

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

**FOREIGN ADOPTION PETITION NO. 1 OF 2025
WITH
JUDGE'S ORDER NO. 5 OF 2025
IN
FOREIGN ADOPTION PETITION NO. 1 OF 2025**

**MAHARASHTRA STATE WOMEN'S COUNCIL)
ADOPTION GROUP)...PETITIONER**

AND

**1) JUAN PEDRO RUIZ GARCIA)
2) ANTONIA HORTA OJEDA)...PROPOSED
ADOPTIVE PARENTS**

Ms.Dipal S. Mehta, Advocate for the Petitioner.

Mr.Dilip Gurav, Chamber Registrar, present.

Ms.Vandana Chincholkar, Scrutiny Officer, ICSW, present.

Ms.Ujwala Ashtankar, Social Worker, present.

Kum.Swaraj, Minor, present.

Ms.Natalia Lopez, Social Worker of AFAA, through Video Conferencing
present.

Mr.Juan Pedro Ruiz Garcia and Ms.Antonia Horta Ojeda, Proposed
Parents, through Video Conferencing present.

CORAM : ABHAY AHUJA, J.

**DATE : 13th MARCH 2025
(IN CAMERA IN VIDEO
CONFERENCE ROOM)**

PC. :

1. This Foreign Adoption Petition by the Petitioner seeks an order of this Court permitting adoption of a male minor named Swaraj born on 30th January 2024 by the Proposed Adoptive Parents.

2. On 16th January 2025, when the matter was called out in chamber, the following order came to be passed :

“1. This Petition has been listed before this Bench in Chamber at 2.45 p.m. seeking following reliefs :

(a) This Hon'ble Court may be pleased to appoint the proposed adoptive parents as the parents of the male minor, Swaraj now in the care of the Maharashtra State Women's Council Adoption Group, Asha Sadan Balgruh, Asha Sadan Marg, Umerkhadi, Mumbai - 400 009,

(b) That the proposed adoptive parents be allowed to change the name of the minor, from 'Swaraj' to any other name if required,

(c) That the proposed adoptive parents may be granted leave to remove the aforesaid child, Swaraj from the jurisdiction of this Hon'ble Court and to take the minor out of India along with them, to their home i.e. wherever they may require him to,

(d) That the Petitioner be granted leave to apply to the concerned Municipal Authorities to issue a Birth Certificate of male minor 'Swaraj' showing the names of the proposed adoptive parents as his parents,

(e) That the concerned Municipality / the Birth Certificate Issuing Authority may be directed to issue Birth Certificate for the said minor 'Swaraj' within five working days from the date

of application of the Petitioner, as per the provisions of sub-regulation 15 of the Adoption Regulations 18 and Regulation 36,

(f) The concerned Regional Passport Office may be directed to issue Passport for the said 'Swaraj' within ten days from the date of application, as per Sub-Regulation (4) of Regulation 18 and Regulation 38.

2. Ms.Deepal Mehta, learned Counsel, appearing for the Petitioner as well as for the prospective adoptive parents has taken me through the various approvals and reports.

3. Mr.Hareendran for the Indian Council of Social Welfare ("ICSW") is present and has also taken me through the representation dated 9th January 2025 of the ICSW which contains a chronology of all the approvals and reports necessary for foreign adoption with a request to consider the same before passing the final order.

4. Mrs.Ujwala Ashtankar, Social Worker attached to the Petitioner group is present along with the adoptive child Swaraj who is in the care of a maid from the Petitioner institution.

5. I have heard Ms.Mehta and also perused the various approvals and reports annexed to the Petition as well as the representation of the ICSW. I have also observed that the adoptive child is a very quiet and pleasant personality.

6. It is, however, observed from the medical reports of the adoptive child that the adoptive child suffers from a congenital heart disease / cardiac disorder commonly known as hole in the heart (page 101) as well as Dolichocephaly which involves a long head and weak bones (page 100) and related motor nerve issues. Ms.Mehta has also drawn my attention to the acknowledgment by the prospective parents of the adoptive child's Medical report (page 104) and the acceptance of the same and also a Physiotherapist's report (page 106) of the child when he was 7 months which suggests

that the child was under physiotherapy for two months and has achieved certain motor milestones. The said report has also been acknowledged by the prospective parents.

