IN THE COURT OF SENIOR CIVIL JUDGE- 2
AIZAWL DISTRICT: AIZAWL, MIZORAM

CIVIL SUIT NO. 74 OF 2009

Plaintiff:

Mr. Lalhmachhuana Pachuau
F/o Marvis Lalhlimpuia
Kulikawn, Aizawl

By Advocate's : 1. Mr. L.H. Lianhrima
2. Mr. Lalhriatpuia

Versus

Defendants:

1. The Chief Secretary to the Govt. of Mizoram
2. The Secretary to the Govt. of Mizoram
   Finance Department
3. The Secretary to the Govt. of Mizoram
   Social Welfare Department
4. The Chief Controller of Accounts
   Accounts & Treasuries
   Govt. of Mizoram

By Advocate's : 1. Mr. R. Lalremruata, AGA
2. Miss Bobita Lalhmingmawii, AGA

Date of Argument : 29-08-2011
Date of Judgment & Order : 05-09-2011

BEFORE
Dr. H.T.C. LALRINCHHANA, Sr. CJ- 2

JUDGMENT & ORDER

GENESIS OF THE CASE

By executing deed of adoption dt. 25-01-2007, the plaintiff gave his son namely- Mr. Marvis Lalhlimpuia to Smt. Biaknungi, who then held the post of Deputy Director, Nursing Health and Family Welfare, Govt. of Mizoram before the family gatherings at Kulikawn, Aizawl on 25-01-2007. After the death of the said adoptive mother, learned Addl. Subordinate District Council Court, Aizawl granted Heirship Certificate under No. 65 of 2008 dt. 29th Jan., 2003 which appointed the said adopted minor as the legal heir of the deceased Smt. Biaknungi in respect of pension benefits and further appointed the plaintiff as the legal guardian of the said Mr. Marvis Lalhlimpuia. The defendant no. 4 by sending a letter to the plaintiff under No. G. 19012/64/08-CCA/HS (P)/51, Dated Aizawl, the 11th Feb., 2009 objected and clarified that the alleged deed of adoption appears doubtful saying that in para 2 of the deed of adoption, the age of adopted son is about 3 years whereas in para 3 of the said deed, the age of adopted son was shown to be 7 years. Furthermore, the deed of adoption shall have to conform to the respective customs and existing laws as well as the

guidelines framed by the Hon'ble Supreme Court in Lakhsmikant Padey's case by referring letter No. B. 12011/8/2005-SWD dt. 5th August, 2005 and No. G. 19011/8/2008-F. APF/20 dt. 13th Jan., 2009. And is further mentioned and annexed, the judgment & order passed by Senior Civil Judge, Aizawl in Civil Suit No. 33 of 2005 decided on 4/8/2008, wherein, it was set aside and void ab initio the similar Office Memorandum dt. 16-05-2005 and letter dt. 26-07-2004 which imposed in country adoption should be in line with Guidelines for In country Adoption, 2004. The plaintiff therefore prays that (i) for a decree in favour of the plaintiff and against the defendants (ii) for a decree directing the defendants for immediate payment of family pension to Marvis Lalhlimpuia through his Natural father and legal guardian, Shri. Lalhmachhuana Pachuau as per the Heirship/Guardianship Certificate No. 65 of 2008 (iii) for immediate consideration of the application for payment of family pension to minor Marvis Lalhlimpuia through his legal guardian and (iv) for any other relief (s) as this court may deem fit and proper.

Although summons were duly served to all defendants, the defendant no. 3 only filed written statements, the defendant no. 3 stated that as per Office Memorandum under No. B. 12011/8/05-SWD, the 5th August, 2005 published in the Mizoram Gazette, Ext. Ordinary on 23.8.2005, it is clarified that 'all in-country and inter-country adoption taken place or taking place on or after 1st August, 2003 have to conform to statutory formalities prescribe in the Juvenile Justice (Care and Protection of Children) Rules, 2003, while such adoptions prior to 1st August, 2003 also have to conform to the respective customs and existing laws as well as to the guidelines framed by the Hon'ble Supreme Court in Lakhsmikant Panday's case. The matter of adoption is entrusted/allocated to the Department of Social Welfare, Govt. of Mizoram which falls under the Juvenile Justice (Care and Protection of Children) Act, 2000 (As amended in 2006). By virtue of section 41 of the said Act clearly laid down the procedure required to be followed by the court for the purpose of adoption. The age of the adoptive parents and the age of the adoptee is essence under the aegis of CARA (Central Adoption Resource Agency) guidelines notified by the Ministry of Social Justice and Empowerment under No. 18-8/2003-CW dt. 1st June, 2004. Meanwhile, the age of the adoptee and the adoptive mother appears doubtful in the instant case. Thus, prayed to dismiss of the suit.

