

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

**Judgment reserved on: 22.03.2012**

% **Judgment delivered on: 30.03.2012**

+ **W.P.(C) 2888/2011**

TEESTA CHATTORAJ ..... Petitioner  
Through: Mr. M. Dutta, Advocate  
versus

UNION OF INDIA ..... Respondent  
Through: Mr. Ruchir Mishra, Advocate

**CORAM:  
HON'BLE MR. JUSTICE VIPIN SANGHI**

### **J U D G M E N T**

**VIPIN SANGHI, J.**

1. The present writ petition under Article 226 of the Constitution of India has been preferred by Ms. Teesta Chatteraj, a minor through her mother and natural guardian Smt. Rajeshwari Chatteraj. The petitioner seeks issuance of a writ of certiorari quashing the letter dated 04.04.2011 (Ref. No.RPO/PG/133/11) issued by the respondent, i.e. the Regional Passport Officer (RPO), New Delhi, whereby the petitioners request for issuance of a passport has been declined. The petitioner also seeks a writ of mandamus directing the respondent RPO to issue a passport in favour of the petitioner on the basis of the information supplied by the petitioner in her passport application form.

2. The petitioner was born on 15.11.1995 at Kolkata. Her natural parents are Sh. Abhijit Ghosh and Smt. Rajeshwari Ghosh, who is now known as Rajeshwari Chatteraj. When the petitioner was only about two years old, the natural parents of the petitioner obtained decree of divorce by mutual consent. So far as the petitioner is concerned, the terms agreed between her natural parents, inter alia, provided that the petitioner's mother *will not claim and/or demand of maintenance and/or alimony for the minor child at present or in future from the petitioner's father*. It was also agreed that the petitioner's mother would maintain the petitioner. The petitioner's father admitted that *he has no right to see the child for all times to come and he will not interfere in any manner regarding rearing up the child by the Opposite party and her family members and that he shall have no right to claim and/or demand for custody of the said child from the Opposite party*.

3. The petitioner's mother married Sh. Surojit Chatteraj at New Delhi on 04.03.1999. By registered deed of adoption deed dated 12.06.2006, the petitioner was given in adoption by her mother to her husband Sh. Surojit Chatteraj. The petitioner submits that religious ceremonies to mark the acceptance of the petitioner by her adopted father were also held, and were attended by members and friends of

the family.

4. On 26.07.2010, the petitioner applied for a passport, through her mother, to the respondent authority. The petitioner was required to provide, inter alia, the registered adoption deed, which was also provided. After much waiting, the petitioner was informed by the impugned communication that her application could not be accepted, as it had been found on scrutiny that the petitioners biological father's name, as per her birth certificate, had not been mentioned in the passport application form, and the adoption deed was not in accordance with the Hindu Adoption and Maintenance Act, 1956 ("HAMA").

5. The gist of the communication dated 04.04.2011 issued by the RPO reads as follows:

*"On scrutiny of file, it is seen that biological father's name as per birth certificate has not mentioned in the passport application form. The adoption Deed as per Adoption Act is also not valid. As per rules of Ministry of External Affairs Circular No.VI/401/01/05/2008 dated 05.10.2009 serial No.4(2) **"In the event of remarriage after divorce, the name of step-father/step mother cannot be written in the passport of children from the previous marriage. The relationship of the child to his biological parents subsists, even after divorce by parents. It is also not possible to leave the column of father or mother blank in the passport in such cases. Therefore, such applicants must write the***

***names of their biological parents in the application form. However, if the stepfather or stepmother is appointed by a Court as legal guardian, the name of such step-parent can be written as legal guardian".***

*In view of the instruction, you are advised to furnish a fresh Form-1 with name of biological father or a Court Order appointing you as a Legal Guardian. This may be treated as Final Reminder, your compliance may reach this office within 15 days, failing which you have nothing to say and your complaint may be treated as closed". (emphasis supplied).*

6. Consequently, the petitioner has preferred this petition, accusing the respondent authority of acting arbitrarily, illegally and malafide.

