

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

227

CWP-29452-2019
Date of Decision: 15.01.2024

ANKITA KUMAR (MINOR) AND OTHERS

... Petitioner

VERSUS

UNION OF INDIA AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Vaibhav Jain, Advocate
for the petitioner.

Mr. Dheeraj Jain, Sr. Panel Counsel
for respondent No.1-U.O.I.

Ms. Niharika Sharma, AAG, Punjab
for respondent No.2.

VINOD S. BHARDWAJ, J. (ORAL)

Prayer in the present petition is for issuance of directions to the respondents for considering the application of the petitioner for grant of citizenship under the Citizenship Act, 1955.

Learned counsel for the petitioner contends that petitioner No.1 is a minor who is born to petitioners No.2 and 3 (mother and father/natural guardians). The said petitioners No.2 and 3 are citizens of India and are domicile of Punjab. It is contended that the marriage of the petitioners No.2 and 3 was solemnized in Jalandhar on 11.10.2006 and the same duly registered with the office of the Registrar of Marriage on 26.10.2009. Thereafter, the petitioners No.2 and 3 moved to United Kingdom for better employment opportunities and stayed at Kent, United Kingdom. The petitioner No.1- Ankita Kumar was born on 19.12.2012. As the stay/visa period of petitioners No.2 and 3 was due to

expire by end of 2014, the petitioners left United Kingdom for India on 31.10.2014 and have been residing here since then. The petitioner No.2 and 3 got issued an Emergency Certificate No.X456641 dated 28.10.2014 from the Indian High Commission, U.K. Copy of the Emergency Certificate issued by the Indian High Commission alongwith a certificate of non-acquisition of British Citizenship have been attached.

After coming to India, the petitioners No.2 and 3 applied for the citizenship of the petitioner No.1 vide application dated 10.12.2014 under Section 4(1) of the Citizenship Act, 1955. However, since the petitioner No.1 did not fulfill the eligibility conditions prescribed under Section 4 of the Citizenship Act, 1955 of registration of the birth of the child at the Indian Consulate, within a period one year of the birth of petitioner No.1, hence, the application in question could not have been examined under Section 4 of the Citizenship Act, 1955. Hence, the petitioner submitted an application under the applicable Section 5 of the Citizenship Act, 1955 bearing application No.2019030. Since no decision has been taken thereupon, despite a lapse of a substantive period, the petitioners are compelled to approach this Court for redressal of their grievance.

A short reply has been filed on behalf of respondent No.1-U.O.I. through Mr. Ashutosh Anand son of Ashok Kumar Pathak working as Under Secretary, Government of India, Ministry of Home Affairs. The factual aspects as noticed above were not disputed. It is, however, contended that status of the application submitted by the petitioners was sought by the Ministry of Home Affairs from the Ministry of External Affairs, Government of India vide OM dated 27.11.2019. Vide its response dated 05.12.2019, the Ministry of External

Affairs informed that no information is available as to where and to which Authority, the petitioner No.1 had submitted her earlier application No.201409018125 under Section 4(1) of the Citizenship Act, 1955 and requested that the same may be provided for evaluation by the concerned Ministry.

Subsequently, the petitioners also submitted an online application under Section 5(1)(d) of the Citizenship Act, 1955 bearing No.2019030280. An applicant, after submitting an online application, is required to submit a hard copy of the said application alongwith the supporting documents in the office of District Magistrate-cum-Deputy Commissioner. On being satisfied, the Competent Authority prescribed under Rule 11 of the Citizenship Rules 2019 administers an oath of allegiance to the applicant and the abovesaid application is thereafter, forwarded by the District Magistrate-cum-Deputy Commissioner under Rule 12 (1) of the Citizen Rules 2019 alongwith his report to the Home Department of the concerned State Government/U.T. The said application is thereafter required to be forwarded alongwith the recommendations to the Ministry of Home Affairs, Government of India and the Ministry examines each such application in terms of the provisions of the Citizenship Act, 1955 and the Rules framed thereunder. Special provisions are also incorporated in Rule 13 of the Citizenship Rules of 2019. In the case of any deficient information/document the same is sought for from the applicant as well as the State Government. It is only when the stipulated criteria is fully met and nothing adverse is found in the Security/Agency report, an "in principal acceptance letter" as issued to the applicant or the State Government by post so as to obtain original Renunciation Certificate and other requisite documents like

Fee Challan, Form-X, specimen signatures, thumb impression and passport size photographs etc. In the event an applicant does not meet the eligibility and security criteria, rejection letter is sent and the application is closed. Hence, all the documents, as required, are to be submitted by the Authorities as well as the applicant. It is further contended that there had been certain modification in the office procedures that were being followed as per the letter of the Ministry dated 16.09.2019.

In reference to the application submitted by the petitioner No.1 under Section 5(1)(d) of the Citizenship Act, 1955, the receipt thereof is acknowledged by the respondent-Ministry of Home Affairs on 05.09.2019 from the State of Punjab. The application in question was examined and certain documents were found to be deficient. Accordingly, the Ministry sent a letter on 07.11.2022 to the State Government to obtain certain deficient documents from the petitioners and to upload the said information. It is further averred that as and when such requisite documents are received from the State of Punjab, the same would be examined. It is contended by the counsel for respondent No.1-U.O.I. that the response to the said letter is still awaited from the Department of Home, Government of Punjab.

