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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 1546/2014

% Date of decision : 23rd August, 2017

LUINGAM LUITHUI AND ORS Petitioners

**Through : Mr. M.S. Ganesh, Sr. Adv.
with Ms. Shomona Khanna
and Ms. Radhika Kolluru,
Advs.**

versus

UNION OF INDIA AND ORS Respondents

**Through : Mr. Sanjay Jain, ASG for
UOI with Mr. A.K. Gautam,
Mr. Ranbir S. Chhillar and
Ms. Rajul Jain, Advs. for
UOI.
Mr. S.C. Solanki, US MHA
(F) and Smt. Sreenath
Ghose, SO (NE-I) MHA.
Mr. Surender Kumar, Under
Secretary, (PV-I) and Mr.
Deepak Sharma, Assistant
Passport Officer (PV-I)**

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

1. The present writ petition has been filed by the petitioners challenging the legislative competence and constitutional validity of sub-section (2) of Section 9 of the Citizenship Act, 1955 read

with Rule 40 as well as paragraphs 3 and 6 of Schedule III of the Citizenship Rules, 2009. The writ petitioners also challenge the constitutional validity of sub-section (5) of Section 10 of the Passports Act, 1967. The writ petitioner makes the following prayers :

- “i. Call for the records of the case from respondent Nos. 1 to 4, including, in particular, the original passport No. R 461568 issued on 4.8.1994 by Respondent No.3 and valid upto 3.8.2004;*
- ii. Hold and declare that:*
 - a) The power to legislate for and enable the State to exile or banish a citizen of India is beyond the legislative competence of Parliament under Articles 10, 11, 245 and 246(1) read with the Seventh Schedule, List I, Entries 17 and 19 and hence also beyond the competence of the executive power conferred on the Union by Article 73 of the Constitution of India;*
 - b) That sub-section (5) of Section 10 of the Passports Act, 1967 and sub-section (2) of Section 9 of the Citizenship Act, 1955 read with Rule 40 and paragraphs 3 and 6 of Schedule III of the Citizenship Rules, 2009 are ultra-vires the Constitutional and fundamental rights guaranteed to the Petitioners by Articles 5(a) and (b), 10, 11, 14, 19(1)(a) to (g), 21 and 29(1) read in the light of Articles 39A, 51(c), 51A(c), (f) and (h) and Article 253 of the Constitution of India;*
 - c) That the alleged and impugned Impounding Circular No. VI/405/89/94 dated 31st*

August 1995 issued by Respondent No. 3 and the alleged and impugned Look Out Circular (LOC) No. 18/96 bearing F.No. 25018/127/96-F.IV dated 24.9.1996 issued by Respondent No. 1 and 2 are void ab initio and also vitiated by malice in law;

d) That Petitioner Nos. 1 and 2 have not voluntarily acquired the citizenship of any foreign State (Canada) within the meaning and intent of Article 9 of the Constitution of India or of paragraphs 3 and 6 of Schedule III under Rule 40(2) of the Citizenship Rules, 2009 read with Section 9(1) of the Citizenship Act, 1955.

iii. Issue a writ of certiorarified mandamus or an appropriate writ, order or direction in the nature of certiorarified mandamus:

a) Directing Respondent Nos. 1 to 4 to grant visas to Petitioner Nos. 1 and 2 to travel to and enter the territory of India to reclaim their citizenship of India;

b) Directing Respondent Nos. 1 to 4 to restore to Petitioner Nos. 1 and 2 their full civil rights, including the right of permanent residence in India as citizens of India by birth;

c) Directing Respondent Nos. 1 to 4 to grant Person of Indian Origin (PIO) cards to Petitioner Nos. 1 and 2;

iv. Grant to Petitioner Nos. 1 and 2 specifically Prayers iii(a) and (b) above such that they are operative nunc pro tunc from 22.9.1995 when this

Hon'ble Court passed its Order finally disposing of C.W.P. No. 1651 of 1995 filed by Petitioner No. 2 through and represented by Petitioner No. 1;

v. Award costs of this Petition in favour of Petitioner Nos. 1 and 2 and against Respondent Nos. 1 to 4"

2. We are confining the present order to the consideration of the prayer of the petitioner nos.1 and 2 to issuance of their passports which prayer for issuance of passport has been denied by the respondents on the plea of their having opted for Canadian citizenship.

3. We note hereunder such facts as are necessary for considering this prayer, which are undisputed.

4. The petitioner nos.1 and 2 herein are husband and wife, who belong to the Tangkhul Naga Tribe (a Scheduled Tribe), domiciled in the hilly areas of the State of Manipur and are Indian citizens by birth within the meaning and intent of Article 5(a) and (b) of the Constitution of India and Section 3(1)(a) of the Citizenship Act, 1955.

5. In 1992, both the petitioners were holding valid Indian Passports issued under the Passports Act, 1967. The petitioner no.2 was issued Indian Passport bearing No. B286072 while petitioner no.1 was issued Indian passport bearing No. W898837. It is also submitted that petitioner no. 1, who had travelled to Ottawa, Canada for a training programme in August, 1993, was issued a

fresh Indian Passport bearing no. R461568 by the Indian High Commission, Canada as his existing Passport bearing no. W898837 was due to expire on 27th September, 1994.

6. While travelling in Bangkok, Thailand on 2nd July, 1994, petitioner no.2 complains that her passport was stolen while in the market place and that she had also made a police complaint in this regard. Consequently, on 4th July, 1994, the petitioner no.2 also made an application at the Indian Embassy in Bangkok for issuance of a duplicate passport, duly enclosing a photocopy of her passport which had been stolen. In support of this plea, the petitioner has placed on record a receipt no.43453 dated 6th July, 1994 issued by the Indian Embassy, Bangkok for the sum of 4980 Baht paid by her to it for the issuance of the duplicate passport. This is informed to be the fee prescribed for the purpose.

7. Inasmuch as her application for duplicate passport was not being processed despite passage of almost a year, on the 9th of May, 1995, the petitioner no.2 had filed CWP No.1651/1995 through the petitioner no.1 in this court seeking issuance of a writ of mandamus to the respondent no.3 directing it to issue a duplicate passport to petitioner no.2.

8. The respondents appeared in response to the notice to show cause in this writ petition and filed a counter affidavit dated 16th August, 1995. We extract hereunder the relevant portion of the counter affidavit filed by the respondents :

“1. Para no.1 of the writ petition is admitted to the extent that the petitioner is an Indian citizen, rest of the

para is denied for want of knowledge.

2. *In reply to para no.2 of the writ petition it is submitted that*

(i) Ms. Peingmla and her husband are from Ukhrul District in Manipur which is seriously affected by the Naga insurgency. Also in some pockets there have been Naga-Kuki conflicts. One of the top leaders of NSCN(I), i.e. Th. Muivah is also from Ukhrul District.

(Emphasis by us)

9. In para 2 (ii) of this counter affidavit dated 16th August, 1995, under the caption “*Brief Facts of the Case*” in the said counter affidavit, the respondents alleged that :

“(ii) Ms. Peingamla Luithui lives with her husband Luingam in Bangkok. Bangkok has reportedly been used as operational HQ by the top leadership of NSCN (I)(M). Isaac Swu and Th. Muivah have been reportedly using Bangkok for strategic purposes and particularly for purchase of arms for being used against Indian Security forces and civilians in the North East. They are also reported to use the place for safe haven, obtaining documents, printing of literature etc. Reportedly, arms consignments have also been procured in Thailand and sent to India through Bangladesh and Myanmar. They have been used for unlawful activities directed against the security and integrity of India. The respondents have taken up the matter with Government of Thailand to obtain their cooperation.”

(iii) It is believed that Luingam Luithui, husband of Ms. Peingmla Luithui has been associated with the top leaders of the NSCN(I)(M) in Bangkok and has been helping them.

(iv) The loss of passport under these circumstances will need to be verified particularly to see under which circumstances the passport has been lost and whether it had not fallen into the hands of unscrupulous elements.

