

Kavita S. J.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INDIAN ADOPTION PETITION NO.7 OF 2024
WITH
JUDGE'S ORDER NO.13 OF 2024
IN
INDIAN ADOPTION PETITION NO.7 OF 2024

Maharashtra State Women's Council Adoption ...Petitioner
Group at Maharashtra State Women's Council,
Asha Sadan Balgruh, Asha Sadan Marg,
Umerkhadi, Mumbai.

And

Swati Malagi

...Co-Petitioner
Proposed Adopter

Ms. Dipal S. Mehta, Advocate for Petitioners.

Mr. O. Hareendran, Scrutiny Officer, Indian Council of Social Welfare.

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

CORAM : R.I. CHAGLA, J.

DATE : 18TH JANUARY, 2024.

ORDER :

1. By this Indian Adoption Petition, the Petitioner and proposed Adopter have sought adoption of the male minor Vinayak ("the said male minor") born on 13th April, 2020.

2. The said male minor was found abandoned by the Nagpada Police Station on 13/07/2022 and produced before the Child Welfare

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Committee (CWC), Mumbai City-I and his custody was given to the Petitioner institution on the same day. Thereafter the said male minor was transferred to the Petitioner Institution at Umerkhadi on 09/01/2023 as per the order of the said CWC under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015 (“the said Act”) for the purpose of future rehabilitation. The Transfer Order of the CWC, Mumbai City-I is on record at Page No.18 to the Petition.

3. After making due inquiry under Section 38 of said Act, the CWC, Mumbai City-II declared the said male minor “Legally Free for Adoption” as on 28/07/2023. The Free for Adoption order is on record at Page Nos. 19-21 to the Petition.

4. The Prospective Adoptive Parent is a Spinster of Indian national residing at Dharwad, Karnataka, aged about 35 years with no biological/adopted children.

5. The Motivation Letter of the Prospective Adoptive Parent is on record at Page No. 24 to the Petition.

6. Affidavit by the Chief Functionary of the Specialized Adoption Agency in support of the adoption of the said male minor is on record at Page Nos. 158-164 to the Petition.

7. The Minutes of Adoption Committee meeting held on 19/10/2023 is on record at Page Nos. 16-17 to the Petition and the committee has decided that the Prospective Adoptive Parent is suitable to adopt the said male minor.

8. The Medical Report of the Prospective Adoptive Parent dated 12/10/2023 states, "The health of the Prospective Adoptive Parent does not disqualify her in parenting a child in anyway". Her HIV and HBsAg test reports certifies the case as Non Reactive. The said Medical Reports are on record at Page Nos. 27-29 to the Petition.

9. The Prospective Adoptive Parent is self-employed (Practicing Advocate) since 2014 and her income for the Assessment Year 2023-24 is Rs.5,79,000/-. Her Income Tax Returns are on record at Page Nos. 52-72 to the Petition.

10. The proof of residence, copies of PAN card and other supportive financial documents are on record at Page Nos. 26, 50 & 73-105 to the Petition.

11. The childcare arrangement plan undertaking of Prospective Adoptive Parent is on record at Page Nos. 106-107 to the Petition. The Home Study Report Part I Self Assessment by the Prospective

Adoptive Parent is on record at Page Nos. 108-116 & 122-126 to the Petition.

12. The Home Study Report Part II: Assessment Reports of Specialized Adoption Agency “Amulya (G) Shishugruha” Hubballi, Karnataka dated 13/04/2019 and 10/08/2023 are on record and the reports have found the Prospective Adoptive Parent suitable for adopting a child. The said Home Study Reports are at Page Nos. 117-121 & 127-130 to the Petition.

13. The child security undertaking dated 26/10/2023 given by the Prospective Adoptive Parent’s brother and sister-in-law residing at Dharwad, Karnataka to look after the said male minor in case of any mishap to the Prospective Adoptive Parent is on record at Page Nos. 152-157 to the Petition.

14. The Pre-adoption foster care undertaking dated 26/10/2023 is on record at Page Nos. 47-49 to the Petition.

15. The Joint Declaration of consent & willingness to adopt by the Prospective Adoptive Parent states that she is willing to be appointed and declared as the Adoptive Parent of the said male minor. The Prospective Adoptive Parent has further agreed and

undertaken to the Petitioner institution that she will not give the said male minor child in further adoption to anyone residing in or outside India. The said declaration is on record at Page Nos.45-46 to the Petition.

16. The Medical Examination of the said male minor Vinayak dated 27/09/2023 states, "Health Status: Normal. Overall Observation of the child: A normal, healthy child". The Prospective Adoptive Parent has countersigned the said report. The said Report is on record at Page Nos. 138-143 to the Petition.

17. The Report of Psychological Testing of the said male minor dated 09/08/2023 states "Based on the VSMS, he gains a Social Quotient of 67 points which places him in mild level of social functioning". The Prospective Adoptive Parent has countersigned the said Report. The said Report is on record at Page Nos. 144-145 to the Petition.

18. The HIV report of the said male minor dated 07/08/2023 certifies the case as Non Reactive. The said Report is on record at Page No.150 to the Petition.

19. The Post Card Size Photograph of the said male minor is on

record at Page No. 23 to the Petition.

20. As regards the change of name, the Prospective Adoptive Parent desire that the said male minor 'Vinayak' be renamed as "Aryan Swati Malagi".

21. The undertaking dated 28/11/2023 given by the Specialized Adoption Agency "Amulya (G) Shishugruha" Hubballi, Karnataka for furnishing post adoption follow-up reports is on record at Page No. 151 to the Petition.

22. The Petitioner institution's recognition from the Women & Child Development, Maharashtra State to place children in adoption is valid up to 05/05/2025.

23. Mr. O. Hareendran, Scrutiny Officer has tendered Report / Representation from the Indian Council of Social Welfare (ICSW) dated 11th January, 2024 which is taken on record and marked 'X' for identification.

24. Having considered the material on record as well as the Report of the Scrutiny Officer dated 11th January, 2024 marked 'X', in my view, it would be in the interest of the said male minor if he is

adopted by the Proposed Adoptive Parent.

25. 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.”*

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

27. In view of the above, the Petition is allowed in terms of the prayer clauses (a) to (e), which reads thus :

“(a) This Hon’ble Court may be pleased to appoint the Co-Petitioner, Ms. Swati Malagi as the Adoptive Parent of the male minor, Vinayak @ Aryan Swati Malagi, in the care of Maharashtra State Women’s Council Adoption Group at Maharashtra State Women’s Council Asha Sadan Balgruh, Asha Sadan Marg, Umderkhadi, Mumbai-400 009’;

(b) That the Co-Petitioner be allowed to change the name of the minor’ Vinayak’ to’ Aryan Swati Malagi’;

(c) That the Co-Petitioner may be granted leave to remove the aforesaid child from the jurisdiction of this Hon’ble Court and to take the minor along with her, i.e. to the Co Petitioner’s family wherever she may reside or her work may require her to;

(d) That the Co-Petitioner Swati Malagi may be granted leave to make an application to the passport authorities or any other authorities for the same;

(e) That the concern 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.”

28. Judge’s order is accepted and signed separately.

29. In the Judge’s Order there is an undertaking of the Adoptive Parent to invest an amount of Rs.1,00,000/- (Rupees One Lakh only) in the name of Adopted Child. She has also undertake not to withdraw this investment till the Adopted Child attains majority. She has 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.

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

31. There shall be no orders as to costs.

[R.I. CHAGLA, J.]