The documents sought by the Ministry of Home Affairs, Government of India in the above communication are extracted as under:-

“To

*The Secretary (Home)
Government of Punjab*

*Subject:- Grant of Indian Citizenship by registration/
naturalisation under Section 5(1)(d) of the Citizenship
Act, 1955-case of Sh/Smt/Kum. ANKITA KUMAR a
Stateless national*

Madam/Sir

In reference to the MHA File No. 2018030280 Dated 15/04/2019 on the above subject, on the preliminary rutiny it has revealed that the following documents has not been made available

- (a) The State Govt. of Punjab vide letter No. 21/62/2015-3PE/968 dated 21/07/2022 has forwarded her citizenship application with relevant documents but without mentioned their recommendation, which is required under rule 12 (2) of the Citizenship Rules, 2009*
 - (b) A copy of her valid and up to date foreign passport has not been made available which are required documents. The applicant has uploaded Emergency Certificate instead of valid passport.*
 - (c) A copy of her valid and up to date Residential Permit/LTV has not been made available which are required documents*
- 2. The State Government is requested to get the above information/documents uploaded online*
- 3. This Ministry's file number given above may be cited invariably in all future correspondence.*

Your faithfully,

*Ashutosh Anand
Under Secretary/Assistant Secretary/Deputy Director”*

A separate reply has been filed on behalf of the Government of Punjab through the Department of Home Affairs, wherein while referring to the procedural requirements, it has been submitted that the Competent Authority for granting citizenship is the Central Government and not the State Government and no action is required to be taken at the end of Department of Home Affairs, Government of Punjab. Additionally, a separate short reply has been filed by

the Deputy Commissioner, Jalandhar-respondent no.3, wherein it has been averred that the said respondent is only a processing Authority under the Citizenship Act, 1955 and final Authority to accept or reject the claim vests with the Government of India. It is contended by the respondent No.3 that the petitioners No.2 and 3 had digitally applied for the citizenship of petitioner No.1 on 15.04.2019 and also submitted the hard copies with the said respondent on 02.02.2021. After the receipt of the hard copies, the same had been sent to the Senior Superintendent of Police (Rural), Jalandhar for seeking fresh police verification, which was also received on 07.04.2021. The papers were, thereafter, sent by respondent no.3 to respondent No.2 for forwarding the same through respondent No.1-U.O.I. for necessary action. The same was, however, received back on 25.11.2021 with the remarks "they applied under wrong Section of the Citizenship Act." The same was conveyed to the petitioners on 26.11.2021. It is contended that the applicant seemingly had applied under the relevant section and proper documents have seemingly not been uploaded by the respondents No.2 and 3. The same was intimated by respondent No.1 to respondent No.2 to the Deputy Commissioner, Jalandhar and that a letter No.3728/MC-5/MA dated 01.02.2023 was issued for necessary action and to upload the copy of valid and upto date additional Form-LTV on the website and to submit the hard copies to the office of Deputy Commission, Jalandhar as per the directions of respondent No.1-U.O.I. The same is yet to be complied with for further necessary action.

Responding to the above, counsel for the petitioners contends that insofar as the first requirement specified in the letter dated 07.11.2022 is concerned, the same relates to a recommendation to be made by Government of

Punjab and has no concern with the petitioners. As far as the requirement stipulated under Clause-b of the said communication, pertaining to valid and upto date foreign passport is concerned, the passport had never been issued to petitioner No.1 and she had travelled to India only on the basis of an Emergency Certificate. Thus, there is no occasion for submission of any foreign passport by and/or for and on behalf of the petitioner No.1. The document mentioned at Clause-c is a copy of her valid and upto date residential permit/LTV, which has not been made available. He contends that there is no residential permit/LTV issued in favour of the petitioner No.1, which is required to be made available by her. The petitioner No.1 returned to India on the strength of the document issued by the Indian High Commission in U.K. and has since then been residing in India. In the absence of any citizenship or passport having been granted to petitioner No.1, there was no occasion for her to travel anywhere else.

Learned Counsel for respondent-State, however, contends that the State would have no objection to consider the claim of the petitioners in the event of their submitting the requisite documents and/or any affidavit in support of and/or explanation to the specified requirements that have been conveyed to the petitioners vide letter dated No.07.11.2022 alongwith the recommendation made by the State of Punjab as mandated under Rule 12 (2) of the Citizenship Rules 2019.

The present petition is accordingly, disposed of with the following directions:

- (i) That the petitioners shall appear in the office of District Magistrate-cum-Deputy Commissioner, Jalandhar within a period

of two weeks of receipt of the certified copy of this order and shall furnish the requisite documents/affidavits responding to the documents required thereunder.

- (ii) On receipt of the said documents/affidavit as the case may be, the respondent-State Government shall, thereafter, submit its recommendations/report in terms of Rule 12(2) of the Citizenship Rules, 2019 within a period of four weeks thereafter.
- (iii) That on submission of aforesaid report/recommendation by the respondent-State Government alongwith the documents/affidavit of the petitioners, the respondent-U.O.I. shall take a decision on the application of petitioner No.1 filed by petitioners No.2 and 3, being her parents and natural guardian, within a period of ten weeks thereafter.

The decision so taken by the respondents on the said application shall be duly conveyed to the petitioners

Petition stands disposed of accordingly.

JANUARY 15, 2024
rajender

(VINOD S. BHARDWAJ)
JUDGE

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