined, compromised or jeopardized. In order to secure and safeguard the right, the Supreme Court interviewed the appellant and impressed upon her the need to disclose the name of her father to her son.

10. Learned counsel for the petitioner next cites *Maria Chaya Schupp v. Director General of Police (Karnataka) and others*, reported at*2009 SCC OnLine Kar 477*, where the Karnataka High Court recognized that the right to know one's origins is a dimension of the broader right to ascertain and preserve one's identity. The learned Single Judge, in the said case, even after acknowledging the said right, could not grant the petitioner's prayer due to the fact that there was an order of the

District Judge pertaining to the question of parentage and that 30 years had passed. However, a larger Bench, in appeal, set aside the order of the Learned Single Judge and allowed the prayer of the petitioner therein. The larger Bench judgment is reported at *2013 SCC OnLine Kar 1788 [Maria Chaya Schupp Vs. Director General of Police]*.

11. Again relying on *Lakshmi Kant Pandey (supra)* the petitioner contends that the biological parent should not get hold of the Child Study Report/Home Study Report under any circumstances, as per the said judgment, not should they get access to the identity of the adoptive parents. When the child attains the age of majority and wants to know about the identity of the biological parents, there may not be any serious objection to giving such information to the child and, according to the Supreme Court, foreign adoptive parents may furnish such information to the child. Thus, it is argued that although the parent's rights have been restricted, the child's right to know his biological parent's identity has been accepted.

12. Learned counsel also relies on Articles 4/16 and 30 of the Hague Convention on Protection of Children and Cooperation in respect of Inter-country Adoption of 1993 where the said right was further recognized and also made mandatory on the state party to adhere to it.

13. The petitioner also relies on the United Nations Convention on the Rights of Child, 1989. Articles 7 and 8 thereof impose a positive and negative duty on the State in that regard, it is contended. Thus, the

State, it is contended, not only has to ensure that nothing prohibits a person from tracing her genetic origins but has to take steps to remove any obstacles thereto.

14. By referring to *K.S. Puttaswamy and Anr. Vs. Union of India and Ors.*, reported at *(2017) 10 SCC 1*, a nine-Judge Bench of the Supreme Court, it is argued that the right to privacy is neither an absolute right nor does it exist in isolation. The said right is to be balanced against other fundamental rights. Thus, the requirement of privacy of the biological mother has to be interpreted in the light and existence of the petitioner's right to identity which is an intrinsic part of his right to live with dignity and right to express.

15. The test of proportionality and legitimacy, it is argued, is in favour of the petitioner.

16. The writ petition, it is argued, is maintainable through the Special Power of Attorney holder, since it satisfies the condition prescribed under Section 85 of the Indian Evidence Act. It is submitted that this Court, *vide* Circular dated May 18, 2010, directed all the courts within its jurisdiction to accept apostilled documents without requiring re-authorization.

17. Under Section 2 of the Power of Attorney Act, 1882, it is provided that the donee of a power of attorney may execute any instrument or do anything in their own name by the authority of the donor.

18. In an unreported case of *Beena (Leena) Makhijani Muller Vs. The Commissioner, Dept of Women* dated October 9, 2019, a Division Bench of the Bombay High Court had held that sub-regulation (6) of

Regulation 44 undoubtedly seeks to achieve an important purpose of not parting with confidential and sensitive information in relation to an adopted child to a third party. However, when the adopted person himself or herself appoints an attorney to act for and on his/her behalf, the said power of attorney ceases to be a third party and would therefore not be hit by the limitation contained in sub-regulation (6) of Regulation 44. Subject to certain safeguards, the Bombay High Court directed the concerned respondent and the SARA to provide necessary document and further information as may be available with it to Ms. Anjali Pawar. It is to be noted that the present writ petition has also been confirmed by the same constituted attorney that is Ms. Anjali Pawar.

19. Thus, the petitioner renews his prayer for the respondent-Authorities to furnish all relevant information to facilitate the petitioner's right to root search. In the event the documents are not found out, the court may allow the petitioner to take resort to police investigation to trace the documents and find the legality of his sourcing for adoption. The petitioner also seeks heavy compensation for infringement of his right to know his origin.

20. Learned counsel for the respondent no. 5 argues that *Lakshmi Kant Pandey (supra)* was passed in the context of child trafficking which is not in issue in the present case. There has been no contravention of the guidelines laid down by respondent no. 5, it is submitted.

