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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6338 OF 2015**

Mrs. Sulabha Sharad Bavadekar	... Petitioner
Vs.	
The Union of India and Ors.	... Respondents

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Mr. Roshan S. Tanna for the Petitioner.
Mr. Vijay Kantharia a/w. Mr. P. S. Gujar for the Respondent no.1.
Ms. Aparna Vhatkar, AGP for the Respondent nos. 2 and 3.

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**CORAM : A.S. OKA &
A.K. MENON, JJ.**
DATE : 5th APRIL, 2017

ORAL JUDGMENT (PER A.S. OKA, J.)

1. Heard learned Counsel appearing for the petitioner, the learned Counsel appearing for the first respondent and learned AGP for second and third respondents. On the last date, we had put the parties to notice that the petition will be taken up for final disposal at admission stage. Rule. The respondents waive service. Accordingly, we have heard the parties.

2. The petitioner on the basis of a passport issued by United Kingdom of Great Britain and Northern Ireland entered India on 18th November, 1968. The petitioner is born on 15th December, 1956. A photocopy of the passport is annexed to the petition bearing an

endorsement that the petitioner is a citizen of United Kingdom and its Colonies. The perusal of the passport of the petitioner shows that on 18th November, 1968 a rubber stamp was put by the authorities in India mentioning "Permitted to land at Bombay". Admittedly as on that date, there was no law which required the petitioner to obtain a visa for particular period. The British passport of the petitioner was lastly renewed upto 23rd June, 1975. The petitioner made an application on 5th November 2007 for grant of Indian citizenship under clause (c) of sub-section(1) of Section 5 of the Citizenship Act, 1955. (for short "Citizenship Act"). The petitioner claims that she is married to a citizen of India on 27th April, 1980 at Pune. Copies of the Memorandum of marriage, passport held by her, the passport held by her husband etc were annexed to the application made by her for citizenship. The Petitioner paid fees of Rs.500/-. After due scrutiny, the Government of Maharashtra alongwith the letter dated 24th April, 2008 forwarded the application of the petitioner for grant of Indian citizenship under clause (c) of sub-section (1) of Section 5 of the Citizenship Act to the Government of India. The said letter specifically records that State Government has no objection for the grant of citizenship to the petitioner.

3. By a letter dated 15th July, 2008 the Ministry of Home Affairs of Government of India addressed to the Government of Maharashtra in

which it was stated that valid and upto-date passport of the Petitioner, valid and upto-date LTV / Residential permit with copies of last seven years LTV were necessary to be produced. A copy of the said letter was forwarded to the petitioner. She responded by her letter dated 1st March, 2009 to the Home Department of the State Government. She relied upon fact that on 18th November, 1968 she was allowed entry in India by putting a rubber stamp on her passport which is referred earlier. Alongwith a letter dated 17th March, 2009, the State Government forwarded a report submitted by Deputy Commissioner of Police, Pune Branch to Government of India. Thereafter, there was correspondence exchanged between the two Governments. Ultimately, by the communication dated 25th October, 2012 the Government of India informed the State Government that the application of the petitioner was not acceptable. The relevant part of the said letter reads thus :-

"I am directed to refer to the State Government letter No. CTZ/TAN 2008/CR-332/FOR-I dated 17.03.2009 on the subject noted above and to say that the citizenship application of the above applicant is not acceptable as the applicant is neither in possession of valid passport nor does she possess valid LYV/RP. She may however be advised to apply afresh after regularization of her stay alongwith requisite documents.

(underline supplied)

4. The petitioner is relying upon the letter dated 27th January, 2015 issued by the Office of the Hon'ble Minister of State for Home Affairs recording that Hon'ble Minister desires that the genuine issue raised by the petitioner needs a sympathetic consideration.

