

In the High Court of Punjab and Haryana at Chandigarh

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Date of Decision: 04.07.2023

CWP-18425-2022

Karanbir Singh Cheema

---Petitioner

versus

Union of India and others

---Respondents

CWP-6838-2021

Gagandeep Singh Cheema

---Petitioner

versus

The Union of India and others

---Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Ms. Archana Vashisht, Advocate for
Mr. K.S.Boparai, Advocate
for the petitioner in CWP No. 6838 of 2021

Mr. Dheeraj Jain, Sr. Panel Counsel for
Union of India

JAGMOHAN BANSAL, J. (ORAL)

1. By this common order, CWP Nos. 18425 of 2022 and 6838 of 2021 are hereby adjudicated as common question for consideration is involved in both the petitions.

2. The petitioners through instant petition under Articles 226/227 of Constitution of India are seeking direction to respondents No. 1 and 2 to consider applications dated 27.01.2020 of the petitioners for registration as Indian Citizens under Section 5(1) (a) and (e) of the Citizenship Act, 1955.

3. On 02.03.2023, following order was passed by this Court:-

“An affidavit has been filed by the Deputy Commissioner, Ludhiana in the Court today which is taken on record.

Ms. Surabhi Malik, Deputy Commissioner, Ludhiana is also present in the Court alongwith her staff including Additional Deputy Commissioner, Ludhiana in compliance of the orders passed by this Court on 23.02.2023. The Deputy Commissioner, Ludhiana has offered her explanation and also stated so in the affidavit which she has filed today. Therefore the notice issued to the Deputy Commissioner, Ludhiana is dropped and no further action is required in the notice issued to the Deputy Commissioner on the last date of hearing.

The controversy at this stage in the present case was that both the petitioners could not file their applications for considering their application for grant of citizenship because online system did not pick up their application despite repeated efforts and repeated requests. As per the Deputy Commissioner, Ludhiana again and again it was tried that the applications be picked up by the software of the department but the same could not be done. The reason as to why it has to be through the online system is the instructions issued by the Government of India, Ministry of Home Affairs vide Annexure R-4 dated 13.01.2021 that the applications are required to be through online mode only.

However, practically and physically the software of the office of the Deputy Commissioner was

not picking up the application of the petitioners and therefore the Deputy Commissioner has written a letter to the Ministry of Home Affairs, Government of India seeking clarification as to whether the application be processed manually or not. However, the fact remains that the application could not be picked up by the computer and the petitioners have been deprived of their rights of being considered in accordance with law.

Mr. Satya Pal Jain, learned Additional Solicitor General of India appearing on behalf of the Union of India submitted that in such like physical and practical difficulty, there is no harm in case the application of the petitioners can be processed manually so that at least they should not be deprived of their rights for being considered.

Apart from the above, this Court is of the view that Annexure R-4 which are the instructions issued by the Government of India are only administrative instructions and prima facie they have got no statutory force of law and therefore in the interest of justice and in case of exigencies, the same can always be ignored because the procedure has to give way to the substantive rights of the persons as procedure is always subservient to the dominant factor of substantial justice.

In view of the aforesaid position, the petitioners will submit fresh applications to the Deputy Commissioner, Ludhiana in the physical form against acknowledgement within a period of two weeks from today and in the event of the petitioners doing so, the Deputy Commissioner, Ludhiana who is present in the Court is directed to forward the application so submitted to the Ministry of Home Affairs, Government

of India within next one week. Thereafter the Ministry of Home Affairs, Government of India shall process and finalize the application of the petitioners within further period of two months and thereafter status report be filed before this Court.

It is made clear that nothing contained in this order shall be deemed to mean any general observation on the enforceability of instructions dated 13.01.2021 since the present order has been passed in view exigencies and practical difficulties arisen in these two cases only.

Adjourned to 04.07.2023.

A copy of this order be placed on the file of other connected cases.”

4. Mr. Dheeraj Jain, Senior Panel Counsel for Union of India, at the outset, submits that competent authority has passed speaking order dated 03.07.2023 rejecting applications of the petitioners seeking citizenship, thus, the present petitions have rendered infructuous.

5. In view of the above development i.e. order dated 03.07.2023 passed by competent authority, the present petitions have rendered infructuous and disposed of as such.

6. The petitioners are at liberty to avail remedy against order dated 03.07.2023, in accordance with law.

(JAGMOHAN BANSAL)
JUDGE

04.07.2023
paramjit

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No