

*Sharada*

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

INDIAN ADOPTION PETITION NO. 35 OF 2024  
WITH  
JUDGE'S ORDER NO. 50OF 2024

Maharashtra State Womens Council Adoption  
Group, Asha Sadan Balgruh ...Petitioner

And

Gajanan Arvind Nerkar and Pooja Gajanan ...Prospective  
Nerkar (PROP Parents) and Shivani Nerkar Adoptive Parents  
(Minor).

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Ms. Dipal Sanjanwala Mehta, Advocate for the Petitioner.

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

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

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CORAM : R.I. CHAGLA, J.

DATE : 13TH MARCH 2024

ORDER :

1. By this Indian Adoption Petition the Petitioner and the Prospective Adoptive Parents have sought adoption of the female minor Shivani (“the said female minor”) born on 26/08/2022. The

biological mother surrendered her child before the Child Welfare Committee (CWC), Mumbai – City I on 27/09/2023 and the child's safe custody was given to the Petition institution on the same day as per the order of the said CWC dated 27/09/2023 under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015. The CWC Admission order is on record at page No.21 to the Petition.

2. After making due inquiry under section 38 of Juvenile Justice (Care and Protection of Children) Amendment Act, 2021, the CWC, Mumbai City-II declared the said female minor Shivani ("Legally Free for Adoption") on 14/12/2023. The Free for Adoption order is on record at page Nos.22-24 to the Petition.

3. The Prospective Adoptive Parents are Indian nationals residing at Pune, Mhaarashtra, aged about 39 years and 35 years respectively. They having married for the past 11 years (01/02/2013) with no biological / adopted children.

4. The Motivation Letter of the Proposed Adopters is on record at page No. 27 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. 156-162 to the Petition.

6. The Minutes of Adoption Committee meeting held on 08/02/2024 is on record at page No.18-20 to the Petition. The Committee has decided that the Prospective Adoptive Parents are suitable to adopt the said female minor.

7. The Medical Report of the Prospective Adoptive Parents dated 22/01/2024 states that "health of the Prospective Adoptive Parents does not disqualify them in parenting a child in anyway". Their HIV and HbsAg test reports certifies the case as Non Reactive. These reports can be found at page Nos.30-41 to the Petition.

8. The Prospective Adoptive Father is working as an Assistant Professor with Indira Institute of Management-BBA, Pune since June, 2023 and his monthly (December-2023) gross salary is Rs.66,692/-. The salary slips and Income Tax Returns are on record at page Nos.53-70 to the Petition. The Prospective Adoptive Mother is a Homemaker.

9. The proof of residence, copies of PAN card and other supportive financial documents are on record at page Nos.47, 71, 113

& 772-113 to the Petition.

10. The Childcare Arrangement Plan Undertaking of the Prospective Adoptive Mother is on record at page No.117-118 to the Petition.

11. The Home study report Part I Self Assessment by the Prospective Adoptive Parents is on record at page Nos.122-132 to the Petition.

12. The Home Study Part II : Assessment Reports of the Specialized Adoption Agency, ("Bharatiya Samaj Seva Kendra"), Pune dated 16/03/2021 and 17/02/2024 are on record and the reports have found the Prospective Adoptive Parents suitable for adopting a child. The said Home Study Reports are at page Nos.119-121 & 133-140 to the Petition.

13. The child security undertaking dated 09/02/2024 given by 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. 154-155 to the Petition.

14. The Pre-adoption foster care undertaking dated 09/02/2024 is on record at page Nos.50-52 to the Petition.

15. The Joint Declaration of consent & Willingness to adopt by the Prospective Adoptive Parents states that they are willing to be appointed and declared as the Adoptive Parents of the said minor. The Prospective Adoptive Parents have further agreed and undertaken to the Petitioner institution and to the Hon'ble Court that they will not give the said child in further adoption to anyone residing in or outside India. The said declaration can be found at page Nos.48-49 to the Petition.

16. The Medical Examination Report of the said female minor dated 10/01/2024 states, "Health status Normal. Overall Observation of the child: A normal, healthy child". The Prospective Adoptive Parents have countersigned the Medical Examination Report which is on record at page Nos.147-151 to the Petition.

16. The HIV report of the said female minor dated 07/12/2023 certifies the case as Non Reactive. This report is on record at page No. 152 to the Petition. The Post Card Size Photograph of the said female minor is on record at page No.26 to the Petition.

17. As regards the change of name, the Proposed Adoptive Parents desire that the said female minor 'Shivani' be renamed as "Girija Gajanan Nerkar".

18. The undertaking dated 19/02/2024 given by the Specialized Adoption Agency ("Bharatiya Samaj Seva Kendra"), Pune for furnishing post adoption follow-up reports is on record at page No.153 to the Petition.

19. 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.

20. Mr. O. Hareendran, Scrutiny Officer has tendered Report / Representation from the Indian Council of Social Welfare (ICSW) dated 07/03/2024 which is taken on record and marked 'X' for identification.

23. Having considered the material on record as well as the Report of the Scrutiny Officer dated 07/03/2024 marked 'X', in my view, it would be in the interest of the said female minor child if she is adopted by the Proposed Adoptive 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.**,<sup>1</sup> 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.”*

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

*“(a) This Hon’ble Court may be pleased to appoint the Co-Petitioners, Gajanan Arvind Nerkar and Pooja Gajanan Nerkar as the adoptive parents of the female minor, Shivani @ Girija Gajanan Nerkar, in the care of the Maharashtra State Women’s Council Adoption Group at Maharashtra State Women’s Council Asha Sadan Balgruh, Asha Sadan MARG, Umerkkhadi, Mumbai – 400 009,*

*(b) That the Co-Petitioners be allowed to change the name of the minor from ‘Shivani’ to ‘Girija Gajanan Nerkar’,*

*(c) That the Co-Petitioners may be granted leave to remove the aforesaid child from the jurisdiction of this*

*Hon'ble Court and to take the minor alongwith them, i.e. too the Co-Petitioners' family wherever they may reside or their work may require them to,*

*(d) That the concerned Municipality / the Birth Certificate Issuing Authority may be directed to issue Birth Certificate for the said minor within five working days from the date of application of the Petitioner, as per the provisions of regulation 36 of the Adoption Regulations,*

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

28. In the Judge's Order there is an undertaking of the Adoptive Parents to invest an amount 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 majority. They have agreed to handover the investment receipt to the Adopted Children on her becoming a major. This undertaking is accepted as an undertaking to this Court.

29. The Indian Adoption Petition is accordingly, disposed of.

30. There shall be no orders as to costs.

**[R.I. CHAGLA, J.]**