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Reserved on : 22.12.2023

Delivered on : 18.01.2024

Court No. - 42

Case :- WRIT - C No. - 19866 of 2023

Petitioner :- Naromattie Devi Ganpat

Respondent :- Union of India and others

Counsel for Petitioner :- Vishnu Pandey, Anil Kumar, Ayush

Mittal, Prabhakar Awasthi, Prateek Srivastava, Vikrant Pratap Singh, Vineet Kumar Singh, Vipul Singh

Counsel for Respondent :- A.S.G.I., Sanjay Kumar Om

Hon'ble Mahesh Chandra Tripathi, J.

Hon'ble Prashant Kumar, J.

(Delivered by M.C. Tripathi, J.)

1. Heard Sri Vineet Kumar Singh, learned counsel for the petitioner and Shri S.P. Singh, learned Assistant Solicitor General of India (ASGI) assisted by Sri Sanjay Kumar Om, learned counsel for Union of India.
2. The factual matrix of the case is that, the petitioner is a citizen of United States of America though born in Guyana, but of Indian origin. Her grandfather Bishnath hailed from Allahabad, Jaunpur and Hania, who was sent from Calcutta by a ship "EMS" to Guyana (British Guyana) vide Immigration no.104709. The petitioner is also great granddaughter of Ganesh and Janki hailing from Jaunpur and Hania respectively, who travelled via Ship from Calcutta to Guyana. In proof of this, the petitioner got an apostille copy of her grandfather's immigration certificate from National Archives of Guyana, which clearly showed that they immigrated by Ship 'Delhet' on 10th October, 1882 and it also carried the immigration certificate of her grandmother Janki.
3. The petitioner applied for "Ancestry Certificate" for her ancestors Bishnath, Ganesh and Janaki, which were issued to her by the Village Pradhan of village-Sarigaon, Tehsil-Mariyadoo, District-Jaunpur, Uttar

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Pradesh on 3.10.2022, mentioning therein that Ganesh hailed from Ahir Caste and belonged to the family of Sadho and Matabhik, who were deported by the Britishers. The ancestry chart of the petitioner is as follows:-

Janki (Daughter of Bhola) – was great grandmother of petitioner,
who had immigrated to Guyana on
10.10.1882 vide immigration no.104709
|
Bishnath (son of Janki)
|
Khemraj (son of Bishnath)
|
Naromattie Devi – (Daughter of Khemraj, Petitioner)

4. The petitioner claims that she got married to one Bhavin Dinesh Dholakia on 14.9.2018 in a temple in Mumbai, which was duly registered on 24.9.2018. She then applied for Overseas Citizenship of India¹ Card through her spouse and also through her Indian origin ancestry, but the same was denied on the ground that her marriage was not verified. Thereafter the petitioner applied for Visa Conversion on 20.9.2022 on both counts, marriage and ancestry because for OCI registration her Visa required to have a minimum validity period of six months. However, it was again rejected.

5. The petitioner claims to have been running from pillar to posts to get the documents by which her OCI Card could be processed. In the meanwhile, her Visa expired on 6.2.2023.

6. The petitioner has all her grandparents origination documents/papers issued by the officials of Guyana, South America, which clearly demonstrate that the grandparents of the applicant were originally from India and having their origination from Allahabad(Prayagraj). All Apostilled official documents are admissible in Indian law for addressing the applicant's claim of OCI Card,

1 OCI

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allowing her Conversion Visa and issue of Nativity Certificate. These documents were sufficient as per the Hague Convention, 1961², which abolishes the requirement of legalization of foreign documents for use in any member country, once an Apostille certificate has been issued by a competent authority of the country.

7. That inspite of having the required documents the respondents refused to process or hand over the OCI Card to the petitioner, so the petitioner filed the instant writ petition with the following reliefs:-

(i) Issue a writ, order or direction in the nature of mandamus directing to the respondent nos.1 to 3 to register petitioner as OCI card holder on the basis of her Indian Origination/Indian Spouse, and

(ii) Issue a writ, order or direction in the nature of mandamus to respondent nos.1 to 3 to allow Conversion Visa to the petitioner to X-1 Entry Visa on the basis of Indian Origination/Indian Spouse, and

(iii) Issue a writ, order or direction in the nature of mandamus to respondent nos.1 to 3 to extend the Visa of the petitioner which has expired on 06.02.2023 as she is fully eligible to receive the OCI (Overseas Citizenship of India) card.

