

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.7524 of 2018
and W.M.P.Nos.9371 & 9372 of 2018

Raghuram (Minor),
represented by mother and natural guardian
Dr.Lakshmi Sundararajan. ... Petitioner

Vs.

1.Union of India,
Represented by its Secretary to Government,
Prime Minister's Office,
South Block, Raisina Hill,
New Delhi-110011.

2.Union of India,
Rep. by its Principal Secretary,
Ministry of Home Affairs,
North Block,
Central Secretariat,
New Delhi-110 001.

3.Union of India,
Rep. by its Principal Secretary,
Ministry of Overseas Indian Affairs,
Akbar Bhawan, Chanakyapuri,
New Delhi-110 021.

4.Union of India,
Rep. by its Principal Secretary,
Ministry of Human Resource Development,
Shastri Bhawan,
New Delhi-110001.

5.Department of Atomic Energy,
Represented by its Secretary,
Anushakthi Bhavan,
C.S.M.Marg,
Mumbai-400 001.

6.National Board of Higher Mathematics,
Rep. by National Coordinator for
Mathematics Olympiad Program,
Statistics & Mathematics Unit,
Indian Statistical Institute,
Bengaluru, India.

7.Homi Bhabha Centre for Science Education (HBCSE)
Rep. by its Director,
Tata Institute of Fundamental Research,
V.N.Purav Marg, Mankhurd,
Mumbai-400 088.

8.Regional Co-ordinator (Tamil Nadu),
C1, Srindhi Apartment,
16A, Giri Road, T.Nagar,
Chennai 600 017.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records culminating in the impugned communication dated 01.03.2018 issued by the 6th respondent, quash the same in so far as it restricts IMO selection to Indian passport holders and consequently direct the respondents to reinstate the petitioner's name in the list of selectees for the International Mathematical Olympiad Training Camp, allow the petitioner to attend the camp scheduled from 18.04.2018 to 16.05.2018 and be considered for selection for participation at the International Mathematics Olympiad.

For Petitioner : Ms.Nivedita S Menon

For Respondents : Mr.B.Rabu Manohar (for RR 1 to 7)
No appearance (for R8)

सत्यमेव जयते
O R D E R

The minor Petitioner, represented by his Mother, has filed this writ petition seeking to quash the impugned communication dated 01.03.2018 issued by the 6th respondent, in so far as it restricts International Mathematical Olympiad selection to Indian passport holders and for a consequential direction to the respondents to reinstate his name in the list of selectees for the International Mathematical Olympiad Training Camp, and allow him to attend the camp scheduled from 18.04.2018 to 16.05.2018 and be considered for selection for participation at the International Mathematics Olympiad.

2. The case of the petitioner's mother is that the Petitioner, who is a minor, aged 15 years, was born in London on 14.03.2003, and is holding Indian Passport at birth in the year 2003 and later in 2009, he acquired British Passport. He obtained an Overseas Citizen of India Card on 19.05.2010. The minor Petitioner along with his parents moved to India and are residing in India since 2010. The petitioner, who is studying in India, received an impugned communication on 01.03.2018 from the 6th respondent stating that he has been selected in the International Mathematical Olympiad-2018 as an INMO-2018 awardee. The communication further states that he is invited for a 4 weeks long camp to be held by the 7th respondent scheduled from 18.04.2018 to 16.05.2018. Based on the performance through various tests, a team of 6 members will be chosen to represent India in IMO 2018. The impugned communication has a condition that the student must hold an Indian passport.

3. The minor Petitioner's mother sent a communication to Respondents 6, 7 and 8 and 8th respondents stating about the British Passport and OCI card of the Petitioner. In response, the 7th respondent, sent a communication stating that the petitioner cannot attend the camp since the Government Policy does not allow students to represent India, without holding an Indian Passport, despite being an Indian citizen. Hence, the petitioner had challenged the communication dated 01.03.2018 issued by the 6th respondent, in so far as, it restricts IMO selection to Indian Passport holders and subsequently direct the respondent to reinstate the petitioner's name in the list of selectees for the International Mathematical Olympiad Training Camp scheduled from 18.04.2018 to 16.05.2018 for selection for participation at the International Mathematics Olympiad.

4. Though no counter is filed by Respondents 1 to 7, learned counsel appearing on their behalf, submitted that there is a specific prohibition debarring the candidates not holding Indian Passport to be in the list of selectees and that the Department of Atomic Energy, by a letter dated 10.01.2018, has categorically stated that the representation in the Olympiad may be restricted only to Indian Passport holders i.e., Indian citizens and that the petitioner, as a matter of right, cannot demand that his case shall be considered. It is his further submission that even though the minor petitioner is a meritorious student and that he is representing Tamil Nadu is disputed, the fact however remains that the child is one among the 35 students from all over India and that only 5 to 6 students are going to be selected at the International Mathematical Olympiad. As the petitioner is a U.K. citizen, not having valid Indian Passport, he cannot, as a matter of right,

seek for a direction to include his name in the list of selection for IMO camp scheduled between 18.04.2018 and 16.05.2018.

