

parents—the Appellant and Respondent No. 4—both of whom are also US citizens.

A. FACTS

3. It is necessary to understand the factual milieu surrounding the dispute before delving into the consequential legal issues.

3.1 To clarify the relationship between the parties, as previously elucidated, the Appellant and Respondent No. 4 are mother and father, respectively. Respondent No. 1 is the Appellant’s brother, whereas Respondent Nos. 5 and 6 are Respondent No. 4’s parents.

3.2 The Appellant and Respondent No. 4 got married in Chennai, India on 09.07.2001, as per Hindu rites and customs. Subsequently, they began residing together in Idaho, US and acquired US citizenship in due course of time. They had two sons , who was born on 06.06.2003, and who was born on 13.03.2005—from the wedlock. Both the children are US citizens by virtue of their birth and their parents’ citizenship. These children were born with intellectual and developmental disabilities. has Ataxic Cerebral Palsy, while has Autism Spectrum Disorder.

3.3 During their marriage, certain irreconcilable differences arose between the Appellant and Respondent No. 4, prompting them to dissolve their marriage by mutual consent through an order dated 12.09.2007, passed by the District Court of the Fourth Judicial District, State of Idaho, US (**Idaho Court**). While dissolving the marriage, the Idaho Court awarded joint legal and physical custody of the sons, as they were minors at the time. The Idaho Court established the terms of joint custody as follows: **(i)** Respondent No. 4 would have physical custody of the sons every week from 8:00 am on Friday to 8:00 am on Monday; and **(ii)** the Appellant would have physical custody of the sons every week from 8:00 am on Monday to 8:00 am on Friday. The Idaho Court divided all holidays equally amongst the parents and further directed them to not disparage each other in the midst of their sons, teachers, care providers, and medical providers. Additionally, neither party was directed to pay child support to the other. Lastly, in furtherance of these directions, the Idaho Court *vide* Clause 13 of the Supplemental Custody Order expounded that, ***“Neither parent shall move the children’s residence to a place which will make the ordered custody and visitation schedule impractical or significantly more difficult or expensive without prior written consent of the other parent or an order of the court.”***

3.4 Thereafter, in June 2022, following a visit in terms of the Idaho Court's custody arrangement, Respondent No. 4 brought back to the Appellant's home, whereas continued to reside with Respondent No. 4. It is pertinent to note that by this time, had already attained majority. This led the Appellant to file a Guardianship Application before the Idaho Court on 30.06.2022, seeking full and permanent legal guardianship over . In response thereto, Respondent No. 4 filed a Counter-Petition before the Idaho Court on 17.01.2023, contending that was sufficiently capable and did not require a permanent guardian.

3.5 In due course, during a preliminary hearing on 04.01.2023 before the Idaho Court, the parties' attorneys laid down mutual terms for them to adhere to until the conclusion of the proceedings. These terms included: **(i)** meeting with the Health and Welfare Committee within 45 days; **(ii)** sharing address, phone number, and email address with the Appellant; **(iii)** allowing regular in-person contact between the Appellant and subject to his comfort level; and **(iv)** providing advance notice and written itineraries for any foreign travel arrangements involving , which would be discussed by the parents jointly.

3.6 As per the terms mentioned above, the Appellant and [redacted] were scheduled to be interviewed on 17.05.2023 by the Evaluation Committee of the Idaho Department of Health and Welfare (West Hub Developmental Disabilities Program) (**Evaluation Committee**). The Evaluation Committee's findings revealed that Respondent No. 4 and [redacted] refused to attend the interview/meeting. A report based on the Evaluation Committee's findings was sent to the parties and the authorities. Soon after, Respondent No. 4 brought [redacted] for his in-person interview with the Evaluation Committee. Accordingly, an addendum dated 25.10.2023 was issued, marking their presence, and concluding that [redacted] required guardianship.

3.7 In the *interregnum*, mediation sessions were scheduled to be held between the parties. However, during this period, the Appellant discovered that Respondent No. 4 and [redacted] had left the US to visit Respondent Nos. 5 and 6 in Chennai, India. This rendered the Appellant entirely unaware of their travel and return itinerary. Therefore, she was unable to maintain regular contact with her son.

3.8 While these developments were materialising, parallelly, the Idaho Court appointed the Appellant as [redacted] temporary guardian on 10.01.2024. Against this backdrop, investigations conducted by the US Federal Authorities and the Idaho District Authorities

revealed that during the pendency of the proceedings, Respondent No. 4 obtained [redacted] passport and left the US on 31.12.2023. On arriving in India, they began residing in Chennai with Respondent Nos. 5 and 6.

3.9 By virtue of this, the Appellant, on 31.01.2024, filed an online police complaint with Respondent No. 2. She then authorized her brother, Respondent No. 1, to act on her behalf to retrieve custody of [redacted]. Thereupon, on 05.02.2024, the Appellant lodged a complaint with the NRI Cell in Chennai. In furtherance thereto, the Police Authorities in Chennai were able to retrieve [redacted] passport number, along with the last known address and contact details of Respondent Nos. 5 and 6. However, [redacted] and Respondent Nos. 4 to 6 remained untraceable.

3.10 Concurrently, in the guardianship proceedings pending before the Idaho Court, an Emergency Order came to be passed on 22.02.2024, directing [redacted] to return to Boise, Idaho within 72 hours. When this direction was not followed, the Idaho Court proceeded to decide the Guardianship Application in favour of the Appellant, consequently appointing her as [redacted] full and permanent guardian on 09.04.2024. This order was passed after duly hearing parties' testimonies; and after reviewing the report

dated 17.05.2023 and addendum dated 25.10.2023 issued by the Evaluation Committee.

3.11 Despite the decree passed by the Idaho Court, whereabouts remained unknown to the Appellant. This prompted the Appellant to file H.C.P. No. 886/2024 before the High Court of Judicature at Madras (**High Court**) through Respondent No. 1, *inter alia* praying for the issuance of a Writ of Habeas Corpus directing Respondent Nos. 2 and 3 to retrieve custody of from Respondent Nos. 4 to 6 and to handover his person to Respondent No. 1.

3.12 During the proceedings, the High Court interacted with and posed multiple questions to him. Based on the answers tendered, the High Court, *vide* its judgment dated 09.08.2024, primarily determined that there was no illegal detention because: (i) as capable of understanding the questions posed by the High Court; and (ii) He was happy and willing to reside in Chennai with his father and his paternal grandparents (**Impugned Judgement**). On 09.09.2024, the US Consulate General, Chennai revoked passport.

3.13 Thus, aggrieved by the High Court's decision, the Appellant preferred the instant appeal.

3.14 This Court, in the course of this appeal, passed the order dated 16.12.2024, issuing certain interim directions: **(i)** Respondent No. 4 was directed to facilitate video calls between the Appellant and [redacted] in the evening between 7:00 pm and 9:00 pm IST. The call duration was to be for a maximum of 30 minutes; **(ii)** Upon the Appellant's arrival in India, Respondent No. 4 was directed to handover temporary custody of [redacted] to her; **(iii)** While [redacted] was under the temporary custody of the Appellant, she and Respondent No. 4 would ensure that he gets his medical treatment regularly and preferably, in adherence with the recommendations of specialists in the US; **(iv)** Respondent No. 4 was permitted to contact [redacted] daily while he was under the temporary custody of the Appellant; and **(v)** The Appellant and Respondent No. 4 were directed to consult the best doctors in Chennai for continued treatment o

3.15 In the meantime, [redacted] in a purported exercise of his own free will, filed two interlocutory applications in the instant appeal. They are I.A. No. 301117/2024 and I.A. No. 301051/2024, seeking to be impleaded in the matter and seeking directions to keep the order dated 16.12.2024 in abeyance till 07.01.2025, respectively. These applications were accompanied by signed affidavits, stating that [redacted] as fully conversant with the facts and circumstances of the

case and that the applications had been prepared in consonance with his instructions.