ISSUES

On perusal of the pleadings of both parties and after hearing of both parties, issues were framed on 30-09-2010 as follows-

1. Whether the Office Memorandum under No. B. 12011/8/2005-SWD dt. 5th August, 2005 and Letter No. G. 19011/8/2008-F. APF/20 dt. 13th Jan., 2009 is repugnant with the observations of Hon'ble Supreme Court in Laxmi Kant Panday Vs. Union of India, 1984 or not
2. Whether the adoption deed dt. 25/1/2007 executed is validly made or not
3. Whether the plaintiff is entitled to the relief claimed or not. If so to what extent?

BRIEF ACCOUNT OF EVIDENCE

For the Plaintiff:

The plaintiff had produced the following witnesses namely-

1. Mr. Lalhmachhuana Pachuau S/o P. Lalupa, Kulikawn, Aizawl (Hereinafter referred to as PW-1)
2. Mr. Vanlalngaia, Kulikawn, Aizawl (Hereinafter referred to as PW-2)
3. Smt. Christina Lalrindiki, Kulikawn, Aizawl (Hereinafter referred to as PW-3)
4. Mr. F. Sawmliana, Kulikawn, Aizawl (Hereinafter referred to as PW-4)

The **PW- 1** in his examination in chief reiterated his plaint as the plaintiff and further deposed that –

Ext. P- 1 is a plaint submitted by him
Ext. P- 1 (a) and (b) are his true signatures
Ext. P- 2 is a copy of Deed of Adoption dt. 25.1.2007
Ext. P 2 (a) and (b) are his true signatures
Ext. P- 3 is a copy of letter dt. 11-02-2009
Ext. P-4 is a copy of Heirship Certificate No. 65 of 2008
Ext. P-5 is a copy of judgment & order dt. 4.9.2008
Ext. P- 6 is a copy of Notice dt. 4/5/2009
Ext. P- 7 is a copy of acknowledgement of legal notice
Ext. P-8 is an application for additional documents
Ext. P-8 (a) and (b) are his true signatures
Ext. P-9 is a copy of letter No. B. 12011/8/2005-SWD dt. 5th August, 2005
Ext. P-10 is a copy of letter No. G. 19011/8/2008-F. APF/20 dt. 13th Jan., 2009

In his cross examination, he further deposed that he is not aware of the legality of adoption whether cope with CARA or the decisions of Hon'ble Supreme Court. He is not also aware of the nomination left by the deceased Smt. Biaknungi. The said Smt. Biaknungi is the sister of his father and later opined that no one will contest to claim the service benefits of the said deceased Smt. Biaknungi.

The **PW-2** in his examination in chief deposed that he witnessed that the adoption was made voluntarily by parties and he was also present at the place where execution of adoption deed and also subscribed his signature as witness, no clandestine action is made in respect of the said adoption. Ext. P- 2 (a) is his true signature.

During his cross examination, he deposed and declined that he was not present at the place of execution of adoption at that time and did not append his signature thereof. He admitted that he is not aware of adoption laws whether under Mizo customs or other existing laws.

The **PW-3** in her examination in chief deposed that she witnessed that the adoption was made voluntarily by parties and she was also present at the place where execution of adoption deed and also subscribed her signature as witness, no clandestine action is made in respect of the said adoption. It was made in their residence. Ext. P- 2 (d) is her true signature.

During her cross examination, she deposed and declined that she was not present at the place of execution of adoption at that time and did not append her signature thereof. She admitted that she is not aware of adoption laws whether under Mizo customs or other existing laws. She also admitted that Smt. Biaknungi did not look after the adopted son at all levels.

In her re-examination, she clarified that her son Mr. Marvis Lalhlimpuia as adopted was also assisted by them for his work after making adoption.

The **PW-4** in his examination in chief deposed that he witnessed that the adoption was made voluntarily by parties and he was also present at the place where execution of adoption deed and also subscribed his signature as witness, no clandestine action is made in respect of the said adoption. Ext. P- 2 (c) is his true signature.

During his cross examination, he deposed and declined that he was not present at the place of execution of adoption at that time and did not append his signature thereof. He further declined that he is not aware of adoption in Mizo customary laws.

For the Defendant:

The defendants adduced evidence by examining only one witness namely- Smt. Zodinthangi, Social Work Teacher, Adoption Cell, Social Welfare Department, Govt. of Mizoram (Herein after referred to as DW)

The **DW** deposed that Ext. D-1 is written statement, Ext. D-1 (a) is the signature of Mr. Saithangpuia, Jt. Secy, Social Welfare Department, Ext. D-2 is Mizoram Gazette, dt. 23.8.2005, Ext. D-3 is Office Memorandum dt. 16.5.2005 and Ext. D-4 is an extract copy of Guidelines for in-country adoption, 2004.

During cross examination, she deposed that she is well aware of the directives of Hon'ble Supreme Court in Laxmi Kant Pandey V. Union of India (1984) 2 SCC 244.