7. It has been stated in the Petition as well as in the various reports that the child is a child with special needs.

8. There is no doubt that the prospective parents are very eager to adopt Swaraj. However, in view of the special needs of the child, I am of the view that for assessing the welfare of the child, an interaction with the prospective parents through video conferencing on a mutually convenient date and time would be necessary so that the suitability of the prospective parents to adopt this child with special needs of the nature described in the Petition and also in the Medical reports can be ascertained. It is also expected that a responsible person from the Spanish agency viz. Children Without Frontiers also remains present on the video call to address queries that may be raised by this Court.

*9. Accordingly, list on **30th January 2025**. Liberty to apply.”*

3. Thereafter, on 30th January 2025, the following order was passed:

“1. Pursuant to earlier order of this Court dated 16th January 2025, today this matter has been listed for an interaction with the prospective parents through video conferencing for ascertaining the suitability of the prospective parents to adopt Swaraj a child with special needs of the nature described in the Petition and also in the Medical reports.

2. When the matter is called out, Ms. Deepal Mehta, learned Counsel appears for the Petitioner and tenders true copy of the Medical Certificate dated 30th January 2025 and copy of follow up card dated 25th November 2024 in respect of the minor and copy of an email dated 5th September 2024 from

the concerned Authorized Foreign Adoption Agency (AFAA) to Maharashtra State Women's Council (MSWC) Adoption Group confirming acceptance of the minor after perusal of Medical Examination Report. The certificate tendered today by Ms.Mehta indicates that Dr.Nazim A. Naik, Newborn & Child Specialist, has certified that he has examined the child on 30th January 2025 and has found no acute illness and that at present he is on treatment for oral iron and vitamin D supplement and at present has no other illness medication. The said documents are taken on record. Let the said documents also be furnished to the Prospective Adoptive Parents as well as the AFAA.

3. As noted in the earlier order, Swaraj suffers from a congenital heart disease / cardiac disorder commonly known as hole in the heart (page 101) as well as Dolichocephaly which involves a long head and weak bones (page 100) and related motor nerve issues and that after physiotherapy for two months, when he was seven months old, he has achieved certain motor milestones. That due to this condition, Swaraj is a child with special needs.

4. This Court had, therefore, after observing the eagerness of the prospective adoptive parents to adopt Swaraj but considering that Swaraj is a child with special needs, considering the aforesaid medical condition, for assessing the welfare of the child and also suitability of the prospective adoptive parents to adopt the child with special needs as above and of the nature described in the Petition, directed that there be an interaction with the prospective adoptive parents as well as a responsible person from the Spanish agency viz. Children Without Frontiers and also to address the queries that may be raised by this Court at the time of interaction.

5. The hearing of this Petition is being conducted in camera, where only the Counsel for the Petitioner, the representative of the Petitioner and the representative of the ICSW and the

child Swaraj with his caretaker, in addition to Court staff are physically present and the prospective adoptive parents, Mr.Juan Pedro Ruiz Garcia and Ms.Antonia Horta Ojeda, are present through video conferencing facility of this Court along with Ms.Natalia, Social Worker of AFAA, authorised representative in Spain.

6. Upon a query from this Court to Ms.Mehta as to whether after considering the medical report and the certification that Swaraj is a special child, whether any further Report as to the suitability of the parents to take care and to bring up a special child such as Swaraj is in place, Ms.Mehta fairly submits that the Home Study Report is prior to identification of Swaraj as the prospective adoptive child. The prospective parents are online and I have also interacted with them online and it appears that the couple, Mr.Juan Pedro Ruiz Garcia and Ms.Antonia Horta Ojeda, are very eager to adopt a child and are excited to interact with Swaraj.

7. While this Court appreciates enthusiasm of the prospective parents to have Swaraj as their child, however, what is of paramount importance is the welfare of the minor child, keeping in mind the objective and the purpose of the Juvenile Justice (Care And Protection Of Children) Act, 2015.

8. While interacting with the prospective adoptive parents today as well as with Natalia, who is a social worker with Ninos Sin Fronteras, I have expressed this Court's concern with respect to the ability and the capacity of the prospective adoptive parents to deal with Swaraj's condition and special needs as well as the Spanish State facilities for his care and therefore, I am of the view that Ninos Sin Fronteras (Children Without Frontiers), the AFAA furnish to this Court a further report as well as a report from a Spanish/Madrid/Ciudad Real equivalent of a Civil Surgeon in Mumbai, on the following two aspects:-

(i) that the prospective parents viz. Mr.Juan Pedro Ruiz Garcia and Ms.Antonia Horta Ojeda are not only financially

and physically suitable, having the time, the resources and wherewithal for Swaraj's treatment and therapies, to adopt Swaraj, who is a special needs' child suffering from a congenital heart disease of hole in the heart as well as Dolichocephaly which involves a long head and weak bones and related motor nerve issues but also emotionally mature to accept him and to care for him and handle his special needs; and

(ii) in the event this adoption is allowed and Swaraj is accepted as a citizen of Spain, the State facilities available in Madrid/Ciudad Real, Spain for Swaraj's treatment, care, rehabilitation and dignified life with his attendant condition, disabilities and special needs.

