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W.P.No.23766 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.No.23766 of 2023
and WMP No.23272 of 2023

Ajit Dharmarajan

.. Petitioner

VS

1.Union of India

Through its Secretary,
Ministry of Home Affairs,
North Block, New Delhi – 110 001.

2.The Director (C),

Govt.of India,
Ministry of Home Affairs,
Major Dhyan Chand National Stadium
India Gate, New Delhi – 110 001.

.. Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records of the impugned order of the 2nd respondent in reference No. 26030-22-2023-IC II dated 14.07.2023, quash the same and consequently direct the respondents to issue citizenship certificate to the petitioner to enable him to seek for an Indian passport as a citizen of India.



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For Petitioner : Mr.Vijay Narayanan
Senior Counsel
For Mr.T.Ravichandran

For Respondents : Mr.Prasad Vijayakumar
Central Government Standing
Counsel

ORDER

The petitioner has sought a quash of order dated 14.07.2023 issued by the Director, Ministry of Home Affairs, Government of India. In that order, a request made by the petitioner's father for grant of Indian citizenship to his son Ajit Dharmarajan, petitioner before me, has been rejected on the ground that he does not possess a valid passport and Visa/residential permit or any other travel documents, premised upon which his application for Indian citizenship has been made. The petitioner has thus been advised to make an application online after all eligible criteria are met.

2. The impugned order, for all intents and purposes, classifies the petitioner as an 'illegal migrant' in terms of Section 2(1)(b) of the Citizenship Act, 1955 (in short 'Act').

3. The brief facts, as explained by Mr.Vijay Narayan, learned Senior Counsel appearing for Mr.T.Ravichandran, learned counsel on



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record for the petitioner, are that the petitioner was born in Chennai, India on 07.06.1999. Both his parents are Indian citizens. The petitioner was issued an Indian Passport bearing No.B0781739 on 12.10.1999. The father of the petitioner had secured employment in Singapore in December, 1995. While there, the petitioner's Indian Passport was cancelled in April, 2002 consequent upon the fact that the petitioner's father had acquired citizenship of Singapore in October, 2001.

4. The petitioner, minor at that time, had obtained citizenship in that Country by virtue of the citizenship acquired by his father there. The petitioner and his family returned to India in April, 2010. The petitioner's father announced his intent to renounce citizenship of Singapore, which was subsequently done.

5. The petitioner has attained majority on 07.06.2020 while in India and he surrendered the Singapore passport and citizenship certificate to the Singapore Indian Mission on 31.08.2021. With that, his ties with Singapore qua citizenship stood severed.

6. On 12.03.2021, even prior to surrendering of the Singapore passport and citizenship, the petitioner had applied for an Indian Passport. In the course of processing of that application, he was asked to furnish a



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citizenship certificate issued by the Indian authorities. The application remained unprocessed, as the extant Rules required the making of an application online in the portal of the Ministry and also for want of Indian citizenship.

7. Thus, a representation was made by him seeking issuance of citizenship certificate and after issue of mandamus by this Court in W.P.No.8008 of 2023 directing the authorities to process that representation in accordance with law, the impugned order has come to be passed rejecting the representation.

8. The petitioner draws attention to the relevant provisions of the Act under which citizenship can be acquired. The petitioner has presently completed his Chartered Accountancy and fully intends to be a citizen of India. The surrender of the Singapore passport and citizenship had been made even prior to initiation of the process for Indian citizenship.

9. This has led to the unfortunate situation of the petitioner being treated as an illegal migrant in 2023, despite the petitioner having returned to India for good, even in 2010. In fact, his Visa had expired even when he was a minor and the family had lost sight of the fact that Indian citizenship must be obtained in a timely fashion.



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10. Mr.Prasad Vijayakumar, learned counsel for the respondents would only highlight the processes to be followed under the Act, especially Section 8(2), where, if a person ceases to be a citizen of India under Section 8(1), the citizenship of every minor child of that person would also cease. Thereafter the child may make a declaration upon attaining majority that he wishes to resume Indian citizenship which has not been done in the present case.

11. I have heard learned counsel, carefully considered the relevant statutory provisions and the facts that arise in the matter.

12. Under the Citizenship Act, citizenship is granted in various ways. Section 3 states that citizenship by birth, can be acquired under Clause (a) by any person born in India between the period 26.01.1950 and 01.07.1987 and under Clause (b) by any person born in India on or after 01.07.1987 but prior to commencement of the Citizenship (Amendment) Act, 2003 and if either of his parents is a citizen of India at the time of his birth. In the present case, the petitioner was born on 07.06.1999 and both his parents are Indian citizens. Hence, he has acquired citizenship by birth in terms of Section 3(1)(b) of the Act.



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13. Section 4, which deals with Citizenship by descent and Section 5, which deals with Citizenship by registration, are inapplicable to the present case. Section 8 deals with Renunciation of citizenship and states that if any citizen of India of full age and capacity makes a declaration renouncing Indian citizenship, upon registration of such declaration, the person shall cease to be a citizen of India.

14. Section 8(2) states that where a person ceases to be a citizen by virtue of Section 8(1), every minor child of that person shall also cease to be a citizen of India. This is what has transpired in the present case, as despite the petitioner having acquired Indian citizenship by birth, by the renouncing of Indian citizenship by his father in October, 2001, the petitioner had also lost Indian citizenship.

