

And

Mr. Rakesh Kapoor i/b M/s. Rakesh K.L. Kapoor & Co. for the Petitioner.
Mr. O. Hareendran, Scrutiny Officer, present.
Mr. D.S. Gurav, Chamber Registrar, present.

DATED : 24th AUGUST, 2023.

ORDER :

1 By this Foreign Adoption Petition, the Petitioner and the Proposed Adopters have sought adoption of the male minor Ganesh, (‘the said male minor’) born on 19.08.2017. The biological mother relinquished the said male minor child before the Child Welfare Committee, Latur on 24.08.2017 and the said male minor child’s custody was given to Shishu Sadan run by Bal Vikas Mahila Mandal, Latur on the same day as per the

order of the CWC dated 24.08.2017 under the provisions of Juvenile Justice Act, 2015. Thereafter the said male minor was transferred to the Petitioner institution on 20.09.2021 as per the order of the CWC, Latur dated 20.09.2021 for further rehabilitation. The Admission order and Transfer orders of the CWC have been placed on record at page Nos.18-19 and 27-28 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 CWC, Latur declared the said male minor Ganesh “Legally Free for Adoption” as on 28.12.2021. The Free for adoption Certificate has been placed on record at page No.17 to the Petition.

3 The Central Adoption Resource Authority (CARA), New Delhi has issued No Objection Certificate dated 02.05.2022 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. The said No Objection Certificate has been placed on record at Page No. 36 to the Petition.

4 The Affidavit of the authorized person of the Specialized Adoption Agency (Petitioner) in support of the adoption of the said male minor Ganesh has been placed on record at Page Nos.29-35 to the Petition.

5 The Proposed Adopters are Italian nationals, both residing at Monteriggioni, Italy aged about 51 and 48 years respectively. They have been married for the past 18 years (18.12.2004) with no biological children.

6 The proposed adopters joint photograph and copies of Passport have been placed on record at page Nos.37-45 to the Petition.

7 The Medical Reports dated 18.12.2020 of the proposed adopters states that they are in good health and do not present any signs of mental or physical diseases either previous or on-going, which may be contraindicated to their adoption of the said male minor. The medical reports have been placed on record at Page Nos.52-57 to the Petition. Their HIV and HBsAg test reports dated 28.06.2022 certify the case as Negative. The learned Counsel appearing for the Petitioner has tendered HIV and HBsAg test reports of the proposed adopters dated 28.06.2022 which is taken on record and marked 'X-1' for identification.

8 The Prospective Adoptive father is a Financial Adviser and sole Agent of Mediolanum S.P.A Bank, Italy since 02.01.1996 and his total income for the year 2020 is of Euros 64,800. The Self Declaration in lieu of Affidavit and Income Tax Return concerning the years 2020 and 2021 have been placed on record at page Nos.58-78 to the Petition.

9 The Prospective Adoptive mother is working as an Assistant Professor with the University of Siena, Italy and her income for the year 2020 is of Euros 33,881.12. The Self Declaration in lieu of Affidavit and Income Tax Return concerning the years 2020 and 2021 have been placed on record at page Nos.79-93 to the Petition.

10 The Declaration of Financial statements and Residence Certificate have been placed on record at page Nos.94-106 to the Petition.

11 The childcare arrangement plan undertaken by the prospective Adoptive parents has been placed on record at page Nos.113-114 to the Petition.

12 The Home study report dated 29.01.2021 by the authorities of “CIAI-Italian Association for Aid to children”, Milan, Italy has found the proposed adopters suitable for adopting the said male minor child. The report has been placed on record at page Nos.115-125 to the Petition.

13 The Psychological Evaluation report dated 29.01.2021 by the Psychologist has recommended the couple for the adoption of a child. This report has been placed on record at page Nos.126-131 to the Petition.

14 The Permission of the Receiving Country as per Article 5/17 of the Hague Convention has been placed on record at page Nos.132-138

to the Petition.

15 The child Security undertaking dated 01.08.2022 given by the prospective adoptive father's cousin and his wife, residing at Milano, Italy to take care of the said male minor child in case of any unforeseen mishap to the proposed adopters has been placed on record at page Nos.155-156 to the Petition.

16 The Medical examination report of the said male minor Ganesh dated 13.11.2021 states "A Normal child. History of delayed motor milestones. The report has been placed on record at page Nos.163-171 to the Petition. The proposed adopters have countersigned this report.

17 The H.I.V. report of the said male minor dated 08.07.2023 certifies the case as Negative. This report has been placed on record at page No.173 to the Petition. The post card size photograph of the said male minor has been placed on record at page No.174 to the Petition.

18 The Declaration of willingness and undertaking of the proposed adopters states that they are willing to adopt the said male minor Ganesh born on 19.08.2017. They have further undertaken that they will allow personal visits by the representatives of the Authorized

Foreign Adoption Agency for follow up of the progress of the said male minor child as required under the Adoption Regulations. The Declaration has been placed on record at page Nos.175-178 to the Petition.

19 The undertaking dated 12.01.2022 of the Authorized Foreign Adoption Agency (AFFA) “CIAI-Italian Association for Aid to Children”, Milan, Italy to provide follow-up report of the said male minor child and make alternative arrangement in case of disruption of the adoptive family has been placed on record at page No.179 to the Petition.

20 The copy of Power of Attorney dated 10.03.2022 duly executed by the proposed adopters in favour the Petitioner institution has been placed on record at page Nos.180-182 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 05.05.2025.

22 The Scrutiny Officer Mr. O. Hareendran has tendered the report/representation from the Indian Council of Social Welfare, dated 19.08.2023 which is taken on record and marked 'Y' for identification.

23 Having considered the material on record as well as report of

theScrutiny Officer Mr. O. Hareendran dated 19.08.2023 which is marked 'Y' for identification, in my view it would be in the interest of said male minor child that he is adopted by the proposed adopter 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

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

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.”*

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

- (a) For the Adoption of the proposed male minor Ganesh Meucci, born on 19th August, 2017 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 male minor Ganesh Meucci and having all parental rights, privileges and responsibilities over the said minor now in the care and custody of the Petitioner institution Sandhi Niketan Shikshan Sanstha, Udgir, District Latur- 413 517, Maharashtra.

- (c) That the proposed adopters be allowed to change the name of the said minor 'GANESH' to "Ganesh Meucci".
- (d) Leave/permission be granted to apply the concern Municipal Authorities to issue Birth Certificate of the said minor Ganesh Meucci, born on 19/08/2017 and stating thereon that the Proposed Adopters are Parents of the said minor.
- (e) That the Proposed Adopters may be granted leave to remove the said minor Ganesh Meucci from the jurisdiction of this Hon'ble Court and to take the said minor to ITALY or wherever they may reside in future.

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

28 It is directed that the Petitioner shall obtain a further undertaking 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.

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

(R.I. CHAGLA, J.)