3.16 Simultaneously, being dissatisfied by Respondent No. 4's non-compliance with the order dated 16.12.2024, the Appellant preferred the captioned Contempt Petition. She sought to allege that despite the clear instructions enumerated in the order dated 16.12.2024, the Appellant was not allowed to interact with on video call. Further, upon her arrival in Chennai, Respondent No. 4 refused to hand over temporary custody of . In fact, he ceased all communication with her. When the Appellant arrived at their flat on 24.12.2024, she was permitted to interact with for roughly 30 minutes, forcing her to cut short her time with her son and leave the flat without obtaining temporary custody of

3.17 Respondent No. 4 brought for medical assessment to the Institute of Mental Health, Kilpauk in Chennai on 25.11.2024. On Respondent No. 4's request, was examined and an Observation Report was prepared, which recorded as follows:

“Mr. years, male was registered in the Institute of Mental Health, Chennai – 10 on 25.11.2024. He was subsequently examined on 29.11.2024, 02.12.2024 and 09.12.2024 at his request and the request of his father.

*Detailed history was obtained from his father. Physical examination, mental status examination and psychological assessment were done. **He has a history of developmental delay since childhood. On psychometry, he has an Intelligence quotient (IQ) of 54, which is suggestive of mild intellectual disability (50% disability).***

*He is able to do simple work on instructions. He is able to travel to familiar places alone. He is capable of living with the assistance of his family members. **He will require support for making major decisions in life like property management.***

3.18 Subsequently, this Court, *vide* order dated 08.01.2025, directed that _____ will reside with his younger brother, _____, and the Appellant in Bengaluru, during the pendency of these proceedings. Respondent No. 4 was permitted to visit and interact with his sons for 3 hours every day. Further, the Appellant and Respondent No. 4 were directed to take the sons for medical assessment to the National Institute of Mental Health and Neuro Sciences (**NIMHANS**), Bengaluru, arguably one of the best institutes in the country. The doctors at NIMHANS, Bengaluru were requested to give their expert opinion as to whether _____ is in a position to make independent decisions. The report so prepared was ordered to be submitted before this Court in a sealed cover.

3.19 It seems that the parties substantially complied with the order dated 08.01.2025, particularly the directions concerning custody, as _____ has been residing with his younger brother and the

Appellant in Bengaluru ever since. In continued compliance with the above order, and his brother were brought to NIMHANS, Bengaluru on 13.01.2025 by their parents. They were duly admitted as in-patients on 14.01.2025.

3.20 From 17.01.2025 to 29.01.2025, was examined by the Department of Clinical Psychology at NIMHANS, Bengaluru. He was administered 7 tests namely, the Vineland Social Maturity Scale (**VSMS**), the Vineland Adaptive Behaviour Skills – 3 (**VABS**), the Wechsler Adult Intelligence Scale – IV India Edition, the Binet Kamat Test of Intelligence (**BKT**), the Comprehension Subtest from Malin’s Intelligence Scale for Indian Children (**MISIC**), the Theory of Mind/False Belief Tests (**Anne and Sally Test; Matchbox Test**), and the Delayed Discounting Task. The test findings are reproduced below:

“SOCIAL AND DAILY ADAPTIVE FUNCTIONS

Vineland Social Maturity Scale (VSMS)

*The VSMS was administered to assess his socio-adaptive functioning. **The patient’s social age was found to be 7 years, which corresponds to an SQ of 47, which suggests Moderate level of disability in current socio-adaptive functioning, corresponding to 75% disability.** As Mr. has motor disabilities and that would have affected his overall VSMS score, an attempt was made to adjust the score by removing the scores related to motor components from VSMS. This showed his score as 53 (Impairment-adjusted SQ); which indicated*

Moderate disability in socio-adaptive functioning according to the VSMS score classification of revised Gazette of India notification. However, the gazette notification was mainly for intact VSMS score (i.e. not for Impairment-adjusted SQ). Hence, the interpretation of Impairment-Adjusted SQ to be done with caution.

It should be noted that VSMS is standardized in India several decades ago and might not adequately reflect his current level of socio-adaptive functioning, for mainly 2 reasons. One the patient is born and brought up in the US, and that the standardization was done long time ago. However, the limitations if has an influence would have caused their score to inflate, rather than bring down. Despite these limitations, his scores still showed that he has Moderate level of disability in social and adaptive functioning.

Vineland Adaptive Behavior Scale – 3 (VABS – 3) – Comprehensive Form

*The VABS-3 test was administered to assess his adaptive behavior. The patient obtained a standard score of 38 on the Communication domain, and 47 on the domain of Daily Living Skills, both suggestive of deficits of ‘Moderately low’ level in these domains. His ability on the domain of socialization showed significant disability as well as a sub-domain scatter, where his coping skills related to social domain was significantly lower compared to the other domains of socialization such as interpersonal relationships, play and leisure. **He obtained a total sum of domain standard scores of 100 corresponding to an Adaptive Behavior Composite (ABC) of 34, suggestive of ‘Low’ level of Adaptive Behavior on the current assessment.***

INTELLIGENCE TESTS:

Binet Kamat Test of Intelligence (BKT)

*On BKT, the patient’s basal age and terminal age were found to be 6 years and 14 years respectively. His prorated mental age obtained is 10 years. **His prorated intelligence quotient (IQ) is 63, indicating Mild level of disability in intellectual functioning.***

Similar to VSMS, BKT has been standardized in Indian Population, several decades ago and intelligence value obtained is through ratio method. Considering this, the obtained IQ can be said as an inflated value, given that Mr. _____ has been born and brought up in USA. **Despite this, he has obtained a prorated IQ of 63, which is in the Mild Intellectual Disability range.**

Wechsler Adult Intelligence Scale IV^{INDIA} Edition (WAIS-4^{INDIA})

On WAIS-4^{INDIA}, his Verbal Comprehension Index Score was calculated to be 75. The perceptual Reasoning Index was 53, the Working Memory Index (WMI) was calculated to be 47, and the Processing Speed Index was 45. **This yields a full-scale IQ (FSIQ) of 53. This score falls in the range of Mild Intellectual Disability.** WAIS-4^{INDIA} as the name implies is standardized for Indian population. However, given the norms differences between Indian and US population, the obtained scores by Mr. _____ if referred to Indian norms will yield a higher score, compared to US norms. **It should be noted that despite this, his score is in the Mild Intellectual Disability range.**

Malin's Intelligence Scale for Indian Children (MISIC) – Comprehension Subtest

On the MISIC subtest of Comprehension, the patient obtained a raw score of 05, corresponding to a test quotient of 62, indicating Mild levels of disability in comprehension. Again, relatively similar to in VSMS and WAIS-4^{INDIA}, the MISIC is for children up to the age of 16 years and the norms are for Indian children. Despite this his score is in the disability range.

PERSPECTIVE TAKING and DECISION MAKING:

Theory of Mind/False-Belief Tests

Theory of mind was tested using Anne and Sally test False-Belief – Matchbox test.

The patient performed poorly on both Anne and Sally and Matchbox tests, where he could not attribute mental states (beliefs, intents) to others. **That is, on test, he**

spontaneously, did not view that the others have their own thoughts/beliefs independent of himself.

