

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on 23.04.2024
Pronounced on 09.05.2025

OWP No.114/1990

1.Mohd Khalil Qazi
S/o Late Gh. Mohd

2. Arifa Qazi
W/o. Mohd Khalil Qazi,
both presently residents
of Baha-ud-din Sahib,
Srinagar.

.....Petitioner/Appellant(s)

Through:- Mr. Mohammad Altaf Khan, Advocate with
Mr. Hashir Shafiq, Advocate

V/s

1.State of Jammu & Kashmir
through Secretary to Govt,
Home Department,
Jammu.

2. Union of India,
through Secretary to Govt.
of India, Ministry of Home
affairs, New Delhi.

.....Respondent(s)

Through:- Mr. Mohsin Qadiri, Sr. AAG with
Ms. Maha Majeed, Assisting Counsel
Mr. T. M. Shamsi, DSGI with
Ms. Sahila Nissar, Assisting Counsel.

CORAM : HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE
JUDGMENT

01. Through the medium of the instant petition, the petitioners seek the following reliefs:-

- “(i) a writ, order or direction in the nature of certiorari declaring the action of the respondents to deport the petitioners as illegal unconstitutional and invalid under law.
- (ii) a writ, order or direction in the nature of mandamus commanding upon the respondents not to deport the petitioners from the territories of J &K (India).”

02. Brief facts of the case are that petitioner No. 1 was born in Srinagar on February 7, 1945, and belongs to a family of permanent residents and landholders of J&K State. His grandfather was issued a State subject certificate by His Highness Govt. of J&K vide order No. 111 of 1977. During the partition of India, petitioner's father was doing business in Rawalpindi, Pakistan and due to the 1948 India-Pakistan war, the petitioner, then a four-year-old child, was stranded in Pakistan. Neither the petitioner nor his family could return to Srinagar, leading to involuntary acquisition of Pakistani nationality due to compelling circumstances beyond his control.

02. Similarly, Petitioner No. 2 was born in Srinagar on 23.04.1962 and claims to be a permanent resident of the State of Jammu & Kashmir, along with her parents. She also was having an Indian passport No. A 704381 issued on 30.05.1986. Being a cousin of Petitioner No. 1, she married him in Rawalpindi in December 1986. Following the marriage, Petitioner No. 2 alleges that she faced serious and cruel treatment from her in-laws. Despite this, Petitioner No. 1 remained sympathetic toward her. The in-laws also allegedly deprived petitioner No. 1 of his business, making their life together highly insecure and marked by mental anguish and anxiety.

03. It is stated that on the basis of their Pakistani passports, the petitioners returned to Srinagar in the month of July, 1988 along with their minor son. Upon arrival, they were issued Residential Permits Nos. RP223/88 and RP224/88 dated 27.07.1988 by the Superintendent of

Police, CID, Srinagar, signifying official acknowledgment of their presence and temporary stay. It is stated that in view of their stated plight in Pakistan and their pre-existing legal status as permanent residents, the petitioners expressed a desire to continue residing in Srinagar. Their applications for an extended stay were considered, and the competent authority (Respondent) granted three successive extensions of thirty days each, vide the following orders:

- Home/156/88/visa dated 29.08.1988
- Home/156/88/visa dated 15.09.1988
- Home/156/88/visa dated 07.10.1988

04. These extensions collectively permitted their stay in Srinagar until 01.11.1988. Subsequent to the expiry of the initial extensions, the petitioners applied for a further extension of stay and simultaneously approached the authorities for resumption of Indian citizenship, relying on their permanent resident status and other equitable considerations. A detailed representation in this regard was submitted on 18.06.1989. Thereafter, besides applying for extension for their stay, the petitioners also approached the respondents for resumption of their Indian Citizenship. On the basis of the representation dated 18.06.1989, the respondent No.1 vide its communication dated 26.12.1989, referred the matter for grant of Indian citizenship to respondent No. 2 and during the pendency of the said communication, an order of deportation came to be issued by the respondents against the petitioners.