(iv) Issue a writ, order or direction in the nature of mandamus to respondent nos.4 and 5 to issue Nativity Certificate to the petitioner with respect to her Indian parents.”

ARGUMENT OF THE PETITIONER

8. Learned counsel for the petitioner submitted that the petitioner was granted a tourist visa which was valid from 7.2.2013 to 6.2.2023 and when her stay visa got expired on 12.6.2020, it was extended from time to time. The stay visa was last extended upto 8.7.2023 and further extension of visa was not granted. Even her OCI card is not being processed, as her tourist visa has already expired.

9. The petitioner's counsel further argued that production of nativity certificate is not the requirement of law in terms of the material provisions

2 Convention, 1961

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contained in the Citizenship Act, 1955³ and the Citizenship Rules, 2009⁴ in regard to grant of registration as an Overseas Citizen of India. The petitioner had duly submitted the requisite documents in support of her claim, a perusal of which, clearly demonstrates that she was having Indian Origin as her forefathers were residing within the territory of the State of Uttar Pradesh.

10. He further submitted that the respondents have failed to take into consideration the Office Memorandum dated 18.11.2020 issued by the Ministry of External Affairs, which clearly records that an Apostille document should, therefore, be treated as legalized document in India by all concerned, in accordance with the international obligation under the Convention, 1961. The provisions contained in Section 7-A of the Act, 1955 and the mandate of law engrafted in Part VI comprising Rules 29 to 35 of the Rules, 2009 do not postulate any such requirement of furnishing a nativity certificate.

11. He further submitted that Rule 32 of the Rules, 2009, the Central Government was obliged under the law to scrutinize the application of the petitioner for grant of registration as an OCI within a time bound period.

ARGUMENT OF RESPONDENTS

12. Per contra, Sri S.P. Singh, learned Assistant Solicitor General of India along with Sri Sanjay Kumar Om, learned counsel for respondent nos.1 to 3 submitted that, the petitioner's application as spouse of Indian citizen could not be processed as she could not provide her husband's earlier divorce/annulment certificate, hence, her application was closed on 20.4.2023, and she was informed about it through email with request to apply afresh with requisite documents. She did apply again but again failed to produce copy of dissolution certificate of her husband's first marriage. Hence the Visa conversion application was again closed on 22.8.2023.

3 Act, 1955

4 Rules, 2009

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13. He further submits that Section 3(2) of the Foreigners Act, 1946 empowers the Central Government to regulate the entry stay and departure of any foreigner in India. Further, the foreign nationals cannot claim visa services from the Central Government as a matter of right as per their convenience. The visa service is meant only for those foreign nationals who intend to arrive/stay/depart in/from India legally and follow Indian laws and rules.

14. With regard to petitioner's second relief regarding issuance of an OCI card, an online application was filed by the petitioner, vide reference no.INDD00365N21 dated 05.05.2021 in Foreigners Regional Registration Office, Delhi⁵, without uploading any documents, though the hard copy was sent with the FRRO, she could have scanned and enclosed to the office. FRRO had sent an email reply on 11.5.2021 intimating applicant that the OCI card registration service is temporarily suspended at FRRO, Delhi due to spread of COVID-19. She was also advised that in case of any query she could call on telephone number 011-26184824, thereafter, no further communication/correspondence was made by the petitioner and as such the said OCI application could not be processed further.

15. This writ petition was filed in May, 2023. When the matter was taken up on 10.7.2023, Sri Sanjay Om, learned counsel for the respondent, very fairly submitted that though the relevant documents were not submitted earlier but if furnished now, they would definitely be processed, after the direction of this Court to the petitioner to submit the same, the documents were submitted, but again there was some short coming. She had failed to provide the Nativity Certificate from the concerned District Magistrate.