5. Ultimately, the petitioner was served with the communication dated 8th May, 2015 addressed by the Section Officer of the Home Department of Government of Maharashtra addressed to the District Collector enclosing therewith a copy of the letter dated 23rd April, 2015 received from the Government. It is necessary for us to reproduce the letter dated 23rd April, 2015 addressed by the Under Secretary of the Home Ministry for Home Affairs to the Secretary of Government of Maharashtra of the Home Department which reads thus : -

"I am directed to refer to the State Government's letter no. ctz/TAN 2008/CR 332/FOR 1 dated 17.3.2009 and this Ministry's letter of even no. dated 25.10.2012 on the above subject and to say that the application is neither in possession of valid passport nor does she possess valid LTV/RP. She may however be again advised to apply afresh after regularization of her stay along with requisite documents."

(underline supplied)

6. Therefore, the present petition under Article 226 of the Constitution of India has been filed challenging the decision of the Government of India denying the citizenship to the petitioner. There is a reply filed by Shri S. C. Solanki on behalf of the first respondent. In the reply, the factual aspects stated in the petition have not been disputed.

7. Today, the learned Counsel appearing for the first respondent has relied upon e-mail received by him dated 31st March, 2017. The e-mail reiterates what is stated in the earlier communications issued by the Government of India to the effect that the petitioner does not possess a residential permit or a valid visa. It states that the petitioner should apply to FRRO for a valid visa / residential permit.

8. Learned Counsel appearing for first respondent while opposing the petition has relied upon statements made in the affidavit- in- reply and what is stated in the email.

9. We have considered the submissions. We are constrained to observe that all the correspondence made by the Government of India proceeds on the erroneous footing that the petitioner is a national of Tanzania. A copy of the passport annexed to the petition shows that petitioner was issued the said passport (pages 20 to 24) as she was a British subject and was a citizen of United Kingdom and its colonies.

The passport is issued by the Government of United Kingdom of Great Britain and Northern Ireland. In the following letters addressed by the Government of India, the petitioner has been referred as a Tanzanian National.

- (1) Letter dated 15th July, 2008 – Exhibit – D.
- (2) Letter dated 17th March, 2009 – Exhibit – F.
- (3) Letter dated 17th August, 2009 – Exhibit – G.
- (4) Letter dated 25th October, 2012 – Exhibit – J.
- (5) Letter dated 23rd April, 2015 – Exhibit – M

10. Even the correspondence made by the State of Maharashtra proceeds on the footing that petitioner was a Tanzanian national. Even in the affidavit of Shri. S. C. Solanki in paragraph 4, it is mentioned that petitioner is a Tanzanian National. Thus, it is apparent that the authorities of the Central Government were not even aware of the fact that the petitioner entered India on the basis of a passport issued by United Kingdom of Great Britain which specifically records that she is a British subject and a citizen of United Kingdom and its Colonies. There is no dispute raised by the first respondent that on 18th November, 1968 the petitioner who was at the time minor was allowed to enter India. A rubber stamp to the effect “Permitted to land at Mumbai” was put on her British Passport. Admittedly, as of that date, there was no law

which provided for the grant of a residential permit or visa. No provision of law is shown to us which lays down that the foreign nationals who were allowed valid entry into India in the year 1968 were required to subsequently apply for Visa or residential permit.

11. The application made by the petitioner was specifically under clause (c) of sub-section (1) of Section 5 of the Citizenship Act. Section 5 of the Citizenship Act reads thus :

Section 5 : Citizenship by registration.

(1) Subject to the provisions of this section and such other conditions and restrictions as may be prescribed, the Central Government may, on an application made in this behalf, register as a citizen of India any person not being an illegal migrant who is not already such citizen by virtue of the Constitution or of any other provision of this Act if he belongs to any of the following categories, namely:—

(a) a person of Indian origin who are ordinarily resident in India for seven years before making an application for registration;

(b) a person of Indian origin who is ordinarily resident in any country or place outside undivided India;

(c) a person who is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration;

(d) minor children of persons who are citizens of India;

(e) a person of full age and capacity whose parents are

registered as citizens of India under clause (a) of this sub-section or sub-section (1) of section 6;

(f) a person of full age and capacity who, or either of his parents, was earlier citizen of independent India, and has been residing in India for one year immediately before making an application for registration;

(g) a person of full age and capacity who has been registered as an overseas citizen of India for five years, and who has been residing in India for 2[one year] before making an application for registration. 3[one year] before making an application for registration."

