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

Date of decision: 13th MARCH, 2024

IN THE MATTER OF:

+ **W.P.(C) 7703/2022 & CM APPL. 23585/2022**

AKSHAR REDDY VANGA AND ANR. REPRESENTED BY
SUBBA REDDY VANGA Petitioner

Through: Mr. C. Mohan Rao, Sr. Advocate with
Mr. P. Venkat Reddy, Mr. Lokesh
Kumar, Mr. Prashant Tyagi and Mr.
P. Srinivas Reddy, Advocates.

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Manish Mohan, CGSC with Mr.
Jatin Teotia and Mr. Prakhar
Vashisth, Advocates for UoI.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

1. The Petitioner has approached this Court with the following prayers:-

“a) Issue appropriate writ order or directions (s) more particularly in the form of a writ of mandamus declaring that the action of the respondents in not reissuing Indian Passports and further cancelling the existing Indian passport of the Writ Petitioners is illegal, arbitrary and contrary to the provisions of Citizenship Act, 1955 and consequently direct the respondents to issue fresh Indian Passports to the Writ Petitioners.

b) Pass such other Writ, Order or Direction as this Hon' ble Court deems fit and proper in the facts and



circumstances of the case.”

2. The facts in brief leading to the writ petition are that the parents of Petitioners No.1 and 2 are Indian citizens by birth. It is stated that the parents of the Petitioners No.1 and 2 migrated to USA. It is stated that the father of the Petitioners continues to be an Indian citizen and whereas the mother of the Petitioners has acquired US citizenship under Section 9 of the Citizenship Act.

3. It is stated that Petitioner No.1 was born on 09.07.2014 in Newark, Delaware, USA and his birth was registered with the Indian Embassy, Washington DC on 17.06.2015, i.e., within a period of one year *vide* BR/3/6/15 (NO. WAS/CONS/4151/3/6/15) as mandated under Section 4 of the Citizenship Act and Petitioner No.1 was issued an Indian passport being Passport No. M5517050 on 06.07.2015.

4. Since, Petitioner No.1 was born in USA, he also acquired US citizenship at birth and since he is a US citizen by birth, he obtained US Passport bearing No. 534276164 on 09.10.2015.

5. It is stated that Petitioner No.2 was born on 01.05.2016 at Gainesville Florida, USA and her birth was registered with the Consulate General of India *vide* BC/1/17 (No. ATL/CONS/BC/415/11/17(1) on 30.01.2017 in accordance with Section 4 of the Citizenship Act. Similarly, Petitioner No.2 was also issued Indian Passport bearing No. R5417674 on 13.04.2017. As Petitioner No.2 was born in USA and is a US citizen by birth, she obtained US Passport bearing No. 560286103 on 14.07.2017.

6. Since the Passports of the Petitioners have expired, the Petitioners made an application for re-issuance of the Indian Passports which has been



denied and the Petitioners have approached this Court by filing the instant writ petition.

7. It is relevant to extract Section 4(1) and 4(1A) of the Citizenship Act, which reads as under:-

“4. Citizenship by descent.

[(1) A person born outside India shall be a citizen of India by descent,—

(a) on or after the 26th day of January, 1950, but before the 10th day of December, 1992, if his father is a citizen of India at the time of his birth; or

(b) on or after the 10th day of December, 1992, if either of his parents is a citizen of India at the time of his birth:

Provided that if the father of a person referred to in clause (a) was a citizen of India by descent only, that person shall not be a citizen of India by virtue of this section unless—

(a) his birth is registered at an Indian consulate within one year of its occurrence or the commencement of this Act, whichever is later, or, with the permission of the Central Government, after the expiry of the said period; or

(b) his father is, at the time of his birth, in service under a Government in India:

Provided further that if either of the parents of a person referred to in clause (b) was a citizen of India by descent only, that person shall not be a citizen of India by virtue of this section, unless—

(a) his birth is registered at an Indian consulate within



one year of its occurrence or on or after the 10th day of December, 1992, whichever is later, or, with the permission of the Central Government, after the expiry of the said period; or

(b) either of his parents is, at the time of his birth, in service under a Government in India:

Provided also that on or after the commencement of the Citizenship (Amendment) Act, 2003 (6 of 2004), a person shall not be a citizen of India by virtue of this section, unless his birth is registered at an Indian consulate in such form and in such manner, as may be prescribed,—

(i) within one year of its occurrence or the commencement of the Citizenship (Amendment) Act, 2003(6 of 2004), whichever is later; or

(ii) with the permission of the Central Government, after the expiry of the said period:

Provided also that no such birth shall be registered unless the parents of such person declare, in such form and in such manner as may be prescribed, that the minor does not hold the passport of another country.