TERMS OF RIVALRY

At the time of arguments, Mr. L.H. Lianhrima, stated that the directives of Hon'ble Supreme Court in **Laxmi Kant Pandey V. Union of India** (1984) 2 SCC 244 is not relevant for in-country adoption procedures as clearly dealt cases of child in adoption to foreign parents and not dealt cases of adoption of children living with their biological parents by leaving authority to their biological parents under para 11 (p. 264). The Heirship Certificate issued by ASDCC, Aizawl within competency is valid. On delving of evidences adduced in the proceedings, no grounds was found to invalidate the instant deed of adoption. Mr. L.H. Lianhrima further submitted that the judgment & order passed by Senior Civil Judge, Aizawl in Civil Suit No. 33 of 2005 decided on 4/8/2008 also already set aside and void ab initio the similar Office Memorandum dt. 16-05-2005 and letter dt. 26-07-2004 which imposed in country adoption should be in line with Guidelines for In country Adoption, 2004.

Miss Bobita Lalhmingmawii, learned AGA contended that as the Office Memorandum clearly elicited to follow the legal procedure under the Juvenile Justice (Care and Protection of Children) Act, 2000 and the CARA framed out in pursuance of the directives of Hon'ble Supreme Court in **Laxmi Kant Pandey V. Union of India** (1984) 2 SCC 244, the instant deed of adoption should not be lawful by referring sub-clause 1.1.7 (f) of CARA in respect of age of adoptive parents and also referring sub-clause 1.1.8 of CARA with regard to the necessity of the child above 6 years. Being contradiction with the Juvenile Justice (Care and Protection of Children) Act, 2000 and Office Memorandum under No. B. 12011/8/2005-SWD dt.

5th August, 2005 and Letter No. G. 19011/8/2008-F. APF/20 dt. 13th Jan., 2009, the instant adoption deed will be *non est* and no relief as prayed in the plaint is sustainable in the eye of law.

FINDINGS

Issue No. 1
Whether the Office Memorandum under No. B. 12011/8/2005-SWD dt. 5th August, 2005 and Letter No. G. 19011/8/2008-F. APF/20 dt. 13th Jan., 2009 is repugnant with the observations of Hon'ble Supreme Court in Laxmi Kant Panday Vs. Union of India, 1984 or not.

Office Memorandum under No. B. 12011/8/2005-SWD dt. 5th August, 2005 supersedes the previous Office Memorandum even No. dt. 16-05-2005 which was set aside by the court of Senior Civil Judge in Civil Suit No. 33 of 2005 decided on 4/8/2008, the Office Memorandum dt. 5th August, 2005 is published in the Mizoram Gazette, Ext. Ordinary; Vol. XXXIV, 23.8.2005, Issue No. 200 as Ext. D-2, it reads thus-

> *"With the enforcement of the Mizoram Juvenile Justice (Care and Protection of Children) Rules, 2003 with effect from 1.8.2003, some doubt has arisen about the legal status of a child adopted prior to 1.8.2003 which may effect or deprive of pensionary benefits and other legal status to a child from adoptive parents. It may even be considered adoption taken place prior to 1.8.03 to the extent of illegal adoption. The matter has been examined in the Law & Judicial Department at length. It is clarified that "all in-country and inter-country adoption taken place or taking place on or after 1st August, 2003 have to conform to statutory formalities prescribed in the Juvenile Justice (Care and Protection of Children) Rules, 2003, while all such adoptions prior to 1st August, 2003 also have to conform to the respective Customs and existing Laws as well as to the guidelines framed by the Hon'ble Supreme Court in Lakhsmikant Panday's case.*
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> *This supersedes this Deptt's Office Memorandum of even No. dt. 16.5.05"*

It was issued by the Secretary to the Govt. of Mizoram, Social Welfare Department and undersigned by himself.

Letter No. G. 19011/8/2008-F. APF/20 dt. 13th Jan., 2009 was issued to the Chief Controller of Accounts, Mizoram by the Finance Department, Govt. of Mizoram (APF Branch) which reproduced the comments and views of Law and Judicial Department under thei I.D. No. LJ. 10/2008/467 Dt. 7.1.2009 under the subject titled *"Adoption made under Customary Law to be accepted as 'Legally Adopted' within the meaning of CCS (Pension) Rules, 1972"*. It was further advised that the adoptive parent should have declared/mentioned the adopted child as family member in her service records.

Needless to say is that the Constitution of India has laid down directives for the care, protection and rights of the child to a family. International standards such as United Nations Convention on Rights of Child (UNCRC)-1989 and Hague Convention on Inter-country Adoption-1993 have also stipulated measures for children who are without family care and/or institutionalized for long. Central Adoption Resource Authority (CARA), an autonomous body under Ministry of WCD, Govt. of India

endeavors to fulfill the rights of every child to a family through a network of NGOs and Government run Adoption homes. To sum up, Guidelines for In Country Adoption, 2004 provides that- *(i) Firstly, prospective adoptive parents should register with the Local Licensed Adoption Agency or Adoption Coordinating Agency. (ii) A home study of the prospective parents is to be conducted by the social worker of the agency. To allay fears and apprehensions, pre-adoptive counseling sessions are to be undertaken by the social worker. For the social worker, assessing the ability of the couple to parent a child not born to them is of crucial importance. Therefore, the couple's suitability to care for an unrelated child is ensured through this home study. (iii) After the initial survey, prospective adoptive parents should submit documents related to their financial and health status to the agency. (iv) A child is then shown to the parents. If desired by the parents, the agency takes care to match a child meeting the desired description. (v) The agency files a petition for obtaining the necessary orders under relevant Act once a successful matching has been done. In some cases, the child may also be placed in pre-adoption foster care with adoptive parents. (vi) Fees, as prescribed by the Government, will be charged by the licensed adoption agency for maintenance and legal cost.*

