

Manoj Wakle

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
AND
IN ITS GENERAL AND INHERENT JURISDICTION

INDIAN ADOPTION PETITION NO.59 OF 2023
WITH
JUDGE'S ORDER NO. 95 OF 2023
IN
INDIAN ADOPTION PETITION NO.59 OF 2023

Vatsalya Trust, Mumbai

...Petitioner/
Applicant

And

Mr. Anup Shrikant Kulkarni and
Mrs. Varsha Anup Kulkarni

...Prospective
Adoptive Parents

Ms. Aarti Prasad Kulkarni for the Petitioner.

Mr. O. Hareendran, Scrutiny Officer, ICSW present.

Mr. Dilip S. Gurav, Chamber Registrar present.

CORAM : R.I. CHAGLA, J.

DATE : 7TH DECEMBER, 2023.

ORDER :

1. By this Indian Adoption Petition jointly filed by the
Petitioner and the Prospective Adoptive Parents, adoption of female
minor Ishwari ("**the said female minor**") born on 29th January, 2023 is

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sought. The biological mother surrendered the said female minor child before the Child Welfare Committee (CWC), Mumbai Suburban District on 02/02/2023 and she was admitted to the Petitioner institution on the same day as per the order of the said CWC dated 02/02/2023 under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015 (“the said Act”). The admission Order of CWC is on record at Page No. 21 to the Petition.

2. After making due inquiry under Section 38 of the said Act, CWC, Mumbai Suburban District declared the said female minor “Legally Free for Adoption” on 11/04/2023. The Free for adoption Certificate is on record at Page Nos. 23-24 to the Petition.

3. The Proposed Adopters are Indian nationals, residing at Nashik, Maharashtra aged about 39 and 40 years respectively. They have been married for the past 10 years (19/11/2013) with no biological children.

4. The Motivation Letter from the Prospective Adoptive Parents is on record at Page No. 42-43 to the Petition.

5. Affidavit by the Chief Functionary of the Specialized Adoption Agency (Petitioner) in support of the adoption of the said

female minor is on record at Page Nos. 105-110 to the Petition.

6. The Minutes of the Adoption Committee Meeting held on 01/06/2023 is on record at Page No. 20 to the Petition and the Committee has decided that the Prospective Adoptive Parents are suitable to adopt the said female minor.

7. The Medical report dated 10/06/2023 of the Prospective Adoptive Father states that “he has a known case of congenital Lt. Hand paresis with slurred speech (Physically Handicap 50%). He is not suffering from any of the chronic or communicable disease and is carrying out his daily routine normally. He is fit to adopt a child with his wife.” His HIV and HbsAg Test reports certify the case as Non Reactive. The said Medical reports can be found at Page Nos. 29-31 & 39-41 to the Petition.

8. The Medical report dated 10/06/2023 of the Prospective Adoptive Mother states that “she is a known case of congenital Hip disorder with torticollis. She is not suffering from any of the chronic or communicable disease and is carrying out her daily routine normally. She is fit to adopt a child along with her husband.” Her HIV and HbsAg Test reports certify the case as Non Reactive. The

Medical reports can be found at Page Nos. 32-38 to the Petition.

9. The Prospective Adoptive Father is working as a Peon with Shri D.D. Bytco Boys High School, Nashik since 2007 and his monthly (January-2023) gross salary is Rs. 44,375/-. The Form No. 16 and Pay slip are on record at page Nos. 57-65 to the Petition. The Prospective Adoptive Mother is a Homemaker.

10. The copies of Pan Card, Proof of Residence and supportive financial documents are on record at Page Nos. 44-45 & 46-51 & 66-68 to the Petition.

11. The Home Study Report Part I: Self Assessment Report by the Prospective Adoptive Parents is on record at Page Nos. 69-77 to the Petition.

12. The Home Study Report Part II: Assessment Report dated 13/06/2023 of the Social Worker of "Adharashram" Nashik has found the Prospective Adoptive Parents suitable for adopting a child. The said report is at page Nos. 78-84 to the Petition.

13. The child security undertaking dated 21/06/2023 of the Prospective Adoptive Mother's cousin brother and sister-in-law

residing at Pune to look after the said female minor in case of any mishap to the Prospective Adoptive Parents is on record at Page Nos. 90-91 to the Petition.

14. The pre-adoption foster care undertaking dated 23/06/2023 is on record at Page No.55-56 to the Petition.

15. The Medical Examination Report of the said female minor dated 27/05/2023 states, "Health status of the child: Normal child. Overall observation of the child: Up to now her overall development is within normal limits". The Proposed Adopters have countersigned the said report, which is on record at Page Nos. 95-101 to the Petition.

16. The HIV report of the said female minor dated 06/02/2023 certifies the case as Negative. The said report is at Page No. 102 to the Petition. The Photograph of the said female minor is on record at Page No.104 to the Petition.

17. As regards the change of name, the Prospective Adoptive parents desire that the said female minor 'Ishwari' be renamed as "Ishwari Anup Kulkarni".

18. The Declaration of consent and undertaking by the Prospective Adoptive Parents states that they are willing to be appointed and declared as the Adoptive Parents of the said female minor. The said Declaration is at Page Nos. 52-54 to the Petition.

19. The undertaking dated 28/06/2023 given by the authorities of “Adharashram”, Nashik for furnishing post adoption follow-up reports is on record at Page No. 113 to the Petition.

20. The Petitioner institution’s recognition from the Women & Child Development, Maharashtra State to place children in adoption is valid for a period up to 05/07/2025.

21. The Scrutiny Officer, Mr. O. Hareendran has tendered the Report/Representation from the Indian Council of Social Welfare dated 30/11/2023 which is taken on record and marked ‘X’ for identification.

22. Having considered the material on record as well as the Report of the Scrutiny Officer which is marked ‘X’, for identification, I am of the view that it would be in the interest of the said female minor child that she is adopted by the Prospective Adoptive Parents.

23. 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 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.”*

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

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

“(a) That the Prospective Adoptive Parents be given the said child in Adoption and be declared as parents and has all parental legal rights, privileges and responsibilities over the said minor.

(b) That the Prospective Adoptive Parents may be granted leave to remove the said minor from the jurisdiction of this Hon’ble Court and to take the said minor out of the jurisdiction of this Hon’ble Court whenever required.

(c) That the concerned Municipal Authority/Birth

Certificate issuing Authority may be directed to issue Birth Certificate in the name of the said minor Ishwari Anup Kulkarni born on and stating thereon that the Prospective Adoptive Parents as the Parents of the said minor.

(d) That the Prospective Adoptive Parents be allowed to change the name of the minor from Ishwari to “Ishwari Anup Kulkarni” born on 29/01/2023.”

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

27. There is an undertaking of the Adoptive Parents in the Judge’s Order to invest sum of Rs.1,00,000/- (Rupees One Lakh only) in the Adopted Child’s name. They also undertake not to withdraw this investment till the Adopted Child attains the age of majority. They have agreed to handover the investment receipt to the Adopted Child on his becoming a major. This undertaking is accepted as an undertaking to this Court.

28. The present Indian Adoption Petition is accordingly, disposed of. There shall be no orders as to costs.

[R.I. CHAGLA, J.]