



\$~J

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment pronounced on: 02.02.2026+ W.P.(C) 16380/2024 and CM APPL.69074/2024

MS. YANGCHEN DRAKMARGYAPONPetitioner

Through: Mr. Sanjay Vashishtha, Advocate
along with Mr. Siddhartha Goswami,
Ms. Geetanjali Reddy and Mr. Aditya
Sachdeva, Advocates.

versus

UNION OF INDIA THROUGH ITS
SECRETARY, MINISTRY OF EXTERNAL AFFAIRS & ORS.

.....Respondents

Through: Mr. Mukul Singh, CGSC along with
Ms. Ira Singh and Mr. Aryan Dhaka,
Advocates for UOI.

CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****JUDGMENT**

%

1. The petitioner has filed the present petition praying as under –

“A. Issue an order / Writ / direction under Article 226 of the Constitution of India in the nature of Mandamus directing the Respondents to issue Indian Passport to the Petitioner.

B. Issue an order / Writ under Article 226 of the Constitution of India or any other appropriate writ recognising the Citizenship of India of the Petitioner in view of section 3(1) (a) of the Indian Citizenship Act, 1955.”

2. The petitioner claims to be a Tibetan refugee by descent, born in Dharamshala, Himachal Pradesh, India on 15.05.1966, and thus an Indian



citizen by birth under Section 3(1)(a) of the Citizenship Act, 1955. The said section provides that every person born in India on or after 26.01.1950, but before 01.07.1987, is a citizen of India by birth, unless covered by exclusions under Section 3(2), which, it is submitted, are not applicable in her case. In order to establish its place of birth in India, the petitioner has annexed an Indian Identity certificate where the petitioner's place of birth is mentioned as Dharamshala, Himachal Pradesh.

3. The background of the matter is that in 1997, the petitioner migrated to Switzerland along with her then two-year-old son, Mr. Tenzin Jigdral Drakmargyapon, who was born in Darjeeling, India, on 27.03.1995. The purpose of her migration was to reunite with her husband, the late Mr. Ngawang Choephel, who had previously settled in Switzerland. Subsequently, on 03.06.2000, the petitioner gave birth to a daughter, Ms. Tenzin Yeshe Choephel, in Switzerland.

4. It is submitted that on 09.06.2009, the petitioner's husband applied to the Swiss cantonal migration authority for a foreign passport for the entire family, as all four members held residence permits in Switzerland. It is submitted that this resulted in the issuance of foreign passport on 02.07.2009, for the entire family of the petitioner, under Article 10 of the Swiss Ordinance on the Establishment of Travel Documents for Foreigners. The validity of the said passport was for five years until 01.07.2014. However, it is submitted that when the petitioner's husband applied for a renewal on 09.09.2014, the then Federal Office for Migration [now the State Secretariat for Migration (SEM)] rejected the application on 05.11.2014.



SEM held that the petitioner's husband should have attempted to obtain a national passport from the competent authority of his country of origin. The translated version of the said order dated 05.11.2014 passed by the Federal Office for Migration (annexed as Annexure P-5) is reproduced as under –

“Sir,

We refer to your request of 9 September 2014 for the issuance of a passport for foreigners and inform you of the following:

After examining the file, we note that the conditions for issuing the required document are clearly not met, in accordance with the Ordinance on the Issue of Travel Documents for Foreigners (ODV, RS 143.5). Each new application is examined again. We therefore note that you can, and may reasonably be required to, take steps with the competent authority of your country of origin in Switzerland to have a national passport issued for you. These steps must be taken personally. Consequently, you are not dependent on a replacement Swiss travel document. If the competent authority refuses to issue you with the document, we ask you to provide us with written proof stating the reasons for the refusal. Technical or organisational delays in issuing the passport cannot consider you as lacking travel documents.

In view of the above, you have the possibility until 4 December 2014 to request in writing a formal decision subject to appeal, subject to a fee of CHF 150 (RS 172.041.1, art. 2 OGEmol of 8 September 2004). After this deadline, your request will be considered as being without object.”

5. It is submitted that thereafter, on 01.12.2014, the petitioner's husband wrote to the Federal Office for Migration explaining his statelessness and challenges in obtaining travel documents. Translated version of the said letter [annexed as Annexure – P – 6 (colly)] is reproduced as under –

“1. I am in a situation where I have no whatsoever contact with the People's Republic of China as I escaped from Tibet in 1959 with my parents, first to Nepal and later to India. I am in fact a stateless person since 1959



2. The only travel document I possessed was the one issued by the Indian government which is called Certificate of Identity. While applying to your service for "Foreign Passport for" in 2009 I clarified by I could no longer get the Indian travel document processed in Geneva due to changes made by India. Also, I no longer had any residential base in India.

3. In the eyes of the Chinese authorities I am a "separatist". Between 1985-2003 I worked for the Tibetan government in exile in Dharamsala, India and while working at the Tibet Office in Geneva I was actively lobbying to bring the human rights situation in Tibet to the attention of the United Nations human rights mechanisms. I have been doing this kind of lobbying work now for over 25 years and even today I continue to do lobbying work as a representative of an Asian NGO.

Finally, I would like to inform you that my family members must also apply for new passports that all expired on 01/07/2104:

Yangchen Drakmargyapon-Passport Number: P0002990

Tenzin Jigdral Drakmargyapon-Passport Number: P0002996

Tenzin Yeshe Choephel-Passport Number: P0002994

I would like to thank you for your attention to this letter and would be grateful if my new passport is issued as soon as possible."

6. However, the SEM, via letter dated 16.01.2015, refused to issue new travel documents and insisted that the petitioner's husband must approach the Chinese Embassy directly for a national passport. Translated version of letter dated 16.01.2015 [annexed as Annexure – P – 6 (colly)] is reproduced as under –

"Although we understand the difficulty of the situation, as mentioned in our letter of 12 December 2014 and after a review of your observations, we inform you that no new elements likely to change our point of view have been brought forward. The conditions for the establishment of the requested document are not met, in accordance with the Ordinance on the establishment of travel documents for foreigners (ODV, RS 143.5).



It is necessary for you to take steps to obtain a national passport. These steps must be taken seriously and personally with the Chinese Embassy and not by a third party. If these steps are unsuccessful and the Chinese Embassy categorically refuses to provide you with the reasons for the refusal in writing, you have the opportunity to demonstrate to the SEM your efforts and steps taken by mentioning, for example, which employee you spoke to, what were the reasons for the refusal given orally, etc.

Therefore, we are giving you one last opportunity to request a decision. Formality subject to appeal (for a fee of CHF 150.-) In this case, we We ask you to let us know in writing by January 26, 2015.”

7. Thereafter, the petitioner’s husband died and by order of 30 May 2017, the Court for the Protection of Adults and Children established a guardianship of representation and management in favour of petitioner. As part of the said mandate, REPUBLIC AND CANTON OF GENEVA, Department of Social Cohesion, Adult Protection Service was required to represent the petitioner in her relations with third parties, in administrative and legal matters in particular.

