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

Date of decision: 02nd JULY, 2024

IN THE MATTER OF:

+ **W.P.(C) 13584/2022, CM APPLs. 28368/2024, 41393/2022**

SAHADEO BAHADUR

..... Petitioner

Through: Mr. Jamnesh Kumar, Mr. Rajpal
Singh and Mr. Aabhas Parimal,
Advocates.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Ms. Nidhi Raman, CGSC with Mr.
Akash Mishra, Advocate for R-1 and
2.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court challenging the Letter dated 28.12.2021 issued by Respondent No.2/Regional Passport Office, Ghaziabad, Ministry of External Affairs closing the passport application bearing No.GZ1065077405620 of the Petitioner. The Petitioner has also prayed for a direction to the Respondents to issue an Indian Passport to the Petitioner.
2. The facts as stated in the writ petition are that the Petitioner's father was working in Hirakud Dam Project, District- Sambalpur, Odisha in the capacity of a Chowkidar between 03.10.1952 and 30.06.1961. It is stated that the Petitioner was born on 19.06.1962. It is stated that the Petitioner's father changed his service and joined as a Security Guard in National



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Mineral Development Corporation (NMDC), Bailadila Iron Ore projects, P.O. Kirandul, District Baster, Madhya Pradesh (Now Chhattisgarh) on 01.03.1967 and continued till 26.07.1973. It is stated that in the year 1973, the Petitioner shifted to Bihar (now Jharkhand) and completed his education in Jharkhand. It is stated that the Petitioner joined a Delhi based private company in the year 1989 and since then he has been residing in Delhi. In the additional affidavit, the Petitioner has stated that he has married an India Citizen Bhavana Rani in the year 1993. The Petitioner applied for an Indian Passport in Regional Passport Office (RPO), Delhi on 02.12.2002. The application of the Petitioner was referred for police verification to the Special Branch, Delhi Police. The Special Branch reported that the Petitioner/applicant is a "Nepali National" and on the basis of the report, the file of the Petitioner was closed by the RPO, Delhi on 06.01.2006.

3. Material on record indicates that after about 11 years, the Petitioner on 18.05.2017 filed an appeal under Section 11 of the Passport Act, 1967 which was dismissed by the Chief Passport Officer, CPV Division, Ministry of External Affairs on 21.07.2020.

4. Material on record indicates that pending the said appeal, the Petitioner had filed a fresh application for issuance of passport on 21.12.2018 before the Regional Passport Office, Ghaziabad since the Petitioner was shifted to Ghaziabad. The police verification was initiated and the police verification report once again stated that the application of the Petitioner should not be recommended as the Petitioner is a citizen of Nepal and a closure notification was sent on 18.02.2020. The Petitioner visited the RPO, Ghaziabad where certain documents were asked from the Petitioner



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which the Petitioner provided. It is stated that on 12.06.2020, the Petitioner, while checking the status of his application, came to know that his application has been closed.

5. The Petitioner, thereafter, filed a writ petition being W.P.(C) 9394/2020 before this Court which was disposed of by this Court by Order dated 07.12.2020 directing the Petitioner to apply a fresh application for issuance of passport.

6. It is stated that pursuant to the said Order dated 07.12.2020 passed by this Court, the Petitioner, for the third time, filed a fresh application for issuance of passport before the Regional Passport Office, COO Complex-1, Hapur Road, Ghaziabad and this time the police verification report received from the police stating that the application of the Petitioner is clear.

7. Material on record indicates that a letter dated 05.03.2021 was sent by the RPO, Ghaziabad to Sr. Superintendent of Police (SSP), Ghaziabad regarding re-confirmation of identity and nationality status of the Petitioner by stating that as to why in the earlier police verification report the Petitioner received adverse remarks and requested the SSP, Ghaziabad to conduct a discreet inquiry into the matter and re-confirm the identity and nationality/citizenship of the Petitioner. The Petitioner on 05.04.2021 filed an application being CM APPL. 12904/2021 in W.P.(C) 9394/2020 seeking directions to the Respondents for issuance of a passport to the Petitioner

8. Material on record reveals that the SSP, Ghaziabad vide letter dated 26.04.2021, after conducting a discreet inquiry, replied to the letter dated 05.03.2021 sent by the RPO, Ghaziabad stating that the Petitioner has been residing in Ghaziabad since 2004 and no documents have been received



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from the Petitioner to show that he is from Nepal. Material on record further indicates that the RPO, Ghaziabad further vide letter dated 18.05.2021 replied to the letter dated 26.04.2021 sent by the SSP, Ghaziabad stating that the assumption that the Petitioner is an Indian Citizen is merely on the proposition of exclusivity and that the police must clarify that on what basis the Petitioner was given adverse remarks in the earlier applications and the police was once again requested to conduct a discreet inquiry.

