

(2022) 03 KL CK 0055

In the High Court Of Kerala

Case No : Writ Petition (C) No. 22555 Of 2021

Chaitanya S.Nair (Minor)

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 08-03-2022

Acts Referred:

Citizenship Act, 1955 — Section 3, 3(1)(c)(ii), 3(2), 7A, 7B, 7C, 7D, 8, 9
Citizenship Rules, 2009 — Rule 23, 38

Citation : (2022) 03 KL CK 0055

Hon'ble Judges : Bechu Kurian Thomas, J

Bench : Single Bench

Advocate : Dr.Abhilash O.U., Jaishankar V.Nair, S.Manu, Shahul Hameed, K.M.Varghese, T.A.Niyas

Final Decision : Allowed

Judgement

Bechu Kurian Thomas, J.

1. 'We worry about what a child will become tomorrow, yet we forget that he is someone today'. The above words of Stacia Tauscher, an Irish artist can give insight, while resolving the issue that arises for consideration in this case.

2. Petitioner is a minor girl who has approached this Court seeking a direction for issuing a passport to her without insisting on the consent from her biological father. She also seeks directions to issue the passport to her, including details of her stepfather.

3. The parents of the petitioner dissolved their marriage by mutual consent through a compromise decree from the Family Court, Ernakulam. Despite the mother of the petitioner being an American citizen, she was appointed as the legal guardian, with visitorial rights given to the father, subject to the mutual convenience of parties. After the dissolution of marriage, petitioner's mother remarried and she intends to take the petitioner abroad to live along with her. For the said purpose, when an application for obtaining a passport was

submitted, the passport issuing authority - second respondent, insisted on the consent/permission from petitioner's biological father and refused to accept the application, without the said consent. According to the petitioner, her parents had been living apart since 2011, and in such circumstances, compelling the petitioner to produce the consent of the biological father is not legally required. An additional affidavit has been filed by the mother of the petitioner stating that petitioner was born on 06.12.2011 at Adoor in Kerala and that petitioner possesses an Aadhar Card also. It is asserted that petitioner is an Indian citizen by birth. Petitioner has also pleaded that her mother, though a citizen of United States, has been registered as an Overseas Citizen of India.

4. A statement has been filed by the second respondent pleading that as per the Passport Manual, 2020, if visitation rights have been granted as per court orders, consent of the other parent is required to process the application for issuance of a passport to a minor and that, if one of the parents willfully refuse to give consent or inordinately delays grant of consent, the passport can be issued to the child, after receipt of an affidavit in the form of Annexure-C obtained from the parent having the custody of the child. The second respondent further averred that the mother of the petitioner is not a citizen of India and from the marriage certificate attached, it is revealed that she is a citizen of the United States of America while the stepfather is a citizen of Canada. The second respondent further pleaded that as per the Passport Manual, when one parent has renounced the Indian citizenship and the other parent is still an Indian citizen, the citizenship of the minor shall be of that person who has legal custody of that minor child and the eligibility of an Indian passport will be determined on the basis of the guardian's citizenship. It was further mentioned that, if both parents have renounced their Indian citizenship and acquired foreign citizenship, the minor child will cease to be an Indian citizen and hence will not be eligible for an Indian passport.

5. According to the second respondent, they have no information regarding the citizenship of the biological father of the petitioner and that if the name of the stepfather is required to be incorporated in the passport, various documents are required to be submitted. The documents for such purpose will include a self-declaration that the minor does not want to have the name of the biological father incorporated in the passport, two educational/public documents where the name of the stepfather is mentioned, the registered certificate of remarriage and in the case of death of the biological father, the death certificate. The passport authority further pleaded that in order to confirm the citizenship of the petitioner and her eligibility to be issued with an Indian passport, the father is required to be impleaded and since the visitation rights have been granted as per the compromise decree, the passport authority has no objection in issuing the passport to the petitioner, on production of consent from the biological father and on confirmation of his Indian citizenship.

6. When the writ petition came up for admission since this Court felt that the

presence of the father is necessary for proper adjudication, despite the divorce and grant of custody to the mother, the third respondent was impleaded.

7. A counter affidavit has been filed by the additional third respondent admitting most of the averments in the writ petition except those regarding abandoning the petitioner. Significantly the third respondent has stated that the mother can maintain the application for an independent passport for the child and that he has no objection in issuing the passport to the petitioner without insisting on his consent.

8. It was averred by the additional third respondent that he has no objection to the passport being issued to the petitioner and also asserted that he continues to be an Indian citizen.

9. I have heard the arguments of Dr. Abhilash O.U., learned counsel for the petitioner, Sri. S. Manu, the learned Assistant Solicitor General of India assisted by Sri. Jaishankar V.Nair learned Central Government Counsel for respondents 1 and 2 and Sri. Shahul Hameed, learned counsel for the additional third respondent.

