

(2015) 04 KL CK 0036

In the High Court Of Kerala

Case No : Writ Petition (C). No. 35380 of 2014 (V)

Sindhu George

APPELLANT

Vs

The Passport Officer and Others

RESPONDENT

Date of Decision : 10-04-2015

Acts Referred:

Citizenship Act, 1955 — Section 3(i), 3(ii), 7A
Constitution of India, 1950 — Article 5, 8
Passports Act, 1967 — Section 5, 6

Citation : (2015) 2 ILR Ker 629 : (2015) 2 KHC 708 : (2016) 1 RCR(Criminal) 590

Hon'ble Judges : A.V. Ramakrishna Pillai, J

Bench : Single Bench

Advocate : A. Rajasimhan, for the Appellant; N. Nagaresh, Advocate Assistant Solicitor General, Advocates for the Respondent

Final Decision : Allowed

Judgement

A.V. Ramakrishna Pillai, J.

1. Aggrieved by the inaction on the part of the respondents in issuing the passport to the petitioner's minor daughter as per Ext. P9 application, the petitioner has approached this Court with this writ petition.

2. The petitioner is an Overseas Indian Citizen, who was born to Indian parents in U.S. She came to India when she was 10 years old. According to the petitioner, since then she was living in India and had her schooling and college educations here. The petitioner states that in a troublesome "live in" relationship, she gave birth to a girl, who is now 5 years of age. At present, the child is with her. According to the petitioner, there is no litigation till date between the petitioner and the child's father. Now, she wants to go to U.S. for job along with the child. There is no one in India to look after the child and, therefore, she applied for a passport for her daughter as per Ext. P9. She had also produced her passport which, according to her, is sufficient as per Rule IV(A)

(3)(b) of Schedule III of the Passport Rules, 1980. Ext. P9 application has not been processed and the first respondent is insisting for parent's Indian passport. It is with this background, the petitioner has come up before this Court.

3. In the statement filed on behalf of respondents 1 and 2, it is stated that the respondents are unable to consider the passport application as per law. According to them, they are vested with the powers to issue passport only to the prescribed classes of persons under the Passport Rules, 1980. According to them, the issue regarding citizenship of the petitioner's minor daughter falls beyond the ambit of PIA or for the Ministry External Affairs. Therefore, according to them, the petitioner has to approach the Ministry of Home Affairs for further assistance in the matter. Their stand is that once the citizenship of the child is established, the petitioner may apply for the child's passport through duly appointed legal guardians as per the established procedures.

4. I have heard the learned counsel for the petitioner and the learned standing counsel for the respondents.

5. Evidently and admittedly too, the petitioner is an Overseas Indian Citizen, who was born to Indian parents in U.S. The definite case of the petitioner is that she came to India when she was 10 years old and she completed the studies. These facts are not disputed by the respondents.

6. Exts. P4 and P5 which are the copies of the secondary school leaving certificate and degree certificate would establish that the petitioner has completed her school as well as degree education in Kerala. At present, she is working as on-line medical transcriptionist in a U.S. Company. Ext. P6 is her PAN card and Ext. P7 is her driving licence. Unfortunately, the petitioner had a "live in" relationship with one Prasanth Sathyavan. There was an unregistered marriage also between them. Mr. Prasanth was hailing from Bangalore. In that relationship, the petitioner gave birth to her daughter by name Archana Prasanth on 25.5.2009. Ext. P8 is the birth certificate.

7. The petitioner admits that she had a prolonged trouble some life with Mr. Prasanth, who later deserted her and the child eight months ago. Since then, they are living separately. No litigation is either pending or disposed of between them. Mr. Prasanth is a native of Bangalore. This fact is also not denied by the respondents. Now, the petitioner wants to go and work in U.S. and she wants to take her child with her as there is nobody to look after the child. It is in this context, she made Ext. P9 application.

8. Now various difficulties are expressed by the respondents in issuing the passport as per Ext. P9 application. However, the respondents maintained the stand that once the citizenship of the petitioner's minor daughter is established, they will be in a position to process Ext. P9 application and to issue passport to the child.

9. The petitioner points out that she appeared before the first respondent who

insisted that she should have an Indian Passport, and returned the entire original file to her after taking the scribbled print outs. However, no orders have been passed refusing the passport under Section 6 of the Passports Act, 1967. Section 6 of the Passport Act, which covers the field, deals with refusal of passport reads as follows:

"Refusal of passports, travel documents etc.--

(1) Subject to the other provisions of this Act, the passport authority shall refuse to make an endorsement for visiting any country under clause (b) or clause (c) of Sub-section (2) of section 5 on any one or more of the following grounds, and on no other ground, namely:--

(a) that the applicant may, or is likely to, engage in such country in activities prejudicial to the sovereignty and integrity of India:

(b) that the presence of the applicant in such country may, or is likely to, be detrimental to the security of India;

(c) that the presence of the applicant in such country may, or is likely to, prejudice the friendly relations of India with that or any other country;

(d) that in the opinion of the Central Government the presence of the applicant in such country is not the public interest.