Such possibilities cannot be ruled out.

*(v) The above will require some time and therefore **extension of time is necessary for this purpose.** Also various other points have been raised in the writ petition which will have to be looked into and replied to.”*

(Emphasis by us)

10. Thus to justify their action of non-processing of the application of petitioner no.2, the respondents made the allegations against petitioner no.1 that he “*is actively assisting leaders of National Socialist Council of Nagaland (Isak Swu faction) which has been notified as an unlawful association under the Unlawful Activities (Prevention) Act, 1967*”.

11. So far as the petitioner no.2 is concerned, it was only stated in the counter affidavit of 1995 that *she has been accompanying her husband Luingam Luithui during his travels to various countries in Asia and Europe*. There was not the remotest suggestion of impropriety or illegal conduct by the petitioner no.2.

12. In the counter affidavit, it was contended by the respondents that, in the stated circumstances, the loss of passport had to be verified and it had to be examined whether it had fallen into the hands of unscrupulous elements. The respondents stated that this aspect of the matter required some time. It is noteworthy that the respondents not only admitted that the petitioners were Indian citizens but also did not dispute the entitlement of the petitioner no.2 to the grant of duplicate passport therein.

13. In all fairness, we may also note the response of the

petitioner no.1 in his rejoinder to the above allegations. In paragraph 4 thereof, he specifically traversed and refuted the allegations made against him in the said counter affidavit stating as follows :

*“The **allegations that the petitioner’s husband (deponent) is associated with and assisting leaders of NSCN (Isaac Swu faction) is totally false.** The deponent has nothing to do with this organisation or its leaders...”*

In paragraph 6 thereof, the petitioners averred :

*“6. It is therefore amazing that Sh. Shahare has filed an affidavit making such **wild accusations and insinuations against the deponent and the petitioner.** The petitioner has believed in and is always fighting for the democratic and human rights of people, especially for the people of Nagaland. It is perhaps his struggle for the rights of these people which has provoked the authorities. ...”*
(Emphasis by us)

14. No proceedings, civil or criminal, against the petitioner no.1, were set out or even suggested by the respondents in the counter affidavit.

15. In these proceedings, an order dated 14th August, 1995 was passed by this court requiring the presence of the Deputy Secretary concerned, along with relevant records. The petitioner no.1, who had sworn the affidavit in support of the writ petition on behalf of his wife, was also directed to remain present in person.

Be it noted that no records were produced by the respondents before the writ court.

16. Given the nature of the disputes before us, we may also

usefully extract the final order dated 22nd September, 1995 passed in CWP No.1651/1995 which reads as follows:

“22.9.95 *Present : Mr. Prashant Bhushan for the petitioner.
 Mr. Bhupinder Singh and Mr. A.K. Vali for respondent.*

C.W.1651/95 and C.M.3013/95

On our directions, Mr. Bhaskar Mitra, Joint Secretary (Counsellor and Passport) is present. He says, on petitioner applying, she will be given travel documents on emergency basis to travel from Bangkok to New Delhi. He further says, the application of the petitioner for grant of duplicate passport to her shall be considered as soon as possible.

In this view of the matter, no further orders are required in this petition which stands disposed of.

D.P. WADHWA, J.

DR. M.K. SHARMA, J.”

(Emphasis by us)

17. The above order would show that even in the hearing on 22nd September, 1995 before the Division Bench of this court, no objection was expressed to the issuance of the duplicate passport to the petitioner no.2. On the contrary, the respondents assured the court that the petitioner no.2's application for grant of duplicate passport shall be considered as soon as possible.

In these circumstances, petitioner no.1 rejoined the petitioner no.2 who was still at Bangkok.

18. However, nothing was done by the respondents to comply with the order dated 22nd September, 1995 and it became evident that respondents no.1 to 3 were not abiding by the commitment given by them on 22nd September, 1995 to this court to issue a duplicate passport.

It is stated in the writ petition that additionally several instances of persecution of the petitioner nos. 1 and 2 through the Thai authorities took place. The petitioners complain that at the instigation of the Govt. of India, on 10th October, 1995, the Royal Thai Police raided a hotel in Chiang Mai where the AIPP and International Work Group on Indigenous Affairs were holding an international conference in which the petitioners were participating.

19. These events cumulatively created a bonafide apprehension in the minds of the petitioner nos. 1 and 2 that a situation was being engineered which would result in the continued stay of petitioner no.2 in Thailand being treated by the local authorities as stay of a foreign national without travel documents in violation of Thai Penal laws, which would result in their incarceration in that country, without availability of any legal redressal. It is also urged that by their contumacious conduct in not issuing the duplicate passport to the petitioner no.2, the respondents effectively prevented the petitioners from seeking legal redressal in India.

20. The petitioner nos.1 and 2 have asserted in the writ petition that they were placed in a legal predicament inasmuch as petitioner no.2 had no documents to travel and re-enter India and that if she tried to enter India without proper travel documents, she would

have been liable for penal action under Section 4 of the Passport (Entry into India) Act, 1920. The petitioner nos.1 and 2 express apprehension that some *modus operandi* would be adopted by the respondent nos.1 to 3 to explain their act of omission in not issuing the duplicate passport to petitioner no.2 to this court.

21. In this background, keeping in view the condition of the *de facto* statelessness of the petitioner no.2 and her helplessness, in utter desperation, the petitioner no.2 took the only legal recourse available to her which was in public international law. More than a year after submission of her application for the duplicate passport, on 12th November, 1995 the petitioner no.2 per force addressed a representation to the representative of the United Nations High Commissioner for Refugees (“UNHCR” hereafter) in Thailand seeking protection. Summarising the factual background and her predicament in the representation, the petitioner no.2 asserted as follows :

“We have strong reasons to believe that the Government of India is taking undue advantage of the loss of my passport to persecute me and my husband because of his human rights work. Under the law of the country (India) the right to a passport is a fundamental right which cannot be arbitrarily denied or taken away. This was the ruling given by the Supreme Court of India in the Maneka Gandhi vs. Union of India (1971 1 SCC 248)”

(Emphasis by us)

22. It is claimed by the petitioners that they were interviewed on the same date by officials of the UNHCR who advised that the

petitioner no.1 should also seek similar protection. Consequently, on 13th November, 1995, petitioner no.1 also addressed a representation to the representative of the UNHCR in Thailand.

23. The petitioners have attributed certain other actions on the part of respondent nos.1 to 3 which caused harassment to them. It is contended that on 4th January, 1996, their residence in Bangkok was searched by the Officials of the Royal Thai Police, suggesting that this was at the instance of the respondents.

24. On the 1st of February 1996, the office of the UNHCR in Bangkok duly certified that the petitioner nos.1 and 2 were “*recognized as **persons of concern** under the mandate of the United Nations High Commissioner for Refugees and is, accordingly, deserving the international protection provided by the High Commissioner*”. The certificate was valid for four months up to 1st of June 1996.

25. The terminology “*person of concern*” is conventionally used by the UNHCR to denote the category of persons mentioned in Article 1A of the “*United Nations Convention Relating to the Statutes of Refugees 1951*” read with the “*Protocol*” of 1967. It is submitted that though India has not ratified either this Convention or the Protocol, India is a member of and sits on the Executive Committee of the UNHCR.

26. In addition to the above impediment faced by the petitioner no.2, the petitioner nos.1 and 2 submit that the above conduct of the Government of India induced in them a well founded fear of persecution for reasons of race, ethnic origin, political opinion and

membership of a particular social group within the meaning of Article 1 (1) of the Bangkok Principles adopted by the Asian-African Legal Consultative Organization (AALCO) (*of which India is a member*) on 24th June, 2001. The submission is that the respondents effectively disabled them from returning to India to avail the protection under the Indian Constitution through process of the court. It is submitted that petitioner nos.1 and 2 were, therefore, covered within the definition of the expression “*refugee*” under Article (1) of the said Bangkok Principles.

