**IN THE HIGH COURT AT CALCUTTA**

**(Constitutional Writ Jurisdiction)**

**APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Krishna Rao**

**W.P.A. No. 13525 of 2026**

**Smt. Aparna Das & Anr.**

**Vs.**

**The State of West Bengal & Ors.**

Mr. Shamik Chatterjee
Mr. Souma Subhra Roy
Ms. Swagata Santra
Ms. Neelam Kumari

....For the petitioners.

Ms. Swagata Datta
Ms. Ankita Dey

....For the State.

Mr. Sudipto Basu
Ms. Susmita Saha

....For the respondent nos. 7 and 8.

Hearing Concluded On : 07.09.2026

Judgment Delivered On : 17.09.2026

Judgment Uploaded On : 17.09.2026

**Krishna Rao, J.:**

**1.** The petitioners have filed the present writ petition praying for a mandamus directing the respondents to disclose and furnish all orders, proceedings, recommendations, inquiry reports, social investigation reports, individual care plans, assessments, communications, placement orders and all other records relating to the minor child, namely, Amit Das.

**2.** The private respondent nos. 6 and 7 are the biological mother and father of the minor child who was born on 24th February, 2023 at M.R. Bangur Hospital, Kolkata. The child was born prematurely at approximately twenty-nine weeks of gestation with a birth weight of approximately 1.68 kilograms. Immediately after the birth of the child, he was admitted to the Special New Born Care Unit (SNCU) and was remain admitted for about twenty-five days. The child was discharged from hospital on 21st March, 2023.

**3.** The respondent nos. 6 and 7 being the biological parents of the minor unable to take care of the child and voluntarily handed over the child to the petitioners on the very same day and on 3rd April, 2023, a Deed of Adoption was executed between the biological parents and the petitioners herein. The petitioners have adopted the minor as their own

child and since then the petitioners are looking after the child and is in the care and custody of the petitioners.

**4.** Since birth, the child is in care and custody of the petitioners. The petitioners were intending to get the child admitted in the school for his study, the petitioners have approached the hospital authorities to obtain Birth Certificate. The hospital authorities directed the petitioners to approach the Child Welfare Committee for adoption of the child and thereafter only the petitioners will get Birth Certificate of the child. The petitioners have approached the Child Welfare Committee on 18th February, 2026 and narrated the entire incidents to the Child Welfare Committee. The Child Welfare Committee has taken the Child in their custody from the petitioners and since then the Child is in custody of the Child Welfare Committee. The petitioners have approached the Committee but the Child was not returned to the petitioners.

**5.** Mr. Shamik Chatterjee, Learned Advocate, representing the petitioners submits that within a week from the birth of the child, the child is in care and custody of the petitioners and there is no allegation against the petitioners that the child was abused, neglected, exploited, trafficked, mistreated and abandoned or subjected to physical, emotional or committed any psychological harm to the child. He further submits that the petitioners have *bona fide* approached the Child Welfare Committee to complete the formalities so as to enable the petitioners to provide proper education to the child but instead of guiding the petitioners, the Child Welfare Committee has taken custody

of the child form the petitioners and no steps is taken to complete Adoption process.

**6.** Mr. Chatterjee submits that instead of removing the custody of the child from petitioners, the Committee ought to have guided the petitioners for completion of formalities for adoption of the child but the Committee failed to do so. He submits that irregularity in adoption process does not by itself establish that the child is unsafe or his removal from established care giving environment was necessary.

**7.** Mr. Chatterjee submits that the petitioners only seeks that the statutory requirements governing adoption and child protection be enforced through a lawful, transparent, fair and welfare oriented process, without mechanically disturbing a settled care giving environment which the child was getting from the petitioners since his birth.

**8.** Mr. Chatterjee submits that the child has spent three years with the petitioners since his birth and recognizes the petitioners as his parents cannot be reduced the love and affection of the child towards the petitioners due to administrative or procedural lapses. He submits that the law protects the child and where the procedure and statutory process is collided, the paramount welfare and best interest of the child is to be considered first.

**9.** Ms. Swagata Datta, Learned Advocate, representing the State submits that under Section 56, 57 and 58 of the Juvenile Justice (Care and

Protection of Children) Act, 2015 along with the Adoption Regulations, 2022, every adoption of a child covered under the Act is required to be completed strictly in accordance with the statutory procedure prescribed therein and under the Adoption Regulations, 2022.

**10.** Ms. Datta submits that the statutory scheme mandates that adoption can only be processed through a recognized Specialized Adoption Agency (SAA) after declaration of the child as legally free for adoption by the competent Child Welfare Committee and after completion of the procedure prescribed under the Adoption Regulations, 2022. A private arrangement or notarized deed executed outside the statutory framework has no legal recognition under the Act.

**11.** Ms. Datta submits that the records relied upon by the petitioners themselves indicate that no statutory procedure contemplated under the Juvenile Justice (Care and Protection of Children) Act, 2015 or the Adoption Regulations, 2022, was followed before the alleged transfer of custody of the child. No declaration of the child as legally free for adoption, registration through Carings, Home Study Report, matching process or judicial adoption order has been shown to have been undertaken.

