

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
AND
IN ITS GENERAL AND INHERENT JURISDICTION
INDIAN ADOPTION PETITION NO. 17 OF 2023
WITH
JUDGE'S ORDER NO. 35 of 2023

Maharashtra State Women's Council
Adoption

...Petitioner

Versus

Mr. Antony Joseph Stalin and
Mrs. Bharathi

...Co-Petitioners/
Proposed Adopters

Ms. Dipal S. Mehta, for the Petitioner.

Mr. O. Hareendran, Scrutiny Officer, Indian Council of Social Welfare.

Mr. D.S. Gurav, Chamber Registrar present.

CORAM : R.I. CHAGLA J

DATE : 3 August 2023

ORDER :

1. The Petitioner is a registered specialized adoption agency duly recognised by the State of Maharashtra under Section 65 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (“**the said Act**”) for rehabilitating orphans, abandoned and surrendered

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children through adoption in accordance with the provisions of the said Act. The Petition has been jointly filed by the co-Petitioners who are the Proposed Adopters.

2. Mr. O. Hareendran, Scrutiny Officer, Indian Council of Social Welfare has tendered the Representation/Report dated 31st July 2023 which is taken on record and marked “X” for identification.

3. The Proposed Adoptive Parents have sought adoption of the minor child Sayma (“**the said female minor**”) who was born on 15th September 2016. The said female minor was found abandoned by the Colaba Police Station, Mumbai and produced before the Child Welfare Committee (“**CWC**”) Mumbai City-I on 12th September 2022. The child’s custody was given to the Petitioner institution, on the same day as per the order of the CWC, Mumbai City-I dated 12th September 2022 under the provisions of the said Act. The CWC order has been placed on record at page No. 20 to the Petition.

4. After making due inquiry under section 38 of Juvenile Justice (Care and Protection of Children) Amendment Act, 2021, the CWC, Mumbai City declared the said female minor “*Legally Free for*

Adoption” as on 13th April 2023. The Free for Adoption order is on record at page Nos. 21-23 to the Petition.

5. The Prospective Adoptive Parents are Indian nationals residing at Chennai, Tamil Nadu; both aged about 49 years have been married for the past 17 years (7th June 2006) with no biological children.

6. The Motivation Letter of the proposed Adopters is on record at Page No. 27 of the Annexure to the Petition.

7. The Affidavit by the Chief Functionary of the Specialized Adoption Agency (Petitioner) in support of the adoption of the said female minor child Sayma is on record at page Nos. 133-139 to the Petition.

8. The Decision of Adoption Committee in their meeting held on 25th May 2023 is on record at page Nos. 18-19 to the Petition.

9. The committee has decided that the Prospective Adoptive

Parents are suitable to adopt the said female minor child Sayma born on 15th September 2016.

10. The medical Report of the Prospective Adoptive Parents dated 15th May 2023 states that “*The health of the prospective adoptive parents do not disqualify them in parenting a child in anyway*”. Their HIV I & II and HBsAg test reports certifies the case as Negative. The medical Report has been placed on record at page Nos. 30-45 to the Petition.

11. The Prospective Adoptive Father is working as a Assistant Manager, with Ventura Engineering Services, Chennai since 18th July 2008 and his monthly (April, 2023) gross salary is Rs. 43,054/-. His Income Tax Returns and pay slips are on record at page Nos. 64-69 to the Petition. The Prospective Adoptive Mother is a Homemaker.

12. The other relevant documents such as proof of residence (rental agreement), copies of PAN card and other supportive financial documents are placed on record at page Nos. 55-59, 70-93 to the Petition.

13. The childcare arrangement plan statement of the Proposed Adoptive Mother has been placed on record at Page No. 94 to the Petition.

14. The home study Report Part I Self Assessment by the Prospective Adoptive Parents has been placed on record at page Nos. 95-98 and 102-105 to the Petition.

15. In Part II, the Assessment Reports of the Social Worker of Holy Apostles Convent, Chennai dated 21st November 2019 and 22nd October 2022 are on record and the Reports have found that the Prospective Adoptive Parents are suitable for adopting a child. The said Home study Reports have been placed on record at page Nos. 99-101 and 106-108 to the Petition.

16. The child security undertaking dated 5th June 2023 given by the Prospective Adoptive Mother's sister and brother-in-law residing at Chennai, wherein they have undertaken to look after the said female minor, if in case of any mishap to the Prospective Adoptive Parents has been placed on record at page Nos. 129-132 to the Petition.

17. The Pre-adoption foster care undertaking dated 5th June 2023 has been placed on record at page Nos. 61-63 to the Petition.

18. The Joint Declaration of consent & willingness to adopt by the Prospective Adoptive Parents states that they are willing to be appointed and declared as the adoptive parents of the said female minor Sayma born on 15th September 2016. The declaration has been placed on record at page No. 60 to the Petition. The Prospective Adoptive Parents have further agreed and undertaken to the Petitioner institution and to this Court that they will not give the said female minor child in further adoption to anyone residing outside India.