With regards to the validity of the impugned Office Memorandum dt. 5th August, 2005, parties overlook its legality whether having binding force or not. In this task, recently in **Jaipur Development Authority & Ors. vs Vijay Kumar Data & Anr** decided on 12 July, 2011 in connection with Civil Appeal No. 7374 of 2003, the Supreme Court has held that-

> "33. It is thus clear that unless an order is expressed in the name of the President or the Governor and is authenticated in the manner prescribed by the rules, the same cannot be treated as an order made on behalf of the Government. A reading of letter dated 6.12.2001 shows that it was neither expressed in the name of the Governor nor it was authenticated manner prescribed by the Rules. That letter merely speaks of the discussion made by the Committee and the decision taken by it. By no stretch of imagination the same can be treated as a policy decision of the Government within the meaning of Article 166 of the Constitution."

Before dealing with the crux, let us firstly look the ratio laid down in **Lakshmi Kant Pandey vs. Union Of India** disposed of on 6 February, 1984 and reported in 1984 AIR 469, 1984 SCR (2) 795, 1984 SCC (2) 244, 1984 SCALE (1) 159, the core principles and norms set thereat reads thus-

> "We may add even at the cost of repetition that the biological parents of a child taken in adoption should not under any circumstances be able to know who are the adoptive parents of the child nor should they have any access to the home study report or the child study report or the other papers and proceedings in the application for guardianship of the child. 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 child study report, the same should be supplied to them by the recognised 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. 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 the child grows up in the surroundings of the country of adoption and becomes a part of the society of that country, 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 his curiosity to meet its biological parents resulting in unsettling effect on its mind. But if after attaining the age of maturity, 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 maturity, it is not likely to be easily affected by such information and in such a case, the foreign adoptive parents may, in exercise of their discretion, furnish such information to the child if they so think fit."

It clearly disclosed that the said judgment is delivered to meet the lacunae and shortfalls in Inter-Country Adoptions. Parties also fails to see the amendment of the said judgment & order in **Laxmi Kant Pandey vs Union Of India** decided on 3 December, 1986 and reported in 1987 AIR 232, 1987 SCR (1) 383 but the core principles and norms were unchanged. The 153rd report of Law Commission of India also recommended to comprehended and consolidated Inter - Country Adoption Guidelines on 26th August, 1994, such appears the factors to chalk out the existing Guidelines for Adoption from India, 2006.

In paragraph 4 of the Introduction and Procedures under Chapter – 1 of the Guidelines for In Country Adoption, 2004, it is clearly noted that "*The importance of In-country adoption is, self-evident. There is need to ensure that not only In-country adoption is actively encouraged and propagated throughout the country, but also a well formulated procedure is followed for the purpose. The Ministry of Social Justice and Empowerment, Govt. of India has now decided to issue common Guidelines for the procedure that needs to be undertaken by adoption Homes/Institutions before filing adoption petitions under Hindu Adoption and Maintenance Act, 1956 (HAMA)***,** *Juvenile Justice (Care & Protection of Children) Act, 2000 (JJ Act) and also Guardianship Petitions under Guardian & Wards Act, 1890. These Guidelines do not affect the provisions in the existing Acts and laws but serve to provide a procedure for processing adoption cases before they are actually brought before the competent authorities/courts under the aforementioned Acts for orders. The Guidelines will also ensure that the best interests of the child are protected and all adoptions are legally processed through licensed Homes/Institutions only.*"

Thus, the said Office Memorandum under No. B. 12011/8/2005-SWD dt. 5th August, 2005 and Letter No. G. 19011/8/2008-F. APF/20 dt. 13th Jan., 2009 which merely reiterated and imposed to follow the procedures adopted under Guidelines for In Country Adoption, 2004 for all adoptions whether from biological parents or not-its legality or validity will require to meticulously examine with the following issues.

Issue No. 2
Whether the adoption deed dt. 25/1/2007 executed is validly made or not

Admittedly, the instant adoption deed was not registered under the Registration Act, 1908, whether it can be used as evidence or not is already answered by Hon'ble Andhra High Court in **Sanagavarapu Venkata Subbaiah Sarma vs Karuthota Galib Saheb And Ors**. decided on 11/4/1997 and reported in 1997 (4) ALT 274, Andhra High Court has held that-

> "32. Looking to the evidence as brought on record, this Court had no hesitation in holding that the adoption was duly proved. The oral evidence as brought on record sufficiently establish the factum of adoption. The Law never contemplates that the adoption deed must be executed in writing and registered. It is not a deed compulsorily registerable Under Section 17 of the Indian Registration Act. What is required to prove the valid adoption is the free consent of both the parents giving in adoption and free consent of both the parents in taking the child in adoption and actually the ceremony of giving and taking the child in adoption must be duly proved. In the present case, there is sufficient evidence on record to establish the factum of giving the child and taking the child in adoption.
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> 33. One more factor would weigh in favour of the plaintiff to establish the factum of adoption that the first defendant and his first wife were issueless. Not only they were issueless but also they had huge properties. A Hindu mind would always think that after him there must be a linear male descendant to give Pinda Danam' to him after his death.

