

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 29.08.2017

+ **W.P.(C) 6074/2014 & CM No.14780/2014**

KARMA GYALTSEN NEYRATSANG

..... Petitioner

Versus

UNION OF INDIA & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr D. K. Thakur.

For the Respondents : Mr Anurag Ahluwalia, CGSC for UOI.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, impugning the Show Cause Notices dated 29.06.2012 and 12.09.2012; order dated 13.07.2012 passed by the Regional Passport Officer (hereafter as 'RPO') for revocation of the petitioner's passport; and order dated 19.08.2014 passed by respondent no.3, Chief Passport Officer (hereafter as 'CPO'), under Section 11 of the Passports Act, 1967 upholding the RPO's order dated 13.07.2012.

2. The passport facilities were withdrawn from the petitioner, principally on the ground that the petitioner's parents were of Tibetan origin and according to the respondents, the petitioner was required to acquire citizenship of this country before being granted any passport facilities.

3. One of the principal reasons indicated by the CPO for rejecting the petitioner's appeal is that the petitioner had concealed the Tibetan identity of his parents and, therefore, was liable to be proceeded against. It was also suggested during the course of arguments before this Court that petitioner had violated certain laws by purchasing immovable property which was funded by foreign sources.

4. Briefly stated, the relevant facts necessary to address the controversy in the present petition are as under:-

4.1 The petitioner and his twin brother were born at Victoria Hospital, Darjeeling, West Bengal, India on 18.07.1965. Admittedly, their parents were of Tibetan origin. The birth of the twins was registered with the Government of West Bengal, Darjeeling Municipality on 24.07.1965 (registration no. 91-7/65). In the birth certificate issued subsequently, the nationality of the petitioner's parents is reflected as Indian.

4.2 The petitioner belongs to the Bhutia community of Tibetans and practices Buddhist faith. The petitioner claims that Bhutia Community is recognized as a Scheduled Tribe under the Constitution of India. The petitioner has also produced a copy of the caste certificate issued by the Sub-Divisional Officer, Darjeeling to the aforesaid effect.

4.3 The petitioner completed his schooling from Mount Hermon School, Darjeeling in 1981. The petitioner has also produced the certificate issued by the Council of Indian School Certificate Examinations, New Delhi, which also discloses his date of birth as 18.07.1965.

4.4 The petitioner applied for an Indian Passport for the first time in 1983 and was issued a passport bearing No. U 849653 dated 13.10.1983.

Thereafter, the petitioner has also been issued three other passports, viz, (i) Passport No. I 226491 dated 25.04.1991; (ii) Passport No. R 742318 dated 25.04.1994 and (iii) Passport No. E 8579377 dated 20.05.2004.

4.5 The petitioner received a show cause notice dated 29.06.2012 in respect of the passport held by him at the material time (Passport No. E 8579377 dated 20.05.2004), calling upon the petitioner to show cause why his passport should not be impounded under Section 10(3)(b) of the Passports Act, 1967, on the allegation that the petitioner was a Tibetan National and had obtained a passport by concealing his Tibetan identity.

4.6 The petitioner responded to the aforesaid show cause notice dated 29.06.2012 by a letter dated 09.07.2012, pointing out that the petitioner was an Indian citizen by birth and he is not a Tibetan national. The petitioner also denied the allegation that he had concealed his Tibetan identity.

4.7 Thereafter, the petitioner received an order dated 13.07.2012, *inter alia*, stating that the petitioner's passport was liable to be revoked because as per Circular No. 26027/08/1994-IC dated 23.02.2012 issued by the Ministry of Home Affairs (Foreigners Division), children born to a Tibetan Refugee in India were not to be treated as Indian citizen by birth and all such persons would have to make a separate application under Section 9(2) of the Citizenship Act, 1955. In the said order, it was also alleged that "*It has come to the notice of this office that you have managed to obtain Indian Passport No. B8579377 from Regional Passport Office, Delhi on 20.05.2004 by wilfully concealing your Tibetan identity and declaring your parents as Indian at the time of applying for the passport*".

4.8 Aggrieved by the said order, the petitioner preferred an appeal under Section 11 of the Passports Act, 1967 on 07.08.2012.

4.9 While the said appeal was pending, the petitioner received another communication dated 12.09.2012, *inter alia*, stating that an adverse police verification report had been received corresponding to the petitioner's application for issuance of passport. The petitioner was called upon to provide a suitable explanation regarding the circumstances under which he had suppressed material information in his application. The petitioner was also called upon to surrender his passport immediately.

4.10 The petitioner once again responded to the said show cause notice, denying all allegations of any suppression of information in his passport application. He reiterated that all details filled in the passport application were correct.

