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A JUDICIAL VICTORY FOR MOTHERHOOD: KARNATAKA HIGH COURT SUPPORTS A SINGLE MOM

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ABSTRACT

This article is written with the intention of provoking contemplative discussions among policymakers in regard to the recent case of Ms. Nancy Nithya. It highlights the needs of single parents who face many problems even in their daily conduct due to the lack of properly laid rules and guidelines.

KEYWORDS: Single mother, passport, family, legality, parenthood

INTRODUCTION

Families come in all sizes, whether it's a big joint family or a small nuclear one, but there's yet another category of the family that essentially has only one parent, and such families are called single-parent families. Taking on the responsibility of both parents can be strenuous at times because they have to be role models as a mother and a father too. In most of the cases, the financial burden also becomes tough to handle, plus the fact that now all the parental duties are on one shoulder. Indian society is definitely rigid when it comes to accepting single parents because it is a norm to believe that single parents are not equipped to raise their children. In addition to that, myths and stereotypes is a permanent blockage when it comes to raising children. Growing up in a single-parent household is strongly associated with school failure, delinquency, drug use, teen pregnancy, poverty, and welfare dependency. As evidenced by the statistics compiled by Emma Fransson⁴⁶⁷ et al., single-parent families

perform poorly. Compared to children from intact families, their physical health, behaviour, mental health, peer friendships, cultural activities, sports, and family relationships. It is salient to realize that children who are reared by single parents are also healthy and happy. A lot of times, it has proven to be a boon to mental health since the child is no longer subjected to the toxic relationship shared by his or her parents. Thus, it goes without saying that being a single parent isn't an easy task, and as a society, we should adopt ways to ease their problems. Moreover, as part of the legal fraternity, our task becomes greater by a notch.

LEGAL DEVELOPMENT

A. The Case of Single Mother

With this, let's delve into the latest case titled *S. Nancy Nithya v. The Government of India & others*⁴⁶⁸, in which the court took the right step and provided some relief to a single mother. Mr. Raghavendra Prasad M S appeared on behalf of the petitioner, and Mr. Aditya Singh appeared on behalf of the respondent.

⁴⁶⁷ Fransson, E., Låftman, S.B., Östberg, V. et al, *The Living Conditions of Children with Shared Residence – the Swedish Example*, 11 CHILD IND. RES. 861–883 (2018), <https://doi.org/10.1007/s12187-017-9443-1>.

⁴⁶⁸ S. Nancy Nithya v. The Government of India & others, (2022) LiveLaw (Kar) 521.

1. First Hearing

Herein, the Regional Passport Officer was instructed to consider the subject passport application without requiring the presence or consent of the ward's father in a case where the petitioner-mother sought acceptance on her pending passport application for her minor ward without any requirement that she mentions the name of the ward's father or his presence or his signature in any form. Justice Krishna S. Dixit granted the petition. The mother, who has been granted sole custody of the ward by the Family Court, filed the current petition on behalf of a minor ward. The petitioner's solicitor argued that once sole custody has been granted by the Family Court, the Regional Passport Officer is not authorized to demand the father of the ward's presence or his consent, and the passport must be issued without such a demand. The Court noted that the Family Court had issued a Divorce Decree in the relevant matrimonial case, granting the father of the ward-petitioner 2's ex-husband-limited visitation rights. Because the respondent believed that his visitation rights would be completely curtailed in the event of visa-free travel, the court noted that the mere issuance of a passport would not by itself have such an effect. The Court relied on the *Master Kishan v. Union of India*⁴⁶⁹ judgement and instructed the Regional Passport Officer to consider the subject application for a passport without insisting on the presence or consent of the father of the ward, i.e., the petitioner's ex-spouse, which was decided on February 15, 2017. Additionally, the Court made it clear that the single mother must obtain permission from the Family Court before leaving⁴⁷⁰.