8. This is evident from the letter dated 28.09.2021 sent by the REPUBLIC AND CANTON OF GENEVA, Department of Social Cohesion, Adult Protection Service on behalf of the petitioner to the SEM requesting it to issue foreign passport to the petitioner and her two children as all avenues available to them to obtain a Chinese or Indian national passport have been exhausted and have all been rejected. Translated version of letter dated 28.09.2021 [annexed as Annexure – P – 7 (colly)] is reproduced as under –

“Concerns: Our data subject Mrs. Yangchen DRAKMARGYAPON, born on May 15, 1966, widow of Mr. Ngawang CHOEPHEL, her daughter Ms. Tenzin Yeshe CHOEPHEL, born on June 3, 2000, and her son Mr. Tenzin Jigdral DRAKMARGYAPON, born on March 25, 1995

Madam, Sir,



By order of 30 May 2017, attached, the Court for the Protection of Adults and Children (TPAE) established a guardianship of representation and management in favour of Mrs Yangchen DRAKMARGYAPON (Exhibit No. 1). As part of this mandate, we are required to represent our protégé in her relations with third parties, particularly in administrative and legal matters. The TPAE also established a guardianship of representation and management in favour of her daughter Ms Tenzin Yeshe CHOEPHEL (Exhibit No. 2)

We hereby request that a foreign passport be issued to Mrs. Yangchen DRAKMARGYAPON and her two children, Ms. Tenzin Yeshe CHOEPHEL and Mr. Tenzin Jigdral DRAKMARGYAPON, as all avenues available to them to obtain a Chinese or Indian national passport have been exhausted and have all been rejected.

Mrs. Yangchen DRAKMARGYAPON and her children do not hold a valid national passport because they are Tibetan refugees. You will therefore find that it is impossible for them to obtain a Chinese passport, especially since Mr. Ngawang CHOEPHEL worked for the Tibetan Government in exile in Dharamsala and for the Tibet Office in Geneva. For this reason, he was perceived as a separatist by the Government of the People's Republic of China and, therefore, his family as well. In any case, it should be noted that Mr. Ngawang CHOEPHEL had left China with his parents in 1959 when he was only one year old, initially bound for Nepal, then India (Exhibit No. 3). It was in the latter country that Mr. Ngawang CHOEPHEL grew up, made his life and met Mrs. Yangchen DRAKMARGYAPON.

Since Tibet was annexed to China, the entire family lived in exile in India until they settled in Switzerland. On 2 July 2009, the members of the family concerned were each issued a foreigner's passport valid until 1 July 2014.

When their foreign passports expired, they requested their renewal, which you refused, indicating that they could be given a national passport. The family then took several steps and contacted the Chinese Embassy in Bern on several occasions. However, their request was never followed up.

In the meantime, Mr. Ngawang CHOEPHEL unfortunately passed away and Mrs. Yangchen DRAKMARGYAPON was placed under guardianship



of representation and management in 2017, which is why we took over her administrative procedures.

By letter dated September 22, 2020, we again approached the Chinese Embassy in Beme to request the granting of a national passport for Mrs. Yangchen DRAKMARGYAPON and her two children (Exhibit No. 4). However, we have not received any response to date.

In April 2021, we contacted two associations working for the defense of Tibetans, namely the "Swiss-Tibet Friendship Society GSTF/SAST" and the "The Tibet Bureau". The Tibet Bureau explained to us that Tibetan refugees in India can apply for a "Certificate of Identity" allowing them to travel. However, they drew our attention to the fact that, for Tibetans no longer residing in India, it is imperative that the renewal of this identity certificate be carried out before its expiry date, otherwise they risk losing the right to apply for a new Indian travel document (Exhibit No. 5). Unfortunately, Mrs. Yangchen DRAKMARGYAPON and her family were not aware of this detail and therefore failed to renew their identity certificates before their expiry date. Consequently, our protégé and her children lost the right to an Indian document allowing them to travel.

However, we spoke by telephone with the Consulate of India in Geneva who informed us that we had to go directly in person to their premises. Therefore, Ms. Yangchen DRAKMARGYAPON went there on 1 May 2021, but her application for renewal of the Indian identity certificates was rejected. We asked the Indian Consulate to inform us in writing of their refusal, specifying the reasons, but we have still not received a response (Exhibit No. 6).

Unwilling to give up and determined to obtain an identity document, Madam, Yangchen DRAKMARGYAPON wrote a letter to the Consul General of India in Geneva summarizing her situation. This letter was directly given in person on May 25, 2021 to a contact person by the name of Mr. Deepak CHAKRABORTY (Exhibit No. 7). The latter informed our client orally that his request had been refused.

Given that Mrs. Yangchen DRAKMARGYAPON and her children have exhausted all options open to them and no solution has been found, we would like to ask you once again to grant them a foreigner's passport. Indeed, all three of them are in reality stateless persons without travel documents.



As for Mrs. Yangchen DRAKMARGYAPON and her daughter Ms. Tenzin Yeshe CHOEPHEL, the curators have the power of representation, and as for Mr. Tenzin Jigdral DRAKMARGYAPON, he countersigns this document, constituting his agreement.

We remain at your disposal for any further information and await your news. Please accept, Madam, Sir, our distinguished sentiments.”

9. However, the desired outcome appears to have eluded the petitioner.

10. In parallel, the petitioner herself applied for a foreign passport from cantonal migration authority on 04.11.2020, but this application was rejected by the SEM in a decision dated 19.04.2021. The SEM cited her place of birth in India to assert that she could acquire Indian citizenship under the Citizenship Act, 1955. It is submitted that it was only upon receiving this decision that the petitioner became aware of her legal entitlement to Indian citizenship. Translated version of letter dated 19.04.2021 (annexed as Annexure – P – 8) is reproduced as under –

“Consider in fact

The person concerned, born in Dharamsala, arrived in Switzerland on 28 July 1997 with her two-year-old son, born in Darjeeling, in order to join her husband, who was himself born in India and had entered Switzerland from that country. The person concerned and her child were granted an annual residence permit under the family reunification scheme.

On 9 June 2009, the husband of the person concerned applied to the competent cantonal

migration authority for a foreign passport on behalf of his entire family, namely two adults and two children who now hold a C permit. The husband of the person concerned indicated in particular that he was in possession of a yellow identity certificate (Identity Certificate) issued by the Indian government and that he was unable to obtain a renewal.

Validity of this document expired, unable to prove a place of residence in India.

On 2 July 2009, a foreign passport valid for 60 months was issued to the person concerned and her family members pursuant to Article 10 of the former ODV.



On 9 September 2014, the husband of the person concerned filed a new application for a foreign passport with the cantonal authority. The SEM rejected this application on 4 November 2014 and considered that it was reasonably required that the husband of the person concerned take steps with the competent authority of his country of origin in order to obtain a travel document.

By letter dated 1 December 2014, the husband of the person concerned maintained his request, stating that he had worked for the Tibetan government in exile in Dharamsala and for the Tibet Office in Geneva, which had made him a separatist in the eyes of the Chinese authorities. He also insisted on his lobbying activities.

By letters dated 12 December 2014 and 16 January 2015, the SEM maintained its position of 4 November 2014, drawing the attention of the interested party's husband to the fact that the steps to obtain a national passport had to be taken personally and that proof of these steps had to be produced without fail.

By letter of 22 September 2002, the SPad informed the SEM, as part of the procedure for extending Mrs Drakmargyapon's residence permit, that a guardianship had been established on 30 May 2017 in her favour. The person concerned absolutely needed a travel document to obtain an extension of her residence permit. Furthermore, steps had been taken by the Spad with the Chinese representation in Switzerland. However, due to political issues, collaboration with the Chinese authorities could not be guaranteed.

On November 4, 2020, Mrs. Drakmargyapon, now a widow, formally requested a passport for foreigners from the cantonal migration authority because she is a native of Tibet, there is no consulate, the Tibetan government lives in exile, and the Tibet office does not produce passports.

By letter dated 22 January 2021, the SEM informed the person concerned, whose establishment permit had been extended to 28 March 2025 in the meantime, that the conditions for establishing the required document were not met, since it is her responsibility to take steps with the



Indian authorities, it being considered in particular that her status is not an obstacle to the steps taken to obtain a national travel document.

