

Sharada

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

INDIAN ADOPTION PETITION NO. 29 OF 2024
WITH
JUDGE'S ORDER NO.42 OF 2024

St. Catherines Home

...Petitioner

And

Avirup Chaki and Taniya Bose (Prospective
Adoptive Parents) and Aditi Chaki (Minor)

...Prospective
Adoptive Parents

Mr. Rakesh Kappor i.by Kappor and co., Advocate for the Petitioner.

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

Mr. D.S. Gurav, Chamber Registrar present.

Ms. Taniya Bose – Prospective Adoptive Parent.

CORAM : R.I. CHAGLA, J.

DATE : 6TH MARCH 2024

ORDER :

1. By this Indian Adoption Petition jointly filed by the Petitioner and the Prospective Adoptive Parents, adoption of female minor Rajni (“**the said female minor**”) born on 28 June 2024 is

sought. The said female minor was admitted to the Petitioner institution on 06/10/2023 as per the order of the Child Welfare Committee (CWC), Mumbai Suburban-II under the Provisions of Juvenile Justice (Care and Protection of Children) Act, 2015 (“the said Act”). Thereafter, the biological mother executed a Deed of surrender before the said CWC, Mumbai Suburban II on 10/10/2023. The Admission Order of CWC is on record at page No. 22 to the Petition.

3. After making due inquiry under Section 38 of said Act, the CWC, Mumbai Suburban-II declared the said female minor Rajni (“Legally Free for Adoption”) on 05/01/2023. The Free for adoption Certificate is on record at page No.21 to the Petition.

4. The Prospective Adoptive Parents are Indian nationals, permanent residents of Thane, Maharashtra and presently residing at Edinburgh, United Kingdom, both aged about 41 years having married for the past 12 years (27/01/2021) with no biological children.

5. The Motivation Letter of the Proposed Adopters is on record at page No. 34 to the Petition.

6. The Minutes of Adoption Committee Meeting held on

05/02/2024 is on record at page Nos.19-20 to the Petition. It states that the Prospective Adoptive Parents are suitable to adopt the said female minor child.

6. 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. 108-112 to the Petition.

7. The Medical Report of the Prospective Adoptive Parents dated 02/02/2024 states that they are physically and mentally fit. Their HIV (I & II) and Hepatitis B test reports certify the case as Non-reactive. The said Medical Report is on record at page Nos. 28-30 to the Petition.

9. The Prospective Adoptive Father is working with Natwest Group in Edinburgh, Scotland, U.K. since September 2023 and his current earning from NatWest is 87,600 Pounds per annum. His Income Affidavit dated 29/01/2024 and Pay slips are on record at page Nos.47-52 to the Petition.

10. The Prospective Adoptive Mother is working with Ooni Limited in Broxburn, Scotland, U.K. since January 2023 and her current annual earning is 70,000 Pounds. Her Income Affidavit dated

29/01/2024 and payroll for the month of November, December and January 2024 are on record at page Nos.53-58 to the Petition.

11. The copies of PAN card, proof of Residence and supportive financial documents are on record at page Nos. 25,28,39-45 & 64-67 to the Petition.

12. The childcare arrangement plan statement is on record at Page No. 110-A to the Petition.

13. The Proof of permanent and present Residence, copies of Aadhar and Pan Cards and other supportive financial documents are on record at page Nos.35-39 & 59-60 to the Petition.

14. The childcare plan Declaration of the Prospective Adoptive Mother and her mother-in-law residing at Kolkata are on record at page Nos.61-64 to the Petition.

15. Home Study Part II : Assessment Reports dated 05/08/2021 of the Social Worker of Specialized Adoption Agency, (“Vatlaya Trust”) Mumbai is on record and the report has found the Prospective Adoptive Parents are suitable for adopting a child. The said Home Study Reports are on record at page Nos. 73-77 to the Petition.

16. The child security undertaking dated 29/01/2024 given by the Prospective Adoptive father's first cousin residing at Lucknow, Uttar Pradesh to look after the said female minor in case of any mishap to the Prospective Adoptive Parents is on record at page Nos.87-91 to the Petition.

18. The Medical Examination Report of the said female minor dated 04/01/2024 states, "Health status of the child : Normal child. Overall Observation of the child : Rajni is slightly delayed in her gross motor milestones, which is expected in premature babies. She is being closely observed regarding the same, so as to intervene if required". The Proposed Adopters have countersigned the said Report which is on record at page Nos. 95-104 to the Petition.

19. As regards the change of name, the Proposed Adopters desire that the said female minor 'Rajni be renamed as "Aditi Chaki".

20. The HIV Report of the said female minor dated 14/10/2023 certifies the case as Negative. This Report is on record at page No. 106 to the Petition.

