

(2016) 09 KL CK 0047

High Court Of Kerala

Case No: Writ Petition (C).No. 29702 of 2016 (K).

Seana Shanth, Aged 2 Months,
D/o. Chandran Nair
Prasanthkumar, Now Residing At
Simi Cottage, Thaikattukara P.O.,
Star Lane, Aluva, Ernakulam.
Rep. By Her Mother Simi Rajan,
Aged 36, W/o.Chandran Nair
Prasanthkumar, Now Residing At
Simi Cottage, Thaikattuk

APPELLANT

Vs

RESPONDENT

Date of Decision: Sept. 28, 2016

Acts Referred:

- Citizenship Act, 1955 - Section 7B
- Constitution of India, 1950 - Article 226
- Passports Act, 1967 - Section 20

Citation: (2017) 170 AIC 516 : (2017) AIR(Kerala) 17 : (2017) 1 CivilLJ 522 : (2016) 4 KLT 497

Hon'ble Judges: Shaji P. Chaly, J.

Bench: Single Bench

Advocate: Sri. P. Shanes Methar, Advocate, for the Petitioner; Sri. N. Nagaresh, Assist. S.G. of India, for the Respondent Nos. 1 and 2

Final Decision: Dismissed

Judgement

Mr. Shaji P. Chaly, J. - Petitioner is a two month old baby, born to parents, who are overseas citizens of India cardholders, represented by her guardian and mother. Petitioner is aggrieved by the stand of the 2nd respondent in not receiving her application for a passport enabling her to go abroad along with her mother, a permanent resident in United Kingdom.

2. Material facts for the disposal of writ petition are as follows; petitioner was born on 25.06.2016, evident from Ext.P1 birth certificate. Parents of the petitioner were Indian citizens and their marriage was solemnized in the year 2006 as per the rites prevailing in Hindu Nair community, registered with the Registrar of Marriages, Koothattukulam Grama Panchayat, evident from Ext.P2. Parents of the petitioner were holding Indian passport till 2010, evident from Exts.P3 and P4. In the year 2008, mother of the petitioner became a British citizen, evident from Ext.P5 and in the year 2013, evident from Ext.P6, father of the petitioner became a British citizen. Therefore, parents of the petitioner have secured British Passport and, Ext.P7 is the passport issued to the mother of the petitioner by United Kingdom of Great Britain and the Northern Ireland. Parents of the petitioner, by virtue of the provisions of Indian Citizenship Act, 1955, hereinafter called "the Act", are registered as overseas citizens of India, evident from Exts.P8 and P9. As per Section 7B of the Act, an overseas citizen of India card holder is entitled to all those rights and privileges other than those coming under sub-section (2) of Section 7B of the Act. The mother of the petitioner is working as a Nurse in Al-Ain hospital, Abudhabi and has to return for duty by 15th of September, 2016 and she wants to take the petitioner along with her for which a valid passport and other travel documents issued by the 1st respondent is necessary. Petitioner is only 65 days old and advised exclusive breast feeding alone for 6 months, evident from Ext.P10, discharge summary. It was in that circumstances, mother of the petitioner approached the 2nd respondent with a request to issue passport to the petitioner. However, 2nd respondent did not heed to the request of the petitioner and conveyed to her, if only she is having a valid Aadhaar card, online application for passport can be submitted. According to the petitioner, in spite of the earnest efforts of the petitioner, 2nd respondent could not be persuaded. It is the further contention of the petitioner, as per Section 20 of the Passport Act, the competent authority can issue the passport or travel documents to a person who is not a citizen of India. It is in this background, seeking appropriate direction, this writ petition is filed.

3. First respondent has filed a statement basically contending that, as provided under Section 6(2)(a) of Passports Act, 1967, 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) on the ground that, the applicant is not a citizen of India. Section 20 of the Passports Act, 1967 deals with a different situation to issue a passport or a travel document to a person, who is a citizen of India, if the Government is of the opinion that, it is necessary so to do in public interest and the benefits provided thereunder is not applicable to the petitioner since there is no public interest involved in the subject matter.

4. That apart it is also stated that as per Section 3(1)(c) of the Act, every person born in India on or after the commencement of 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. In the present case, the mother renounced Indian citizenship and acquired British citizenship during the year 2008 and the father renounced Indian citizenship and acquired British citizenship during the year 2013. The child is born in the year 2016 and since at the time of birth of the child, both parents were British citizens, child is also a British citizen. So also it is contended that the Central Government has specified the following rights to the persons registered as overseas citizens of India under Section 7A of the Act, as per S.O.542(E) dated 11.4.2005.

"(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."