27. The writ petitioner submits that the provisions of the Convention are compatible to fundamental rights, directive principles of State policy as well as the fundamental duties of the citizens under the Constitution of India and that the legislative and executive functions of the Union which are required to be performed in a manner consistent with the fundamental rights. Article 51 of the Constitution of India concerned with “*Promotion of international peace and security*” mandates that the State shall endeavour to “*foster respect for international law*”. The petitioners also emphasise the Constitutional obligation of the respondents to implement “*any decision made at any international conference, association or other body*”. In this regard, our attention is drawn to Articles 13(2) and (3)(a), 14, 15 (1) and (2), 16(2), 19, 21, 25(1), 29(1), 38(1), 39-A, 51(c), 51-A(a), (e), (f) and (h), and 253 of the Constitution of India.

28. On or about 15th March, 1996, the UN High Commissioner for Refugees (respondent no.6 herein), through the Canadian

Embassy in Bangkok, arranged to relocate the petitioner nos.1 and 2 in Canada.

29. On 27th June, 1996 the UNHCR in Bangkok wrote to the Immigration Bureau in Bangkok requesting it to render assistance to petitioner nos.1 and 2 who stood recognized as “*refugees*” under the UNHCR mandate and accordingly deserving of the international protection provided by the UNHCR. Copy of this communication has been placed before us. This letter endorsed the fact that UNHCR was providing basic care and maintenance which was necessary for the petitioner nos.1 and 2 during their stay in Thailand till they are deported to Canada.

In this background, petitioner nos.1 and 2 landed in Vancouver, Canada on 16th July, 1996 as landed immigrants and were transported to Ottawa.

30. The above narration of events manifests that the apprehensions of the petitioners were real and stand substantiated by the fact that even before us, the respondents are unable to point out a single step taken by them to comply with their assurance given to this court on the 22nd of September 1995 in CWP No.1651/95. The genuineness of the apprehensions is reinforced by the acts and omissions *qua* the passport of the petitioner no.1, some of which we noted hereafter.

31. The important fact brought out from the established circumstances on record, which must be noted, is that there was no volition in the petitioners’ movement to Canada – they had no choice or agency in the matter of seeking refuge from the UNHCR

or travelling to Canada at all.

Impounding of the passport of petitioner no.1

32. As has been pointed out above, the passport no.R461568 of petitioner no.1 required additional leaves. On the 8th of August 1996, the petitioner no.1 approached the respondent no.4 - High Commission of India at Ottawa, Canada for this purpose and paid the requisite fee. The petitioner no.1 has submitted that instead of attaching the additional leaves to the petitioner's passport, the High Commission simply appropriated the same and withheld petitioner no.1's passport, refusing to listen to him and called upon him to leave the Commission. No reasons were given to him for this action. The petitioner no.1 lodged a strong protest by way of a representation to the High Commission of India on 9th August, 1996 in respect of this action stating as follows :

“Taking away my passport without giving reasons is an arbitrary act and refusing to give me in writing that my passport has been taken back through the High Commission of India in Ottawa is an act of abusing official position with the criminal intention of unduly depriving me of my basic right to appeal to court of law. This is not only an act of violation of the national law but an act of absolute cowardice which is self-denigrating.”
(Emphasis by us)

33. In response thereto, the High Commission of India issued a letter dated 26th August, 1996 as to the petitioner no.1 stating :

“With reference to your letter August 9, 1996, this is to inform you that India passport No. R-461568 dated 4.8.1994 issues in the name of Luingam Luithui son of

Saphei Luithui, resident of Ukhrul, Manipur has been impounded vide impounding circular No. VI/405/89/94 dated 31st August 1995 under section 10(3)(c) of the Indian Passport Act, 1967. Mr. Luithui, is, however, at liberty to take recourse to judicial review of this Order by filing an appropriate writ in the concerned High Court in India.”

(Emphasis by us)

34. The petitioner no.1 points out that this is the first ever intimation he got that his passport was impounded one year before. The basis, reason or justification for the same was not disclosed. No copy of the order dated 31st August, 1995 was enclosed. The order had obviously been passed without opportunity to show cause being served upon the petitioners.

35. Impounding of a passport is serious business which has drastic consequence for its holder. It can be done only in accordance with Section 10(3) of the Passports Act, 1967. We extract the provisions of sub-sections (3), (5) and (6) of Section 10 of the Passports Act, 1967 which are relevant :

“10. Variation, impounding and revocation of passports and travel documents

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(3) The passport authority may impound or **cause to be impounded** or **revoke a passport** or travel document,-

(a) if the **passport authority** is satisfied that the holder of the passport or travel document is **in wrongful possession thereof**;

(b) if the passport or travel document was **obtained by the suppression of material information or on the basis of wrong information** provided by the holder of the passport

or travel document or any other person on his behalf;

Provided that if the holder of such passport obtains another passport the passport authority shall also impound or cause to be impounded or revoke such other passport.

*(c) if the **passport authority** deems it **necessary so to do in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India** with any foreign country, or in the **interests of the general public**;*

*(d) if the holder of the passport or travel document has, at any time after the issue of the passport or travel document, been **convicted by a court in India** for any **offence involving moral turpitude and sentenced** in respect thereof to imprisonment for **not less than two years**;*

*(e) if **proceedings** in respect of an offence alleged to have been committed by the holder of the passport or travel document are **pending before a criminal court in India**.*

(f) if any of the conditions of the passport or travel document has been contravened;

(g) if the holder of the passport or travel document has failed to comply with a notice under sub-section (1) requiring him to deliver up the same;

(h) if it is brought to the notice of the passport authority that a warrant or summons for the appearance, or a warrant for the arrest, of the holder of the passport or travel document has been issued by a court under any law for the time being in force or if an order prohibiting the departure from India of the holder of the passport or other travel document has been made by any such court and the passport authority is satisfied that a warrant or summons has been so issued or an order has been so made.

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*(5) Where the **passport authority** makes an order varying*

or cancelling the endorsements on, or varying the conditions of, a passport or travel document under sub-section (1) or an order impounding or revoking a passport or travel document under sub-section (3), it shall record in writing a brief statement of the reasons for making such order and furnish to the holder of the passport or travel document on demand a copy of the same unless in any case, the passport authority is of the opinion that it will not be in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country or in the interests of the general public to furnish such a copy.

(6) The authority to whom the passport authority is subordinate may, by order in writing, impound or cause to be impounded or revoke a passport or travel document on any ground on which it may be impounded or revoked by the passport authority and the foregoing provisions of this section shall, as far as may be, apply in relation to the impounding or revocation of a passport or travel document by such authority.”

(Emphasis supplied)

36. So far as “passport authority” is concerned, under Section 2(c) of the Passports Act, 1967, it is described thus :

“2. Definitions

In this Act, unless the context otherwise requires,

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(c) "passport authority" means an officer or authority empowered under rules made under this Act to issue passports or travel documents and includes the Central Government; ”

37. We may also extract Rule 3 of the Passport Rules, 1980 and Entry 27 of Schedule 1 which are relevant and read as follows :

“3. Passport authorities.- (1) In addition to the Central

Government, the officers specified in column (2) of Schedule I shall, subject in the provisions of sub-rule (2), be the passport authorities for all purposes of the Act and these Rules. (2) An officer referred to in column (2) of Schedule I shall, for the purpose of issue of a passport or travel document, exercise jurisdiction in respect of applications for such issue made by persons ordinarily residing in the territories specified in the corresponding entries in column 3 of the said Schedule:

Provided that in exceptional and urgent cases the said officer may entertain an application for the issue of a passport or travel document from a person not ordinarily residing within his jurisdiction and may issue a passport or travel document to such a person for a period not exceeding twenty-four months.”

