

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
AND
IN ITS GENERAL AND INHERENT JURISDICTION
FOREIGN ADOPTION PETITION NO. 26 OF 2024
WITH
JUDGE'S ORDER NO. 143 OF 2024
IN
FOREIGN ADOPTION PETITION NO. 26 OF 2024

Bal Asha Trust

...Petitioner

And.

1. Mr. Miguel Gotor Fernandez
2. Mrs. Silvia Del Rocio Perez Dioni.

... Proposed Adoptive
Parents.

Ms. Rakesh K. L. Kapoor i/b. M/s. Rakesh K. L. Kapoor & Co., for the
Petitioner.

Ms. O. Hareendran, Scrutiny Officer - ICW present.

Mr. Dilip S. Gurav, Chamber Registrar present.

CORAM : R. I. CHAGLA, J.

DATE : 23 OCTOBER 2024

ORDER :

1. By this Foreign Adoption Petition, the Petitioner and the
Proposed Adoptive Parents have sought adoption of the female minor
Pragya (“the said female minor”) born on 17th July 2023.

The biological parent surrendered the said female minor before the Child Welfare Committee (CWC), Mumbai City-1 on 24th July 2023 and the child's safe custody was given to the Petitioner-Institution on the same day as per the order dated 24th July 2023 of the CWC 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. 19 to the Petition.

2. After making due inquiry under section 38 of the said Act the CWC, Mumbai City-II declared the said female minor "Legally Free for Adoption" on 6th October 2023. The Free for Adoption Certificate is on record at page Nos. 17-18 to the Petition.

3. The Central Adoption Resource Authority (**CARA**) New Delhi has issued its No Objection Certificate dated 2nd August 2024 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. 26 to the Petition.

4. The undertaking / affidavit by the Petitioner-Institution is on record at page Nos.20-25 to the Petition.

5. The Prospective Adoptive Parents are Spanish Nationals, residing at Merida, Spain aged about 40 and 45 years respectively. They have been married for the past 7 years (9th September 2017) with no biological children.

6. The Prospective Adoptive Parents joint photograph and copies of Passport are on record at Page Nos.27-33 to the Petition.

7. The Medical Reports dated 22nd March 2024 of the Prospective Adoptive Parents states that they do not suffer from any chronic, communicable or serious disease that could prevent them from adopting a child. Their HIV test reports certify the case as Negative. These reports are on record at page Nos. 44-51B to the Petition.

8. The Prospective Adoptive Father is working as a Plant Manager of Biomass with the company Res Energy Global Services S.L.U. since 7th July 2014 and his gross salary for the year 2023 was 65,849 Euros. His employment and income certificate is on record at page Nos. 52-56 to the Petition.

9. The Prospective Adoptive Mother is working as an Operating Staff with the State Postal and Telegraph Services since 1st

July 2020 and her gross salary for the year 2023 was 25,975.57 Euros. Her employment and income certificate is on record at page Nos.57-61 to the Petition.

10. The Income Tax Certificate and Proof of Residence are on record at page Nos.62-69 to the Petition.

11. The Childcare Plan undertaking of the Prospective Adoptive Parents is on record at page Nos.70-71 to the Petition.

12. The Home Study Report dated 16th November 2023 of Local Government Extremadura, Department of Health and Social Services, Spain has found the Prospective Adoptive Parents suitable to adopt a child between 0 and 4 years old from India. The said Home Study Report is on record at page Nos.72-79 to the Petition.

13. The Report of Psychological Evaluation of Prospective Adoptive Parents dated 28th November 2023 by the authorities of Department of Health and Social Services, Merida, Spain has found the Prospective Adoptive Parents suitable for adopting a child. The said report is on record at page No.80-87 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.88-92 to the Petition.

15. The Child Security undertaking dated 16th August 2024 given by Prospective Adoptive Father's sister-in-law residing at Asturias, Spain to look after the said female minor in case of any mishap to the Prospective Adoptive Parents is on record at page Nos. 103-104 to the Petition.

16. The Medical Examination Report of the said female minor dated 4th October 2023 states "Health Status : Special Need. Overall observation of the child: She was found to have mild hypertonia and developmental delay for which she has been started on Baclofen and clonazepam and neuro-developmental therapy/occupational therapy. Her MRI showed diffusion restriction in corpus callosum and splenium of internal capsule and her Bera report shows a mild elevation of hearing threshold on the left ear." The Prospective Adoptive Parents have countersigned the said report alongwith additional investigation reports, which are on record at page Nos. 109-132 to the Petition.

17. The HIV Report of the said female minor dated 28th

September 2023 certifies the case as Non-Reactive. This Report is on record at page No. 136 to the Petition. The post card size photograph of the said female minor is on record at page No. 137 to the petition.

18. As regards the change of name, the Prospective Adoptive Parents desire that the said female minor “Pragya” be renamed as “Pragya Gotor Perez”.

19. The consent, willingness and undertaking of the Prospective Adoptive Parents states that they are willing to be adopt the said female minor. They further undertake that they will allow personal visits by the representatives of the Authorized Foreign Adoption Agency (AFAA) for follow up of the progress off the child as required under the Adoption Regulations. The said Declaration is on record at page Nos. 133-135 and 138-143 to the Petition.

20. The undertakings dated 9th April 2024 of the Authorized Foreign Adoption Agency (AFAA) “Children Without Frontiers”, Madrid, Spain to provide follow-up report of the child and make alternative arrangement in case of disruption of the adoptive family is on record at Page Nos.144-146 to the Petition.

21. The Power of Attorney dated 9th April 2024 duly

executed by the Prospective Adoptive Parents in favour of the Petitioner institution is on record at page Nos.147-150 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 5th May 2025.

23. Mr. O. Hareendran, Scrutiny Officer has tendered a Report/ Representation of Indian Council of Social Welfare dated 30th September 2024. The Report / Representation is taken on record and marked "X" for identification.

24. Having considered the material on record as well as the Report of Mr. O. Hareendran, Scrutiny Officer dated 30th September 2024, which is marked X, I am of the view that it would be in the interest of the said female minor child, that she is adopted by the Proposed Adopters.

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

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

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 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 minor Pragya Gotor Perez, born on 25/07/2013 by the proposed adopters under Section 59 (7) of the Juvenile Justice Act, 2015.

(b) For declaring the Proposed Adopters as Adoptive Parents of the said minor Pragya Gotor Perez and having all parental rights, privileges and responsibilities over the said minor now in the care and custody Bal Asha Trust, Bal Asha Dham, Anand Niketan, Dr. E. Moses Road, Mahalaxmi, Mumbai-400 011.

(c) That the proposed adopters be allowed to change the name of the minor 'Pragya' to "Pragya Gotor Perez".

(d) Leave/permission be granted to apply the concerned Municipal Authorities to issue Birth Certificate of the said minor Pragya Gotor Perez born on 17/07/2023 and showing the proposed adopters

as Parents.

(e) That the Proposed Adopters may be granted leave to remove the said minor Pragya Gotor Perez from the jurisdiction of this Hon'ble Court and to take the said minor to SPAIN or wherever they may reside in future.

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

29. It is directed that the Petitioner institution shall obtain further undertaking from the Adoptive Parents that they shall not give the said female minor for further adoption without the prior permission of this Court. Once this undertaking is obtained, the same shall be filed on the record of this Court.

30. The present Foreign Adoption Petition is accordingly disposed of. There shall be no order as to costs.

[R. I. CHAGLA J.]

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by KISHOR
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