

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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CM No.8373 of 2015 and
Civil Writ Petition No.21528 of 2014

Date of Decision: July 15, 2015

Rakesh Kumar and another

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Mandeep Kumar Dhot, Advocate
for the applicants-petitioners.

Mr. Ashish Sharma, Additional Advocate General, Punjab,
for respondents No.1 to 3.

Mr. V.K. Kaushal, Advocate
for respondent No.4-Union of India.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.8373 of 2015

Prayer in this application is for exemption from filing the certified copies of Annexures P-8 to P-10 and for permission to place on record the Annexures P-8 to P-10.

Application is allowed subject to just exceptions.

Annexures P-8 to P-10 are taken on record.

CWP No.21528 of 2014

Petitioners have approached this Court praying for issuance of a writ of certiorari for quashing the order dated 11.04.2014 (Annexure P-6) passed by the Tehsildar-cum-Sub Registrar, S.A.S. Nagar, Mohali and the order dated 12.08.2014 (Annexure P-7) passed by the Deputy

Commissioner-cum-Registrar, S.A.S. Nagar, Mohali, by which the adoption deed of the petitioners has been returned by observing that the same cannot be registered as petitioner No.2 at the time of presentation of the document has exceeded the age of 15 years.

Briefly the facts of the case are that petitioner No.2 was born on 30.01.1994 with his natural parents being Subhash and Sushma. In the birth certificate, which was got registered on 08.02.1994, the names of natural parents of petitioner No.2 are mentioned. Subhash, natural father of petitioner No.2, is real younger brother of petitioner No.1-Rakesh Kumar. Since petitioner No.1 had only two daughters and no son, whereas Subhash had two sons prior to birth of petitioner No.2-Kashish, he was adopted by petitioner No.1 on 01.08.1994. From that very date onwards, he was taken care of and resides with petitioner No.1 and his wife namely Raksha Devi.

Ration Card was got made by petitioner No.1, where the name of petitioner No.2 finds mention as his son and at that time petitioner No.2 was 4 years of age. Ration Card dated 15.05.1998 is appended as Annexure P-8. Ration Card, which has been issued to the brother of petitioner No.1 namely Subhash Kumar (natural father of petitioner No.2) is also appended as Annexure P-9, where name of petitioner No.2 namely Kashish does not find mention. It has been asserted that the petitioner No.2 has studied in Gian Jyoti Public School, Phase-2, Mohali, from Class 3rd onwards and has passed his All India Secondary School Examination from the said school in March, 2009, where name of petitioner No.1 is mentioned as father. Character Certificate issued by the said school is appended as Annexure P-10.

Counsel for the petitioners contends that since the very

inception, the petitioner No.2 is residing with petitioner No.1 and his wife and, therefore, he had applied for issuance of a passport, which was not issued rather petitioners were directed to get the adoption deed registered with the Tehsildar-cum-Sub Registrar-respondent No.3. On presentation of the said adoption deed before respondent No.3 for registration, the same has been rejected on the ground that the same cannot be accepted as the same is violative of the provisions of the Hindu Adoption and Maintenance Act, 1956. The said order dated 11.04.2014 is appended as Annexure P-6. The appeal preferred by the petitioners before the Deputy Commissioner-cum-Registrar, S.A.S. Nagar, Mohali-respondent No.2, has also been rejected by order dated 12.08.2014 (Annexure P-7) by observing that since petitioner No.2 is now 20 years of age and has exceeded the age limit of 15 years, prior whereto the adoption deed could have been registered, the same cannot be registered.

Petitioners have approached this Court challenging these two orders passed by respondents 2 and 3 respectively and has also prayed for directing the Regional Passport Officer, Chandigarh-respondent No.4, to issue the passport to petitioner No.2, as there is no requirement under the provisions of the Passport Act, 1967, that the adoption deed should have been registered. In support of this contention, counsel for the petitioners has relied upon the Full Bench judgment of this Court passed in case titled as *Pawan Deep Singh Versus Union of India and another 2004(1) R.C.R. (Civil) 459*, where it has been held that merely because the adoption is not valid, is not a ground for rejection of the application for issuance of passport. Reliance has also been placed on the Division Bench judgment of this Court passed in case titled as *Satinder Pal Singh Sibia Versus Union of*

India and another 2006(4) R.C.R. (Civil) 514, where it has been held that it is not open to the Passport Officer to go into the validity of adoption at the time of issuance of a passport.