*“SCHEDULE I
(See rule 3)*

<i>Sr.No (1)</i>	<i>Passport authorities (2)</i>	<i>Jurisdiction (3)</i>
xxx	xxx	xxx
27.	<i>Consular Officer or Consular Agents in the Indian Mission or Posts outside India.</i>	<i>The area within the consular jurisdiction of the Indian Mission or Posts concerned.</i>
xxx	xxx	xxx”

38. It is important to note that Section 10 is categorical that only the “*passport authority*” or, under sub-section (6), an authority to whom the “*passport authority is subordinate*”, is empowered to impound a passport. The statutory provision is clear. Sub-section (5) of Section 10 provides that the passport authority “**shall record in writing a brief statement of reasons for making such order**”.

Further, sub-section 5 of Section 10 of the statute mandates that the **authority has to furnish a copy of the same to the holder**. The only exception to the furnishing of a copy is restricted to the opinion of the passport authority that it will not be in the interests of sovereignty, integrity, security of India, its friendly relations with any foreign country or in the interests of the general public.

It needs to be noted that, even if a copy is not to be furnished, the mandate to record reasons is not obviated. Such reasons must therefore, exist on official record.

39. One of us (*Gita Mittal, J.*) had occasion to consider the jurisdiction of impounding of a passport, when its holder is in a foreign country, and the impact thereof in the judgment dated 31st May, 2005 in writ petition ***WP(C) No. 8682/2005 Adishri Saisha Manan v. Union of India & Ors.*** In this case, the passport of the petitioner, a minor child aged 7 years, was impounded by the Indian Embassy in Bangkok, Thailand while she was in Thailand with her mother. The petitioner's mother had submitted her passport for renewal at the Indian Embassy at Bangkok, Thailand and was scheduled to collect the same on the 24th of January, 2005. When the mother of the petitioner went to collect her passport, the Embassy officials communicated that they had instructions not to return the passport and the reasons for the same could only be obtained from the Regional Passport Office at New Delhi. A letter was addressed by the petitioner's mother to the authorities but no reply thereon was received. The petitioner stood rendered without a passport and was exposed to penal liability

under the Laws of Thailand as the Thai Visa (valid till July, 2005) needed re-endorsement every 90 days with the Immigration Office at Bangkok (the next endorsement due in the middle of March, 2005). An appeal was filed by the petitioner under Section 11 of the Passport Act, 1967 before the Appellate Authority of the Ministry of External Affairs, New Delhi. The Ministry sent only an acknowledgment after 20 days without fixing a date for hearing of the appeal. The appeal stood dismissed on the 28th April, 2005 without even affording the petitioner an opportunity of being heard. It was in the order of dismissal of the appeal that the petitioner for the first time got to know that her father had made some kind of a complaint to the RPO, Delhi based whereon the Passport stood impounded. In these circumstances, a writ petition came to be filed in this court.

40. In the said case, it was noted that no notice to deliver up the passport was issued to the petitioner or her mother in terms of Section 10 of the Passports Act, 1967. In this regard the following observations are relevant and extracted in *extenso* hereunder :

*“27. The passport authority is statutorily empowered to vary or cancel endorsement on the passport only with the previous approval of the Central Government and that too after **requiring the passport holder by a notice in writing** to deliver up the passport within the specified time.*

28. There were no applications whatsoever for variation, modification or cancellation of endorsement of the passport by the petitioner or her mother in the instant case and no notice whatsoever was admittedly issued requiring delivery of the passport.

29. *So far as the making of an order bearing cancellation endorsement of the passport is concerned, a passport officer is statutorily mandated to record in **writing a brief statement of the reasons for making such order and is required to furnish the same on demand to the holder of the passport.***

30. *In case impounding is effected by an authority to whom the passport authority is subordinate, the same is also permissible only by an order in writing under the provisions of Section 10(6).*

31. *From the above, it is to be noticed that no notice to show cause was issued as per law to the petitioner or her mother who was also having a custody and was her guardian. There were nothing on record to show that the application form for the passport was without the consent of the other parents. **The respondents or the Indian Embassy has no power whatsoever to impound the passport on a bald complaint of estranged father to the effect that the child has been removed out of the country without his consent. The respondents have no authority in law to impound a passport for such reason. No statutory provision enabling the respondents or the Indian Embassy to do so has been brought to my notice.***

xxx

xxx

xxx

59. ***There is no order of impounding of the passport of the petitioner made in accordance with law. No order is available in the original record nor was any order communicated to the petitioner. No order has been placed on court record.***

60. *The Indian Embassy at Thailand has no jurisdiction or power whatsoever to impound the petitioner's passport upon an unsubstantiated complaint from an estranged parent, more so without any further inquiry from the petitioner's mother. Receipt of a complaint would not by itself authorize or give any right to the Indian Embassy to impound a*

person's passport which would result in such drastic consequences on a minor citizen of this country.

61. The order dated 28th April, 2005 is based on irrelevant considerations and no material. The same has been passed without compliance of the mandate of the statute and in violation of principles of natural justice and as such cannot be permitted to stand."

(Emphasis supplied)

It was also noted in this judgment that the Government proceeded in disposing off the Appeal without following the mandate of Section 11 of the Passports Act, 1967 and the appellate order was also quashed. The writ petition was disposed with *inter alia* the following directions:

"62. For the reasons recorded herein above, I hold that the action of the Indian Embassy at Thailand in impounding the passport of the petitioner when it was submitted for renewal on the 18th January, 2005 was without authority, illegal and unjustified. I also hold that the order dated 28th April, 2005 has been passed in violation of statutory provision and as such hereby set aside and quash the same.

63. As a result of foregoing, it is directed that the respondents shall restore the passport of the petitioner through her mother forthwith."

41. The impounding of passport has therefore, drastic consequences especially, if you are outside the boundary of India. There can be no compromise with statutory compliances for such actions.

42. It is trite that reasons for impounding and refusal of issuance

of passport have to be communicated to the applicant. The law is settled in this respect as was so held by this court in the judgment reported at **1997 (41) DRJ 108 Hajra Iqbal Memon v. Union of India**. What to comment on the communication of such an order to the petitioners, the Union of India could not even place such a communication before this court, despite repeated court directions in this regard.

43. It is trite that where law prescribes a procedure to be followed, the same must be strictly abided by. Section 10 of the Passports Act provides the procedure for impounding of the passport. Passing an order after compliance with the requirement of law, furnishing the order as well as the reasons for it, to the person whose passport is impounded, has to be held to be a requirement which cannot be permitted to be compromised under any circumstances. The violation thereof as in the present case is a complete illegality.

44. It is an admitted position that, till date, no order dated 31st August, 1995 or of any other date ordering impounding the passport has been communicated or furnished to the petitioner no.1. No copy thereof has been produced by the respondents on record.

45. The petitioner no.1 has submitted that even after 31st August, 1995 when the impounding order was allegedly made, he was travelling on the same Indian passport no. R461568 without any objection from any quarter. Four days after 22nd September, 1995 (when the proceedings in C.W.No.1651/95 came to an end), the

petitioner travelled to Bangkok on the 26th of September 1995 on the same passport to join his wife. He moved openly and without any hindrance or objection from any person or authority.

46. The petitioner points out that, pending decision of the UNHCR on the above representations, on 8th December, 1995, the petitioner no.1 had applied to the Indian Embassy at the Hague, Netherlands, for additional pages to his passport, when the petitioner no.1 had less than a month's visa for stay in the Netherlands. The First Secretary in the Visa Section of the Embassy (one Mr. Khanna) informed him that the Embassy was under special instructions from the Government of India not to issue additional visa leaves or to extend/renew his passport without permission from India. In these circumstances, the petitioner withdrew his application.

Even on 8th December, 1995, no adverse order or any objection with regard to the validity of the petitioner no.1's passport was pointed out by the Indian Embassy in Netherlands. It is submitted that this fact establishes that no such order dated 31st August, 1995 stands passed.

47. We may point out that the respondents failed to comply with the order dated 14th August, 1995 in CWP No.1651/1995 directing them to produce the record before the court.