05. Learned counsel for the petitioners submits that the respondents have acted illegally, unlawfully, and in blatant disregard of the valuable

legal rights of the petitioners to continue holding Indian citizenship, by proceeding to forcibly deport the petitioners from India to Pakistan.

06. Counter affidavit has been filed by respondent No. 1, in which it has been stated that the petitioners are neither permanent residents nor citizens of India and they have admitted in their writ petition that they have acquired citizenship of Pakistan. In terms of Section 9(1) of the Citizenship Act of 1955, whoever acquires citizenship of another country voluntarily ceases to be the citizen of India. It is stated that the petitioners after acquiring the citizenship of Pakistan, have lost all the rights and privileges applicable to the citizens of India including property rights.

07. In the counter affidavit it has been further stated that petitioner No. 2, actually a resident of Baba-ud-Din Sahib, Nowhatta Srinagar married her maternal uncle's son, namely, petitioner No. 1 at Rawalpindi Pakistan in December, 1986. The petitioners along with their minor son arrived in India on 27.07.1988 on 14 days short period visa on Pakistani Passport 9D-496880 dated 26.03.1988 and Indian visa No. JK278/88 dated 14.07.1988 and C-056590 dated 07.07.1986 and Indian visa No. JK-277/88 dated 14.07.1988 respectively. However, on their request, they were granted three visa extensions of 30 days each up to 02.11.1988. Thereafter, they requested for further extension of their stay in India, which was rejected and the Home Department subsequently, issued their Deportation Order No. Home/156/Visa/88 dated 13.09.1989.

08. Respondent No. 1 in the counter affidavit has further submitted that the sequence of events along with the documentary proof placed on record by the petitioners clearly establishes that the petitioners have

voluntarily acquired the citizenship of another country, as such, they have ceased to be citizens of India. Further, the petitioners submitted a representation for granting Indian nationality/citizenship to the MHA, Government of India, which clearly indicates that they themselves were fully aware of their status as a non-citizen in India and knowingly entered the country using LOC entry permit as a citizen of Pakistan. It is stated that petitioners were staying illegally in India, as such, the act of deportation ordered by the Home Department is not illegal.

09. Heard learned counsel for the parties and perused the material placed on record.

10. The petitioner No. 1 claims to be born in Srinagar on February 7, 1945, but submit but that he had involuntary acquired Pakistani nationality due to the fact that during partition, his father was doing business in Rawalpindi, Pakistan. Petitioner No.2 claims to be a citizen of India on the ground that she was born in Srinagar on 23rd April, 1962, and holding an Indian passport number A704381 issued in her favour her on 30th May, 1986. She had married to her cousin (petitioner No. 1) in Rawalpindi in December 1986, and thereafter travelled to Srinagar along with their son on Pakistani passports.

11. The contention of learned counsel for the petitioners is that the petitioners have retained the status of Indian citizens and permanent residents of the State of Jammu and Kashmir as they were compelled to acquire Pakistani citizenship under circumstances beyond their control, and should not be subjected to deportation. It is stated that the petitioners now seek restoration of their Indian citizenship, particularly as they have

remained permanent residents of the State throughout. It is further contended that the action taken against the petitioners is arbitrary and violation of Article 14 of the Constitution of India, as well as the principles of natural justice, equity, and fair play. It is also submitted that the respondents have acted without proper application of mind and in a colourable exercise of power in attempting to deport the petitioners ignoring the fact that they have retained the status of Indian citizens.

12. On the other hand, the case of the respondents is that the petitioners have admitted that they have acquired the citizenship of Pakistan voluntarily, as such, they ceased to be the citizens of India. They have lost all their rights as citizens in this country. The petitioners having voluntarily acquired citizenship of foreign state have lost all their rights on citizens of this country.

