

\$~13, 15, 17, 18 & 19

***IN THE HIGH COURT OF DELHI AT NEW DELHI**
% Judgment delivered on: 13.04.2017

+ **W.P.(C) 254/2017**

TENZIN PASSANG

.... Petitioner

versus

UNION OF INDIA & ORS

.... Respondents

and

+ **W.P.(C) 1455/2017**

RINZIN DOLMA

.... Petitioner

versus

UNION OF INDIA & ORS

.... Respondents

and

+ **W.P.(C) 1865/2017**

TENZIN YANGZOM

.... Petitioner

versus

UNION OF INDIA & ORS

.... Respondents

and

+ **W.P.(C) 1893/2017**

TSERING DHONDEN LHEWA

.... Petitioner

versus

UNION OF INDIA & ORS

.... Respondents

and

+ **W.P.(C) 2171/2017**

RINZIN DORJEE

..... Petitioner

versus

UNION OF INDIA & ORS

.... Respondents

Advocates who appeared in these petitions:

For the Petitioners : Mr Simarpal Singh Sawhney an Mr Sidhant Krishan Singh

For the Respondents : Mr Dev P.Bhardwaj for Union of India in W.P.(C) 254/2017
& W.P. (C) 1865/2017

Mr Anil Soni, Ms Priyanka Singh and Mr Naginder Benipal
for Union of India in W.P.(C) 1455/2017

Mr Arun .Bhardwaj for Union of India in W.P. (C) 1893/2017

Mr Arun Bhardwaj, Mr Ripu Daman Bhardwaj and Mr T.P.
Singh for Union of India in W.P. (C) 2171/2017

Mr Vishambhar Datt from Regional Passport Office, Delhi, in
person.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

13.04.2017

SANJEEV SACHDEVA, J. (ORAL)

1. The Petitioners in these batch of petitions seek a direction to the respondents to issue passports to the petitioners. The petitioners are all born in India and claim to be citizens of India in terms of Section 3 of the Citizenship Act, 1955 (hereinafter referred to as the Act).

2. The petitioner – Tenzin Passang (W.P.(C) 254/2017), was born

on 25.11.1986 and claims to be a citizen of India in terms of Section 3(1)(a) of the Act.

3. The petitioner – Rinzin Dolma (W.P.(C) 1455/2017), was born on 01.08.1973 and claims to be a citizen of India under Section 3(1)(a) of the Act.

4. The petitioner – Tenzin Yangzom (W.P.(C) 1865/2017), was born in India on 11.11.1990 and her mother Rinzin Dolma (petitioner in W.P.(C) 1455/2017) was born in India on 01.08.1973. As her mother was born in India and satisfies the requirement of Section 3(1)(a) of the Act, the petitioner claims to be an Indian Citizen under Section 3(1)(b) of the Act.

5. The petitioner – Tsering Dhonden Lhewa (W.P.(C) 1893/2017), was born on 10.09.1969 and claims to be a citizen of India under Section 3(1)(a) of the Act.

6. The petitioner – Rinzin Dorjee (W.P.(C) 2171/2017), was born on 30.06.1978 and claims to be a citizen of India under Section 3(1)(a) of the Act.

7. Reliance is placed by the petitioners on the judgment of this Court dated 22.09.2016 in W.P.(C) No.3539/2016 titled **Phuntsok Wangyal versus Ministry of External Affairs & Ors** and other connected petitions. This Court by common Judgment dated 22.09.2016 in **Phuntsok Wangyal** (*supra*), W.P.(C) No.4275/2016

titled **Lobsang Wangyal Versus Union of India** and W.P.(C) No.7983/2016 titled **Tenzin Dhonden Versus Union of India** relying on the decision of the **Namgyaal Dolkar versus Government of India, Ministry of External Affairs** dated 22.12.2010 in W.P.(C) No.12179/2009, held that persons like the petitioner therein, who are covered under Section 3 of the Act are citizens of India and cannot be denied a passport on the ground that they are not Indian Citizens in terms of Section 6(2)(a) of the Passports Act, 1967. The Petitioner in **Phunstok Wangyal** (supra) and **Lobsang Wangyal** (supra) had claimed to be Citizens of India in terms of section 3(1) (a) of the Act as they were born in India on or after 26.01.1950 and before 01.07.1987. The Petitioner in **Tenzin Dhonden** (supra) was born on 16.08.1992 and had contended that his father was born in India on 01.01.1966 and claimed citizenship of India by virtue of Section 3(1)(b) of the Act.

8. The said Writ Petitions were allowed, by a common judgment dated 22.09.2016, holding the petitioners therein to be Indian Citizens and entitled all benefits and privileges, as are available to Indian Citizens. The respondents were directed to issue Indian Passports to the petitioners, who had been declared to be Indian Citizens.

