

Sharada

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

FOREIGN ADOPTION PETITION NO. 19 OF 2024

WITH

JUDGE'S ORDER NO.97 OF 2024

IN

FOREIGN ADOPTION PETITION NO. 19 OF 2024

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Janani Ashish Charitable Trust,

...Petitioner

And

Jessy Pushpa Vandervaeren, Belgian National ...Proposed Adopter

Mr. Rakesh Kapoor i.by Mr. Rakesh K. Kapoor, 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 Adopters have sought adoption of female minor Muskan (“the said female

minor”) born on 03/21/2021. The said female minor was found abandoned by the Rabodi Police Station Thane on 10/12/2021 and produced before the Child Welfare Committee, (CWC) Thane on the same day. Thereafter the said CWC, Thane admitted the said female minor to the Petitioner Institution vide their order dated 10/12/2021 under the Provisions of Juvenile Justice (Care and Protection of Children) Act 2015, (‘the said Act’). The Admission Order of the CWC is on record at page No.18 to the Petition.

2. After making due inquiry under Section 38 of the said Act, the CWC Thane declared the said female minor “Legally Free for Adoption” as on 24/11/2023. The Free for Adoption Certificate is on record at page No.17 to the Petition.

3. The Central Adoption Resource Authority (CARA), New Delhi has issued No Objection Certificate dated 28/03/2024 to this adoption as per Adoption Regulations 2017 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.25 to the Petition.

4. The undertaking / affidavit by the Petitioner institution is on

record at page Nos.19-24 to the Petition.

5. The Proposed Adoptive Parent is a Spinster of Belgian Nationality of Indian origin (OCI Card holder), residing at Belgium. She is aged about 40 years and has no biological /pr adopted children.

6. The Proposed Adoptive Parent's Photograph, Copies of Passport and Certificate of Registration-Overseas Citizen of India are on record at page Nos.26 to 29 to the Petition.

7. The Health Report dated 27/03//2024 of the Prospective Adoptive Parent states that "She is in good health and free from infectious diseased, chronic illness and terminal conditions. Patient is fit to raise a child". Her HIV and HbsAg Test Reports Certify the case as Negative. These Reports are on record at Page Nos.33-38 to the Petition.

8. The Prospective Adoptive Parent is working, as a Project Manager with VZW Pin Partners & Integratie, Halle, Belgium since February 2023 and her monthly (April-2024) net salary is Euro 2108.96/- Her Pay slips and Income Tax Certificates are on record at page Nos.39-63 to the Petition. The Proof of Residence is on record at page Nos.64-66 to the Petition.

9. The Childcare Arrangement Plan declaration of the Prospective Adoptive parent is on record at page Nos.67-69 to the Petition.

10. The Home study Reports dated 27/11/2018 conducted by the authorities of “Brussels Centre for Social Welfare Work”, Belgium and Updated Report dated 20/02/2023 conducted by the authorities of Ray of Hope, Belgium are on record and the Reports have found the Prospective Adoptive Parent suitable for adopting a child. The said Home Study Report is at page Nos.70-109 to the Petition.

11. The Psychological Report dated 20/02/2023 by authorities of “Ray of Hope”, Belgium has found the Prospective Adoptive Parent suitable to adopt the child. The said report is on record at page Nos.110-121 to the Petition.

12. The Permission of the Receiving Country as per Article 5/17 of the Hague Adoption Convention is on record at page Nos.122-136 to the Petition.

13. The Child Security Undertaking dated 05/04/2024 given by the Prospective Adoptive Parent’s childhood friend residing at Terveuren, Belgium to look after the said female minor in case of any unforeseen mishap to the Prospective Adoptive Parent is on record at page Nos.147-

149 to the Petition.

14. The Medical Examination Report of the said female minor dated 06/12/2023 states that Muskan is a happy and content child. Her physical, mental and social milestones are age appropriate. The Prospective Adoptive Parent has countersigned this Report, which is at page Nos.155-162 to the Petition.

15. The Psychological Test Report dated 15/11/2022 of the said female minor states that her social quotient is found to be 109 indicating that the child seems to have average social intelligence. The Prospective Adoptive Parent has countersigned this report, which is on record at page Nos.163-164 to the Petition.

16. The H.I.V. Report of the said female minor dated 19/06/2024 certifies the case as Negative. This Report is on record at page No.176 to the Petition. The Post Card Size Photograph of the said female minor is on record at page No.177 to the Petition.

17. As regards the change of name, the prospective adoptive parent desire that the said female minor 'Muskan' be renamed as "Muskan Divya Vandervaeren".

18. The Declaration of willingness and Undertaking of the

Prospective Adoptive Parent states that she is willing to adopt the said female minor. She further undertakes that she will allow personal visits by the Representative of the Authorized Foreign Adoption Agency (AFAA) for follow-up of the progress of the child as required under the Adoption Regulations. The said declaration is on record at page Nos.178-181 to the Petition.

19. The Undertaking dated 21/03/2024 of the Authorized Foreign Adoption Agency (AFAA) "Flemish Central Authority for Intercountry Adoption", Brussels, Belgium for furnishing post adoption follow-up reports of the child and make alternative arrangements in case of disruption of the adoptive family is on record at page Nos.181-183 to the Petition.

20. The General Power of Attorney dated 20/03/2024 duly executed by the Prospective Adoptive Parent in favour of the Petitioner institution is on record at page Nos.184-185 to the Petition.

21. The Petitioner institution's recognition from the Women & Child Development, Maharashtra State to place children in adoption is valid for a period up to 12/04/2026.

22. Ms. Vandana Chincholkar, Scrutiny Officer who is present has tendered Report / Representation of Mr. O. Hareendran, Scrutiny Officer

from the Indian Council of Social Welfare (ICSW) dated 07/07/2024 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 marked 'X', I am of the view that, it would be in the interest of the said female minor to be adopted by the Proposed Adopters.

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.**,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

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

“(a) For the Adoption of the proposed female minor Muskan Divya Vandervaeren, born on 03/12/2021 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 female minor Muskan Divya Vandervaeren and having all parental rights, privileges and responsibilities over the said minor, now in the care and custody of the Petitioner institution Janni Ashish Charitable Trust, Dombivali, Thane.

(c) That the proposed adopter be allowed to change the

name of the said minor Muskan to Muskan Divya Vandervaeren.

(d) Leave/permission be granted to apply the concern Municipal Authorities to issue Birth Certificate of the said minor Muskan Divya Vandervaeren, born on 03/12/2021 and stating thereon that the Proposed Adopter as Parent of the said minor.

(e) That the Proposed Adopters may be granted leave to remove the said minor Muskan Divya Vandervaeren from the jurisdiction of this Hon'ble Court and to take the said minor to BELGIUM or wherever she may reside in future".

27. It is directed that the Petitioner institution shall obtain further undertaking from the Adoptive Parent that she shall not give the said female minor 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.

28. The Judge's Order is accepted and separately signed.

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

30. There shall be no orders as to costs.

[R.I. CHAGLA, J.]

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