

Sajakali Jamadar

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

FOREIGN ADOPTION PETITION NO. 32 OF 2024

WITH

JUDGE'S ORDER NO.164 OF 2024

Bal Anand, Worldchildren Welfare Trust India,
Sai Krupa, 93, Ghatla Vilage Chembur,
Mumbai - 400 071
Through its Administrative
Assistant/Authorized
Signatory : Ms.Kirti Bairagi

...Petitioner

And

1. Gokul Krishna Moorthy, Canadian National,
aged 42 years, residing at 28 Overstone Road,
Georgetown, Ontario, L7G 0M9, Canada.

2. Amrutha Ramchandran, Canadian
National, Aged 37 years, wife of Mr. Gokul
Krishna Moorthy, residing at the above said
address.

... Proposed
Adopters

Mr. R.K.L. Kapoor for the Petitioners.

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

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

CORAM : R.I. CHAGLA J

DATE : 18TH DECEMBER 2024.

ORDER :

1. By this Foreign Adoption Petition the Petitioner and the Proposed Adopters are seeking adoption of the female minor 'Kiyara' (**"the said female minor"**) born on 06.04.2023. The said female minor was admitted to the Petitioner institution on 02/05/2023 as per the order of the Child Welfare Committee (CWC), Mumbai Suburban-I dated 02/05/2023 under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015 (**"the said Act"**). Thereafter the birth mother executed a Deed of Surrender before the said CWC on 09/05/2023 for further rehabilitation. The Admission Order of CWC is on record at page No.19 to the Petition.

2. After making due inquiry under section 38 of the said Act, the Child Welfare Committee, Mumbai City II declared the said female minor "Legally Free for Adoption" as on 05/03/2024. 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 No Objection Certificate dated 19/09/2024 to this adoption as per Adoption Regulations 2017 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 Proposed Adopters are Canadian Nationals of Indian origin (OCI Cardholders), residing at Ontario, Canada, aged about 42 and 37 years respectively. They have been married for the past 11 years (09/12/2013) with no biological children.

6. The Prospective Adoptive Parents Joint Family Photograph and Copies of Passport are on record at page Nos. 27-34 to the Petition.

7. The Medical reports dated 12/10/2022 of the Prospective Adoptive Parents is on record and it states that both are in good health and have no symptoms of current or previous psychiatric and infectious diseases. Their HIV and HBsAg Test Reports certify the case as Negative. These reports are at Page Nos. 41-61 to the Petition.

8. The Prospective Adoptive Father is working, as a Mortgage specialist with BMO Human Resources Centre, Toronto, Canada since 26/06/2022 and his annual income is CAD 40,603. His Employment & Income Tax certificate is on record at page Nos. 62-67 to the Petition.

9. Prospective Adoptive mother is working as a Commercialization Launch Manger with Electrolux Canada Corp. since December 10, 2019 and her annual gross salary is CAD 101,332.00. Her Employment & Income Tax certificate is on record at page Nos. 68-73 to the Petition.

10. The Proof of Residence is on record at page Nos. 74-75 to the Petition.

11. The Childcare plan declaration from the Prospective Adoptive Parents is on record at page Nos. 76 to the Petition.

12. The home study report dated 08/12/2022 has been conducted by the Private Adoption Practitioner Lorraine Franco, MKSW, RSW, Ontario, Canada. The said report has found the Prospective Adoptive Parents suitable for adopting a child. The said home study report is on record at page Nos. 77-91 to the Petition.

13. The Psychological Evaluation Report dated 28/10/2022 of the Prospective Adoptive Parents by the Clinical Psychologist Dr. Paula J. Gardner states that the Prospective Adoptive Parents are in excellent psychological health, and they are well prepared to take on the challenges and responsibilities of adopting a child from India. The said report is on record at page Nos. 92-97 to the Petition.

14. The Permission from the Receiving Country as per Article 5/17 of the Hague Convention is on record at page Nos. 98-111 to the Petition.

15. Child Security undertaking dated 01/10/2024 given by the Prospective Adoptive Father's brother and Sister-in-law residing at New Jersey, USA to look after the said female minor in case of any mishap to the Prospective Adoptive Parents is on record at page No.120 to the Petition.

16. The Medical Examination report of the said female minor dated 12/03/2024 states "Health Status: Normal. Over all observation of the child: Kiyara is a Cheerful 11 month old whose growth and development is age appropriate". The Prospective Adoptive Parents have countersigned this Report, which is at page Nos. 124-133 to the Petition.

17. The H.I.V. report of the said female minor dated 10/05/2023 certifies the case as Non-Reactive. This report is on record at page No. 136 to the Petition.

18. The Post Card size photograph of the said female minor is on record at page No. 137 to the Petition.

19. As regards the change of name, the Prospective Adoptive Parents desire that the said female minor 'Kiyara' be renamed as "Diya Gokul".

20. The Letter of Acceptance and undertaking of the Prospective Adoptive Parents is on record at page Nos. 138-142 to the Petition. It 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.

21. The undertaking dated 01/08/2024 of the Authorized Foreign Adoption Agency (AFAA) "Cornerstone Adoption Agency" Ontario, Canada to provide follow-up reports of the female minor child and make alternative arrangements in case of disruption of the adoptive family is on record at page No. 143 to the Petition.

22. The Special Power of Attorney dated 27/06/2024 duly executed by the Prospective Adoptive Parents in favour of the Petitioner institution is on record at page Nos. 144-145 to the Petition.

23. 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.

24. Mr. O. Hareendran, Scrutiny Officer has tendered Report/Representation of Indian Council of Social Welfare dated 16/12/2024 which 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 marked X, I am of the view that it would be in the interest of the said female minor, if she is adopted by the Prospective 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.

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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 **Diya Gokul** born on 06/04/2023 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 **Diya Gokul** and having all parental rights, privileges and responsibilities over the said minors now in the care and custody of Bal Anand, Worldchildren Welfare Trust India, Sai Krupa, 93,Ghatla Village, Chembur, Mumbai –400071.
- (c) Leave/permission be granted to apply the concerned Municipal Authorities to issue Birth Certificate of the said minor **Diya Gokul** born on 06/04/2023 and showing the proposed adopters as Parents.
- (d) That the Proposed Adopters may be granted leave to remove the said minor **Diya Gokul** from the jurisdiction of this Hon’ble Court and to take the said minor to CANADA or wherever they may reside in future.

- (e) That the proposed adopters be allowed to change the name of the said minor '**KIYARA**' to "**Diya Gokul**".

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

30. It is directed that the Petitioner institution will obtain further undertakings 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. There shall be no order as to costs.

[R.I. CHAGLA J.]

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