

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 7TH DAY OF AUGUST, 2013

BEFORE

THE HON'BLE MR. JUSTICE A.S. BOPANNA

WRIT PETITION NO.15437/2013 (GM-PASS)

BETWEEN:

TENZIN CHOEPHAG LING RINPOCHE,
AGED ABOUT 27 YEARS,
SON OF ZANGPOLA,
RESIDING AT YONGZIN LINGTSANG LABRANG,
LC-2, DREPUNG MONASTRY, MUNDGOD,
KARWAR – 581 411,
KARNATAKA.

... PETITIONER

(BY SRI V.SRINIVASA RAGHAVAN, ADV. FOR INDUS LAW)

AND:

1. UNION OF INDIA,
REPRESENTED BY THE SECRETARY,
MINISTRY OF EXTERNAL AFFAIRS,
ROOM NO.20, 1ST FLOOR,
PATIALA HOUSE ANNEXE,
NEW DELHI – 110 001.
2. UNION OF INDIA,
REPRESENTED BY THE SECRETARY,
MINISTRY OF HOME AFFAIRS,
NORTH BLOCK,
NEW DELHI – 110 001.
3. REGIONAL PASSPORT OFFICE,
REPRESENTED BY THE PASSPOST OFFICER,
80 FEET ROAD, EIGHTH BLOCK,

KORAMANGALA,
BANGALORE-560 095.

... RESPONDENTS

(BY MS.GOWHAR UNNISA, ADV. FOR R1-R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 19.2.2013 WITH FILE NO.1200031-CPC-BNG VIDE ANNEXURE-A ISSUED BY THE 3RD RESPONDENT IN CONSULTATION WITH THE 1ST RESPONDENT DECLARING THAT THE PETITIONER IS NOT A CITIZEN OF INDIA AND CONSEQUENTLY REFUSING TO ISSUE HIM WITH A PASSPORT.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING 'B' GROUP THIS DAY, THE COURT PASSED THE FOLLOWING:

ORDER

The petitioner is before this Court assailing the order dated 19.02.2013 (Annexure-A) and has sought for issue of mandamus to direct the respondents to issue a passport to the petitioner within a time frame.

2. The respondents have entered appearance and filed their objection statement.

3. Heard the learned counsel for the petitioner and the Central Government Standing Counsel for the respondents and perused the petition papers.

4. The parents of the petitioner are Tibetan Nationals who are in India. The petitioner was born in India on 18.11.1985 in Mcleodganj Dharamsala, Kangra District, Himachal Pradesh. The fact that the petitioner has also been issued with a identity certificate as issued to Tibetan nationals settled in India is not in dispute. When this was the position, the petitioner had applied for issue of passport in his favour.

5. At the first instance, the request made by the petitioner had not been considered. In that view, the petitioner was before this Court in W.P.No.33689/2012. This Court while disposing of the petition on 09.01.2013, had recorded the statement of the respondents that the case of the respondents will be considered in accordance with law. Pursuant thereto, the communication dated 19.02.2013 is issued to the petitioner, whereby the request of the petitioner for issue of passport has been declined in consultation with Home Affairs (Foreigners Division), New Delhi. The reason putforth in that regard by the respondents is that the children born to the

Tibetan Refugees in India cannot be automatically treated as Indian citizens under the Citizenship Act, 1955 and the same could be considered only if, a certificate is issued in response to an application made under Section 9 (2) of the Citizenship Act, 1955. The said communication dated 19.02.2013 is assailed in the instant petition.

6. The learned counsel for the petitioner while contending that the reasons putforth in the said application is not sustainable inasmuch as the children born to Tibetan parents settled in India between the periods 26.01.1950 to 01.07.1987 would automatically be an Indian citizen by birth in terms of Section 3 (1) (a) of the Citizenship Act would also place reliance on the judgment rendered by the High Court of Delhi in W.P. (C) 12179/2009 decided on 22.12.2010. In that view, the learned counsel for the petitioner places reliance on the birth certificate of the petitioner which indicates that the petitioner was born on 18.11.1985 and as such is eligible to be considered as an Indian Citizen by birth.

