

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
AND
IN ITS GENERAL AND INHERENT JURISDICTION
FOREIGN ADOPTION PETITION NO. 25 OF 2024
WITH
JUDGE'S ORDER NO. 142 OF 2024
IN
FOREIGN ADOPTION PETITION NO. 25 OF 2024

Bal Asha Trust

...Petitioner

And.

1. Mr. Luis Fernando Lage Puebla ... Proposed Adoptive
2. Mrs. Maria Del Carmen Garcia Canada. 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.

Ms. Angel Aloor – Social Worker alongwith

Kum. Priyanshu Rajkumar – Minor 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 male minor

Pryanshu Rajkumar (“**the said male minor**”) born on 1st July 2015. The said male minor found abandoned by CSMT Railway Police Station, Mumbai and addmitted to C.C.D.T. Ashray, Mumbai from 13th December 2019 to 5th January 2023. Thereafter the said male minor was transferred to the Petitioner Institution Bal Asha Trust, Mumbai on 5th January 2023 as per order of the Child Welfare Committee, (**CWC**), Mumbai City-I 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 male minor “Legally Free for Adoption” on 31st July 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 13th 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. 27-28 to the Petition.

4. The undertaking / affidavit by the Petitioner-Institution is on record at page Nos.21-26 to the Petition.
5. The Prospective Adoptive Parents are Spanish Nationals, residing at Madrid, Spain aged about 54 and 46 years respectively. They have been married for the past 12 years (01st June 2012) with no biological children.
6. The Prospective Adoptive Parents joint photograph and copies of Passport are on record at Page Nos.29-35 to the Petition.
7. The Medical Reports dated 6th June 2024 of the Prospective Adoptive Parents states that they do not suffer from any chronic, communicable or serious disease and they are medically fit to adopt a child. Their HIV test reports certify the case as negative. These reports are on record at page Nos. 46-56 to the Petition.
8. The Prospective Adoptive Father is working as a IT Specialist with the Company “Robert Bosch Espana” S.L.U. Spain since 23rd November 2006 and his gross annual income is of 46,719.60 Euros. His employment and income certificate is on record at Page Nos. 57-59 to the Petition.

9. The Prospective Adoptive Mother is working as a Credit Risk Expert with the Company Cetelem Gestion A.I.E. (BNP Paribas Personal Finance) since 1st March 2016 and her gross annual income is of 66,795 Euros. Her employment and income certificate is on record at page Nos.60-62 to the Petition.

10. The Income Tax Certificate and Proof of Residence are on record at page Nos.63-70 to the Petition.

11. The Childcare Plan undertaking of the Prospective Adoptive Parents is on record at page Nos.71-73 to the Petition.

12. The Home Study Report dated 30th March 2022 of the Licensed Social Worker Lucia Menendez Fernandez, Spain is on record and the report has found the Prospective Adoptive Parents suitable to adopt a child from India within an age range between 5 and 8 years old. The said Home Study Report is on record at Page Nos.74-83 to the Petition.

13. The Report of Psychological Evaluation of Prospective Adoptive Parents dated 18th March 2022 by the Licensed Psychologist Blanca Tejero Claver, Spain found the Prospective Adoptive Parents suitable for adopting a child. The said report is on record at page No.84-92 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.93-96 to the Petition.

15. The Child Security undertaking dated 26th August 2024 given by Prospective Adoptive Mother's sister and brother-in-law residing at Madrid, Spain to look after the said male minor in case of any mishap to the Prospective Adoptive Parents is on record at page Nos. 107-109 to the Petition.

16. The Medical Examination Report of the said male minor dated 7th July 2023 states "Health Status : Normal child. Overall observation of the child: The said male minor has not suffered from any major illness needing hospitalization and is currently disease free." The Prospective Adoptive Parents have countersigned the said report, which is on record at page Nos. 114-122 to the Petition.

17. The Report of Psychological Testing, of the said male minor dated 15th December 2023 states that the said male minor has average intellectual functioning and average social functioning. The Report of Language Speech and Hearing is also on record and it states that he has no significant delay in his language acquisition. The

Proposed Adopters have countersigned these reports, which is on record at page Nos.123-130 to the Petition.

18. The HIV Report of the said male minor dated 13th January 2023 certifies the case as Non-Reactive. This Report is on record at page No. 131 to the Petition. The post card size photograph of the said male minor is on record at page No. 132 to the petition.

19. As regards the change of name, the Prospective Adoptive Parents desire that the said male minor “Priyanshu Rajkumar” be renamed as “Priyanshu Lage Carcia”.

20. The consent, willingness and undertaking of the Prospective Adoptive Parents states that they are willing to be adopt the said male minor. They further undertakes 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. 133-140 to the Petition.

21. The undertakings dated 24th June 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.141-142 to the Petition.

22. The Power of Attorney dated 24th June 2024 duly executed by the Prospective Adoptive Parents in favour of the Petitioner institution is on record at page Nos.143-146 to the Petition.

23. The Petitioner - Institution's recognition from the Women & Child Development, Maharashtra State to place children in adoption is valid up to 5th May 2025.

24. Mr. O. Hareendran, Scrutiny Officer has tendered a Report/ Representation of Indian Council of Social Welfare dated 9th October 2024. The Report / Representation is taken on record and marked "X" for identification.

25. Having considered the material on record as well as the Report of Mr. O. Hareendran, Scrutiny Officer dated 9th October 2024, which is marked X, I am of the view that it would be in the interest of the said male minor child, that he is adopted by the Proposed Adopters.

26. 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.”*

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

28. 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 Priyanshu Lage Garcia, born on 01/06/2015 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 Priyanshu Lage Garcia 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 'Priyanshu Rajkumar' to "Priyanshu Lage Garcia".

(d) Leave/permission be granted to apply the concerned Municipal Authorities to issue Birth Certificate of the said minor Priyanshu Lage Garcia born on 01/06/2015 and showing the proposed adopters as Parents.

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

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

30. It is directed that the Petitioner institution shall obtain further undertaking from the Adoptive Parents that they shall not give the said male 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.

31. 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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