File reference N 527549 Vyd

The interested party requested the establishment of a formal decision within the time limit, without producing any observations, by means of the SPAd.

Considers in law:

Within the meaning of Art. 4 para. 1 ODV (in conjunction with Art. 59 para. 2 let. b and c LEI), a stateless person recognised under the Convention of 28 September 1954 relating to the status of stateless persons and a foreigner without travel documents who has a residence permit are entitled to a passport for foreigners.

A foreigner without travel documents with an annual residence permit may benefit from a passport for foreigners (art 4 al 2 ODV)

The status is mentioned in the passport (art 4 al 3 ODV)

A foreigner is deemed to be without travel documents when he does not have any valid travel document issued by his State of origin or provenance, and that he cannot be required him to request the competent authorities of his State of origin or provenance the establishment or extension of such a document, or that it is impossible to obtain for him travel documents (art. 10 para. 1 ODV).

Delays incurred by the competent authorities of the State of origin or provenance in issuing a travel document do not justify recognition of the status of person without travel documents (art 10 para. 2 ODV)

In particular, persons in need of protection and asylum seekers cannot be required to contact the competent authorities of their State of origin or provenance (art. 10 al 3 ODV)

The status of a person without travel documents is noted by the SEM during the examination of the application (art 10 al 4 ODV)

The factual and legal situation in force at the time the application is decided constitutes a determining factor in the decision.

In this case, the person concerned stated that she was of Tibetan origin and that the Tibetan government did not issue passports. The SPAd also stated that it had contacted the Chinese representation in Switzerland, but that due to political issues related to the person concerned's situation, collaboration with the Chinese authorities was uncertain.



It is appropriate to note here that the person concerned was born in India and was the holder of an Identity Certificate issued by the Indian authorities. However, under the Citizenship Act of 1955, persons born in India between 20 January 1950 and 1 July 1987 can obtain Indian citizenship by birth, and this since 2017.

In view of the above, it is reasonably expected that the person concerned, born in India in 1966, currently holding a settlement permit without having been recognised as either stateless or a refugee in Switzerland, should take the necessary steps to obtain a national passport or a travel document (Identity Certificate) from the authorities of her country of origin.

File reference N527549 V

In view of the above, the person concerned has not taken all reasonably required steps to obtain a national passport. Consequently, as things stand, she is not considered to be a person without travel document within the meaning of the ODV and is therefore not entitled to a foreigner's passport.

In view of the above application must be rejected”

11. It is submitted that the SPAd subsequently contacted the Indian Consulate in Geneva, however, they were informed that applications must be submitted in person. Consequently, the petitioner visited the consulate on 01.05.2021, to apply for the renewal of her family's identity certificates. However, her application was rejected. Thereafter the petitioner addressed a letter to the Consul General of India on 21.05.2021, which was handed over in person on 25.05.2021 to Mr. Deepak Chakraborty (consular contact), explaining her situation and requesting an Indian Passport or IC. It is submitted that Mr. Chakraborty verbally informed her that the application had been rejected, but it is submitted that no written confirmation or reasons were given. Letter dated 21.05.2021 is reproduced as under –



“Dear Sir,

With reference to the above subject, I would like to request you to kindly renew them. The personal details, our IC copies, Swiss Passport for foreigners copies and the decision of Secretariat of State Migrations SEM-Swiss Authority are attached herewith for your kind information and are self explanatory.

The SEM-Swiss authority didn't renewed our Swiss Passport for foreigners expired on 01.07.2014 because the SEM no longer consider itself qualified. Told us to apply for Chinese Passports as my late husband was born in Tibet before the Chinese occupation of Tibet. My late husband tried his best to get them renewed but in vain.

Now They're asking us to apply for Indian Passport because I was born in India. The SEM assumes that they can reasonably ask my family to take steps to the Indian Consulate in order to get a national passport (Indian). Indeed, since 2017, according to the Citizenship Act of 1955, the people born in India between 26.01.1950 to 01.07.1987 can obtain Indian citizenship by birth. As I was born in 1966, the SEM assumes that I have now the right to obtain Indian nationality or at least an IC (page 3-4 of de Decision of SEM-SWISS Authority).

I therefore request you to kindly look into the matter and issue us (DRAKMARGYAPON Yangchen-mother, DRAKMARGYAPON Tenzin Jigdral-son and CHOEPHEL Tenzin Yeshe daughter) the Indian Passport or IC.”

12. Subsequently, on 10.03.2022, SPAd emailed seven Swiss embassies and consulates in India seeking intervention, but the Swiss Embassy in New Delhi declined to act in Indian immigration matters.

13. On 22.08.2022, it is submitted that SPAd submitted a formal request to SEM urging it to contact Indian and Chinese authorities to facilitate travel to India for the petitioner and her children. It is submitted that reason for travel was to allow them to carry the ashes of their deceased husband and father, Mr. Ngawang Choephel, to India and perform his final rites. This plea was again denied by SEM in a decision dated 16.05.2023. The relevant



portion of the order dated 16.05.2023 is reproduced as under –

“In view of the above, the persons concerned, born in India in 1966, currently holding a settlement permit without having been recognised as either stateless persons or refugees in Switzerland, have not demonstrated that they have personally undertaken all the necessary steps to obtain a national passport or a travel document (IC) from the authorities of their country of origin, or even steps to obtain Indian nationality. It is therefore reasonably expected that they approach the Indian authorities in the aforementioned sense. Furthermore, the authorities of origin are in principle competent to propose to their nationals living abroad possible and reasonable solutions for obtaining identity or travel documents in their country. If a personal presentation in India were to prove unavoidable, the possibility of issuing a laissez-passer for a single trip to India would fall within the competence of the Indian representation in Switzerland.

It is also reasonably expected that the persons concerned should also contact the Chinese authorities. In this regard, the SEM notes that Mrs Drakmargyapon has already contacted the Chinese representation in Switzerland, but again through the SPAd. However, it is important that the persons concerned personally contact the authorities of their country of origin as part of their efforts to obtain a travel document. Finally, this contact is not compatible with the persons concerned' allegations relating to their status as dissidents, which allegedly arises from the activities of their late husband and father. If they were to persist in their statements on this subject, they still have the option of asserting them in the context of a separate asylum procedure.

Finally, to the extent that it falls outside the disputed framework as defined (travel documents), the question of possible statelessness does not need to be examined.

In view of the above, the SEM is of the opinion that the persons concerned have not taken all reasonably required steps to obtain a travel document. Consequently, as things stand, they are not considered to be without travel documents within the meaning of the ODV and are therefore not entitled to a foreigners' passport.”

14. It is submitted that with no alternative remedies left, the petitioner applied for recognition as a stateless person on 21.08.2023. However, in its



order dated 06.06.2024, SEM rejected this application as well.

15. It is submitted that the petitioner and her children have been stranded in Switzerland since 2014 without any valid passport or travel document. It is submitted that they are unable to return to India to deposit the ashes of the petitioner's late husband, Mr. Ngawang Choephel, in India.

16. It is averred that the only document the petitioner possessed was an Indian Citizenship (IC) certificate, the renewal of which was not possible in Geneva due to legislative changes made by the Indian authorities.

17. It is submitted that the Election Commission of India (ECI) has also clarified, vide its letter dated 07.02.2014 (No. 30/ID/2010-ERS), that children born in India to Tibetan refugees between 26.01.1950 and 01.07.1987 are to be treated as Indian citizens under Section 3(1)(a).

18. In order to substantiate its case, the petitioner has placed reliance on *Namgyal Dolkar v. Government of India, Ministry of External Affairs*, 2010 SCC OnLine Del 4548, *Phuntsok Wangyal v. Ministry Of External Affairs & Ors.*, 2016:DHC:6690 and *Sonam Lhazom V. Union Of India And Ors.*, 2018:DHC:102.