(2) Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under clause (c) of Sub-section (2) of section 5 on any one or more of the following grounds, and on no other ground, namely:--

(a) that the applicant is not a citizen of India;

(b) that the applicant may, or is likely to engage outside India in activities prejudicial to the sovereignty and integrity of India;

(c) that the departure of the applicant from India may, or is likely to, be detrimental to the security of India;

(d) that the presence of the applicant outside India may, or is likely to, prejudice the friendly relations of India with any foreign country;

(e) that the applicant has, at any time during the period of five years immediately preceding the date of his application, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;

(f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India;

(g) that a warrant or summons for the appearance, or a warrant for the arrest, of the applicant has been issued by a court under any law for the time being in

force or that an order prohibiting the departure from India of the applicant has been made by any such court;

(h) that the applicant has been repatriated and has not reimbursed the expenditure incurred in connection with such repatriation;

(i) that in the opinion of the Central Government, the issue of a passport or travel document to the applicant will not be in the public interest."

10. In the instant case, there was no order of refusal to issue passport. Had there been such an order of refusal, the petitioner might have approached the appellate forum for redressal of her grievance. The reason for the denial for the want of Indian passport to her minor daughter which, according to the petitioner, is illegal, unnecessary and unwarranted as evidenced from the rules.

11. It was pointed out by the learned counsel for the petitioner that as per Rule IVA(3)(b) of Schedule III of the Passport Rules, 1980, the parent need to produce the passport and it need not be an Indian passport. I see valid force in the said submission. The petitioner has complied with the said requirement. The Rules mandate Annexures C and G for a single parent or guardian to get the passport for the minor. These are the affidavits sworn before the Judicial First Class Magistrate evidencing the parenthood and the custody of the child. Here, the petitioner is in the custody of the child and the child is still in a feeding stage. The petitioner points out that the child was produced before the learned Magistrate who attested the affidavits. The petitioner appeared before the respondents along with the child and there cannot be any doubt regarding the custody of the child.

12. The marriage with the child's father was not registered and it was a "living in" relationship which neither party wanted to continue. They are separated for ever and the future of the child is at stake. Ext. P3, which is the copy of the passport of the petitioner, contains the certificate of registration issued by the Ministry of Home Affairs, Government of India. As per Ext. P3, the petitioner has been registered as an Overseas Citizen of India under the provisions of Section 7A of the Citizenship Act, 1955. The same is seen issued on 24.9.2014 vide S.O. 542(E) dated 11th April, 2005 published in the Gazette of India Extra., Pt.II, Sec. 3(ii), dated 11th April, 2005.

13. Vide S.O. 542(E) dated 11.4.2005, the Central Government has specified the following rights to the persons registered as overseas citizens of India under Section 7A of the Act. They shall be entitled to the following--

"(a) grant of multiple entry lifelong visa. for visiting India for any purpose;

(b) exemption from registration with Foreign Regional Registration Officer or Foreign Registration Officer for any length of stay in India; and

(c) parity with Non-Resident Indians in respect of all facilities available to them in economic, financial and educational fields except in matters relating to the

acquisition of agricultural or plantation properties."

14. Similarly, Vide S.O. 12(E) dated 5th January, 2007 published in the Gazette of India, Extra., Pt.II, Sec. 3(i) dated 6th January, 2007, the registered overseas citizens shall be treated at par with the non resident Indians in the matter of inter-country adoption of Indian children, and also in the matter of tariffs in air fares in domestic sectors in India.

15. Article 8 of the Constitution of India deals with the rights of citizens of certain persons of Indian origin residing outside India. It reads as follows:

"Notwithstanding anything in Article 5, any person who or either of whose parents or any of whose grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted) and who is ordinarily residing in any country outside India as so defined shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him therefore to such diplomatic or consular representative, whether before or after the commencement of this Constitution, in the form and manner prescribed by the Government of the Dominion of India or the Government of India."

16. Here, the parents of the petitioner are of Indian origin. Though the petitioner was born in U.S. she had to come to India at the age of 10. By registration as per Section 7A of the Act, the petitioner shall be deemed to be a citizen of India. Therefore, by virtue of Article 8 of the Constitution read with Section 7A of the Citizenship Act, the competency of the petitioner to approach this Court cannot be challenged as she is deemed to be a citizen of India.

17. It is true that the petitioner's minor daughter was not born in a legal wedlock. However, the child was born in India. Every person is born with a domicile of origin. It is a domicile received by him/her at his/her birth. The domicile of origin of every person of legitimate birth is the country in which at the time of his/her birth, his father was domiciled. The domicile of origin is a concept of law and clings to a man till he abandons it and the domicile of origin prevails until a new domicile has been acquired.

18. The petitioner's daughter being a minor, it cannot be said that she has an intention to abandon the domicile of her origin. The petitioner is a single parent and there is no one to look after the child in the event of her going to U.S. Therefore, the situation demands an humanitarian consideration and it would be a travesty of justice if passport is denied to the petitioner's minor daughter on hyper technical grounds.

19. It is crucial to note that the right to life includes the right of the children to grow with the parents and to be in the company of the parents. The denial of the same would be violation of natural justice of the petitioner as well as her minor daughter. It is also detrimental to the psychological growth and development of

the children. Therefore, to meet the ends of justice, it is highly essential and expedient to give a direction to the respondents to issue passport to the petitioner's minor daughter.

In the result, the writ petition is allowed. The respondents are directed to possess Ext. P9 application and issue Indian Passport to the petitioner's minor daughter named Archana Prasanth within a period of two weeks from the date of receipt of a copy of this judgment.

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