10. In this context, I must mention that the father of the petitioner deserves credit for expressing his consent to the mother taking the child to live with her abroad. The said willingness expressed, considering the welfare of the child to have a better education and the need of an adolescent girl to have the maternal care more than the paternal, is commendable. The third respondent in fact expressed his willingness to abide by any condition so that his daughter - the petitioner, can be with her mother. The aforementioned willingness expressed by the father of the petitioner is indeed creditworthy, indicative of the parent acting in the interests of the welfare of the child and worthy of emulation by other similar parents.

11. On a consideration of the submissions made across the Bar, I find that the dispute lies in a narrow sphere. The issues are (i) Whether the consent of both parents are required to issue a passport to a minor child, (ii) Whether the minor child is disentitled to get an Indian passport, if one of the parents is a citizen of another country? and, (iii) Whether the passport can be issued mentioning only the name of the legal guardian?

The issues are dealt with as under:

(i) Whether the consent of both parents are required to issue a passport to a minor child?

12. The third respondent had expressed, in writing as well as during the submissions of Adv. Shahul Hameed, that he has no objection to the child being issued with an Indian passport. Legally also, the passport issuing authority cannot insist on consent from both parents for issuing a passport to a minor child. Though in earlier times, there was ambiguity and confusion regarding the procedure to be adopted when consent of both parents could not be obtained

while issuing a passport to a minor, by virtue of several precedents, which were subsequently incorporated as guidelines in the Passport Manual, it has been provided that, if an affidavit is filed in the form of Annexure-C (earlier Annexure-G) of Schedule III of the Passport Rules, 1980, the passport issuing authority can issue a passport to a minor child, without insisting upon the consent of both parents. Therefore, even if one of the parents of a minor child refused to give consent, the passport issuing authority is entitled to issue a passport to a minor, provided Annexure-C is submitted. *Juvairiya v. Regional Passport Officer, Malappuram* (2014 (2) KHC 53) is an authority for the above proposition.

13. In the instant case, since the biological father himself has no objection in issuing a passport to the petitioner, the option to submit Annexure-C, - when the consent of one of the parents is not obtained, or Annexure-D, - when the consent of both parents is obtained, is available to the petitioner. Thus, if the petitioner submits the relevant form as per the Passport Rules, 1980, the respondents are bound to process the application for issuance of a passport to the petitioner.

(ii) Whether the minor child is disentitled to get an Indian passport, if one of the parents is a citizen of another country?

14. The second objection relates to the mother of the petitioner being a foreign citizen. While considering the issue noted above, it is relevant to bear in mind that the mother of the petitioner was born in the United States of America and had always been an American citizen, though she is issued with an Overseas Citizen of India Card (OCI), (the concept of Overseas Citizenship was introduced into the Act of 1955 w.e.f 03-12-2004, through sections 7-A to 7-D). The third respondent has, on the other hand, pleaded that he was always an Indian citizen and continues to be so, even now.

15. As mentioned earlier, in the statement filed by respondents 1 and 2, it was mentioned that, as per the Passport Manual, 2020, when one parent has renounced Indian citizenship, the citizenship of the minor will be that of the person who has legal custody of the minor child and the eligibility of an Indian passport will be determined on the basis of the guardian's citizenship. Relying upon the above pleading, based on the Passport Manual, 2020, it was argued that petitioner cannot be issued with an Indian passport as she has lost her Indian citizenship.

16. To appreciate the present controversy, it is essential to consider who is an Indian Citizen. Section 3 of the Citizenship Act deals with Citizenship by birth. It reads as below:

S.3 (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 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, 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-

(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.

17. The aforesaid section 3(1)(c)(ii) reveals that a person born in India becomes a citizen of India by birth, even if only one of his parents is an Indian citizen, provided the other conditions mentioned in the sub-section are not applicable. Admittedly petitioner was born in India and her father was a citizen of India not only at the time of birth of the petitioner but is one, even at present. None have a case that the exclusions in section 3(1)(c) (ii) or section 3(2) of the Act apply to the petitioner. Thus indubitably, the petitioner is a citizen of India by birth. Petitioner has also not terminated her citizenship under section 9 of the Citizenship Act. In such circumstances, the petitioner is entitled to be treated as an Indian citizen.

