
(2015) 06 BOM CK 0301

In the Bombay High Court

Case No : Criminal Writ Petition No. 68 of 2014

Graca Beatriz Fernandes

APPELLANT

Vs

State of Goa and Others

RESPONDENT

Date of Decision : 09-06-2015

Acts Referred:

Citizenship Act, 1955 — Section 3(1)(c), 5(4), 9(2)

Citation : (2015) 3 BomCR(Cri) 675

Hon'ble Judges : F.M. Reis and K.L. Wadane, JJ.

Bench : Division Bench

Advocate : J. Abreu Lobo, for the Appellant; S.R. Rivonkar, P.P., for the Respondent

Final Decision : Disposed Off

Judgement

F.M. Reis, J.—Heard Mr. J. Lobo, learned Counsel appearing for the petitioner and Mr. S.R. Rivonkar, learned Public Prosecutor appearing for the respondents. A short grievance which arises in the above writ petition upon hearing Mr. J. Lobo, learned Counsel appearing for the petitioner and Mr. S.R. Rivonkar, learned Public Prosecutor appearing for the respondents is that despite of the fact that an application was filed by the petitioner on behalf of her minor daughter way back on 12.2.2014 addressed to the Collector of Goa to register the minor child as an Indian citizen in terms of section 3(1)(c) read with section 5(4) of the Indian Citizenship Act, 1955 (herein after referred to as "the said Act") such application has not been disposed of. It is also pointed out by the learned Counsel appearing for the petitioner that thereafter the petitioner had submitted an application along with Form IV on 19.5.2014 in compliance with the requirement of section 5(4) of the said Act. The dispute raised by the respondents in their affidavit in reply is that in view of the Circular issued by the Central Government and circulated to the respondents, all the applications for registration are to be made online. But however, it is the contention of Mr. Lobo, learned Counsel appearing for the petitioner that the application filed by the petitioner have not been

uploaded as according to him Form IV which is a requirement to comply with section 5(4) of the said Act is not available on the website and as such it was submitted manually.

2. The dispute in the above petition with regard to the citizenship of a minor child is an offshoot of a matrimonial discord between the petitioner and her husband who is a British National. It appears that there are proceedings pending before the Court with regard to the custody of the minor child. It is pointed out by Mr. Lobo, learned Counsel appearing for the petitioner that in such proceedings the interim custody of the child has been given to the petitioner herein.

3. The urgency in examining the application of the petitioner was on account of the deportation orders issued by the respondent No. 2 on 29.1.2014 and 22.7.2014 as in the meanwhile the validity of the British passport held by the minor child had expired. In view of the matrimonial discord, such passport could not be renewed which entitled the petitioner according to Mr. Lobo, to file an application for registration of the minor child as an Indian citizen as according to him the child was born in Goa on 13.6.2008 and the birth is duly registered before the Municipal Authorities. It is the contention of the petitioner that she was forced to sign on the application for British passport as the parent of the minor. The corrections of the said contentions of Mr. Lobo, need not be gone into in the present petition as they shall have to be dealt with on its own merits by the concerned authorities.

4. Mr. Rivonkar, learned Public Prosecutor appearing for the respondents however points out that the delay in processing the application was in view of the non-compliance of the directions of the Central Government to apply only online. But however, such application is not uploaded on the website as the relevant Form IV which according to the petitioner is a material requirement is not available on the website. As such, we find that it would not be reasonable to prevent the petitioner to apply for Indian citizenship if she is so entitled and get such application processed by the concerned authorities in accordance with law. Mr. Rivonkar, learned Public Prosecutor states that the respondents shall abide by directions of this Court to accept such application manually.

5. Mr. Lobo, learned Counsel appearing for the petitioner in the course of his submission has brought to our notice the judgment of this Court reported in 2004 B.C.I. (soft) 379 : 2005(3) All.M.R. 367 in the case of (Dr. Hemchandra Madhav Kulkarni & anr. Vs. State of Maharashtra and others), wherein it has been observed at para 10 thus:

"10. We find merit in the submission of Shri Acharya. It is now well settled position that a person cannot lose or abandon his or her citizenship or acquire nationality so long he or she remains minor. See Sharafat Ali Khan Vs. State of Uttar Pradesh and Others, and Mst. Allah Bandi and Another Vs. Govt. of Union of India (UOI) and Others, . Therefore, the fact that the petitioner No. 2 had acquired a British Passport during his minority is of no consequence as he had

not legal capacity to acquire a domicile different from that of the guardian and could not in law migrate. In fact, it is an admitted position that the petitioner No. 2 did not renew the passport after attaining majority and has been all along residing in India right from 1952. However, Shri Chavan urged that the petitioners' parents had acquired British Passport in 1952 and that may be construed as an intention of abandoning their citizenship. The contention is without any merit. It is clearly seen from the facts of the present case that the petitioner's parents obtained British Passport only for the purpose of travelling back into the country of their origin. Thereafter the said passport was not used by the petitioners' parents at any time. The petitioners' parents continued to stay in India through out their life. The foreign passport was not used or renewed. In the above circumstances, on this factual background, we are inclined to accept the prayer made by the petitioners. Accordingly, we make the rule absolute in terms of prayer Clauses (a) and (b). The Passport Authority is directed to issue the passport to the petitioners subject to compliance with other conditions, if any. Petition allowed."

The question which would also arises in the facts of the case is to examine the provisions of section 9(2) of the said Act which is an issue which has to be decided by the Central Government. In such circumstances, we find it appropriate to dispose of the above writ petition by directing the respondent No. 3 to accept the application filed by the petitioner dated 19.5.2014 along with Form IV in accordance with law. The respondent No. 3 shall proceed to examine whether the request of the petitioner in terms of section 5(4) of the said Act would have to be examined by the Central Government in accordance with law.

Mr. Rivonkar, learned Public Prosecutor appearing for respondents assures that the processing of the said application would take about four weeks. Until the disposal of the said application filed by the petitioner, the deportation order dated 22.7.2014 shall be kept in abeyance and for a period of two weeks thereafter from the date of the communication of the final decision by the Central Government to the petitioner in case any adverse order is passed against the petitioner. Rule is made absolute in above terms. The petition stands disposed of accordingly.