

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
AND
IN ITS GENERAL AND INHERENT JURISDICTION
FOREIGN ADOPTION PETITION NO. 3 OF 2024
WITH
JUDGE'S ORDER NO. 6 OF 2024

Maharashtra State Women's Council Adoption ...Petitioner

And

Rupa Kantilal Kotecha

...Proposed
Adoptive Parent

Ms. Dipal Sanjanwala Mehta for the Petitioner.

Mr. O. Hareendran, Scrutiny Officer present.

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

CORAM : R.I. CHAGLA J

DATE : 11 January 2024

ORDER :

1. This Foreign Adoption Petition is filed seeking adoption of the female minor Kiyara ("**the said female minor**") born on 6th September 2019. The said female minor was found abandoned by the V. P. Road Police Station on 16th September 2019 and produced

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before the Child Welfare Committee (CWC), Mumbai City-I and the child's custody was given to the Petitioner institution's Bal Gruha on the same day. Thereafter the said female minor was transferred to the Petitioner Institution at Umerkhadi on 21st April 2022 for the purpose of future rehabilitation as per the order of the said CWC dated 21st April 2022 under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015 ("**the said Act**"). The Transfer Order of the CWC, Mumbai City -I is on record at page No. 62 to the Petition.

2. After making due inquiry under Section 38 of the said Act, the CWC, Mumbai City I declared the said female minor Kiyara "Legally Free for Adoption" on 9th November 2022. The Free for Adoption Certificate is on record at Page Nos. 63-64 to the Petition.

3. The Central Adoption Resource Authority (CARA), New Delhi has issued its No Objection Certificate (dated 28th November 2023) to this adoption as per Adoption Regulations 2022 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. 66 to the Petition.

4. The Affidavit by the Authorized Representative of the Specialized Adoption Agency (Petitioner) in support of adoption of said female minor is on record at Page Nos. 56-61 to the Petition.

5. The Prospective Adoptive Parent is a spinster of American national of Indian origin residing at California, U.S.A. aged about 45 years with no biological/adopted children.

6. The Prospective Adoptive Parent's Passport copy and photograph is on record at page Nos. 28-30 and 53-55 to the Petition.

7. The Motivation Letter of the Prospective Adoptive Parent is on record at page Nos. 19-22 to the Petition.

8. The Medical Reports dated 13th September 2022 of the Prospective Adoptive Parent is on record and it states, "She is having a history of ventricular tachyarrhythmia in 2012 status post ablation. She has been doing well since then and does not take any cardiac medications and does not require follow up with cardiology. She does not have any symptoms currently. Her long-term prognosis is

excellent and does not affect her ability to care for a child. She is advised to seek medical attention if she ever develops symptoms". Her HIV & HbsAg Reports certify the case as Negative. These reports are on record at page Nos. 40-49 to the Petition.

9. The Prospective Adoptive Parent is working as Emergency Room Charge Nurse-Clinic Y1 with Kaiser since August 2011 and her gross income for the current year (2023) is of \$91,927.42. She also owns "Code Blue Certs," since September 2014, where she teaches CPR, advanced cardiovascular life support and pediatric life support. Her Total Income for the year 2022 as per U.S. Income Tax Return 2022 is \$222,048. Her Employment and Income Certificate, Salary Slips and Income Tax Returns are on record at page Nos. 146-176 to the Petition.

10. The Proof of Residence and Financial Declaration of Proposed Adoptive Parent is on record at page Nos. 34-36 and 143-145 to the Petition.

11. The childcare arrangement undertaking of the Proposed Adoptive Parent is on record at page No. 181-182 to the

Petition.

12. The Home Study Reports dated 23rd May 2022 and 26th September 2022 by the authorities of “Bal Jagat-Children’s World Inc.,” California, U.S.A. and the Reports recommended and approved the Prospective Adoptive Parent to adopt one male or female child, 0-8 years old, from India who is healthy or has minor special needs. These Reports are on record at page Nos. 95-121 to the Petition.

13. The Psychological Assessment Report dated 7th February 2022 by the Orange County Health Psychologists, Inc. California, USA states that the Prospective Adoptive Parent is a prime candidate as an adoptive mother and recommends her for adoption of a child. The said Report is on record at page Nos. 125-128 to the Petition.

14. The Permission of the Receiving Country as per Article 5/17 of the Hague Convention is on record at page Nos. 138-142 to the Petition.

