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

+ W.P.(C) 9353/2017

MR. KARMA DHONDUP

..... Petitioner

Through

Mr. Deepak kumar Thakur and Mr.
Amit Singh Chauhan, Advocates

versus

UNION OF INDIA & ORS

..... Respondents

Through

Mr. Ripu Daman Bharadwaj,
Advocate for Respondent Nos. 1 to 4

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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25.10.2017

1. Issue notice. The Learned counsel for the respondents accepts notice. The matter is taken up for final hearing.
2. The petitioner has filed the present petition, *inter alia*, impugning the order dated 13.07.2016 (hereafter 'the impugned order') passed by the Chief Passport Officer.
3. By the impugned order, the petitioner's passport has been revoked and he has been denied passport facilities on the ground that as per the policy of the Government of India, children born to persons of Tibetan origin in India prior to 01.07.1987 cannot be treated as Indian Citizens automatically. Further a penalty of ₹50,000 has also been imposed on the petitioner for "providing incorrect information about his nationality status". The operative part of the impugned order reads as under:

"8 As per the extant policy of the Government

of India, children born to Tibetan Refugees in India would not be treated as Indian Citizen automatically based on their birth in India, before 01.07.1987 u/s 3(1) (a) of the Citizenship Acts, 1955. Such persons would have to submit an application individually to the Ministry of Home Affairs, Government of India, u/s 9 (2) of the Citizenship Act, 1955, and thereafter, the nationality status would be determined by the Ministry of Home Affairs as per the prescribed procedure available under Citizenship Rules, 2009.

9 Having gone through all the records and in light of full facts and circumstances of the case, I, as the appellate authority, u/s 11 of the Passports Act, 1967, decide as under:

i) The appellate has violated the provisions of the Passports Act, 1967, by obtaining Indian passports by providing wrong information about his nationality status. The PO should, therefore, revoke the appellant's passports E-2125475 and J-9599323 by invoking section 10 (3) (b) and provisions of the Passports Act, 1967.

ii) The appeal is not allowed."

4. There is no dispute that the petitioner was born in India on 15.11.1975. The petitioner also claims that both his parents are Indian citizens and had come to India prior to the year 1959. However this is disputed by the respondents and the passport authorities claim that petitioner's parents are not Indian nationals and had come to India in the year 1959.

5. The petitioner asserts that he does not hold and never held the Identity Card issued to Tibetan refugees. The petitioner had applied for the Indian Passport and was granted passport facilities. First such passport was issued on 09.02.1990 (passport no.- G 834082). Thereafter, two other passports

were issued to the petitioner successively: passport nos. E 2125475 issued on 12.06.2002 and J 9599323 issued on 05.12.2011.

6. The petitioner was issued a show cause notice dated 04.02.2013 in respect of his passport issued on 12.06.2002 (passport no. E 2125475) which was valid up to 11.06.2012. The only ground indicated in the aforementioned show cause notice was that a letter had been received from the Ministry of External Affairs deciding to place the name of Mr. Karma Lhundup @ Karma Dhondup in the PAC list for a period of five years and the petitioner was called upon to show cause why his passport be not revoked.

7. It is material to note that prior to said date, the said passport had already expired and a new passport (passport no. J 9599323 dated 11.06.2012) had been issued.

8. It was the petitioner's case that his name was Karma Dhondup and he was never referred to by the name of Karma Lhundup. Further, as is apparent from the said show-cause notice, it was bereft of any details which could be meaningfully responded to by the petitioner.

9. Aggrieved by the action of the respondent, the petitioner filed the writ petition (WP(C) 3332/2013) in this Court, which was disposed of by an Order dated 20.11.2014. The said order reads as under:

"It prima facie, appears that there has been confusion with regard to the identity of the petitioner. In this view, I deem it appropriate, that the present petition be treated as a representation to the respondents. The concerned authority shall consider the same and pass a speaking order within a period of three weeks. In the event, the respondents sustain the revocation order

dated 28.01.2013, the petitioner would be at liberty to apply afresh.

The writ petition and the pending application are disposed of."

10. Thereafter, the petitioner was afforded a hearing on 28.06.2016 and the impugned order was passed subsequent thereto.

11. Undisputedly, the issues raised in the impugned order - that are: (i) that children of parents of Tibetan origin are not entitled to citizenship by birth and are required to apply under section 9(2) of the Citizenship Act, 1955; and ii) that providing a birth certificate which incorrectly discloses nationality of parents as Indian amounts to a false declaration - are squarely covered in favour of the petitioner by several decisions of this Court including *Namgyal Dolkar v. Government of India, Ministry of External Affairs, W.P. (C) 12179/2009, decided on 22.12.2010* and *Karma Gyaltsen Neyratsang v. Union of India & Ors: WP(C) 6074/2014, decided on 29.08.2017*.

12. In view of the above, the present petition is allowed and the respondent is directed to forthwith restore the passport facilities provided to the petitioners.

13. It is seen that issues raised in the impugned order were squarely covered by the *Namgyal Dolkar v. Government of India (supra)*. However, despite the fact that a coordinate Bench of this Court settled the issue regarding right of a citizen born of parents of Tibetan origin to claim citizenship by birth, the respondents have denied the passport facilities to the petitioner on the ground that the persons of Tibetan origin do not acquire Indian citizenship by birth under Section 3(1)(a) of the Citizenship Act, 1955

and are required to approach the Ministry of Home Affairs under Section 9 (2) of the Citizenship Act, 1955.

14. It is further seen that in the present case even though this Court had specifically directed the concerned authority to consider the petitioner's case and pass a speaking order within a period of three weeks from 20.11.2015, the impugned order was passed almost more than 1 1/2 years thereafter.

15. Given the above facts, this Court is of the opinion that this is a fit case that costs should be imposed on the respondent. Accordingly respondents no.1 is directed to pay ₹25,000/- to the petitioner as costs within a period of two weeks from today.

16. Order Dasti under signatures of the court master.

OCTOBER 25, 2017
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VIBHU BAKHRU, J