Delay Discounting Task:

Delay Discounting Task primarily assesses decision making and impulsivity. In this task Mr. performed poorly in the second trail itself, where he preferred significantly smaller reward – immediately, forgoing significantly larger reward – at a delay of one month. For example, when presented with the patient a hypothetical scenario of choosing between 10 INR now or 100 INR after a month, he said 100 INR after a month. However, with the follow-up questions of choosing 20 INR now or 100 INR after a month, he answered 20 INR now. He could not answer the subsequent questions and had difficulty understanding the value of money.

COMMENTS ABOUT INDEPENDENT DECISION MAKING:

• **Decision Making for Daily Living Activities:**

As observed on VABS-3 and VSMS, the patient is capable of carrying out basic daily activities, such as brushing his teeth with an electric toothbrush, adjusting water to the appropriate temperature for bathing, and selecting suitable clothing based on the weather. He can also spread sauces or jam using a table knife, change clothes with large buttons, put on shoes without laces, and use certain kitchen appliances, such as bread toaster and a microwave oven, under supervision.

However, he struggles with independent self-care when left alone and has difficulty performing more complex tasks. He faces challenges using a manual toothbrush, handling a knife to cut fruits, and independently seeking medical attention as needed. Additionally, he would have difficulty operating household appliances safely, such as a vacuum cleaner, iron, or power tools.

While he is able to tell time using the digital watch, he struggles with reading an analog clock. Furthermore, he has difficulty exercising discretion and judgment in

higher-level activities, such as traveling alone to unfamiliar places or setting and achieving long-term goals that require planning over two years or more.

Impression: Independent Decision-making ability is adequate for basic activities but inadequate for higher-level activities.

- **Decision Making for Financial Safety:**

When asked to make payments or explicit purchases, the patient shows responsibility with a small amount of money. He is careful about this and uses it as directed. **However, he has not able to make independent decisions with regard to monetary aspects in relatively higher values.**

He has also been observed to have difficulty differentiating currency values and providing the correct change. **When asked which currency had a higher value, 100 INR or 500 INR, he chose 100 INR. The same error was observed when questioned about US currency.** Additionally, he struggled with basic mathematics, such as addition and subtraction. For instance, when given a scenario where 50 INR was spent on ice cream, and 100 INR was handed to the shopkeeper, he could not determine the correct return amount. He also had difficulties performing similar other simple, mental calculations of verbal in nature, involving two-digit numbers about subtraction, multiplication, and division.

Financial safety and related aspects were to have significant deficits.

Impression: He cannot make independent decision in financial aspects.

- **Decision Making for Socialization:**

On VABS-3, it was observed that the patient can recognize emotions and express his feelings through words. He shares toys and possessions voluntarily without being prompted and takes turns naturally while playing games or sports. Additionally, he can join a group when verbal and nonverbal cues indicate he is welcome

and adjusts his behaviour to avoid disturbing others nearby.

However, he struggles with playing complex games that involve rules and has difficulty imitating intricate actions hours after observing them, such as shaving, vacuuming, or hammering nails. He also faces challenges in modulating his speech appropriately in terms of loudness, speed, and excitement to match the conversation. Engaging in discussions on topics that do not interest him is difficult, as is initiating conversations by discussing subjects relevant to others. He also struggles to pick up on indirect cues or hints in conversations and has difficulty providing additional explanations to ensure his message is understood.

Furthermore, he would have difficulty planning activities that require coordinating multiple elements, such as organizing a birthday party or a group outing. **He also lacks the ability to navigate social situations safely, such as going out with peers in the evening without supervision, social media, and identifying harmful relationships or situations. This includes difficulty avoiding or exiting situations where he might be bullied, coerced into illegal activities, or taken advantage of sexually or financially.**

Impression: Independent decision making in simple social and close group/family/home aspects is adequate, but anything beyond is inadequate.

• **Decision Making for Occupation:**

It was observed that the patient can sometimes complete routine household tasks when instructed, use basic tools or utensils, and draw simple shapes and objects with pencils or crayons.

However, he would have difficulty engaging in small remunerative work, such as making simple garments, performing minor repairs, taking the initiative in occasional tasks like housework, or assisting in child care. Additionally, he would struggle with creative activities, including making useful items, raising pets, writing simple stories or poems, or creating basic paintings.

He also faces challenges in performing responsible routine chores appropriate for his age, such as assisting with household tasks, caring for a garden, cleaning a car, washing windows, setting the table, or fetching water. Furthermore, as observed on VABS-3, he would have difficulty maintaining a job for at least one year, even if it required only 10 hours of work per week.

Impression: Decision-making in very basic occupational skills is adequate and beyond that it is inadequate.

OVERALL IMPRESSION:

Considering his intellectual disability, which is at the Mild disability level, and all the other findings mentioned above as well as considering his spontaneous verbalizations mentioned above; we are of the opinion that Mr. _____ is functioning at the level of about 8 to 10 years old child in general. Given this, any complex decisions that exceeds the capacity of an 8-to 10-year-old, he would not be able to make informed decisions by himself; and even if he makes, those decisions would be made without considering all the options and repercussions that come with decision making.”

3.21 During his stay at NIMHANS, Bengaluru, on 22.01.2025, the Department of Speech Pathology and Audiology assessed speaking abilities. Their findings, as enumerated in the handwritten report, are as follows:

“Phonology:

- *Omission of [‘l’] in initial, medial, and final position.*
- *Substitution of [‘l’] with [‘r’] in initial, medial, and final position.*
- *Substitution of [‘t’] with [‘s’] in initial, medial, and final position.*

Morphosyntax:

- *He uses simple, compound sentence structure in sentences and in conversation.*
- *He consistently uses morphological markers such as bound morpheme, inflectional morpheme, free morphemes.*
- *He uses suffix, prefix to change tense.*
- *He uses singular and plurals in sentences and in conversation.*
- *He compares and contrasts.*
- *He uses verbs to nouns in conversation and sentences.*
- *He uses adjectives to describe objects.*
- *He uses negations in the form of 'No'.*
- *He can formulate questions (what, who, where).*
- *He uses conjunction in conversations, sentences.*
- *He produces errors in free sentences.*
- *He uses time formation such as past tense, future tense.*
- *He uses singular possessions and plural possessions in conversation and in sentences.*
- *He uses adverbs (here, there).*
- *He uses affixes (ing format to describe).*

Semantics:

- *He understands abstract words.*
- *He understands meaning of words based on context and interprets multiple meanings.*
- *He understands idiomatic expression.*
- *He understands sentence structure to interpret.*
- *He can understand simple meaning from a story but has difficulty in understanding complex meanings.*
- *He can understand jokes and reacts to it.*
- *He has difficulty in understanding figurative language.*
- *He has difficulty in understanding inference from a complex scenario when given.*
- *He had difficulty in understanding complex false beliefs and assumptions.*
- *He has difficulty in understanding complex synonyms, antonyms.*
- *He can answer to simple 'wh' questions but has difficulty in answering complex 'wh' questions.*

Intelligibility: AYJNIHH rating scale level 02.

Impression: Inadequate speech and language and developmental dysarthria 2° IDD & CP.

Advice:

- Speech and language intervention.
- Attend DT session in department.
- Counselling.
- Follow up during next visit to NIMHANS on Mon/Tue/Wed/Fri @ 8:30 am.”

3.22 On 03.02.2025, the Department of Clinical Psychology administered the Thematic Apperception Test (**TAT**) to _____, to assess his understanding of interpersonal relationships. The findings of this test are reproduced below:

“Behavioural Observations:

The patient came to the interview willingly. His attention could be aroused and sustained. Patient was cooperative and interested in the testing throughout the session. He was able to comprehend the instructions adequately.

