



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2024

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.22157 of 2023

Mrs. Wong Mui Cheen

... Petitioner

VS

- 1 Union of India
Rep. by its Secretary,
Ministry of External Affairs,
Government of India,
New Delhi.
- 2 Regional Passport Officer,
Regional Passport Office, Chennai,
Ministry of External Affairs,
Government of India,
Rayala Towers No.2 and 3 IV Floor
Old No.785, New No.158, Anna Salai
Chennai 600 002.

- 3 The Secretary
Ministry of Home Affairs, North Block,
New Delhi.
(R-3 impleaded suo motu vide order
dated 19.03.2024)

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing respondents to issue a passport to the petitioner based on the Petitioner's Application Reference No.19-



1009386519 and Application No.MA2062490843919 dated 04.10.2019 pending with the 2nd respondent.

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For Petitioner : Mr. V.Prakash
Senior Counsel
For M/s.Raman & Associates

For Respondents : Mr.B.Rabu Manohar
Senior Panel Counsel

ORDER

The Petitioner, a senior citizen, seeks a mandamus directing the respondents to issue a passport based on her application filed on 04.10.2019.

2. The brief submissions of Mr.Prakash, learned Senior Counsel appearing for Raman and Associates for the petitioner are that the petitioner was born on 27.11.1957 in Kolkata to one Late Wong Tsam Cha, who was born in China and had come to India to pursue his living. Her mother was born in Sikkim and belongs to the Lepcha Community.

3. Her parents were married in Kolkata and the petitioner was born there and holds a birth certificate issued by the Kolkata Municipal Corporation dated 08.11.1976 bearing Serial No.2299 setting out her date of birth as 27.11.1957 and date of registration as 02.11.1976. The column '*Nationality or caste*' contains the narration '*Chinese Buddhist.*'

4. The petitioner shifted to Chennai in 1976 after her marriage with Li Wenfa. The couple have four children born in Chennai. The petitioner has



been issued an Aadhar Card, Pan Card and Ration Card by the Indian authorities. Her four children were originally issued Indian Passports and while three continue their Indian citizenship, her eldest son is stated to be an OCI Card holder. He is currently residing in Auckland, New Zealand, holding a New Zealand passport. The youngest, her daughter, is stated to be currently residing in United Kingdom. Two of her sons, Indian passport holders, are residing in Chennai.

5. The petitioner's husband passed away in Chennai on 22.04.2021 and prior thereto, her father had passed away in Chennai on 16.02.1991. The petitioner claims to have applied for a passport in 2007 which application was not processed. She once again applied in November, 2012 and this application is also kept pending inordinately.

6. The receipt of the application is not in dispute. The petitioner was given to understand in response to an application under Right to Information Act (RTI) that reminders have been sent to the Under Secretary Citizenship, Ministry of Home Affairs (MHA), New Delhi seeking a clarification in regard to her citizenship.

7. Subsequently, despite strenuous efforts, that application did not see any result for a long time. Out of the blue, she received a letter dated 11.01.2019 informing her that her application has been closed. She tried for a



third time vide an application filed on 04.10.2019 which application also not seen the light of day thus far.

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8. The petitioner relies on Section 6 of the Passport Act, 1967 (in short 'PA Act'), where specific grounds have been set out for refusal of passport. She does not satisfy any of those grounds. She claims full citizenship to India under Section 3(1)(a) of the Citizenship Act, 1955 (in short 'CA Act') and states that she is thus entitled to a passport.

9. The petitioner has, in the course of the three occasions when she has sought a passport, been informed that the narration '*Chinese Buddhist*' in the column '*Nationality and caste*' was standing in the way of her request. However, she would urge that this could have no relevance in her case in light of Section 3(1)(a) of the CA Act which states that any person born in India between 26.01.1950 and 01.07.1987 shall be a citizen irrespective of the Nationality of her parents.

10. She relies on the decision of this Court in *Neyatitus V. Regional Passport Officer*¹ to that effect that the description of that applicant as a Sri Lankan refugee would not come in the way of issuance of passport. She has been suffering ill health and wishes to visit her son in New Zealand which she cannot do without a passport.

¹2023 SCC Online Mad2068.
<https://www.mhc.mg.gov.in/judis>



11. Relying on the judgments of the Supreme Court in the case of *Satwant Singh Sawhney V. D.Ramarathnam, Assistant Passport Officer*² and *Menaka Gandhi V. Union of India*³, she argues that the refusal to issue a passport despite being born in India has made a travesty of her fundamental right of personal liberty which includes the right to travel abroad.

12. Since the MHA was not arrayed as a party to this Writ Petition, the said authority has been impleaded suo motu by this Court vide order dated 19.03.2024.