(1A) A minor who is a citizen of India by virtue of this section and is also a citizen of any other country shall cease to be a citizen of India if he does not renounce the citizenship or nationality of another country within six months of attaining full age.]”

8. A perusal of Section 4(1)(b) and the proviso thereto shows that if a person is born outside India after 10.12.1992, he shall be a citizen of India if either of his parents is a citizen of India at the time of birth provided the birth is registered at an Indian consulate within a period of one year from the



birth. The requisites of Section 4(1A) has been met with by the Petitioners inasmuch as the Petitioners' father continues to be a citizens of India though they were born outside India, their births have been registered as per provisos 4(1)(b) of the Citizenship Act.

9. Section 4(1A) of the Citizenship Act provides that a minor who is a citizen of India by virtue of Section 4(1)(b) read with provisos and is also a citizen of any other country, like in this case, the Petitioners are born in USA, shall cease to be a citizen of India, if they does not renounce the citizenship or nationality of another country within six months of attaining full age. 'Minor' is defined in Section 2(1)(e) which states that minor means a person who has not attained the age of 18 years.

10. The Union of India has clarified the position by issuing a circular on 02.02.2011. The entire clarification is reproduced as under:-

"To

*Secretary (Home)
State Governments/Union Territories*

Subject: Grant of Indian Citizenship to Minor Children under Section 4(I) of Citizenship Act, 1955-Clarification regarding 4(I-A).

Sir,

I am directed to say that Sub Section I-A of Section 4 of Citizenship Act, 1955 stipulates that a minor who acquires Indian citizenship by descent as per provisions of sub section 1 of section 4 and is also a citizen of any other country will cease to be an Indian citizen unless, within six months of attaining full age, he renounces the citizenship of any other country, held by him. This provision was inserted by the Citizenship (Amendment) Act, 2003 in order to take care of a



situation where a foreign passport is obtained after registering birth under this section.

2. Under sub-section IA of section 4. a minor can hold citizenship of India along with citizenship of any other country i.e. dual citizenship up to the expiry of six months from the date of his attaining full age.

3. With the approval of competent authority, it is clarified that there is no compelling reason to guard against a minor child having dual citizenship. It is conscious provision of law given to a minor so that he/she can decide within 6 months of completing 18 years of age as to whether he/she prefers Indian citizenship, If a person does not renounce foreign citizenship or nationality of another country within six months of attaining full age, he/she shall cease to be a citizen of India.

4. It is further clarified that if a minor has obtained foreign passport before registering at an Indian consulate, he/she shall not be registered as Indian Citizen under Section 4.

5. The clarification may be brought to the notice of all concerned.”

11. It is, therefore, clear that even the government has accepted that a minor till attaining the age of majority is entitled to have an Indian passport issued and has the option to renounce either the Indian citizenship or the foreign citizenship in order to continue to be an Indian citizen.

12. The Respondents are primarily relying on Chapter 29 of the Passport Manual and more particularly Paragraph 5.5, which has been extracted in the counter affidavit. Paragraph C and D of the counter affidavit reads as under:-

*“C. That **Para 5.5 of Chapter 29 of Passport Manual 2020** (Seventh Edition) states, “...In the case child has*



to compulsorily have a foreign passport, it may be advised that once the registration process is complete, the child may apply for an OCI card. As dual citizenship is not permitted as per the constitution of India, it is clarified that under no circumstances an Indian citizen, including a minor, can possess an Indian and a foreign Passport at the same time.

D. That it has further been reiterated that at the end of Para 5.5 through a 'Note'. It states that, 'It has been brought to the notice of the Ministry that FRRO/MHA had issued a clarification that children having dual citizenship may be permitted to have two passports till the age of 18. It is clarified that as per the provisions of Citizenship Rules, 2009, an Indian citizen cannot have a foreign passport at any time and having a foreign passport is conclusive proof of foreign citizenship. Hence, an Indian citizen, including a minor who has foreign citizenship by birth, cannot have both an Indian and Foreign Passport.'"

13. Clearly, the Passport Manual is at variance with Section 4 of the Citizenship Act which will undoubtedly prevail over the Passport Manual. It is clear that the subordinate legislation cannot override the parent legislation.

14. In view of the above, this Court does not find any impediment in granting the prayers as sought for by the Petitioners in the writ petition.

15. The writ petition is allowed. Pending application(s), if any, stand disposed of.

SUBRAMONIUM PRASAD, J

MARCH 13, 2024

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