9. Material on record also indicates that the place where the Petitioner's father was working i.e., National Mineral Development Corporation (NMDC), Bailadila Iron Ore Mine, Kirandul Complex from 1967 to 1973 responded to the RTO, Ghaziabad vide letter dated 25.07.2021 stating that the records of the Petitioner's father is not traceable. Thereafter, the SSP, Ghaziabad vide letter dated 30.07.2021 replied to the letter dated 18.05.2021 sent by the RPO, Ghaziabad stating that the corroborating evidence has not been provided by the Petitioner that he is an Indian Citizen and therefore, it is not possible to verify the citizenship of the Petitioner and SSP, Ghaziabad gave a report that the Petitioner has been residing at the address since 2002 but the Petitioner has not given any documentary proof regarding his citizenship and, hence the application of the Petitioner cannot be given a clear remark. Thereafter, the passport application of the Petitioner was closed vide the Impugned Letter dated 28.12.2021.

10. Notice was issued in the writ petition on 20.09.2022. Pleadings are complete.

11. Learned Counsel appearing for the Petitioner contends that the Petitioner's father has been working in India since 1952 and the Petitioner



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was born in the year 1962. He states that the Petitioner has completed his graduation from Ranchi University. He states that the Petitioner himself has been working in India since 1989 and has also married an Indian Citizen named Bhavana Rani in the year 1993. He states that the Petitioner, from his birth, has been residing only in India and therefore, the Petitioner is entitled to citizenship of India by way of birth. He states that the Petitioner has also furnished his Election ID Card, Aadhar Card, Income Tax Returns, School Certificates, University Degree etc. to substantiate his contention.

12. *Per contra*, learned Counsel appearing for the Respondents contends that there is a discrepancy in the documents furnished by the Petitioner. He states that in the Aadhar Card, the date of birth of the Petitioner is shown as 19.06.1962, whereas in the Election ID Card, the year of birth of the Petitioner is shown as 1964. She states that there is no proof with the Petitioner to show that the Petitioner was born in India. She states that in the absence of any proof that the Petitioner was born in India, it cannot be stated with certitude that the Petitioner is entitled to Citizenship of India by birth.

13. Heard learned Counsel appearing for the Parties and perused the material on record.

14. The first proof given by the Petitioner is a Service Certificate issued by the Sub-Divisional Officer, Stores Sub-Division, Hirakund Dam Project, Odisha stating that the Petitioner's father has worked in the capacity of Chowkidar at Hirakund Dam between 03.10.1952 and 30.06.1961. The second proof given by the Petitioner is that the Petitioner's father has worked in the capacity of a Security Guard at National Mineral Development Corporation (NMDC), Bailadila Iron Ore Mine, Kirandul Complex between



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01.03.1967 and 26.07.1973. There is nothing on record to show that the Petitioner's father was in India for the period from 30.06.1961 to 01.03.1967 and that the Petitioner was born in India in the year 1962. No Date of Birth Certificate has been produced by the Petitioner to show that the Petitioner was born in India. Unfortunately, the Petitioner has also not been able to produce any certificate from the school records stating that he was born in India. There is no conclusive proof to show that the Petitioner was born in India.

15. At this juncture, it is apposite to refer to Section 3 of the Citizenship Act which 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;

(b) on or after the 1st day of July, 1987, but before the commencement of the Citizenship (Amendment) Act, 2003 (6 of 2004) and either of whose parents is a citizen of India at the time of his birth;

(c) on or after the commencement of the Citizenship (Amendment) Act, 2003 (6 of 2004), where—

(i) both of his parents are citizens of India; or

(ii) one of whose parents is a citizen of India and the other is not an illegal migrant at the time of his birth, shall be a citizen of India by birth.