5. However, the right to secure Indian passport has not been specified under the said provision. Moreover, parents of the child as per their letter dated 27.7.2016, stated that they have already applied for a British passport to the minor child. The request of the parents had been forwarded to the Ministry of External Affairs, and as per e-mail dated 12.8.2016 communicated to the 2nd respondent to advise the parents to approach the British Mission to obtain passport for the child, and accordingly the same was informed to the parents of the petitioner. Therefore, it is submitted, petitioner is not entitled for any relief as sought for in the writ petition.

6. Heard learned counsel for the petitioner, learned ASG appearing for the respondent, perused the documents on record and the pleadings put forth by the respective parties.

7. On evaluating the respective submissions made across the Bar and perusing the documents, the question to be considered is whether a child born in India to British citizens, enjoying status of overseas citizens, is entitled to secure a passport under the Passports Act, 1967. It is an admitted fact, father and mother of the petitioner were Indian citizens, evident from Exts.P2, P3 and P4. However, it is also an admitted fact that, both of them renounced Indian citizenship and acquired British citizenship in 2013 and 2008 respectively. True, parents of the petitioner are cardholders of overseas citizens of India issued under Section 7A of the Act. However overseas citizens of India are provided with only limited rights enumerated above, as per Section 7A of the Act. Therefore, it can be seen that, over and above the rights conferred to the overseas cardholders, no other right can be demanded by the parents of the petitioner. In that view of the matter, merely because parents of the petitioner were Indian citizens by origin, who have secured citizenship of United Kingdom, have no liberty to seek issuance of passport merely because they hold card of overseas citizens of India.

8. Yet another legal contention advanced by learned counsel for the petitioner is that, under Section 20 of the Passports Act, 1967, 2nd respondent is vested with powers to issue passport and other travel documents to persons who are not citizens of India which reads thus:

"Notwithstanding anything contained in the foregoing provisions relating to issue of a passport or travel document, the Central Government may issue, or cause to be issued, a passport or travel document to a person who is not a citizen of India if that Government is of the opinion that it is necessary so to do in the public interest".

9. According to the learned counsel for the petitioner, Section 20 is an enabling circumstance for the petitioner to apply for a passport in order to have a way out to get over the present situation. However, Section 20 is qualified with a very important factor namely, public interest which differs from situation to situation. It may be a situation where extradition is done by the Government of India. It may be a situation where political asylum is provided by the Government of India to a non national. It may be a situation where a non national is deported in the best interest and security of the country, but it can never be said, the child born in India to foreign citizens of Indian origin is entitled in "public interest", for an Indian passport. Therefore, in my considered opinion, the said ground raised by the learned counsel for the petitioner cannot also be sustained.

10. It is true, Section 7B of the Citizenship Act, 1955 deals with conferment of rights on overseas citizens of India wherein it is stipulated that notwithstanding anything contained in any other law for the time being in force, an overseas citizen of India shall be entitled to such rights (other than the rights specified under sub-section (2)) as the Central Government may, by notification in the official gazette, specify in this behalf. Sub-section (2) deals with various circumstances for which no right is conferred on an overseas citizen of India. Taking note of the said prohibition, learned counsel for the petitioner contended that, under sub-section (2) there is no prohibition created for an overseas citizen of India to secure a passport and therefore, the petitioner is entitled to a passport as sought for. But in my considered opinion securing of passport is not a vested right not even to a citizen of India but it can only be secured on the basis of the provisions contained under the Passports Act, 1967. Therefore, I do not think that, such an argument advanced by learned counsel for the petitioner can be sustained under law. Moreover, Section 20 of the Passports Act deals with issuance of a passport to a foreign national. When there is a specific provision under the relevant statute to deal with a situation, it cannot be said that, in the absence of prohibition contained under Section 7B(2) of the Citizenship Act, 1955, petitioner is entitled as of right to obtain a passport.

11. Taking into account the totality of the circumstances and the provisions of law discussed above, I am satisfied that there is no illegality, arbitrariness or other legal infirmities on the part of the 2nd respondent, declining to issue a passport to the petitioner, enabling this court to exercise the power conferred under Article 226 of

the Constitution of India. . Sequel to the above discussion is that, writ petition fails and accordingly it is dismissed. However, I make it clear, the same will not stand in the way of the petitioner seeking appropriate reliefs before the Government of India, which may be in a position to extend necessary assistance to the petitioner on the basis of any treaty, agreement etc. etc. It is also observed that, the Ministry of External Affairs may explore the possibility of making a provision to tackle such a situation, exercising the power conferred on it under the Passports Act, 1967, or the Citizenship Act, 1955 and the rules thereunder, enabling to secure a travel document for a short duration.