21. The respondent no. 5, it is submitted, cooperated with the petitioner by replying to the e-mail of his constituted attorney dated November 2,

2021 by an e-mail dated November 10, 2021 where it was stated that all documents were made over to the adoptive parents in the course of the adoption process and that the answering respondent had no access to the same.

22. It is argued that the petitioner's e-mail dated November 13, 2021 was also responded to by respondent no. 5 on November 14, 2021, informing the constituted attorney of the petitioner to search for the documents in Alipore Court, where the adoption was given effect by passing the adoption order. Thus, respondent no. 5 has assisted the petitioner with all the documents available with the said respondent.

23. The application filed by the adoptive father of the petitioner under Sections 10 and 26 of the Guardians and Wards Act, 1890 records thatafter birth of the child, the unmarried mother of the minor had relinquished all the claims and handed it over to the respondent no. 5 by executing proper deed of relinquishment for its care and protection.

24. The matter was considered by the District Judge at Alipore on March 29, 1988 and in terms of the order, the scrutiny report was prepared by the respondent no. 6, under the head of "Background of the Child"2.It had been recorded in Serial No. 4 that the names of the biological parents were to be kept confidential and not to be disclosed.

25. Upon consideration of the said report, the District Judge, Alipore on May 9, 1988 allowed the adoption. It was recorded that the order was passed in fulfilment of the norms and procedures laid down by the Supreme Court of India.

26. Learned counsel for the respondent no. 5 argues that the law mandating maintenance of records was put in place on and from the year 2017 without any retrospective application of the requirement for maintenance of the records.

27. In *Anjali Tara Babanrao Pawar Vs. The State of Tamil Nadu and others*, an unreported judgment, in *WP No. 17124 of 2022*, the said proposition was reiterated.

28. It is argued that in line with the Hohfeldian analysis, there was no right in favour of the petitioner and no corresponding obligation on the respondent no. 5 for preservation of records.

29. Learned counsel relies on Regulation 47(6) of the 2022 Regulations which preserves the right of the mother to privacy. It is argued that the said right surpasses the right of the child to know the identity of the mother, since the mother did not wish to disclose her identity. Such right will be preserved against the world as well as the child who has not attained majority.

30. Learned counsel for the respondent no. 6 agrees with the modalities of adoption as set out in *Lakshmi Kant Pandey (supra)*. Two agencies, namely Child Welfare Adoption agency that is respondent no. 5 and Scrutinising Committee that is respondent no. 6were generated after the said judgment. In paragraph 22 of the said judgment, the role of the Scrutinising Committee was clearly laid down. The position was further clarified in *Lakshmi Kant Pandey*'s second case reported at *AIR 1986 SC 272* which stipulates that the Scrutinizing Committee (respondent no. 6 in the instant case) was not required to retain any

paper regarding the biological parents or the child to inform or to assist the Court but by scrutinising the relevant papers to give a report, based on which the final order of adoption would be passed. Thus, the respondent no. 6 never had any opportunity to retain any papers, far less the relinquishment deed of the petitioner.

31. The relinquishment deed, as per paragraph no. 22 of *Lakshmi Kant Pandey (supra)*, ought to have been kept in sealed envelope with the office of the learned District Judge passing the order of adoption.Neither the District Judge's office nor the respondent no. 5 has a copy of the same. The adoption of the petitioner had taken place in the year 1988, when the only available law governing the modalities of adoption was *Lakshmi Kant Pandey*'s case. Since there was no law prevalent at that time regarding retaining or preserving the records, the petitioner cannot as a matter of right claim and/orfix responsibilities for non-availability of such papers. Thus, in the absence of such right, no Mandamus or Certiorari can be issued in favour of the petitioner.

32. After *Lakshmi Kant Pandey*'s case, the Convention of the Rights of the Child, 1992 recognized and laid down various rights of the child across the world. The right of root search was never granted in the said Convention. Article 7 thereof only acknowledges the right of a child to know and be cared for by his or her parents.

33. The term "rood search" was codified for the first time in the Adoption Regulations, 2017, promulgated under the Juvenile Justice (Care and Protection of Child) Act, 2015. Subsequently, the said Regulations

were replaced by the Adoption Regulations of 2022. It is submitted that the term "parent" means a father or a mother of a person. Paragraph no. 14 of *Lakshmi Kant Pandey*'s case describes biological parents to be inclusive of both the father and mother staying together or alone. The said judgment nowhere categorizes or visualizes the situation of an 'unmarried mother'.