> 34. Considering the above facts as brought on record, this Court has no hesitation in holding that the adoption is duly proved."

Therefore, non registration of adoption deed will have no meaning as held in the above case. Without conforming Guidelines for In Country Adoption, 2004, whether adoption can be had as per Mizo Customary laws or not is another point. If so whether such customs will remains valid after chalked out of Guidelines for In Country Adoption, 2004 will be the main onerous task.

With regards to the judgment & order passed by Senior Civil Judge, Aizawl in Civil Suit No. 33 of 2005 decided on 4/8/2008, wherein, it was set aside and void ab initio the similar Office Memorandum dt. 16-05-2005 and letter dt. 26-07-2004 which imposed in country adoption should be in line with Guidelines for In country Adoption, 2004, although Mr. L.H. Lianhrima relied in its persuasive value, if I am in a position to say, the said judgment & order is concluded that being a dumb from birth of one minor namely- Mr. Master Laruatkima, the court declared as a child in need of care and protection as per section 2 (d) (iii) of the Juvenile Justice (Care and Protection of Children) Act, 2000, if it be so, only the court is empowered to make adoption as per section 41 of the said Act if a child is in need of care and protection. In short (although I duly respect the said observations), the reasons and decisions of the said judgment are contradictory by violating statutory laws like the Juvenile Justice (Care and Protection of Children) Act, 2000.

Guidelines for In Country Adoption, 2004 was chalked out under No. S.O. 711 (E), Dated New Delhi, 1st June, 2004 forwarded by Mrs. Rajwant Sandhu, Jt. Secy. to Govt. of India, she concluded her foreword that "*It is hoped that these guidelines will facilitate in-country adoption of children who are abandoned, destitute or orphaned so that they get the opportunity to develop in a loving and caring home environment that is the right of every child*". Clause (aa) of section 2 of the Juvenile Justice (Care and Protection of Children) Act, 2000 defined adoption that-

> '(aa) "adoption" means the process through which the adopted child is permanently separated from his biological parents and become the legitimate child of his adoptive parents with all the rights, privileges and responsibilities that are attached to the relationship;';

As introduced by the provisions of the Act itself, the Juvenile Justice (Care and Protection of Children) Act, 2000 is "*An Act to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this enactment.*". Section 41 of the Juvenile Justice (Care and Protection of Children) Act, 2000 reads thus-

> "**41. Adoption**.-(1) The primary responsibility for providing care and protection to children shall be that of his family.
> (2) Adoption shall be resorted to for the rehabilitation of the children who are orphan, abandoned or surrendered through such mechanism as may be prescribed.
> (3) In keeping with the provisions of the various guidelines for adoption issued from time to time, by the State Government, or the Central Adoption Resource Agency and notified by the

Central Government, children may be given in adoption by a court after satisfying itself regarding the investigations having been carried out, as are required for giving such children in adoption."

Sub- section (6) of the said section further stipulated that

"The court may allow a child to be given in adoption—
(a) to a person irrespective of marital status; or
(b) to parents to adopt a child of same sex irrespective of the number of living biological sons or daughters; or
(c) to childless couples."

Thus, it can be observed that the Juvenile Justice (Care and Protection of Children) Act, 2000 (As amended in 2006) and the rules framed thereunder whether the Mizoram Juvenile Justice (Care and Protection of Children) Rules, 2003 or the Mizoram Juvenile Justice (Care and Protection of Children) Rules, 2010, can only be achieved a child who is in need of care and protection for the purpose of rehabilitation and social reintegration. The Explanation embodied under section 39 of the said Act further streak out that-

"Explanation.— For the purposes of this section "restoration of and protection of a child" means restoration to—
(a) parents;
(b) adopted parents;
(c) foster parents;
(d) guardian;
(e) fit person;
(f) fit institution."