19. While objecting to the arguments of the petitioner, the respondents submit that Section 3(1)(a) of the Citizenship Act, 1955 must be interpreted in conjunction with the provisions of the Foreigners Act, 1946, the Foreigners Order 1948, the Registration of Foreigners Act, 1939 and more particularly the order regulating "entry of Tibetan Nationals into India"

20. The respondent relies on Order dated 26.12.1950 (SRO 1108) issued under the Foreigners Act, 1946, and Registration of Foreigners Act, 1939



which governed the entry of Tibetan nationals in India. The said order is reproduced as under –

“India: S.R.O. 1108 of 1950 Regulating Entry of Tibetan national into India, 1950, 26 December 1950

In exercise of the powers conferred by Section 3 of the Foreigners Act 1946 (31 of 1946) and Section 3 of the Registration of Foreigners Act, 1939 (16 of 1939) the Central Government is pleased to direct that any foreigner of Tibetan nationality, who enters into India hereafter shall –

(a) at the time of his entry into India obtain from officer in- charge of the Police post at the Inda-Tibetan frontier, a permit in the form specified in the annexed Schedule;

(b) comply with such instructions as may be prescribed in the said permit; and

(c) get himself registered as a foreigner and obtain a certificate of registration.”

21. While relying upon the said order it is submitted that foreigners (refugees) registered in India, including their children born during their stay in India are a separate class in themselves and as such not covered within the ambit of Section 3(1) (a) of the Citizenship Act.

22. The case of the respondent is that that foreigner Tibetan nationals and their children born within the territory of India during their stay in India, who have registered themselves as Tibetan refugees and have acquired an identity certificate by expressing/declaring their nationality as Tibetan nationals amounts to a voluntary renunciation of their Indian citizenship (even if deemed to be acquired by birth) under Section 9(1) of the Citizenship Act and as such, such foreigners can be granted Indian Citizenship only by naturalisation or registration.



23. It is further submitted that the issuance of Passport is secondary to establishing Indian Citizenship status of any individual. Once the citizenship status of the petitioner is established as per the provisions of the Citizenship Act 1955, administered by Union Ministry of Home Affairs, the concerned Passport Authority will consider the passport application for issuance of Passport.

FINDINGS

24. Learned counsel for the parties have been heard. The principal question that arises for consideration before this Court is whether the petitioner is an Indian citizen by birth under Section 3(1)(a) of the Citizenship Act, 1955, and consequently, whether the petitioner is entitled to the issuance of an Indian passport.

25. Before adverting to the facts of the present case, it would be apposite to refer to Section 3 of the Citizenship Act, 1955, which deals with citizenship by birth. The same is reproduced as under –

“3. Citizenship by birth.—(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 (6 of 2004) 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 (6 of 2004), 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.]”

26. Thus, Section 3(1) of the Act, inter alia, provides that the following categories of persons shall be citizens of India by birth -

(i) persons born in India on or after 26 January 1950 but before 1 July 1987; or

(ii) persons born in India on or after 1 July 1987 but before the commencement of the Citizenship (Amendment) Act, 2003, and either of whose parents was a citizen of India at the time of their birth; or

(iii) persons born in India on or after the commencement of the Citizenship (Amendment) Act, 2003, where both parents are citizens of India, or where one parent is a citizen of India and the other is not an illegal migrant at the time of birth.

27. Section 3(2) of the Act carves out certain exceptions to the above provision to Section 3(1) of the Act.

28. In the present case, the petitioner was born on May 15, 1966, in Dharamshala, Himachal Pradesh, India which squarely satisfies the requirement of Section 3(1)(a) of the Act, i.e., birth in India on or after 26



January 1950 but before 1 July 1987. The place and date of birth of the petitioner are duly evidenced from the Identity Certificate (IC) annexed as Annexure P-1 (colly) in the present petition.

29. It is not the case of the respondents that the petitioner suffers from any of the disqualifications contemplated under Section 3(2) of the Citizenship Act, 1955.

30. Upon a considering the facts of the present case, this Court is of the considered view that the judgment of this Court in ***Namgyal Dolkar v. Government of India, Ministry of External Affairs***, 2010 SCC OnLine Del 4548, is squarely applicable. In the said case as well, the Court was concerned with the question of citizenship of persons (whose parents were Tibetan) born within the territory of India during the relevant period, and the issues arising therein are substantially similar to those involved in the present petition. The relevant extract from the judgment in ***Namgyal Dolkar*** (supra) is reproduced under –

“16. The above submissions have been considered. It is not in dispute that the Petitioner was born in Kangra, Himachal Pradesh, India on 13th April, 1986 and both her parents are Tibetans. The case of the Petitioner essentially is based on Section 3(1)(a) CA.

23. The amended Section 3(1)(a) reads as under:—

*“3. **Citizenship by birth:**— (1) Except as provided in sub-section (2), every born in India,—*

“(a) on or after the 26th day of January 1950, but before the 1st day of July, 1987.”

(b)

(c)Shall be a citizen of India by birth.”



24. A plain reading of the above provision shows that a cut-off date was introduced by the Parliament for recognition of citizenship by birth. Except as provided by Section 3(2), “every person born in India on or after the 26th January, 1950 but before the 1st day of July 1987” shall be a citizen of India by birth. Admittedly, in the present case, none of the prohibitions contained in Section 3(2) CA are attracted. The case of the Petitioner is within the ambit of Section 3(1)(a) since she was born in India on 13th April, 1986, i.e., after 26th January, 1950 but before 1st July, 1987. The SOR accompanying the amendment Bill of 1986, by which the above provision was introduced and discussed in the Lok Sabha and Rajya Sabha, makes it clear that the change brought about by the amendment was to be prospective. The rationale behind introduction of a ‘cut-off’ date was that the position prior to 1st July, 1987 was not intended to be disturbed.

25. Learned counsel for the Petitioner is right in her submission that there is no need for a person who is an Indian citizen by birth, to have to apply for citizenship. Unlike certain other provisions, like Section 5 and Section 6 CA which require an application to be made for grant or recognition of citizenship, no such application process is envisaged in Section 3(1) CA.

26. The grounds for the refusal of a passport to the Petitioner may next be examined. The ostensible ground is Section 6(2)(a) PA whereunder an application for passport can be refused if the applicant is not a citizen of India. The impugned communication dated 1st September, 2009 states that the passport has been refused on the ground that the Petitioner is not an ‘Indian national’ under Section 3(1)(a) CA. At the outset it must be observed that the concept of an Indian ‘national’ is not recognised by the CA. The term ‘national’ is not defined under the CA. It has obviously been used in a loose sense in the communication dated 1st September, 2009.

27. What is now held against the Petitioner is that in her application for a passport she did not disclose that she held an identity certificate. Further, in her application for the grant of an identity certificate she declared herself to be of Tibetan ‘nationality’. This, according to the Respondents, implied that she did not consider herself to be an Indian citizen.

