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

+ LPA 225/2022 & CM.APPL 14679/2022

UNION OF INDIA

..... Appellant

Through

Ms. Nidhi Banga, Senior Panel
Counsel

versus

MS. BAHAREH BAKSHI

..... Respondent

Through

Mr. Ankur Mahendru and Mr. Rohan
Taneja, Advs.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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25.03.2022

1. This appeal has been filed challenging the judgment dated 22.07.2021 passed by the learned Single Judge in WP(C) 10807 of 2020, directing the appellant to accept the respondent's application for an Overseas Citizen India card (in short, 'OCI Card') and to process the same in accordance with the law.
2. The learned Single Judge has held that Clause 21.2.5 (vi) of Charter 21 of the Visa Manual (April 2021) (hereinafter referred to as the 'Visa Manual') does not make it mandatory for a personal interview to be conducted for the spouse of the applicant by the Indian Mission/Post/FRRO, as concerned, at the stage of document verification.
3. The learned counsel for the appellant submits that with a view to curb the practice of entering into a marriage of convenience just to obtain an OCI card by foreign nationals, mandatory verification by way of a personal

interview (either physical or through video conference) has been mandated. She submits that in terms of Section 7A of the Citizenship Act, 1955 (in short, the 'Act'), such spouse, in fact, is to be subjected to a prior security clearance by the competent authority in India and therefore, insistence on the applicant's spouse also appearing for the personal interview cannot be faulted.

4. On the other hand, the learned counsel for the respondent, who appears on advance notice, submits that there is a series of matrimonial disputes between the respondent and her husband. There are legal proceedings also filed by her against her estranged spouse before the learned Family Court in Bengaluru, and order passed therein, has been challenged by the husband before the High Court of Karnataka. He submits that, therefore, the respondent's husband would not appear before the concerned authority for a personal interview. He submits that the learned Single Judge has rightly observed that Clause 21.2.5 (vi) of the Visa Manual does not mandate the presence of the applicant's spouse at the time of the personal interview. He submits that the reliance of the learned counsel for the appellant on Section 7A of the Act is also ill-founded.

5. We have considered the submissions of the learned counsels for the parties. The object of the enquiry that the appellant undertakes is to be satisfied that the application is genuine and is not founded upon a false claim of marriage by the applicant with an Indian citizen. To carry out this enquiry, the appellant is free to require production before them of the Indian spouse, in the normal course. Normally, the spouse would also appear for their interaction before the authorities. However, that may not be possible to secure in all cases, such as, where a matrimonial dispute has erupted

between the parties. There could also be cases where the Indian spouse may die, or go missing. In such situations, it may not be possible for the applicant to produce their Indian spouse. In the present case, the respondent/applicant claimed that the respondent had married an Indian Citizen; there is a matrimonial dispute between the parties; and that there are litigations pending between them. In this background, to reject her application merely because her Indian spouse is not produced would not be proper. The appellant can still conduct its enquiry to satisfy themselves with regard to the genuineness of the marriage, by examining other facts and circumstances. In view of such litigations, insistence on the respondent producing her spouse at the time of personal interview was clearly arbitrary.

6. Section 7A (d) of the Act provides as under:

“7A Registration of overseas citizens of India. —

....

(d) spouse of foreign origins of a citizen of India of 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 grate 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.”

(Emphasis supplied)

7. A reading of the above provision would show that the appellant is

entitled to make a complete inquiry on the claim of the respondent for the OCI card, including on the genuineness of her marriage and the claim of matrimonial disputes. In fact, the appellant is also entitled to carry out a security clearance of the respondent.

8. Insistence on the presence of the respondent's spouse, is therefore, only one of the modes in which the appellant can satisfy itself on the genuineness of the claim of the OCI card of the respondent. However, in light of the facts of the case, the same could have been dispensed with, and other aspects could be examined to arrive at their decision by the appellant.

9. In view of the above, we dispose of the present appeal with a clarification that the impugned order would not bar the appellant from carrying out an investigation on the claim of the respondent in her application for the OCI card and to consider the same in accordance with the law, however, without insisting on the presence of the respondent's spouse at the personal interview. The appellant shall pass an order on respondent's application within eight weeks. There shall be no order as to cost.

VIPIN SANGHI, ACJ

NAVIN CHAWLA, J

MARCH 25, 2022/Arya/AB