**12.** Ms. Datta submits that the Child Welfare Committee is the statutory authority empowered under Chapter-VI of the Juvenile Justice (Care and Protection of Children) Act, 2015 to deal with children found to be in need of care and protection. Upon receiving information regarding

the circumstances under which the child had been placed with the petitioners, the Committee was under a statutory obligation to examine the matter and pass appropriate orders in the best interest of the child.

**13.** Ms. Datta submits that according to SARA, the action of the Child Welfare Committee in assuming custody of the child was part of the statutory process contemplated under the Juvenile Justice (Care and Protection of Children) Act, 2015 and cannot be construed as arbitrary merely because the petitioners claim emotional attachment with the child.

**14.** Ms. Datta submits that the paramount consideration under the Juvenile Justice (Care and Protection of Children) Act, 2015 and the Adoption Regulations, 2022, is the welfare and best interest of the child. Any decision relating to custody, restoration or adoption has to be taken only after assessment by the competent statutory authorities and in accordance with the prescribed legal framework.

**15.** Ms. Datta submits that while SARA does not dispute that the petitioners may have cared for the child for a considerable period, such circumstances by themselves cannot validate an adoption which is otherwise contrary to the mandatory provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015.

**16.** The biological mother and father with their consent given the child to the petitioners on the very same day of the birth of the child. On 23rd April, 2023, a Deed of Adoption was executed between the parties. The

Deed of Adoption was not registered but it is notarized. The biological parents accepted and agreed that they have given the child in adoption with their own consent.

**17.** The procedure as per the Central Adoption Resource Authority (CARA), constituted under the Ministry of Women and Child Development, Government of India, which has now received statutory recognition under the Juvenile Justice (Care and Protection of Children) Act, 2015 has not been followed. The traditional Hindu Adoptions and Maintenance Act, 1956 (HAMA), which has its own limitations. The traditional HAMA, which has its own limitations, as it is available only for particular religion and the Guardians and Wards Act, 1890, which only provide for guardianship but not for adoption, which are otherwise deficient in its application and this issue is now taken care by CARA, which primarily deal with adoption or orphan, abandoned and surrendered children through the recognized adoption agencies.

**18.** The provisions of Juvenile Justice (Care and Protection of Children) Act, 2015, states about the type of children which would be brought within the ambit of its provisions. The Act intends to offer protection to two categories of children, i.e. children in conflict with law and children in need of care and protection. Chapter VI of the Act provides the procedure in relation to children in need of care and protection. Sub Section (14) of Section 2 defines the term “child in need of care and protection” which reads as follows:

*"**2.(14)** 'child in need of care and protection' means a child-*

*(i) who is found without any home or settled place of abode and without any ostensible means of subsistence; or*

*(ii) who is found working in contravention of the provisions of this Act or labour laws for the time being in force or is found begging, or living on the street; or*

*(iii) who resides with a person (whether a guardian of the child or not) and such person-*

*(a) has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child; or*

*(b) has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or*

*(c) has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or*

*(iv) who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or having parents or guardians unfit to take care, if found so by the Board or the Committee; or*

*(v) who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or*

*(vi) who does not have parents and no one is willing to take care of and protect or who is abandoned or surrendered;*

*(vii) who is missing or run away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed; or*

*(viii) who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or*

*(ix) who is found vulnerable and has been or is being or is likely to be inducted into drug abuse or trafficking; or*

*(x) who is being or is likely to be abused for unconscionable gains; or*

*(xi) who is victim of or affected by any armed conflict; civil unrest or natural calamity; or*

*(xii) who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnization of such marriage."*

**19.** The Child Welfare Committee constituted under Chapter V of the Act is empower to exercise the powers and discharge the duties conferred in relation to the child in need of care and protection and the functions and responsibilities of the Committee include to take cognizance of and receive the children produced before it and conduct an inquiry on all the issue regarding the safety and well-being of the child. The Child Welfare Committee would exercise its power only in relation to the children in need of care and protection, as defined under Section 2(14) of the Act.

**20.** When a child is produced before the Child Welfare Committee by any person, including any police officer or special juvenile police unit, public servant, Childline Services or any voluntary or NGO or a Child Welfare Officer or Probation Officer, any social worker or by the child himself, the procedure prescribed under Chapter VI of the Act shall be followed.

**21.** There is no dispute that biological parents have given the child in adoption to the present petitioners without following the proper procedure. Admittedly, the child is neither "orphan" nor "abandoned". The petitioners have accepted the child and decided to take care of the child by obtaining custody of the child from the biological parents. The Deed of Adoption executed between the parties is a notarized document. As per the Hindu Adoption and Maintenance Act, 1956, merely by executing the notarized Adoption Deed, the petitioners cannot claim that they have right to hold the custody of the child. On the other hand, the Child Welfare Committee does not get any power to deal with the child who is neither "abandoned" nor "orphan". The child involved in the present case also does not fall in the category of 'children in need of care and protection'.