13. Mr.Rabu Manohar, learned Central Government Standing Counsel appearing for the respondents does not dispute the birth certificate issued by the Health Officer and Chief Registrar of Births and Deaths, Corporation of Calcutta, vide serial number 2299 dated 08.11.1976 as proof of her birth. In any event, the petitioner had subsequently applied for, and produced yet another birth certificate dated 28.02.2013 bearing No.0384049 confirming her date of birth as 27.11.1957. The subsequent certificate does not contain a column relating to caste or Nationality.

14. The apprehensions expressed by the respondents initially centered around her mother's nationality. The petitioner had informed the authorities that her mother had been born in Bhutan. Subsequently she had stated that her

²AIR 1967 1 SC 1836

³AIR 1978 SC 597



mother was born in Sikkim and belonged to the Lepcha community. The mother's birth certificate was unavailable.

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15. The second apprehension relates to the fact that the petitioner's application had been referred to the Deputy Secretary, PV-I, Ministry of External Affairs (MEA) for instructions on 11.03.2013. The MEA had directed that necessary explanation be obtained from the petitioner and that the matter may be referred to the MHA to ascertain the veracity of the petitioner's claims.

16. There has been correspondence between the MEA and MHA and the matter was pending with the MHA to provide the final go-ahead on the petitioner's request. The respondents state that after the filing of this Writ Petition, they have once again reminded the MHA to look into the matter and ascertain the nationality of the petitioner.

17. Importantly, they refer to a letter from the MHA dated 09.08.2023 where the Deputy Director states that a report on the petitioner's application was awaited from the Central Security Agency. At paragraph 11 of counter dated 11.08.2023, the respondents confirm that birth certificate dated 28.02.2013 issued by the State of West Bengal based on the report from the Kolkata Municipal Corporation is genuine. The apprehension relating to the nationality of the petitioner's mother is also not pursued.

18. After a detailed hearing on 19.03.2024, it was clear that the apprehensions relating to the date of birth of the petitioner and the nationality of



her mother did not survive any longer. All that remained is for the Central Security Agency authorities to issue their report, and the authorities to satisfy themselves in regard to the nationality of the petitioner based on the contents of the aforesaid report. Hence, the following order was passed on 19.03.2024.

The reply dated 09.08.2023, from the Deputy Director, Ministry of Home Affairs clarifies at paragraphs 3 and 4, the issues that have been raised in the counter.

2. The first issue is that in birth certificate issued in 1976, the nationality of the petitioner is mentioned as 'Chinese'. However, in birth certificate dated 28.02.2013, there is no mention of nationality. The Deputy Director states that the Ministry has sought a fresh report from the Central Security Agency.

3. The Deputy Director refers to two letters, dated 05.09.2016 and 09.01.2017 issued by the State of West Bengal and Kolkatta Municipal Corporation, respectively, confirming that the details of birth of the petitioner has been found in the birth register.

4. Mr.B.Rabu Manohar, learned Standing Counsel, will furnish copy of the report from the Central Security Agency, if any, as referred to in paragraph 3 of letter dated 09.08.2023. To obtain clarity, the Secretary, Ministry of Home Affairs, North Block, New Delhi, is suo motu impleaded as R3 and Mr.Rabu Manohar, learned Standing Counsel, accepts notice. Copies of letters dated 05.09.2016 and 09.01.2017 shall also be furnished.

5. Status report with enclosures as aforesaid will be supplied to the petitioner in advance and filed within a week from today i.e., on or before 27.03.2024.

6. List on 28.03.2024 in the same position.

19. When the matter was taken up on 13.06.2024, Mr.Rabu Manohar circulated the response of the MHA in a sealed cover. Since the covering letter from the MHA stipulates that the information contained therein was highly confidential and secret, the Court does not reproduce any of the contents thereof



as part of this order. However, the Court has carefully perused the letter of MHA addressed to the learned counsel for the respondents dated 03.04.2024, where the Under Secretary to the Government of India states as follows:

I am directed to refer to your e-mail dated 22.03.2024 addressed to RPO, Chennai, wherein the order dated 19.03.2024, passed by the Hon'ble Court in the captioned case has been enclosed.

2. *The Hon'ble Court vide order dated 19.03.2024 (Annexure-I) referred to the reply from this Ministry dated 09.08.2023 in the subject petition. The Hon'ble Court further, inter-alia observed that:*

(Extracted in paragraph 18 and hence not repeated here)

3. *In this regard, it is stated that;*

(i) As referred by the Hon'ble Court vide para 3 of the aforesaid order, the letter dated 05.09.2016 issued by the State Government of West Bengal is not available with the Ministry. Although, it is humbly submitted that the Deputy Director, Ministry of Home Affairs vide letter dated 09.08.2023 (copy enclosed as Annexure – IA) has referred to this Ministry's letter dated 05.09.2016, copy of which is placed as Annexure – II.