13. The relevant constitutional and statutory provisions dealing with citizenship are provided in Part II of the Constitution. Article 5 to 11 reads as under:-

Part II of the Constitution deals with 'Citizenship'. It consists of Articles 5 to 11, which read thus:

"5. Citizenship at the commencement of the Constitution:- At the commencement of this Constitution every person who has his domicile in the territory of India and-

(a) who was born in the territory of India; or
(b) either of whose parents was born in the territory of India; or

(c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement, shall be a citizen of India.

6. Rights of citizenship of certain persons who have migrated to India from Pakistan.—Notwithstanding anything in Article 5, a person who has migrated to the territory of India

from the territory now included in Pakistan shall be deemed to be a citizen of India at the commencement of this Constitution if—

(a) he or either of his parents or any of his grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted); and

(b) (i) in the case where such person has so migrated before the nineteenth day of July, 1948, he has been ordinarily resident in the territory of India since the date of his migration, or

(ii) in the case where such person has so migrated on or after the nineteenth day of July, 1948, he has been registered as a citizen of India by an officer appointed in that behalf by the Government of the Dominion of India on an application made by him therefor to such officer before the commencement of this Constitution in the form and manner prescribed by that Government:

Provided that no person shall be so registered unless he has been resident in the territory of India for at least six months immediately preceding the date of his application.

7. Rights of citizenship of certain migrants to Pakistan.— Notwithstanding anything in Articles 5 and 6, a person who has after the first day of March, 1947, migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India:

Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan, has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clause (b) of Article 6 be deemed to have migrated to the territory of India after the nineteenth day of July, 1948.

8. Rights of citizenship of certain persons of Indian origin residing outside India.—Notwithstanding anything in Article 5, any person who or either of whose parents or any of whose grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted), and who is ordinarily residing in any country outside India as so defined shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him therefore to such diplomatic or consular representative, whether before or after the commencement of this Constitution, in the form and manner prescribed by the Government of the Dominion of India or the Government of India.

9. Persons voluntarily acquiring citizenship of a foreign State not to be citizens.—No person shall be a citizen of India by virtue of Article 5, or be deemed to be a citizen of India by virtue of Article 6 or Article 8, if he has voluntarily acquired the citizenship of any foreign State.

10. Continuance of the rights of citizenship.—Every person who is or is deemed to be a citizen of India under any of the foregoing provisions of this Part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen.

11. Parliament to regulate the right of citizenship by law.—Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.”

14. The Citizenship Act 1955, Act has been passed by the Parliament and has come into force on December 30, 1955. It provides for acquisition and determination of Indian citizenship. The acquisition of citizenship under this Act is under citizenship by birth, by descent citizenship by registration and citizenship by naturalization and with acquisition by incorporation of territory. The termination of Citizenship is provided under Sections 8 to 10 of the Citizenship Act, 1955. Section 8 deals with Renunciation of citizenship; Section 9 with termination of citizenship and Section 10 with deprivation of citizenship.

15. Section 9 of the Citizenship Act, 1955 deals with termination of citizenship being relevant is reproduced as under:

“9. Termination of citizenship.

(1) Any citizen of India who by naturalisation, registration or otherwise voluntarily acquires, or has at any time between the 26th January, 1950 and the commencement of this Act, voluntarily acquired, the citizenship of another country shall, upon such acquisition or, as the case may be, such commencement, cease to be a citizen of India:

Provided that nothing in this sub-section shall apply to a citizen of India who, during any war in which India may be engaged, voluntarily acquires the citizenship of another country, until the Central Government otherwise directs:

(2) If any question arises as to whether, when or how any [citizen of India] has acquired the citizenship of another country, it shall be determined by such authority, in such manner, and having regard to such rules of evidence, as may be prescribed in this behalf."

16. In view of Section 9(1), a citizen who voluntarily acquires citizenship of another country after commencement of the 1955 Act or between 26th January, 1950 and date of commencement of the 1955 Act, upon such acquisition, such citizenship automatically cease to be citizen of India. Petitioner No. 1 ceased to be a citizen of India as he migrated to Pakistan and is a citizen of Pakistan. Petitioner No. 2 has voluntarily acquired the citizenship of Pakistan after her marriage and their son is a citizen of Pakistan by birth. Therefore, immediately upon acquiring the citizenship of Pakistan, they cease to be citizens of India. Thus, voluntary acquisition of citizenship of another country by an Indian citizen results in the termination of his Indian citizenship.

