

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

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Judgment delivered on: 03.10.2018

+ **W.P.(C) 7974/2017**

**PRABHLEEN KAUR**

...Petitioner

Versus

**UNION OF INDIA & ANR**

...Respondents

**Advocates who appeared in this case:**

For the Petitioner :Mr Shailendra Bhardwaj and Ms A.Roma S. Bhardwaj.

For the Respondent :Mr Sanjib Kumar Mohanty, Senior Panel, Central Govt. counsel UOI with Mr Amit Acharya, Mr Santosh Kumar Pandey, Govt. Pleader, UOI.

Mr Sachin Nahar, Mr V.P. Nahar for R-2 with SI Harjinder Singh in person.

Amicus Curiae :Mr Neeraj Kishan Kaul, Senior Advocate.

**CORAM**

**HON'BLE MR JUSTICE VIBHU BAKHRU**

**JUDGMENT**

**VIBHU BAKHRU, J**

1. The petitioner has filed the present petition under Article 226 of the Constitution of India praying that the respondents be directed to issue a passport to the petitioner. The petitioner also impugns a letter dated 02.08.2017 (hereafter 'the impugned communication') issued by the Regional Passport Office, Ministry of External Affairs (hereafter 'RPO'), whereby the petitioner's application for re-issuance of a passport is declined.

2. The petitioner was born on 29.11.1994. That is, after 01.07.1987 but prior to the commencement of the Citizenship (Amendment) Act, 2003. Therefore, in terms of Section 3(1)(b) of the Citizenship Act, 1955 (hereafter 'the Citizenship Act'), she would be a Citizen of India by birth provided either of the parents were citizens of India at the time of her birth. The petitioner's request for passport facilities has now been denied as the nationality of both her parents is doubtful.

### ***Factual Background***

3. The petitioner was born on 29.11.1994 in New Delhi, India. The petitioner completed her 10<sup>th</sup> & 12<sup>th</sup> standard from Daisy Dales Sr. Secondary School, East of Kailash, New Delhi in the year 2011 & 2013. Thereafter, she did her B.A. (Hons) English from Maitreyi College, Delhi University in the year 2016.

4. The petitioner was successively issued two passports: the first bearing no. A4243264, which was valid for the period 02.12.1997 to 01.12.2007; and the second bearing no. G5581942, which was valid for the period 07.11.2007 to 06.11.2012.

5. The petitioner's father (Sh Harvinder Singh), claims that he was born on 27.01.1957 in Amritsar and is an agriculturist. He holds an Indian passport bearing no. H3069553. The petitioner's mother (Smt Kulwant Kaur) was born on 05.01.1963. She claims that she was born in Amritsar. She completed her education from Punjab in 1983 and was successively issued three passports: the first bearing no. E073997, which was valid for the period 17.10.1988 to 16.10.1998; the second

bearing no. A5381954, which was valid for the period 02.06.1998 to 01.06.2008; and the third bearing no. G5593338 valid for the period 28.11.2007 to 27.11.2017.

6. In 2013, the petitioner applied for renewal of her passport bearing no. G5581942. However, the same was not renewed on the ground that her nationality was doubtful. She requested for closure of her application for renewal of her passport and issuance of No Objection Certificate (NOC). The Regional Passport Officer (RPO) issued a letter dated 06.01.2016 intimating the closure of the passport application filed by the petitioner.

7. Thereafter, the petitioner applied again for renewal and reissuance of her passport; however, she was informed vide email dated 17.12.2016 that police verification has been initiated

8. On 08.05.2017, the petitioner filed a writ petition bearing no. W.P. (C) 4327/2017 before this Court seeking renewal and re-issuance of the passport. On 19.05.2017, the respondents sought time to take instructions and file relevant record and the matter was thereafter listed on 26.05.2017.

9. On 26.05.2017, this Court directed the respondents to produce the records with respect to the passport issued to the petitioner as well as her parents alongwith their renewals. The matter was then listed on 05.07.2017.