Counsel for respondents 1 to 3, on the other hand, submits that the impugned orders passed by the Tehsildar-cum-Sub Registrar and the Deputy Commissioner-cum-Registrar, are in accordance with law, as these authorities have only followed the mandate of the statute, which requires the Registering Authority to register the adoption deed till the date, the minor attains the age of 15 years and not beyond that. In support of this contention, he has relied upon Section 10(iv) of the Hindu Adoption and Maintenance Act, 1956.

It would not be out of way to mention here that on 17.10.2014, counsel for the petitioners had given up the challenge to the orders dated 11.04.2014 (Annexure P-6) and 12.08.2014 (Annexure P-7).

In view of the provisions of the statute, the impugned orders cannot be said to be not in consonance with the requirement of law and, therefore, this part of the prayer of the petitioners cannot be accepted.

Submission, which has been made by the counsel for the petitioners with regard to the issuance of the passport to petitioner No.2, appears to be carrying weight in the light of the fact that as per the provisions of Section 6 of the Passport Act, 1967, the reasons specified therein can only be taken into consideration by the authority for rejecting the application or for refusal of the passport. The only ground, which to some extent may carry weight and which has been pointed out in the reply filed by respondent No.4 is that the birth certificate of petitioner No.2 contains the name of his natural parents and, therefore, the contents in the

application submitted by the petitioners for issuance of the passport, are not depicting the correct position.

This stand of the respondent cannot be accepted in the light of the overwhelming documentary evidence on record, which clearly shows that petitioner No.2 was adopted by petitioner No.1 and his wife-Raksha Devi on 01.08.1994. It is a different aspect that the said adoption deed has not been registered but registration of such a document is not required or mandated under the provisions of the Passport Act, 1967, nor is it available as a ground for rejection of the application for issuance of a passport or for refusal of issuance of the same.

Counsel for respondent No.4 has placed reliance upon the Division Bench judgment of this Court passed in *LPA No.220 of 2013* tiled as *The Regional Passport Office Versus Karan Khurmi*, decided on 21.10.2013. The said judgment related to a case, where under the provisions of the Hindu Adoption and Maintenance Act, 1956, the petitioner in the said writ petition could not have been adopted as per law. It has clearly been mentioned therein that the adoptive parents were having one male child at the time of adoption of the petitioner and, therefore, he could not have been adopted in terms of Section 11 of the Hindu Adoption and Maintenance Act, 1956, which is not the position in the present case as in the present case, the adoptive parents had two daughters and have no son.

That apart, the natural father of petitioner No.2 is the real younger brother of petitioner No.1, who is the adoptive father. Such adoption of a son is common between families, where one of the brothers has no male child, whereas the other already has two and is blessed with third male child, he may in such circumstances, give in adoption one of his

male child to his brother, who has no male child. The documents on record, as has been referred to in the factual aspect, indicate that petitioner No.2 has also been residing and was in care and protection of petitioner No.1 and his wife from his infant stage. All this clearly depicts that there was no bar under the statute with regard to the adoption of petitioner No.2 by petitioner No.1 and his wife and that there is nothing on the record to the contrary, which would indicate that adoption had not taken place.

In view of the Full Bench judgment of this Court in **Pawan Deep Singh's case** (supra) as also **Satinder Pal Singh Sibia's case** (supra), it would not be open to respondent No.4 to refuse the passport to petitioner No.2 on the ground that the adoption deed has not been registered when the adoption of petitioner No.2 by petitioner No.1 and his wife is not in dispute or that the said adoption was illegal or not permissible under the 1956 Act, nor is there anything suggesting otherwise that the adoption had not taken place.

In view of the above, the present writ petition is partly allowed with a direction to the Regional Passport Officer, Chandigarh-respondent No.4, to consider the application of the petitioner in the light of the findings recorded above and proceed to finalise his claim for issuance of a passport within a period of four weeks from today.

Copy of this order be given *dasti* to the counsel for the parties under signatures of Bench Secretary.

July 15, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE