

Sharada

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

FOREIGN ADOPTION PETITION NO.23 OF 2024

WITH

JUDGE'S ORDER NO.120 OF 2024

IN

FOREIGN ADOPTION PETITION NO.23 OF 2024

Adharashram, Nashik

...Petitioner

And

Mr. Sebastien Deal and Mrs. Sandrine
Christine fernande Rey e. Deal French
National,

Proposed Adopters

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 : 28TH AUGUST 2024

ORDER :

1. By this Foreign Adoption Petition the Petitioner and the
Proposed Adopters have sought adoption of female minor Didi

Dadabhau Gaikwad, (**“the said female minor”**) born on 10/06/2012.

2. The said female minor was found abandoned by Yeola Taluka Police Station on 03/06/2015 and admitted to the Petitioner institution on the same day as per the order of the child Welfare Committee (CWC), Nashik dated 03/06/2015 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 Nos.18-19 to the Petition.

3. After making due inquiry under Section 38 of the said Act, the CWC , Nashik declared the said female minor “Legally Free for Adoption” as on 01/09/2022. The Free for Adoption Certificate is on record at page No.17 to the Petition.

4. The Central Adoption Resource Authority (CARA), New Delhi has issued No Objection Certificate dated 27/03/2024 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.

5. The undertaking / affidavit by the Petitioner institution is on record at page Nos.21-25 to the Petition.

6. The Prospective Adoptive Parents are French Nationals, residing at Les Roberts, France aged about 50 and 56 years respectively. They have been married for the past 15 years. Their Birth Certificates, Medical Reports and consent letters are on record at Page Nos.59-67 to the Petition.

7. The Prospective Adoptive Father was married earlier on 14/03/1998 and divorced on 11/02/2004 and has one biological son aged about 23 years (born on 10/02/2001). The divorce decree, provides that the custody of the said biological son who was minor on the date when the decree was passed would with the mother and the father who is the Prospective Adoptive Father herein shall have visitation rights. Further, the authority on the child will be a common one. The Divorce Decree, biological son's birth certificate and consent letter is on record at Page Nos.43-58 to the Petition.

8. The Prospective Adoptive Parents Joint Family Photograph, Copies of Passport are on record at page Nos.27-33 to the Petition.

9. The Medical Reports dated 09/04/2021 of the Prospective Adoptive Parents states that both are in good physical health and do not suffer from chronic diseases, catching venereal ones or tuberculosis or other diseases being a threat for their life. Their HIV

and HBsAg Test Reports certify the case as Negative. These Reports are on record at Page Nos.68-79 to the Petition.

10. The Prospective Adoptive Father is working as a Chief Warrant Officer with the Ministry of Armies, France since 1st January, 1993 and his gross yearly income is 28,397.31/- Euros. His Employment and Income Certificate is on record at Page Nos.80-81 to the Petition.

11. The Prospective Adoptive Mother is working as an Administration Assistant with the Department Director of the Hautes Alpes, France since 01/10/2020 and her yearly gross income amounts to 26,775.75/- Euros. Her Employment & Income certificate is on record at Page Nos.82-83 to the Petition.

12. The supportive financial documents and Residence Certificate are on record at Page Nos.84-96 to the Petition.

13. The Childcare Arrangement Plan statement of the Prospective Adoptive Parents is on record at page No.97 to the Petition.

14. The Home study Report dated 02/03/2022 by the authorities of “Les Enfants de l’Esperance”, France is on record and the Report has found

the Proposed Adopters suitable for adopting a child. The said Home Study Report is at page Nos.98-107 to the Petition.

15. The Psychological Evaluation Report of the Prospective Adoptive Parents dated 02/03/2022 by Berengere Doyen, Psychologist has recommended the couple for the adoption of a child. The said report is on record at page Nos.108-110 to the Petition.

16. The Permission of the Receiving Country as per Article 5/17 of the Hague Adoption Convention is on record at page Nos.111-122 to the Petition.

17. The Child Security Undertaking dated 16/07/2024 given by the Prospective Adoptive Father's second cousin and his wife residing at Septemes-les-Vallons, Spain to look after the said female minor in the event case of any mishap to the Prospective Adoptive Parents is on record at page No.137 to the petition.

18. The Medical Examination report of the said female minor dated 21/02/2023 states that "Health Status of the child: Normal. Overall observation of the child:Her overall growth development health appears normal till date". The Prospective Adoptive Parents have countersigned this Report, which is on record at page Nos.142-147 to the Petition.

19. The Psychological Assessment Report dated 20/06/2023 of the said female minor is on record at Page No.147A to the petition. It states that she has age appropriate development in all domains and average Intellectual Abilities.

20. The H.I.V. Report of the said female minor dated 03/01/2024 certifies the case as Non Reactive. This Report is on record at page No.149 to the Petition. The Post Card Size Photograph of the said female minor is on record at page No.150 to the Petition.

21. The Letter of Acceptance and Undertaking of the Prospective Adoptive Parents states that they are willing to adopt the said female minor. They further undertake that they will allow personal visits by the Representative of the Authorized Foreign Adoption Agency (AFAA) during post adoption follow-up. The said letter of Acceptance and undertaking is on record at page Nos.151-152 to the Petition.

22. The Undertaking dated 10/07/2023 of the Authorized Foreign Adoption Agency (AFAA) "Les Enfants de l'Esperance", Noisiel, France 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 Nos153-154 to the Petition.

23. The Special Power of Attorney dated 03/08/2023 duly executed by the Prospective Adopters in favour of the Petitioner institution is on record at page Nos.155-158 to the Petition.

24. 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.

25. 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 20/08/2024 which is taken on record and marked 'X' for identification.

26. 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 female minor if she is adopted by the Proposed Adopters.

27. 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.”

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

29. 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 Berenice-Marie Dadabhau Deal, born on 10/06/2012 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 minor Berenice-Marie Dadabhau Deal and having all parental rights, privileges and responsibilities over the said minor now in the care and custody of the Petitioner institution Adharashram, 491/6 Gharpure Ghat, Nashik-422 002, Maharashtra

(c) That the proposed adopters be allowed to change the name of the said minor ‘Didi Dadabhau Gaikwad’ to “Berenice-Marie Dadabhau Deal”.

(d) Leave/permission be granted to apply the concern Municipal Authorities to issue Birth Certificate of the said minor Berenice-Marie Dadabhau Deal, born on 10/06/2012 and stating thereon that the Proposed Adopters are Parents

of the said minor.

(e) That the Proposed Adopters may be granted leave to remove the said minor Berenice-Marie Dadabhau Deal from the jurisdiction of this Hon'ble Court and to take the said minor to FRANCE or wherever they may reside in future".

30. It is directed that the Petitioner institution will obtain further undertaking from the Adoptive Parents that they 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.

31. The Judge's Order is also separately signed.

32. The present Foreign Adoption Petition is accordingly, disposed of.

33 . There shall be no orders as to costs.

[R.I. CHAGLA, J.]

Privacy warning : No part of this order shall be uploaded on any public domain or portal without this Court's express permission.