

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. 13 of 2023

WITH

JUDGE'S ORDER NO. 30 OF 2023

Maharashtra State Women's Council
Adoption

...Petitioner

Versus

Pratyush Chakraborty & Anr.

...Co-Petitioners/
Proposed Adopters

Ms. Dipal S. Mehta for the Petitioners.

Mr. O. Hareendran, Scrutiny Officer present.

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

CORAM : R.I. CHAGLA J

DATE : 20 July 2023

ORDER :

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PANDURANG
KHOT

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1. The Indian Adoption Petition has been filed by the Petitioner institution and the Proposed Adoptive Parents for adoption of female minor Pournima (“**the said female minor**”) born on 7th November 2022 and who was admitted to the Petitioner institution

on 4th January 2023 as per the order of the Child Welfare Committee (CWC), Mumbai City-I dated 4th January 2023 under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015. Thereafter, the biological mother has executed a Deed of Surrender before the said CWC, Mumbai City-I on 6th January 2023. The CWC order has been placed on record at page No. 20 to the Petition.

2. After making due inquiry under Section 38 of Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016) the Child Welfare Committee, Mumbai City-I declared the said female minor “Legally Free for Adoption” as on 17th March 2023. The Free for Adoption order has been placed on record at page Nos. 21-23 to the Petition.

3. The Prospective Adoptive Parents are Indian nationals residing at Kolkata, West Bengal, aged about 44 years and 37 years respectively and have been married for the past 14 years (4th February 2009) with no biological children. The Motivation Letter of the Proposed Adoptive Parents is on record at Page No. 26 to the Petition.

4. Affidavit by the Chief Functionary of the Specialized Adoption Agency (Petitioner) in support of the adoption of the said female minor has been placed on record at page Nos. 153-159 to the Petition.

5. The Decision of Adoption Committee meeting dated 1st June 2023, wherein it was decided that the Prospective Adoptive Parents are suitable to adopt the said female minor child has been placed on record at page Nos. 18-19 to the Petition.

6. The Medical Report of the Prospective Adoptive Parents dated 19th May 2023 states, "The health of the Prospective Adoptive Parents do not disqualify them in parenting a child in anyway". Their HIV and HBsAg test reports certifies the case as Non Reactive. The Report has been placed on record at page Nos. 29-35 to the Petition.

7. The Prospective Adoptive father is working as a Creative Director with SoS Ideas Private Limited, Kolkata and his monthly (January 2023) gross salary is Rs. 1,56,000/-. His Income and Employment Certificate and Income Tax Returns are on record at page Nos. 63-67 to the Petition. The Prospective Adoptive mother is a

Homemaker.

8. The learned Counsel appearing for the Petitioner has tendered a compilation of salary slips of the Proposed Adoptive father for the month of February to May 2023 as well as letter of reference of family friend of Proposed Adoptive Parents, Sharmilee Roy to CARA, wherein she has certified that the Proposed Adoptive Parents are fit to adopt a child/children. The compilation is taken on record and marked “X” for identification.

9. The proof of residence (rental agreement), copies of PAN card and other supportive financial documents of the Proposed Adoptive Parents have also been placed on record at page Nos. 40-56, 68-94 to the Petition.

10. Childcare arrangement plan statement of Proposed Adoptive Mother is on record at page No. 95 to the Petition.

11. The home study Report Part I Self Assessment by the Prospective Adoptive Parents is on record at page Nos. 97-104 to the Petition.

12. The Part II - Assessment Report of the Social Worker of Society For Indian Children's Welfare, Kolkata (Home visit done on 3rd January 2023) is on record and the Report has found the Prospective Adoptive Parents suitable for adopting a child (either gender) within the age of 0-2 years. The said Home study Report is at page Nos. 105-115 to the Petition.

13. The child security undertaking dated 5th June 2023 given by the Prospective Adoptive father's cousin sister and brother-in-law residing at Kolkata to look after the said female minor in case of any mishap to the Prospective Adoptive Parents is on record at page Nos. 148-152 to the Petition.

14. The Pre-adoption foster care undertaking dated 7th June 2023 has been placed on record at page Nos. 60-62 to the Petition.

15. The Joint Declaration of consent & willingness to adopt by the Prospective Adoptive Parents is on record and it states that they are willing to be appointed and declared as the Adoptive Parents of the said female minor born on 7th November 2022. 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. The said undertaking has been placed on record at page Nos. 57-59 to the Petition.

16. The Medical Examination of the said female minor dated 19th April 2023 states that “Right ear-Normal. Left ear-Mild hearing loss. BERA test to be repeated after three months. Physical and mental milestones are normal for age. Overall Observation of the child : A normal, healthy infant.” The said medical Report is at page Nos. 140-145 to the Petition. The Proposed Adopters have countersigned the said Report.

17. The HIV Report of the said female minor dated 23rd January 2023 certifies the case as Non Reactive. This Report has been placed on record at page No. 146 to the Petition.

18. There is a post card size photograph of the said female minor which is on record at page No. 25 to the Petition.

19. As regards the change of name, the Proposed Adopters desire that the said female minor “**Pournima**” be renamed as “**Aikantika Chakraborty**”.

20. The undertaking dated 6th June 2023 given by the authorities of “Society For Indian Children’s Welfare”, Kolkata for furnishing post adoption follow-up Reports is on record at page No. 147 to the Petition.

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

22. Mr. O. Hareendran, Scrutiny Officer has tendered Report dated 7th July 2023, which is taken on record and marked “**X-1**” for identification.

23. Having considered the relevant material on record and the Report of the Scrutiny Officer marked X-1, in my view, it would be in the interest of the said female minor child, if she is adopted by the Proposed Adoptive Parents.

24. 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 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

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

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."*

25. Hence, it is clear that this Court can consider and dispose of the present Petition.

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

- (a) This Hon'ble Court may be pleased to appoint the Co-Petitioners, Pratyush Chakraborty and Sudeshna Chakraborty as the adoptive parents of the female minor, Pournima @ Aikantika Chakraborty, in the care of the 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 'Pournima' to 'Aikantika Chakraborty'.
- (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,

27. The Judge's Order is also separately signed.

28. The Petitioners have undertaken to deposit an amount of Rs. 1,00,000/- (Rupees One Lakh only) in the name of the said female minor in any Nationalised Bank which is also stated in

the Judge's Order.

29. The present Indian Adoption Petition is accordingly, disposed of. No order as to costs.

[R.I. CHAGLA J.]