17. Petitioner No. 1 is admittedly a citizen of Pakistan and chosen to remain so till date after his marriage to petitioner No. 2, he visited India in July 1988. Petitioner No. 2 voluntarily acquired the citizenship of Pakistan after her marriage. Both the petitioners had travelled to India in 1988 along with their son on Pakistani Passport. They were issued residential permits for temporary stay which were extended till 01.11.1988. Their request for further extension of visa was rejected by the respondents and deportation order was issued.

18. The petitioners submit that they have sought citizenship of India, in support of their claim, have relied upon several communications. One such communication, dated June 1989, was addressed by the petitioners to the Hon'ble Chief Minister of the State of Jammu and Kashmir, seeking the grant of Indian citizenship. Another communication, dated 26.12.1989, was addressed to the Secretary, Ministry of Home Affairs, Government of India, wherein the petitioners claim to have sought the grant of Indian citizenship in favour of petitioner No. 1. However, upon perusal of the latter communication, it is observed that it bears no signature from any competent authority.

19. The only challenge raised in this petition is against the respondents' action of deporting the petitioners and further they seek a direction restraining the respondents from deporting them from the territory of Jammu and Kashmir/India.

20. Admittedly, the petitioners are staying in India, Srinagar on the strength of the fact that the orders of deportation was stayed by this Court vide order dated 25.04.1990. The petitioners having voluntarily acquired the citizenship of another country in terms of Section 9 of the Citizenship Act 1955 and being aware of their status had entered the State of Jammu and Kashmir. In **Izhar Ahmad Khan vs. Union of India**, reported as **1962 (3) SCR 235**, it has been as under:-

“17. There is no ambiguity about the effect of this section. It is clear that the voluntary acquisition by an Indian citizen of the citizenship of another country terminates his citizenship of India, provided the said voluntary acquisition has taken place between the 26th January, 1950 and the commencement of the Act, or takes place thereafter.”

21. In Union of India vs. Pranav Srinivasan reported as 2024

Online Sc 2920, it has been held as under:-

In view of Section 9(1), those citizens of India who voluntarily acquire citizenship of another Country after the commencement of the 1955 Act, or between 26th January 1950 and the date of the commencement of the 1955 Act, upon acquisition of such citizenship, automatically cease to be citizens of India. It is not in dispute that Pranav's parents acquired Singapore citizenship on 19th December 1998, before his birth when he was in the womb. Therefore, immediately after the voluntary acquisition of Singapore citizenship, Pranav's parents ceased to be citizens of India by the operation of Section 9(1).

22. The petitioners have acted in their own volition acquired the citizenship of a foreign Country. Their passports and the residential permit issued in their favour are cogent, unequivocal evidence of the fact that the petitioners are not citizens of India and, as such, orders to deport them were valid.

23. The petitioners have not placed on record any documentary proof of the fact that they had applied for the citizenship in terms of the Citizenship Act or Rules. There is thus, clear evidence to explain the fact that the petitioners on the strength of passport of Pakistan and Visa, permission were granted to them to visit India. There is nothing on record to suggest that their request for grant of citizenship of India has been accepted. They are staying in India on the strength of Pakistani passports, the period of which has expired and after expiry of the extension of their stay they had to return to their country. The petitioners are residing in Srinagar since 1988 and during this period they have not placed anything on record to show that they are citizens of this Country.

24. In view of the aforementioned discussion, the instant petition is found to be without any merit and the same is, accordingly, dismissed.

(Sindhu Sharma)
Judge

JAMMU
09.05.2025
BIR

Whether the order is speaking : Yes/No
Whether the order is reportable : Yes/No

