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W.P.No.14733 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.14733 of 2024

And

W.M.P.No.22105 of 2024

Minor Miss.Paveshja R N
Rep. by Mother and Natural Guardian
Mrs.Dhivya Sathanathan

... Petitioner

Vs.

1.The Regional Passport Officer,
25, AGT Business Park,
Avinashi Road,
Civil Aerodrome Post,
Coimbatore – 641 014.

2.Union of India,
Represented by its Secretary,
Ministry of External Affairs,
74 B, South Block,
New Delhi – 110 001.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondent nos.1 and 2 to consider the passport renewal application of the petitioner vide Application Reference No.24-1005931889 dated 08.05.2024 and renew the passport of the petitioner within a time period stipulated by this Hon'ble Court.



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For Petitioner : Mr.M.B.Elakkumanan
For Respondents : Mr.R.Siddharth
Central Government Counsel

ORDER

The petitioner has filed this writ petition seeking issuance of Writ of Mandamus directing the respondents 1 and 2 to consider the passport renewal application of the petitioner vide Application Reference No.24-1005931889 dated 08.05.2024 and renew the passport of the petitioner within the time frame stipulated by this Court.

2.The case of the petitioner is that the petitioner was born on 01.07.2015 at Nivetha Hospital, Dharapuram, Tiruppur District and the petitioner is an Indian citizen by birth. The petitioner's Father is an Indian citizen and the petitioner's Mother is an Sri Lankan citizen. The petitioner's parents marriage was solemnized on 27.08.2014 at Sri Lanka and was registered by the Registrar of Marriages, Sri Lanka on 03.09.2014. After marriage, the petitioner's parents lived in Dharapuram, Tiruppur District, however, matrimonial dispute arose between them and the petitioner's mother filed divorce petition in H.M.O.P.No.81 of 2020 before the learned Subordinate Judge,



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Dharapuram, Tiruppur District and the same was allowed on 01.03.2022. The petitioner had a valid Indian passport which was issued to her on 30.10.2015 and the same expired on 29.10.2020 and subsequently, the petitioner lost the passport. Therefore, she applied for renewal of passport on 13.10.2022 and her appointment was fixed on 26.10.2022, however, the petitioner's application for renewal of passport was rejected. Hence, this writ petition.

3.The learned counsel appearing for the petitioner submitted that the issue involved in this writ petition is no longer *res integra*. It has already been considered by the Kerala High Court in the decision reported in **2022 SCC OnLine Ker 1177 [Chaitanya S.Nair (Minor) rep. by Mother and Legal Guardian, Krishna Kumari Radhakrishnan Nair Vs. Union of India, Represented by Secretary to Government of India and others]**, wherein the Kerala High Court has held that if a person is born in India, irrespective of his/her Mother's citizenship, the person is entitled to get passport. Accordingly, he prayed for allowing the writ petition.

4.Per contra, the learned Central Government Counsel appearing for the respondents submitted that as per the Ministry's instructions,



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both parent should sign Annexure – D in fresh or reissue cases (both parent shall be present at the PSK while applying for passport for their minor children) or one Indian parent can submit Annexure – C with passport of both parents may be present or with divorce order in case of divorcee.

5.The learned Central Government Counsel appearing for the respondents further submitted that the petitioner's Father is an Indian, holder of Indian passport and her Mother is a Sri Lankan, holder of Sri Lankan passport. In the present case, even though the petitioner is an Indian by birth, she is a minor and hence, the consent of her Father who is an Indian citizen is mandatory to obtain Indian passport. Therefore, the petitioner's application was not accepted by the respondents.

6.Heard the arguments advanced on either side and perused the materials available on record.

7.The facts of the case is not in dispute. The petitioner was born on 01.07.2015 at Nivetha Hospital, Dharapuram, Tiruppur District and the petitioner is an Indian citizen by birth. The petitioner's Father is an



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Indian citizen and the petitioner's Mother is an Sri Lankan citizen. The petitioner's parents marriage was solemnized on 27.08.2014 at Sri Lanka and was registered by the Registrar of Marriages, Sri Lanka on 03.09.2014. The petitioner was issued with a valid Indian passport on 30.10.2015 and the same expired on 29.10.2020 and subsequently, the petitioner lost the passport. Therefore, she applied for renewal of passport on 13.10.2022 and her appointment was fixed on 26.10.2022, however, the petitioner's application for renewal of passport was rejected on the ground that the petitioner's father objected for issuance of passport to the petitioner.

8.Once passport is issued, the status will continue for renewal of passport. Further, the issue involved in this writ petition is no longer *res integra*. It has already been considered by the Kerala High Court in the decision reported in **2022 SCC OnLine Ker 1177 [Chaitanya S.Nair (Minor) rep. by Mother and Legal Guardian, Krishna Kumari Radhakrishnan Nair Vs. Union of India, Represented by Secretary to Government of India and others]**, the relevant portion of which reads as follows:

"25. Since the petitioner was born in India and her domicile of origin is India and when her biological father continues to be an



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Indian citizen, the objection raised by the respondents in issuing an Indian Passport, based purely on her mother being an American citizen is, to say the least, odious and legally unsustainable. The observations of this Court in *Prashanth Sathyavan v. Sindu George* (2015 SCC OnLine Ker 15968) that "*Father of the child being an Indian Citizen, it could well be stated that child can be issued with Indian Passport*" is apt in this context.