2. Second Hearing

Subsequently, in another hearing of this case with a single judge bench, the Karnataka High

Court noted that a Passport Manual provision directing the single parent to obtain permission from the Family Court where a divorce or custody petition is pending is in violation of the Passport Rules and ordered the Central Government to appropriately amend the provision. The Court ruled that the Passport Manual, which was created to ensure smooth operation, is only a set of guidelines or solutions to address potential circumstances; it cannot be used to circumvent the Statute's rules.

According to Justice M. Nagaprasanna, "*The Rules are framed by the Central Government in terms of Section 24⁴⁷¹ of the (Passport) Act. Therefore, they are part of the statute and are statutory. The Passport Manual are guidelines to issue a passport are a solution to answer circumstances that would emerge, but cannot run counter to the statute, as they are not statutes.*" The bench recognized that the Passports Act of 1967's Section 24 grants the Central Government the authority to promulgate rules to carry out the Act's objectives. The 1980 Passports Rules were created in accordance with the aforementioned power. Then they made reference to Clause (11) of Case No. B of the Rules, which addresses applications submitted by one parent or guardian when receiving the consent of either one parent or both parents is not possible. They opined: "*In the event, a single parent is an applicant, without the consent of the other, the documents required are proof of present address, proof of date of birth, attested photocopy of the passport of both or either parent and a declaration affirming the particulars furnished in the application about the minor.*" The Court did, however, point out that Chapter 9 of the Passport Manual, 2020, requires the consent of the court hearing either the divorce or custody cases. "*This (Chapter 9 provision) runs contrary to what is permitted in the Schedules to the Rules,*" the bench declared.

3. Final Decision

⁴⁶⁹ Master Kishan v. Union of India, (2017) SCC OnLine Kar 884.

⁴⁷⁰ N.A., Karnataka High Court | Consent of father not a prerequisite for grant of passport of minor child in exclusive custody of mother; Visitation rights not affected, SCC ONLINE (Sept. 08, 2022), <https://www.sconline.com/blog/post/2022/09/08/karnataka-high-court-consent-of-father-not-a-prerequisite-for-grant-of-passport-of-minor-child-in-exclusive-custody-of-mother-visitation-rights-not-affected/>.

⁴⁷¹ The Passport Act, 1967, § 24, No. 15, Acts of Parliament, 1967 (India).

Noting that the woman's application was turned down based on Chapter 9 of the manual and that the petitioner had not omitted any information about the ongoing legal dispute with her ex-husband, the court stated: "The reliance placed on Chapter-9 of the Manual runs counter to the Rules. If the Manual is in the nature of guidelines or certain administrative instructions for achieving the purposes of the Act, they cannot run counter to the Act or the Rules, schedule appended to the Rules." The bench was very straightforward in admitting the fact that the passport authorities also face a plethora of problems while granting passports, but it also stated that "it cannot run counter to the Rules."

Accordingly, it ordered⁴⁷²: "They will have to consider the application of the petitioner in terms of the Rules and seek any document or clarification from the parent in terms of the Rules and not in terms of the Passport Manual."

CONCLUSION

This case stands as a testament to the fact that there are still multiple legal lacunae that need to be filled when it comes to the aid of a single parent. These discrepancies are detrimental and unfortunate for anyone but, more so, a single mother. She, by herself, is working on fostering the growth of her child under inadequate circumstances, that is, the absence of a father figure in her child's life. The presence of both parents makes a child's life fulfilling. It is commendable how she has managed to take care of her kid all by herself, and going to Australia to celebrate Christmas was a part of it. Hindrance in their Christmas celebration, because of the absence of the father's signature, definitely creates bitter memories. It is the duty of the central government to take the decision of the Karnataka High Court in a positive light and bring about the necessary

amendment to the rules and the Manual in order to significantly reduce any harassment faced by single mothers as seen in this case.

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⁴⁷² Mustafa Plumber, *Karnataka HC Allows Consideration Of Single Mother's Application For Child's Passport Without Husband's Consent*, LIVELAW (Dec. 27, 2022), <https://www.livelaw.in/news-updates/karnataka-hc-allows-consideration-of-single-mothers-application-for-childs-passport-without-husbands-consent-217604?infinitescroll=1>.