18. However, the complexity of the issue is escalated by the fact that petitioner's mother is an American citizen but was still granted custody and guardianship of the minor child by orders of the Family Court. The passport issuing authority relies upon the proviso to section 8 of the Act to contend that petitioner cannot be issued with an Indian passport. For better comprehension, section 8 and section 9 of the Citizenship Act of 1955 are extracted as follows:

"8. Renunciation of citizenship.?(1) If any citizen of India of full age and capacity, makes in the prescribed manner a declaration renouncing his Indian Citizenship, the declaration shall be registered by the prescribed authority; and, upon such registration, that person shall cease to be a citizen of India:

Provided that if any such declaration is made during any war in which India may be engaged, registration thereof shall be withheld until the Central Government otherwise directs.

2. Where a person ceases to be a citizen of India under sub-section (1), every minor child of that person shall thereupon cease to be a citizen of India:

Provided that any such child may, within one year after attaining full age, make a

declaration in the prescribed form and manner that he wishes to resume Indian citizenship and shall thereupon again become a citizen of India.

9. Termination of citizenship.?(1) Any citizen of India who by naturalisation, registration or otherwise voluntarily acquires, or has at any time between the 26th January, 1950 and the commencement of this Act, voluntarily acquired, the citizenship of another country shall, upon such acquisition or, as the case may be, such commencement, cease to be a citizen of India:

Provided that nothing in this sub-section shall apply to a citizen of India who, during any war in which India may be engaged, voluntarily acquires the citizenship of another country, until the Central Government otherwise directs."

19. Renouncement of citizenship and termination of citizenship are two entirely different concepts. Section 8 of the Citizenship Act, 1955 (for short, 'the Act of 1955') deals with renouncement of citizenship, while section 9 deals with termination of citizenship. The method and the consequences of renouncement and termination are different, as is evident from a perusal of the above-extracted provisions.

20. Under section 9 of the Act of 1955, any citizen of India, who voluntarily acquires the citizenship of another country, will cease to be a citizen of India, the moment he/she acquires citizenship of another country. The difference in the language employed in section 8 indicates that it applies to a different set of circumstances. Under section 8 of the Citizenship Act, 1955, it is not the acquisition of citizenship of another country, but a conscious renouncement of Indian citizenship, effected by a declaration made in the prescribed manner, which is thereafter registered with the prescribed authority, that results in the renouncement. Section 8 contemplates a conscious action of renouncing Indian citizenship followed by registration and renouncement.

21. The Citizenship Rules, 2009 provide in Rule 23 the prescriptions for renouncing the citizenship of India. The Rules contemplate a declaration to be made in Form XXII followed by an acknowledgement of the declaration in Form XXIII by the Authority specified in Rule 38 and a consequent registration of the declaration in the Register kept for that purpose and followed by a Certificate issued to the declarant in Form XXIV. Unless these specific procedures are complied with, no citizen of India can be deemed to have renounced their citizenship.

22. Neither the petitioner nor the respondents have a case that either the mother or father of the petitioner had renounced their citizenship, as specified earlier. Termination of citizenship of India by acquiring the citizenship of another country under section 9 of the Act of 1955 by itself, does not partake the character of renunciation of citizenship contemplated under section 8 of the Act of 1955. In the instant case, the mother of the petitioner was always an American citizen and hence the question of termination of citizenship of one parent or renouncement of citizenship of that parent does not arise.

23. Petitioner having acquired Indian citizenship by birth as per section 3 of the Act of 1955 cannot be regarded as a stateless child by reason of her mother being an American citizen. Law abhors such statelessness of children. The comity of nations ensures that every person must have a nationality so that all rights accrue to that individual as a national of that particular country. Though nationality and citizenship are not synonymous terms, the concept of nationality cannot be ignored while considering the citizenship of a minor child, especially when the statute confers citizenship by birth. It is apposite to mention that the right to nationality of every individual is protected under the Universal Declaration of Human Rights as per Article 15. International treaties like the Convention on the Rights of the Child have also included stipulations regarding the right to nationality of children. The right of every child to acquire a nationality is guaranteed under Article 7 of the Convention, which obliges every party State to implement this right and under Article 8 to protect and preserve the nationality of every child. India, as a party State to the Convention on the Rights of the Child, (by virtue of its ratification in December 1992) has an obligation that no child is left stateless.

24. In this context, this Court cannot also ignore the domicile of origin of the petitioner. Petitioner is admittedly born in India and her domicile of origin is India. The domicile of origin is a concept of law and clings to a person until he abandons it by acquiring a new domicile of choice. [See the decisions in *Govindan v. Bharathi* (1964 KLT 252) and *Sindhu George v. Passport Officer, Ekm. and Another* (2015 (2) KHC 708)].

25. Since the petitioner was born in India and her domicile of origin is India and when her biological father continues to be an Indian citizen, the objection raised by the respondents in issuing an Indian Passport, based purely on her mother being an American citizen is, to say the least, odious and legally unsustainable. The observations of this Court in *Prashanth Sathyavan v. Sindu George and Others* (2015 SCC OnLine Ker.15968) that "Father of the child being an Indian Citizen, it could well be stated that child can be issued with Indian Passport" is apt in this context.