16. He further submitted that the documents furnished by the petitioner obtained by her from the archives of Guyana was not eligible for OCI card registration under Section 7A(1) or Section 7A(3) of the Act, 1955 read with

5 FRRO

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Articles 5 and 8 of the Constitution of India, as descendants of Indian origin immigrants, who migrated as indentured labourers during British rule to Mauritius, Surinam, Netherlands and Reunion Island were only made eligible for OCI Card registration by granting special dispensation, with the approval of Ministry of Home under Section 7A(3) of the Citizenship Act, 1955 from time to time (whereby the documents of the archives of these countries can only be considered for OCI registration of their citizens). However, Indian immigrants of Guyana were not included in the special dispensation category. Therefore, the petitioner cannot be considered eligible for registration as OCI card holder on the basis of the documents obtained by her from the archives of Guyana. She is mandatorily required to submit a nativity certificate issued by the concerned District Magistrate and she cannot be granted any OCI card merely on the basis of documents obtained from the archives of Guyana. He further stated that in the absence of any nativity certificate from the concerned District Magistrate, her OCI application cannot be processed. An OCI card cannot be granted to any foreign national who is found not eligible for the issuance of the same.

ANALYSIS, REASONING AND CONCLUSION

17. We have carefully considered the submissions advanced by learned counsel for the respective parties. With the able assistance, we have perused the pleadings, grounds taken in the petition, affidavits and annexures thereto and the reply filed by concerned parties.

18. The first issue is, as to whether a Nativity Certificate is mandatory for processing the application for OCI Card?

19. The second issue is as to whether an Apostille Certificate issued by the National Archives of Guyana could be treated as a valid document under Hague Convention, 1961?

20. Before proceeding further with the matter we would first analyze with the provisions of the Acts and Rules.

21. The relevant provision of the Citizenship Act, 1955 reads as under :

“7A. Registration of Overseas Citizen of India Cardholder.--(1) The Central Government may, subject to such conditions, restrictions and manner as may be prescribed, on an application made in this behalf, register as an Overseas Citizen of India Cardholder--

(a) any person of full age and capacity,--

(i) who is a citizen of another country, but was a citizen of India at the time of, or at any time after the commencement of the Constitution; or

(ii) who is a citizen of another country, but was eligible to become a citizen of India at the time of the commencement of the Constitution; or

(iii) who is a citizen of another country, but belonged to a territory that became part of India after the 15th day of August, 1947; or

(iv) **who is a child or a grandchild or a great grandchild of such a citizen; or**

(b) a person, who is a minor child of a person mentioned in clause (a); or

(c) a person, who is a minor child, and whose both parents are citizens of India or one of the parents is a citizen of India; or

(d) spouse of foreign origin of a citizen of India or spouse of foreign origin of an Overseas Citizen of India Cardholder registered under section 7A and whose marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the presentation of the application under this section:

Provided that for the eligibility for registration as an Overseas Citizen of India Cardholder, such spouse shall be subjected to prior security clearance by a competent authority in India:

Provided further that no person, who or either of whose parents or grandparents or great grandparents is or had been a citizen of Pakistan, Bangladesh or such other country as the Central Government may, by notification in the Official Gazette, specify, shall be eligible for registration as an Overseas Citizen of India Cardholder under this sub-section.

(2) The Central Government may, by notification in the Official Gazette, specify the date from which the existing persons of Indian Origin Cardholders shall be deemed to be Overseas Citizens of India Cardholders.

Explanation.--For the purposes of this sub-section, "Persons of Indian Origin Cardholders" means the persons registered as such under notification number 26011/4/98 F.I., dated the 19th August, 2002, issued by the Central Government in this regard.

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(3) Notwithstanding anything contained in sub-section (1), the Central Government may, if it is satisfied that special circumstances exist, after recording the circumstances in writing, register a person as an Overseas Citizen of India Cardholder.”

22. The relevant provisions of the Citizenship Rules, 2008 are as follows:-

“

PART VI

OVERSEAS CITIZENSHIP OF INDIA – REGISTRATION, RENUNCIATION AND CANCELLATION

29. Application for registration under section 7A.- (1) *An application for registration as an overseas citizen of India under section 7A shall be made in Form XXVIII.*

(2) A family consisting of a spouse and upto two minor children may apply in the same Form.

30. Application for registration under section 7A by Person of Indian Origin card holders.- *A Person of Indian Origin Card holder, notified vide the notification of the Government of India in the Ministry of*

Home Affairs number 26011/4/95-F.I, dated the 19th August, 2002 (published

in the Gazette of India, Extraordinary, Part I, Section 1), as amended from time to time, who is otherwise eligible for registration as overseas citizen of

India, may apply in Form XXVIII for grant of registration, which shall be decided in the manner specified in this part for other applicants.

