

Baby Manji Yamada vs Union Of India & Another

Supreme Court of India

29 September, 2008

Bench:

Arijit Pasayat, Mukundakam Sharma

Where Reported

13 SCC 518 at 512

Legislation Cited

1. Article 32 in The Constitution Of India 1949
2. The Commissions for Protection of Child Rights Act, 2005
3. Section 13 in the Commissions for Protection of Child Rights Act, 2005
4. Guardians and ward act, 1890

Case Digest

Summary: Japanese Couple - Dr. Ikufumi Yamada & Dr. Yuki Yamada - surrogacy arrangement with Pritiben Mehta - Dr. Nayna fertility specialist - unknown donor of egg and sperm of Dr. Ikufumi - biological parents divorced 1 month prior birth - 25th July, 2008, Manji - private hospital - Dr. Ikufumi came alone to take custody of child - no mother (Yuki, Pritiben Mehta and anonymous Donor) was legally responsible as no parental responsibility clause in agreement - Manji moved to Arya Hospital safekeeping from rock explosions - baby stayed there thereafter breastfed and nurtured as unclear who is to be given custody - Japanese passport denied considering Mehta, Indian birthing mother - Indian govt requires surrogate child to be adopted but single men cannot adopt girl child (guardian and wards Act 1890) - Dr. Ikufumi files Indian passport for Manji - requires birth certificate - uncertified mother in certificate (Yuki, Pritiben Mehta and anonymous Donor) - Indian passport denied as Ikufumi not Indian - Ikufumi's grandmother nurtured Manji after expiration of his visa - certificate of Identity issued for Japan 1 year with blank mother and nationality.

Issue:

- Who is the mother when 3 mothers are involved?
- Nationality of surrogate child, complications of commercial surrogacy.

Judgment: This petition under Article 32 of the Constitution of India, 1950 challenged certain directions given by the division bench of Rajasthan high court in relation to the production and custody of a surrogate child, Manji Yamada. Emiko Yamada, claiming to be the grandmother of the child, filed the petition. There is no dispute about Baby Manji Yamada being a surrogate child. There is no law governing surrogating in India and it has become a money making racket. The union of India should work on stringent laws on surrogacy. There was not even an indication as to whose alleged illegal custody the child was. Surrogacy and its types commercial surrogacy, traditional surrogacy, gestational surrogacy, altruistic surrogacy were highlighted.

The Commission for Protection of Child Right Act, 2005 has been enacted for the protection of child rights and children's courts to provide speedy trial of offences against children and violation of child rights. Sec 13 in Chapter III of the Act is of considerable importance. The Commission has a right to inquire complaints and take suo motu notice of deprivation, child rights violation, non implementation of laws providing protection and development to children and non compliance policy of decisions. The writ petition was disposed of with a direction that if any person has any grievances to be ventilated before the Commission constituted under the Act and takes into account various aspects necessary. The permission to travel, including issuance of a Passport for the baby is under consideration of the Central Government, but no orders have been passed in that regard. There was another prayer in the petition requesting extension of the visa of the grandmother of the child. If a comprehensive application, as required under law, is filed within a week, the same shall be disposed of within four weeks. The petitioner's grievance's remedy can be availed by the available law.