7. The learned counsel for the respondents relying upon the objection statement would contend that in the instant case, the decision rendered by the Delhi High Court cannot be made applicable. It is her contention that the petitioner though was born on 18.11.1985 in India, cannot be automatically considered to be a Citizen by birth under the Act, but would have to file an application as contemplated under Section 9 (2) of the Citizenship Act, 1955. It is contended that in the application made for issue of passport, the nationality of the petitioner was indicated as Tibetan and in such circumstance, without there being an application as contemplated under the Citizenship Act, 1955 and the competent authority issuing a Citizenship Certificate, the case of the petitioner cannot be considered for issue of passport. The contention in fact is in similar lines as indicated in the impugned communication dated 19.02.2013.

8. In that regard, first and foremost it is necessary to refer to the decision of the Delhi High Court,

a copy of which is annexed as Annexure-K to the petition. A perusal of the said decision would indicate that in almost similar circumstances, the petitioner therein had approached the Delhi High Court when the authority had rejected the case of the petitioner for issue of passport on the ground that the petitioner had not surrendered the identity certificate and the petitioner therein was not accepted as a Citizen by birth. While considering these aspects of the matter, the Delhi High Court has made detailed reference to the provisions contained in Section 3 of the Citizenship Act, 1955 and also the amendment to the said provision.

9. In that light, after referring to the debate in the Parliament, has arrived at the conclusion that the cut off date of 26.01.1950 and 01.07.1987 is to be taken into consideration and any person who is born to the parents in India between the said two dates is to be automatically considered as a Citizen by birth in India. In that circumstance, the Court was of the view that the mentioning of the nationality as Tibetan in the

application is of no consequence and the issue of the identity certificate has also been referred to in the said decision. While considering that aspect of the matter, the Court has arrived at the conclusion that when a person is born in India to the Tibetan nationals, who are settled in India and if no passport is issued to such person for the purpose of identification, the identity certificate would be issued to such person to enable the stay of such person in India. Having taken note of this aspect of the matter, the Court has also referred to the situation that the issue of a passport to a person would thereafter identify his status in India and therefore the surrender of the identity certificate in such circumstance is necessary.

10. Therefore, what has been clarified in the said decision is that the identity certificate would be issued and be held by a person born to the Tibetan parents, even if they are born after 26.01.1950 and before 01.07.1987 and that in itself would not disentitle a person to claim Citizenship by birth and once the passport is issued, the surrender of certificate would only

mean that the subsequent documents are available with the person who is a Citizen of India.

11. Having noticed the decision rendered by the High Court of New Delhi, I am of the opinion that if a similar circumstance arises, certainly the petitioner would be entitled to the benefit of the conclusion reached therein inasmuch as I see no reason whatsoever to take a different view from what has been stated by the Delhi High Court.

12. Furthermore, what is also to be noticed is that in the impugned communication dated 19.02.2013 itself, the respondents have taken note of the said decision in W.P.(C) No.12179/2009 and have also indicated that the said decision has been implemented. In such circumstance, when the said decision still holds the field and in the instant facts when it is seen that the petitioner was born on 18.11.1985 i.e. before 01.07.1987, certainly the petitioner also would be entitled to claim the status of an Indian Citizen by birth. Therefore, in my opinion, the impugned communication

dated 19.02.2013 by which the request of the petitioner has not been considered on the grounds stated therein would not be sustainable. The same is accordingly quashed. The respondents No.2 and 3 are now directed to consider the request of the petitioner for issue of passport de hors the reasons indicated in the impugned communication, but if the petitioner is otherwise entitled for issue of passport in accordance with law. The request of the petitioner for issue of passport shall be considered as expeditiously as possible, but not later than two months from the date all the necessary verifications from competent authorities are received by the issuing authority.

13. In terms of the above, the petition stands disposed of.

**Sd/-
JUDGE**

ST