34. A separate class of biological parents with that of an unmarried mother was for the first time recognized in the Adoption Regulations, 2017. Regulations 7(4), 7(7), 7(21) and 25 would make it clear that the Legislature had consciously used the word "biological parents" and "unmarried mother" simultaneously and did not include an unmarried mother within the connotation of biological parents consciously.

35. Regulation 44 further clarifies the intention, where only the term "biological parents" has been used and not "parent" or "unmarried mother".

36. Even after the promulgation of the Adoption Regulations, 2022, the classification of categories did not change from Regulations 7(4), 26(k), 30(2)(b) and 47. Thus, the intention of the Legislature was to keep out the unmarried mothers from the scope and operation of root search.

37. Root search, it is argued, generally infringes the right to privacy of the biological parents. The right to privacy has been protected by the Adoption Regulations, 2022. The right to privacy of an unmarried mother stands on a completely different pedestal as the question is of survival as regards social ostracization. The question of survival has to be weighed with that of the petitioner's right for his quest for his

roots. The right to survival has to have more gravity. The right to dignity of an individual is natural and inalienable, being intrinsic to freedom and liberty. Such right to dignity has been found intertwined with the right to privacy under Article 21 of the Constitution of India in *Puttaswamy*'s case.

38. The present attempt to facilitate root search is unreasonable and injurious to the right of the said unmarried woman who is not even a party to the proceeding, it is argued.

39. The Madras High Court in Writ Petition No. 17124 of 2022 had dismissed a similar case of root search on the petition of Ms. Anjali Tara Babanrao Pawar who is the constituted attorney of the petitioner in the present case, on the ground that a third party could not have pursued the quest for root search of an adopted child.

40. The judgment reported in *(2015) 10 SCC 1 [ABC v. State (NCT of Delhi)]* relied on by the petitioner nowhere recognises the right of root search, it is argued. The basis of the said judgment is non-disclosure of the name of father by an unwed mother in her application for guardianship which is factually different from the present case.

41. Lastly, respondent no. 7, that is, the learned District Judge, South 24 Parganas at Alipore contends through counsel that the report filed by the respondent no. 7, contains all documents based upon which the order of adoption was passed. It clearly reflects that all the documents which were handed over during the course of hearing were given to the scrutinising agency which, after perusal and careful consideration of the same, observed that the unmarried mother had

relinquished all her claims for the child due to social and economic reasons. As per recommendation of such agency and in view of the report, the petition under Section 10/26 of the Guardians and Wards Act, 1980 was allowed on May 9, 1988. In the said report of the respondent no. 6/Scrutinizing Agency, it was mentioned as the background of the child that as per statement of ISRC (respondent no. 5), the unmarried mother of the child Ranbir (present petitioner) to avoid social scandal and stigma immediately after its birth left the minor relinquishing all the claim and handed over to the authority of ISRC for its care and protection and he was residing at the Nursery of ISRC as abandoned and unclaimed child.

42. The record of Case No. 170 of 1988, the adoption application, reveals that no Surrender/Relinquishment Deed of the biological mother was ever filed in such case. The said deed was not available as the scrutinizing agency in their report mentioned that the name of the biological mother was not to be disclosed as it was mentioned as "Confidential".

43. A copy of the said records of Act VIII Case No. 170 of 1988 is relied on in such context by the respondent no. 7.

44. The cardinal issues which have fallen for consideration in the present case are as follows:

i) Whether the petitioner has a right – legal or constitutional – to search out the particulars of his biological parents/mother.

ii) If so, whether the said right prevails over the right to privacy of the petitioner's biological mother.

iii) Whether the respondents or any of them had any legal obligation to preserve the records relating to the relinquishment of the petitioner, in particular the relinquishment deed (Deed of Surrender) executed by his biological mother.

iv) If so, what remedy is available to the petitioner to enforce the same.

45. The answers to the above questions are interconnected and so all the issues are taken up together for adjudication. There are two distinct time-frames involved in the present case. The petitioner was born in the year 1987 and was given in adoption in the year 1988. On the other hand, the present writ petition has been filed to assist the petitioner in his root search regarding his biological parents. It has been filed in the year 2023, that is, about 35 years after the adoption.

