

Sharada

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

INDIAN ADOPTION PETITION NO.49 OF 2024

WITH

JUDGE'S ORDER NO.72 OF 2024

IN

INDIAN ADOPTION PETITION NO.49 OF 2024

Vatsalya Trust, Mumbai

...Petitioner

And

Mr. Ashok Venktappa Naik and Mrs. Pramila
Ashok Naik

...Prospective
Adoptive Parents

Ms. Aarti Prasad Kulkarni, Advocate for the Petitioner.

Mr. O. Hareendran, Scrutiny Officer, ICSW present.

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

CORAM : R.I. CHAGLA, J.

DATE : 10th July 2024

ORDER :

1. By this Indian Adoption Petition the Petitioner and the Prospective Adoptive Parents have sought adoption of the male minor

Vedesh (“**the said male minor**”) born on 28/01/2023. The biological mother surrendered the said male minor before the Child Welfare Committee (CWC), Mumbai Suburban District on 07/02/2023 and the child’s safe custody was given to the Petitioner institution Vatsalya Trust, Mumbai on the same day as per the order of the CWC dated 07/02/2023 under the Provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 (“the said Act”). The Admission Order of the CWC is on record at page No.21 to the Petition.

2. After making due inquiry under Section 38 of the said Act, the CWC, Mumbai Suburban District declared the said male minor Vedesh “Legally Free for Adoption” on 11/04/2023. The Free for Adoption Certificate is on record at page Nos.23-24 to the Petition.

3. The Prospective Adoptive Parents are Indian nationals residing at Uttara Kannada, Karnataka, aged about 47 and 46 years respectively. They having married for the past 14 years (21/05/2010) with no biological children.

4. The Motivation Letter from the Prospective Adoptive Parents is on record at page No.33 to the Petition.

5. Affidavit by the Chief Functionary of the Specialized

Adoption Agency (Petitioner) in support of the adoption of the said male minor is on record at page Nos.108-113 to the Petition.

6. The Minutes of Adoption Committee Meeting held on 28/07/2023 is on record at page No.20 to the Petition. It states that the Adoptive Parents are suitable to adopt the said male minor.

7. The Medical Report dated 14/07/2023 of the Prospective Adoptive Parents are on record and it states that they are physically fit. Their HIV and HbsAg Test Reports certifies their case as Negative. These report are on record at page Nos.33-38 to the Petition.

8. The Prospective Adoptive Father is self employed (Civil Contractor in Bhatkal, Karnataka) since 2000 and his total income for the Assessment Year 2023-24 is of Rs.3,78,580/-. The Income Tax Returns and Business Registration Certificate are on record at Page Nos.41-58 to the Petition. The Prospective Adoptive Mother is a Homemaker.

9. The copies of Pan Card, Proof of Residence and supportive financial documents are on record at page Nos.34-36 & 59-61 to the Petition.

10. The Home Study Report Part I: Self Assessment Reports by

the Prospective Adoptive Parents is on record at page Nos.62-69 & 75-84 to the Petition.

11. The Home Study Part II : Assessment Reports dated 05/12/2019 and 12/12/2022 of the Specialized Adoption Agency, “Sahaya Trust” North Kannada have found the Prospective Adoptive Parents suitable for adopting a child. The said reports are on record at page Nos.70-74 & 85-89 to the Petition.

12. The child security Undertaking dated 17/07/2023 of the Prospective Adoptive father’s sister and brother-in-law residing at Bhatkal, Karnataka to look after the said male minor in case of any mishap to the Prospective Adoptive Parents is on record at page Nos.93-94 to the Petition.

13. The Pre-adoption foster care undertaking dated 14/07/2023 is on record at page Nos.39-40 to the Petition.

14. The Medical Examination Report of the said male minor dated 27/05/2023 states, “Health status of the child: Normal. Overall Observation of the child: Up to now, his overall development is within normal limits”. The Prospective Adoptive Parents have countersigned the said Report which is on record at page Nos.198-104 to the Petition.

15. The HIV Test Report of the said male minor dated 20/03/2023 certifies the case as Negative. This report is on record at page No.106 to the Petition. The Photograph of the said male minor is on record at page No.107 to the Petition.

16. The Declaration of consent and undertaking by the Prospective Adoptive Parents states that they are willing to be appointed and declared as Adoptive Parents of the said male minor. The said Declaration is on record at page Nos. 37-38 to the Petition.

17. As regards the change of name, the Prospective Adoptive Parents desire that the said male minor “Vedesh” be renamed as “Ayush Ashok Naik”.

18. The undertaking dated 14/07/2023 given by the authorities of “Sahaya Trust” North Kannada for furnishing post adoption follow-up reports is on record at page No.116 to the Petition.

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

20. Mr. O. Hareendran, Scrutiny Officer has tendered Report / Representation from the Indian Council of Social Welfare (ICSW)

dated 27/04/2024 which is taken on record and marked 'X' for identification.

21. Having considered the material on record as well as the Report of the Scrutiny Officer dated 27/04/2024 marked 'X', in my view, it would be in the interest of the said male minor child that he is adopted by the Proposed Adopters.

22. 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."*

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

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

"a) *"That the Prospective Adoptive Parents be given the said child in Adoption and be declared as parents and have all parental legal rights, Privileges and responsibilities*

over the said minor.

b) That the Prospective Adoptive Parents may be granted leave to remove the said minor from the jurisdiction of this Hon'ble Court and to take the said minor out of the jurisdiction of this Hon'ble Court whenever required.

c) That the concerned Municipal Authority/ Birth Certificate issuing Authority may be directed to issue Birth Certificate in the name of the said minor Ayush Ashok Naik born on 28th January 2023 and stating that thereon that the Prospective Adoptive Parents as the Parents of the said minor.

d) That the Prospective Adoptive Parents be allowed to change the name of the minor from Vedesh to "Ayush Ashok Naik" born on 28/01/2023".

25. In the Judge's Order there is an undertaking of the Adoptive Parents to invest an amount of Rs.1,00,000/- (Rupees One Lakh only) in the Adopted Child's name. They also undertake not to withdraw this investment till the Adopted Child attains majority. They have agreed to handover the investment receipt to the Adopted Child on his becoming a major. These undertakings are accepted as undertakings to this Court.

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

27. The Indian Adoption Petition is accordingly disposed of.

28. There shall be no orders as to costs.

[R.I. CHAGLA, J.]

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