19. The medical examination of the said female minor Sayma dated 15th April 2023 states that the child has a mild lisp, which is responding well to regular speech therapy. Her physical and mental milestones are normal for age. Such overall Observation of the child states, "*a normal, healthy child*". The Proposed Adopters have countersigned the said Report along with the Speech-Language Progress Report dated 19th April 2023. These Reports have been

placed on record at Page Nos. 117-122 and 126-127 to the Petition.

20. The I.Q. Report of the minor dated 19th April 2023 states that “*on the basis of Kamat’s test of intelligence she gains an intellectual quotient of 76 points, which places her in Low Average Range of Intellectual Functioning*”. The Proposed Adopters have countersigned the said Report. The I.Q. Report is on record at page Nos. 124-125 to the Petition.

21. The HIV report of the said female minor dated 3rd April 2023 certifies the case as Non Reactive. This Report is on record at page No. 123 to the Petition.

22. The Post Card Size Photograph of the said female minor is on record at page No. 25 to the Petition.

23. As regards the change of name, the Proposed Adopters desire that the said female minor ‘Sayma’ be renamed as “*A. Sherlyn Sayma*”.

24. The undertaking dated 12th May 2023 of Holy

Apostles Convent, Chennai for furnishing post adoption follow-up Reports are on record at page No. 128 to the Petition.

25. The Petitioner institution's recognition from the Women & Child Development, Maharashtra State to place children in adoption is valid up to 5th May 2025.

26. Having considered the material on record as well as the Representation/Report of Mr. O. Hareendran, Scrutiny Officer marked X, it is in the interest of the said female minor that she is adopted by the Adoptive Parents.

27. It is relevant to note here that in the case of **Nisha Pradeep Pandya alias Nisha Amit Gor and Anr. Vs. Union of India and Ors.**¹ concerning challenge raised to the Juvenile Justice (Care and Protection of Children) Amendment Act, 2021, the Division Bench of this Court on 10th January, 2023 passed an interim order. The relevant portion of said order of Division Bench reads as follows :

“8. In the meantime, there will be an ad-interim order

¹ Writ Petition No.1085/2023 (Writ Petition (L) No.32065/2022)

only until the next date in terms of prayer clauses (d), (e) and (f) of the petition which reads as follows:

(d) Pending the final hearing and disposal of the present Petition, the Hon'ble Court may be pleased to stay the effect, implementation and purport of the letter dated 30th September, 2022 issued by Respondent No.2;

(e) Pending the final hearing and disposal of the present Petition, the Hon'ble Court may be pleased to direct the Respondents not to transfer pending adoption matters before the District Magistrates for adjudication.

(f) Pending the final hearing and disposal of the present Petition, the Hon'ble Court may be pleased to direct the Hon'ble Courts to continue with the adjudication of the adoption matters that are pending on their record and file.

9. *Additionally, the safer and more prudent course of action would be to allow all matters to be placed before the learned Single Judge of this Court who is assigned those matters. Those orders may be continued to be passed until the challenge is finally decided."*

28. Hence, it is clear that this Court can consider and

dispose of the present Petition.

29. In these circumstances, the Petition is allowed in terms of prayer clauses (a) to (c) of the Petition, which read thus:-

- “(a) This Hon’ble Court may be pleased to appoint the Co-Petitioners, Antony Joseph Stalin and Mrs. Bharathi as the adoptive parents of the female minor, Sayma @ A. Sherlyn Sayma, in the care of the Maharashtra State Women’s Council Adoption Group at Maharashtra State Women’s Council Asha Sadan Balgruh, Asha Sadan Marg, Umderkhadi, Mumbai-400 009.*
- (b) That the Co-Petitioners be allowed to change the name of the minor ‘Sayma’ to ‘A. Sherlyn Sayma’.*
- (c) That the Co-Petitioners may be granted leave to remove the aforesaid child from the jurisdiction of this Hon’ble Court and to take the minor along with them, i.e. to the Co-Petitioners’ family wherever they may reside or their work may require them to,*
- (d) That the concern Municipality/the Birth Certificate Issuing Authority may be directed to issue Birth Certificate for the said minor within five working days from the date of application of the Petitioner, as per*

the provisions of regulation 36 of the Adoption Regulations,”

30. The Judge’s Order is also accepted and signed separately.

31. The Adoptive Parents have undertaken to invest an amount of Rs. 1,00,000/- (Rupees One Lakh only) in the name of the said female minor. They have further undertaken not to withdraw this investment till the adopted child attains majority. They agreed to handover investment receipts to the adopted child, upon becoming major. This undertaking is also part of the Judge’s Order, which as aforementioned is separately signed.

32. The Indian Adoption Petition is accordingly, disposed of.

33. No order as to costs.

[R.I. CHAGLA J.]