7. The submission of Mr. Dutta, learned counsel for the petitioner is that the respondent RPO has no authority or jurisdiction to deny the issuance of a passport to the petitioner by going into the legality or otherwise of the adoption deed. He submits that the adoption deed has been duly registered. He submits that the RPO cannot question, or sit in judgment over the validity, or otherwise, of the adoption deed.

8. It is argued that the respondent authority does not function as an adjudicating authority, who could rule on the validity or otherwise of the adoption deed. He further submits that the only grounds on which the passport can be refused by the RPO are contained in Section 6 of

the Passports Act, 1967, and the ground raised by the RPO, namely, that the adoption deed is not valid is not mentioned as a ground in Section 6 of the Passports Act.

9. It is argued that by declining the passport to the petitioner, the petitioner's fundamental right to travel has been infringed. In support of this submission, learned counsel for the petitioner places reliance upon a decision of the Full Bench of the Punjab and Haryana High Court in **Pawandeep Singh v. Union of India** decided on 07.11.2003, reported as 2003 LawSuit (P&H) 1221, which has been followed subsequently in **Satinder Pal Singh Sibia v. Union of India & Anr.**, 2007 (1) HLR 59.

10. Learned counsel for the petitioner further submits that even otherwise it cannot be said that the adoption deed is not in accordance with the HAMA. It is submitted that Section 9 of HAMA provides that the mother of a child has the capacity to give the child in adoption. He further submits that proviso to Section 9(2) also stands fully satisfied, inasmuch, as, it can be said that the petitioner's natural father has "*finally renounced*" the petitioner's world, inasmuch, as, he had, at the time of obtaining divorce by mutual consent, given up his rights to have anything to do with the petitioner, and he had also renounced his responsibilities towards the petitioner as a father.

11. In support of this submission, learned counsel for the petitioner has placed reliance upon the definition of the expression “renounce” and “renounce the world” and “renouncing”, as contained in the Advanced Law Lexicon by P. Ramanatha Aiyar (Third Edition); Black’s Law Dictionary (Eighth Edition), and; the Concise Oxford Dictionary of Current English (Eighth Edition).

12. He also places reliance on an unreported judgment of the Bombay High Court in **Maroti Vitthal Bhatwalkar & Anr. v. Mahila Vikas Mandal, Chandrapur**, 2007 (2) AIR Bom R 44, to submit that even when the biological parents are alive, the Court could allow the application of the strangers to take the child in adoption in the interest and welfare of the child.

13. On the other hand, learned counsel for the respondent submits that the RPO is enjoined by Section 5 of the Passports Act to make such an enquiry as it may consider necessary, and thereafter by an order in writing, either issue the passport or refuse the same. Learned counsel submits that under Section 5(3) of the Passports Act, it is provided that in case a passport is issued with an endorsement or is refused, the passport officer is obliged to record his reasons in brief, which has been done in the present case.

14. He further submits that the Punjab and Haryana High Court while rendering the aforesaid decisions did not consider the opening words of Section 6(1) and 6(2) of the Passports Act, which reads *“Subject to the other provisions of this Act, the passport authority shall refuse .... ....”*. He submits that apart from the ground specifically mentioned in Section 6, the passport officer can refuse issuance of a passport on the ground that the information furnished by the applicant is incorrect or insufficient, and can require the applicant to resubmit the application by providing the correct and complete information.

15. Learned counsel for the respondent submits that in the petitioner’s passport application form, the name of the father was mentioned as that of the adopted father, and not the natural father. During the course of verification of the factual disclosures made in the petitioner’s application, the petitioner was required to provide the adoption deed. The adoption deed, though registered, is not valid, since, even a bare perusal of the adoption deed shows that the consent of the natural father has not been obtained, and it is not even the petitioner’s case that the petitioner’s natural father has either finally renounced the world, or has ceased to be a Hindu, or has been declared by a court of competent jurisdiction to be of unsound mind. Reference is made to Section 9(2) of HAMA.

16. It is further argued that merely because the petitioner's father renounced or waived his rights, qua the petitioner, and also gave up his obligations to maintain the petitioner at the time of obtaining divorce by mutual consent, the same cannot be construed as a final renunciation of the world.