48. On 6th of July 2017, in the present writ petition, we had directed as follows :

“1. During the course of the arguments, our attention is drawn to the order dated 22.09.1995 passed in W.P.(C)

No.1651/1995, which was filed seeking directions for issuance of duplicate passports of the petitioner No.2, which had been stolen from a market place in Bangkok, and an application dated 04.07.1994 made at the Indian Consular for issuance of such duplicate.

On 22.09.1995, thus writ petition was disposed of in view of the submission made by Mr. Bhaskar Mitra, Joint Secretary (Consular and Passport) to the effect that:

“.....application of the petitioners for grant of duplicate passport to her shall be considered as soon as possible.”

2. It is further submitted by Mr. Ganesh that purportedly order dated 31.08.1995 impounding the passport of the petitioner No.1 thereof has till date not been furnished to him.

3. The original records relating to the above, are relevant for the purposes of our consideration and for adjudicating the present writ petition.

4. In view thereof, we direct as follows:

(i) The respondent No.1 shall produce before us all the records relating to the application dated 04.07.1994, made by the petitioner No.2, on the next date of hearing.

(ii) The entire records based whereon the order dated 31.08.1995 was passed as well as the original order dated 31.08.1995 shall be produced before us on the next date of hearing.

(iii) Any other orders that have been passed relating to the petitioner Nos.1 and 2 shall also be produced on the next date of hearing.

List on 10.07.2017 for further arguments.”

(Emphasis by us)

49. Even our order dated 6th July, 2017, directing the respondents to produce the original records, remains uncomplied with till date.

The order dated 31st August, 1995, if it actually exists, has, therefore, not seen the light of day till date.

50. Even are not informed by the respondents about the date of the order or the reasons for impounding the same. The letter dated 26th August, 1996 from the High Commission of India in Ottawa makes a bare reference to the order of impounding dated 31st August, 1995 having been passed under Section 10(c) of the Act. No opinion however, stands mentioned that the copy of the order ought not to be furnished to the passport holder as is required by sub-section 5 of Section 10 of the Passport Act. As a result of the actions of the Indian High Commission on 8th of August 1996, the petitioner no.1, an Indian citizen, was thus stranded in Canada, a foreign country without his passport. He remains clueless even on date about the basis of or the reasons for the action of the respondents.

51. We also fail to understand as to how the suggestion to the petitioner in the letter dated 26th of August 1996 to seek judicial review of the order of impounding could be a meaningful exercise without furnishing a copy of the order in question to him. How the petitioner no.1 would travel to India without a passport even to exercise this option remains a mystery?

52. The petitioner nos.1 and 2 submit that it was only in the above circumstances, created by the respondents themselves, that they were compelled to continue to stay in Canada against their wish.

Whether the petitioner nos.1 and 2 voluntarily acquired citizenship of Canada, if so, effect thereof

53. In this background, the petitioners complain that they were consciously and illegally deprived of their documents of identification. Finally the petitioner no.1 was compelled to seek issuance of travel documents from the Canadian authorities. As a result, a travel document dated 9th October, 1996 was issued by the Canadian authorities to the petitioner no.1 which, given the apprehension which had been expressed by the petitioner nos.1 and 2 for their stay in Canada, permitted him to travel to all countries except to India.

54. The petitioner nos.1 and 2 were thereby prevented from travelling to and living in India, their country of birth. They stood separated from family and friends, a natural aspiration of every human being.

55. Even thereafter, the petitioner nos.1 and 2 have waited more than a reasonable period. More than eight years from 4th July, 1994, when the petitioner no.2 had made the application for issuance of duplicate passport at Bangkok, only in the year 2002, the petitioner no.2 was constrained to seek appropriate documentation from the Canadian Authorities and on 17th June, 2002, a Canadian passport was issued to petitioner no.2.

56. So far as the petitioner no.1 is concerned, a Canadian passport was issued to him only on 4th October, 2006, that is, more than a decade after his Indian passport was detained by the High Commission of India at Ottawa.

57. Even thereafter, the applications of petitioner nos.1 and 2 for grant of visa to ever travel to India were also not favourably considered by the respondents. The petitioners' applications for grant of visa were returned by the order dated 1st December, 2009.

58. Again on 21st December, 2011, requests for visa were not granted by the respondents without assigning any reason. In the information accessed by the petitioners under the Right to Information Act, 2005 the petitioners have been informed that these were denied despite the respondents position that they were "*only an activist*".

59. It was in this background that the writ petitioners were left with no choice but file the present writ petition on 26th February, 2014 seeking the above prayers.

60. Interestingly, the respondents do not explain before us in these proceedings, as to how, if the petitioner no.1's passport had actually been impounded by an order passed on 31st August, 1995, he was permitted to leave India on 26th September, 1995 after passing of the order dated 22nd September, 1995 in CWP No. 1651/1995.

61. So far as the petitioner no.2 is concerned, in the counter affidavit of 1995, the only allegation of the respondents was that she was "*accompanying her husband Luingam Luithui during his travel to various countries in Asia and Europe*". There was not even a remote suggestion of illegality and impropriety in her conduct.

62. Mr. Sanjay Jain, Id. ASG appearing for the respondents

submits that petitioner nos.1 and 2 having acquired/obtained Canadian passports, they are deemed to have acquired the citizenship of that country.

In support of this submission, Id. ASG would rely upon the provision of Section 3 of the Citizenship Act, 1955 and Clauses 3, 5 and 6 of Schedule III to the Citizenship Rules, 2009.

63. Section 3 of the Citizenship Act, 1955 reads thus :

“3. Citizenship by birth.—(1) Except as provided in sub-section (2), every person born in India—

(a) on or after the 26th day of January, 1950, but before the 1st day of July, 1987;

(b) on or after the 1st day of July, 1987, but before the commencement of the Citizenship (Amendment) Act, 2003 (6 of 2004) and either of whose parents is a citizen of India at the time of his birth;

(c) on or after the commencement of the Citizenship (Amendment) Act, 2003 (6 of 2004), where—

(i) both of his parents are citizens of India; or

(ii) one of whose parents is a citizen of India and the other is not an illegal migrant at the time of his birth, shall be a citizen of India by birth.

(2) A person shall not be a citizen of India by virtue of this section if at the time of his birth—

(a) either his father or mother possesses such immunity from suits and legal process as is accorded to an envoy of a foreign sovereign power accredited to the President of India and he or she, as the case may be, is not a citizen of India; or

(b) his father or mother is an enemy alien and the birth occurs in a place then under occupation by the enemy.”

64. We may also extract Sections 8, 9 and 10 of this enactment which read as follows :

“8. Renunciation of citizenship.—(1) If any citizen of India of full age and capacity, makes in the prescribed manner a **declaration renouncing his Indian Citizenship**, the declaration shall be registered by the prescribed authority; and, upon such registration, that person shall cease to be a citizen of India:

Provided that if any such declaration is made during any war in which India may be engaged, registration thereof shall be withheld until the Central Government otherwise directs.

(2) Where a person ceases to be a citizen of India under sub-section (1), every minor child of that person shall thereupon cease to be a citizen of India:

Provided that any such child may, within one year after attaining full age, make a declaration in the prescribed form and manner that he wishes to resume Indian citizenship and shall thereupon again become a citizen of India.

9. Termination of citizenship.—(1) Any citizen of India who by naturalisation, registration otherwise **voluntarily acquires**, or has at any time between the 26th January, 1950 and the commencement of this Act, **voluntarily acquired, the citizenship of another country** shall, upon such acquisition or, as the case may be, such commencement, cease to be a citizen of India:

Provided that nothing in this sub-section shall apply to a citizen of India who, during any war in which India may be engaged, voluntarily acquires the citizenship of another country, until the Central Government otherwise directs.

(2) If any question arises as to whether, when or how any citizen of India has acquired the citizenship of another country, it shall be determined by such authority, in such manner, and having regard to such rules of evidence, as may be prescribed in this behalf.