31. Authority to which applications are to be made.- *An application under rule 29 or as the case may be, rule 30 shall be made in duplicate -*

(a) in India-

(i) to the Foreigners Regional Registration Officer situated at National Capital Territory of Delhi, Mumbai, Kolkata, Chennai or Amritsar, who shall forward the same to the Central Government in the Ministry of Home Affairs; or

(ii) to the Foreigners Division, Ministry of Home Affairs;

(b) outside India-

(i) to the Indian Mission or Post having jurisdiction over the country of which an applicant is a citizen; or

(ii) where he is not in the country of his citizenship, to the Indian Mission or Post having jurisdiction over the country of which the applicant is ordinarily resident.

32. Scrutiny of applications.-*(1) The Central Government may, after a preliminary inquiry and on being apparently satisfied that there is no*

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adverse information available against the applicant, register the person as an overseas citizen of India as soon as possible but not later than a period of thirty days and the case shall be placed for post verification of the antecedents.

(2) The Central Government may, in case of any adverse information against the applicant, and after making such inquiry as it considers necessary, approve or reject the grant of registration within a period of four months from the date of receipt of the application.

33. Certificate or registration and maintenance of register of persons under section 7A.-*(1) Every person, who is registered as an overseas citizen of India under section 7A shall be issued a certificate of registration in Form XXIX, signed by an officer not below the rank of Under Secretary to the Government of India.*

(2) A copy of the certificate of overseas citizen of India issued under this rule, shall be preserved for the purposes of record by the issuing authority.

(3) The issuing authority shall maintain, a register containing names and other details of the persons registered as overseas citizen of India under section 7A in Form XXX and a copy thereof shall be forwarded to the Ministry of Home Affairs in the first week of every months.

34. Declaration of renunciation of overseas citizenship;*(1) A declaration of renunciation of overseas citizenship of India under section 7C shall be made in Form XXXI, accompanied with the original certificate of registration of overseas citizen of India, to the concerned India Mission or Post or the Ministry of Home Affairs, Government of India who in turn shall forward the same to the authority which issued the said certificate of registration.*

(2) On receipt of the declaration of renunciation of overseas citizenship of India, the issuing authority shall issue an acknowledgement in Form XXXII and remove the name of the declarant from the register of overseas citizen of India.

35. Cancellation of registration as overseas citizen.- *(1) Where an order has been made cancelling the registration as an overseas citizen of India, the person whose registration has been cancelled or any other person in possession of the certificate of registration shall, when required by notice in writing by the Central Government, deliver the said certificate to such person and within such period as may be specified in the notice.*

(2) On the certificate being delivered, it shall be cancelled and in case the certificate is not delivered, then the Central Government may direct that it shall be treated as cancelled.

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(3) The issuing authority shall make an appropriate entry in the registered maintained under sub-rule (3) of rule 33 stating the cancellation of registration as overseas citizen of India and a copy thereof shall be submitted to the Ministry of Home Affairs in the first week of every month.

HAGUE CONVENTION , 1961

23. The convention was held in Hague on 5th October, 1961 for abolishing the requirement of Legislation for foreign public documents. In this Convention the primary reason was to ensure the authenticity of public documents of a country. This Convention replaced the traditional and cumbersome process of certification of any document. The issuance of certificate was called an “Apostille”. An “Apostille” issued by the State of Origin, authenticated the origin of public document so that it can be presented abroad in any member country.

24. An ‘Apostille’ is an international certification that can be used in conjunction with the legal preparation of the document. An ‘Apostille’ granted by the State of origin suffice to certify the document if the convention is applicable between two States.

25. The purpose of the Convention was to replace the complicated and expensive legalization process of chain certification, with the mere issuance of a single ‘Apostille’ certificate. Hence, as a party to the Hague Apostille Convention, public documents issued by another Contracting Party need not undergo the authentication process by the foreign country.

26. In this Convention it was decided that if an ‘Apostille’ is issued by any competent authority in any country, it will be presumed that they are satisfied of the authenticity of the document. The relevant Articles of the Hague Convention are as under:-

Article 1 : The present Convention shall apply to the public documents, which have been executed in the territory of one Contracting State and which have to be produced in the territory of another Contracting State.

