



\$~12

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 3057/2022**

TENZIN LOSEL

..... Petitioner

Through: Mr. Giriraj Subramaniam, Mr.
Simarpal Singh Sawhney and Mr.
Ravi Pathak, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Kavindra Gill, Sr. Panel Counsel.
Ms. Monika Arora, Mr. Subhrodeep
Saha, Mr. Kushal and Mr. Ranjeet
Kumar, Advocates for UoI.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

02.02.2024

%

1. Petitioner has approached this Court for a direction to the Respondent to issue orders to process the declaration of renunciation of citizenship of India made by the Petitioner in terms of Section 8(1) of the Citizenship Act, 1955 read with Rule 23(1) of the Citizenship Rules, 2009.
2. The facts, in brief, leading to the present Writ Petition, are that the Petitioner was born in Manipal, Chhattisgarh, India on 19.05.1970. The issue as to whether the persons of Tibetan origin who are born in India should be considered as citizens of India or not was considered by this Court in a batch of Writ Petitions in Phuntsok Wangyal v. Ministry of External Affairs & Ors., **2016 SCC OnLine Del 5344**, wherein this Court has held as under:



“22. The Election Commission of India, by the said letter dated 07.02.2014, has stated that notwithstanding anything contained in the communication dated 26.08.2011, the Electoral Return Officers (EROs) are not to deny enrolment to the children of the Tibetan refugees where they satisfy the requirement of Section 3 of the Act.

23. Furthermore, Section 3 of the Act very categorically lays down the conditions under which a person acquires citizenship by birth. By a mere correspondence or an inter-Ministerial meeting, the statutory provisions cannot be defeated. No decision taken in an inter-ministerial meeting can override a statutory provision. The petitioner have been given rights under the Act, those rights cannot be taken away by a mere inter-ministerial decision.

24. The communication dated 26.08.2011 of the Ministry of Home Affairs notices the decision of this Court in Namgyal Dolkar (supra), but, records that the same may not be applicable per se in other cases. It is not understandable as to how such a view could be taken by the Respondents in view of the clear findings of this court in Namgyal Dolkar (supra). The action of the respondents is clearly unsustainable. The communication dated 26.08.2011 and the minutes of meeting dated 30.03.2010, being contrary to the Act, are quashed.

25. The writ petitions are allowed holding that the petitioners are Indian citizens and entitled to all benefits and privileges, as are available to Indian citizens. The respondents cannot require the petitioners to make any application under section 9 of the Act. The Petitioners cannot be denied Indian passport by the respondents on that ground. 26. The respondents are directed to issue the India passports to the petitioners,



who have been declared to be Indian citizens, within a period of four weeks in accordance with the Rules.”

3. It is stated that when the said Judgment was not implemented, contempt proceedings were initiated in this Court and subsequently, Union of India brought out an Office Memorandum dated 17.03.2017 accepting the directions passed by this Court. Relevant portion of the Office Memorandum reads as under:

“4. Since the Ministry of Home Affairs has explicitly stated that they would not file any appeal against the impugned order dated 22/09/2016 of the High Court of Delhi and the executive order dated 26/08/2011 of MHA restraining the TR applicants to declare themselves as the Indian Citizens by birth under Section 3(1) (a) of the Citizenship Act, 1955 has been quashed by the High Court, at present other than the Citizenship Act, 1955 and the order dated 22/09/2016 of the High Court of Delhi nothing is binding on this Ministry, so far as the issue of citizenship of TRs born in India in the above mentioned intervening period is concerned. Moreover, a number of TR applicants after the issue of order dated 23/09/2016 have also approached the same High Court requesting the court to also declare them as the Indian citizens by birth under the relevant section(s) of the Citizenship Act, 1955 and the court has clubbed all such matters for the next hearing scheduled on 21/03/2017, with the observation that unless there is a stay against its order dated 22/09/2016, non-compliance of the same in general in respect of all such TRs amounts to contempt of the High Court. In view of this, there is a huge probability that on the next date of hearing Le. 21/03/017, the High Court may come down very heavily on the Government

5. In view of the above it has been decided that all the Passport Issuing Authorities in India/abroad in



compliance/pursuance to order dated 22/09/2016 of the High Court of Delhi, subject to usual checks and other formalities stipulated under the Passports Act, 1967 and the Passport Manual, 2016, shall process all the pending applications of TR applicants born in India between 26/01/1950 to 01/07/1987, for the issue of passports treating them as the Indian citizens by birth under Section 3(1)(a) of the Citizenship Act, 1955. However, if the Police Verification Report (PVR) in the cases of such applicants from the local police authorities or the security agencies of the Government is received as "ADVERSE" by virtue of the fact that the applicant being a TR is not an Indian citizen by birth, shall not be taken as Adverse but the same shall be accepted as 'CLEAR' and passport will be issued to such an applicant, if he is otherwise eligible to hold the same."

4. In view of the fact that the Petitioner was born on 19.05.1970, the Petitioner is a citizen of India by birth in accordance with Section 3(1)(a) of the Citizenship Act, 1955. Section 3(1)(a) of the Citizenship Act, 1955 reads as under:

*"3. Citizenship by birth.—(1) Except as provided in sub-section (2), every person born in India—
(a) on or after the 26th day of January, 1950, but before the 1st day of July, 1987;...."*

5. It is stated that the Petitioner is now settled in the USA and has got the US citizenship. The Petitioner has applied for an Overseas Citizen of India Card. In terms of Section 7(A) of the Citizenship Act, which deals with Registration of Overseas Citizen of India Cardholder, the Petitioner is entitled to be registered as an Overseas Citizen of India. Section 7(A)(a)(i)(ii) of the Citizenship Act reads as under:

"7A. Registration of Overseas Citizen of India Cardholder.--(1) The Central Government may, subject



to such conditions, restrictions and manner as may be prescribed, on an application made in this behalf, register as an Overseas Citizen of India Cardholder--

(a) any person of full age and capacity,--

(i) who is a citizen of another country, but was a citizen of India at the time of, or at any time after the commencement of the Constitution; or

(ii) who is a citizen of another country, but was eligible to become a citizen of India at the time of the commencement of the Constitution; or.....”

6. It is stated that for the purposes of registration as an OCI, the Petitioner was required to submit a declaration of renunciation of his Indian Citizenship and the same was done under Section 8(1) of the Citizenship Act. Learned Counsel stated that the same is not being processed.

7. The Petitioner has, therefore, approached this Court for a direction to the Respondents to process his declaration of renunciation so that the Petitioner can apply to be an Overseas Citizen of India.

8. In view of the Judgment passed by this Court, the Office Memorandum dated 17.03.2017 and the provisions of the Citizenship Act, the Petitioner was a citizen of India and was entitled to a declaration that he has renounced his citizenship under Section 8(1) of the Citizenship Act and the Rules.

9. Accordingly, the Writ Petition is allowed. Pending applications, if any, also stand disposed of.

SUBRAMONIUM PRASAD, J

FEBRUARY 2, 2024

Rahul