28. In the considered view of this Court, the above ground for rejection of the Petitioner's application for passport is untenable. As already noticed, the concept of ‘nationality’ does not have legislative



recognition in the CA. The Petitioner's describing herself to be a Tibetan 'national' is really of no legal consequence as far as the CA is concerned, or for that matter from the point of view of the policy of the MEA. The counter affidavit makes it clear that the MEA treats Tibetans as 'stateless' persons. Which is why they are issued identity certificates which answers the description of travel documents within the meaning of Section 4(2)(b) PA. Without such certificate, Tibetans face the prospect of having to be deported. They really have no choice in the matter. It must be recalled that when her attention was drawn to the fact that she could not hold an identity certificate and a passport simultaneously, the Petitioner volunteered to relinquish the identity certificate, if issued the passport. That was the correct thing to do, in any event. **The holding of an identity certificate, or the Petitioner declaring, in her application for such certificate, that she is a Tibetan national, cannot in the circumstances constitute valid grounds to refuse her a passport.**

29. The policy decision of the MHA not to grant Indian citizenship by naturalisation under Section 6(1) CA to Tibetans who entered India after March 1959 is not relevant in the instant case. Having been born in India after 26th January, 1950 and before 1st July, 1987, the Petitioner is undoubtedly an Indian citizen by birth in terms of Section 3(1)(a) CA. **The fact that in the application form for an identity certificate the Petitioner described herself as a Tibetan national will make no difference to this legal position. There cannot be waiver of the right to be recognized as an Indian citizen by birth, a right that is expressly conferred by Section 3(1) CA. The Petitioner cannot be said to have 'renounced' her Indian citizenship by birth by stating that she is a Tibetan national. Renunciation can happen only in certain contexts one of which is outlined in Section 8 which reads as under:**

"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 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.”

30. Clearly the Petitioner's case is not covered by Section 8 CA. She has not expressly or impliedly renounced her Indian citizenship by birth. The provisions of Section 9 CA relating to termination of citizenship are also not attracted. The said provision reads thus:

“9. **Termination of citizenship:**— (1) Any citizen of India, who by naturalisation, registration otherwise voluntarily acquires, or has at any time between the 26th January, 1960 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.

(2) If any question arises as to whether, when or how many citizen of India has acquired the citizenship of another country, it shall be determined by such authority, in such manner, and having regard to such rules of evidence, as may be prescribed in this behalf.”

31. The Petitioner was born in India on 13th April, 1986, i.e. after 26th January, 1950 and before 1st July, 1987, and is an Indian citizen by birth in terms of Section 3(1)(a) CA. She cannot therefore be denied a passport on the ground that she is not an Indian citizen in terms of Section 6(2)(a) PA.”

31. The aforesaid judgment has subsequently been relied upon and followed by this Court in ***Phuntsok Wangyal v. Ministry Of External Affairs & Ors.***, 2016:DHC:6690. The relevant extract of the said judgment is reproduced as under –

“3. The petitioner – Phuntsok Wangyal in W.P.(C) No.3539/2016 was born on 17.09.1977 and the petitioner – Lobsang Wangyal in W.P.(C)



No.4275/2016 was born on 25.05.1970. The petitioners, in these two petitions, claim citizenship of India on the basis of Section 3(1)(a) of the Act.

4. The petitioner – Tenzin Dhonden in W.P(C) No.7983/2016 was born on 16.08.1992 and contends that his father was born in India on 01.01.1966 and claims citizenship of India by virtue of Section 3(1)(b) of the Act.

5. It is contended by the petitioners that the petitioners being citizens of India, cannot be discriminated against and cannot be denied the Indian passport by the respondents. It is also contended that the petitioners, being Indian citizens by virtue of the Citizenship Act, 1955, have no requirement of making any application with the respondents for being so declared and are entitled to all benefits and privileges, as are available to citizens of India.

6. Reliance is placed on the decision of a Coordinate Bench of this Court in *Namgyal Dolkar versus Government of India, Ministry of External Affairs*, dated 22.12.2010 in W.P.(C) No.12179/2009, wherein similar relief has been granted.

7. Learned counsel for the respondents rely on a letter dated 26.08.2011 issued by the Ministry of Home affairs to the Election Commission of India, whereby Minutes of inter-Ministerial meeting held on 30.03.2010 was conveyed, inter alia, to the following extent:-

“The children born to Tibetan Refugee in India will not be treated as Indian citizen automatically based on their birth in India before 01.07.1987 under Section 3(1)(a) of the Citizenship Act, 1955. All such persons will have to submit an application individually under Section 9(2) of the Citizenship Act, 1955 to MHA and thereafter the nationality status of all such children born to Tibetan Refugees in India, will be determined by MHA as per prescribed procedure available under the Citizenship Rules, 2009. All such children, as and when their nationality status as an Indian is decided by this Ministry, will have to surrender their Tibetan Refugee Certificate and Identity Card before accepting Indian citizenship.”

8. It is contended that as per the said Minutes, all children born to Tibetan refugees in India would not be treated as Indian citizens based on their birth in India before 01.07.1987 and such persons shall have to



submit applications individually under Section 9(2) of the Citizenship Act and thereafter the nationality status would be determined by the Ministry of Home Affairs, as per the procedure prescribed under the Citizenship Rules, 2009.

9. It is contended that the petitioners cannot be considered to be Indian citizens automatically and need to apply in terms of the decision of the respondent.

10. Section 3 of the Act reads as under:-

“3. Citizenship by birth- (1) Except as provided in subsection (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 , 1947, 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 any 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.”

“11. As per section 3(1) of the Act, there are three categories of persons who are citizens of India by birth: (i) those born, on or after the 26th day of January, 1950, but before the 1st day of July, 1987 or (ii) those born on or after the 1st day of July , 1947, 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 or (iii) those born on or after the commencement of the Citizenship (Amendment) Act, 2003, where both of his parents are citizens of India or one of whose parents is a citizen of India and the other is not an illegal migrant at the time of his birth.

12. However a person, who though satisfies the criteria of section 3(1) of the Act, would still not be a citizen of India if at the time of his birth (i) either his father or mother possesses such immunity from suits and legal process as is accorded to any 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 (ii) his father or mother is an enemy alien and the birth occurs in a place then under occupation by the enemy.

13. The petitioner – Phuntsok Wangyal in W.P.(C) No.3539/2016 was born on 17.09.1977 and the petitioner – Lobsang Wangyal in W.P.(C) No.4275/2016 was born on 25.05.1970. Both of them satisfy the requirement of section 3(1) (a) of the Act i.e. born, on or after the 26th day of January, 1950, but before the 1st day of July, 1987.

14. The petitioner – Tenzin Dhonden in W.P(C) No.7983/2016 was born on 16.08.1992 and his father was born in India on 01.01.1966. Since the father of the petitioner – Tenzin Dhonden was born in India and satisfies the requirement of section 3(1) (a) of the Act, he would be an Indian Citizen and thus the petitioner satisfies the requirement of section 3(1) (b) of the Act i.e. those born on or after the 1st day of July, 1947, 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.

15. None of the Petitioners admittedly suffer from the disqualification of section 3(2).

16. In Namgyal Dolkar (Supra) the learned Judge held as under:-

“24. A plain reading of the above provision shows that a cut-off date was introduced by the Parliament for recognition of citizenship by birth. Except as provided by Section 3(2), "every person born in India on or after the 26th January 1950 but before the 1st day of July 1987" shall be a citizen of India by birth. Admittedly, in the present case, none of the prohibitions contained in Section 3(2) CA are attracted. The case of the Petitioner is within the ambit of Section 3(1)(a) since she was born in India on 13th April 1986, i.e., after 26th January 1950 but before 1st July 1987. The SOR accompanying the



amendment Bill of 1986, by which the above provision was introduced and discussed in the Lok Sabha and Rajya Sabha, makes it clear that the change brought about by the amendment was to be prospective. The rationale behind introduction of a 'cut-off' date was that the position prior to 1st July 1987 was not intended to be disturbed.