10. On 05.07.2017, this Court passed an order holding that the

petitioner cannot be denied a passport. The relevant extract of the said order is set out below:

“1. The learned counsel for respondent no.1 states that the passport has been denied to the petitioner only because certain doubts have been expressed as to the petitioner’s nationality as well the nationality of her parents.

2. There is no dispute that the petitioner was born in Delhi on 29.11.1994. The petitioner has also completed her schooling in Delhi. The only apprehension expressed by respondent no.2 is with regard to the nationality of petitioner’s parents. It is stated that there are doubts as to the nationality of the petitioner’s father (who also holds an Indian Passport) as it is appears that his brother is a national of Afghanistan.

3. Indisputably, the respondent no.1 had issued passports to both the parents of the petitioner. The passport issued to the petitioner’s mother indicates her date of birth as 13.04.1964 and the place of birth as Amritsar. The doubt as to the petitioner’s mother’s nationality is based on the address provided by the petitioner’s mother in respect of her parents (which is an address located in Amritsar). The learned counsel for respondent no.2 states that the said address has been found to be temporary camp and, therefore, could not be a permanent address of the grandparents of the petitioner.

4. Respondent no.2 has no other particulars to substantiate its doubts. Clearly, any bald apprehension or any doubt as to the residence of the petitioner’s grandparents is wholly insufficient to cast a doubt and to reject the passport of the petitioner’s mother, which, it is assumed would have been issued after due police verification at the material time. In the circumstances, respondent no.1 was also directed to produce the relevant documents on the basis of which the passports were issued to the mother of the petitioner. The learned counsel for respondent no.1 states that passports were issued to the petitioner’s mother based on her earlier passports and

no documents are available of the initial passport that was issued in the year 1987.

5. This court is informed that after first passport was issued to the mother of the petitioner, two other passports were also issued to mother of the petitioner on expiry of the earlier passport(s) and this was also done after due police verification.

6. The petitioner has also produced documents to substantiate that her mother was educated in India.

7. In the circumstances, it is apparent that the petitioner cannot be denied a passport unless some concrete evidence is available with the respondents, which can raise any doubts regarding the citizenship of the petitioner's mother. A passport is a document evidencing a citizen's nationality and cannot be ignored on mere suspicions."

11. On 10.07.2017, the RPO filed a short affidavit in reply stating that the passport was not issued to the petitioner as an adverse police report was received stating that the petitioner's nationality was doubtful and the petitioner also did not produce any document to prove her nationality.

12. On the same date, respondent no.2 also filed a short affidavit wherein doubts as to the nationality of the petitioner's parents were raised. These doubts were based on the statement given by the petitioner's neighbor, Mr Ravinder Singh Channi, who stated that the petitioner's parents were Afghan nationals.

13. On 20.07.2017, the petitioner filed her reply to the affidavits filed by the RPO and respondent no.2 and submitted that in 1987, the petitioner's mother got married and after marriage they shifted to

Delhi. In 1988, the petitioner's mother applied for a passport incorrectly mentioning her date of birth as 13.04.1964 instead of 05.01.1963. She also submitted that merely a discrepancy in her mother's date of birth in the passport cannot be the reason to say that her mother's nationality was doubtful.

14. On 26.07.2017, this Court disposed of the petition by directing the respondents to consider renewal of the petitioner's passport and pass a speaking order. The petitioner was also granted liberty to apply afresh if aggrieved.

15. On 04.08.2017, the petitioner received a letter, whereby the petitioner was informed that her application for renewal and reissuance of passport had been rejected on the basis of the police report. The respondents issued a show cause notice dated 02.08.2017 to the parents of the petitioner thereby calling upon them to show cause as to why their passports should not be impounded under Section 10(3)(b) of the Passports Act, 1967.

16. On 09.08.2017, the parents of the petitioner submitted their responses alongwith documents in support of their claim to be Indian nationals.