4.11 Since the petitioner did not hear from the respondents thereafter, he sent reminders to the CPO for deciding his appeal preferred against the order dated 13.07.2017.

4.12 The petitioner received a letter dated 28.06.2013, calling upon the petitioner to appear before the CPO on 15.07.2013 in regard to his appeal under Section 11 of the Passports Act, 1967. Pursuant to the aforesaid notice, the petitioner appeared before the CPO through his advocate; he was heard and order was reserved.

4.13 Since the petitioner did not receive any communication thereafter, the petitioner once again sent a letter dated 15.10.2013, requesting for disposal of his appeal within a reasonable time.

4.14 Since no response or communication was received from the CPO, the petitioner filed the writ petition - W.P. (C) 4472/2014 - before this Court. This petition was disposed of by this Court on 22.07.2014 directing the CPO to pass a final order disposing of the petitioner's appeal at his earliest convenience and in any event not later than four weeks from that date.

4.15 In compliance with the aforesaid order, the CPO once again called upon the petitioner to appear before him on 12.08.2014 and thereafter passed the impugned order dated 19.08.2014. The operative part of the said order reads as under:-

"5. Having gone through all the records and in light of full facts and circumstances of the case, I decide as under:

- i) Decision of the PO to revoke passport of the appellant is in order since by declaring his parents as Indian at the time of applying for the passport in 2004, while in fact they were Tibetan Refugees, appellant is guilty of violation of section 10(3) (b) of the Passport Act."
- ii) As conveyed earlier the appellant may follow due procedure governing the children born to a Tibetan refugee, in terms of extant rules related to Indian Citizenship, before applying for Indian passport.
- iii) The appeal is not allowed."

4.16 Aggrieved by the aforesaid decision, the petitioner filed the present petition in this Court.

5. The present petition was moved on 12.09.2014. The petitioner's twin brother was also facing similar issues with the respondents and had filed a writ petition being W.P.(C) 6143/2014 captioned as '*Karma*

Lhundup Neyratsang v Union of India & Ors.' The present petition was then tagged with W.P. (C) 6143/2014 and both the petitions were taken up on 15.09.2014. On 15.09.2014, the learned counsel appearing for the respondents sought time to file a reply and it was directed that the reply be filed within a period of four weeks from that date and the petitions were set down for hearing on 20.11.2014. The respondents failed to file a counter affidavit and on 20.11.2014 sought further time to do so. On that date, it was submitted on behalf of the respondents that the orders revoking the petitioner's passport were passed based on the inputs received from the Intelligence Bureau (IB). Accordingly, the matter was posted on 24.02.2015, and the respondents were also directed to produce the inputs received from IB in a sealed cover. On 24.02.2015, the respondents sought an adjournment.

6. The matter was, thereafter, taken up for hearing on 16.04.2015 and on that date, the Court also perused the IB reports and observed as under:-

“5. I have perused the reports. The reports seem to indicate that there are some concerns that respondents have with regard to the petitioners i.e., KGN and KLN's activities in India, particularly, with regard to purchase of immovable properties. The suggestion is that the money for the said purpose is being provided by a foreign Government. These reports cover a wide time span. These are reports which go back in point of time to 1993. Since then reports have been generated by IB from time to time right till 2012.

6. A narration of the facts would show that show cause notice was issued only in 2012. Though IB reports were escalated to highest echelon in the Government, no action was taken under the Passports Act, till June, 2012.

6.1 Nevertheless what is to be borne in mind is as to whether these activities to which reference is made in the IB reports are relevant for the purposes of sustaining the impugned orders. The impugned orders, which are two show cause notices, only point to one singular aspect, which is that KGN and KLN have concealed the nationality of their parents.”

7. Thereafter, the petitions were posted on a number of occasions, but were adjourned for one reason or the other. At a hearing held on 22.08.2017, this Court was informed that the petitioner’s twin brother, Karma Lhundup Neyratsang - the petitioner in W.P. (C) 6143/2014 - had expired. Therefore, the said petition was disposed of.

8. On the said date, the learned counsel for the respondents also drew the attention of this Court to the affidavit filed on behalf of the respondents, wherein it had been affirmed that petitioner had applied for renewal of the passport and it was claimed that while processing the same it was found that the petitioner had mis-declared the identity of his parents. This was plainly incorrect as the petitioner had already been issued the passport bearing No E 8579377 dated 20.05.2004 and the respondents had sought to withdraw the said facilities by the orders impugned in the present petition. This is not a case where the petitioner had been declined the issue or renewal of a passport, but a case where the passport issued to the petitioner was revoked.

