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

+ **W.P.(C) 6594/2024**

AHMAD ASGAR SALEH BHAI & ORS.

.....Petitioners

Through: Mr. Santosh Krishnan, Mr. Zulfiker
Ali P.S. and Ms.
Deepshikha Sansanwal, Advocates.

versus

UNION OF INDIA & ANR.

.....Respondents

Through: Ms. Nidhi Raman, CGSC with Mr.
Zubin Singh and Mr. Hussain Taqvi,
Advocates for R-1, 2.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

01.10.2024

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1. The present petition seeks to direct the Respondents to declare Petitioners as citizens and register their birth certificate at the Indian Embassy of Kuwait, enabling them to apply for an Indian passport.
2. All the four Petitioners were born in Kuwait between 1991 and 1995, to an Indian citizen. At that point of time, Kuwait was in the midst of the Iraq-Kuwait war and their father was left unemployed. Further, to the predicament of the Petitioners, the sponsor of Petitioners' father went missing. As a result, the passport and valid documents of the Petitioners' father, which were in possession with the sponsor, were untraceable.
3. In order to visit India, Petitioners' father approached the Indian Embassy in Kuwait and the Embassy issued Emergency Travelling



Documents dated 24th September, 2008, to all the Petitioners and their father, which were valid till 30th November, 2008. However, they could not travel to India and their father travelled to India leaving the minor Petitioners and their mother behind in Kuwait.

4. In the meantime, the Citizenship (Amendment) Act, 2003 was enacted, whereby a Third Proviso was added to Section 4(1) of the Citizenship Act, 1955,¹ delineating that a person shall not be a citizen of India by virtue of this Section unless his birth is registered at an Indian Consulate within one year of its occurrence or the commencement of the Amendment Act, whichever is later or with the permission of central government after the expiry of said period. The Petitioners being minor then, were unable to take steps for registration of their birth as required under this provision. The Petitioners' father also did not possess the necessary documentation to initiate the process. Further, their mother, being a Sri Lankan Citizen, was also helpless as she did not have any documents to prove the Petitioners identity and nationality.

5. In 2010, the Petitioners' father visited the State of Kuwait on a visiting visa seeking to renew the Embassy Travelling Documents, however, this was rejected by the Indian Embassy in Kuwait. On a subsequent visit, he was informed that the Embassy Travelling Documents cannot be renewed without birth certificates, which were subsequently, issued by the Ministry of Public Health, Kuwait on 5th, January 2022. Thereafter, Petitioners, who had attained majority by then, approached the Indian Embassy in Kuwait to register their birth to an Indian national as mandated under Third Proviso of Section 4(1) of the Act and also sought to apply for an Indian passport. In



this regard, the Petitioners also submitted a series of representations through letters and email communications with the concerned officers of the Respondents, but to no avail. Hence, the Petitioners have now invoked the jurisdiction of this Court under Article 226 of the Constitution of India, seeking Indian citizenship.

6. In this background, Mr. Santosh Krishnan, counsel representing the Petitioners, submits that Petitioners are Indian citizens by descent and are entitled to get an Indian passport. Since the Petitioners have duly explained the delay in registering their birth as per the Third Proviso to Section 4(1) of the Act through several representations and email communications to the Respondents, the same ought to be considered.

7. In the counter affidavit, the Respondents have stated that all four Petitioners have attained full age of 18 years and as such their citizenship is a matter to be decided under Section 4(2) of the Act and not under Third Proviso to Section 4(1) of the Citizenship Act, 1955, as claimed by the Petitioner.

8. Although Mr. Krishnan controverts the said position, nonetheless, he points out that in the counter affidavit, the Ministry of Home Affairs mentions of the letter dated 20th August, 2024, whereby the said Ministry has sought the opinion/ comments of various stakeholders. They have stated that pursuant to receiving such comments, the case will be examined a suitable reply shall be conveyed to the Ministry of External Affairs. Additionally, he states that in light of the above statement of the Respondents, the petition can be disposed of, as the Respondents are in the process of deciding the Petitioner's representations. He, however, requests

¹ "the Act"



for a time bound decision thereon.

9. Having regard to the afore-noted facts, since the matter is still under consideration, it would be apposite that the Court refrains from adjudicating the instant issue, awaiting the decision to be rendered by the Respondents. In light of the above, the present petition is disposed of with a direction to the Respondents to decide the Petitioners' representations, within four months from today.

10. It is made clear that the Courts have not delved into the merits of the case and all rights and contentions of the parties are left open. In the event, the Petitioners' representations are not accepted, needless to say, the Petitioners shall be free to explore their legal option against such a decision, in accordance with law.

11. With the above directions, the present petition is disposed of.

SANJEEV NARULA, J

OCTOBER 1, 2024

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