

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. 14 OF 2023
WITH
JUDGE'S ORDER NO. 64 OF 2023

Shri Ganesh Shikshan Prasarak Mandal's ...Petitioner
Shishu Gruh

Versus

David John Heska & Anr. ...Proposed Adoptive
Parents

Mr. Swapnil S. Dhage, for the Petitioner.
Mr. O. Hareendran, Scrutiny Officer, Indian Council of Social Welfare.
Mr. Dilip S. Gurav, Chamber Registrar present.

CORAM : R.I. CHAGLA J

DATE : 12 October 2023

ORDER :

1. By this Foreign Adoption Petition jointly filed by the
Petitioner and the Proposed Adoptive Parents, adoption of proposed
male minor Pushkar ("**the said male minor**") is sought. The said male
minor was born on 27th October 2021. The biological mother had

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surrendered the said male minor before the Child Welfare Committee (CWC), Latur on 28th October 2021 and the child's safe custody was given to the Petitioner institution Shri Ganesh Shikshan Prasarak Mandal, Latur on the same day as per the order of CWC dated 28th October 2021 under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 ("**the said Act**").

2. The Deed of Surrender and safe custody order has been placed on record at page Nos. 59-60 & 79 of the Petition.

3. After making due inquiry under section 38 of the said Act, the CWC, Latur declared the said male minor "Legally Free for Adoption" as on 30th December 2021. The Free for Adoption order is on record at page No. 78 to the Petition.

4. The Affidavit by the Chief Functionary of the Specialized Adoption Agency (Petitioner) in support of the adoption of the said male minor child is at page Nos. 251-255 to the Petition.

5. The Central Adoption Resource Authority's (CARA) No Objection Certificate (NOC) dated 30th August 2022 to this adoption

as per Adoption Regulations 2017 and Article 17(c) of the Hague Convention on the Protection of Children and Cooperation in respect of Inter-country Adoption 1993 is on record at page No. 159 to the Petition.

6. The Prospective Adoptive Parents are Canadian Nationals and both residing at Ontario, Canada aged about 39 and 38 years respectively. They have been married for the past 14 years (9th May 2009) and have three biological children i.e. two daughters aged about 12 years and 9 years and a son aged about 6 years respectively. The biological children's passport copy, Birth Certificates, medical certificates and consent letters are placed on record at page Nos. 28-34, 44-51, 174-178 & 232-242 to the Petition.

7. The Prospective Adoptive Parents Passport copies and joint Photographs have been placed on record at page Nos. 24-26 & 147 to the Petition.

8. The Motivation Letter from the Prospective Adoptive Parents is placed on record at Page No. 271 to the Petition.

9. The latest health report of the Prospective Adoptive parents dated 29th August 2023 states, “They are in good mental and physical condition”. Their HIV and HbsAg test reports certify the case as Non Reactive. These reports can be found at page Nos.257-262 to the Petition.

10. The Prospective Adoptive father is working as a Director, Building Science-South-West Ontario with WSP Canada Inc. on a full-time basis since 5th May 2008. His annual salary is \$193,000.08. His latest Employment and Income Certificate dated 8th August 2023 has been placed on record at page Nos. 265 to the Petition.

11. The Prospective Adoptive mother is working as a Part-time Registered Nurse with Hamilton Health Sciences since 20th August 2007 and she earns \$ 42.12 per hour. Her latest Employment and Income Certificate dated 8th August 2023 is on record at page No. 264 to the Petition.

12. The Proof of Residence, Financial Statement, Property Assessment Notice and Bank Reference have been placed on

record at page Nos. 56-57, 179-184 and 191-197 to the Petition.

13. The childcare plan declaration by the Prospective Adoptive Parents is on record at page No. 270 to the Petition.

14. The Home Study Report dated 13th November 2019 by the Registered Adoption Practitioner Jon A. Boyd, M.S.W., R.S.W, Ontario, Canada has found the Proposed Adopters suitable for adopting a female or male minor child, with special needs, as young as possible, up to 36 months at the time of proposal, and born after September 2018 from India. The said Report has been placed at page Nos. 110-138 to the Petition.