26. In view of the above deliberations, this Court is of the view that merely because one parent acquired the citizenship of another country or if one parent is not a citizen of India, will not by itself, disentitle a child born in India and whose other parent is an Indian citizen to be issued with an Indian passport. Therefore, Petitioner is entitled to be issued with an Indian passport.

(iii) Whether the passport can be issued mentioning only the name of the legal guardian?

27. During the course of arguments, it was submitted by the learned counsel for the petitioner that, since the biological father has an objection in including the name of the step-father in the passport, he confined his submission for including the name of the legal



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[Emphasis Added]

guardian in the passport. The receipt of acknowledgement of the application for the passport issued by the respondents provide columns for incorporating the name of the mother as well as that of the guardian and not that of the father. Further, in the website of the Ministry of External Affairs, Government of India relating to the passport and Visa Division, the following frequently asked questions have been mentioned. Since this is maintained by the Ministry of External Affairs itself, some of the questions have relevance and they are extracted as below:

Q1 : Exclusion of father/mother name from passport of minor in single-parent custody

A : 1. The online passport application form now permits that an applicant may provide the name of father or mother or legal guardian, i.e., only one parent and not both. This would enable single parents to apply for passports for their children and get passport(s) issued where the name of either the father or the mother is not required to be printed at the request of the applicant.



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2. In case of minor children of unwed single parent, the name of father or mother is not to be mentioned in the passport application and in the passport, in case of unwed parents submitting Appendix-12, name of both the parents is to be mentioned in the application form and in the passport.

3. In case of minor children of married parents, the name of father/mother shall be furnished by the other single parent having the custody of the child, irrespective of the status of their marriage, such as, divorced, divorce pending, separated or deserted, with or without visitation rights to the estranged parents.

Q2 : Divorce pending cases

A. In case divorce is still pending before the court, the applicant's parent should furnish or obtain permission from the court to apply for a passport for the child without the consent of the other parent of the child or provide declaration in form of Annexure-C with applicable reason. In pending divorce cases, where the single parent with child is already working/staying abroad, the child



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requires a passport for its continued stay abroad.

Q3 : Single divorced parent with exclusive custody of child without visitation rights for the other parent.

A : Where the custody of the child has been given exclusively to either parent without any visitation rights to the other parent, the question of obtaining consent of the other parent would normally not arise. A certified copy of the court order has to be submitted with the application and Annexure 'C' signed by the single parent.

Q8 : Annexure 'C' and 'D' : Their applicability and differentiation:

A : 1. **Annexure 'C'** : This declaration is applicable in cases where for any reason whatsoever the married parent applying for passport for the minor child is not able to obtain the consent of the other parent for obtaining passport for the child. The reasons also include - wilful denial of consent by the estranged parent; desertion; absence of communication between the divorced/not divorced but separated parents, ex-parte



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divorce proceedings etc., but exclude cases where both the parents are involved in divorce proceedings in which case, the permission of the court or consent of both the parents in Annex 'D' is required.

2. **Annexure 'D'** : This is for all normal cases where both the parents have to sign Annexure 'D'. Both parents or either parent with passports of both the parents shall be present at the time of issue of fresh passport or reissue of passport to the minor children or one parent with the passports of both the parents. This Annexure is also applicable to a single parent who has got full custody of the child and without any visitation rights to other parent (judgment to be verified); seaman/sailor spouse who are unable to sign Annexure D; unmarried parents submitting an affidavit as per Appendix-12.

28. Parents of the petitioner had divorced by mutual consent and the custody of the petitioner was given to the mother. Though the biological father has been given visitorial rights, that right is at the convenience of the parties. The third respondent has submitted in



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Court that he has no objection to the child being taken abroad by the mother, and to live there. None of the parties could bring to the notice of this Court any legal prohibition in incorporating the name of a non-citizen as the legal guardian in the passport of a minor child. In view of the above, this Court holds that the passport of the petitioner can be issued with the name of the mother as legal guardian.

29. While considering the issues mentioned, this Court was mindful of the fact that the petitioner, though a minor and a child, is still "someone, even today". Petitioner's right to travel, her right to enjoy her nationality and her right to enjoy her citizenship cannot be ignored.

30. In conclusion, this Court is of the opinion that petitioner is entitled to be issued with an Indian passport with the name of her mother endorsed not only as a mother but even as the legal guardian in the passport to be issued.

31. Therefore, there will be a direction to the second respondent to process the application filed by the petitioner, receipt of which is produced as Ext.P4, based upon the observations made in the judgment, as expeditiously as possible, at any rate, within a



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period of three weeks from the date of receipt
of a copy of this judgment.”

9.In view of the above said facts and applying the ratio laid down in the decision cited supra, this writ petition is allowed. The respondents are directed to renew the passport of the petitioner, within a period of four weeks from the date of receipt of a copy of this order.

10.The writ petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

24.09.2024

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Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

To

1.The Regional Passport Officer,
25, AGT Business Park,
Avinashi Road,
Civil Aerodrome Post,
Coimbatore – 641 014.

2.Union of India,
Represented by its Secretary,
Ministry of External Affairs,
74 B, South Block,

12/13



New Delhi – 110 001.

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M.DHANDAPANI,J.
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