17. So far as the submission of the petitioner founded upon the decisions of the Punjab and Haryana High Court is concerned, I reject the same. With utmost respect and with due deference to the Punjab and Haryana High Court, I cannot agree with the view taken in the aforesaid two decisions.

18. In the case of **Pawandeep Singh** (supra), the passport was refused on the ground that the adoption deed, on the basis of which the passport application was moved, was not valid. In this case, the petitioner was born on 27.08.1989 in Punjab. Both his parents had died by October 1998. His real grandparents gave him in adoption to their other son Shri Satpal Singh and his wife, who were living in Italy, and an adoption deed dated 17.05.1999 was executed and registered in the office of the Sub Registrar, Ludhiana. The respondents contention was that under the provisions of HAMA, Sh. Satpal Singh and his wife, who had sons of their own, could not have adopted the petitioner and, therefore, the adoption was invalid.



19. The Full Bench, after extracting Section 6 of the Passports Act, observed as follows:

***“9. A bare perusal of Section 6 afore-mentioned shows that except on four grounds mentioned in Sub Section 1 and nine grounds mentioned in Sub-section 2 of Section 6 on no other ground there could be refusal to grant Passport or travel document.***

10. In *Ganpathi National Middle School v. M. Durai Khanna*, (1996) 6 S.C.C. 464 and *State of H.P. v. H.P. State Recognised & Aided Schools Managing Committees and Ors.*, (1995)4 S.C.C. 507 the Hon'ble Supreme Court has held that a child has got a fundamental right of education. In *Satwant Singh Sawhney v. D. Ramarathnam*, Assistant Passport Officer, A.I.R. 1967 S.C. 1836 it was held to the effect that Article 21 takes in the right of locomotion and to travel abroad. Hidayatullah, J. in his dissenting judgment also considered that there is no doubt a fundamental right to equality in the matter of grant of passports (subject to reasonable classifications). In *Mrs. Maneka Gandhi v. Union of India*, (1978)1 S.C.C. 248, the Apex Court laid down the applicable tests under Article 19 in relation to impounding of passport. Under our constitutional scheme the fundamental right enshrined under Article 21 is available not only to adults or non citizens but also to the minors. The Government cannot deprive the minor's right to have a better education or to live a dignified life, apart from love and affection of his own uncle and Aunt ***though the stand taken by the Respondents that adoption was not valid is correct since the Aunt and Uncle are having their own sons.*** This significant aspect of the matter was not considered earlier by the Division Bench. The judgment of the Division Bench has also not considered the provisions of Section 6 of the Act. It is, thus, per incuriam. We are, thus, constrained to overrule this decision.

11. We have no hesitation in holding that the action of the Respondent No. 2 in refusing to grant Passport to the Petitioner in the peculiar facts and circumstances of the

*case, is in teeth of Article 14 which is antithesis to any arbitrary action and against the Petitioner's fundamental rights enshrined under Articles 19 and 21 of the Constitution of India". (Emphasis supplied)*

20. With the utmost respect, the Full Bench failed to notice the opening words of Section 6(1) and (2) of the Passports Act. Insofar it is relevant, Section 6 of the Passports Act reads as follows:

*"6. Refusal of passports, travel documents, etc. - (1) Subject to the other provisions of this Act, the passport authority shall refuse to make an endorsement for visiting any country under clause (b) or clause (c) of sub- section (2) of section 5 on any one or more of the following grounds, and on no other ground, namely:--*

- (a) ....*
- (b) ....*
- (c) ....*
- (d) ....*

*(2) Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under clause (c) of sub- section (2) of section 5 on any one or more of the following grounds, and on no other ground, namely:--*

- (a) ....*
- (b) ....*
- (c) ....*
- .....*
- (i) .....".*

21. The Full Bench also did not notice Section 5(2) and (3) of the Passports Act, which reads as follows:

*"5. Applications for passports, travel documents, etc. and orders thereon. –*

*... ..*

*.... ..*

*..... ..*

**(2) On receipt of an application [under this section,] the passport authority, after making such inquiry, if any, as it may consider necessary, shall, subject to the other provisions of this Act, by order in writing,-**