Section 40 of the said Act further clarified that "40. **Process of rehabilitation and social reintegration**.- The rehabilitation and social reintegration of a child shall begin during the stay of the child in a children's home or special home and the rehabilitation and social reintegration of children shall be carried out alternatively by (i) adoption, (ii) foster care, (iii) sponsorship, and (iv) sending the child to an after-care Organisation." Section 2 (d) of the said Act also clearly termed child in need of care and protection as follows-

"(d) "child in need of care and protection" means a child-
(i)who is found without any home or settled place or abode and without any ostensible means of subsistence;
(ia) who is found begging, or who is either a street child or a working child,
(ii) who resides with a person (whether a guardian of the child or not) and such person-
(a) has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out, or
(b) has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person,
(iii) who is mentally or physically challenged or ill children or children suffering from terminal diseases or incurable diseases having no one to support or look after,
(iv) who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child,

(v) who does not have parent and no one is willing to take care of or whose parents have abandoned or surrendered him or who is missing and run away child and whose parents cannot be found after reasonable injury,
(vi) who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts,
(vii) who is found vulnerable and is likely to be inducted into drug abuse or trafficking,
(viii) who is being or is likely to be abused for unconscionable gains,
(ix) who is victim of any armed conflict, civil commotion or natural calamity;"

Whether, the instant adopted minor children is a child in need of care and protection or not and if not, whether the nature and mode of adoption and treatment of the said child after adoption will also be relevant. As deposed by the PWs, there is no evidence to reveal that the minor child Mr. Marvis Lalhlimpuia was a child in need of care and protection, being a relative solely for the purpose of the welfare of the said child, they intended to make adoption with the deceased Smt. Biaknungi, the then Deputy Director (N), Health Department, Govt. of Mizoram. Evidence of the defendant is silent about the status of the child whether in need of care and protection or not. Thus, the instant adoption will be freeing from the entity of the Juvenile Justice (Care and Protection of Children) Act, 2000 (As amended in 2006) and the rules framed thereunder and its allied guidelines.

To discuss the nature and mode of adoption, all PWs corroboratively deposed that by conducting family gatherings in the residential house of the Minor Mr. Marvin Lalhlimpui with the presence of his parents like PWs. 1 and 3 and the adoptive mother, they executed Deed of Adoption in the presence of reliable witnesses like the PWs 2 and 4 as undisputedly deposed by PWs. Section 109 of the Mizo Customary Laws, 1956 (As amended in 1960) says that-

"109. RO LUAH TURA SIAM EMAW FA RO LUAH: (adoption or inheritance by one's children). In the absence of a will, the Mizo Law of Inheritance is as follows: -

Strictly speaking, there is no such laws of adoption of person for legal heir from outside family circle according to Mizo Customary Law; however, adoption may be allowed with the consent of one's close relatives or under certain peculiar circumstances. Whoever adopts a child to succeed him against the consent of his relatives, the legal heirs should be the adopted child. Any person who has no issue or who has no close relative to maintain him may adopt any person to inherit his properties, and if the person so adopted looks after the person till his death he may succeed him. A man may adopt a child if his brother or brother's sons refuse on fail to support him. In such a case he should first inform the village authorities of his intention to adopt a child and the village authorities may approve of the proposed adoption if they are satisfied that this has got to be done, after proper verification.

The extent to which an adopted son can inherit property of the adoptive father should be within certain limits. If the brothers of the adoptive father attempt to oust the adopted son and inherit all the properties they cannot be allowed, the properties should rather be divided into three shares of which one share will go to the adopted son and the rest to the brothers or other natural heir or heirs according to the merit of the case. No hard and fast rule can be made concerning inheritance by adoption. The adopted son is not entitled to inherit the properties of the adoptive father unless he has been disowned by his natural heirs. If, however, an orphan has lived for a number of years with his adoptive father and supported him, the orphan is entitled to one third of the properties of the adoptive father. The following example will make the matter clear: -

(a) 'A' has no issues or close relatives, and 'B' is an orphan, and 'A' brought up 'B' and is very kind to him. Therefore, 'A' can adopt 'B' as his son and make him his heir. It is however, obligatory on the part of 'B' to support 'A's' wife after 'A's death.

(b) 'A' and 'B' are brothers of the same parents 'A' is a rich man, but he has no issue while 'B' is a poor man and has many children. 'A' has made 'C' an orphan, to be his heir, and then 'A' dies. 'C' now wants to inherit all the properties of 'A', but he is not allowed to do so, so long as 'B' or 'B's children lay claim in 'A's properties which can be allowed. However, if 'C' had been very helpful to 'A', then he can have certain share on 'A's properties. But 'C' will get nothing if he has no service rendered to 'A'. 'C' is entitled to one third of 'A's cooking utensils and jhum produce only, if he had supported 'A' till death and had been so helpful to him. And, if 'C' reared domesticate animals and earned some money, he may get half of the same as his own."

Under Chapter- 6, section 96 of the newly compiled Mizo Customary Laws by the Committee on Mizo Customary Laws notified under No. H. 12018/119/03-LJD/62, the 4th April, 2005 published in the Mizoram Gazette, Ext. Ordinary; Vol. XXXIV, 6.4.2005, Issue No. 66, adoption can be made in three grounds viz. (i) a man/person without any children (ii) a person having no supporters (iii) illegitimate child. The procedure is also duly framed under this Chapter by prescribing the form under Form No. 1 requiring two witnesses and in the presence of local authority.

In the instant adoption deed, instead of signing before the Village/local authority, the deed was executed before the learned Magistrate, Subordinate District Council Court, Aizawl.