46. Thus, the law applicable at the time of the petitioner's adoption and that governing the root search process are somewhat different.

47. The right to root search, as correctly argued by the petitioner, is implicit in the right of the petitioner to know himself and to live a life of dignity, an integral part of which is to know one's identity. Hence, the right to know the identity of one's biological parents is a part of the right to life as enshrined in Article 21 of the Constitution of India. Although the petitioner is a Swiss national, Article 21 is applicable to foreign nationals as well. Despite the petitioner not residing on Indian soil, his roots lie in India and as such, broadly speaking, the right to life guaranteed by the Constitution of India is applicable to him

insofar as the broad base of his search for his biological parents lies in India.

48. The concept of "root search" is comparatively new in India. Chapter VI of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as, "the 2015 Act"), which received the assent of the President of India on December 31, 2015, deals with the procedure in relation to children in need of care and protection. Section 35 of the said Act speaks about surrender of children and Sections 36 to 38 provide the modalities for the same. The Adoption Regulations, 2017 were framed under the said Act and were replaced by the Adoption Regulations of 2022.

49. The 2022 Regulations were published by Notification No. G.S.R. 726(E) dated September 23, 2022. Hence, when the writ petition has been filed in 2023, the 2022 Regulations are in force.

50. Regulation 47 of the 2022 Regulations provides for root search. Sub-clause (1) of Regulation 47 provides that if the biological parents, at the time of surrender of the child, have specifically requested anonymity, their consent in writing shall be taken by the Specialised Adoption Agency (SAA) or the District Child Protection Unit, as the case may be, before divulging information. Sub-clause (2), which applies to the present petitioner who is now about 36 years-old, stipulates that in cases of root search by older adoptees, the concerned Agencies or Authorities, including the State Adoption Resource Agency (SARA) or the SAA that is the respondent no. 5 in the present case, "whenever contacted by any adoptee, shall facilitate

their root search". It is noteworthy that the mandate of the Regulation is that the said Agencies shall "facilitate" the root search and does not direct specifically any disclosure of documents in particular. Of course, facilitation includes cooperation in the root search in all possible manners, subject to the governing laws.

51. Upon a person above 18 years applying independently online, in case of denial by the biological parents or non-traceability of the parents in surrendered cases, the reasons and the circumstances under which the information is being made available shall be disclosed to the adoptee under sub-clause (4) of Regulation 47.

52. In the present case, the biological mother of the petitioner, who was the only available parent who surrendered the petitioner, is admittedly not traceable, since her particulars are not available with the respondents or the petitioner.

53. Although sub-clause (5) debars a root search by a third party, the petitioner has cited judgments of other High Courts, in particular the Bombay High Court, which hold in favour of information being made available to constituted attorneys of an adoptee, although there is divergent opinion on the subject.

54. In all fairness to the petitioner, however, the said bar is not insurmountable, since the Court can always, even on an application through a constituted attorney, direct the information to be disclosed only to the petitioner directly and not through the constituted attorney, subject to the discretion of the Court.

55. The most crucial part of Regulation 47 is sub-clause (6) which clearly stipulates that the right of an adopted child shall not infringe the right to privacy of the biological parents.

56. Regulation 48 provides that all agencies and authorities involved in the adoption process shall ensure that confidentiality of adoption records is maintained, except as permitted under any law and the adoption order may not be displayed on any public portal. Such confidentiality is required for the protection of all, for the adoptee as well as the surrendering biological parents and the adoptive parents.

57. Regulation 47 is to be read in conjunction with the procedure relating to surrendered child as provided in Regulation 7 of the 2022 Regulations. Sub-clause (7) thereof provides that in case of a child born out of wedlock, only the mother can surrender the child. Sub-clause (4) says that if a female biological parent including an unwed mother is willing to surrender the child through the procedure laid down under Section 35 of the 2015 Act, the Deed of Surrender (somtimes called "the Deed of Relinquishment") may be executed in presence of any female member of the Child Welfare Committee (CWC). Thus, for the purpose of surrender and its modalities, a distinction has been drawn between a female biological parent who is a single mother/unwed mother or when a child is born out of wedlock on the one hand and biological parents in general on the other, which lends primacy to the will of the biological mother to surrender.

58. Again, sub-clause (13) provides that due regard be given to the privacy of the surrendering parents (which obviously includes a single

biological mother as well) and the surrendered child by the authorities and agencies involved in the process.

