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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 1953/2021 & CM APPL. 50813/2023**

TAHIR AZHAR & ORS

..... Petitioners

Through: Mr. Siddharth Yadav, Sr. Advocate
with Mr. D. K. Pandey, Mr. Wasim
Ashaf and Mr. Ankit Chadha, Advs.

versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr. Raj Kumar Yadav, Mr. Nitya
Sharma and Mr. Umakant Mishra,
Advs for UoI.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

09.10.2023

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1. Learned Counsel for the Respondents states that the Union of India will not be filing the counter affidavit in this case, and, therefore, the matter is being heard without the counter affidavit.
2. The instant writ petition has been filed with the following prayers:-

“1) Issue writ of Mandamus or any other writ, directing the respondent(s) to decide /dispose-off the Application No. LBYTP0000519 of the petitioner No. 4 i.e Younus Azhar Dated 12.07.2019 for issuance of passport at the earliest; and/or

2) Issue writ of Mandamus or any other writ, to register the Birth Certificates of the Petitioner no. 1 , Petitioner No. 2, Petitioner No. 3; with the Indian Embassy , and subsequently directing the respondents



to issue passports to them.

3) Pass such other order(s) and further orders as may be deemed necessary on the facts and in the circumstances of the case.”

3. As of today, prayer No.1 stands infructuous.
4. The facts leading to the instant writ petition are that the Petitioners No.1 to 4 are born in Tripoli, Libya on the following dates:
 - i. Yousuf Azhar born on 22.12.1990,
 - ii. Yasir Azhar born on 12.01.1994,
 - iii. Tahir Azhar born on 04.05.1997 and
 - iv. Yonus Azhar born on 16.09.2001.
5. It is stated that the father and mother of the Petitioners are citizens of India by birth. The Petitioners have approached this Court stating that the applications of the Petitioners for issuance of passport are not being considered on the ground that the birth of the Petitioners have not been registered with the Indian Consulate within a period of one year from the commencement of Citizenship Act in case of the first child, i.e., Petitioner No.2, and that the date of births of Petitioners No.1, 3 & 4 have not been registered with the Indian Consulate.
6. Section 3 and 4 of the Citizenship Act, which are necessary for adjudication of this case, read 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.

4. Citizenship by descent. *(1) A person born outside India shall be a citizen of India by descent,--*

(a) on or after the 26th day of January, 1950, but before the 10th day of December, 1992, if his father is a citizen of India at the time of his birth; or

(b) on or after the 10th day of December, 1992, if either of his parents is a citizen of India at the time of his birth:

Provided that if the father of a person referred to in clause (a) was a citizen of India by descent only, that



person shall not be a citizen of India by virtue of this section unless--

(a) his birth is registered at an Indian consulate within one year of its occurrence or the commencement of this Act, whichever is later, or, with the permission of the Central Government, after the expiry of the said period; or

(b) his father is, at the time of his birth, in service under a Government in India:

Provided further that if either of the parents of a person referred to in clause (b) was a citizen of India by descent only, that person shall not be a citizen of India by virtue of this section, unless--

(a) his birth is registered at an Indian consulate within one year of its occurrence or on or after the 10th day of December, 1992, whichever is later, or, with the permission of the Central Government, after the expiry of the said period; or

(b) either of his parents is, at the time of his birth, in service under a Government in India:

Provided also that on or after the commencement of the Citizenship (Amendment) Act, 2003(6 of 2004), a person shall not be a citizen of India by virtue of this section, unless his birth is registered at an Indian consulate in such form and in such manner, as may be prescribed,--

(i) within one year of its occurrence or the commencement of the Citizenship (Amendment) Act, 2003(6 of 2004), whichever is later; or

(ii) with the permission of the Central Government,



after the expiry of the said period:

Provided also that no such birth shall be registered unless the parents of such person declare, in such form and in such manner as may be prescribed, that the minor does not hold the passport of another country.

(1A) A minor who is a citizen of India by virtue of this section and is also a citizen of any other country shall cease to be a citizen of India if he does not renounce the citizenship or nationality of another country within six months of attaining full age.]

(2) If the Central Government so directs, a birth shall be deemed for the purposes of this section to have been registered with its permission, notwithstanding that its permission was not obtained before the registration.

(3) For the purposes of the proviso to sub-section [any person] born outside undivided India who was, or was deemed to be, a citizen of India at the commencement of the Constitution shall be deemed to be a citizen of India by descent only."

7. Learned Senior Counsel for the Petitioners contends that the provisos to Section 4 of the Citizenship Act, the consideration of which arises in the present case, would apply only if the father of the applicant is the citizen of India by descent. He states that in the present case both the parents of the Petitioners are citizens of India by birth, and, therefore, the provisos to Section 4 of the Citizenship Act would not apply. He states that the third and fourth proviso to Section 4 is also not applicable to the facts of this case.

8. *Per contra*, learned Counsel for the Union of India, contends that Section 4 of the Citizenship Act mandates registration of birth at Indian Consulate for grant of citizenship by descent. He states that in this case,



since the birth of the Petitioners has not been registered, they have not been granted citizenship.

9. The undisputed facts are that both parents of the Petitioners are citizens of India at birth. Clause (a) of sub-Clause 1 of Section 4 of the Citizenship Act deals with a person who is born outside India on or after 26.01.1950 but before 10.12.1992. The said provision states that if the father of such person is a citizen of India only by descent, then such a person cannot be citizen of India unless his birth is registered at an Indian Consulate within one year of the birth or one year of the commencement of the Citizenship Act, whichever is later or with the permission of the Central Government if such a registration is after the expiry of one year.

10. As stated earlier, Yousuf Azhar was born on 22.12.1990, and his case is covered by Clause (a) of sub-Clause 1 of Section 4 of the Citizenship Act. Since the parents of the Petitioners are citizens of India by birth, then the Yousuf Azhar, who is born outside the country will be a citizen by descent without the necessity of registration of his birth at the Indian Consulate, as the proviso applies only if the father of a person who is born outside India is a citizen by descent and not a citizen by birth.

11. Sub-Clause (b) of sub-Section 1 of Section 4 of the Citizenship Act applies to those persons who are born outside India on or after 10.12.1992. The second proviso also indicates that the registration with the Indian Consulate would apply only if the parents of the said person would be a citizen of India by descent.

12. In the present case, since both the parents of the Petitioners are citizens of India by birth, the requirement of registration with the Indian Consulate does not arise.



13. Resultantly, the objection of the Respondents cannot be accepted.
14. Since the parents of the Petitioners are both citizens of India by birth, in which case, the registration with the Indian Consulate is not mandatory.
15. Accordingly, the writ petition is allowed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

OCTOBER 9, 2023
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