As already discussed, Guidelines for In Country Adoption, 2004 merely embarked the procedure but not change any other law. In this avenue, the principles enunciated under Article 371G of the Constitution of India may be relevant which not only saved the Mizo customary laws but also its procedures, it reads thus-

"**371G. Special provision with respect to the State of Mizoram**.

Notwithstanding anything in this Constitution,—

(a) no Act of Parliament in respect of—

(i) religious or social practices of the Mizos,

(ii) Mizo customary law and procedure,

(iii) administration of civil and criminal justice involving decisions according to Mizo customary law,

(iv) ownership and transfer of land, shall apply to the State of Mizoram unless the Legislative Assembly of the State of Mizoram by a resolution so decides:

Provided that nothing in this clause shall apply to any Central Act in force in the Union territory of Mizoram immediately before the commencement of the Constitution (Fifty-third Amendment) Act, 1986;

(b) the Legislative Assembly of the State of Mizoram shall consist of not less than forty members."

In this catena, the salutary judgment of Hon'ble Supreme Court in **Sri Indra Das vs State Of Assam** decided on 10 February, 2011 in connection with Criminal Appeal No.1383 of 2007 will be attracted, the Supreme Court has held that-

"27. The Constitution is the highest law of the land and no statute can violate it. If there is a statute which appears to violate it we can either declare it unconstitutional or we can read it down to make it constitutional. The first attempt of the Court should be try to sustain the validity of the statute by reading it down. This aspect has been discussed in great detail by this Court in Government of Andhra Pradesh vs. P. Laxmi Devi 2008(4) SCC 720."

And in the previous day case in **State Of Orissa & Anr. vs Mamata Mohanty** decided on 9 February, 2011 in connection with Civil Appeal No. 1272 of 2011, the Supreme Court has also observed that-

> "41. It is a matter of common experience that a large number of orders/letters/circulars, issued by the State/statutory authorities, are filed in court for placing reliance and acting upon it. However, some of them are definitely found to be not in conformity with law. There may be certain such orders/circulars which are violative of the mandatory provisions of the Constitution of India. While dealing with such a situation, this Court in Ram Ganesh Tripathi & Ors. v. State of U.P. & Ors., AIR 1997 SC 1446 came across with an illegal order passed by the statutory authority violating the provisions of Articles 14 and 16 of the Constitution. This Court simply brushed aside the same without placing any reliance on it observing as under: "The said order was not challenged in the writ petition as it had not come to the notice of the appellants. It has been filed in this Court along with the counter affidavit..... This order is also deserved to be quashed as it is not consistent with the statutory rules. It appears to have been passed by the Government to oblige the respondents....."

Whilst recognizing the ingredients of valid customs as observed by the Hon'ble Supreme Court in the case of **State of Bihar & Ors. Vs. Subodh Gopal Bose & Anr.** decided on 22/08/1967 and reported in 1968 AIR 281, 1968 SCR (1) 313 held as-

> "A custom is a usage by virtue of which a class of persons belonging to a defined section in a locality are entitled to exercise specific rights against certain other persons or property in the same locality. To the extent to which it is inconsistent with the general law undoubtedly the custom prevails. But to be valid a custom must be ancient, certain and reasonable, and being in derogation of the general rules of law must be construed strictly"

Also vide, **Mookka Kone Vs. Ammakutti Ammal** [AIR 1928 Mad 299 (FB)]; **Yeghoto Sumi Vs. State of Nagaland and Ors.** 1997 (2) GLT 568; **Salekh Chand (Dead) by Lrs Vs. Satya Gupta and Ors.** reported in (2008) 13 SCC 119, I must therefore uphold that the instant adoption deed dt. 25th Jan., 2007 is validly made as per Mizo customs and practices freeing from the circumlocution of the Juvenile Justice (Care and Protection of Children) Act, 2000 (As amended in 2006) and the rules framed thereunder whether the Mizoram Juvenile Justice (Care and Protection of Children) Rules, 2003 or the Mizoram Juvenile Justice (Care and Protection of Children) Rules, 2010 or Guidelines for In Country Adoption, 2004.

With regards to the different/variant age mentioned in the Adoption Deed Dt. 25th Jan., 2007, the intention of the executing parties is being a minor, Mr. Marvin Lalhlimpuia was adopted by Smt. Biaknungi, it may be relevant to take reliance as well settled law for reading of deed in **Pradeep Oil Corporation vs Municipal Corporation Of Delhi & Anr.** decided on 6 April, 2011 in connection with Civil Appeal Nos. 6546-6552 of 2003, the Supreme Court observed thus-

> "24. It is well settled legal position that a deed must be read in its entirety and reasonably. The intention of the parties must also as far as possible be gathered from the expression used in the document itself."

In this alleged variation of the age of adoptee, his only Birth Certificate issued by the authorized/competent authority will determine his exact and true age for the purpose of pension process of Smt. Biaknungi. This issue and the Issue No. 1 is decided in favour of the plaintiff.

Issue No. 3
Whether the plaintiff is entitled to the relief claimed or not. If so to what extent?