XXXX

XXXX

XXXX

XXX

28. In the considered view of this Court, the above ground for rejection of the Petitioner's application for passport is untenable. As already noticed, the concept of 'nationality' does not have legislative recognition in the CA. The Petitioner's describing herself to be a Tibetan 'national' is really of no legal consequence as far as the CA is concerned, or for that matter from the point of view of the policy of the MEA. The counter affidavit makes it clear that the MEA treats Tibetans as 'stateless' persons. Which is why they are issued identity certificates which answers the description of travel documents within the meaning of Section 4(2)(b) PA. Without such certificate, Tibetans face the prospect of having to be deported. They really have no choice in the matter. It must be recalled that when her attention was drawn to the fact that she could not hold an identity certificate and a passport simultaneously, the Petitioner volunteered to relinquish the identity certificate, if issued the passport. That was the correct thing to do, in any event. The holding of an identity certificate, or the Petitioner declaring, in her application for such certificate, that she is a Tibetan national, cannot in the circumstances constitute valid grounds to refuse her a passport.

29. The policy decision of the MHA not to grant Indian citizenship by naturalisation under Section 6(1) CA to Tibetans who entered India after March 1959 is not relevant in the instant case. Having been born in India after 26th January 1950 and before 1st July 1987, the Petitioner is undoubtedly an Indian citizen by birth in terms of Section 3(1)(a) CA. The fact that in the application form for an identity certificate the Petitioner described herself as a Tibetan national will make no difference to this legal position. There cannot be waiver of the right to be recognized as an Indian citizen by birth, a right that is expressly conferred by Section 3 (1) CA. The Petitioner cannot be said to have 'renounced' her Indian citizenship by



birth by stating that she is a Tibetan national. Renunciation can happen only in certain contexts one of which is outlined in Section 8 which reads as under:-

"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 subsection (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 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."

xxxx

xxxx

xxxx

xxxx

31. The Petitioner was born in India on 13th April 1986, i.e. after 26th January 1950 and before 1st July 1987, and is an Indian citizen by birth in terms of Section 3(1)(a) CA. She cannot therefore be denied a passport on the ground that she is not an Indian citizen in terms of Section 6(2)(a) PA."

17. This Court in Namgyal Dolkar (supra) has very categorically laid down that the persons like the petitioners are covered under Section 3 of the Citizenship Act, and cannot be denied a passport on the ground that they are not Indian citizens in terms of Section 6(2)(a) of the Passport Act, 1967. I am in complete agreement with the view taken by the coordinate bench in the said judgment.

18. Learned counsel for the respondents do not contend that the said decision has either been set aside or stayed by any higher forum.

19. Even the Election Commission of India, to whom the said letter dated 26.08.2011 of the Ministry of Home Affairs, was addressed, has issued a letter dated 07.02.2014, which reads as under:-



“No.30/ID/2010-ERS.

Dated – 7th February, 2014

To,

The CEOs of all States/UTs

Subject: Registration of Tibetan Refugees and their offspring
in the electoral roll-clarification – regarding

Sir/Madam,

I am directed to refer to the Commission’s instruction dated 27th September, 2011, on the subject cited and to state that in the light of decision dated 7th August, 2013 of Karnataka High Court in WP No. 15437/2013 Tenzin Choephag Ling Rinpoche Vs Union of India and others, the Commission has reconsidered its stand communicated by the aforesaid letter. (A copy of the HC order is enclosed as Annexure-1)

As per Section 3(1) (a) of the Citizenship Act, 1955, the children born to Tibetan Refugees in India shall be treated as Indian citizens based on their in India, on or after 26th January, 1950 and before 1st July, 1987. Hence, notwithstanding anything contained in Union Home Ministry letter number 26027/08/1994-S-I dated 26th August, 2011 conveyed to all CEOs vide ECI letter dated 27th September, 2011, the Commission clarifies that the EROs concerned should not deny enrolment to the children of Tibetan Refugees where they are satisfied that(1) the applicant was born in India, (2) he/she was born on or after 26th January, 1950 but before 1st July, 1987, and (3) he/she is ordinarily resident in the constituency in which the application for enrolment has been made.

Please bring this into the notice of all concerned EROs and other stakeholders for information and compliance.

Yours faithfully,

(R.K. Srivastava)

Principal Secretary”

20. The Election Commission of India, by the said letter dated 07.02.2014, has stated that notwithstanding anything contained in the



communication dated 26.08.2011, the Electoral Return Officers (EROs) are not to deny enrolment to the children of the Tibetan refugees where they satisfy the requirement of Section 3 of the Act.

21. Furthermore, Section 3 of the Act very categorically lays down the conditions under which a person acquires citizenship by birth. By a mere correspondence or an inter-Ministerial meeting, the statutory provisions cannot be defeated. No decision taken in an interministerial meeting can override a statutory provision. The petitioner have been given rights under the Act, those rights cannot be taken away by a mere inter-ministerial decision.

22. The communication dated 26.08.2011 of the Ministry of Home Affairs notices the decision of this Court in Namgyal Dolkar (supra), but, records that the same may not be applicable per se in other cases. It is not understandable as to how such a view could be taken by the Respondents in view of the clear findings of this court in Namgyal Dolkar (supra). The action of the respondents is clearly unsustainable. The communication dated 26.08.2011 and the minutes of meeting dated 30.03.2010, being contrary to the Act, are quashed.

23. The writ petitions are allowed holding that the petitioners are Indian citizens and entitled to all benefits and privileges, as are available to Indian citizens. The respondents cannot require the petitioners to make any application under section 9 of the Act. The Petitioners cannot be denied Indian passport by the respondents on that ground.

24. The respondents are directed to issue the India passports to the petitioners, who have been declared to be Indian citizens, within a period of four weeks in accordance with the Rules.”

32. Thus, it stands conclusively settled that a person is an Indian citizen by birth in terms of Section 3(1)(a) of the Citizenship Act, 1955, if such person was born in India on or after 26 January 1950 but before 1 July 1987. In the present case, although the petitioner is of Tibetan descent and is described as a Tibetan refugee, however, the petitioner was born in India on 15.05.1966 at Dharamshala, Himachal Pradesh. The Identity Certificate also records the petitioner’s place of birth as Dharamshala, Himachal Pradesh.



33. The contention advanced by the respondents (while relying upon Order dated 26.12.1950 (SRO 1108) issued under the Foreigners Act, 1946, and Registration of Foreigners Act, 1939) that Tibetan nationals and their children born within the territory of India, who have registered themselves as Tibetan refugees and obtained an Identity Certificate by declaring their nationality as Tibetan, amounts to voluntary renunciation of Indian citizenship under Section 9(1) of the Citizenship Act, 1955, is misconceived. The said issue stands conclusively settled by the judgment in **Namgyal Dolkar** (supra), wherein this Court categorically recognized the citizenship of the petitioners therein notwithstanding the fact that they were holders of Identity Certificates.

34. Further, this Court in **Tenzin Passang v. Union Of India & Ors**, 2017:DHC:1996, has observed as under –

“7. Reliance is placed by the petitioners on the judgment of this Court dated 22.09.2016 in W.P.(C) No.3539/2016 titled **Phuntsok Wangyal versus Ministry of External Affairs & Ors** and other connected petitions. This Court by common Judgment dated 22.09.2016 in **Phuntsok Wangyal (supra)**, W.P.(C) No.4275/2016 titled **Lobsang Wangyal Versus Union of India** and W.P.(C) No.7983/2016 titled **Tenzin Dhonden Versus Union of India** relying on the decision of the **Namgyaal Dolkar versus Government of India, Ministry of External Affairs** dated 22.12.2010 in W.P.(C) No.12179/2009, held that persons like the petitioner therein, who are covered under Section 3 of the Act are citizens of India and cannot be denied a passport on the ground that they are not Indian Citizens in terms of Section 6(2)(a) of the Passports Act, 1967. The Petitioner in **Phunstok Wangyal (supra)** and **Lobsang Wangyal (supra)** had claimed to be Citizens of India in terms of section 3(1) (a) of the Act as they were born in India on or after 26.01.1950 and before 01.07.1987. The Petitioner in Tenzin Dhonden (supra) was born on 16.08.1992 and had contended that his father was born in India on 01.01.1966 and claimed citizenship of India by virtue of Section 3(1)(b) of the Act.