9. Learned counsel for the respondent submits that the Ministry of External Affairs, Government of India, has accepted the decision of this Court dated 22.09.2016 in **Phuntsok Wangyal** (supra) and other connected matters and issued an Office Memorandum dated

17.03.2017 to all Passport Offices in India and all Indian Mission/Posts abroad. The Office Memorandum dated 17.03.2017 is produced in Court and the same is taken on record.

10. At this juncture, it would be expedient to reproduce the Office Memorandum in toto. The Office Memorandum dated 17.03.2017 reads as under:

*“No. VI/441/1/16/2016 (Vol.III)
Government of India
Ministry of External affairs
CPV Division*

*Patiala House Annexe, New Delhi
The 17th March, 2017*

OFFICE MEMORANDUM

Subject: *Grant of passport facilities to the Tibetan Refugees born in India between 26/01/1950 to 01/07/1987, who have been declared as the Indian Citizens by birth under Section 3 (1) (a) of the Citizenship Act, 1955 by the High Court of Delhi vide its judgment dated 22/09/2016 in the W.P. No. 4275/2016 of Lobsang Wangyal Vs. Union of India & others – reg.*

It may be mentioned that the High Court of Delhi vide its judgment dated 22/09/2016 in the W.P. (C) No. 4275/2016 of Lobsang Wangyal Vs Union of India and two other WPs, has not only declared the Tibetan Refugees (TRs) born in India between 26/01/1950 to 01/07/1987, as the Indian citizens by birth under Section 3(1)(a) of the Citizenship Act, 1955 but also quashed the executive instructions dated 26/08/2011 of the Ministry of

Home Affairs and the minutes of the meeting dated 30/03/2010, restraining TR applicants to declare themselves as the Indian citizens by birth under the relevant section (s) of the said Act. The High Court besides declaring all such TR petitioners as the Indian citizens by birth also directed this Ministry/Passport Issuing Authorities to process their applications for the issue of passports, if they were otherwise eligible to hold the same.

2. Pursuant to the judgment dated 22/09/2016 of the High Court of Delhi, the Ministry to Home Affairs being the major stakeholder on the TRs as well as Indian citizenship related issues was requested to apprise this Ministry whether they are intended to file an Appeal/SLP against the impugned order dated 22/09/2016 of the Single bench of the High Court of Delhi before the Division Bench of the same High Court or the Supreme Court of India, as the case may be. Since there was no time bound reply by the MHA in this regard, this Ministry decided to comply with the Court's order dated 22/09/2016 and issued the passports to all the petitioner TRs in respect of whom the order was passed.

3. However, the Ministry of Home Affairs subsequently informed that they are not intended to file any appeal against the order dated 22/09/2016 of the High Court of Delhi as their executive instructions, which had been quashed by the High Court could not bear the judicial scrutiny.

4. Since the Ministry of Home Affairs has explicitly stated that they would not file any appeal against the impugned order dated 22/09/2016 of the High Court of Delhi and the executive order dated 26/08/2011 of MHA restraining the TR applicants to declare themselves as the Indian Citizens by birth under Section 3(1) (a) of the

Citizenship Act, 1955 has been quashed by the High Court, at present other than the Citizenship Act, 1955 and the order dated 22/09/2016 of the High Court of Delhi nothing is binding on this Ministry, so far as the issue of citizenship of TRs born in India in the above mentioned intervening period is concerned. Moreover, a number of TR applicants after the issue of order dated 22/09/2016 have also approached the same High Court requesting the court to also declare them as the Indian citizens by birth under the relevant section (s) of the Citizenship Act, 1955 and the court has clubbed all such matters for the next hearing scheduled on 21/03/2017, with the observation that unless there is a stay against its order dated 22/09/2016, non-compliance of the same in general in respect of all such TRs amounts to contempt of the High Court. In view of this, there is a huge probability that on the next date of hearing i.e. 21/03/2017, the High Court may come down very heavily on the Government.

5. In view of the above it has been decided that all the Passport Issuing Authorities in India/abroad in compliance/pursuance to order dated 22/09/2016 of the High Court of Delhi, subject to usual checks and other formalities stipulated under the Passports Act, 1967 and the Passport Manual, 2016, shall process all the pending applications of TR applicants born in India between 26/01/1950 to 01/07/1987, for the issue of passports treating them as the Indian citizens by birth under Section 3(1)(a) of the Citizenship Act, 1955. However, if the Police Verification Report (PVR) in the cases of such applicants from the local police authorities or the security agencies of the Government is received as “ADVERSE” by virtue of the fact that the applicant being a TR is not an Indian citizen by birth, shall not be taken as Adverse but the same shall be accepted as ‘CLEAR’ and passport will be issued to such an

applicant, if he is otherwise eligible to hold the same.