Before blindly go into the issue, firstly look into the relief claimed in the plaint such as- (i) for a decree in favour of the plaintiff and against the defendants (ii) for a decree directing the defendants for immediate payment of family pension to Marvis Lalhlimpuia through his Natural father and legal

guardian, Shri. Lalhmachhuana Pachuau as per the Heirship/Guardianship Certificate No. 65 of 2008 (iii) for immediate consideration of the application for payment of family pension to minor Marvis Lalhlimpuia through his legal guardian and (iv) for any other relief (s) as this court may deem fit and proper.

In this prayer and for the efficacious of the judgment and decree, the impugned Office Memorandum under No. B. 12011/8/2005-SWD dt. 5th August, 2005 and Letter No. G. 19011/8/2008-F. APF/20 dt. 13th Jan., 2009 will requires to set aside but inclined to follow the principles coined in **M. Meenakshi v. Metadin Agarwal** reported in (2006) 7 SCC 470, the Supreme Court held that:

> "18. It is a well-settled principle of law that even a void order is required to be set aside by a competent court of law inasmuch as an order may be void in respect of one person but may be valid in respect of another. A void order is necessarily not non est. An order cannot be declared to be void in a collateral proceeding and that too in the absence of the authorities who were the authors thereof. The orders passed by the authorities were not found to be wholly without jurisdiction. They were not, thus, nullities."

As it is, no other diverse decree and adjudication except to hold and make efficacy of the Heirship/Guardianship Certificate No. 65 of 2008 issued by the learned Magistrate, Addl. Subordinate District Council Court under No. SDCC/H.C. 65/08/3147-9 Dated Aizawl, the 29th Jan., 2008 which declared the minor Mr. Marvis Lalhlimpuia as the legal heir of the deceased namely- Smt. Biaknungi, Deputy Director (N), Health Department, Govt. of Mizoram in respect of Pension benefit and further appointed the plaintiff as the legal guardian of the said minor if not challenged by preferring an appeal and set aside by the competent court of law. Meanwhile, CCS (Pension) Rules, 1972 as advised in letter No. G. 19011/8/2008-F. APF/20 dt. 13th Jan., 2009 is adhered by this court as a the well settled law is that the court is bound to follow statutory laws duly enacted or framed within competency as recently held by the Hon'ble Supreme Court in **K.T. Plantation Pvt. Ltd. & Anr. vs State Of Karnataka** decided on 9 August, 2011 in connection with Civil Appeal No. 6520 of 2003.

DIRECTIVES

In view of the above findings and reasons, it is ordered and decreed that the Office Memorandum under No. B. 12011/8/2005-SWD dt. 5th August, 2005 and Letter No. G. 19011/8/2008-F. APF/20 dt. 13th Jan., 2009 are hereby set aside and declared and null and void only for the purpose of the instant case as held in **M. Meenakshi v. Metadin Agarwal (supra.)** keeping in view that other case (if any) will also be determined by factual matrix and circumstances from case to case.

It is further ordered and decreed that the defendants are directed to comply the Heirship/Guardianship Certificate No. 65 of 2008 issued by the learned Magistrate, Addl. Subordinate District Council Court under No. SDCC/H.C. 65/08/3147-9 Dated Aizawl, the 29th Jan., 2008 which declared the minor Mr. Marvis Lalhlimpuia as the legal heir of the deceased Smt. Biaknungi, Deputy Director (N), Health Department, Govt. of Mizoram in respect of Pension benefit and further appointed the plaintiff as the legal guardian of the said minor and make a process in this pursuit to be completed within six months from the date of this order or the date of receiving this judgment & decree if the said Heirship/Guardianship Certificate No. 65 of 2008 is not set aside or nullified by the competent

appellate court. No order as to costs of the suit in view of the peculiarities of the case.

The case shall stand disposed of.

Give this copy to all concerned.

Given under my hand and seal of this court on this 5th September, 2011 Anno Domini within the premises and during the working hours of this court and is pronounced in an open court.

Dr. H.T.C. LALRINCHHANA
Senior Civil Judge- 2
Aizawl District: Aizawl

Memo No. CS/74/2009, Sr. CJ (A)/ Dated Aizawl, the 5th Sept., 2011

Copy to:

1. Mr. Lalhmachhuana Pachuau F/o Marvis Lalhlimpuia, Kulikawn, Aizawl through Mr. L.H. Lianhrima, Advocate.
2. The Chief Secretary to the Govt. of Mizoram through Mr. R. Lalremruata, AGA
3. The Secretary to the Govt. of Mizoram, Finance Department through Mr. R. Lalremruata, AGA
4. The Secretary to the Govt. of Mizoram, Social Welfare Department through Mr. R. Lalremruata, AGA
5. The Chief Controller of Accounts, Accounts & Treasuries, Govt. of Mizoram through Mr. R. Lalremruata, AGA
6. P.A. to Hon'ble District & Sessions Judge, Aizawl Judicial District-Aizawl
7. Case record.

PESKAR