5. Heard both parties and perused the materials placed on record.

6. It is not in dispute that the parents of the minor Petitioner were originally Indian citizens and they have gone abroad and have become British Citizens. It is also not in dispute that the child/minor petitioner was born in London and initially was holding Indian Passport and thereafter acquired British Passport and became a British Citizen. The factum that the entire family have come back to India and that the minor child is studying in India is an admitted fact. The only issue is whether a person, who has an International Passport alone would be entitled to be considered in the list of selectees for the IMO training camp scheduled between 18.04.2018 and 16.05.2018 to be considered for selection for participating at International IMO. For this factum, a reference has to be drawn to Articles 5, 8 and 11 of the Constitution of India and also Section 7-B(1) of Citizenship Act, 1955 and they are extracted as follows:

"5. Citizenship at the commencement of the Constitution. At the commencement of this Constitution, every person who has his domicile in the territory of India and—

(a) who was born in the territory of India; or

(b) either of whose parents was born in the territory

of India; or

(c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement, shall be a citizen of India.

8. Rights of citizenship of certain persons of Indian origin residing outside India.

Notwithstanding anything in article 5, any person who or either of whose parents or any of whose grandparents was born in India as defined in the Government of India Act, 1935 (as originally enacted), and who is ordinarily residing in any country outside India as so defined shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him therefor to such diplomatic or consular representative, whether before or after the commencement of this Constitution, in the form and

manner prescribed by the Government of the Dominion of India or the Government of India.

11. Parliament to regulate the right of citizenship by law. Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship."

Section 7-B(1) of the Citizenship Act, 1955:

7-B. Conferment of rights on overseas citizen of India cardholder.

(1) Notwithstanding anything contained in any other law for the time being in force, an overseas citizen of India cardholder shall be entitled to such rights, other than the rights specified under sub-section (2), as the Central Government may, by notification in the Official Gazette, specify in this behalf."

7. A reading of Article 11 of the Constitution of India would make it very clear that nothing contained in Part II of the Constitution of India shall derogate the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship. Similarly, a reading of 7-B(1) of Citizenship Act, 1955 would make it clear that an Overseas Citizen of India cardholder shall be entitled to such rights other than the rights specified under Sub-section (2), as the Central Government may, by notification in the Official Gazette, specify in this behalf. Pursuant to the proviso under Section 7-B(1), a notification was issued by the Ministry of Home Affairs, which was published in the Gazette of India Extraordinary (Part II-Sec.3(ii)) dated 11.04.2005, and the same reads as follows:

"S.O.542(E)-In exercise of the powers conferred by Sub-section(1) of Section 7B of the Citizenship Act, 1955 (57 of 1955), the Central Government hereby specifies the following rights to which the persons registered as Overseas Citizens of India under Section 7A of the said Act shall be entitled namely:-

(a) grant of multiple entry lifelong visa for visiting India for any purpose;

(b) exemption from registration with Foreign Regional Registration Officer or Foreign

Registration Officer for any length of stay in India; and

(c)parity with Non-Resident Indians in respect of all facilities available to them in economic, financial and educational fields except in matters relating to the acquisition of agricultural or plantation properties."

8. A reading of Article 11 of the Constitution of India, Section 7-B(1) of the Citizenship Act and the notification would make it very clear that the persons registered as overseas citizens under Section 7-A would be entitled to parity with Non-Resident Indians in respect of all facilities available to them in economic, financial and educational fields. In this case, the petitioner is a student. There shall be a specific notification excluding the educational fields by means of separate notification, modifying the notification dated 11.04.2005. Unless there is a notification, the communication issued by the Department of Atomic Energy cannot hold the field. Any circular or communication cannot override the Act and the said Act came into force pursuant to the Constitutional provisions.

9. In this regard, Mr.Rabu Manohar, learned counsel appearing for the respondents 1 to 7 tried to justify his arguments by citing the judgment dated 07.07.2017 passed by the High Court of Karnataka at Bengaluru in W.P.No.23448 of 2017, where the student taking up NEET exam for the year 2017 was treated on par with Non-Resident of Indians. Though, the said student was eligible for admission under various categories of seats for the first year, the names can be considered for admission. But that had been with reference to medical college students and not with regard to the similar issue. Hence, in view of this Court, the said decision cannot be applicable to the case on hand.

