



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CWP-37074-2019

Date of decision: 24.07.2024

SIMARDEEP KAUR SRAN AND ANOTHER

.....Petitioner

VERSUS

UNION OF INDIA AND ANOTHER

.....Respondents

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

Present: - Ms. Harpreet Kaur, Advocate
for the petitioner.

Mr. Dheeraj Jain, Senior Panel Counsel with
Mr. Sahil Garg, Advocate for the respondents.

VINOD S. BHARDWAJ, J. (Oral)

The petitioner has approached this Court for seeking directions to the respondents to entertain and consider the application for release of an O.C.I citizen of India Card Holder Application under Section 7-A of the Citizenship Act, 1955.

2. Learned Counsel appearing on behalf of the petitioner contends that the petitioners, who are minors, have approached this Court through their father-natural guardian. She contends that the father of the petitioners had obtained citizenship of Hong Kong, Special Administrative Region, Peoples Republic of China. While working in Hong Kong, Paramdeep Singh

Sran-the father of the petitioners entered into matrimony with Nayer Zia

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(mother of the petitioners) on 23.04.2005. The mother of the petitioners was a Pakistani national but was born in Hong Kong on 18.11.1982. She had renounced her Pakistani nationality on 02.10.2006 and was nationalized as a citizen of Hong Kong-China on 18.10.2006. The petitioner No.1 was born on 02.03.2007 while petitioner No.2 was born on 05.02.2008 at Hong Kong. Since father of the petitioners is a permanent resident of Punjab at Village and Post Office Akalgarh, Tehsil Raikot, District Ludhiana, an application was submitted on their behalf for issuance of O.C.I Card but the Consulate General of India at Hong Kong, refused to entertain the said application on the ground that since the mother of the petitioners was a citizen of Pakistan, their application for OCI Card cannot be entertained. An E-mail in this regard was sent to them.

3. Short reply by way of affidavit of Shri Naresh Kumar, Director, Consular, Passport & Visa (CPV) Division, Ministry of External Affairs, New Delhi, on behalf of respondents, has been filed. Counsel appearing on behalf of the respondents contends that Section 7A of the Citizenship Act, 1955 provides for registration of Overseas Citizen of India, Cardholders and as per the second proviso thereof no person who or either of whose parents or grandparents or great grandparents is or had been a citizen of Pakistan, Bangladesh or such other country as the Central Government may by notification in the official Gazette, specify, would be eligible for registration as Overseas Citizen of India under Section 7 (A) (1).

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4. Relying on the same, Counsel contends that the Consulate General of India has rightly declined to entertain the application for issuance of the O.C.I Card to the petitioners.

5. Controverting the same, learned Counsel appearing on behalf of the petitioners submits that the respondents have just communicated about their refusal to entertain the application by placing reliance on Section 7 (A) (1) Second proviso but have conveniently chosen not to advert to sub-section 3, which is an exception to Section 7 (A)(1) of the Citizenship Act, 1955 and it starts with a non-obstante clause. The said section specifically prescribes that the Central Government may, if it is satisfied that a special circumstance exists, after recording the circumstances in writing, register a person as an overseas Citizen of India Cardholder. She thus contends that the respondents are required to take an appropriate decision as to whether any special circumstances exist or not and the application should not be refused to be even forwarded to the competent authority.

6. Counsel for the respondent does not dispute the same and fairly submits that an enabling provision does exist.

7. He is also not in a position to respond to the question that the discretion of the competent authority under Section 7 A (3) cannot be subjected to the discretion of the receiving office. The provision of the Act does not confer any power on the receiving consulate/High Commission to decide to receive or not to receive the application. Such a discretion would subject the power of the competent authority contingent to the whim of the

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receiving office and in effect rendering the overriding power under Section 7 A (3) subject to Section 7 A (1) of the Passport Act, 1955.

8. I have heard learned Counsel appearing on behalf of the parties and have gone through the documents available on record.

9. Even though the 2nd proviso to Section 7 (A) (1) of the Citizenship Act, 1955 declares an ineligibility for a person to claim an overseas citizen of India Card Holder when any of parents/grandparents is or had been citizen of Pakistan (which in the present case would directly affect the petitioners) however, Section 7 (A)(3) confers a discretion to the Central Government to consider the case and pass an order whether to accept or to decline registration of a person as an overseas citizen of India.

10. Since the aforesaid exercise has not been taken in the present case, I am of the opinion that the respondents are required to forward the application and to thereafter take a decision as to whether any special circumstances exists which may permit registration of the petitioners as Overseas citizen of India Card holding.

11. The present writ petition is accordingly disposed of with liberty to the petitioners to apply through the proper mode (Online/Offline) to the concerned Consulate/High Commission/Embassy for grant of O.C.I Cardholder under Section 7-A of the Citizenship Act, 1955.

12. In the event of submission of such an application by the petitioners alongwith all necessary documents as may be required for processing of the case, the competent authority shall consider and decide the



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same keeping in view of Section 7 (A)(3) of the Citizenship Act, 1955. Let a decision be taken on such an application by the competent authority within a period of 12 weeks of the receipt of the complete application, alongwith all supporting documents.

(VINOD S. BHARDWAJ)
JUDGE

JULY 24, 2024
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No