(2) A person shall not be a citizen of India by virtue of this section if at the time of his birth—



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(a) either his father or mother possesses such immunity from suits and legal process as is accorded to an envoy of a foreign sovereign power accredited to the President of India and he or she, as the case may be, is not a citizen of India; or

(b) his father or mother is an enemy alien and the birth occurs in a place then under occupation by the enemy.]

16. Section 3(1)(a) of the Citizenship Act would apply to the case of the Petitioner since the Petitioner was born between the year 1950 and 1987. However, it cannot be said with certitude that the Petitioner was born in India in the year 1962. In the absence of any proof that the Petitioner was born in India, the Petitioner cannot be held to be a Citizen of India by birth.

17. In view of the above, this Court is not in a position to accede to the contention raised by the learned Counsel for the Petitioner that the Petitioner is entitled to the Citizenship of India by birth. However, Section 5 of the Citizenship Act reads as under:

“5. Citizenship by registration.—*[(1) Subject to the provisions of this section and such other conditions and restrictions as may be prescribed, the Central Government may, on an application made in this behalf, register as a citizen of India any person not being an illegal migrant who is not already such citizen by virtue of the Constitution or of any other provision of this Act if he belongs to any of the following categories, namely:—*

(a) a person of Indian origin who is ordinarily resident in India for seven years before making an application for registration;



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(b) a person of Indian origin who is ordinarily resident in any country or place outside undivided India;

(c) a person who is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration;

(d) minor children of persons who are citizens of India;

(e) a person of full age and capacity whose parents are registered as citizens of India under clause (a) of this sub-section or sub-section (1) of section 6;

(f) a person of full age and capacity who, or either of his parents, was earlier citizen of independent India, and [is ordinarily resident in India for twelve months] immediately before making an application for registration;

(g) a person of full age and capacity who has been registered as an [Overseas Citizen of India Cardholder] for five years, and who [is ordinarily resident in India for twelve months] before making an application for registration.

Explanation 1.—For the purposes of clauses (a) and (c), an applicant shall be deemed to be ordinarily resident in India if—

(i) he has resided in India throughout the period of twelve months immediately before making an application for registration; and

(ii) he has resided in India during the eight years immediately preceding the said period of twelve months for a period of not less than six years.



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Explanation 2.—For the purposes of this sub-section, a person shall be deemed to be of Indian origin if he, or either of his parents, was born in undivided India or in such other territory which became part of India after the 15th day of August, 1947.]

[(1A) The Central Government, if it is satisfied that special circumstances exist, may after recording the circumstances in writing, relax the period of twelve months, specified in clauses (f) and (g) and clause (i) of Explanation 1 of sub-section (1), up to a maximum of thirty days which may be in different breaks.]

(2) No person being of full age shall be registered as a citizen of India under sub-section (1) until he has taken the oath of allegiance in the form specified in the Second Schedule.

(3) No person who has renounced, or has been deprived of, his Indian citizenship or whose Indian citizenship has terminated, under this Act shall be registered as a citizen of India under sub-section (1) except by order of the Central Government.

(4) The Central Government may, if satisfied that there are special circumstances justifying such registration, cause any minor to be registered as a citizen of India.

(5) A person registered under this section shall be a citizen of India by registration as from the date on which he is so registered; and a person registered under the provisions of clause (b)(ii) of article 6 or article 8 of the Constitution shall be deemed to be a citizen of India by registration as from the commencement of the Constitution or the date on which he was so registered, whichever may be later.



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[(6) If the Central Government is satisfied that circumstances exist which render it necessary to grant exemption from the residential requirement under clause (c) of sub-section (1) to any person or a class of persons, it may, for reasons to be recorded in writing, grant such exemption.].

18. The Petitioner has married an Indian Citizen Bhavana Rani in the year 1993. Thirty one years (31) have passed since the solemnization of marriage. The Petitioner is, therefore, entitled to apply for citizenship by registration. In case the Petitioner applies for citizenship in terms of Section 5 of the Citizenship Act, the same shall be considered by the Respondents as expeditiously as possible.

19. In view of the fact that the Petitioner has not been able to demonstrate conclusively that the Petitioner was born in India in the year 1962, the Petitioner cannot be held to be a Citizen of India by birth and this Court is, therefore, not inclined to accede to the prayers, as sought for, by the Petitioner in the present writ petition.

20. Resultantly, the writ petition is dismissed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

JULY 02, 2024

S. Zakir