Summary of Test Findings:

The patient’s stories were reasonably imaginative content. Although he described what was given in the pictures he was able to attribute thoughts and feelings to the characters. The predominant theme that emerged from the stories was one of a family unit enjoying various activities together such as eating, going for a hike, planning a feast in others' home or inviting guests over. The stories also indicated how one has to learn and behave during various interpersonal conflicts. He showed good problem solving skills such as adequate communication with others during conflicts, rethinking one’s actions and consequences.”

3.23 Thereafter, on 05.02.2025, the Department of Psychiatric Social Work prepared the Psychosocial Assessment Report after studying parameters such as living arrangements throughout the years, his education, training, occupation, and future plans. Further, exhaustive interviews were conducted with the Appellant and Respondent No. 4, individually, to determine their perspectives on parenting, expectations from plans for his future, and opinions about the other parent. The findings are extracted as follows:

“Upbringing and living arrangements: From birth to 2 years of age, the client lived with his parents in Boise City, Idaho, U.S., till their separation in 2005. From 2005 to 2007, as per the temporary orders by the Idaho court, the client and his younger brother stayed with their father for one whole week in a month, while the remaining 3 weeks were spent with their mother. After the parents’ divorce in 2007, the living arrangement changed; the children would stay with their mother from Monday to Thursday, and their father from Friday to Sunday, and both houses were 5 to 7 miles apart. The vacations were equally spent with both parents separately, taking into consideration the father’s nature of the job. This practice continued till 2017-2018, after which the mother requested an alternative week arrangement and thus, from 2018 to 2021, the client and his younger brother stayed with each parent on alternate weeks of the month. During their stay with the father, he took care of all the needs of the children by himself including supervision, feeding and self-care, while the mother had assistance with the same. The mother reported that both children were cared for by the father, and she didn’t notice any behavioural changes in the client during their stay with the father. **Up to 2019, both parents had equal joint custody, physical and legal custody of the client. In 2019, Idaho court granted the mother the legal**

custody of both children while both parents shared the physical custody till 2021 when the client became an adult.

The client and his younger brother stayed with their mother from 2021 to 2022, when the father returned to India to care for his parents, which the mother was also aware of. The father came back to the U.S. in 2022 to meet the client and his brother; the client lived with his father independently from 2022 to 2024 in the U.S. In January 2024, the client came to India with his father to stay with his grandparents and lived here since then.

Education: The client started schooling at the age of 5 years. From the beginning, he followed the Individual Education Plan (IEP). **The client attended an integrated school with special schooling and standard classes. From middle school onwards, the client attended classes under the supervision of a special educator.** He completed his 12th class and diploma in 2022 instead of 2021 as his mother decided to extend the training for individual living skill training and job skill training.

Training attended: The client attended the Infant-Toddler Programme for 3 years (birth to 3 years of age), followed by training in the Head Start programme till 5 years of age. These programmes were provided mainly to address the client's developmental delay and physical difficulties. In addition to the special training and physical therapy, speech therapy, and occupation therapy from his school, the client also attended professional handwriting training at home (Handwriting without Tears programme) for 3 years during elementary schooling, physical exercise in parks and once a week half-day social skill training through exposure to social gatherings from 2017 onwards, which his mother supervised. During the client's stay with his father, the client was informally trained by his father on quick loop-back therapy, a form of physiotherapy for 5 years. In addition to that, the father would take the client for 1 to 2-mile walking. From 2013 to 2017, under a club, the client was trained in swimming and physical activities to gain strength and gait training.

Occupation: *The client worked for one year as a Patient Coordinator at a dental clinic in North Carolina, which had been owned by his paternal aunt. Following this, the client did a six-month internship as a Hospitality worker, during which he travelled alone using a special transportation service arranged by InReach. The client attended Skill-based vocational training for 3 months in India under the Department of Adult Independent Living at the National Institute for Empowerment of Persons with Multiple Disabilities, Chennai. During all these periods, the client maintained good relationships with his colleagues and clients, and there were no complaints against him.*

Citizenship and related concerns: *The client is a U.S. citizen by birth and was registered with the Overseas Citizen of India (OCI). The OCI certificate was issued on 29.03.2011, allowing the client multiple entries to India for a lifetime.*

Plan: *During the client's stay in the U.S., he visited India five times and stayed in India for a total of 1 year and 6 months. **The client reported that he wishes to stay and spend time with his younger brother, complete his independent living skill training, and start his own business in the U.S.***

Observations

- *Both parents have expressed willingness to provide the client with emotional, physical, and financial support throughout his future.*
- *Both parents have a stable support system, including financial and physical resources.*
- *Both parents have concerns regarding the client's care given to the opposite parties.*
- *Both parents blamed the other and believed the other party could not care for the client.*
- *The father criticised the mother as having mental health concerns and unable to care for the children independently. At the same time, the mother portrayed the father as emotionally weak and attempting to impose faith-based practices on the client.*
- *The father believes the client has reached an age-appropriate level of development and is legally an adult, eliminating the need for custodianship.*

- *The mother reports that the client has difficulties performing specific tasks and may require assistance with decision-making, necessitating guardianship.*
- ***The mother is willing to accept the father as a co-guardian.***
- ***The client is more comfortable with the U.S. and wants to start working there. He had stayed in India for less than 2 years and had difficulty understanding and speaking the local language. However, the client had no difficulty in staying in India.***

Interpretations

- *Both parents are concerned about the client's future and are willing to support him and assist in enhancing his quality of life. However, their interpersonal relationship issues with each other and unhealthy communication create different opinions regarding the client's future.*
- *The differences in the parents' preferences for the client's autonomy further led the parents to have different ideas about how the client should live his life and make decisions.*
- *Both parents are also worried they will lose their importance as parents if the other party gets the client's guardianship.*
- ***Though the client was comfortable staying in India, he wishes to return to the U.S. and start working there. Both parents want the client to live freely and as per his wish, regardless of where he wishes to stay.***

Recommendations

- *Parents are recommended to attend parenting skills training by a qualified family therapist at least twice a month, in-person or online.*
- ***If parental conflicts continue, the client should be offered supervised care by a recognised institution in the U.S. to focus on building independent living skills and autonomy of the client as he wishes to live in the U.S. in the future.***
- *The focus of the care has to be on nurturing the skills and autonomy of the client in an environment where he feels comfortable and familiar.”*

3.24 Finally, after completing all the assessments, on 06.02.2025, NIMHANS, Bengaluru prepared the Comprehensive Assessment Report based on a thorough review of past medical records and the various assessments conducted by different departments of NIMHANS. They assessed: **(i)** the Eligibility Reports for Specialized Education and Progress and the Evaluation Assessment Reports from 2015 to 2022 issued by the West Ada School District, Idaho, US; **(ii)** The report dated 17.05.2023 and the addendum dated 23.10.2023 prepared by the Evaluation Committee; **(iii)** The Patient Summaries from 2003 to 2005 issued by St. Luke’s Regional Medical Centre, Boise, Idaho; **(iv)** The Observation Report dated 11.12.2024 issued by the Institute of Mental Health, Kilpauk, Chennai; and **(v)** The assessment reports issued by various departments of NIMHANS, Bengaluru. The relevant extracts of the Comprehensive Assessment Report are reproduced below:

1. “Salient Points from the Available Past Records

*At birth, Mr. _____ had complications, including delayed cry and neonatal seizures. These complications resulted in delayed achievement of developmental milestones. He has been diagnosed with Intellectual Disability and Other Specified Neurodevelopmental Disorder associated with Cerebral Palsy in the United States. **His full-scale IQ composite score of 53, which places him in the “very low range of cognitive ability”. He has exhibited significant cognitive limitations, including deficits in spatial-perceptual reasoning, conceptual reasoning, knowledge retention, and recall ability.***

He was also evaluated in the Institute of Mental Health, Kilpauk, Chennai and diagnosed with Mild Intellectual Disability with an IQ score of 54 with 50% disability.