21. The Post Card Size Photograph of the said female minor is on record at page No.107 to the Petition.

22. The Declaration of consent, willingness and undertaking by the Prospective Adoptive Parents is on record and it states that they are willing to be appointed and declared as the Prospective Adoptive Parents of the said female minor, the said declaration is on record at page Nos.40-41 to the Petition.

23. The Pre-adoption foster care undertaking dated 29-01-2024 is on record at page Nos.42-44 to the Petition.

24. The undertaking dated 09/02/2024 given by the Specialized Adoption Agency ("Vatsalya Trust"), Kanjur Marg, Mumbai for furnishing post adoption follow-up reports is on record at page No. 113 to the Petition.

25. The learned Counsel appearing for the Prospective Adoptive Parent has tendered Affidavit dated 06/03/2024 wherein certain directions have been sought. Affidavit is accepted and taken on record and marked as "X" for identification. The directions read thus:-

a] To direct the Vice Consul, Consulate General of India, Edinburgh, to prepare the follow-up-reports of child ADITI CHAKI, born on 28th June, 2023 as per the directions of this Court.

b] To furnish a copy of the reports thus prepared to the Adoptive Parents in order for them to file the reports with this Court, the Petitioner Agency and the Indian Council of Social Welfare.

26. The said affidavit it has been affirmed by the Prospective Adoptive Mother. The Prospective Adoptive Mother has that she and her husband (Prospective Adoptive father) are Indian Citizens having permanent residence in Thane. In view thereof no Foreign Adoption Agency can prepare the post adoption follow up reports as per the norms prevalent with regards to Foreign residents who are not citizen of that country.

26. The Prospective Adoptive mother has further stated that as per 14(7) chapter III of the Central Adoption Resource Authority (CARA) regulation 2022, the Prospective Adoptive Parents can approach the Indian Embassy to carry out the follow up reports process, once this Court directs the concerned Indian Consulate in this regards. The Indian Consulate is to comply with directions given which is Annexed at Exhibit "A" to this affidavit in the relevant extract of the CARA Regulation.

27. The Prospective Adoptive Mother has further stated in

the said Affidavit that the Prospective Adoptive Father approached the concerned Indian Consulate for preparing the follow-up-reports as per the said Regulation of CARA and the Indian Consulate has agreed for the same. The reply of the concerned Indian consulate is annexed at Exhibit B to the said Affidavit.

28. Accordingly, the Prospective Adoptive Parents have undertaken to comply with the aforementioned directions in the event they are issued by this Court and that they will file the said reports, as prepared by the concerned Indian consulate with this Court, and the Indian Council of Social Welfare without fail.

29. Having considered the averments in the said Affidavit 06/03/2024 which is affirmed by the Prospective Adoptive Mother, I am satisfied that such directions are necessary to be issued which is as per the relevant CARA Regulation 2022.

30. Accordingly the directions in para no. 7 (a) to (c) are issued to the Vice Consul, Consulate General of India, in terms of Paragraph No.7(a) to (b) of the said Affidavit.

31. The Petitioner institution's recognition from the

Women & Child Development, Maharashtra State to place children in adoption is valid for a period up to 05/05/2025.

32. Mr. O. Hareendran, Scrutiny Officer has tendered Report / Representation from the Indian Council of Social Welfare (ICSW) dated 29/02/2024 which is taken on record and marked 'Y' for identification.

33. Having considered the material on record as well as the Report of the Scrutiny Officer dated 29/02/2024 marked Y, in my view, it would be in the interest of the said female minor if she is adopted by the Proposed Adoptive Parents.

34. 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."

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

36. 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 Aditi Chaki in Adoption and be declared as parents having 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 Aditi Chaki 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 Certificates Issuing Authority may be directed to issue Birth Certificate in the name of the said minor Aditi Chaki, born on 28/06/2023 and stating thereon that the Prospective Adoptive Parents are the Parents of Parents of the said minor.

(d) That the Prospective Adoptive Parent be allowed to change the name of the minor from ‘Rajni’ to “Aditi Chaki”.

37. The Judge’s Order is also accepted and separately signed.

38. In the Judge’s Order there is an undertaking of the Adoptive

Parents to invest an amount of Rs.2,00,000/- (Rupees Two Lakh only) in the name of Adopted Child in any Nationalized Bank. They also undertake not to withdraw this investment till the Adopted Child attains majority. They have agreed to handover the investment receipt to the Adopted Child on her becoming a major. This undertaking is accepted as an undertaking to this Court.

40. The present Indian Adoption Petition is accordingly, disposed of.

41. There shall be no orders as to costs.

[R.I. CHAGLA, J.]