15. Though the petitioner states that his father had applied for Singapore citizenship, he confirms that no oath of Singapore citizenship has been taken on account of him being a minor at that point in time. The position in law is thus that, the petitioner was a citizen of Singapore from October, 2001 till his return to India in April, 2010 and thereafter, till the surrender of his Singapore citizenship on 31.08.2021, after attaining majority.



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16. The proviso to Section 8(2) grants the benefit of resumption of Indian citizenship upon an individual attaining majority. The petitioner has attained majority on 07.06.2020 and ought to have simultaneously sought resumption of Indian citizenship. Without doing so, he has surrendered his Singapore Passport and Citizenship certificate to the Singapore Indian Mission on 31.08.2021.

17. He was not an Indian citizen as on that date and, having also chosen to give up his Singapore citizenship, arrived at a position of being Stateless, being neither an Indian nor Singaporean citizen. At the time of admission of this matter on 11.08.2023, the findings in the impugned proceedings treating the petitioner as an illegal migrant stood stayed.

18. Evidently, the petitioner and his family have erred in not applying for resumption of Indian citizenship upon his attaining majority. This, the Court believes, is on account of their unfamiliarity with the law. The question that thus arises for consideration of this Court is as to whether this lapse is fatal or whether it is curable.

19. I have carefully considered the matter and believe that the sequence of events in this case can well be understood to imply that the



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petitioner intended to resume Indian citizenship even prior to surrender of Singapore citizenship and passport.

20. This is for the reason that the petitioner had made an application for issuance of Indian passport as early as on 12.03.2021. That application could not be processed as it required a citizenship certificate of India as an annexure to the application, which certificate the petitioner did not possess.

21. In fact, it was only the enquiry caused in processing of the passport application, that triggered the events leading to passing of the impugned order. Till such time the petitioner appears to have been blissfully unaware of the specific mandate for seeking resumption of Indian citizenship on attaining of majority.

22. Be that as it may, the fact that the petitioner has sought Indian passport on 12.03.2021 but could not fill in the particulars of citizenship there, as he had not sought Indian citizenship as on that date, would reveal the intention of the petitioner to resume Indian citizenship. The petitioner has stated on affidavit at paragraph 8 of the affidavit that upon attainment of majority, he chose to be an Indian citizen which benefit and right he had acquired by birth.



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23. To this Court, this declaration would more than suffice to establish the intention of the petitioner to resume citizenship on India and would tantamount to a Declaration as required under the proviso to Section 8(2) of the Act that the petitioner wished to resume citizenship.

24. This Court is of the categorical view that this conclusion would serve to satisfy both the letter and spirit of Section 8(2). To be fair to the respondents, there is no objection on any score to the petitioner being granted citizenship barring the fact that the proper procedure as set out under Section 8(2) has not been followed.

25. The authorities proceed on the basis of the definition of 'Foreigner' under the Foreigners Act, 1946 and 'illegal migrant' under Section 2(b) of the Citizenship Act, 1955 and conclude that the petitioner cannot be considered for either grant of citizenship by registration or naturalisation. Technically, there is no flaw in this conclusion.

26. However, the representation of the petitioner was styled as an appeal/plea on the premise that the petitioner was (i) born in India (ii) his parents were, and continue to be Indian citizens with a short break in between (iii) his renunciation of Indian citizenship was consequent on his father's renunciation of Indian citizenship on account of employment



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abroad (iv) on attaining majority on 07.06.2020, he applied for an Indian passport on 12.03.2021 (v) he renounced his Singapore passport and citizenship on 31.08.2021 and (vi) his education has throughout been in India after his return, including his professional qualification of Chartered Accountancy.

27. The only mistake committed is that he ought to have sought resumption of Indian citizenship at the first instance while keeping alive the status of Singapore citizenship, whereas the petitioner has renounced his citizenship of Singapore even without seeking such resumption. He has however revealed his intention to resume his ties with India by making an application for Indian passport four months prior to surrendering the Singapore citizenship.

28. In the careful and considered opinion of the Court, the sequence of events as set out will make more than abundantly clear the intention of the petitioner to resume Indian citizenship. The impugned order is found lacking in its appreciation of the aforesaid factors which entitle the petitioner to the full benefit of Section 8(2) and the proviso thereunder.

29. This Writ Petition is allowed and the respondents are directed to do the needful in terms of conferring Indian citizenship on the petitioner



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forthwith and not beyond four (4) weeks from date of receipt of a copy of this order.

30. Needless to say, the conclusions in this order are very specific to the factual matrix that has arisen for consideration of this Court in this case and cannot be applied as a precedent in any other matter. The questions of Nationality and citizenship must be considered carefully, on a case-to-case basis, and cannot be granted for the asking.

31. In the present case, this Court is convinced that the appeal for citizenship must be granted on the facts as appreciated and adumbrated in the paragraphs supra and, importantly, in light of there being no contest to these facts.

32. Reliance has been placed on the decisions in the case of *Master Arya Selvakumar Priya and ors v Joint Secretary (PSP) and Chief Passport Officer and others*¹ and *Rachita Francis Xavier v UOI and ors*² and the view taken in the aforesaid decisions is analogous to that taken in the present matter. No costs. Connected Miscellaneous Petition is closed.

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Index: Yes/No

Neutral Citation: Yes

¹ W.P.No.21642 of 2023 - Karnataka HC dated 21.03.2023

² W.P.(C) 1754 of 2020 – Delhi HC dated 05.01.2024



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Through its Secretary,
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DR. ANITA SUMANTH,J.

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