10. Deprivation of citizenship.—*(1) A citizen of India who is such by naturalisation or by virtue only of clause (c) of article 5 of the Constitution or by registration otherwise than under clause (b)(ii) of article 6 of the Constitution or clause (a) of sub-section (1) of section 5 of this Act, shall cease to be a citizen of India, if he is **deprived of that citizenship by an order of the Central Government** under this section.*

(2) Subject to the provisions of this section, the Central Government may, by order, deprive any such citizen of Indian citizenship, if it is satisfied that—

(a) the registration or certificate of naturalisation was obtained by means of fraud, false representation or the concealment of any material fact; or

(b) that citizen has shown himself by act or speech to be disloyal or disaffected towards the Constitution of India as by law established; or

(c) that citizen has, during any war in which India may be engaged, unlawfully traded or communicated with an enemy or been engaged in, or associated with, any business that was to his knowledge carried on in such manner as to assist an enemy in that war; or

(d) that citizen has, within five years after registration or naturalisation, been sentenced in any

country to imprisonment for a term of not less than two years; or

(e) that citizen has been ordinarily resident out of India for a continuous period of seven years, and during that period, has neither been at any time a student of any educational institution in a country outside India or in the service of a Government in India or of an international organisation of which India is a member, not registered annually in the prescribed manner at an Indian consulate his intention to retain his citizenship of India.

(3) The Central Government shall not deprive a person of citizenship under this section unless it is satisfied that it is not conducive to the public good that person should continue to be a citizen of India.

(4) Before making an order under this section, the Central Government shall give the person against whom the order is proposed to be made notice in writing informing him of the ground on which it is proposed to be made and, if the order is proposed to be made on any of the grounds specified in sub-section (2) other than clause (e) thereof, of his right, upon making application therefore in the prescribed manner, to have his case referred to a committee of inquiry under this section.

(5) If the order is proposed to be made against a person on any of the grounds specified in subsection (2) other than clause (e) thereof and that person so applies in the prescribed manner, the Central Government shall, and in any other case it may, refer the case to a Committee of Inquiry consisting of a chairman (being a person who has for at least ten years held a judicial office) and two other members appointed by the Central Government in this behalf.

(6) The Committee of Inquiry shall, on such reference, hold the inquiry in such manner as may be prescribed and submit its report to the Central Government; and the Central Government shall ordinarily be guided by such report in making an order under this section.”

65. For expediency, we extract the relevant clauses of Schedule III to the Citizenship Rules, 2009 which reads thus :

*“3. The fact that a **citizen of India** has obtained on any date a **passport from the Government of any other country** shall be **conclusive proof** of his having **voluntarily acquired the citizenship** of that country before that date.*

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*5. In **determining whether** a citizen of India has or has not **voluntarily acquired the citizenship of any other country**, the Central Government may take the following circumstances into consideration, namely: -*

*(a) whether the person has **migrated** to that country with the **intention** of making it his **permanent home**;*

*(b) whether he has in fact **taken up permanent residence** in that country; and*

*(c) **any other circumstances relevant to the purpose.***

6. Notwithstanding anything contained in paragraph 4, a citizen of India who leaves or has left India without a travel document issued by the Central Government and resides outside India for a period exceeding three years, shall be deemed to have voluntarily acquired the citizenship of the country of his residence.”

(Emphasis by us)

66. It is noteworthy that in the writ petition, Id. Senior Counsel for the petitioners has laid a substantive challenge to the *vires* of these Rules contending that they are *ultra vires* of the statute as

well as Articles 5, 14 and 21 of the Constitution of India. We make it clear that we are not opining on this challenge for the purpose of consideration of the prayer made before us inasmuch as the same is completely unnecessary for the view we are taking.

67. No order stands passed by the Central Government under Section 10 of the Citizenship Act depriving the petitioner nos.1 and 2 of their Indian citizenship.

68. The petitioner nos.1 and 2 have also not made any declaration renouncing their Indian Citizenship as required under Section 8 of the Act.

69. Given the plea set up by the respondent, it becomes necessary to examine whether the acquisition of the Canadian passports could be treated as the petitioner nos.1 and 2 voluntarily having acquired the citizenship of another country, as envisaged under Section 9 of the Act and therefore, ceased to be the Indian citizens.

70. A conjoint reading of the provision of Clauses 3,5 and 6 of Schedule III and the Rules, as they stand, shows that determination by the Government of India of the fact as to whether the person seeking citizenship under consideration has or has not “*voluntarily*” acquired citizenship of any other country is postulated.

71. The issue that an act of acquisition of a passport of any other country has *ipso facto* to be treated as conclusive proof of his having acquired the citizenship of that country, necessarily entails consideration of the issue as to whether such acquisition of passport was also a voluntary act or the person of the citizen of

India and was not compelled by any relevant circumstances? We have examined the facts of the present case so as to evaluate the reasons for the petitioner nos.1 and 2 acquiring Canadian passports and the impact thereof.

72. For this adjudication and assessment, let us examine the response of the respondents to the filing of the writ petition. Notice was issued in the writ petition by order dated 10th March, 2014.

73. An affidavit dated 14th July, 2014 stands filed under the signature of Shri Pravin Horo Singh, Director, Ministry of Home Affairs stating as follows :

“6. It is respectfully submitted that the petitioners’ contention of granting them visas to enable them to visit India has been examined by this Ministry. After consultation with concerned Government agencies and security agencies, this Ministry after careful consideration has decided to grant multiple entry visa to Petitioner No.1 and Petitioner No.2. Accordingly, the Indian Missions in Canada has been informed vide this Ministry’s letter dated 14-07-2014 to grant multiple entry visa to the petitioners as and when they apply for the same at the Indian Missions in Canada.”

(Emphasis by us)

74. Advance copy of the writ petition was served on the respondents firstly on 26th February, 2014. It took almost six months thereafter, before even the letter dated 14th July, 2014 was issued. Given the impact of the denial of the passports and, after 2002, the visas as well, and considering the nature of the rights effected, this delay is also of significance.

75. Consequently, on the next date of hearing, that is, 15th July, 2014 time was sought by the petitioners to await further progress regarding letter dated 14th July, 2014 of the Ministry of Home Affairs, Government of India with regard to the visas to be issued to them.

76. Clearly, it is only after filing of the present writ petition, that the respondents took and implemented a decision to grant multiple entry visa to the petitioner nos.1 and 2 as and when they applied for the same to the Indian High Commission in Canada.

77. It is noteworthy that in para 1 of the writ petition, the petitioners have stated that they are Indian citizens by birth. In the counter affidavit filed by the Ministry of Home Affairs, the respondents do not deny this averment.

78. So far as pleas of the petitioner with regard to entitlement to Indian passports are concerned, the same are also not disputed other than a plea we examine hereafter.

79. In the rejoinder filed by the petitioners, they have reiterated the above narration of circumstances and the manner in which the respondent no.1 and its agencies/instrumentalities left the petitioner nos.1 and 2 no choice but to seek relief from the UNHCR which arranged for their relocation to Canada

80. We may note that the respondents have attempted to explain their non-action in the counter affidavit dated 21st April, 2015 filed in the present writ petition, with the position that the petitioner no.2 did not approach the authorities for “*emergency travel documents*”. Before us, Mr. Sanjay Jain, Id. ASG submits that the petitioner no.2

did not seek issuance of travel documents as assured by the respondents in the hearing on 22nd September, 1995 in C.W.No.1651/1995. Unfortunately, there is no explanation as to why the application of the petitioner no.2 submitted on 4th July, 1996 for duplicate passport admittedly pending with the respondents, also assured on 22nd September, 1995, was not processed. The respondents give not a whit of an explanation for impounding the passport of respondent no.1. No copy of the order dated 31st August, 1995 is enclosed even with the counter affidavit dated 21st of April 2015.

81. The petitioners have pointed out that the travel documents offered by the respondents do not constitute alternative documentation in lieu of the passport *stricto sensu*.