59. Sub-clause (20) stipulates that strict confidentiality shall be maintained in respect of all documents pertaining to biological parents in all circumstances unless the surrendering parents have expressed their willingness for divulging the same, provided that only the child shall have access to the surrender deed. However, the proviso to Regulation 7(20), giving access of the surrender deed to the child, is subject to the bar of Regulation 47(6) which stipulates that the right of an adopted child shall not infringe the right to privacy of the biological parents.

60. Thus, the modalities envisaged in the 2022 Regulations, which were partially there in the 2017 Regulations as well, point towards the confidentially willed by the biological parents (more so for a single unwed mother, which is rather obvious) prevails over the right of the child to have access to the surrender deed or a root search. Hence, if issues (i) and (ii) framed above are taken together, the petitioner definitely has a legal as well as constitutional right to search out the particulars of his biological parents/mother. However, such right is subject and subservient to the right of privacy of the adoptee's biological mother/parents.

61. The judgments cited by the petitioner are primarily on conflicting fundamental rights and speak about the inter-relation between different Articles under Part III of the Constitution of India. Yet, the present case is different from those insofar as the interplay between

different components of Article 21 and the intra-play within different corollaries of the same fundamental right are pitted against each other.

62. The right to privacy has been discussed threadbare in *K.S. Puttaswamy (supra)* by a 9-Judge Constitutional Bench of the Supreme Court. Although the specific ingredients of the present case were not under consideration by the Supreme Court, the right to privacy has been held to be an essential component of the right to life, although it is not absolute and does not exist in isolation and has to be balanced against other fundamental rights.

63. The right to know one's roots is definitely implicit in one's existence as a human being. Quest and curiosity are the primary premises of human evolution and progress. At the level of the individual, the same translates to leading a life worth the name.

64. However, as against the right to know one's roots, the rights of privacy and protection of identity of the biological parents of an adoptee are more fundamental and basic insofar as the said right protects the very survival of the biological parents. It is all the more so when an unwed mother surrenders her child due to extreme social pressures. Subjecting the said mother to potential social ignominy and ostracization might hit at the very root of her survival and may even lead her to take an extreme measure. There is no reason to assume that the biological mother who was so compelled as to leave her child with an agency for being put up for adoption would welcome the idea

of being exposed to the scrutiny of society or even her child at an advanced age.

65. Thus, the right to privacy and confidentiality of the unwed biological mother who surrendered her child has to be given primacy over the right of the adoptee, which is more on the fringes of his human existence and survival inasmuch as the said right is an add-on to his existence, which is otherwise well-sheltered and protected in the hands of his Swiss adoptive parents with whom he has grown up during all of his 35-36 years of existence on earth.

66. Hence, seen from every perspective, although the petitioner has a legal and constitutional right to search out the particulars of his biological parents, the right of privacy of his mother prevails over the petitioner's said right.

67. The context in *ABC vs. State (NCT of Delhi)* reported at *(2015) 10 SCC 1* was entirely different from the instant case. In the said case, the dispute arose as to whether notice was to be given to the putative father of a minor child in a guardianship application filed by the mother. The Supreme Court held that there was no mandatory and inflexible procedural requirement of such notice. While considering the welfare of the child as the paramount consideration, the court considered as one of its primary concomitants the right of the child to know the identity of his or her parents. Assuming *parens patriae* obligation, the Supreme Court sought to ensure that the child's right to know the identity of his parents is not vitiated, undermined, compromised or jeopardised. In order to secure and safeguard this

right, the Supreme Court interviewed the appellant (the mother) and impressed upon her the need to disclose the name of the father to her son.

68. There were, however, several distinguishing features in the said case as opposed to the case at hand. First, the case did not pertain to adoption and the issue of the conflict between the right of confidentiality of an unwed mother who surrendered her child and the right of the child to know his parents was not under consideration. Rather, the mother disclosed her identity as the mother of the child and went so far as to seek legal guardianship of her child.

69. Secondly, the Supreme Court recorded that it had "interviewed the appellant and impressed upon her the need to disclose the name of the father to her son" which, by necessary implication, indicates that the mother was not legally bound to do so.

70. Thirdly, the court was exercising its *parens patriae* jurisdiction in respect of a minor child. Here, the petitioner is not only major but attained majority long back and there is no scope of exercise of *parens patriae* jurisdiction by any court of law.

