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

+ W.P.(C) 5375/2024
GELEG TSERING

.....Petitioner

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

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Rohan Jaitley, CGSC, Mr.
Hussain Taqvi, GP, Mr. Dev Pratap
Shahi, Mr. Yogya Bhatia and
Mr. Varun Pratap Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

28.01.2025

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1. The present petition has been filed by the petitioner seeking that the respondent be directed to register the petitioner as an Overseas Citizen of India Cardholder under Section 7A of the Citizenship Act, 1955.
2. It has been averred in the petition that the petitioner was born on 14.08.1970 at District Kangra, Himachal Pradesh, India and is a holder of Identity Certificate bearing No.020844 issued by the respondent no.2 (Ministry of External Affairs) which expired on 21.02.1993.
3. Relying upon a judgment of this Court in the case of *Phuntsok Wangyal vs. Ministry of External Affairs & Ors.*, 2016 SCC OnLine Del 5344, it is contended that the petitioner is an Indian citizen by virtue of Section 3(1) (a) of the Citizenship Act, 1955.
4. Learned counsel for the petitioner has also drawn attention to an



Office Memorandum dated 17.03.2017 which records that the UOI accepted the aforesaid judgment ; the said Office Memorandum, *inter-alia*, 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.”

5. It is further pointed out that the petitioner has been issued birth



certificate by the Government of Himachal Pradesh, Department of Health and Family Welfare under Section 17 of Registration of Birth and Deaths Act, 1969. A copy of the said birth certificate has also been filed along with the present petition.

6. Learned counsel for the petitioner submits that the right of the petitioner and similarly situated persons for registration as an Overseas Citizen of India Cardholder has been conclusively recognized by this Court in the case of ***Tenzin Losel vs. Union of India & Ors.***[W.P.(C) 3057/2022]. A copy of the judgment / order dated 02.02.2024 passed in the said case has been filed as Annexure P17 of the present petition. The operative directions issued by this Court in that case in the context of a person of Tibetan origin born in India in 1970, are as under:

“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.....”

7. Thus, *prima facie*, there is merit in the contention that the petitioner is entitled to be registered as an Overseas Citizen of India Cardholder under Section 7A of the Citizenship Act, 1955.

8. Considering that the respondent/s have not yet taken a decision on the application(s)/ representation(s) of the petitioner, the present petition is disposed of with a direction to the respondents to consider the application of the petitioner for registration as an Overseas Citizen of India Cardholder. Let the same be considered in the light of the judgment in *Tenzin Losel vs. Union of India & Ors.* (supra), and the requisite decision be taken within a period of eight weeks from today, under intimation to the petitioner.

9. The petition is disposed of in terms of the aforesaid directions.

10. In case the petitioner is aggrieved with the outcome of the aforesaid exercise, he shall be at liberty to avail appropriate remedies under law.

SACHIN DATTA, J

JANUARY 28, 2025/cl