10. Let the aforesaid be furnished under an affidavit duly notarized/apostilled in Spain within a period of two weeks.

11. List on 20th February, 2025."

4. On 20th February 2025, the following order was passed :

"1. Pursuant to the order dated 30th January 2025, today when the matter is called out, Ms.Mehta, learned Counsel appears for the Petitioner and tenders an undertaking dated 10th February 2025 from Ninos Sin Fronteras (Children Without Frontiers) with respect to the medical treatment of the minor by proposed adoptive parents as well as an undertaking dated 5th February 2025 from Dr. Ana Barbero Sans, Pediatrician, with respect to the post adoption medical treatment of minor Swaraj.

2. A perusal of the same does not, in my view, satisfy the requirement of paragraph – 8 of the order dated 30th January 2025.

3. Accordingly, for the Petitioner / Proposed Adoptive Parents to comply with the said requirement, list on 13th March 2025."

5. Thereafter, today viz. on 13th March 2025, when the matter was called out, Ms.Mehta has tendered across the bar following documents under cover of letter dated 13th March 2025 :

(i) Undertaking / Report dated 27th February 2025 from the General Director of the Spanish Central Authority about the medical treatment that the minor will received in Spain.

(ii) Undertaking / Report dated 27th February 2025 from the General Director of the Spanish Central Authority about the suitability of Proposed Adoptive Parents to accept the minor with special needs.

(iii) Undertaking dated 3rd March 2025 from the AFAA, Children Without Frontiers.

The said reports / undertakings are taken on record.

6. The biological mother surrendered Swaraj before the Child Welfare Committee (CWC), Mumbai City-II on 5th February 2024 and the child's safe custody was given to the Petitioner Institution as per the order dated 5th February 2024 of the CWC under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015 (the "said Act") for primary care and protection. The Safe Custody order of the CWC is on record at Exhibit C to the Petition.

7. After making due inquiry under Section 38 of the said Act, the CWC, Mumbai City-I declared Swaraj "Legally Free for Adoption" on

23rd April 2024. The Free for Adoption Certificate is on record at C-1 to the Petition.

8. The Central Adoption Resource Authority (“CARA”), New Delhi has issued its No Objection Certificate dated 9th December 2024 to this adoption as per Adoption Regulation 2022 and Article 17(c) of the Hague Convention on the Protection of Children and Co-operation in respect of Inter country Adoption, 1993. The said No Objection Certificate is at Exhibit D to the Petition.

9. The Prospective Adoptive Parents are Spanish nationals, residing at Los Cortijos, Spain, aged about 36 and 45 years respectively. They have been married for the past 11 years (7th September 2013) with no biological children. The Prospective Adoptive father is working as a Estate Manager with Juana Vigara Calvo, Puertolland, Spain since 17th August 2020 and his total income for the year 2023 is Euro 19,880. The Prospective Adoptive mother is working as a Housekeeper with Aries Services S.L., Puertolland, Spain since 17th July 2023 and her annual gross income is Euro 7,532.70.

10. Ms.Vandana Chincholkar, Scrutiny Officer, Indian Council of Social Welfare (“ICSW”), present at today’s hearing has tendered the representation dated 9th January 2025 of ICSW which contains a chronology of all the approvals and reports necessary for adoption with a request to consider the same before passing the final order. The said representation is taken on record and marked “X” for the purposes of identification. As per the Representation from the ICSW to place children in adoption is valid for a period up to 5th May 2025.

11. Ms.Dipal S. Mehta, learned Counsel appearing for the Petitioner has, as noted in order dated 16th January 2025, taken me through the various approvals, reports, affidavits, declarations and undertakings as under :

Sr. No.	Date	Report/Affidavit/Declaration/Undertaking	Exhibit No.
1	30-10-2024	Proposed Adoptive Parents Application for adoption	A
2	27-09-2024	Letter of Motivation of the Proposed Adoptive Parents’	A-1
3	11-10-2024	Police Clearance/Verification Certificate of Proposed Adoptive Parents’	A-2
4	12-01-2021	Proposed Adoptive Parents’ Birth Certificates	A-3
5	09-03-2021	Proposed Adoptive Parents’ Marriage Certificate	A-4
6	14-01-2021	Proof of citizenship being Passport Pages of the Proposed Adoptive Parents	A-5
7	18-12-2023	Government issued identity cards of Proposed Adoptive Parents	A-6
8	18-10-2024	Medical Certificates with reports of Proposed Adoptive Parents	A-7