### ***Reasons and Conclusion***

17. At the outset, it is relevant to refer to Section 6 of the Passports Act, 1967 (hereafter 'the Passports Act'), which sets out the grounds on which a passport can be refused. One such ground being that the

applicant is not a citizen of India. The relevant extract of the said subsection is set out below:-

**“Section 6(2) in The Passports Act, 1967**

(2) Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under clause (c) of subsection (2) of section 5 on any one or more of the following grounds, and on no other ground, namely:—

- (a) that the applicant is not a citizen of India;
- (b) that the applicant may, or is likely to, engage outside India in activities prejudicial to the sovereignty and integrity of India;
- (C) that the departure of the applicant from India may, or is likely to, be detrimental to the security of India;
- (d) that the presence of the applicant outside India may, or is likely to, prejudice the friendly relations of India with any foreign country;
- (e) that the applicant has, at any time during the period of five years immediately preceding the date of his application, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;
- (f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India;
- (g) that a warrant or summons for the appearance, or a warrant for the arrest, of the applicant has been issued by a court under any law for the time being in force or that an order prohibiting the departure from

India of the applicant has been made by any such court;

- (h) that the applicant has been repatriated and has not reimbursed the expenditure incurred in connection with such repatriation;
- (i) that in the opinion of the Central Government the issue of a passport or travel document to the applicant will not be in the public interest.”

18. A plain reading of sub-section (2) of Section 6 of the Passports Act indicates that the passport can be refused only on the grounds as set out therein and “*on no other ground*”. In the present case, the petitioner has been denied the passport, as the RPO considers the petitioner’s nationality to be doubtful. Clearly, a doubt raised regarding nationality of a citizen is not a ground for refusal of a passport. As expressly indicated under Section 6(2) of the Passports Act, the passport can be denied if the applicant is not a citizen of India. In the present case, although, the petitioner’s nationality is doubted, it is conceded that the respondents have not concluded that the petitioner is not a citizen of this country.

19. The controversy in this case must necessarily be considered in the context of the facts. There is no doubt that the petitioner was born on 29.11.1994 at New Delhi. Both her parents are *Sikhs*. The petitioner completed her schooling from Daisy Dales Senior Secondary School. She cleared her 10<sup>th</sup> standard exam conducted by the Central Board of Secondary Education (CBSE) in the year 2011 with Cumulative Grade Point Average of 9.6 (grade ‘A’ in all subjects). She completed her

12<sup>th</sup> standard from the same school in the year 2013 with high grades. Thereafter, she was admitted to Maitreyi College, University of Delhi in the degree course of B.A (Hons), which she completed with First Division in the year 2016.

20. The petitioner is born and brought up in this country. The petitioner has no moorings in any other country. She knows no place, other than in this country as her home. Although, it is asserted that her parents hail from Afghanistan, the petitioner has never visited that country and there is no material to even remotely suggest that the petitioner is connected with any place in Afghanistan.

21. The controversy, essentially, revolves around the nationality of the petitioner's parents. The petitioner's mother (Ms Kulwant Kaur d/o Jagat Singh) asserts that she was born in Amritsar on 05.01.1963 and had completed her education in Amritsar. Her claim of being born in Amritsar is now in question. The respondents state that the Register of Births and Deaths maintained in Amritsar does not contain an entry relating to the petitioner's mother. Further discrete enquiries reveal that the petitioner's mother's family had migrated from Afghanistan; however, none of the aforesaid enquiries even remotely indicate as to when the said family had migrated to India.

22. The undisputed facts are that the petitioner's mother cleared the 10<sup>th</sup> standard from Shahzada Nand Girls High School, Amritsar. The said school had issued a certificate confirming that Ms Kulwant Kaur d/o Jagat Singh (the petitioner's mother) had passed her 10<sup>th</sup> standard

in 1978. It was also certified that her date of birth as per the school register is 05.01.1963. The said school also confirmed that no previous records, other than the result register are available. Further, the Headmistress of Shahzada Nand Girls High School had issued a letter stating that the petitioner's mother was not a school student during the session 1967 to 1970. However, she has been unable to produce any record of her admission as no such records (other than the Result Register) are available.