*(a) issue the passport or travel document with endorsement or, as the case may be, make on the passport or travel document the endorsement, in respect of the foreign country or countries specified in the application; or*

*(b) issue the passport or travel document with endorsement, or, as the case may be, make on the passport or travel document the endorsement, in respect of one or more of the foreign countries specified in the application and refuse to make an endorsement in respect of the other country or countries; or*

*(c) refuse to issue the passport or travel document or, as the case may be, refuse to make on the passport or travel document any endorsement.*

**(3) Where the passport authority makes an order under clause (b) or clause (c) of sub- section (2) on the application of any person, it shall record in**

***writing a brief statement of its reasons for making such order and furnish to that person on demand a copy of the same unless in any case the passport authority is of the opinion that it will not be in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country or in the interests of the general public to furnish such copy".*** (Emphasis supplied)

22. The observations made by the Full Bench that except for the four grounds mentioned in sub section (1) and nine grounds mentioned in sub section (2) of Section 6, the passport officer could not refuse the passport or travel documents on any other ground, clearly misses the opening words of Section 6(1) and 6(2) "*Subject to the other provisions of this Act ..... ..*". Pertinently, the Full Bench also acknowledges that the stand taken by the passport authority, to the effect that the adoption was not valid, was correct. However, it directed issuance of a passport on considerations of breach of Article 21 of the Constitution, in case the passport was denied to the applicant.

23. An application for seeking issuance of a passport is required to be made under Section 5(1) and on receipt of an application, the passport authority is required to make his enquiry and thereafter pass an order. He may either decide to issue the passport in terms of clause (a) of Section 5(2), or to issue a passport with an endorsement,

or refuse to make an endorsement in respect of some countries in terms of clause (b) of Section 5(2), or he may altogether refuse to issue a passport under clause (c) of Section 5(2). In case he passes an order under clause (b) and/or (c) of Section 5(2), he is required to record brief reasons therefor. Therefore, if the details and particulars mentioned in a passport application by an applicant are found to be incorrect or deficient upon a scrutiny of the application and the documents produced in support of it, the passport authority is not obliged to issue a passport, merely because such a case may not be covered by the ground contained in Section 6(1) or 6(2) of the Passports Act.

24. Take, for example, a case where the applicant mentions his wrong name, or wrong name of his parents; his incorrect address; his incorrect date of birth and makes false declaration with regard to such other information, as may be required to be furnished in the application. It is quite possible that none of such information may actually be covered by the grounds contained in clauses (a) to (d) of Section 6(1) or clauses (a) to (i) of Section 6(2) of the Act. Does it mean that the passport authority, despite finding such inaccuracies in the application form, is obliged to issue a passport merely because the ground contained in Section 6(1) and 6(2) are not made out? In my

view, the obvious and plain answer has to be a “No”.

25. The Parliament deliberately used the words “*Subject to the other provisions of this Act*” in Section 6(1) and 6(2) of the Act, to take care of all such situations. In my view, what Section 6(1) and 6(2) of the Act provide is that if the application of the applicant is otherwise found to be complete and truthful in respect of the information required to be provided in the application for issuance of a passport or for seeking an endorsement thereon, the same may still be refused for the grounds mentioned in Section 6(1) and 6(2) respectively. Pertinently, the present cannot be even termed as a refusal to issue a passport to the petitioner altogether. All that the petitioner has been informed is to make correction in the information provided in the application form and to resubmit the same.