15. The child Security undertaking dated 2nd October 2023 of the Prospective Adoptive Mother's Niece and Nephew-in-law residing at California, USA to take care of the said female minor child in case of any unforeseen mishap to the Prospective Adoptive Parent is on record at page Nos. 185-191 to the Petition.

16. The Medical Examination Report of the said female minor dated 23rd November 2022 states "Health status of the child: special needs child. Overall Observation of the child: Her physical and mental development normal for age. The child is on treatment for Tuberculosis since 1st July 2022. Since 5th May 2023 the child was detected with Cervical Lymph Nodes despite having regular treatment for Pulmonary TB. Hence after investigation she was put on the regime for multi drug resistant TB". The Prospective Adoptive Parent has countersigned this Report. The said Report is on record at page Nos. 73-84 to the Petition.

17. The I.Q. Report of the said female minor dated 14th June 2023 states, "Based on the Kamat's Test of Intelligence she gains an Intellectual Quotient of 84 points, which places her in Low Average Range of Intellectual Functioning". The Prospective Adoptive

Parent has countersigned this report. The Report is on record at page Nos. 85-88 to the Petition.

18. The H.I.V. Report of the said female minor dated 1st March 2023 certifies the case as Non-Reactive. This Report is on record at page No. 93 to the Petition. The post card size photograph of the said female minor is on record at page No. 94 to the Petition.

19. As regards the change of name, the Prospective Adoptive Parent desires that the said female minor 'Kiyara' be renamed as "**Kiyara Kotecha**".

20. The Declaration of consent and undertaking of the Prospective Adoptive Parent is on record and it states that she is willing to adopt the said female minor. She further undertakes that she will allow personal visits by the Social Worker of Authorized Foreign Adoption Agency (AFFA) during post-adoption follow-up. The said Declaration/undertaking is on record at page Nos. 213 and 226 to the Petition.

21. The undertaking dated 25th September 2023 of

the Authorized Foreign Adoption Agency (AFFA) “Children’s Home Society of Minnesota” USA to provide follow-up report of the said female minor child and make alternative arrangement in case of disruption of the adoptive family is on record at page No. 223 to the Petition.

22. The copy of General Power of Attorney dated 10th October 2023 duly executed by the Proposed Adoptive Parent in favour the Petitioner institution is on record at page Nos. 227-231 to the Petition.

23. The Petitioner institution’s recognition from the Women & Child Development, Maharashtra State to place children in adoption is valid up to 5th May 2025.

24. Mr. O. Hareendran, Scrutiny Officer has tendered Report/Representation of Indian Council of Social Welfare dated 5th January 2024, which is taken on record and marked “X” for identification.

25. Having considered the material on record as well as the Report of Mr. O. Hareendran, Scrutiny Officer marked X, I am

of the view that it would be in the interest of the said female minor, if she is adopted by the Prospective Adopters.

26. 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

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

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."*

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

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

"(a) This Hon'ble Court may be pleased to appoint the proposed adoptive parent Rupa Kotecha as the parent/mother of the female minor, Kiyara now in the care of Maharashtra State Women's Council Adoption Group, Asha Sadan Balgruh, Asha Sadan Marg, Umerkhadi,

Mumbai - 400 009,

- (b) *That the proposed adoptive parent be allowed to change the name of the minor, from 'Kiyara' to 'Kiyara Kotecha',*
- (c) *That the proposed adoptive parent may be granted leave to remove the aforesaid child, Kiyara @ Kiyara Kotecha from the jurisdiction of this Hon'ble Court and to take the minor out of India along with her, to her home i.e. wherever she may require her to,*
- (d) *That the Petitioner be granted leave to apply to the concerned Municipal Authorities to issue a Birth Certificate of female minor 'Kiyara Kotecha' showing the name of the proposed adoptive parent/mother, Rupa Kotecha as her Parent,*
- (e) *That the concern Municipality/the Birth Certificate Issuing Authority may be directed to issue Birth Certificate for the said minor 'Kiyara Kotecha' within five working days from the date of application of the Petitioner, as per the provisions of sub-regulation 15 of the Adoption Regulations 18 and regulation 36,*
- (f) *The concerned Regional Passport Office may be directed to issue Passport for the said 'Kiyara Kotecha' within ten days from, the date of application as per sub-regulation(4) of regulation 18 and regulation 38."*

29. Judge's Order is accepted and signed separately.
30. It is directed that the Petitioner institution will obtain further undertakings 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.
31. The Foreign Adoption Petition is accordingly, disposed of. There shall be no order as to costs.

[R.I. CHAGLA J.]