(ii) A copy of the letter dated 09.01.2017 from the Government of West Bengal forwarding the letter from Kolkata Municipal Corporation is enclosed as Annexure – III.

(iii) The reports dated 06.10.2016 and 27.09.2023 of the Central Security Agency are 'SECRET' in nature and placed at Annexure –IV in sealed cover. The same may be opened by the Hon'ble Court only and thereafter the same may be returned to this Ministry.

4. *Therefore, it is requested to place the above mentioned facts before the Hon'ble Court, as and when required, defending the interest of the Union of India. Further, a copy of the Captioned Writ Petition may be forwarded to this Ministry at the earliest, so that the same may be perused for further necessary action (s).*

5. *This issues with the approval of the Competent Authority.*

Sd/-



Under Secretary to the Government of India

20. The Court does not find any information in the Annexures adverse to the interests of the petitioner that would come in the way of the nationality of the petitioner being confirmed, or her being issued a passport.

21. The only other information referred to, barring various particulars already on record, relate to certain medical ailments of the petitioner and these findings are not of any relevance in deciding the question of the petitioner's nationality or the request for issuance of passport. In fact, there is no adverse comment seen in the documents forwarded by the MHA. The cover with enclosures received from Mr.Rabu Manohar on 13.06.2024 is re-sealed after perusal and returned to him.

22. The Court is conscious that the question of nationality is a sensitive one, and one would be extremely cautious in rendering any findings that may impact the conferment of this benefit. The marshalling of facts relevant to this issue is thus critical, as is the necessity for those facts to be unambiguously admitted by all parties concerned.

23. Hence, and at the risk of repetition, this Court reiterates the factual findings in regard to the relevant dates and events that arise in this matter.

- i) The petitioner was born in Kolkata on 27.11.1957. The Kolkata Municipal Corporation has issued a birth certificate dated 08.11.1976 vide serial number 2299 setting out the date of



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registration as 02.11.1976 and confirming the date of birth of the petitioner as 27.11.1957.

- ii) Birth certificate dated 08.11.1976 contains the words '*Chinese Buddhist*' in the column for Nationality or caste.
- iii) A subsequent application was filed by the petitioner for issuance of birth certificate and certificate bearing No.0384049 dated 28.02.2013 has been issued confirming that her date of birth is 27.11.1957. The counter filed by the respondents categorically accept the genuineness of both birth certificates, dated 08.11.1976 and 28.02.2013, and her date of birth as 27.11.1957.
- iv) Though initially the petitioner had stated that her mother had been born in Bhutan, her subsequent statement that her mother had been born in Sikkim in the Lepcha community has been accepted and the initial apprehension in the regard has not been pursued by the authorities.
- v) It is admitted that the petitioner's father was from China and that he was a Buddhist. This, coupled with the narration '*Chinese Buddhist*' in birth certificate dated 08.11.1976 is what has given rise to the apprehensions regarding the petitioner's nationality.
- vi) The petitioner has been issued a PAN card, Aadhar card and Ration card and has been resident in India since 1976 after



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marriage with one Li Wenfa. They have four children and all of them have been found eligible to hold Indian passports. Two sons reside in Chennai with the petitioner and two reside abroad, one of them being an OCI card holder.

24. Section 3(1)(a) of the CA Act states that those persons born in India between 26.1.1950 and 01.07.1987 shall be citizens of India by birth. The petitioner's date of birth falls within this period and thus she is, on the basis of the statutory mandate, entitled to her claim of nationality. Undoubtedly, this, by itself, cannot efface legitimate concerns being entertained in regard to a person's nationality, if there are any. There are also sufficient safeguards in the PA Act that provide for such situations and eventualities and the authorities are well equipped to intervene in cases where genuine apprehensions are proven to exist.

25. However the present case does not present any such hurdles or hinderances. The undisputed facts as adumbrated in paragraph 23 supra have been carefully taken note of, and in the considered view of the Court, there is nothing that stands in the way of the respondents issuing a passport to the petitioner based on her application bearing reference No.MA2062490843919 dated 04.10.2019.

26. Mandamus is thus issued to R2 to process application bearing reference No.MA2062490843919 dated 04.10.2019 expeditiously and in line



with the observations contained in this order and issue a passport within a period of four (4) weeks from date of receipt of a copy of this order.

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27. This Writ Petition is disposed in the aforesaid terms. No costs.

20.06.2024

Index : Yes

Speaking Order: Yes

Neutral citation: Yes

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To

1. The Secretary,
Union of India
Ministry of External Affairs,
Government of India,
New Delhi.

2. Regional Passport Officer,
Regional Passport Office, Chennai,
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DR.ANITA SUMANTH,J.

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