9	27-09-2024	Letter confirming name of minor	A-8
10		Photograph of Proposed Adoptive Parents	A9
11	13-12-2024	Petitioner's office bearer's Affidavit of consent and support	B
12	05-02-2024	Child Welfare Committee's safe custody Order	C
13	23-04-2024	C.W.C's Legally Free for Adoption Order	C-1
14	23-04-2024	C.W.C.'s Admission Order	C-2
15	09-12-2024	CARA NOC	D
16	28-02-2012	Letter issued by CARA to the M.S.W.C. confirming its recognized enlistment along with Certificate	E
17	29-04-2024	Child Study Report of the minor duly approved by Proposed Adoptive Parents	F
18	18-04-2024	Medical Examination Report of the minor duly approved by Proposed Adoptive Parents	F-1
19	20-06-2024	Medical Assessment Report of minor approved by Proposed Adoptive Parents	F-2
20	02-09-2024	Minor's Physiotherapy Report duly approved by Proposed Adoptive Parents	F-3
21	23-04-2024	Legally free Adoption Order duly signed by Proposed Adoptive Parents	F-4
22	18-03-2024	HIV Report of the minor	F-5
23	18-11-2024	Certified Photograph of minor Swaraj	G
24	21-08-2023	Home Study Report	H
25	21-08-2023	Psychological Report of Proposed Adoptive Parents for adoption	H-1
26	13-05-2022	Copy of AFAA [Children Without Frontiers] License issued by CARA	H-2
27	26-09-2023	Articles 5 & 17 of Spanish Government's permission for receiving adopted minor	I
28	27-09-2024	Declaration of assets and financial status of Proposed Adoptive Parents	J
29	04-10-2024	Copy of First Proposed Adoptive Parent's Income Tax Certificate for the years 2021, 2022 and 2023	J-1
30	17-09-2024	First Proposed Adoptive Parent's Employment Certificate with salary slips	J-2
31	17-09-2024	Second Proposed Adoptive Parent's Employment Certificate with salary slips	J-3
32	19-09-2024	Proposed Adoptive Parent's Degree Certificates	J-4
33	27-09-2024	Affidavit of Child Care Arrangement Undertaking	J-5
34	11-10-2024	Undertaking/Child Security from the relatives of the Proposed Adoptive Parents	K
35	24-02-2021	Reference Letter	L

36	24-02-2021	Reference Letter	L-1
37	27-09-2024	Declaration of Consent and Willingness of Proposed Adoptive Parents	M
38	27-09-2024	Undertaking from Proposed Adoptive Parents	M-1
39	27-09-2024	Undertaking from Proposed Adoptive Parents	M-2
40	27-09-2024	Undertaking from AFAA 'Children Without Frontiers'	M-3
41	27-09-2024	Copy of General Power of Attorney given by Proposed Adoptive Parents to M.S.W.C.	N

12. I have heard Ms.Dipal Mehta and also as noted earlier, perused the various approvals, reports, affidavits, declarations and undertakings annexed to the Petition as well as the representation of the ICSW.

13. The Home study report dated 26th September 2023 of the Social Worker of the Interdisciplinary Team of Children, Spain, has found the Prospective Adoptive Parents suitable for adopting a healthy male child between the age group of 0 to 4 years.

14. From the Medical Examination Report it is noted that Swaraj is a child with special needs who suffers from congenital heart defect with a hole in the heart and dolichocephaly with related motor nerve issues.

15. Also, as noted above, pursuant to order dated 20th February 2025, Ms.Dipal Mehta, learned Counsel for the Petitioner has today

tendered the Report/undertaking dated 27th February 2025 from the General Director of the Spanish Central Authority regarding the suitability of the Proposed Adoptive Parents to accept the child Swaraj with special needs as well as regarding the medical treatment that Swaraj will receive upon his arrival to Spain, and undertaking dated 3rd March 2025 from the AFAA, Children Without Frontiers.

