

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
AND
IN ITS GENERAL AND INHERENT JURISDICTION
FOREIGN ADOPTION PETITION NO. 15 OF 2023
WITH
JUDGE'S ORDER NO. 66 OF 2023

Bal Asha Trust

...Petitioner

Versus

Biagio Ricciuti, Italian National & Anr.

...Respondents

Mr. R.K. L. Kapoor, 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 : 12 October 2023

ORDER :

1. By this Foreign Adoption Petition, the Petitioner and the Proposed Adoptive Parents has sought for adoption of the male minor Siraj Shaikh (“**the said male minor**”).

2. The said male minor born on or about 13th June 2012

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was admitted in Navjeevan Centre, Mumbai by his biological mother for shelter in the year 2016. His biological mother regularly visited the Centre to see the said male minor child. However, since December, 2019 she did not come to the said Centre. On 14th October 2021, the said male minor was presented before the Child Welfare Committee (CWC), Mumbai City-I by the said Navjeevan Centre and the said male minor's custody was given to the Petitioner institution for further care and rehabilitation as per the order of the CWC dated 14th October 2021 under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015 ("**the said Act**"). The Safe Custody Order of the CWC has been placed on record at page No.21 to the Petition.

3. After making due inquiry under Section 38 of the said Act, the CWC, Mumbai City I declared the said male minor "Legally Free for Adoption" as on 23rd June 2022. The Free for adoption Order and Certificate has been placed on record at page No. 17-20 to the Petition.

4. The Central Adoption Resource Authority (CARA), New Delhi has issued its No Objection Certificate dated 14th March 2023

to this adoption as per Adoption Regulations 2022 and Article 17(c) of the Hague Convention on the Protection of Children and Cooperation in respect of Inter-country Adoption 1993. The said No Objection Certificate has been placed on record at Page No. 29 to the Petition.

5. The undertaking/affidavit by the Petitioner institution has been placed on record at page Nos. 23 to 28 to the Petition.

6. The Proposed Adopters are Italian Nationals, residing at Rondissone, Italy, both aged about 49 years having been married for the past 15 years (27th December 2008) with no biological children. The Proposed Adopters Joint Family Photograph and Copies of Passport have been placed on record at page Nos. 30-44 to the Petition.

7. The Health Reports dated 12th October 2020 of the Prospective Adoptive Parents states that both enjoys good health and have no psycho-physical alteration whatsoever. Their HIV and HBsAg test report certifies the case as Negative. These reports are at Page Nos. 57-76 to the Petition.

8. The Prospective Adoptive Father is self-employed - Owner & Technical Manager of the Company named “Ricciuti Services” based in Rondissone, Italy. His gross yearly income for the Tax Year 2018 is Euro 56,524.00. His Employment Certificate & Income Tax Certificate for the Tax year 2018 has been placed on record at page No. 79-85 to the Petition.

9. The learned Counsel for the Petitioner has tendered compilation of latest Income statement of the Prospective Adoptive Parents along with their respective Income Tax Return and permission dated 21st March 2023 from the Presidency of the Council of Ministers as per Article 17 of the Hague Convention which is taken on record and marked “X” for identification.

10. The Prospective Adoptive Mother is working as a Technical/ Administrative employee with Wind Tre Spa at Ivrea, Italy since 1998 and also work as an Administrative Assistant with her husband’s company ”Ricciuti Services”. Her gross annual income for the year 2018 is Euro 40,358.00. Her Employment certificate & Income Tax certificate for the Tax year 2018 has been placed on record at page No. 86-106 to the Petition.

11. The Financial Declaration and Certificate of Residence are on record at page Nos. 108-119 to the Petition.

12. The Childcare Arrangements Plan statement from the Proposed Adopters is on record at page No. 120 to the Petition.

13. The Home Study Report dated 15th October 2020 by the authorities of “C.I.F.A. for Children”, Torino, Italy is on record and the report has found the Proposed Adopters suitable for adopting a child. The said home study report is at page Nos. 122-148 to the Petition.

14. The Psychological Evaluation Report of the Prospective Adoptive Parents dated 10th December 2020 by Dr. Laura Piacenti, CIFA Psychologist is on record and the report has recommended the couple for the adoption of a child from India. This report can be found at page Nos. 152-155 to the Petition.

