

Manoj Wakle

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

FOREIGN ADOPTION PETITION NO.20 OF 2023
WITH
JUDGE'S ORDER NO. 98 OF 2023
IN
FOREIGN ADOPTION PETITION NO.20 OF 2023

Apang & Kushtarogi Swavalamban Sanstha,
Shishu Gruha, Dhule

...Petitioner

And

Mr. Filippo Menci, Italian National and
Mrs. Angese Assembri, Italian National

...Proposed
Adopters

Mr. Rakesh K.L. Kapoor i/by Ms. Rakesh K.L. Kapoor & Co., Advocate
for the Petitioner.

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

Mr. Dilip S. Gurav, Chamber Registrar present.

CORAM : R.I. CHAGLA, J.

DATE : 14TH DECEMBER, 2023.

ORDER :

1. This Foreign Adoption Petition is filed seeking adoption
of the male minor Sujit ("the said male minor") born on 06th August,

2022. The biological mother relinquished the said male minor child before the Child Welfare Committee (CWC), Dhule on 14/08/2022 and the said male minor's custody was given to Shishu Gruha run by Apang & Kushtarogi Swavalamban Sanstha, Shishu Gruha, Dhule on the same day as per the order of the CWC, Dhule dated 14/08/2022 under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015 ("the said Act"). The Admission Order and Transfer Orders of the CWC are on record at Page No.19 to the Petition.

2. After making due inquiry under Section 38 of the said Act, the CWC, Dhule declared the said male minor "Legally Free for Adoption" as on 02/11/2022. The Free for adoption Certificate is on record at Page Nos. 17-18 to the Petition.

3. The Central Adoption Resource Authority (CARA), New Delhi has issued its No Objection Certificate dated (27/03/2023) 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 is on record at Page No. 26 to the Petition.

4. The Affidavit of the Authorized person of the Specialized

Adoption Agency (Petitioner) in support of adoption of the said male minor is on record at Page Nos. 20-25 to the Petition.

5. The Proposed Adopters are Italian nationals, both residing at Castello (PG), Italy aged about 38 and 35 years respectively, having been married for the past 8 years (11/07/2015) with no biological children.

6. The Proposed Adopters joint photograph and copies of Passport are on record at Page Nos. 27-39 to the Petition.

7. The Medical Reports dated 28/04/2022 of the Proposed Adopters states that “both are not affected by chronic, venereal, contagious or terminal diseases and do not present any physical or mental condition that can prevent them from taking care of the minor child”. The said Reports also certify that the Prospective Adoptive Parents have tested Negative to pathologies for HIV and Hepatitis “B”. The said Medical Reports are on record at Page Nos. 58-69 to the Petition.

8. The Prospective Adoptive Father is working as a Programmer with Iplabs srl since May 2017 and his gross income for the year 2022 is of Euros 23,441.98. His Income & Employment

Certificate and Income Tax Certificate are on record at Page Nos. 70-91 to the Petition.

9. The Prospective Adoptive Mother is working as a Kindergarten Teacher with DAGSII since September 2021 and her gross income for the year 2022 is of Euros 20,423.41. Her Income & Employment Certificate and Income Tax Certificate are on record at Page Nos. 92-113 to the Petition. The Residence Certificate is on record at Page Nos. 114-124 to the Petition.

10. The childcare arrangement plan undertaking by the Prospective Adoptive Parents is on record at Page Nos.125-126 to the Petition.

11. The Home Study Report dated 08/06/2022 by the authorities of “Associazione e “Lo Scoiattolo ONLUS”, Terni (TR)”, Italy has found the Proposed Adopters suitable for adopting a child. The said report is on record at Page Nos.127-145 to the Petition.

12. The Psychological Evaluation Report dated 09/06/2022 by De Nicola Viviana, Psychologist is on record and the said report has recommended the couple for the adoption of a child. This report is on record at Page Nos. 146-151 to the Petition.

13. The Permission of the Receiving Country as per Article 5/17 of the Hague Convention is on record at Page Nos. 152-157 of the Petition.

14. The child security undertaking dated 17/10/2023 given by the Prospective Adoptive Father's brother and sister-in-law, residing at Citerna, Italy to take care of the said male minor child in case of any unforeseen mishap to the Proposed Adopters is on record at Page Nos. 182-183 to the Petition.

15. The Medical Examination Report of the said male minor dated 12/11/2022 states, "Health Status: Special Need. Sickle cell anemia. This baby needs special attention and periodic evaluation". The Proposed Adopters have countersigned this report, which is on record at Page Nos. 189-197 to the Petition.

16. The H.I.V. report of the said male minor dated 10/11/2022 certifies the case as Non Reactive. The said report is on record at Page No. 198 to the Petition. The Post Card Size Photograph of the said male minor is on record at Page No.199 to the Petition.

17. The Declaration of willingness and undertaking of the Proposed Adopters states that they are willing to adopt the the said

male minor. They 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 said Declaration is on record at Page Nos. 200-207C to the Petition.

18. The undertaking dated 20/02/2023 of the Authorized Foreign Adoption Agency (AFFA) "Associazione "Lo Scoiattolo ONLUS", Terni (TR), Italy 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 Nos. 208-209 to the Petition.

19. The copy of Power of Attorney dated 09/02/2023 duly executed by the proposed adopters in favour the Petitioner institution is on record at Page Nos. 210-218 to the Petition.

20. The Petitioner institution's recognition from the Women & Child Development, Maharashtra State to place children in adoption is valid 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 09/12/2023 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 male minor child that he is adopted by the Proposed Adopters.

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) For the Adoption of the proposed male minor SUJIT, born on 6th August, 2022 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 SUJIT and having all parental rights, privileges and responsibilities over the said minor now in the care and custody of the Petitioner institution Apang & Kushtarogi Swavalamban Sanstha, Shishu Gruha, Dhule, Maharashtra.

(c) Leave/permission be granted to apply the concern Municipal Authorities to issue Birth Certificate of the said minor SUJIT, born on 06/08/2022 and stating thereon that the Proposed Adopters are Parents of the said minor.

(d) That the Proposed Adopters may be granted leave to remove the said minor SUJIT from the jurisdiction of this Hon'ble Court and to take the said minor to ITALY or wherever they may reside in future."

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

27. It is directed that the Petitioner shall obtain a further undertaking from the Adoptive Parents that they shall not give the said male minor 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.

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

[R.I. CHAGLA, J.]