26. The fundamental right available under Article 21, which includes the right of locomotion and to travel abroad, is subject to reasonable restrictions. It cannot be said that a citizen has a right to obtain a passport by furnishing incorrect or wrong information with regard to his name, age, address or parentage. He cannot claim that non issuance of the passport with incorrect/false information is infringing his fundamental right of locomotion or to travel abroad. In my view, it cannot be said that the passport authority has no

jurisdiction whatsoever to go into the issue of correctness or otherwise of the adoption deed, even in case where, on the face of it, the said adoption deed appears to be in contravention of the law. The enquiry that the passport authority is required to undertake under Section 5 of the Passport Act is a serious enquiry. Such an enquiry cannot be done cursorily or perfunctorily. If, during the course of the enquiry, it comes to the notice of the passport authority that the documents provided by the applicant did not support the claims made by the applicant in his application for issuance of a passport, he would not only be entitled, but would be duty bound to raise the issue with the applicant. A passport is not only a travel document, but is also an identity document. The identity of a person is determined, inter alia, by his parentage. Therefore, unless there is a legal adoption of the applicant, he/she is bound to give the name of his/her natural parents and cannot choose to provide the name of the adopted parent(s) in his/her application form.

27. I now proceed to consider the submissions of learned counsel for the petitioner that the petitioner's adoption deed in favour of Shri Surojit Chatteraj is valid. Sections 9(1) and 9(2) of the HAMA are relevant and reads as follows:-

“9. Persons capable of giving in adoption.-

(1) No person except the father or mother or the guardian of a child shall have the capacity to give the child in adoption.

(2) Subject to the provisions of sub-section (4), the father or the mother, if alive, shall have equal right to give a son or daughter in adoption:

Provided that such right shall not be exercised by either of them save with the consent of the other unless one of them has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind."

28. From the aforesaid reading, it is clear that both parents of a child, if alive, have equal right to give the child in adoption. Therefore, the right of the petitioner's mother, Smt. Rajeshwari Chatteraj to give the petitioner in adoption cannot be questioned. However, the law is very clear that such right cannot be exercised by either of the parents of the child *"save with the consent of the other, unless one of them has deliberately and finally renounced the world or has ceased to be a Hindu or has been declared by a Court of competent jurisdiction to be of unsound mind."* Consequently, the consent of the petitioner's natural father was required to give the petitioner in adoption to Surojit Chatteraj. However, such consent would not be necessary if the petitioner's natural father had, inter alia, *"finally renounced the world"*.

29. The issue is whether, in the facts of this case, it can be said that the petitioner's father, Shri Abhijit Ghosh has finally renounced the world.



30. The petitioner has placed reliance on the meaning of the expression “renounce” and “renounce the world” contained in the Advanced Law Lexicon by P. Ramanatha Aiyer 3<sup>rd</sup> Edition 2007 Reprint. “Renounce” is said to mean “to give up a right; surrender; abandon, refuse to recognize any longer (as) to renounce treaty principles, authority, heirship, etc. “Renounce the world” would mean “to withdraw from worldly interests in order to lead a spiritual life.” Reference is made to Section 13(1)(vi) of the Hindu Marriage Act. The expression “renouncing” means “making formal resignation of some right or trust especially of one’s position as heir or executor”. The Black’s Law Dictionary Eighth Edition explains the expression “renounce” to mean “to give up or abandon formally (a right or interest); to disclaim (renounce an inheritance), to refuse to follow or obey; to decline to recognize or observe (renounce one’s allegiance)”. The Concise Oxford Dictionary of Current English defines the expression “renounce” as “consent formally to abandon; surrender; give up ( a claim, right, possession, etc); repudiate; refuse to recognize any longer (renouncing their father’s authority); a decline further association or disclaim relationship with (renounced my former friends); withdraw from; discontinue; forsake; refuse or resign a right or position esp., as an heir or trustee”. “Renounce the world” means “abandon society or material affairs.”

31. From the reading of aforesaid definitions and meaning, no doubt, it could be said that the natural father of the petitioner, Shri Abhijit Ghosh has renounced his rights and obligations qua, the petitioner and the petitioner's mother renounced her rights qua the natural father, Shri Abhijit Ghosh. But can it be said that the petitioner's natural father has "renounced the world"?

32. In my view, on a plain grammatical and literal interpretation of the said words, it cannot be said that the petitioner's natural father Shri Abhijit Ghosh has renounced the world, as the renunciation of the world by a person would involve and entail his severing his relationships with all other human beings and would also entail the giving up of all material wealth and pleasures.