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For the purposes of the present Convention, the following are deemed to be public documents:

(a) documents emanating from an authority or an official connected with the courts or tribunals of the State, including those emanating from a public prosecutor, a clerk of a court or a process-server (“huissier de justice”);

(b) administrative documents;

(c) notarial acts;

(d) official certificates which are placed on documents signed by persons in their private capacity, such as official certificates recording the registration of a document or the fact that it was in existence on a certain date and official and notarial authentications of signatures.

Article 2 : Each contracting State shall exempt from legislation the documents to which the present Convention applies and which have to be produced in its territory. For the purposes of the present Convention, Legislation means only the formality by which the diplomatic or consular agents of the country in which the document has to be produced, certify the authenticity of the signature, the capacity in which the person signing the documents has acted and, where appropriate, the identity of the seal or stamp which it bears.

(Emphasis Supplied)

27. India being a signatory of this Convention is bound to accept any public document issued by the other contracting party (country). An ‘Apostille’ document should, therefore, be treated as legalized document in India by all concerned, in accordance with the international obligation under the Hague Apostille Convention.

28. Since, India had signed on Hague Convention as a result the Ministry of External Affairs had issued Office Memorandum on 18th November, 2020, where, the Ministry of External Affairs had themselves agreed that there is no reason of attestation of any ‘Apostille’ document issued by the member country. It was further clarified that no other attestation or legalization of an Apostille document is required in India as India was a member of Hague Convention. An Apostille document should, therefore, be treated as a

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legalized document in India by all concerned, in accordance with the international obligation under the Hague Apostille Convention.

29. The Ministry of External Affairs issued Office Memorandum dated 18th November, 2020, which is being quoted below for ready reference:-

***Ministry of External Affairs
(CPV Division)***

*Room No.20, Patiala House Annexe,
Tilak Marg, New Delhi -110001
November 18, 2020*

No. Q/OI/433/2/2020

OFFICE MEMORANDUM

The Hague Apostille Convention, 1961, abolishes the requirement of legalization of foreign documents for use in any member country, once an Apostille certificate (including e-Apostille) has been issued by a competent authority of the country where the document originates.

2. It has been brought to the notice of this Ministry that some institutes/organizations/establishments in India demand an apostilled document of a member country to be further attested by the Indian Mission/Post in that country. It is clarified that no further attestation or legalization of an apostilled document should be required in India as India is a member of the Hague Apostille Convention. An apostilled document should, therefore, be treated as legalized document in India by all concerned, in accordance with the international obligation under the Hague Apostille Convention.

3. Copy of a Note on “Issuing and Accepting Apostilles” is enclosed for ready reference. The full text of the Hague Apostille Convention and list of its member countries are available at:

<https://www.hcch.net/en/instruments/conventions/specialised-sections/apostille>.

4. To avoid unnecessary hassle caused to general public by demand of further legalization or attestation of an apostilled document, all concerned are requested to disseminate the information contained in paras 1, 2 & 3 above, among organizations/academic establishments, which are under their charge/ in their jurisdiction or are affiliated with them. The information may also please be prominently displayed on the official websites.

(Devesh Uttam)/OSD(CPV)

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30. Further the respondent submitted that this Court does not have territorial jurisdiction to entertain the present writ petition as the petitioner is staying in Uttrakhand is also not correct. Since the great grandparents of the petitioner hailed from Allahabad and Jaunpur, which lies within the territorial jurisdiction of this Court, hence, their objection regarding lack of territorial jurisdiction is incorrect and the same is turned down by this Court. Accordingly, we hold that this Court has full jurisdiction to entertain the present case.

31. The petitioner herein had applied for OCI Card initially as spouse but since she could not produce the earlier marriage annulment certificate of her husband, the application was initially rejected. However, she again moved an application for OCI Card on the account of being great grand child of Indian citizen who had immigrated to Guyana in 1882.

32. In the instant matter, the petitioner, who had applied for OCI Card, had given the proof that her great grandfather migrated from Allahabad and Jaunpur. These documents were taken from the National Archives of Guyana and were duly Apostilled, which goes to show that petitioner's great grandfather Ganesh had immigrated from India and another 'Apostille' document shows that her great grandmother Janki had immigrated to Guyana on 10th October, 1882. The parentage had been proved by further birth certificates by the petitioner filed along with the petition. Once the immigration of great grandparents of the petitioner is proved, there is no reason to disbelieve the said documents.