9. One of the central issues in this petition was whether the petitioner had made a false declaration regarding the identity of his parents being Indian citizens. In this regard, the respondents were directed to produce all relevant documents on the basis of which the respondents had sworn the

affidavit that the petitioner had made a false declaration and the matter was posted on 23.08.2017. On 23.08.2017, an unequivocal statement was made on behalf of the respondents that *“no declaration was made by the petitioner that his parents were of Indian nationality and thus there is no document on record which reflects such declaration.”*

10. It is apparent from above, that the respondents have been shifting their stand and the passport authorities have denied passport facilities to the petitioner on grounds, which have been modified more than once. First, it was alleged that the petitioner was a Tibetan national and had obtained the passports by concealing his Tibetan nationality - this was the only ground stated in the first Show Cause Notice issued on 29.06.2012. Second, it was held that the petitioner had wilfully declared the nationality of his parents as Indian and concealed his Tibetan identity. Third, it was alleged that the passport was obtained by suppression/ wrong information provided by the holder - this allegation was made in the notice dated 12.09.2012 which was bereft of any particulars. Fourth, it was stated in the counter affidavit filed before this Court that there was also a report from the IB that the petitioner was involved in "anti-national activities". Although, it was contended that this was also a reason for denying passport facilities, this allegation does not find mention in any of the show cause notices or the orders issued by the respondents.

11. Clearly, there is no material to support the allegation that the petitioner is not an Indian national. There is no dispute whatsoever that the petitioner was born in Victoria Hospital, Darjeeling, West Bengal, India on 18.07.1965. The birth of the petitioner was registered with the Darjeeling Municipality and the respondents have not been unable to show any

material, which would even remotely cast a doubt on the aforesaid fact. Thus, by virtue of Section 3 (1) (a) of the Citizenship Act, 1955, the petitioner acquired the citizenship of this country by birth. The petitioner had replied to the Show Cause Notice dated 26.06.2012 by a letter dated 09.07.2012 placing all the relevant facts and also referring to Section 3(1) (a) of the Citizenship Act, 1955.

12. Although, the respondents did not dispute that the petitioner was a citizen of this country. In the order dated 13.07.2012, the RPO referred to a circular dated 23.02.2012 issued by the Ministry of Home Affairs which, *inter alia*, provided that the children born to a Tibetan Refugee prior to 01.07.1987 would not acquire Indian citizenship automatically but were required to submit a separate application under Section 9 (2) of the Citizenship Act, 1955. Apparently, the said circular also provided that the said children would have to surrender Tibetan Refugee Certificate and Identity Cards before accepting Indian citizenship.

13. Before proceeding further it would be relevant to set out Section 3 and Section 9 of the Citizenship Act, 1955 which read as under:-

“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 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.

(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.

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.”

14. It is apparent from a plain reading of Section 3(1)(a) of the Citizenship Act, 1955 that every person born in India on or after 26.01.1950

but before 01.07.1987 would acquire citizenship by birth. The only exception set out is in under sub-section (2) of Section 3 of the said Act. In cases where either of the parents of the person possess immunity from suits and legal process as is accorded to an envoy of a foreign sovereign power accredited to the President of India and the said parent is not a citizen of India, the person born in India would not acquire Indian citizenship. The second exception being in case where either of the parents of the person is an enemy alien and the birth occurs in a place then under occupation by the enemy. Plainly none of these two exceptions are applicable in this case.

15. The petitioner neither held any Tibetan refugee certificate nor a Tibetan identity card, thus, there is no material which would raise any doubts as to the Indian citizenship of the petitioner. Plainly, the petitioner had acquired Indian citizenship by birth.

16. The circulars issued by the Ministry of Home Affairs cannot be read to dilute the express provisions of the Citizenship Act, 1955. The question of invoking the provisions of Section 9(2) of the Citizenship Act, 1955, arise, only if any question arises as to *whether, when or how any citizen of India has acquired a citizenship of another country*. In the present case, there is not even a remote suggestion that the petitioner has acquired citizenship of another country. Thus, the question of the petitioner making any application under Section 9 (2) of the Citizenship Act, 1955 to decide the question of his citizenship would not arise. The question whether children born to persons of Tibetan origin in India before 1987 are required to make a separate application for claiming the citizenship by birth was considered and decided by this Court in ***Namgyal Dolkar v. Government of India: W.P. (C) 12179/2009, decided on 22.12.2010***. This issue is also

squarely covered by a coordinate Bench of this Court in ***Phuntsok Wangyal v. Ministry of External Affairs & Ors.: W.P.(C) 3539/2016, decided on 22.09.2016.***

17. It is apparent from the above that none of the grounds as stated in the Show Cause Notice dated 29.06.2012 and the order dated 13.07.2012, have any substance.