71. The Supreme Court, in the said case, dealt with the Convention on the Rights of the Child, to which India had acceded on November 11, 1992. However, the provisions of the same quoted in the judgment revolve around the welfare of minor children below the age of eighteen years and highlight their welfare and, in such perspective, the obligations of their parents to take care of them. The said Convention

has nothing to do with the rights of confidentiality of a surrendering mother or the right of root search of an older adoptee.

72. The petitioner also relies on the judgment of a learned Single Judge of the Karnataka High Court in *Maria Chaya Schupp vs. The Director General of Police (Karnataka) & Ors.* reported at *ILR 2010 Kar 883*. However, the said case arose out of a claim that an older adoptee had been kidnapped and given up for adoption with the active assistance of an institution. The Court took a very sensitive approach and held that the right to know one's origins is a dimension of the broader right to ascertain and preserve one's identity. Identity is a complex concept which unsurprisingly has never been defined legally. However, the court observed that the scope of the writ petition was to be confined to how best the court could intervene to help the petitioner in her search and whether directions could be issued to help the petitioner reach her goal and also to address the issue of child trafficking. However, ultimately the court took into consideration the lapse of about three decades and dismissed the petition, despite sympathizing with the turmoil of the petitioner.

73. In the present case as well, several factors come into play. The sympathy with the petitioner in his search for his roots is, of course, a given and cannot be denied. However, it has to be kept in mind that the interplay between the right to search his roots and the right of confidentiality of his biological mother was not under consideration before either the Karnataka High Court or the Supreme Court in the cited reports.

74. Apart from the United Nations Convention on the Rights of Child, 1989, the Hague Convention on Protection of Children and Cooperation in respect of Inter-Country Adoption, 1993 also peripherally touches the issues of protection of children and cast duties on the State regarding tracing of genetic origins. However, international conventions and treaties, even if accepted by a country, operate as guiding principles, casting certain duties and obligations on the State at the State level. Such documents at best provide guidelines and indicators at the individual level. Insofar as implementation at the ground level is concerned, the Conventions and Treaties are not binding on individual citizens, unless specifically incorporated and made a part of the law of the country. Since the 2015 Act and the Adoption Regulations of 2017 and 2022 operate in the field of adoption, the provisions of the same and judge-made law of the country has to be looked into for the specifics.

75. Thus, in view of the above discussions, Issue no. (i) is answered in the positive, but Issue no. (ii) in the negative. Whereas the petitioner does have a right to search out his biological parents/mother, the said right does not override the right of confidentiality of his biological mother.

76. Issue nos. (iii) and (iv) are now taken up for consideration.

77. Let us now traverse back to the juncture of the petitioner's adoption. In 1988, when the petitioner was given in adoption, neither the 2015 Act nor the Adoption Regulations were in force. Thus, the first judgment of the Supreme Court in *Lakshmi Kant Pandey (supra)* is a landmark decision in all senses. Not only did it lay down the future

roadmap for adoption, in particular cross-country adoption and act as a catalyst for legislation in the field, the cardinal and essential pillars of the law in the said field were laid down as principles in the said judgment.

78. Taking a pragmatic approach, however, it cannot be overlooked that in 1988, when the petitioner was given in adoption, *Lakshmi Kant Pandey*'s case had only been operative in the field for few years and might not have percolated properly in every detail to the bottom rungs of the adoptive hierarchy of authorities. Thus, although the law laid down by the Supreme Court in the said judgment was undoubtedly binding on all, the rigours of the same were still at an inchoate stage. Thus, the obligations of the respondents have to be considered from such perspective and with a pragmatic approach.

79. Certain observations in the said judgment become relevant in the present context. In paragraph 14 of the judgment, the Supreme Court, while discussing the safeguards required to be provided to biological parents, made it clear that when it talked about biological parents, it meant both parents if they were together or the mother or the father if either was alone. Thus, the case of unwed biological mothers was also covered.

80. The process of screening the adoptee and the adoptive parents from the biological parents, seen from the perspective of the adoptee, was obvious, since a further consent from the biological parents at a later stage of adoption would of course lead to absurd situations which would be detrimental to the adopted child. In paragraph 14, the

Supreme Court found that in order to eliminate any possibility of mischief and to make sure that the child had in fact been surrendered by its biological parents, it was necessary that the institution or centre or home for child care or social or child welfare agency to which the child was surrendered by the biological parents, should "take" (as opposed to "preserve" or "maintain") from the biological parents a document of surrender duly signed by the biological parents and attested by at least two responsible persons which should not only contain the names of the biological parents and their address but also information in regard to the birth of the child and its background, health and development. A process of consent was incorporated in the judgment where the biological parents are known and relinquish the child. But, if for any reason the biological parents cannot be traced, then there can be no question of taking their consent or consulting them, it was observed.

