

Sharada

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

FOREIGN ADOPTION PETITION NO. 17 OF 2024

WITH

JUDGE'S ORDER NO. 95 OF 2024

IN

FOREIGN ADOPTION PETITION NO. 17 OF 2024

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Children of the World India Trust

..Petitioner

And

Ms. Aida Alosio Silio

..Proposed Adopter

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

Ms. Vandana Chincholkar, Scrutiny Officer, ICSW present.

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

CORAM : R.I. CHAGLA, J.

DATE : 24TH JULY 2024

ORDER :

1. By this Foreign Adoption Petition the Petitioner and the Proposed
Adopter have sought adoption of male minor Shahid ("the said male

minor”) born on 23/03/2023. The said male minor was surrendered by the mother of his biological mother in turn a minor before the Child Welfare Committee (CWC), Palghar on 20/04/2023. Thereafter the CWC, Palghar transferred the said minor to CWC, Thane on the same day and the child’s safe custody was given to the Petitioner institution as per the order of the CWC, Thane dated 20/04/2023 under the Provisions of Juvenile Justice (Care and Protection of Children) Act 2015, (‘the said Act’). The Safe Custody order of the CWC is on record at page Nos.17 to the Petition.

2. After making due inquiry under Section 38 of the said Act, the CWC Mumbai, City-I declared the said male minor “Legally Free for Adoption” as on 26/06/2023. The Free for Adoption Certificate is on record at page No.16 to the Petition.

3. The Central Adoption Resource Authority (CARA), New Delhi has issued No Objection Certificate dated 26/06/2024 to this adoption as per Adoption Regulations 2022 and Article 17 (c) of the Hague Convention on the Protection of the Children and Cooperation in respect of Inter-country Adoption 1993. The said No-objection Certificate is on record at page No.24 to the Petition.

4. The undertaking / affidavit by the Petitioner institution

is on record at page Nos.18-23 to the Petition.

5. The Proposed Adopter is a Spinster of Spanish Nationality, residing at Santander, Spain. She is aged about 44 years and has no biological/adopted children.

6. The Prospective Adoptive Parent's Photograph and Passport copy is on record at page Nos.25-28 to the Petition.

7. The Health Report dated 02/10/2023 of the Prospective Adoptive Parent states "Does not suffer from any kind of infectious, contagious disease or from any physical or psychological pathology. She has completed the vaccination schedule". Her HIV and Hbs Antigen test Report certify the case as Negative. These reports are on record at page Nos.37-48 to the Petition.

8. The Prospective Adoptive Mother is a Secondary school teacher at the Bezana Secondary School, Department of Education, Govt. of Cantabria and her monthly (May-2024) salary is Euro 3,109.46. Her Salary certificate and Income Tax Certificates are on record at page Nos.49-64 to the Petition.

9. The Financial Declaration and Certificate of Residence are on

record at page Nos.65-73 to the Petition.

10. Childcare Arrangement Plan Declaration of the Prospective Adoptive Parent is on record at page Nos.74-76 to the Petition.

11. The Home Study Reports dated 29/07/2021 and 08/04/2022 by the Authorities of “Cantabrian Institute of Social Services”, Govt. of Cantabria, Spain is on record and the reports have found the Prospective Adoptive Parent suitable to adopting a child. The said Home Study Reports are on record at page Nos.77-98 to the Petition.

12. The Psychological Evaluation Report of the Prospective Adoptive parent dated 04/08/2021 by the authorities of “Cantabrian Institute of Social Services”, Govt. of Cantabria, Spain is on record and the report has recommended the Prospective Adoptive Parent for the adoption of a child. This report can be found at page Nos.99-116 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.117-128 to the Petition.

14. The Child Security Undertaking dated 23/04/2024 given by the Prospective Adoptive Parent’s close friends residing at Cantabria,

Spain to look after the said male minor in the event of any unforeseen mishap to the Prospective Adoptive Parent is on record at page Nos.137-139 to the petition.

15. The Medical Examination Report of the said male minor dated 29/06/2023 states “Health Status: Normal. Overall Observation of the child: Normal for age”. The Prospective Adoptive Parent has countersigned this Report which is on record at page Nos.144-151 to the Petition.

16. The H.I.V. Report of the said male minor dated 16/04/2024 certifies the case as Non Reactive. This report is on record at page No.153 to the Petition. The Post Card Size Photograph of the said male minor is on record at page No.154 to the Petition.

17. The Declaration of willingness and undertaking of the Prospective Adoptive Parent states that she is willing to be appointed and declared as the Adoptive Parent of said male minor. She further undertakes that she will allow personal visits by the Representative of the Authorized Foreign Adoption Agency (AFAA) during post-adoption follow-up as per Adoption Guidelines. The said Declaration is on record at page Nos.155-158 to the Petition.

18. The Undertaking dated 16/10/2023 by the Authorized of Foreign Adoption Agency (AFAA) “Namaste Asociation Para La Promocion De La Infancia”, Spain to provide follow-up reports of the child and make alternative arrangements in case of disruption of the adoptive family is on record at page Nos.159-161 to the Petition.

19. The Power of Attorney dated 23/11/2023 duly executed by the Prospective Adoptive Parent in favour of the Petitioner institution is on record at page Nos.162-166 to the Petition.

20. The Petitioner institution’s recognition from the Women & Child Development, Maharashtra State to place children in adoption is valid for a period up to 05/005/2025.

21. Ms. Vandana Chincholka, Scrutiny Officer who is present has tendered Report / Representation of Mr. O. Hareendran, Scrutiny Officer from the Indian Council of Social Welfare (ICSW) dated 15/07/2024 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 marked ‘X’, in my view, it would be in the interest of the said male minor that he is adopted by the

Proposed Adoptive Parents.

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

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

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 Shahid born on 23/03/2023 by the proposed Adopter under Section 59(7) of the Juvenile Justice Act, 2015.

(b) For declaring the Proposed Adopter as Adoptive Parent of the said minor Shahid, having all parental rights, privileges and responsibilities over the said minor now in the care and custody of Children fo the World

India Trust, Vishwabalak Kendra, Plot No.9 & 10, Sector-12 Nerul, Navi Mumbai – 400 706.

(c) Leave/permission be granted to apply the concerned Municipal Authorities to issue Birth Certificate of the said minor Shahid born on 23/03/2023 and showing the proposed adopter as Parent.

(d) That the Proposed Adopter may be granted leave to remove the said minor Shahid from the jurisdiction of this Hon'ble Court and to take the said minor to SPAIN or wherever she may reside in future.

26. It is directed that the Petitioner institution shall obtain a further undertaking from the Adoptive Parent that she 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.

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

28. The present Foreign Adoption Petition is accordingly disposed of.

29. There shall be no order as to costs.

[R.I. CHAGLA, J.]

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