

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1617 OF 2013

Mihir Ramesh Vora	]	
Indian Inhabitant of mumbai,	]	
Residing at 15-A/7 Shriniketan,	]	
3 <sup>rd</sup> floor, Sion Naka, Station Road,	]	
Sion, Mumbai 400 022	]	.. Petitioner
versus		
1. Union of India	]	
through the Secretary,	]	
Ministry of External Affairs,	]	
Passport Seva Kendra, Lower Parel	]	
Trade Point, Kamla Mill Compound	]	
Pandurang Budhkar Marg,	]	
Lower Parel, Mumbai 400013	]	
2. Regional Passport Officer,	]	
Regional Passport Office,	]	
Passport Seva Kendra,	]	
Lower Parel, Trade point,	]	
Kamla Mill Compound,	]	
Pandurang Budhkar Marg,	]	
Lower Parel, Mumbai 400013	]	..Respondents

Mr. Mukesh M. Vashi with Mr. Abhishek Bharati i/b. M. P. Vashi & Associates for Petitioner.  
Ms Madhubala Kajale for Respondents.

**CORAM : S. J. VAZIFDAR &**  
**M. S. SONAK, JJ.**  
**DATE : 14<sup>TH</sup> AUGUST, 2013.**

**JUDGMENT (Per : M. S. Sonak, J.) :-**

1] Rule. Rule is made returnable forthwith and heard finally by

consent of the parties.

2] The petitioner, who has attained majority seeks a writ of mandamus directing the Regional Passport Officer, Mumbai (respondent no. 2) to issue a passport in his name as indicated in a deed of adoption dated 28.06.2001.

3] The brief facts and circumstances in which the petitioner was required to file the present petition are set out hereunder:-

(A) The petitioner was born on 28.11.1991 to Suryakant Nisar and his wife Jigna Suryakant Nisar, hereinafter referred to as the 'petitioner's biological parents'.

(B) By a deed of adoption dated 28.06.2001, the petitioner, then 9 years old, was taken in adoption by one Ramesh Vora and his wife. The said Ramesh Vora is hereinafter referred to as the 'adoptive father of the petitioner'.

Incidentally, the said Suryakant Nisar is the maternal uncle of the petitioner.

(C) The petitioner has placed on record the Maharashtra Government Gazette published on 19.7.2001 (Entry No.X-5353) as also classified advertisements in newspapers, which notified that the name of the petitioner has been changed from Mihir Suryakant

Nisar to 'Mihir Ramesh Vora'.

(D) The statement of marks issued by the Maharashtra State Board of Secondary and Higher Education, consequent upon the petitioner passing SSC and HSC examinations and the passing certificate issued by the University of Mumbai, consequent upon the petitioner passing the 1<sup>st</sup> year engineering examination mention the petitioner's name as 'Mihir Ramesh Vora'.

(E) The name of the petitioner appears in the family ration card issued to Ramesh Vora. The petitioner has been issued PAN Card, Adhar Card, Election Commission of India Identity Card, Driving licence all in the name of '*Mihir Ramesh Vora*'.

(F) The Petitioner desires to travel abroad for the purposes of further education. Statement of marks and passing certificates issued by the Education Boards and University indicated petitioner's name as '*Mihir Ramesh Vora*'. In the circumstances, it was imperative for the petitioner to apply for a passport in his adoptive name i.e. '*Mihir Ramesh Vora*', as otherwise the discrepancies might be difficult to explain, particularly to the authorities abroad.

(G) The petitioner, accordingly by an application dated 25.09.2012 applied on-line to the respondent no. 2, who is the prescribed authority, for issuance of passport. In the said application, the petitioner disclosed the names of his biological

parents as appearing in his birth certificate.

(H) On the appointed date and time, when the petitioner reported for pre-checking of the documents in the office of the respondent no. 2, he was informed that no passport can be issued to him unless he produced a '*registered adoption deed*'. On the application form, an endorsement was made, which reads "*Adoption Deed registered in the court.*"

4] Ms. Kajale appearing for the respondents placed reliance upon a circular dated 03.10.2001 issued by the Ministry of External Affairs (CPV Division) Government of India to contend that production of registered adoption deed is mandatory for issue of passports to all adopted children. Thereupon the petitioner amended the petition seeking inter alia a declaration that circular dated 03.10.2001, to the extent to which it makes the production of registered adoption deed mandatory for the purpose of issue of passport is illegal, ultravires and unconstitutional.

5] The circular, in its entirety is transcribed herein below for ready reference :

"No. VI/401/1/87/2000  
Government of India  
Ministry of External Affairs  
(CPV Division)

3/10/2001

Circular

Subject : Issue of passport to Minor children – Police verification.

In partial modification of Ministry's circular of even number dated 3/5/2001, following would be the procedure relating to police verification in case of issue of passports to minor children.

Children upto 15 yrs:

1. Where either of the parent holds a valid passport – Passport to be issued without any police verification.
2. Where neither of the parents hold a valid passport – Passport to be issued only after receipt of a clear Police Verification Report.

Children between 15 & 18 Yrs.

Passport to be issued only after receipt of a clear Police Verification Report or on the Post Police Verification basis with the production of Verification Certificate as is the case with normal adult passports. Children between 15 & 18 Yrs may be issued passports under their own signature without insisting on counter signatures by parent / legal guardian

Adopted Children

Passports to children who are adopted from another State / area of jurisdiction other than that of the Passport Officer will be issued on Post Police Verification basis. However as a matter of precaution it has been decided that production of registered Adoption deed would be mandatory for issue of

passports to all adopted children. Consequently Ministry's circular no. VI/401/8/2000 dated 6/4/2000 may be treated as modified accordingly.”