2. Comprehensive Medical Assessment

The assessments corroborated the earlier diagnoses of Ataxic Cerebral Palsy and Disorder of Intellectual Development, Mild. Additionally, relevant laboratory and clinical investigations were carried out. His genetic testing reports are awaited.

*The psychological assessments included the Vineland Social Maturity Scale (VSMS), Vineland Adaptive Behaviour Skills (VABS), Wechsler Adult Intelligence Scale - IVth Edition, Binet-Kamat Test of Intelligence (BKT), comprehension subtest from Malin's Intelligence Scale for Indian Children (MISC), Theory of Mind/False Belief Test, and Delayed Discounting Task. **The results indicated that Mr. falls within the category of Mild Intellectual Disability, with an overall functioning level equivalent to that of an 8 to 10 year old child.***

The Thematic Apperception Test (TAT) revealed that Mr. exhibits imaginative thinking, with adequate production of themes that may be understood psychodynamically as wishful thinking in the background of the realities of parental separation and existing family dynamics.

The psychosocial assessment highlighted that both parents are concerned about Mr. future and are committed to supporting and enhancing his quality of life. However, their interpersonal conflicts and communication patterns result in differing and often contradictory choices presented before , who has limitations in cognitive and intellectual capabilities to reconcile and resolve such differences.

The occupational therapy evaluation indicated that Mr. has limited functional abilities, impaired hand function, motor incoordination, and dependency on others for activities of daily living. Gait and balance training have been recommended to improve his mobility.

The speech and language assessment determined that Mr. [REDACTED] has inadequate speech and language development and dysarthria, which is secondary to his Intellectual Disability and Cerebral Palsy.

On neuropsychiatric assessment, Mr. [REDACTED] was found to have limitations in attention, memory, language, and executive function, with deficits in abstract thinking, problem-solving, and motor coordination. Significant difficulties are noted in constructional ability, right-left orientation, and frontal lobe tasks.

Mr. [REDACTED] extent of overall disability resulting from Mild Intellectual Developmental Disorder and Cerebral palsy falls under the category of Severe disability with 080%.

Mr. [REDACTED] has consistently demonstrated the level of understanding and reasoning that equipped him to participate with the clinical team in all the assessments and provide his assent for all the interventions. **However, as alluded to above, he has limitations with complex decision-making.**

3. Expert Opinion on Mr. [REDACTED] Decision-Making Ability

Based on the results of the comprehensive multidisciplinary evaluation detailed above, we infer that Mr. [REDACTED] demonstrates independent decision-making abilities for basic activities, such as performing simple arithmetic calculations, engaging in basic social interactions within close circles, and carrying out fundamental occupational tasks. **However, he exhibits significant limitations in making informed decisions concerning higher-level activities of daily living, financial matters, and complex social and occupational responsibilities.**

His psychological limitations are further compounded by physical impairments, including difficulties in writing, speech, and mobility. **Given his mild intellectual disability and associated physical challenges, his overall cognitive functioning is comparable to that of an 8-to-10-year-old child. Consequently, he lacks the ability to make complex, informed decisions**

independently. In situations requiring higher-order reasoning, evaluation of multiple options, or consideration of long-term consequences, he would require external guidance and support. Any decisions made beyond his cognitive capacity may not be well-informed or thoroughly considered.

In light of these findings, it is respectfully submitted that Mr. [REDACTED] has an overall level of intellectual functioning of an 8 to 10 year old child. He is capable of making basic personal decisions, but he has limitations in making complex, independent decisions concerning financial, legal, social, and occupational matters without substantial support and oversight.”

3.25 The aforementioned Comprehensive Assessment Report was duly submitted, in a sealed cover, to this Court on 19.02.2025, in the presence of all parties and copies were supplied to them. This report will play a crucial role in analysing and adjudicating the underlying dispute in the instant appeal.

B. CONTENTIONS OF THE PARTIES

4. Ms. V. Mohana, Learned Senior Counsel, appearing on behalf of the Appellant, contended that the High Court fell in grave error in its decision and advanced the following submissions:

- (a) The High Court passed the Impugned Judgement merely on an oral examination of [REDACTED]. The High Court ignored the specific pleadings regarding his intellectual disability and cognitive limitations, substantiated by the reports of the Evaluation

Committee. Thus, the High Court did not adequately assess his ability to provide consent.

- (b) has resided in the US his entire life. Since the age of 8 years, he had been receiving specialized education there and was unable to begin the next level of schooling designed for him, owing to his extended and unplanned stay in India. Further, qualifies for social security benefits and disability services provided by the State, including free medical care and a maximum supplemental income in excess of USD 960 per month. Additionally, he is covered by the health insurance provided by the Appellant's employer until he turns 26 years old. Upon turning 26 years old, he would be eligible for full medical coverage owing to the Medicaid Program of the State and Federal Departments of the US. Finally, once he is able to work, he would be covered by the Federal Social Security Disability Insurance Program, which would cover any loss of income faced as a result of his disability. By permitting him to continue residing in India, the High Court did not act according to his best interests and welfare.

- (c) The High Court failed to consider that at the time of hearing of the Habeas Corpus petition, the Idaho Court had already granted the Appellant full and permanent guardianship over

In this context, the High Court should have shown more restraint as the parties involved were US citizens and their rights and liabilities were already being dealt with by a court of competent jurisdiction in their native state in the US.

- (d) was being manipulated and tutored against the Appellant by Respondent No. 4. Through this, Respondent No. 4 was actively trying to disobey the Court's orders by restricting access to the Appellant.

5. *Per contra*, Ms. Liz Mathew, Learned Senior Counsel, appearing on behalf of Respondent No. 4, put forth the following submissions:

- (a) is completely mentally fit to make decisions about his own welfare and well-being. Despite his limitations, he is capable of informed judgment and independent or supported decision-making. He does not require a guardian by any means and needs only some support and assistance, which Respondent No. 4 has been duly providing.

(b) Respondent No. 4 has never manipulated or coerced his son, _____, who desired to go to India and stay with his father. Furthermore, after the order dated 16.12.2024 was read over to _____, he expressed that he did not want to reside with his mother, even though he had been interacting with her frequently on video call. In fact, when he met his mother on 24.12.2024, he was visibly distressed by the Appellant dredging up old memories to convince him to live with her. He also expressed that he wanted to be represented in the proceedings before this Court. Having sought legal consultation, Respondent No. 4 was informed that as _____ was a major, he had the right to consult and appoint his own lawyers. Accordingly, _____ interacted with a lawyer in Delhi over calls and provided instructions to file the interlocutory applications before this Court. The decision not to live with the Appellant was solely taken by _____ out of his own free will and based on the legal advice he received.

(c) Respondent No. 4, as _____ primary caregiver, has safeguarded his son's best interests and welfare in India. He has been provided with a stable, nurturing, and supportive environment where he has been encouraged to express his opinions and exercise his autonomy. In comparison, under the

Appellant's care, social, physical, and psychological growth were being impeded due to the Appellant's constant dismissal of capacities. With Respondent No. 4's guidance, has been undergoing requisite sessions for skill training for persons with disabilities in Chennai, is living under the loving embrace of his paternal family, and is able to showcase greater autonomy, thus attesting to his best interests and welfare being served.