23. The petitioner's mother asserts that she had completed her entire education from Amritsar. She had started her education in the year 1968 by taking admission in class one of the Junior Branch of Shahzada Nand Girls Junior School where she studied up to the 5<sup>th</sup> standard. Thereafter, in the year 1973, the petitioner's mother joined the 6<sup>th</sup> standard in the High School Branch of Shahzada Nand Girls High School and completed her 10<sup>th</sup> standard in the year 1978. She also asserts that her mother's record from class six onwards was available in the school but the records prior to that are not available.

24. The admitted position with regard to the studies of the petitioner's mother is that there are records indicating that the petitioner's mother was a student of a school in Amritsar from 1970. Although, it is also admitted that the school does not have all the records. It is confirmed by the principal of Shahzada Nand Girls School that the petitioner's mother had cleared the 10<sup>th</sup> standard in the year 1978 and her date of birth was 05.01.1963. Thus, undisputedly, the petitioner's mother has been a resident in India at least from the

time when she was seven years old, that is, at least for the last 48 years.

25. The petitioner's mother had also produced certain rent receipts issued by Akhara Shri Brahm Boota Sahib, Amritsar relating to the years 1987 to 1999. The said rent receipts are in respect of Plot No. 45 Bhram Boota Sahib. The petitioner's mother claims that her parents were residents of the said property located at Brahm Bhoota Marg. The respondents have assumed the word 'Akhara' to mean a *dharamshala* or a temporary camp. This is seriously disputed by the petitioner's mother and she has also produced communication from the President Akhara Bhram Bhoota confirming that the Akhara had number of properties and House No. 45 of Brahm Bhoota Marg was one of the properties owned by the Akhara. The said property was leased to Sh Jagat Singh s/o Jeevan Singh earlier (the father of the petitioner's mother) and currently it is leased to Sh Tanmeet Singh s/o Gurjeet Singh, who runs a guest house from the said premises.

26. It is also relevant to note that the petitioner's mother had applied for and was issued a passport (bearing no. E073997), which was valid for the period 17.10.1988 to 16.10.1998. She was thereafter issued another passport (bearing no. A5381954), which was valid for the period 02.06.1998 to 01.06.2008. Thereafter, once again the petitioner's mother applied for a passport and was issued one which was valid for the period 28.11.2007 to 27.11.2017. Thus, the petitioner's mother has held an Indian passport for more than three decades.

27. It was stated that the earlier passports had been issued on the basis of affidavits submitted by the petitioner's mother. During the course of arguments, this Court had pointedly asked whether the respondents could affirm that no police verification was done prior to issuance of the said passports and the learned counsel for the respondents had candidly stated that the police verification must have been done before issuing the said passports. Clearly, in the year 1988, there would not be such paucity of material to ascertain whether the petitioner's mother was born in India. Although, at this stage, a controversy has been raised whether the petitioner's mother has resided in *Dharamshala* or a temporary camp (as noticed above, this is seriously disputed by the petitioner's mother). Clearly, no such controversy was raised in 1988 when the petitioner's mother's family was residing at the premises bearing house no. 45 Brahm Boota Marg. Having conducted a verification almost thirty years ago and having accepted the petitioner's mother was a citizen of this country by birth, it would now be unreasonable to question the same and call upon the petitioner's mother to produce documents establishing her birth after the elders of the family have expired.

28. Viewed in the light of the aforesaid facts, where it is admitted that the petitioner's mother is residing in this country as a citizen – as is evidenced by her holding a passport – for the past forty eight years and there is no material available to disprove her assertion that she was born in Amritsar; there is little reason to hold that she is not a citizen of India.