6] In light of the view which we propose to take, it is not necessary to decide upon the legality and validity of the circular dated 03.10.2001.

7] The circular, in the first place concerns issue of passport '*to Minor Children*'. Admittedly, the petitioner is neither a '*Child*' (minor), nor have the respondents declined to consider the petitioner's application for issue of passport upon any ground relating to police verification.

The first part of the circular concerns the circumstance in which police verification is necessary before issuance of passport for '*minor children*' upto 15 years of age and between 15 and 18 years of age. As the petitioner has attained majority being more than 18 years of age on the date of application for issuance of passport, this part of the circular is not at all attracted to his case.

8] The second part of the circular captioned '*Adopted Children*' provides that passports to children who are adopted from another State / area of jurisdiction other than that of the passport officer will

be issued on post police verification basis. Further, the circular provides that as a matter of precaution production of an registered adoption deed would be mandatory for issue of passports to all adopted children. Ms. Kajale laid considerable emphasis upon this part of the circular to contend that production of a registered adoption deed is mandatory for issue of passports to all '*Adopted Children*'.

9] The circular dated 3.10.2001 is required to be read in its entirety. So read, it is clear that the same applies to minor children, whether adopted or otherwise. The portion of the circular captioned "*Adopted Children*" cannot be read independent of the first portion, which clearly concerns minor children below 18 years age. Even in the second portion of the circular entitled "*Adopted Children*" reference is made to '*children*' or '*adopted children*'. Contextually, it is clear that the requirement concerns '*minor adopted children*' and not '*adopted children*', who have attained age of majority. Further, in any case, the circular applies to children, who are adopted from another State/area of jurisdiction other than that of the passport officer. This is a matter of precaution. None of the these circumstances apply to the petitioner's case. The petitioner is neither a minor, nor has he been adopted from another State/area

or jurisdiction other than that of the passport officer. Clearly therefore, the circular dated 3.10.2001 is inapplicable to the case of the petitioner. In these circumstances, it is not necessary to rule upon the validity or otherwise of the circular dated 3.10.2001 in the peculiar facts and circumstances of the present petition.

10] Mr. M. M. Vashi, however, placed reliance upon the decision of a Division Bench of this Court in the case of *Vishvanath Ramji Karale vs. Rahibai Ramji Karale & Ors. A.I.R. 1931 Bombay 105*, in which it is held that it is the act of adoption and not an adoption deed which confers the status of an adopted son. A perfectly valid adoption can be made without an adoption deed. The relevant observations from this judgment are transcribed herein below for ready reference:-

*“... Now admittedly this document was not written in the presence of the Sub-Registrar or by him, and the question then would be whether an adoption deed of this nature requires registration. Under S. 17, Registration Act, adoption deeds in themselves are not compulsorily registrable, but it is contended that by this adoption deed Ramji the adopter created an interest of Rs.100 or upwards in immovable property and therefore the document would be compulsorily registrable. The answer to that is that it is not the adoption deed which confers the status of an adopted son or any interest in the property of the adoptive father, but the adoption itself which in this case had taken place some days earlier. A perfectly valid adoption can be made without an adoption deed and any status which the adopted son gets by the adoption is due to the proper ceremonies being performed and not to any*



*deed passed as evidence of that adoption.”*

11] However, as we are of the opinion that the circular dated 03.10.2001 is itself inapplicable to the case of the petitioner, we do not deem it fit to go into the issue as to whether requirement of registered adoption deed can be insisted upon by the respondents and that too by means of a circular.

12] Apart from the circular dated 03.10.2001, Ms. Kajale made no reference to the provisions of the Passports Act, 1967 or any rules made thereunder, on the basis of which it could be said that registered Adoption Deed is a mandatory requirement for issuance of passports to adopted persons who have attained majority at the time of making an application for issuance of passport.

13] In the case of *Maneka Gandhi vs. Union of India & Anr. (1978)1 SCC 248*, the Supreme Court has ruled that the right to travel abroad and consequently the right to obtain a passport to enable a citizen to do so is a highly valuable right which is a part of personal liberty, an aspect of spiritual dimension of man and it should not be lightly interfered with. Such right was read into Article 21 of the Constitution of India and it was held that no person can be deprived of that right except according to the procedure established

by law.

In this case, Justice Krishna Iyer, whilst concurring with the majority opinion has expressed himself thus :

*“..... To argue for arbitrary inhibition of travel rights under executive directive or legislative tag is to invite and accelerate future shock. This broader setting is necessary if we are to view the larger import of the right to passport in its fundamental bearings. It is not law alone but life’s leaven. It is not a casual facility but the core of liberty.*

*“ ..... The right of free movement is a vital element of personal liberty. The right of free movement includes the right to travel abroad. So much is simple textbook teaching in Indian, as in Anglo-American law. Passport legality, affecting as it does, freedoms that are “delicate and vulnerable, as well as supremely precious in our society”, cannot but excite judicial vigilance to obviate fragile dependency for exercise of fundamental rights upon executive clemency. So important is this subject that the watershed between a police State and a Government by the people may partly turn on the prevailing passport policy.”*

14] In the peculiar facts and circumstances of the present case therefore, we direct the respondent no. 2 to consider the petitioner's application dated 25.09.2012 for issuance of passport in accordance with law, without insisting upon production of registered adoption deed. We make it clear however, that the respondent No.2 is at liberty to take into consideration any other issues relating to the identity, police verification and fulfillment of other requirements as may be prescribed by the Passports Act, 1967 or the rules made thereunder.

15] Rule is made absolute to the aforesaid extent. However, there shall be no order as to costs.

**(M. S. SONAK, J.)**

**(S. J. VAZIFDAR, J.)**

Chandka