8. The said Writ Petitions were allowed, by a common judgment dated 22.09.2016, holding the petitioners therein to be Indian Citizens and entitled all benefits and privileges, as are available to Indian Citizens. The respondents were directed to issue Indian Passports to the petitioners, who had been declared to be Indian Citizens.

9. Learned counsel for the respondent submits that the Ministry of External Affairs, Government of India, has accepted the decision of this Court dated 22.09.2016 in Phuntsok Wangyal (supra) and other connected matters and issued an Office Memorandum dated 17.03.2017 to all Passport Offices in India and all Indian Mission/Posts abroad. The Office Memorandum dated 17.03.2017 is produced in Court and the same is taken on record.

10. At this juncture, it would be expedient to reproduce the Office Memorandum in toto. The Office Memorandum dated 17.03.2017 reads as under:

“No. VI/441/1/16/2016 (Vol.III)

Government of India

Ministry of External affairs

CPV Division

Patiala House Annexe, New Delhi

The 17th March, 2017

OFFICE MEMORANDUM

Subject: Grant of passport facilities to the Tibetan Refugees born in India between 26/01/1950 to 01/07/1987, who have been declared as the Indian Citizens by birth under Section 3 (1) (a) of the Citizenship Act, 1955 by the High Court of Delhi vide its judgment dated 22/09/2016 in the W.P. No. 4275/2016 of Lobsang Wangyal Vs. Union of India & others – reg.

It may be mentioned that the High Court of Delhi vide its judgment dated 22/09/2016 in the W.P. (C) No. 4275/2016 of Lobsang Wangyal Vs Union of India and two other WPs, has not only declared the Tibetan Refugees (TRs)



born in India between 26/01/1950 to 01/07/1987, as the Indian citizens by birth under Section 3(1)(a) of the Citizenship Act, 1955 but also quashed the executive instructions dated 26/08/2011 of the Ministry of Home Affairs and the minutes of the meeting dated 30/03/2010, restraining TR applicants to declare themselves as the Indian citizens by birth under the relevant section (s) of the said Act. The High Court besides declaring all such TR petitioners as the Indian citizens by birth also directed this Ministry/Passport Issuing Authorities to process their applications for the issue of passports, if they were otherwise eligible to hold the same.

2. Pursuant to the judgment dated 22/09/2016 of the High Court of Delhi, the Ministry to Home Affairs being the major stakeholder on the TRs as well as Indian citizenship related issues was requested to apprise this Ministry whether they are intended to file an Appeal/SLP against the impugned order dated 22/09/2016 of the Single bench of the High Court of Delhi before the Division Bench of the same High Court or the Supreme Court of India, as the case may be. Since there was no time bound reply by the MHA in this regard, this Ministry decided to comply with the Court's order dated 22/09/2016 and issued the passports to all the petitioner TRs in respect of whom the order was passed.

3. However, the Ministry of Home Affairs subsequently informed that they are not intended to file any appeal against the order dated 22/09/2016 of the High Court of Delhi as their executive instructions, which had been quashed by the High Court could not bear the judicial scrutiny.

4. Since the Ministry of Home Affairs has explicitly stated that they would not file any appeal against the impugned order dated 22/09/2016 of the High Court of Delhi and the executive order dated 26/08/2011 of MHA restraining the TR applicants to declare themselves as the Indian Citizens by birth under Section 3(1) (a) of the Citizenship Act, 1955 has been quashed by the High Court, at present other than the Citizenship Act, 1955 and the order dated 22/09/2016 of the High Court of Delhi nothing is binding on this



Ministry, so far as the issue of citizenship of TRs born in India in the above mentioned intervening period is concerned. Moreover, a number of TR applicants after the issue of order dated 22/09/2016 have also approached the same High Court requesting the court to also declare them as the Indian citizens by birth under the relevant section (s) of the Citizenship Act, 1955 and the court has clubbed all such matters for the next hearing scheduled on 21/03/2017, with the observation that unless there is a stay against its order dated 22/09/2016, non-compliance of the same in general in respect of all such TRs amounts to contempt of the High Court. In view of this, there is a huge probability that on the next date of hearing i.e. 21/03/2017, the High Court may come down very heavily on the Government.

5. In view of the above it has been decided that all the Passport Issuing Authorities in India/abroad in compliance/pursuance to order dated 22/09/2016 of the High Court of Delhi, subject to usual checks and other formalities stipulated under the Passports Act, 1967 and the Passport Manual, 2016, shall process all the pending applications of TR applicants born in India between 26/01/1950 to 01/07/1987, for the issue of passports treating them as the Indian citizens by birth under Section 3(1)(a) of the Citizenship Act, 1955. However, if the Police Verification Report (PVR) in the cases of such applicants from the local police authorities or the security agencies of the Government is received as "ADVERSE" by virtue of the fact that the applicant being a TR is not an Indian citizen by birth, shall not be taken as Adverse but the same shall be accepted as „CLEAR" and passport will be issued to such an applicant, if he is otherwise eligible to hold the same.

(Y.K. Shukla)

Under Secretary (PV-I)

Ph. 011-23070364

Fax 011-23389802

E-mail-uspv1@mea.gov.in



11. By the Office Memorandum dated 17.03.2017, the Government of India, in compliance of and pursuant to judgment dated 22/09/2016 (supra), directed all passport Issuing authorities in India and abroad, subject to usual checks and other formalities stipulated under the Passports Act, 1967 and the Passport Manual, 2016, to “process all the pending applications of TR applicants born in India between 26/01/1950 to 01/07/1987, for the issue of passports treating them as the Indian citizens by birth under Section 3(1)(a) of the Citizenship Act, 1955. However, if the Police Verification Report (PVR) in the cases of such applicants from the local police authorities or the security agencies of the Government is received as “ADVERSE” by virtue of the fact that the applicant being a TR is not an Indian citizen by birth, shall not be taken as Adverse but the same shall be accepted as „CLEAR” and passport will be issued to such an applicant, if he is otherwise eligible to hold the same”.

xxx

xxx

xxx

13. In terms of the Office Memorandum dated 17.03.2017 all persons who are citizens in terms of section 3(1)(a) of the Act would be entitled to a passport, subject to usual checks and other formalities stipulated under the Passports Act, 1967 and the Passport Manual, 2016.

14. Thus the petitioners, (i) Tenzin Passang (W.P.(C) 254/2017), born on 25.11.1986, (ii) Rinzin Dolma (W.P.(C) 1455/2017), born on 01.08.1973, (iii) Tsering Dhonden Lhewa (W.P.(C) 1893/2017), born on 10.09.1969 and (iv) Rinzin Dorjee (W.P.(C) 2171/2017), born on 30.06.1978 and who claim to be a citizens of India in terms of Section 3(1)(a) of the Act are declared to be citizens of India and entitled to a passport in terms of the Office Memorandum dated 17.03.2017, subject to usual checks and other formalities stipulated under the Passports Act, 1967 and the Passport Manual, 2016.