82. We may point out that the legislature has clearly differentiated between different categories of documents under Section 4 of the Passports Act, 1967 and provided for both passports and travel documents. Whereas classes of passports are provided for in sub-section (1) of Section 4, classes of travel documents are provided for in sub-section (2) of Section 4. For convenience Section 4 is reproduced hereinbelow:

“4. Classes of passports and travel documents.—

(1) The following classes of passports may be issued under this Act, namely:—

- (a) ordinary passport;*
- (b) official passport;*
- (c) diplomatic passport.*

(2) The following classes of travel documents may be issued under this Act, namely:—

(a) emergency certificate authorising a person to enter India;

(b) certificate of identity for the purpose of establishing the identity of a person;

(c) such other certificate or document as may be prescribed.

(3) The Central Government shall, in consonance with the usage and practice followed by it in this behalf, prescribe the classes of persons to whom the classes of passports and travel documents referred to respectively in sub-section (1) and sub-section (2) may be issued under this Act.”

83. Clearly, the travel documents offered by the respondents were in the nature of an *ad hoc* arrangement restricted to travel between India and Bangkok, certainly not the documents of identity and security as is the passport. There is no justification as to why the petitioner should be so confined. It needs no elaboration that emergency travel documents are not the documents that the petitioner no.2 had applied on 4th July, 1994 and paid for. Such documents are not, in any case, a replacement for a valid Indian passport, which is the constitutional and legal right of the petitioner no.2.

84. Therefore, clearly the failure of the respondent nos.1 to 4 to process the application of petitioner no.2 for the duplicate passport till date is arbitrary and completely illegal. There is not a whit of explanation for the same in the counter affidavit which has been

filed on our record.

85. It is also important to note that in the counter affidavit dated 16th August, 1995 filed in CWP No.1651/1995, the respondent nos.1 to 3 make no allegations of any illegal/criminal act against the petitioner no.1. The counter affidavit merely contains a suggestion that petitioner no.1 was “*associated with some leaders of an organization of the NSCN(I)(M) in Bangkok and has been helping them*”.

86. So far as the counter affidavit dated 21st April, 2015, filed in the present writ petition is concerned, the respondents do not make such allegations. More so, it is an admitted position that since the year 1996, the petitioner nos.1 and 2 have been living in Canada. The respondents do not say that the petitioners have been implicated in any criminal case, let alone stood trial or convicted in any proceedings at any point of time, before July, 1994 till date.

87. Petitioner nos.1 and 2 are husband and wife. The suggestions in the counter affidavit filed in CWP No.1651/1995 to the effect that the petitioner no.1 was assisting active members of the Naga organizations and that they were residing in Bangkok in connection with activities related to this organization as well as the course of events which has unfolded after the theft of the passport, in fact, would lend support to the contention of Mr. M.S. Ganesh, Id. Senior Counsel for the petitioners that there was an attempt to keep the petitioners out of India.

88. We have extracted above certain incidents creating apprehensions in the mind of the petitioners regarding the *bona fide*

of the respondents. The petitioner no.2 was without any documents of identity and has additionally asserted that after the theft of her passport and the failure of the respondents to issue a duplicate, she was actually stateless exposing her to the risk of incarceration in Bangkok and was therefore, compelled to approach the UNHCR which facilitated her relocation to Canada for reasons of safety and security. Apart from the threatening events complained of by the petitioners, as her husband, the petitioner no.1 could not have abandoned the petitioner no.2 and he also had no choice in the matter. He was advised by the UNHCR to seek assistance as well which he did on 13th November, 1995.

89. We have elaborately dwelt on the manner in which the passport of the petitioner no.1 was taken away in 1996 by the Indian High Commission without furnish reasons for the same. Both the petitioners were not only rendered stateless and thereby successfully prevented from travelling to their home land by the respondents and were separated from their friends and family members. The respondents are unable to place any valid justification for the action taken by them depriving the petitioner nos.1 and 2 of their passport and travel documents. In fact, but for the acts of omission of the respondent nos.1 to 3 in the present case, the petitioner nos.1 and 2 who were Indian citizens, were actually entitled to their Indian passports.

90. In this background, it has to be held that the petitioner nos.1 and 2 were compelled by the acts and omissions of the respondent no.1 to seek protection from the UNHCR in 1996, which relocated

them to Canada. Given the hopeless situation in which they were placed, the petitioner nos.1 and 2 had no option but to seek documents of identity from this country into which they stood relocated in 1996, again not of their volition.

91. We may note that the petitioners have made every possible efforts for issuance of the passport to the petitioner no.2 and release of the passport of petitioner no.1, including approaching this court by way of the writ petition of the petitioner no.1 aforesaid waiting more than a reasonable time before seeking issuance of the passports from the Canadian Authorities. As noted above, it was after waiting for six years only on 17th June, 2002 when a Canadian passport was issued to petitioner no.2. The petitioner no.2 waited even longer – for a decade – till 4th October, 2006 when the Canadian passport was issued to him.

The above discussion would show that petitioner nos.1 and 2 in the present case had no option but to seek issuance of Canadian passports.

92. We may note that the respondents are unable to point out even a single voluntary act on the part of the petitioner nos.1 and 2 to renounce or relinquish their Indian citizenship or to acquire Canadian citizenship.

93. The petitioner nos.1 and 2 were also prevented from travelling to India. Only after filing of the writ petition in 2014, they were given short term visas to visit India.

94. In this background, can it be reasonably held that the petitioner nos.1 and 2 voluntarily acquired citizenship of Canada?

The answer has unequivocally, to be in the negative. The petitioner nos.1 and 2 have not renounced or relinquished the same voluntarily at any point of time. For clarity, we hold and declare that the acts of the petitioners in obtaining Canadian passports were not voluntary acts as envisaged under Section 9 of the Citizenship Act, 1955 and Clauses 3,5 and 6 of Schedule III to the Citizenship Rules, 2009 but were compelled by the acts of omission of the respondents. Legally, the petitioner no.1 is entitled to issuance of a duplicate passport and the petitioner no.2 to return to his passport by the respondents

Nature of rights involved - what is the impact of the impounding of a passport

95. In the pronouncement reported at, *AIR 1967 SC 1836 Satwant Singh Sawhney v. D. Ramarathnam, Assistant Passport Officer, Government of India, New Delhi & Ors*, the Supreme Court has recognized by majority that the right to travel abroad, is included in the expression ‘personal liberty’, and flows from Article 21 of the Constitution of India. In this regard several views of different High Courts were considered by the Apex Court and it was concluded by *K. Subba Rao, J.* speaking for the majority, thus:

“ **31.** ... *It follows that under Article 21 of the Constitution no person can be deprived of his right to travel except according to procedure established by law...* ”

96. The view was affirmed with approval in the celebrated pronouncement of *Maneka Gandhi v. Union of India & Anr*

[(1978) 1 SCC 248] in the following terms:

“25. There is also another consideration which leads to the same conclusion. The right to go abroad is, as held in Satwant Singh Sawhney case, included in “personal liberty” within the meaning of Article 21 and is thus a fundamental right protected by that article. When the State issues a passport and grants endorsement for one country, but refuses for another, the person concerned can certainly go out of India but he is prevented from going to the country for which the endorsement is refused and his right to go to that country is taken away. This cannot be done by the State under Article 21 unless there is a law authorising the State to do so and the action is taken in accordance with the procedure prescribed by such law. The right to go abroad, and in particular to a specified country, is clearly right to personal liberty exercisable outside India and yet it has been held in Satwant Singh Sawhney case to be a fundamental right protected by Article 21. This clearly shows that there is no underlying principle in the Constitution which limits the fundamental rights in their operation to the territory of India....”