Statement of Objects and Reasons [The Citizenship (Amendment) Act, 2005] To reduce the period of residence in India from two years to one year for the persons registered as Overseas Citizens of India to acquire Indian citizenship. Explanation 1.—For the purposes of clauses (a) and (c), an applicant shall be deemed to be ordinarily resident in India if—

(i) he has resided in India throughout the period of twelve months immediately before making an application for registration; and

(ii) he has resided in India during the eight years immediately preceding the said period of twelve months for a period of not less than six years. Explanation 2.—For the purposes of this sub-section, a person shall be deemed to be of Indian origin if he, or either of his parents, was born in undivided India or in such other territory which became part of India after the 15th day of August, 1947.]

(2) No person being of full age shall be registered as a citizen of India under sub-section (1) until he has taken the oath of allegiance in the form specified in the Second Schedule.

(3) No person who has renounced, or has been deprived of, his Indian citizenship or whose Indian citizenship has terminated, under this Act shall be registered as a citizen of India under sub-section (1) except by order of the Central Government.

(4) The Central Government may, if satisfied that there are special circumstances justifying such registration, cause any minor to be registered as a citizen of India.

(5) A person registered under this section shall be a citizen of India by registration as from the date on which he is so registered; and a person registered under the provisions of clause(b)(ii) of article 6 or article 8 of the Constitution shall be deemed to be a citizen of India by registration as from the commencement of the Constitution or the date on which he was so registered, whichever may be later. 3[(6) If the Central Government is satisfied that circumstances exist which render it necessary to grant exemption from the residential requirement under clause (c) of sub-section (1) to any person or a class of persons, it may, for reasons to be recorded in writing, grant such exemption.]

Section 2(c) : “illegal migrant” means a foreigner who has entered into India -

- (i) *without a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf; or*
- (ii) *with a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf but remains therein beyond the permitted period of time;”*

12. It is not in dispute that at the time of entry into India, the petitioner was possessing a valid travel document. Therefore, sub-clause (i) of Section 2(c) will have no application. As there is nothing placed on record to show that at the time of her entry into India, the petitioner was permitted to stay in India limited to a specific duration, even sub-clause (ii) of Section 2 (c) will have no application. Hence, the petitioner cannot be said to be an illegal occupant.

13. We may note here that the Registration of Foreigners Rules, 1992 came into force on 19th March, 1992. There is no dispute raised by either the State Government or the Central Government about the fact that the petitioner married to an Indian Citizen on 27th April, 1980. In fact a copy of the Memorandum of marriage was produced along with the application for citizenship. There is no dispute that before the date of making the application for citizenship on 5th November, 2007, continuously for a period of more than seven years, the petitioner was

an ordinary resident of India.

14. In absence of any material placed by the Government of India to show that on a particular day, the residence of the petitioner in India became illegal, there was no valid reason to deny the citizenship to the petitioner on the grounds stated in the impugned communication.

15. Therefore, the orders passed by the Government denying Indian Citizenship to the petitioner are completely illegal and deserve to be set aside.

16. Accordingly, we pass the following order :

(a) The communications dated 25th October, 2012 and 23rd April, 2015 issued by the Government of India are quashed and set aside;

(b) We direct the Government of India to decide the application dated 5th November, 2007 made by the petitioner for grant of citizenship under clause (c) of Section (5) of the Citizenship Act afresh in the light of findings recorded in this judgment and order. We make it clear that application cannot be rejected on the grounds on which the impugned communications have been issued;

(c) Final order shall be passed on the application for grant of citizenship as expeditiously as possible and in any event within six weeks from the date on which an authenticated copy of the judgment and order is submitted by the petitioner in the Office of Ministry of Home Affairs, Government of India in Jaisalmer House, Man Singh Road, New Delhi;

(d) Rule is made absolute on the above terms.

(A.K. MENON, J)

(A.S. OKA, J)