- (d) The assessment conducted by the Institute of Mental Health, Kilpauk diagnosed with Mild Intellectual Disability, established an IQ score of 54, and recognized a disability level of 50%. This is in stark contrast to the report prepared by NIMHANS, Bengaluru. Persons with borderline, mild, or moderate intellectual disabilities are capable of living in normal social conditions, though they may need some supervision or assistance from time to time. developmental delays should not be equated with mental incapacity and his decisions should be respected under law.

C. ISSUES

- 6.** Having given our thoughtful consideration to the events that have transpired and the submissions at length, the following issues arise for the consideration of this Court:

- i. Whether _____ is capable of making independent decisions?
- ii. Whether _____ best interests and welfare would be served by permitting him to continue residing with Respondent No. 4 in India?

D. ANALYSIS

D.1 Issue No. 1: capacity to make independent decisions

7. The issue herein concerns _____ ability to make independent decisions regarding his future and well-being. To this end, the Appellant argued that _____ has had an intellectual disability since childhood, resulting in a full-scale IQ of 53, which features in the **‘very low range of cognitive ability’**. To substantiate this, she relied on the detailed report dated 17.05.2023 and the addendum dated 23.10.2023 prepared by the Evaluation Committee constituted by the Idaho Department of Health and Welfare. She pointed out specific findings in these reports including that, **‘lacked the capacity to make decisions, even at a rudimentary level’** and that he **‘was someone who could be easily manipulated into speaking, signing, or acting against his own best interest.’** Furthermore, she adduced the decision of the Idaho Court which declared him to be a **‘Developmentally Disabled Person’** and a **‘Vulnerable Adult.’** She contended that by virtue of his disability, he cannot make independent, legally-

binding decisions on subjects that will substantially impact his future, such as, his place of permanent residence.

- 8.** *Per contra*, Respondent No. 4 has vehemently argued that though suffering from a disability, is mentally fit to make decisions about his own welfare and well-being. To substantiate this, he relied on the Observation Report dated 11.12.2024 issued by the Institute of Mental Health, Kilpauk, Chennai. In fact, Respondent No. 4 has placed on record that [redacted] wants to reside in India with him and not with his mother. Furthermore, the High Court had interacted with [redacted] and concluded that he was consensually living with Respondent No. 4 in India.
- 9.** That being the fundamental dissonance between the parties' viewpoints and to arrive at a conclusive determination regarding his cognitive capacity, as mentioned earlier, on 08.01.2025 this Court requested for [redacted] and his younger brother, [redacted] to undergo medical assessment at NIMHANS, Bengaluru. In pursuance thereof, the doctors at NIMHANS, Bengaluru were requested to provide their expert opinion as to whether [redacted] is in a position to make independent decisions.

10. The reports, as extracted in *paras 3.20 to 3.24*, were duly received by this Court in a sealed cover on 19.02.2025. The contents have been thoroughly examined. It may be seen that _____ was brought to NIMHANS, Bengaluru on 13.01.2025 by his parents and was admitted as an in-patient on 14.01.2025, with his brother. Detailed assessments were then conducted in collaboration with the Departments of Clinical Psychology, Psychiatric Social Work, Neurology, Speech Pathology and Audiology, Neurorehabilitation and Genetics. To properly understand the report, it is necessary to lay down the conclusions of the assessments individually conducted by each department and then, advert to the final findings in the Comprehensive Assessment Report.

11. *First*, the Department of Clinical Psychology (*see para 3.20*) administered seven tests to _____ and on the basis of the same noted that: **(i)** He is capable of carrying out basic daily activities, such as brushing his teeth and selecting clothing; **(ii)** He struggles with independent self-care when left alone and has difficulty performing more complex tasks such as, handling a knife to cut fruits and seeking medical attention; **(iii)** He struggles with basic addition and subtraction; **(iv)** He has difficulty performing simple mental calculations; **(v)** He lacks the ability to navigate social situations safely and identify harmful relationships or situations;

(vi) He would have difficulty engaging in small remunerative work such as, making simple garments and making minor repairs; (vii) He faces challenges performing routine, responsible chores for his age such as, cleaning a car and washing windows; and (viii) He would have difficulty maintaining a job for at least one year, even if required to work only 10 hours per week. Owing to this, the report by the Department of Clinical Psychology concluded that functions at the level of an 8 to 10-year-old child. As a result, he would not be able to make informed decisions by himself. Even in the event he made such decisions, they would be made without considering all available options and repercussions.

12. *Second*, the Department of Speech Pathology and Audiology (*see para 3.21*), in their report, noted that [redacted] uses and understands simple sentences, but struggles to utilize and comprehend complex sentences. The report concluded that his speech and language abilities were inadequate, overall.

13. *Lastly*, the Department of Psychiatric Social Work (*see para 3.23*) studied [redacted] living arrangements, education, training, occupation, and future plans. Further, exhaustive interviews were conducted with the Appellant and Respondent No. 4, individually, to determine their perspectives on parenting, expectations from [redacted], plans for his future, and opinions about the other parent.

Based on this, the Psychosocial Assessment Report noted that [redacted] wanted to return to the US and start working there. Further, it was observed that both parents wanted him to live freely and as per his wish, regardless of where he wishes to stay. Ultimately, the report by the Department of Psychiatric Social Work recommends that: **(i)** if the parental conflicts continue, [redacted] should be offered supervised care by a recognized institution in the US; and **(ii)** the focus of his care must be on nurturing his skills and autonomy in an environment where he feels most comfortable and familiar.

- 14.** Finally, the Comprehensive Assessment Report was prepared after a thorough review of past medical records and the exhaustive medical assessments conducted by various departments in NIMHANS, Bengaluru (*see para 3.24*). This report notes that: **(i)** From birth till the age of 20, [redacted] was living in the US; **(ii)** He has a full-scale composite IQ score of 53, which places him in the ‘*very low range of cognitive ability*’; **(iii)** He has significant cognitive limitations such as, conceptual reasoning, spatial-perceptual reasoning, knowledge, retention, and recall ability; **(iv)** His overall functioning level is equivalent to that of an 8 to 10-year-old child; and **(v)** His extent of overall disability, resulting from Mild Intellectual Developmental Disorder and Cerebral Palsy falls under the category of severe disability with 80%.

15. The Comprehensive Assessment Report, thus concludes that demonstrates independent decision-making abilities for basic activities such as, simple arithmetic calculations and basic social interactions within close circles. It put forth that he exhibits significant limitations in taking decisions concerning higher-level activities of daily living, financial matters, and complex social and occupational responsibilities. His psychological limitations were underlined to be further compounded by his physical impairments and as such, he lacks the ability to make complex, informed decisions independently. Additionally, it detailed that those situations requiring higher-order reasoning, evaluation of multiple options, or consideration of long-term consequences require external guidance and support. In essence, the report conclusively laid down that independent decisions made beyond cognitive capacity may not be well-informed or thoroughly considered.

16. These findings are further substantiated by the report dated 17.05.2023 and the addendum dated 23.10.2023 prepared by the Evaluation Committee constituted by the Idaho Department of Health and Welfare (West Hub Developmental Disabilities Program). The Evaluation Committee consisted of a Psychologist, a Physician, and a Social Worker. The report dated 17.05.2023 was

prepared based on an in-person interview with the Appellant and the documents provided by both parties. These documents included the Guardianship Petition, Counter-Petition, several of medical reports over the years, eligibility reports from his school, and background check reports from 2022 and 2023. The report dated 17.05.2023 concluded that, among others: **(i)** He does not have the capacity to live independently without any supervision or assistance; **(ii)** Language must be overly simplified for him to understand; **(iii)** He requires constant guidance, assistance, and supervision in performing basic self-care tasks such as eating, hygiene, grooming; and **(iv)** He requires a combination of specialized care and inter-disciplinary treatments which are lifelong and individually planned. The report notes that his cognitive limitations significantly impact his ability to manage his health, food, finances, and safety needs without support and therefore, he requires some type of guardianship.