**22.** Section 3 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as "Act of 2015"), provides General principles to be followed in administration of Act which reads as follows:

"***3. General principles to be followed in administration of Act.-*** *The Central Government, the State Governments, other agencies, as the case may be, while implementing the provisions of this Act shall be guided by the following fundamental principles, namely:-*

*(i) Principle of presumption of innocence: Any child shall be presumed to be an innocent of any mala fide or criminal intent up to the age of eighteen years.*

*(ii) Principle of dignity and worth: All human beings shall be treated with equal dignity and rights.*

*(iii) Principle of participation: Every child shall have a right to be heard and to participate in all processes and decisions affecting his interest and the child's views shall be taken into consideration with due regard to the age and maturity of the child.*

*(iv) Principle of best interest: All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential.*

*(v) Principle of family responsibility: The primary responsibility of care, nurture and protection of the child shall be that of the biological family or adoptive or foster parents, as the case may be.*

*(vi) Principle of safety.: All measures shall be taken to ensure that the child is safe and is not subjected to any harm, abuse or maltreatment while in contact with the care and protection systems, and thereafter.*

*(vii) Positive measures: All resources are to be mobilised including those of family and community, for promoting the well-being, facilitating development of identity and providing an inclusive and enabling environment, to, reduce vulnerabilities of children and the need for intervention under this Act.*

*(viii) Principle of non-stigmatising semantics: Adversarial or accusatory words are not to be used in the processes pertaining to a child.*

*(ix) Principle of non-waiver of rights: No waiver of any of the right of the child is permissible or valid, whether sought by the child or person acting on behalf of the child, or a Board or a Committee and any non-exercise of a fundamental right shall not amount to waiver.*

*(x) Principle of equality and non-discrimination: There shall be no discrimination against a child on any grounds including sex, caste, ethnicity, place of birth, disability and equality of access, opportunity and treatment shall be provided to every child.*

*(xi) Principle of right to privacy and confidentiality: Every child shall have a right to protection of his privacy and confidentiality, by all means and throughout the judicial process.*

*(xii) Principle of institutionalisation as a measure of last resort: A child shall be placed in institutional care as a step of last resort after making a reasonable inquiry.*

*(xii) Principle of repatriation and restoration: Every child in the juvenile justice system shall have the right to be re-united with his family at the earliest and to be restored to the same socio-economic and cultural status that he was in, before coming under the purview of this Act, unless such restoration and repatriation is not in his best interest.*

*(xiv) Principle of fresh start: All past records of any child under the Juvenile Justice system should be erased except in special circumstances.*

*(xv) Principle of diversion: Measures for dealing with children in conflict with law without resorting to judicial proceedings shall be promoted unless it is in the best interest of the child or the society as a whole.*

> *(xvi) Principles of natural justice: Basic procedural standards of fairness shall be adhered to, including the right to a fair hearing, rule against bias and the right to review, by all persons or bodies, acting in a judicial capacity under this Act."*

**23.** For the ends of justice, it would be appropriate to direct the Child Welfare Committee to return of child to the petitioners. This is by the following the principle of the best interest of the child, principle of family responsibility, principle of safety, positive measures, principle of institutionalization as a measure of last resort, principle of repatriation and restoration, which are also enunciated as general principles in Section 3 of the Act of 2015.

**24.** As the child is neither "orphan" nor "abandoned" and does not fall in the category of 'children in need of care and protection' in terms of Section 2(14) of the Act of 2015, the action of the Child Welfare Committee taking the custody of the child from the petitioners is not is accordance with law.

**25.** Considering the circumstances, the Child Welfare Committee is directed to hand over the custody of the child to the petitioners on or before 18th September, 2026 at 04:00 P.M.

**26.** As an abandon caution and for the best interest of the Child, the Member Secretary of the District Legal Services Committee, South 24 Parganas, Kolkata, West Bengal, is directed to seek reports on the welfare and progress of the child from the petitioners on a quarterly

basis starting from the month of December, 2026 onwards. The Member Secretary of the District Legal Services Committee will also be at liberty to depute a Child Welfare Expert to inspect the house of the petitioners where the child resides to see the welfare and progress of the child.

**27.** As this Court already held that a proper procedure is not followed by the petitioners and biological parents while handing over the child in adoption, the child is neither "orphan" nor "abandoned" and the child do not fall in the category of 'children in need of care and protection'. The biological parents after the birth of the child decided to give the child in adoption to the petitioners and the petitioners have accepted the child and decided to take care of the child by obtaining custody of the child by adoption.

**28.** In the above circumstances of the case, the petitioners are directed to take appropriate steps before the appropriate Court of law for declaration that the petitioners are the adoptive parents of the child and the child is the adoptive child of the petitioners.

**29.** **WPA No. 13525 of 2026** is thus **disposed of**.

**30.** Copy of this order be forwarded to the Member Secretary of the District Legal Services Committee, South 24 Parganas, for information and compliance.

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

**(Krishna Rao, J.)**