33. Section 7(A) of the Citizenship Act, 1955 lays down for grant of OCI which can be issued to anyone, who is a child or a grandchild or a great grandchild of such a citizen of Indian Origin. Section 18 of the Citizenship Act further obliges the respondents to frame Rules. Accordingly, under Section 18 of the Act, 1955, the Rules, 2009 was framed. Rules 29 to 35 of the Rules, 2009 which is Part VI of the Rules, 2009, lays down registration,

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renunciation and cancellation of overseas citizenship of India. In these rules, there is no mention of Nativity Certificate as sought by the respondents herein. However, after the petitioner had furnished all the documents along with the OCI Card, the respondents asked the petitioner to submit Nativity Certificate, though the same is not required under the Citizenship Act and Rules.

34. In response to this query, the petitioner approached Nagar Nigam, Allahabad for issuance of Nativity Certificate. Nagar Nigam, Allahabad replied that, they do not have the records prior to 1900, so they are not in a position to issue Nativity Certificate to the petitioner.

35. On one hand, the Government of India had amended the Act, 1955 and added Section 7(A) and also made Rules, 2009 in which anybody who is eligible can apply for OCI Card in Form XXVIII.

36. The petitioner herein had given sufficient evidence (by way of Apostille document taken from the National Archives of Guyana) about the great grandparents of petitioner, who had immigrated from India on 10th October, 1882. But since Nagar Nigam, Allahabad had not kept records prior to 1900, it cannot be taken against the petitioner. The respondents herein cannot reject the application of the petitioner on the ground that she is not able to procure the Nativity Certificate when the government authorities had themselves failed to maintain the same. The plain reading of the Act and the Rules clearly shows that, to apply for OCI Card, the applicant has to prove that his/her grandparents or great grandparents were of Indian origin. Here, the petitioner has successfully proved the same by filing Apostille document from the National Archives of Guyana. In the light of the same it is not open for the respondents to have rejected the OCI Card on the ground that the petitioner has not been able to produce the Nativity Certificate.

37. Respondent nos.1 to 3 cannot take advantage of their own fault. They have not maintained any register/record prior to 1900, and at the same time,

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they cannot compel the petitioner to produce Nativity Certificate. Further, apart from Apostille Certificate issued by the Government of Guyana the petitioner had also enclosed a certificate, along with the application, given by Village Pradhan stating that Ganesh, petitioner's great grandfather was 'Ahir' by caste who belonged to family of Sadhu and Mata Bhikh, who were deported by the Britishers to Guyana. The petitioner has produced enough evidence to show that her great grandparents had immigrated from India and hence, she is eligible to apply for the OCI Card.

38. Office Memorandum dated 18.11.2020 issued by the Ministry of External Affairs clearly state that the Apostille document by any other country would be treated as legalized document in India by all concerned authorities. However, the same Ministry of External Affairs while processing the petitioner's OCI Card has refused to accept the Apostille document of the petitioner.

39. On being asked as to whether respondent nos.1 to 3 are bound by Hague Convention and Office Memorandum dated 18th November, 2020, the reply given by the Assistant Solicitor General of India was that he has been instructed to state that the Office Memorandum is a valid document but is not mandatory. This argument per se is not correct, as the Government of India had signed the Hague Convention Treaty and in view of Hague Convention, the Ministry of External Affairs had issued the Office Memorandum dated 18th November, 2020 treating the Apostille document as a legal document, but at the same time they cannot turn around and say that following the Hague Convention Treaty is not mandatory. Respondent nos.1 to 3 are bound with the Hague Convention, 1961 and also bound to accept the Apostille document of other countries.

40. Article 51(C) of the Constitution of India is a Directive Principle of State Policy which states that the State shall endeavour to foster respect for international law and treaty obligations, where India is a signatory nation to

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an international treaty, and a statute is made in furtherance of such treaty, a purposive rather than a narrow literal construction of such statute is preferred. The interpretation of such a statute shall be construed on broad principle of general acceptance rather than earlier domestic precedents, being intended to carry out treaty obligations, and not to be inconsistent with them.