81. The pivot of the said observations was that the biological parents need not be consulted further after they took a conscious decision and the adoption proceeded to an advanced stage. However, a careful scrutiny of the entire judgment shows that since it was still a nascent stage of formulation of guidelines of adoption, the Supreme Court did not take into consideration the conundrum of the need of privacy of the biological unwed mother or parents as pitted against the need of the child to know its roots. The perspective of the entire judgment, as set out in the initial paragraphs, was to curb trafficking of children which was rampant in inter-country adoption at that point of time. Hence,

the aspect in consideration in the present case was a non-issue before the Supreme Court in the said case.

82. Paragraph 16 of *Lakshmi Kant Pandey (supra)* speaks about situations where agencies which are not recognized by the Government as specialised agencies receive a surrendered child and desire to put up the child for inter-country adoption, in which cases it was directed that the process of adoption should be routed through a recognized social or child welfare agency.

83. In such specific context, the Supreme Court held that every recognized social or child welfare agency must maintain a register in which the names and particulars of all children, proposed to be given in inter-country adoption through it, must be entered and in regard to each such child the recognised social or child welfare agency must prepare a child study report through a professional social worker.

84. The child study report must give all relevant information in regard to the child. Such "relevant information" was only "so as to help the foreigner to come to a decision whether or not to adopt the child and to understand the child, if he decides to adopt it and also to assist the court in coming to a decision whether it will be for the welfare of the child to be given in adoption to the foreigner wishing to adopt it".

85. Thus, the entire context of the child study report was to assist the court in coming to a decision and to help the foreigner also to decide on the adoption. In the details contemplated by the Supreme Court, the child study report should contain indentifying information and information about original parents, including their health and details

of the mother's pregnancy and birth. Thus, the information regarding original parents as contained in the child study report need not necessarily include the specific names and addresses of the biological parents as such but only general information to assist the court to come to a decision and to help the adoptive parents to decide whether they would adopt the child and also to understand the child.

86. The requirement for the agency was to maintain a register containing the names and particulars of the children and not the names and particulars of their biological parents. In the present case, the petitioner was surrendered directly to the respondent no. 5/Agency which was itself a specialised agency, recognized within the contemplation of *Lakshmi Kant Pandey (supra)*. Hence, it was not a case where a different agency was routing the inter-country adoption through the respondent no. 5 or placed the petitioner to respondent no. 5 specifically for the purpose of inter-country adoption.

87. The guidelines above were given in the context of a non-recognized agency desiring the child to be given in inter-country adoption and placing it with a recognized agency specifically for such purpose, which required the maintenance of a register containing the names and particulars of the children.

88. A corresponding duty has also been cast on the Ministry of Social Welfare, Government of India in paragraph no. 22 of *Lakshmi Kant Pandey (supra)*. The said Ministry is to maintain a register containing the names and other particulars of the children (not the biological parents) in respect of whom orders for appointment of guardian have

been made as also names, address and other particulars of the prospective adoptive parents who have been appointed such guardians and permitted to take away the children for the purpose of adoption. Checks and bounds, routed through the Indian Embassy or High Commission of the respective countries, have also been put in place. The entire contemplation was to prevent child trafficking to foreign countries.

89. Insofar as the maintenance of register is concerned, the same cannot, thus, be said to be an edict set in stone mandating the agencies to preserve the relevant register for all time to come. Since root search has been recognized in the 2022 Adoption Regulations and even worldwide to be available to an adoptee after attaining majority, the petitioner was well within its rights to seek a root search when he attained the age of majority. However, the petitioner chose to remain silent on such score and only initiated the proceedings when he was about 35 years old. Thus, the findings in paragraph 16 of *Lakshmi Kant Pandey (supra)* cannot be said to be an inviolable legal obligation of the respondent no. 5 to retain the register, even less the child study report for over three decades, as in the Karnataka High Court judgment cited by the petitioner.