29. It may be correct that the petitioner's mother's family had migrated from Afghanistan but there is no material now to establish when they had done so. The respondents have been unable to produce any records, which indicate that the petitioner's mother's family had migrated to Amritsar after the petitioner's mother was born. During the course of the arguments, the learned counsel appearing for the petitioner submitted that the petitioner's mother's family had come to India at the time of partition in 1947. There is no reason to contest this assertion, as there was a mass migration in the Indian subcontinent at the time of partition. A large number of families had migrated across the India's western borders during partition. The principal question that needs to be addressed is, should in the given facts, the petitioner's mother's assertion that she was born in India on 05.01.1963 be disbelieved? This Court thinks not. In these circumstances, the nationality of a person who was admittedly residing in India as a citizen for the last 48 years, cannot be questioned. Raising such issues at this stage is plainly unreasonable and in this Court's view, impermissible.

30. Once it is accepted that the petitioner's mother's citizenship cannot be questioned in the given facts, the doubt, if any, raised on the nationality of the petitioner does not survive.

31. The petitioner's father also claims to be a citizen of India. However, his citizenship is doubted as his brother is registered with the Foreign Regional Registration Offices (FRRO) as the foreign

national. However, he claims to be born in India in the year 1957. It is also not disputed that he is also a resident of Delhi for over 30 years.

32. It is also relevant to note that the petitioner was also issued a passport (passport no. A4243264), which was valid for the period 02.12.1997 to 01.12.2007. She was subsequently issued another passport (passport no. G5581942), which was valid for the period 07.11.2007 to 06.11.2012. Thus, the petitioner's nationality was also not questioned in the past. At this stage, questioning her nationality in the given facts is wholly unsustainable.

33. Having stated the above, it is also relevant to consider the consequences of the stand now taken by the respondents. Clearly, the petitioner is not a national of any other country, she cannot claim to be a citizen of Afghanistan. She has no moorings in that country, she knows of no place in that country that could be remotely called her home. She has never visited that country or has been accepted in that culture. She is born of parents whose faith is in Sikhism and she is an integral part of her community. Questioning her nationality in these facts, at this stage, would render her stateless and this result must clearly be avoided insofar as possible.

34. In ***Gangadhar Yeshwant Bhandare v. Erasmo De Jesus Sequiria* : (1975) 1 SCC 544**, the appellant had challenged the nationality of the respondent. The respondent (therein) was a resident of Goa prior to 20.12.1961 (the date of liberation of Union Territory of Goa, Daman and Diu from Portuguese domination). After the

liberation of Goa i.e. on 20.03.1962, the Central Government issued the Goa, Daman and Diu Citizenship Order, 1962 conferring Indian citizenship on persons born in Goa, Daman and Diu prior to 20.12.1961. The said order also provided that such a person would not be deemed to have become a citizen of India as per the aforesaid Order, if within one month from the date of publication of the said Order, the person makes a declaration in writing to the Administrator of Goa, Daman and Diu that he chooses to retain the citizenship or nationality, which he had before 20.12.1961. The respondent in that case made such a declaration on 27.04.1962 and retained his nationality as a Portuguese citizen. He also travelled overseas on the basis of a Portuguese passport issued on or about 20.06.1958 by the erstwhile Portuguese Administration. On 20.12.1962, the Government of India also notified the Citizenship (Amendment) Rules, 1962 which, *inter alia*, provided that a person who would become an Indian citizen by virtue of the Goa, Daman and Diu Citizenship Order, 1962 holds a passport issued by the government of any other country, the fact that he has not surrendered the said passport on or before 19.01.1963 would be conclusive proof of his having voluntarily acquired the citizenship of that country before that date. Admittedly, the respondent had not surrendered his passport prior to 19.01.1963. He attempted to do so sometime in January, 1964. On 15.12.1964, the administration of Goa, Daman and Diu sent a letter informing the respondent that he had “*prima facie*” become a citizen of India by virtue of the Goa, Daman and Diu (Citizenship) Order, 1962. It was also stated that the respondent was on a secret mission till January, 1964 and, therefore,

had no choice but to retain his Portuguese nationality. In the facts of that case, the Supreme Court upheld the decision of the High Court rejecting the appellant's plea that the respondent was not a citizen of India. In the given context, the Court also observed as under:-

“22. We may observe that the Government of India issued a passport in favour of the respondent in 1965 and thereafter in 1970. The respondent before his election to the Lok Sabha in 1971 was also a member of the Lok Sabha from 1967 till 1971. When elected as a member of the Lok Sabha in 1967 as also when he obtained the Indian passport in 1965 and 1970 the respondent had to sign the declaration that he was an Indian citizen. He has already renounced his Portuguese citizenship. To hold at this stage that the respondent is not an Indian citizen would have the effect of rendering him stateless.”

