

HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.39278 OF 2014

ORDER:

The issue arises under the Passports Act, 1967.

The petitioner prays for Mandamus declaring the action of 1st respondent in insisting the petitioner to produce valid adoption deed for issuance of passport, through communication dated 08.11.2013 in file No.HY1067141870313, as illegal and unconstitutional.

The petitioner claims to be a major. The petitioner applied for passport and the same is pending in file in file No.HY1067141870313 dated 06.08.2013. The petitioner is the daughter of Mr.Rakesh Kumar Rastogi and Mrs.Anitha Rastogi. The petitioner claims that she was given in adoption to Mr. and Mrs.B.D.Rastogi and the petitioner has been living with adoptive parents. The adoptive father is none other than petitioner's mother's brother (maternal uncle). The 1st respondent through the communication dated 08.11.2013 observed the following shortcoming in application vide file No.HY1067141870313

"you are requested to furnish valid adoption deed in accordance with Hindu Adoption Act, to enable us to process your application."

(emphasis

supplied)

The petitioner assails the said communication primarily on the ground that the requirement now insisted upon by the 1st respondent is unintelligible and does not fit into the scheme of the Hindu Adoption and Maintenance Act, 1956 (for short 'the Act'). Section 6 of the Act states the requisites of a valid adoption and the execution of an adoption deed is not one of the requirements under Section 6 of the Act. As a matter of fact, as the adoptive and biological

parents are alive, the petitioner contends that the factum of adoption is evidenced through declarations given by all of them which are enclosed along with the application.

The petitioner places strong reliance upon the decision of High Court of Bombay in **MIHIR RAMESH VORA Vs. UNION OF INDIA AND REGIONAL PASSPORT OFFICER**^[1]. The relevant paragraph on which reliance is placed is as under:

“The circular dated 03.10.2001 is required to be read in its entirety. So read, it is clear that the same applies to minor children, whether adopted or otherwise. The portion of the circular captioned “Adopted Children” cannot be read independent of the first portion, which clearly concerns minor children below 18 years age. Even in the second portion of the circular entitled “Adopted Children” reference is made to ‘children’ or ‘adopted children’. Contextually, it is clear that the requirement concerns ‘minor adopted children’ and not ‘adopted children’, who have attained age of majority. Further, in any case, the circular applies to children, who are adopted from another State/area of jurisdiction other than that of the passport officer. This is a matter of precaution. None of these circumstances apply to the petitioner’s case. The petitioner is neither a minor, nor has he been adopted from another State/area or jurisdiction other than that of the passport officer. Clearly therefore, the circular dated 3.10.2001 is inapplicable to the case of the petitioner. In these circumstances, it is not necessary to rule upon the validity or otherwise of the circular dated 3.10.2001 in the peculiar facts and circumstances of the present petition.”

It is further contended that the petitioner being major cannot be compelled now to produce a document which is not required by the Act and consequently the petitioner prays for setting aside the communication dated 08.11.2013.

The 1st respondent, on receipt of notice, explained the

circumstances which compelled him to call upon the petitioner to produce evidence in proof of adoption. The reply, in the opinion of this Court, is slightly fine tuned from the shortcoming noted in the communication dated 08.11.2013. It is, no doubt, true that the 1st respondent having seen different names of natural parents and adoptive parents desired certainty in the matter before the name of father of petitioner is incorporated in the passport. For that purpose, in the opinion of this Court, and in view of the principle laid down by the Division Bench in the above decision, the 1st respondent cannot insist upon a condition which is not required even under the Act.

Therefore, the impugned communication dated 08.11.2013 is liable to be set aside and is accordingly set aside. The 1st respondent has alternatively submitted that the petitioner is required to prove the adoption and the application of the petitioner will be considered for grant of passport. The petitioner, if so advised, is given one week time from today to submit the best evidence available in proof of adoption, including a declaration deed by the natural and adoptive parents. The respondent is directed to consider application No. HY1067141870313 of the petitioner without insisting upon a particular type of adoption deed and pass final order in the matter within a further period of two weeks thereafter for issue of passport.

The writ petition is, accordingly, ordered as indicated above.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

S.V. BHATT, J

25th February, 2015

Lrkm

^[1] 2013 (5) MHLJ 827 (DB)