16. The first report with respect to the suitability of the Proposed Adoptive Parents to accept Swaraj suggests that the Proposed Adoptive Parents have been assessed by the Interdisciplinary Team for the Protection of Children of the Provincial Delegation of Social Welfare of Ciudad Real and have been declared suitable, both economically and physically, as well as emotionally mature to adopt the child of Indian origin with special needs Swaraj, born on 30th January 2024, who suffers from congenital heart defect with a hole in the heart and dolichocephaly with related motor nerve issues. That, following this rigorous assessment, the Proposed Adoptive Parents are considered suitable to accept, care for and attend to Swaraj's special needs and that in the event Swaraj's adoption is allowed, the child will be able to arrive and reside in Spain as a Spanish citizen and will be able to make use of all the State Health Services in Ciudad Real, Madrid or any other

Spanish city that he requires due to his special needs condition so that he can have a dignified life like any other Spanish citizen.

17. The second report refers to Law 26/2015 of 28th July which guarantees universal and free healthcare for all children including those from inter-country adoptions and establishes that the Public Administrations must provide children with adequate treatment and assistance for the exercise of their rights including the support and rehabilitation resources they may require. That, Law 54/2007 of 28th December on Inter-Country Adoption amended by Law 26/2015 strengthens the protection of internationally adopted children ensuring that they receive the same treatment, care and rehabilitation services as any other child in the country. It has been submitted that, therefore, in the event that the adoption of Swaraj by the Proposed Adoptive Parents is allowed and as provided in the Laws stated therein, upon his arrival in Spain, the said report serves to state that Swaraj will be attended to in any of the State Health facilities that he may need according to his conditions of special needs, in any corresponding Spanish Public Hospital, like any other Spanish citizen.

18. The third document is an undertaking from AFAA which clearly records that the General Director of the Central Adoption Authority of Castilla-la-Mancha has issued two reports addressed to this Court in response to paragraph 8 of the order dated 30th January 2025.

19. I am satisfied that the requirements of the order dated 30th January 2025 have been met.

20. As also noted in order dated 30th January 2025, I have also interacted with the Proposed Adoptive Parents through video conferencing facility of this Court and note that they are eager to adopt Swaraj. It can be said that the Proposed Adoptive Parents are physically, mentally, financially, socially and emotionally prepared to adopt Swaraj.

21. The Prospective Adoptive Parents do not want to change the name of Swaraj.

22. I am satisfied that it would be in Swaraj's interest and welfare that he is adopted by the Proposed Adoptive Parents as the adoption will secure his treatment, upbringing and a dignified life.

23. It does not appear to me that this is a case where any consideration has been given or agreed to be given in consideration for the adoption nor any material has been placed before me or brought to my notice to hold otherwise.

24. This Court has jurisdiction to consider and dispose of the present Petition in view of the order dated 10th January 2023 of this Court 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.

25. Ergo, the Petition is allowed in terms of prayer Clauses (a) to (f) which read thus :

- (a) This Hon'ble Court may be pleased to appoint the proposed adoptive parents as the parents of the male minor, Swaraj now in the care of the Maharashtra State Women's Council Adoption Group, Asha Sadan Balgruh, Asha Sadan Marg, Umerkhadi, Mumbai - 400 009,
- (b) That the proposed adoptive parents be allowed to change the name of the minor, from 'Swaraj' to any other name if required,

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

- (c) That the proposed adoptive parents may be granted leave to remove the aforesaid child, Swaraj from the jurisdiction of this Hon'ble Court and to take the minor out of India along with them, to their home i.e. wherever they may require him to,
- (d) That the Petitioner be granted leave to apply to the concerned Municipal Authorities to issue a Birth Certificate of male minor 'Swaraj' showing the names of the proposed adoptive parents as his parents,
- (e) That the concerned Municipality / the Birth Certificate Issuing Authority may be directed to issue Birth Certificate for the said minor 'Swaraj' within five working days from the date of application of the Petitioner, as per the provisions of sub-regulation 15 of the Adoption Regulations 18 and Regulation 36,
- (f) The concerned Regional Passport Office may be directed to issue Passport for the said 'Swaraj' within ten days from the date of application, as per Sub-Regulation (4) of Regulation 18 and Regulation 38.

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

27. The undertakings in the Petition and the Judge's Order are accepted as undertakings to this Court.

28. In addition to the above, Ninos Sin Fronteras (Children Without Frontiers) to undertake to this Court that it shall furnish a report along

with supporting documents and current medical reports of the status, growth and well-being of the Indian child Swaraj to the Indian Embassy in Spain, every six months, to be forwarded to the Petitioner Institution as well as the ICSW and to this Court till Swaraj attains the age of majority in Spain.

29. The Foreign Adoption Petition accordingly stands allowed and disposed as above.

(ABHAY AHUJA, J.)

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