41. Hon'ble Supreme Court in the matter of **Commissioner of Customs, Bangalore vs M/S G.M. Exports & Ors**⁶ has held as under:-

“15. A number of judgments, both English and Indian, have laid down as to what is the correct approach to the construction of a statute made in response to an international treaty obligation by a member nation. Thus, in The Jade The Eschersheim Owners of the motor vessel Erkowit v. Owners of the ship Jade, [1976] 1 All ER 920, the House of Lords stated:

“As the Act was passed to enable Her Majesty’s government to give effect to the obligations in international law which it would assume on ratifying the convention to which it was a signatory, the rule of statutory construction laid down in Salomon v. Customs and Excise Commissioners [1966] 3 All ER 871 and Post Office v. Estuary Radio Ltd. [1967] 3 All ER 633 is applicable. If there be any difference between the language of the statutory provision and that of the corresponding provision of the convention, the statutory language should be construed in the same sense as that of the convention if the words of the statute are reasonably capable of bearing that meaning.” [at page 924]

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17. In Garland v. British Rail Engineering Ltd., [1982] 2 All ER 402, the same Rule was set out with an addition – that not only should municipal law carry out treaty obligations, but it should also not be inconsistent with the terms of a treaty. This was put by the House of Lords in the following words:-

“My Lords, even if the obligation to observe the provisions of article 119 were an obligation assumed by the United Kingdom under an ordinary international treaty or convention and there were no question of the treaty obligation being directly applicable as part of the law to be applied by the courts in this country without need for any further enactment, it is a principle of construction of United Kingdom statutes, now too well established to call for citation of authority, that the words of a statute passed after the Treaty has been signed and

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dealing with the subject matter of the international obligation of the United Kingdom, are to be construed, if they are reasonably capable of bearing such a meaning, as intended to carry out the obligation, and not to be inconsistent with it.” [at page 415]

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20. To similar effect are some of the judgments of our court. In *Vellore Citizens’ Welfare Forum v. Union of India and others*, (1996) 5 SCC 647, when dealing with the Environment Protection Act, this Court stated:

*“Even otherwise once these principles are accepted as part of the Customary International Law there would be no difficulty in accepting them as part of the domestic law. It is almost an accepted proposition of law that the rules of Customary International Law which are not contrary to the municipal law shall be deemed to have been incorporated in the domestic law and shall be followed by the Courts of Law. To support we may refer to Justice H.R. Khanna’s opinion in *Addl. Distt. Magistrate Jabalpur v. Shivakant Shukla* [(1976) 2 SCC 521 : AIR 1976 SC 1207], *Jolly George Varghese v. Bank of Cochin* [(1980) 2 SCC 360 : AIR 1980 SC 470] and *Gramophone Co. of India Ltd. v. Birendra Bahadur Pandey*, [(1984) 2 SCC 534 : 1984 SCC (Cri) 313 : AIR 1984 SC 667].” [at para 15]*

42. Hon’ble Supreme Court in the matter of **Lakshmi Kant Pandey vs Union of India & Ors**⁷ has held as under:

“.....procedure prescribed in the Hague Apostille Convention be accepted and followed by the Indian courts while dealing with the adoption of children by foreign parents.

.....

(a) Direct the courts of competent jurisdiction dealing with adoption/guardianship cases to accept documents authenticated by officers competent to issue certification by “Apostille” in the country of their execution as provided and covenanted in the Hague Apostille Convention.”

43. Hon’ble Delhi High Court in the matter of **Dr. Sanjay Khanduja vs. Punjab National Bank and another**⁸ has held as under:-

“15. Further, the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, 1961, i.e., Apostille Convention, is clear to the effect that legalisation in the Indian

7 (2010) 12 SCC 735

8 2021 SCC OnLine Del 3209

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Embassy would not be required if the documents is duly apostilled. India, being a member of the Apostille Convention since 2005, there is no requirement of legalisation of duly apostilled documents in India. The relevant portion of the Apostille Convention is as under:

“ARTICLE 2 – Each Contracting State shall exempt from legislation the documents to which the present Convention applies and which have to be produced in its territory. For the purposes of the present Convention, Legislation means only the formality by which the diplomatic or consular agents of the country in which the document has to be produced, certify the authenticity of the signature, the capacity in which the person signing the documents has acted and, where appropriate, the identity of the seal or stamp which it bears.