15. The petitioner – Tenzin Yangzom (W.P.(C) 1865/2017), who was born in India on 11.11.1990 and who claims to be a citizen of India in terms of Section 3(1) (b) of the Act is also entitled to be so declared. Her mother Rinzin Dolma, (petitioner in the connected Writ Petition being W.P.(C) 1455/2017), was born in India on 01.08.1973 and has been held to be a citizen of India in terms of Section 3(1)(a) of the Act and covered by the Office Memorandum dated 17.03.2017.

16. The case of the petitioner Tenzin Yangzom (W.P.(C) 1865/2017), is also similar to the case of Tenzin Dhonden (supra) whose petition



was also in the batch of cases decided by the common judgment dated 22.09.2016, which judgment has been accepted by the Respondents and consequent to which the Office Memorandum dated 17.03.2017 has been issued. The said petitioner is also declared to be a citizen of India and entitled to a passport, subject to usual checks and other formalities stipulated under the Passports Act, 1967 and the Passport Manual, 2016.

17. Another issue that arises is with regard to the Identity Certificate (I.C.) /Registration Certificate/Residential Permit (R.C./R.P.) issued to petitioners and other similarly situated persons.

18. Learned counsel for the respondent submits that since the Office Memorandum has been issued directing issuance of passport to the petitioners and other similarly situated persons, the Identity Certificate (I.C.) /Registration Certificate/Residential Permit (R.C./R.P.), already issued, is required to be surrendered prior to issuance of the passport.

19. It is submitted that a surrender certificate application form is proposed to be circulated to all Passport Offices requiring the persons who are applying for a passport to surrender the existing Identity Certificate (I.C.) /Registration Certificate/Residential Permit (R.C./R.P.) prior to the issuance of the Passport.

20. It is an admitted position that some of the petitioners and some of the other similarly situated persons are using the Identity Certificate (I.C.) /Registration Certificate/Residential Permit (R.C./R.P.), as a travel document.

21. Rule 13 of the Passport Rules, 1980 stipulates that a person holding a passport or travel document in special circumstances shall not be entitled to another passport or travel document unless he surrenders, to the passport authority, the passport or travel document already held by him.

22. Accordingly, the petitioners are directed to surrender the Identity Certificate (I.C.) /Registration Certificate/Residential Permit (R.C./R.P.), if issued, by approaching the respective Passport Office where they have applied for issuance of a passport.

23. It is clarified that the Identity Certificate (I.C.)/Registration Certificate/Residential Permit (R.C./R.P.) would be required to be surrendered prior to the issuance of the passport.



24. *In view of the above, the petition is disposed of directing the respondents to issue the passports, as expeditiously as possible, preferably within a period of four weeks, subject to the petitioners satisfying the other requirements of the Passports Act as well as the Passport Manual, 2016 and the Rules framed there under. There shall be no orders as to costs.”*

35. The Identity Certificate of the petitioner also notes as under –

“This certificate is issued for the sole purpose of providing the holder with identity papers in lieu of a national passport. It is without prejudice to and in no way affects the national status of the holder. If the holder obtains a national passport, this certificate ceases to be valid and must be surrendered to the nearest Indian Passport Issuing Authority.”

36. Thus, in light of the settled legal position and having due regard to the fact that the petitioner was born on 15.05.1966 at Dharamshala, Himachal Pradesh, within the territory of India and during the period between 26 January 1950 and 1 July 1987, this Court holds that the petitioner is an Indian citizen by birth in terms of Section 3(1)(a) of the Citizenship Act, 1955.

37. It is also relevant to note that the petitioner’s case does not fall within the ambit of Section 8¹ of the Citizenship Act, as the petitioner has not renounced her Indian citizenship. Equally, the provisions of Section 9² of

¹ 8. Renunciation of citizenship.—(1) If any citizen of India of full age and capacity, 26[* * *] 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.

² 9. Termination of citizenship.—(1) Any citizen of India who by naturalisation, registration or otherwise



the Citizenship Act, which pertain to termination of citizenship, are inapplicable to the facts of the present case, as the petitioner has clearly not acquired the citizenship of another country, as per the provision of the Section 9 of the citizenship Act.

38. It is correct that the petitioner was issued a Swiss passport for foreigners on 02.07.2009 for herself and her family members. The said passport was issued under the Swiss Ordinance on the Establishment of Travel Documents for Foreigners and was valid for a limited period of five years, i.e., until 01.07.2014. It appears evident that such travel documents are issued only to foreigners who do not possess a national travel document but hold a Swiss residence permit, or to asylum seekers. In the present case, the petitioner was holding a Swiss residence permit, on the basis of which the Foreigners passport was issued.

39. The petitioner has placed on record copies of Swiss passport for foreigners issued to her son and daughter, which explicitly describe the passport as a “passport for aliens”, thereby leaving no manner of doubt that the said documents were issued to non-citizens and were merely travel documents for foreign nationals.

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.

(2) If any question arises as to whether, when or how any 30[citizen of India] has acquired the citizenship of another country, it shall be determined by such authority, in such manner, and having regard to such rules of evidence, as may be prescribed in this behalf.



40. Accordingly, the mere issuance of a “passport for aliens” or a temporary travel document under the Swiss legal framework cannot be equated with voluntary acquisition of foreign citizenship so as to attract the provisions of Section 9 of the Citizenship Act, 1955. The petitioner, therefore, continues to retain her Indian citizenship, unaffected by the issuance of the said travel document.

41. It is further noted that after the expiry of the aforesaid travel document, when the petitioner once again applied for issuance of a passport for foreigners, the competent Swiss authorities responded that the conditions prescribed under the Ordinance on the Issue of Travel Documents for Foreigners (ODV, RS 143.5) were not fulfilled. The petitioner was accordingly advised to approach the competent authority of her country of origin to obtain a national passport, clearly reaffirming her status as a foreign national and not a Swiss citizen.

42. The translated version of the said communication dated 05.11.2014, as annexed by the petitioner, is reproduced hereinbelow for ready reference:

“Sir,

We refer to your request of 9 September 2014 for the issuance of a passport for foreigners and inform you of the following:

After examining the file, we note that the conditions for issuing the required document are clearly not met, in accordance with the Ordinance on the Issue of Travel Documents for Foreigners (ODV, RS 143.5). Each new application is examined again. We therefore note that you can, and may reasonably be required to, take steps with the competent authority of your country of origin in Switzerland to have a national passport issued for you. These steps must be taken personally. Consequently, you are not dependent on a replacement Swiss travel document. If the competent authority refuses to issue you with the



document, we ask you to provide us with written proof stating the reasons for the refusal. Technical or organisational delays in issuing the passport cannot consider you as lacking travel documents.

In view of the above, you have the possibility until 4 December 2014 to request in writing a formal decision subject to appeal, subject to a fee of CHF 150 (RS 172.041.1, art. 2 OGEmol of 8 September 2004). After this deadline, your request will be considered as being without object.”

43. In **Namgyal Dolkar** (supra) the Court has categorically held that “*the fact that in the application form for an identity certificate the Petitioner described herself as a Tibetan national will make no difference to this legal position. There cannot be waiver of the right to be recognized as an Indian citizen by birth, a right that is expressly conferred by Section 3(1) CA. The Petitioner cannot be said to have ‘renounced’ her Indian citizenship by birth by stating that she is a Tibetan national.*”

44. It further observed “*that Clearly the petitioner’s case is not covered by Section 8 CA. She has not expressly or impliedly renounced her Indian citizenship by birth. The provisions of Section 9 CA relating to termination of citizenship are also not attracted*”.

45. Thus, the petitioner being a citizen of India by birth in terms of Section 3(1)(a) of the Citizenship Act, 1955, is therefore entitled to the issuance of an Indian passport in accordance with law.

46. The present petition is allowed in the above terms.

SACHIN DATTA, J

FEBRUARY 2, 2026/sv