15. The Psychological Testing Report of the Prospective Adoptive Parents dated 21st August 2019 by Dr. Nathan J. Cooper, C. Psych. is on record at page Nos. 140-144 to the Petition. The Report has strongly recommended them as Prospective Adoptive Parents.

16. Letter of Approval dated 29th January 2020, Permissions from the Receiving country as per Article 17(c) and

updated Approval dated 2nd March 2022 and Letter from Authorized Foreign Adoption Agency (AFFA) “The Children’s Bridge-International Adoption Agency”, Ontario, Canada regarding validity of Home study Report are on record at page Nos. 83-91 and 266-267d to the Petition.

17. The child Security undertaking (Guardianship Statement) dated 14th November 2019 given by the Prospective Adoptive Father’s sister and brother-in-law residing at Ontario, Canada to take care of the child in case of any unforeseen mishap to the proposed adopters is on record at page Nos. 220-222 to the Petition.

18. The Medical Examination Report of said male child dated 19th March 2022 states “Health Status: Special Need. Overall observation of the child: HIV Elisa Tested Negative on 29th October 2021 and Reactive on 28th December 2021 and 11th January 2022. HIV RNA PCR tested Negative on 25th January 2022. HIV Elisa test to be done at the age of 18 months to confirm the HIV status till that time the child will be in the special needs category”. The Proposed Adopters have countersigned this Report. The Report has been placed

on record at page Nos. 95-102 to the Petition.

19. The HIV test Reports of the said male minor dated 29th October 2021, 28th December 2021, 11th January 2022, 22nd January 2022 and 25th January 2022 have been placed on record at page Nos. 103 to 107 to the Petition. The HIV Elisa Test Report to confirm HIV status dated 23rd August 2023 certifies the case as Negative (HIV –I & II). The said Report is on record at page No. 263 to the Petition.

20. The Post Card size photograph of the said male minor is on record at page No. 109 to the Petition.

21. The Declaration of willingness and undertaking of the Proposed Adopters states that they are willing to adopt the said male minor child. They further undertake that they will co-operate and contact their Adoption Practitioner to prepare and complete the post placement reports as required by the authorities in India and the province of Ontario. The said Declaration has been placed on record at page Nos. 224-225 and 268-269 to the Petition.

22. As regards the change of name, the Proposed Adopters desire that the said male minor 'Pushkar' be renamed as "Pushkar David Heska".

23. The undertaking dated 22nd September 2022 of the Authorized Foreign Adoption Agency (AFFA) "The Children's Bridge-International Adoption Agency", Ontario, Canada to provide follow-up report of the said male minor child and make alternative arrangement in case of disruption of the adoptive family is on record at page No. 216-219.

24. The Copy of the General Power of Attorney dated 18th May 2022 duly executed by the Proposed Adoptive Parents in favour the Petitioner institution has been placed on record at page Nos. 72-73 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 July 2025.

26. Mr. O. Hareendran, Scrutiny Officer has tendered

Scrutiny Report of Indian Council of Social Welfare dated 9th October 2023, which is taken on record and marked “X” for identification.

27. Having considered the documents placed on record as well as the Report of Mr. O. Hareendran, Scrutiny Officer marked X, in my view, 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

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

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."*

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 (d) of the Petition, which read thus:-

“(a) The above-named Proposed Adoptive Parents may please to declared as parents of the said child for all purposes allowed by the law and may be allowed to be taken to the country of their residence for upbringing the child as their own child.

(b) The Birth Certificate Issue Authority may please be directed to issue Birth Certificate for the said child within five working days from the date of Application, as per the provisions of sub-regulation (5) of regulations 18 and regulation 36;

(c) The Regional Passport Office (RPO) concerned may be directed to issue Passport for the said child within 10 days from the date of application, as per sub-regulation (4) of regulation 18 and regulation 38;

(d) The male child namely ‘PUSHKAR’ be renamed as PUSHKAR DAVID HESKA;

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.]