(Emphasis by us)

97. It is also apposite to note the impact of impounding. In this regard, we may refer to a judgment dated 19th December, 2008 rendered by one of us (*Gita Mittal, J.*) in **WP(C) No. 9519/2007 *Aditya Khanna v. Regional Passport Officer/Passport Authority*** where it was observed thus:

*“24... On examination of the statutory scheme, I find that **sub-Section 10(3)** of the Passport Act, 1967 enables the passport authority if it deems it necessary to impound, revoke the passport in the interests of the sovereignty and integrity of India, the security of*

India, friendly relations of India with any foreign country, or in the interests of the general public. Sub-section (e) and (f) also empowers the passport authority to make such order if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a criminal court in India or if it is brought to the notice of the passport authority that a warrant or summons for the appearance, or a warrant for the arrest, of the holder of the passport or travel document has been issued by a court under any law for the time being in force or if an order prohibiting the departure from India of the holder of the passport or other travel document has been made by any such court and the passport authority is satisfied that a warrant or summons has been so issued or an order has been so made.

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26. It is evident that as a result of impounding, the passport does not cease to exist. Only its possession and custody changes hand and it is placed in the hands of the authorities stipulated under the statute. So far as revocation is concerned, its effect is as if the document had not been granted or issued and it is rendered nonest.”

(Emphasis by us)

98. It is therefore, trite that the right to travel flows from Article 21 of the Constitution of India. Further as a consequence of impounding of the passport, only its custody passes into the hands of the impounding authorities. Impounding does not tantamount to revocation or cancellation of the passport. Its existence is not extinguished.

Conclusions

99. We therefore, conclude that so far as petitioner no.1 is concerned, the only reason for impounding of his passport is a reference to order dated 31st August, 1995 which has not been produced. It has to be held that the passport of petitioner no.1 has not been detained on any legally tenable ground and this court has no option but to hold that no such order is in existence. If it does, no material or basis for the same is disclosed. No opportunity to show cause against it stands afforded to the petitioners. It clearly cannot stand in law and is hereby quashed.

100. As a consequence, the petitioner no.1 becomes entitled to release of his passport, wrongfully detained in 1996 by the Indian High Commission in Ottawa, duly validated.

101. We may note that since August, 1996, when the passport of the petitioner no.1 was impounded, till today, more than 21 years have passed. Passports are issued with a validity date. We can safely presume that the validity date of the original passport of the petitioner no.1 would have lapsed and as a result, he is entitled to a duly renewed valid passport.

102. As the respondents are unable to produce any records with regard to the passport of petitioner no.1 or orders thereon, we are left with no option but to presume that the same are not available.

103. We are also informed by Mr. Sanjay Jain, Id ASG that so far as passport of petitioner no.1 is concerned, inasmuch as on account of data upgradation of Ministry of External Affairs which was

effected in the year 2000, the necessary particulars of the passport of the petitioner no.1 are also not available. Mr. Sanjay Jain, Id. ASG submits that in this background, the petitioner no.1 be required to make an application for issuance of a passport. It appears to us that it would be appropriate to so direct, in order to enable the respondents to compile a record.

104. So far as petitioner no.2 is concerned, she was admittedly legally entitled to the duplicate passport. No justification is given as to why her application for duplicate passport made on 4th July, 1994 could not be processed. There is no reason at all as to why the statement made on 22nd September, 1995 on behalf of the respondent has not been complied with. Therefore, clearly the application made on 4th July, 1994 has to be processed and a duplicate passport has to be issued to petitioner no.2 in accordance with law in compliance with the statement made on behalf of respondents on 22nd September, 1995 in CWP No.1651/1995.

105. We are informed by Mr. Sanjay Jain Id. ASG for the respondents on instruction of Mr. S.C. Solanki, Under Secretary, Ministry of Home Affairs, who is present, that inasmuch as the record of petitioner no.2 application at Bangkok is not traceable, the petitioner no.2 may be called upon to submit a fresh application.

106. Needless to say, this application has to relate back to the application made on 4th July, 1994, which would of course have to abide by the rules and procedure as were applicable today.

107. An apprehension is expressed by Mr. M.S. Ganesh, Id.

Senior Counsel for the petitioners that the respondents had issued look out circulars in respect of the petitioner nos.1 and 2 and that their movements would be obstructed because of the pendency of such circumstances. Mr. Sanjay Jain, Id. ASG informs us that he has made inquiries and has instructions to state that at present there are no look out circulars pending against the petitioner nos.1 and 2.

We take this statement on record.

108. The deprivation in the present case is of the worst possible kind. The citizens of India have actually, in effect been exiled from their own country for a long period of almost 23 years from the 2nd of July 1994 when the petitioner no.2 lost her passport and duplicate thereof was denied to her which would have enabled her to travel back. As a result, this couple has been deprived from associating with their close family members and friends and compelled to live in foreign countries without a break till visas were issued to them in the present case.

109. To us, it is extremely distressing that two Indian citizens have been constrained to seek refuge from the United Nations Commission for Refugees and thereafter, when deprived of their identities by the respondents, to seek passports from the Canadian authorities. Can these deprivations ever be adequately compensated in any terms? The answer has to be a clear no.

110. There is yet another reason which would discourage us from exploring the path of awarding compensation to the petitioner nos.1 and 2. More than anything else, they need restoration of their ties with their country and family members.

Any attempt at compensation and reparation may divert the process of restoration of the passports to the petitioner nos.1 and 2. Additionally before us, the respondents have taken a fair stand that the passports of the petitioners, if applied for in terms of our directions, would be processed in a time bound manner. Therefore, to ensure the sole objective of expeditious processing of the documents of the petitioner nos.1 and 2, we are refraining from making any orders in this regard.

111. Before parting with this case, we may note that the present case manifests the failure to abide with the mandate of the statute as well as ignorance about the correct procedure, rights of the citizens as well as the manner in which to deal with them on the part of the official respondents which leads to gross errors having serious repercussions to the persons affected. We also find that the orders which may be correct or warranted in a case, would get criticised upon a judicial review because of procedural infractions. Acts and omissions of the respondents, as in the present case, also have international ramifications. These could result in embarrassments of the State across boundaries. Therefore, sensitization of their officials on the issues, awareness and training about the basic and relevant laws as well as procedures, both statutorily prescribed or laid down by judicial precedents, deserves the immediate attention of the authorities to ensure that such errors are not repeated.

Result

112. In view of the above we direct as follows:-

- (i) *The petitioner nos.1 and 2 shall submit applications in physical form for issuance of Indian passport to them within a period of ten weeks from today with the Indian High Commission, Ottawa, Canada.*
- (ii) *The respondents shall process the same within a further period of twelve weeks from the date of application. In case there are any objections or compliance, the same shall be communicated to the petitioner nos.1 and 2 as well as their counsels by post as well as by e-mails within two weeks of the receipt of the applications. The petitioner nos.1 and 2 shall make good the deficiencies within two weeks of receipt of the intimation.*
- (iii) *It shall be the responsibility of ld. counsel for the petitioners to furnish the valid e-mail ids and addresses for service to Mr. Anil Gautam, ld. counsel for respondent nos.1 to 4 within three days from today.*
- (iv) *Respondent nos.1 to 4 shall inform the petitioners in writing at such addresses by all modes, that the passports are ready and available for delivery.*
- (v) *The petitioners shall submit a requisite application for renouncing the Canadian Citizenship to the competent authority in Canada in accordance with the Citizenship Act of Canada within a period of ten weeks from today. The*

petitioner nos.1 and 2 shall serve a copy of the order passed by this court upon the competent authority in Canada concerned with renunciation of their Canadian citizenship.

- (vi) The petitioner nos.1 and 2 shall take steps for renunciation of their Canadian citizenships.*
- (vii) The Indian passports shall be delivered to the petitioner nos. 1 and 2 by the Indian High Commissioner at the Indian High Commission in Canada (respondent no.4 herein) against production of the certificate of renunciation of Canadian Citizenship issued by the Canadian authorities.*
- (viii) The respondents would inform the Government of Canada through its High Commission at New Delhi (respondent no.7) of this order of this court.*
- (ix) In case of any difficulty in working out this order, liberty is given to both sides to approach this court by way of an appropriate application.*
- (x) Appropriate steps in terms of para 111 above be considered on priority and a view taken.*

This writ petition stands allowed in the above terms.

Dasti to parties.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

AUGUST 23, 2017
mk/aj