90. In fact, the child study report may not be retained by the SAA at all even as per *Lakshmi Kant Pandey (supra)*. In paragraph no. 18 of the said judgment, the Supreme Court observed that the recognized social or child welfare agency must place sufficient material before the court to satisfy it that the child is legally available for adoption. The said

rider, read in conjunction with the requirement of paragraph no. 16 that the child study report was required *inter alia* to assist the court in coming to a decision, makes it amply clear that the said report need not contain the specific names and particulars of the biological parents but general relevant information regarding the health and background of the adoptee child.

91. Paragraph no. 22 of the judgment stipulates that the proceedings on the application for guardianship should be held by the Court in camera and they should be regarded as confidential. As soon as an order is made on the application for guardianship the entire proceedings including the papers and documents, according to the Supreme Court, should be "sealed".

92. More importantly, in paragraph no. 23, the Supreme Court observes that the foreign parents who have taken a child in adoption would normally have the child study report with them before they select the child for adoption and in case they do not have the report, the same should be supplied to them by the recognized social or child welfare agency processing the application for guardianship and from the child study report, they would be able to gather information as to who are the biological parents of the child, if the biological parents are known. Thus, under normal circumstances, the child study report was to be handed over to the adoptive parents and not retained by the recognized agency at all. In the present case, the petitioner has failed to establish any reason to deviate from such normal circumstances, nor have the adoptive parents of the petitioner ever raised any

grievance all through as to such document not being made available to them.

93. The Supreme Court continued to observe in paragraph no. 23 that there can be no objection in furnishing to the foreign adoptive parents particulars in regard to the biological parents of the child taken in adoption but it should be made clear that it would be entirely at the discretion of the foreign adoptive parents whether and if so when, to inform the child about its biological parents. Once a child is taken in adoption by a foreigner and grows up in the surroundings of the country of adoption and becomes a part of its society, it may not be desirable to give information to the child about its biological parents whilst it is young, as that might have the effect of exciting its curiosity to meet its biological parents resulting in unsettling effect on its mind. Not stopping there, the Supreme Court went on to hold that if after attaining the age of majority, the child wants to know about its biological parents, there may not be any serious objection to the giving of such information to the child because after the child attains majority, it is not likely to be easily affected by such information and in such a case, the foreign adoptive parents may, in exercise of the discretion, furnish such information to the child if they so think fit.

94. The petitioner vociferously asserts his rights against the respondent-Agencies without taking into consideration that if *Lakshmi Kant Pandey (supra)* and the guiding principles laid down therein are to be observed to the letter, the entire responsibility is cast on the adoptive parents of the petitioner to disclose in due time the particulars of his

biological parents to him, according to the discretion of the adoptive parents. Thus, in the present case, the petitioner having kept silent as to the role of his adoptive parents in that regard, the only "right" which may be asserted by the petitioner is to have a facilitation of his root search under the 2022 Adoption Regulations insofar as the respondent-Agencies are concerned.

95. In fact, *Lakshmi Kant Pandey (supra)* was not an authority on the conflicting rights of confidentiality of an unwed, or otherwise inconvenienced, biological mother and the right of an adoptee to know his roots.

96. As evident from both the guidelines laid down in *Lakshmi Kant Pandey (supra)* and the subsequent judgments following its principles as well as the currently existing Adoption Regulations of 2022 (or that of 2017) and the 2015 Act, the right of the petitioner to carry out a root search accrued to the petitioner long back, when he attained the age of majority. Having waited for almost two decades thereafter, the petitioner cannot be permitted to assert any right based on any perceived obligation of the respondents to retain his adoption records.

97. In the present case, the concerned District Judge as well as all the involved agencies including the Scrutinizing Agency and the recognized Specialised Adoption Agency have disclosed whatever documents are available with them, which do not contain any Relinquishment Deed or Deed of Surrender. In the absence of any strict legal obligation on the adoption agency to retain such surrender deed, particularly for so long, no penal action or direction can be

passed against the respondent no. 5 with regard to the admitted absence of the document with it.

98. Hence, the petitioner does not have a remedy either in damages or in penal action against the Specialised Adoption Agency insofar as the non-preservation of the surrender deed is concerned. Hence, the remedy sought in the present writ petition cannot be granted, particularly in view of the delay of almost two decades by the petitioner to come up with the present search after attaining majority.

99. Hence, the writ petition fails.

100. Accordingly, WPA No. 3792 of 2023 is dismissed on contest without any order as to costs.

101. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)