- 17.** After this report was sent to the parties and the authorities, Respondent No. 4 brought for his in-person interview with the Evaluation Committee. Thereafter, an addendum dated 25.10.2023 was issued. This addendum dated 25.10.2023, while reiterating all the previously stated conclusions, also stated that he presents as someone who can be easily misguided and

manipulated. Ultimately, the Evaluation Committee recommended full guardianship by one, but not both parents, as [redacted] could be easily maneuvered into speaking, signing, or acting against his own best interest. Further, the Evaluation Committee opined that his voice was not being heard in decisions concerning him as he had been denied access to his mother and his brother.

18. The Observation Report issued by the Institute of Mental Health, Kilpauk, Chennai (*see para 3.17*) and relied upon by Respondent No. 4, does not seem to have considered [redacted] old medical records and reports when evaluating him. In fact, it seems that [redacted] medical history was obtained only from his father. Furthermore, the Observation Report does not specify how [redacted] was assessed, which parameters were used for assessment, and which tests were administered to him during the evaluation. For these reasons alone, the Observation Report cannot be relied upon. Regardless, it clearly and unequivocally states that [redacted] requires assistance in making complex and important life decisions.

19. It is pertinent to note that the report and addendum of the Evaluation Committee were brought on the record of the High Court, to help them decide whether [redacted] was living consensually in India. However, the Impugned Judgement has not dealt with the

medical assessments or school records in any capacity. In fact, the High Court has passed its judgement simply based on a few minutes of oral interaction with In this regard, we are constrained to hold that the High Court's decision was passed in haste, without fully delving into the nuances of the matter.

- 20.** In our considered view, even though Courts are well within their rights to come to a finding distinct from an expert's report, they cannot discard the expert's opinion, as a whole, for no rhyme or reason. Given that the dispute before the High Court concerned the sensitive and complex issue of alleged illegal detention of a person with severe cognitive limitations, the High Court ought to have considered and given due credence to the Evaluation Committee's report. If the High Court had any doubt as to the reliability of the report and its conclusions, it ought to have ordered an enquiry through a reputable medical institution. Dismissing all aspects of scientific assessment in a highly specialized and niche area of medicine was misconceived and ill-founded. As such, the Impugned Judgement does not enlighten us as to decision-making abilities.

21. For this purpose, we must rely on the reports produced by NIMHANS, Bengaluru and the Evaluation Committee. At the risk of reiteration, it seems to us that both bodies have concurred that owing to his cognitive and physical limitations, does not possess the capacity to make well-informed, independent decisions, for his own benefit, on complex subject matter, such as long-term residence.

22. In the event there is any confusion or doubt regarding a person's capacity and ability to make independent decisions and if there is a definitive opinion on disability endorsed by a specialist, domain expert, or a doctor, the Court should give due credence to that opinion. If the expert's report concludes that the mental or physical age of the person concerned is well below the age of majority, there can be no inference of any 'implied' or 'express' consent to any act which might have a substantive impact on the consenting person. Unless there are strong reasons to disbelieve an expert's report to this effect, the Courts must be overly-cautious in coming to a finding contrary thereto. Bearing this principle in mind, we must conclude that as was assessed to possess the cognitive abilities of an 8 to 10-year-old child, the reasoning assigned by the High Court, of him consensually living in India, is seriously errant.

23. As a result, we must answer the first issue in the negative cannot make independent, legally-binding decisions on his own. In light of this, we find ourselves compelled to hold that the High Court erred in coming to a finding on alleged illegal detention solely based on his perceived ‘independent’ decision to reside in India with Respondent No. 4.

D.2 Issue No. 2 best interests and welfare

24. Since we have already opined that cannot make independent decisions, it is the duty of the Court, under the *parens patriae* doctrine, to determine the course of action that would best serve his interests and welfare.¹

25. To this end, the Appellant contended that best interests would be served by repatriating him to the US, where he could complete his schooling in a familiar environment and reside in the company of his younger brother, to whom he is deeply attached. She further contended that would be subject to ‘Parental Alienation Syndrome’ if allowed to stay long-term with Respondent

¹ Shafin Jahan v. Asokan K.M., (2018) 16 SCC 368, para 45.

No. 4. For this, the Appellant has relied on ***Sheoli Hati v. Somnath Das***² and ***Vivek Singh v. Romani Singh***.³

26. *Per contra*, Respondent No. 4 contended that though specially-abled, wishes should be the sole criterion to determine his place of residence. For this, he has placed reliance on ***Girish v. Radhamony K.***⁴ and ***Suchita Srivastava v. Chandigarh Admn.***⁵ Let us analyze these cases to determine whether they substantiate the stand taken by Respondent No. 4.

27. First and foremost, ***Girish v. Radhamony K. (supra)*** concerned the alleged kidnapping of a minor girl. The girl came before the Court, claimed to be major, and expressed that she had left of her own will and volition. This Court held that, on this basis, the Habeas Corpus petition should have been dismissed instead of the High Court directing the registration of an FIR. Unlike the instant case, she made the decision independently as she was a fully functioning adult with no conditions limiting her cognitive ability. The lack of cognitive impairment, alone, renders this case unreliable in the instant proceedings.

² *Sheoli Hati v. Somnath Das*, (2019) 7 SCC 490.

³ *Vivek Singh v. Romani Singh*, (2017) 3 SCC 231.

⁴ *Girish v. Radhamony K.*, (2009) 16 SCC 360.

⁵ *Suchita Srivastava v. Chandigarh Admn.*, (2009) 9 SCC 1.

28. The judgement in *Suchita Srivastava v. Chandigarh Admn.* (*supra*) pertained to terminating the pregnancy of a woman suffering from mild to moderate mental retardation, who had been impregnated through rape. The expert body noted that her mental age was equivalent to that of a 9-year-old child. Respondent No. 4 appears to rely on this case because this Court provided due deference to the opinions and desires of the victim-therein, who was observed to have the same level of cognitive functioning as
However, the rationale for relying on her opinions was extremely nuanced and motivated by other factors.

29. This Court held that the language of the Medical Termination of Pregnancy Act, 1971 required the Court to respect the decision of a major. Alongside this, the Court considered the fact that at such a late stage in the pregnancy, it would have been dangerous to direct her to undergo an abortion. The Court was seemingly influenced by an assurance of the Chairperson of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation, and Multiple Disabilities that the Trust was prepared to look after the interests of the victim in question, including assistance with childcare. Since there is no Statute prescribing a particular course of action in the instant case and is unlikely to face life-threatening repercussions due to a decision of

this Court, the above-stated decision does not support Respondent No. 4's case. Regardless thereto, we reiterate the correct principle of law, which we have briefly drawn in *para 22*.