26. In view of the above deliberations, this Court is of the view that merely because one parent acquired the citizenship of another country or if one parent is not a citizen of India, will not by itself, disentitle a child born in India and whose other parent is an Indian citizen to be issued with an Indian passport. Therefore, Petitioner is entitled to be issued with an Indian passport.

(iii) Whether the passport can be issued mentioning only the name of the legal guardian?

27. During the course of arguments, it was submitted by the learned counsel for the petitioner that, since the biological father has an objection in including the name of the step-father in the passport, he confined his submission for including the name of the legal guardian in the passport. The receipt of acknowledgement

of the application for the passport issued by the respondents provide columns for incorporating the name of the mother as well as that of the guardian and not that of the father. Further, in the website of the Ministry of External Affairs, Government of India relating to the passport and Visa Division, the following frequently asked questions have been mentioned. Since this is maintained by the Ministry of External Affairs itself, some of the questions have relevance and they are extracted as below:

Q1: Exclusion of father/mother name from passport of minor in single-parent custody

A: 1. The online passport application form now permits that an applicant may provide the name of father or mother or legal guardian, i.e., only one parent and not both. This would enable single parents to apply for passports for their children and get passport(s) issued where the name of either the father or the mother is not required to be printed at the request of the applicant.

2. In case of minor children of unwed single parent, the name of father or mother is not to be mentioned in the passport application and in the passport, in case of unwed parents submitting Appendix-12, name of both the parents is to be mentioned in the application form and in the passport.

3. In case of minor children of married parents, the name of father/mother shall be furnished by the other single parent having the custody of the child, irrespective of the status of their marriage, such as, divorced, divorce pending, separated or deserted, with or without visitation rights to the estranged parents.

Q2: Divorce pending cases

A. In case divorce is still pending before the court, the applicant's parent should furnish or obtain permission from the court to apply for a passport for the child without the consent of the other parent of the child or provide declaration in form of Annexure-C with applicable reason. In pending divorce cases, where the single parent with child is already working/staying abroad, the child requires a passport for its continued stay abroad.

Q3: Single divorced parent with exclusive custody of child without visitation rights for the other parent.

A: Where the custody of the child has been given exclusively to either parent without any visitation rights to the other parent, the question of obtaining consent of the other parent would normally not arise. A certified copy of the court order has to be submitted with the application and Annexure 'C' signed by the single parent.

Q8: Annexure 'C' and 'D': Their applicability and differentiation:

A: 1. Annexure 'C': This declaration is applicable in cases where for any reason whatsoever the married parent applying for passport for the minor child is not able to obtain the consent of the other parent for obtaining passport for the

child. The reasons also include – wilful denial of consent by the estranged parent; desertion; absence of communication between the divorced/not divorced but separated parents, ex-parte divorce proceedings etc., but exclude cases where both the parents are involved in divorce proceedings in which case, the permission of the court or consent of both the parents in Annex 'D' is required.

2. Annexure 'D': This is for all normal cases where both the parents have to sign Annexure 'D'. Both parents or either parent with passports of both the parents shall be present at the time of issue of fresh passport or reissue of passport to the minor children or one parent with the passports of both the parents. This Annexure is also applicable to a single parent who has got full custody of the child and without any visitation rights to other parent (judgment to be verified); seaman/sailor spouse who are unable to sign Annexure D; unmarried parents submitting an affidavit as per Appendix-12.

28. Parents of the petitioner had divorced by mutual consent and the custody of the petitioner was given to the mother. Though the biological father has been given visitorial rights, that right is at the convenience of the parties. The third respondent has submitted in Court that he has no objection to the child being taken abroad by the mother, and to live there. None of the parties could bring to the notice of this Court any legal prohibition in incorporating the name of a non-citizen as the legal guardian in the passport of a minor child. In view of the above, this Court holds that the passport of the petitioner can be issued with the name of the mother as legal guardian.

29. While considering the issues mentioned, this Court was mindful of the fact that the petitioner, though a minor and a child, is still “someone, even today”. Petitioner’s right to travel, her right to enjoy her nationality and her right to enjoy her citizenship cannot be ignored.

30. In conclusion, this Court is of the opinion that petitioner is entitled to be issued with an Indian passport with the name of her mother endorsed not only as a mother but even as the legal guardian in the passport to be issued.

31. Therefore, there will be a direction to the second respondent to process the application filed by the petitioner, receipt of which is produced as Ext.P4, based upon the observations made in the judgment, as expeditiously as possible, at any rate, within a period of three weeks from the date of receipt of a copy of this judgment.

The writ petition is allowed as above.