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11. By the Office Memorandum dated 17.03.2017, the Government of India, in compliance of and pursuant to judgment dated 22/09/2016 (supra), directed all passport Issuing authorities in India and abroad, subject to usual checks and other formalities stipulated under the Passports Act, 1967 and the Passport Manual, 2016, to ***“process all the pending applications of TR applicants born in India between 26/01/1950 to 01/07/1987, for the issue of passports treating them as the Indian citizens by birth under Section 3(1)(a) of the Citizenship Act, 1955. However, if the Police Verification Report (PVR) in the cases of such applicants from the local police authorities or the security agencies of the Government is received as “ADVERSE” by virtue of the fact that the applicant being a TR is not an Indian citizen by birth, shall not be taken as Adverse but the same shall be accepted as ‘CLEAR’ and passport will be issued to such an applicant, if he is otherwise eligible to hold the same”.***

12. Section 3 of the Act reads as under:

“3. Citizenship by birth- (1) Except as provided in subsection (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, 1947, but before the commencement of the Citizenship (Amendment) Act, 2003 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, 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 any 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.”*

13. In terms of the Office Memorandum dated 17.03.2017 all persons who are citizens in terms of section 3(1)(a) of the Act would be entitled to a passport, subject to usual checks and other formalities

stipulated under the Passports Act, 1967 and the Passport Manual, 2016.

14. Thus the petitioners, (i) Tenzin Passang (W.P.(C) 254/2017), born on 25.11.1986, (ii) Rinzin Dolma (W.P.(C) 1455/2017), born on 01.08.1973, (iii) Tsering Dhonden Lhewa (W.P.(C) 1893/2017), born on 10.09.1969 and (iv) Rinzin Dorjee (W.P.(C) 2171/2017), born on 30.06.1978 and who claim to be a citizens of India in terms of Section 3(1)(a) of the Act are declared to be citizens of India and entitled to a passport in terms of the Office Memorandum dated 17.03.2017, subject to usual checks and other formalities stipulated under the Passports Act, 1967 and the Passport Manual, 2016.

15. The petitioner – Tenzin Yangzom (W.P.(C) 1865/2017), who was born in India on 11.11.1990 and who claims to be a citizen of India in terms of Section 3(1) (b) of the Act is also entitled to be so declared. Her mother Rinzin Dolma, (petitioner in the connected Writ Petition being W.P.(C) 1455/2017), was born in India on 01.08.1973 and has been held to be a citizen of India in terms of Section 3(1)(a) of the Act and covered by the Office Memorandum dated 17.03.2017.

16. The case of the petitioner Tenzin Yangzom (W.P.(C) 1865/2017), is also similar to the case of **Tenzin Dhonden** (supra) whose petition was also in the batch of cases decided by the common judgment dated 22.09.2016, which judgment has been accepted by the Respondents and consequent to which the Office Memorandum dated

17.03.2017 has been issued. The said petitioner is also declared to be a citizen of India and entitled to a passport, subject to usual checks and other formalities stipulated under the Passports Act, 1967 and the Passport Manual, 2016.

17. Another issue that arises is with regard to the Identity Certificate (I.C.) /Registration Certificate/Residential Permit (R.C./R.P.) issued to petitioners and other similarly situated persons.

18. Learned counsel for the respondent submits that since the Office Memorandum has been issued directing issuance of passport to the petitioners and other similarly situated persons, the Identity Certificate (I.C.) /Registration Certificate/Residential Permit (R.C./R.P.), already issued, is required to be surrendered prior to issuance of the passport.

19. It is submitted that a surrender certificate application form is proposed to be circulated to all Passport Offices requiring the persons who are applying for a passport to surrender the existing Identity Certificate (I.C.) /Registration Certificate/Residential Permit (R.C./R.P.) prior to the issuance of the Passport.

20. It is an admitted position that some of the petitioners and some of the other similarly situated persons are using the Identity Certificate (I.C.) /Registration Certificate/Residential Permit (R.C./R.P.), as a travel document.

21. Rule 13 of the Passport Rules, 1980 stipulates that a person holding a passport or travel document in special circumstances shall not be entitled to another passport or travel document unless he surrenders, to the passport authority, the passport or travel document already held by him.

22. Accordingly, the petitioners are directed to surrender the Identity Certificate (I.C.) /Registration Certificate/Residential Permit (R.C./R.P.), if issued, by approaching the respective Passport Office where they have applied for issuance of a passport.

23. It is clarified that the Identity Certificate (I.C.)/Registration Certificate/Residential Permit (R.C./R.P.) would be required to be surrendered prior to the issuance of the passport.

24. In view of the above, the petition is disposed of directing the respondents to issue the passports, as expeditiously as possible, preferably within a period of four weeks, subject to the petitioners satisfying the other requirements of the Passports Act as well as the Passport Manual, 2016 and the Rules framed there under. There shall be no orders as to costs.

25. *Dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J

APRIL 13, 2017

‘Sd’