35. It is apparent from the above that one of the grounds considered by the Supreme Court was that accepting the appellant's contention would render the respondent therein stateless. And, insofar as possible, this should be avoided.

36. India is also a signatory to the Universal Declaration of Human Rights, 1948. Article 15 of the said treaty expressly provides that everyone has a right to one nationality. In the facts of this case, the only nationality that the petitioner can have is Indian. Thus, denial of the same would also fall foul of the Universal Declaration of Human Rights, 1948.

37. It is also relevant to refer to Section 8 of The Foreigners Act, 1946. If the petitioner is held to be not a citizen of India, she would be

a foreigner within the meaning of Section 2(a) of the Foreigners Act, 1946. Section 8 of the said Act provides “*where for any reason it is uncertain what nationality, if any, is to be ascribed to a foreigner, that foreigner may be treated as a national of the country with which he appears to the prescribed authority to be most closely connected for the time being in interest or sympathy or if he is of uncertain nationality, of the country with which he was last so connected*”. Thus, in view of the above, if the petitioner was considered a foreigner, she would necessarily have to be ascribed some nationality and the only nationality that can be ascribed to her is a nationality of this country.

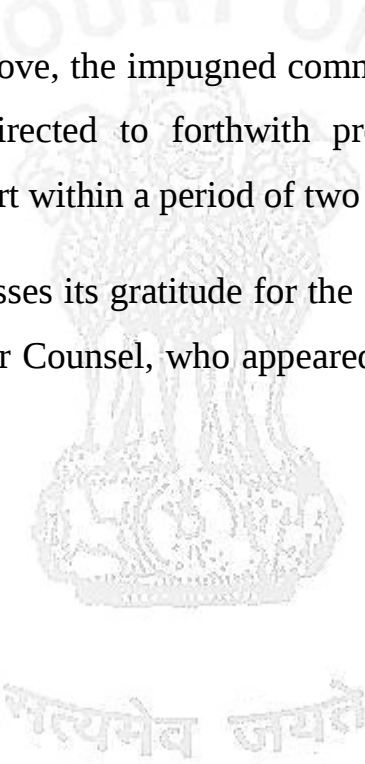
38. There is yet another perspective with which the controversy can be examined. Even if it is accepted (which this Court does not) that the petitioner is not a citizen of India by birth, she undoubtedly is entitled to be recognized as a citizen of this country by naturalization. Undisputedly, the petitioner complies with the contention of the Third Schedule to the Citizenship Act. She has also produced certificates from her school as well as college affirming that she is of good character. She has full knowledge of the culture and values of this nation and more importantly is a part of the community. In these circumstances, there would have been no difficulty for the petitioner to have applied under Section 6(1) of the Citizenship Act. However, that recourse is not open to the petitioner since she claims to be a citizen by birth. Thus, in either event, citizenship of this country cannot be denied to the petitioner. There would thus be little purpose for

relegating the petitioner to approach the Central Government for removal of any doubts as to her nationality.

39. In view of the aforesaid and in the given facts of this case, this Court has little doubt that the denial of passport to the petitioner is manifestly unfair and unjust. This is a fit case for issuance of a mandamus directing the respondents to provide the passport facilities to the petitioner without questioning her nationality.

40. In view of the above, the impugned communication is set aside, the respondents are directed to forthwith process the petitioner's application for a passport within a period of two weeks from today.

41. This Court expresses its gratitude for the assistance provided by Mr Kaul, learned Senior Counsel, who appeared as an Amicus Curiae in this matter.



**VIBHU BAKHRU, J**

**OCTOBER 03, 2018**

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