15. The Adoption Guarantee Letter dated 7th December 2022 issued by the Commission for Intercountry Adoption on behalf of the Government of Italy has been placed on record at

page No. 158 to the Petition.

16. The Permission dated 21st March 2023 from the Presidency of the Council of Ministers as per Article 17 of the Hague Convention forms part of the compilation marked X.

17. The child security undertaking dated 1st December 2022 given by the Prospective Adoptive Father's brother and sister-in-law residing at Torino, Italy to look after the proposed minor in case of any unforeseen mishap to the Proposed Adopters is on record at Page No. 178-179 to the Petition.

18. The Medical Examination report of the said male minor dated 4th July 2022 states, "Health Status: Normal child. Overall observation of the child: Siraj is developmentally normal for his age. He has not suffered from any major illness needing hospitalization and is currently disease free". The Proposed Adopters have countersigned this Report, which is at page Nos. 184-189 to the Petition.

19. The Report of Psychological Testing of the said

male minor dated 9th June 2022 states that he has average intellectual functioning and social functioning. The Report of Language Speech and Hearing states he has no significant delay in speech and language acquisition. He requires continues language stimulations for achieving milestones. The Proposed Adopters have countersigned these reports, which are at page Nos. 190-195 to the Petition.

20. The H.I.V. report of the proposed minor dated 19th November 2021 certifies the case as Non Reactive. This report has been placed on record at page No. 198 to the Petition. The post card size photograph of the minor is on record at page No. 199 to the Petition.

21. The Declaration of consent, willingness and undertaking of the Proposed Adopters states that they are willing to be appointed and declared as the Adoptive Parents of the said male minor. They further undertake that they will allow personal visits by the Representative of the Authorized Foreign Adoption Agency (AFFA) during post-adoption follow-up. The said Declaration has been placed on record at page Nos. 200-204 to the Petition.

22. The undertaking dated 11th November 2022 of the Authorized Foreign Adoption Agency (AFFA) “CIFA For Children-International Centre for Children and Family”, Torino, Italy to provide follow-up reports of the said male minor and make alternative arrangements in case of disruption of the Adoptive family is on record at page Nos. 205-206 to the Petition.

23. As regards the change of name, the Proposed Adopters’ desire that the said male minor ‘Siraj Shaikh’ be renamed as “Siraj Carlo”.

24. The Power of Attorney dated 17th January 2023 duly signed by the Proposed Adopters in favour of the Petitioner institution is on record at page Nos. 209-211 to the Petition.

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

26. Mr. O. Hareendran, Scrutiny Officer has tendered Report/Representation of Indian Council of Social Welfare dated 4th October 2023, which is taken on record and marked “Y” for

identification.

27. Having considered the documents placed on record as well as the Report of Mr. O. Hareendran, Scrutiny Officer marked Y, I am of the view that it would be in the interest of the said male minor, if he is adopted by the Prospective Adoptive Parents.

28. 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

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

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.”

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

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

- “(a) For the Adoption of the proposed minor **Siraj Carlo** born on 13/06/2012 by the proposed adopters under Section 59 (7) of the Juvenile Justice Act, 2015.
- (b) For declaring the Proposed Adopters as Adoptive Parents of the said minor **Siraj Carlo** and having all parental rights, privileges and responsibilities over the said minor now in the care and custody Bal Asha Trust, Bal Asha Dham, Anand Niketan, Dr. E. Moses Road, Mahalaxmi, Mumbai – 400 011.
- (c) That the proposed adopters be allowed to change the name of the minor ‘**Siraj Shaikh**’ to “**Siraj Carlo**”.
- (d) Leave/permission be granted to apply the concerned Municipal Authorities to issue Birth Certificate of the said minor **Siraj Carlo** born on 13/06/2012 and showing the proposed adopters as Parents.
- (e) That the Proposed Adopters may be granted leave to remove the said minor **Siraj Carlo** from the jurisdiction of this Hon’ble Court and to take the said minor to ITALY or wherever they may reside in future.

31. The Judge’s Order is accepted and signed separately.

32. It is directed that the Petitioner institution will

obtain further undertakings from the Adoptive Parents that they shall not give the Adopted Child for further adoption without the prior leave of this Court. Once this undertaking is obtained, the same shall be filed on the record of this Court.

33. The Foreign Adoption Petition is accordingly, disposed of. There shall be no order as to costs.

[R.I. CHAGLA J.]