18. After the petitioner had filed an appeal under Section 11 of the Passports Act, 1967, the petitioner received yet another Show Cause Notice dated 12.09.2012 and the only allegation made in the show cause notice was that “*the passport was obtained by the suppression/wrong information provided by the holder*”. Curiously, no other detail was provided in the said show cause notice as to which information had been suppressed or which incorrect information had been provided by the petitioner.

19. The Supreme Court and other courts in India have rendered several decisions holding that the show cause notice must indicate the case set up to enable the noticee to meet the same. A bald and vague allegation without any details provides no real opportunity to the noticee to provide any explanation. The said show cause notice is thus *ex facie* unsustainable and invalid.

20. Although the notice dated 12.09.2012 did not disclose any particulars, nonetheless, the petitioner responded to the same and once again sent a detailed reply providing all his particulars. He has received no communication from the concerned RPO, thereafter.

21. As noticed above, the petitioner’s appeal was finally disposed of by

the impugned order dated 19.08.2014, *inter alia*, on the ground that the decision of the RPO to revoke the passport was valid because the petitioner was guilty of violation of Section 10(3)(b) of the Passport Act, 1967 on account of his declaring his parents as Indian at the time of applying for the passport in 2004.

22. The above allegation was also repeated in the affidavit filed on behalf of the respondents. On this allegation being stoutly disputed, this Court directed production of material available with the respondents on the basis of which the said statement was affirmed. In response, the official from the respondent confirmed that "*no declaration was made by the petitioner that his parents were of Indian nationality and thus there is no document on record which reflects such declaration.*" Thus, concededly, the principal ground on which the petitioner's appeal was rejected is *ex-facie* incorrect.

23. The birth certificate of the petitioner (which obviously would be as per the details provided by the petitioner's parents) incorrectly records nationality of his parents as Indian. This issue could have been put to the petitioner and a clarification could have been sought in this regard. It has never been the case of the petitioner that his parents were Indian nationals. The petitioner had submitted his birth certificate as per the requirement of the respondents as evidence of his date of birth and not as evidence of the nationality of his parents.

24. During the course of proceedings, it was also suggested that there are reports from the IB on the basis of which the passports of the petitioner and his twin brother had been denied by the Passport Authorities. As noticed above, the IB report was also perused and this Court had noticed in

the order dated 16.04.2015 that the IB reports covered a wide span of time from 1993 till 2012. The reports suggested that the petitioner had acquired certain properties by funds provided by a Foreign Government. This is a serious allegation and it is difficult to accept that if the same was correct, the concerned law enforcement authority would not have followed it through; however, concededly there are no proceedings which are pending against the petitioner.

25. It is also important to note that no such allegation had been made for revoking the petitioner's passport and more importantly, no proceedings for violation of any law are pending against the petitioner. It is also doubtful whether any proceedings were even instituted - at any rate, the respondents are not aware of any such proceedings (as is confirmed in response to queries put by the Court).

26. The learned counsel for the petitioner submits that way back certain queries had been made by the Enforcement Directorate and that was a case of mistaken identity and those proceedings were dropped long back.

27. It is apparent from the above that the respondents have acted not only contrary to law but also in an unfair and a callous manner. The petitioner has been denied the passport facilities for now almost five years and on grounds, which can most charitably be described as illusory.

28. As noticed above, even the counter affidavit filed before this Court has been affirmed without verifying the correct facts. Concededly, the statement that certain facts were discovered during processing the petitioner's application for renewal of the passport, is incorrect.

29. Notwithstanding that a coordinate Bench of this Court had

considered and decided the issue whether a separate application is required to be made by persons born in India prior to 1987 for acquiring citizenship by birth for persons born prior to 1987, the respondents have persisted in simply ignoring the said decision.

30. This Court finds it very difficult to countenance the callous manner with which the passport authorities have conducted themselves. Thus, this Court is of the view that this is a fit case where the present petition should be allowed with costs.

31. In view of the above, the petition is allowed and the Passport Authorities are directed to forthwith restore the petitioner's passport. The impugned notices dated 29.06.2012 and 12.09.2012 are set aside. The impugned order dated 13.07.2012 passed by the RPO and the impugned order dated 19.08.2014 passed by the CPO are also set aside. The petitioner is further awarded cost of ₹25,000/- which shall be paid by the respondent no.1/ respondent no.3 within a period of four weeks from today.

32. The petition is disposed of with the aforesaid directions.

VIBHU BAKHRU, J

AUGUST 29, 2017
pkv/RK