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

Judgment pronounced on: 9.2.2018

+ W.P. (C) 1023/2018, CM APPL.4304/2018

SONAM TASHI

..... Petitioner

Through: Mr. Simarpal Singh Sawhney with
Mr. Sidhant Krishan Singh, Advocates.

Versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Nikhil Bhardwaj, Advocate.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SHAKDHER

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RAJIV SHAKDHER, J. (ORAL)

1. This is a writ petition, whereby a direction is sought qua the Court respondents for issuance of passport to the petitioner in the background of the following brief facts:

2. The petitioner, who is of Tibetan origin was born in Lobarsing, Gajapati, Odhisha on 11.08.1987. His mother, one, Nyima Youdon, was born in the same place, albeit, on 22.3.1962.

2.1 The petitioner was issued a registration certificate/residential permit on 25.4.2006 by the Superintendent of Police & Foreigners Registration Officer, Gajapati, Odisha, India.

3. The petitioner, in these circumstances, applied for issuance of fresh passport on 16.8.2017. An acknowledgment was issued to the petitioner via letter bearing No.DL1061376989617.

3.1 The petitioner avers that though nothing in writing was served upon to him, he was informed by the officials manning the passport office that since he was a Tibetan national, his nationality was doubtful and, therefore, he could not be issued the passport.

4. It appears upon perusal of Annexure P-8 which is appended to the writ petition that his application for issuance of passport has been put “on hold”.

4.1 The petitioner further avers that pursuant to submission of the application, police verification was carried out whereat he produced the relevant documents.

4.2 The petitioner further avers that since no response was received, he checked the status of his passport application on the website of the respondents wherein he found the following displayed: -

“Police Verification Report for passport application is under review at the Regional Passport Office. Passport will be dispatched after Police Verification Report is found clear. The applicant would receive an sms/e-mail once the passport is dispatched.”

5. Being aggrieved, the petitioner once again made personal enquiries with the officials manning the Regional Passport Office, Delhi, whereupon petitioner’s enquiries revealed that his request for issuance of passport was not being actioned as he was not, in their wisdom, an Indian Citizen. This information, though, was given to petitioner informally and that too orally.

6. It is for this reason that the petitioner has approached this Court by way of the instant writ petition under Article 226 of the Constitution. The petitioner in support of his contentions relies upon the following judgments rendered by this Court: -

(i) Judgment dated 13.04.2017, passed in batch of writ petitions; the lead petition being W.P.(C)No.254/2017, titled: *Tenzin Passang v. Union of India & Ors.*;

(ii) Judgment dated 22.12.2010, passed in W.P.(C)No.12179/2009, titled: *Namgyal Dolkar v. Government of India, Ministry of External Affairs*;

(iii) Judgment dated 22.9.2016, passed in batch of writ petitions; the lead petition being W.P.(C)No.3539/2016, titled: *Phuntsok Wangyal v. Ministry of External Affairs & Ors.*

7. Notice in this writ petition was issued on 5.2.2018. On that date, Mr. Arun Bhardwaj, learned CGSC had accepted the notice on behalf of the respondents. Accordingly, Mr. Arun Bhardwaj was directed to revert with instructions having regard to the view taken by this Court in the aforementioned judgments as they *prima facie* appeared to cover the issue raised in the writ petition, albeit, in favour of the petitioner.

7.1 It was made clear that if instructions were received to the contrary, counter affidavit will be filed before the next date of hearing.

8. Unfortunately, no counter affidavit has been filed. Therefore, this Court has nothing on the record which would demonstrate as to why the relief sought for by the petitioner ought not to be granted.

9. *De hors* this aspect of the matter, I may only touch upon the relevant provision of the Citizenship Act, 1955 (hereafter referred to

as “1955 Act”), on which reliance is placed by the petitioner; these being Section 3(1)(a) and (b) of the 1955 Act, which read as follows: -

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.]”

9.1. A bare reading of Section 3 (1) (a) would show that any person who does not fall within the exception of sub-section (2) and is born in India on or after 26.1.1950 but before 1.7.1987 would be a citizen of

India. Likewise Section 3 (1) (b) provides that any person who, does not fall within the exception of sub-section (2) and is born on or after 1.7.1987 but before the commencement of Citizenship (Amendment) Act, 2003 and either of whose parents is a citizen of India at the time of his birth, would be a citizen of India.

9.2. It is not in dispute that neither the petitioner nor his mother falls within the purview of sub-Section (2) of Section 3.

9.3 Therefore, insofar as the petitioner is concerned (whose date of birth, as indicated above, is 11.8.1987) he can claim citizenship of India by birth, only if either of his parents were also citizens of India at the time of his birth.

9.4 As indicated above, the petitioner's mother was born in India on 22.3.1962 therefore, insofar as the mother is concerned, his claim for citizenship falls within the ambit of Section 3 (1) (a) of the 1955 Act.

9.5 Likewise, insofar as the petitioner is concerned, his claim gets covered under Section 3 (1) (b) of the 1955 Act because the twin conditions provided therein are fulfilled by him as his birth took place within the defined period which is after 1.7.1987 but before the commencement of Citizenship (Amendment) Act, 2003 coupled with the fact that his mother acquired citizenship by birth as his case fell within the purview of Section 3 (1) (a) of the 1955 Act.

10. In my view, a bare reading of the aforementioned provisions *prima facie* establishes that the petitioner's claim to citizenship is sustainable, and if, there is no other impediment, his application for issuance of passport ought to be considered. The petitioner in support of his case has relied upon three judgments which are referred to in

paragraph 6 above. Broadly, these judgments also take a similar view with regard to the claim of citizenship by birth in case of persons of Tibetan origin.

11. Therefore, given the aforesaid circumstances, the respondents are directed to consider the petitioner's application for issuance of passport in accordance with law. The respondents while taking a decision in the matter will also bear in mind the observations made hereinabove and those made in the aforementioned judgments. Needless to say this exercise will be carried out by the respondents by an independent application of mind to the facts obtaining in the petitioner's case.

12. The respondents will do the needful as expeditiously as possible, though, not later than eight weeks from today.

13. The writ petition is disposed of. Consequently, pending application also stands closed.

14. Dasti.

RAJIV SHAKDHER, J

FEBRUARY 09, 2018

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