- 30.** Curiously, both parties have relied on a common judgement, i.e. ***Nithya Anand Raghavan v. State (NCT of Delhi)***,⁶ albeit for different reasons. Respondent No. 4 relied on it owing to the similarity in the facts, where a child was removed from a foreign country by one parent and brought to India, despite adverse findings by the relevant Foreign Court. Ultimately, the child was allowed to stay in India with the parent, regardless of the Foreign Court's contrary orders. The Appellant, however, relied on this case owing to the primacy given to the doctrine of '*best interests and welfare of the child.*' Essentially, the parties have relied on this case to highlight various aspects of the '*best interest of a child*' principle, as well as the primacy afforded to decisions of Foreign Courts.
- 31.** In this vein, it is a settled position of law that the principle of comity of courts and a pre-existing order of a Foreign Court must yield to the best interests of the child, especially when the Court has decided to conduct an elaborate enquiry in this regard.⁷ Such cases must be decided on the sole and predominant criterion of '*what*

⁶ *Nithya Anand Raghavan v. State (NCT of Delhi)*, (2017) 8 SCC 454.

⁷ *Nithya Anand Raghavan v. State (NCT of Delhi)*, (2017) 8 SCC 454, para 46.

would serve the interests and welfare' of the minor.⁸ The pre-existing order of a Foreign Court is merely one of the circumstances to consider when assessing the best interests and welfare of the person concerned.⁹ This doctrine was evolved to protect children who may, unwittingly, become collateral damage in their parents' legal disputes. It has gained significance over the past several years, owing to the frequency and ease of migration.

- 32.** To consider the interests of the child, the Court must take into account all attending circumstances and the totality of the situation. The Court must consider the welfare and happiness of the child as the paramount consideration and go into all relevant aspects of welfare including stability and security, loving and understanding care and guidance, and full development of the child's character, personality, and talents.¹⁰ The Court has to give due weightage to the child's ordinary contentment, health, education, intellectual development, favourable surroundings, and future prospects. Further, over and above physical comforts, moral and ethical values also have to be taken note of, as they constitute equal if not more important factors than the others.¹¹

⁸ Elizabeth Dinshaw v. Arvand M. Dinshaw, (1987) 1 SCC 42, para 8; Dhanwanti Joshi v. Madhav Unde, (1998) 1 SCC 112, para 21; Rohith Thammana Gowda v. State of Karnataka, 2022 SCC OnLine SC 937, para 8.

⁹ Nithya Anand Raghavan v. State (NCT of Delhi), (2017) 8 SCC 454, para 42.

¹⁰ V. Ravi Chandran (Dr.) (2) v. Union of India, (2010) 1 SCC 174, para 29.

¹¹ Gaurav Nagpal v. Sumedha Nagpal, (2009) 1 SCC 42, para 50.

33. As per the Eligibility Reports and Evaluation Reports issued by his school district, _____ was receiving a specially-curated curriculum to help him enhance his skills and pursue his education despite his limitations. All the reports from the school district indicate that he was happy attending classes, was excited about graduating high school, and looked forward to working at a job. In fact, he had already worked part-time in a hotel and in his paternal aunt's dental clinic, under the supervision of a job coach. He was making plans for his future, which he expected to continue in the US. In the 2022-2023 academic year, he was due to start a Transitional Program to help him curate vocational and non-vocational training skills, alongside his education. He was supposed to be part of this Transitional Program from 18 years to 21 years of age, i.e. for three years. His enrolment and participation in this program were interrupted solely by his impromptu trip to India.

34. Though he may be content with his father in India, he reiterated to the doctors at NIMHANS, Bengaluru that he wants to reside with his brother, complete his living skill training, and start his own business in the US. His brother, _____, has been diagnosed with Intellectual Disability and Autism Spectrum Disorder. He is also enrolled in a specially-curated curriculum for his education in the US. As assessed by NIMHANS, Bengaluru, like his brother, he

possesses a ***‘full-scale composite IQ score of 60, which classifies him within the “very low range of cognitive ability.”*** Further ***‘while he has the general cognitive functioning equivalent to that of an 8 to 10-year-old child, he has considerable limitations in independently managing financial, legal, social, and occupational matters without substantial external support and oversight.’*** The Idaho Department of Health and Welfare prepared a Guardianship Evaluation for _____, whereunder they recommended that the Appellant be granted full guardianship.

- 35.** Here is a case where _____, his parents, and his younger brother, _____, have resided in the US for almost two decades and are all US citizens. The sons were born and brought up in the US together, owing to which they are accustomed to the culture, the activities, the language, and the schooling there. As a natural corollary, they know no other way of life and undeniably have their roots in the US. Regardless of these commonalities, the brothers share certain unique characteristics which perhaps help them understand, relate to, and lean on each other. This emotional relationship, in our considered opinion, is the foundational strength of their self-confidence, sense of security and all other kinds of support, which they are unlikely to receive elsewhere, outside of close family. If

separated by entire continents, we are confronted by the unfortunate possibility that their bond may wither away with the passage of time. It is necessary for them to retain their connection as they grow up and grow old, to have a constant bonding through the years. For these reasons, it is imperative that they stay together.

36. In this light, it seems to us that regardless of the parents being divorced, the entire family appears to have set up a comfortable life for themselves in the US. Fortunately, neither of the parents is facing any financial difficulties jeopardizing their lives there. Given their established routine and support systems, we seriously doubt whether it is in best interests to continue residing in India.

37. does not seem to have received much training or education during his time in India. Besides attending a 3-month-long skill-based vocational training course under the Department of Adult Independent Living at the National Institute for Empowerment of Persons with Multiple Disabilities, Chennai, he does not appear to have obtained any long-term formal and supervised training or education. Further, he has not taken up a part-time or full-time job as he was able to in the US. Finally, other than Respondent Nos. 4 to 6, we have not been informed of any other family or

formal/informal support systems here that he interacts with regularly or can depend upon. Regardless, the doctors at NIMHANS, Bengaluru noted that he was struggling to understand the language spoken in Chennai.

38. In comparison, he has completed most of his schooling in the US; he has access to long-term specialized welfare services and curriculums; he has a peer group; an established routine; and places to regularly attend for socialization. Further, he is familiar with the language and lifestyle in the US. He desires to be in the company of his younger brother, from whom he has been separated for far too long. Finally, owing to their citizenship, the Idaho Court has already passed an order appointing the Appellant as full and permanent guardian. Taking this into account, we cannot state that [redacted] has given up his roots in the US and has developed new roots in India, due to which he should not be displaced.

39. Considering all the facts and surrounding circumstances, we believe it is in [redacted] best interests and welfare to return to the US, where he can complete his schooling and reside with his younger brother, under the Appellant's guardianship. We clarify that this does not mean that Respondent No. 4 should not be a part

- iv.** Pursuantly, the Appellant is directed to return to the US with both the sons within 15 days and ensure that they continue their schooling there. Respondent No. 4 shall not cause any impediment to their return;
- v.** Now that the controversy pertaining to the custody of stands resolved, the office of US Consulate-General, Chennai will return his US passport and facilitate the Appellant in taking him back to the US immediately;
- vi.** The Appellant and Respondent No. 4 shall share their phone numbers, email IDs, and home addresses with each other, so that they can remain in contact for the sake of their children;
- vii.** Neither the Appellant nor Respondent No. 4 shall restrict the sons' access to the other parent; and
- viii.** Owing to substantial compliance with this Court's subsequent order dated 08.01.2025, the contempt proceedings are hereby dropped.

42. The instant appeal is allowed in the above terms.

43. Ordered accordingly. Pending applications if any, also stand disposed of.

44. Before parting, we would like to seize this opportunity and place on record our profound appreciation and gratitude for the team at NIMHANS, Bengaluru, for accommodating our time-bound request to assess and and aiding us in this exercise of adjudicating this delicate and complicated dispute.

.....**J.**
(SURYA KANT)

.....**J.**
(DIPANKAR DATTA)

.....**J.**
(UJJAL BHUYAN)

NEW DELHI;
MARCH 3, 2025.