44. In the matter of **Abdul Manaf v. State of Kerala**⁹, High Court of Kerala has held as follows:-

“3. Ext.P5 certificate of civil status is issued by the Swiss Confederation, to prove the bride marital status, attested by a notary in terms of Hague Convention, abolishing the requirement of legalisation for foreign public documents (Apostille Convention). India has declared its accession to above Convention on 05/10/1961. The Switzerland has not objected to accession of India as Contracting State under article 12 of the Convention. Thus, the Indian Court and the Public Authorities are bound to recognise such certification of the notaries of the foreign country.

5. The Apostille Convention replaced cumbersome formalities of requirement of diplomatic or consular legislation for foreign public documents and legalisation process of authentication by issuance of Apostille Certificate. Therefore, foreign public documents do not require legislation if it bears apostille certification.”

45. Hon’ble Supreme Court of Namibia has held in the matter of **Hans-Jurgen Gunther Koch vs. The State**¹⁰ as follows:-

9 2015 SCC OnLine Ker 29460

10 S v Koch (1) (SA 13 of 2005) [2006] NASC 6 (29 November 2006)

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“The purpose of the Convention, as stated in its name, was to simplify proof of foreign documents and the authentication thereof for use in countries which have acceded to the Convention. The provisions of the Convention, in so far as they are relevant to these proceedings, are as follows:

“Article 1 The present Convention shall apply to public documents which have been executed in the territory of one Contracting State and which have to be produced in the territory of another Contracting State.

For the purposes of the present Convention, the following are deemed to be public documents:

(a) documents emanating from an authority or an official connected with the courts or tribunals of the State, including those emanating from a public prosecutor, a clerk of a court or a process-server;

Article 2

Each Contracting State shall exempt from legislation documents to which the present Convention applies aEach Contracting State shall exempt from legalisation documents to which the present Convention applies and which have to be produced in its territory. For the purposes of the present Convention, legalisation means only the formality by which the diplomatic or consular agents of the country in which the document has to be produced certify the authenticity of the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which it bears and which have to be produced in its territory. For the purposes of the present Convention legalisation means only the formality by which the diplomatic or consular agents of the country in which the document has to be produced certify the authenticity of the signature the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which it bears.

Article 3

The only formality that may be required in order to certify the authenticity of the signature, the capacity in which the person signing the document has acted and, where appropriate, the

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identity of the seal or stamp which it bears, is the addition of the certificate described in Article 4, issued by the competent authority of the State from which the document emanates.

.....

From this it follows that the terms of the Convention are part of the law of Namibia and legally bind Namibia against other Contracting States.”

46. Hence, it is clear that the petitioner has placed the documents which goes to show that, her grandparents had immigrate from India to Guyana on 10th October, 1882 and the documents given by her are sufficient enough to prove the same. The Citizenship Act, 1955 was amended and Section 7A was added on 28.6.2005. This amendment was clearly carried out to give benefits to the foreign citizens (whose forefathers/mothers have been native of Indian origin) for travelling and staying in India, so Section 7A was added in the Citizenship Act, 1955, and Overseas Citizen of India Cards were to be issued, to such citizens, whose forefathers were Indians.

47. The request of respondents to provide Nativity Certificate is, nowhere, provided in the Citizenship Act or the Rules. We understand the respondents can ask for documents to prove ancestry, which has been provided by the petitioner in this case. Further, the respondents cannot compel the petitioner to get a Nativity Certificate from the office of the District Magistrate, which admittedly as per their own objection, they have not maintained the same since 1900.

48. The Government of India has been signatory of the Hague Convention, and accordingly, the Ministry of External Affairs had issued Office Memorandum on 18.11.2020 treating the ‘Apostille’ document as a legal document. Here, when the petitioner had given ‘Apostille’ document showing her ancestry, it is not open for respondent nos.1 to 3 to disbelieve the same and not follow the Treaty, even though they themselves had signed.

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49. The petitioner has clearly made out a case that her great grandparents migrated to Guyana in October, 1882, hence, she is entitled for the OCI Card. Accordingly, we direct respondent nos.1 to 3 to process the OCI Card of the petitioner in accordance with Section 7A of the Citizenship Act, 1955. We further direct conversion of VISA of the petitioner, so that she is eligible for the OCI Card.

50. Accordingly, the writ petition stands **allowed**.

Order date : 18.1.2024

Manish Himwan