10. The issue in the present case is with regard to education, which was considered by the Karnataka High Court and an order was passed. In fact, apart from the notification of the year 2005, there was a separate notification in the year 2009, wherein the parity with non-resident Indians in respect of fees provisions etc., had been considered. In terms of the notification dated 11.04.2005, which had been issued pursuant to Section 7-B of the Citizenship Act, 1955 and taking note of Article 11 of the Constitution of India, I am of the view that the petitioner will have to succeed and the impugned communication dated 01.03.2018 has to be interfered with, where there is a bar to the candidates not having Indian Passports for participation in the International Mathematical Olympiad selection.

11. Hence, there shall be a direction to the respondents to include the name of the minor petitioner in the list of selectees for the International Mathematical Olympiad Training Camp and allow him to attend the camp scheduled from 18.04.2018 to 16.05.2018 and his candidature may be considered for selection for the participation at International Mathematical Olympiad, if he is otherwise found to be successful.

With the above directions, the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

rm/aeb

To:

1. Union of India,
Represented by its Secretary to Government,
Prime Minister's Office, South Block, Raisina Hill, New
Delhi-110011.
2. Union of India,
Rep. by its Principal Secretary,
Ministry of Home Affairs, North Block, Central Secretariat,
New Delhi-110 001.
3. Union of India,
Rep. by its Principal Secretary,
Ministry of Overseas Indian Affairs,
Akbar Bhawan, Chankyapuri, New Delhi-110 021.
4. Union of India,
Rep. by its Principal Secretary,
Ministry of Human Resource Development,
Shastri Bhawan, New Delhi-110001.
5. Department of Atomic Energy,
Represented by its Secretary,
Anushakthi Bhavan, C.S.M. Marg, Mumbai-400 001.

6.National Board of Higher Mathematics,
Rep. by National Coordinator for
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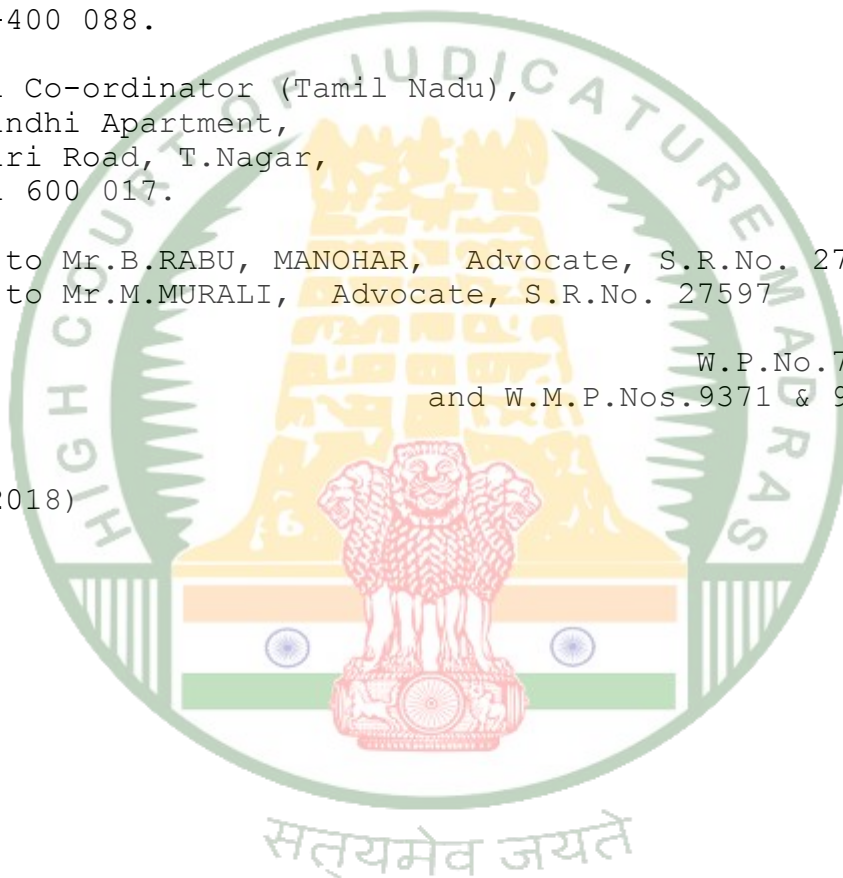
8.Regional Co-ordinator (Tamil Nadu),
C1, Srindhi Apartment,
16A, Giri Road, T.Nagar,
Chennai 600 017.

+1cc to Mr.B.RABU, MANOHAR, Advocate, S.R.No. 27620

+3cc to Mr.M.MURALI, Advocate, S.R.No. 27597

W.P.No.7524 of 2018
and W.M.P.Nos.9371 & 9372 of 2018

SSV(CO)
TR(16/04/2018)



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