33. In ***Madhusudhan Mohapatra Vs. Gobind Sabat and Another***, AIR 1965 Orrisa 54, the High Court takes note of an earlier decision reported as ***Baldeo Prasad Vs. Arya Pritinidhi Sabha***, AIR 1930 ALL 643, where the Court took the view that the mere fact that a person declares that he has become a sanyasi or that he has described himself as such, or wears clothes ordinarily worn by the sanyasis would not make him a perfect sanyasi. He must not only retire from the worldly interests and become dead to the world, but to attain this, he must perform the necessary ceremonies without which the renunciation will not be complete.

34. It is not even the petitioner's case that Shri Abhijit Ghosh has, in that wider and natural sense, renounced the world. All that the petitioner contends is that Shri Abhijit Ghosh, her natural father, has not no concern with the petitioner any longer. Had the intention of the legislature been to exclude the consent of that parent, who may have cut off all his relationship with the minor child, on account of the divorce obtained by the parents, the legislature would not have used the expression "*renounce the world*" but would have used the words like "*severed his or her relationship with the minor child*" instead. It is not for this Court to read into the plain language used by the legislature, words which are not there.

35. The petitioner's mother could not have secured the right, at the time of her obtaining divorce from Shri Abhijit Ghosh, to claim that the petitioner was not the naturally born child of her natural father, Shri Abhijit Ghosh. The petitioner's mother also could not have taken away the petitioner's right to claim that Shri Abhijit Ghosh is her natural father. The petitioner's right to claim her status as the daughter and an heir of Shri Abhijit Ghosh also could not have been taken away by her mother by entering into a compromise with her natural father. The rights which inhere in the petitioner on account of her being a natural heir of her natural father continue to survive. The identity of the petitioner is derived by the fact that the petitioner is the

naturally born child of her parents i.e. Shri Abhijit Ghosh and Smt. Rajeshwari Ghosh, now known as Smt. Rajeshwari Chatteraj. The settlement arrived at between the petitioner's parents at the time when they obtained the divorce cannot be said to include an implied consent by the petitioner's father to the giving in adoption of the petitioner to any other person.

36. The decision relied upon by the petitioner in the case of ***Maroti Vitthal Bhatwalkar*** (supra), though founded upon a different factual matrix does support the petitioner's argument. However, I have difficulty following the said decision in the light of the clear and express language used in Sections 5 and 6 of the HAMA. These provisions read as follows:-

**“5. Adoptions to be regulated by this Chapter-** (1) No adoption shall be made after the commencement of this Act by or to a Hindu except in accordance with the provisions contained in this Chapter, and any adoption made in contravention of the said provisions shall be void.

(2) An adoption which is void shall neither create any rights in the adoptive family in favour of any person which he or she could not have acquired except by reason of the adoption, nor destroy the rights of any person in the family of his or her birth.

**6. Requisites of a valid adoption.-** No adoption shall be valid unless-

(i) the person adopting has the capacity, and also the right, to take in adoption;

- (ii) the person giving in adoption has the capacity to do so;
- (iii) the person adopted is capable of being taken in adoption; and
- (iv) the adoption is made in compliance with the other conditions mentioned in this Chapter.”

37. It is pertinent to note that both Sections 5 and 6 of the HAMA begin with the words “no adoption shall be made.....” and “no adoption shall be valid unless.....” It is, therefore, clear that both these provisions are mandatory. From a reading of Section 5, it is clear that an adoption not made in accordance with the provisions of Chapter II of the HAMA is void. The adoption is not valid unless the person giving in adoption has the capacity to do so and the adoption is made in compliance with the conditions mentioned in Chapter II of the HAMA, which would include the condition mentioned in the proviso to Section 9(2) of the said Act.

38. For all the aforesaid reasons, I dismiss this petition leaving it open to the petitioner to comply with the objections raised by the RPO and to resubmit her application with the correct details, inter alia, with regard to her parentage. The parties are left to bear their respective costs.

**(VIPIN SANGHI)**  
**JUDGE**

**MARCH 30, 2012**  
sr/as