

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE T.R.RAVI

TUESDAY, THE 23RD DAY OF JULY 2024 / 1ST SRAVANA, 1946

WP(C) NO. 18750 OF 2022

PETITIONERS:

- 1 RASHEEDA BANO,
AGED 49 YEARS
W/O.MOHAMMED MAROOF, 'THANAL'
UKKASMOTTA, KADIRUR, THALASSERY,
KANNUR - 670 642.
- 2 SUMAIRA MAROOF,
AGED 21 YEARS
D/O.MOHAMMED MAROOF, 'THANAL' UKKASMOTTA, KADIRUR,
THALASSERY, KANNUR - 670 642.
- 3 MARIAM MAROOF,
AGED 24 YEARS
D/O.MOHAMMED MAROOF, 'THANAL'
UKKASMOTTA, KADIRUR, THALASSERY,
KANNUR - 670 642.

BY ADVS.
SRI M.SASINDRAN
SRI T.S.BHARATH KRISHNA

RESPONDENTS:

- 1 UNION OF INDIA,
REPRESENTED BY ITS SECRETARY, MINISTRY OF HOME
AFFAIRS, GOVERNMENT OF INDIA,
MAJOR DHYAN CHAND NATIONAL STADIUM,
NEW DELHI - 110 002.
- 2 STATE OF KERALA,
REPRESENTED BY ITS PRINCIPAL SECRETARY (HOME),
HOME (G) DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.

3 DISTRICT COLLECTOR,
KANNUR - 670 001.

4 DISTRICT POLICE CHIEF,
KANNUR - 670 001.

BY ADVS.
SMT.MINI GOPINATH (CGC)

SRI SUNIL KUMAR KURIAKOSE, GOVT. PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 13.06.2024, THE COURT ON 23.07.2024 DELIVERED THE
FOLLOWING:

“CR”

T.R. RAVI, J.

W.P.(C)No.18750 of 2022

Dated this the 23rd day of July, 2024

JUDGMENT

The petitioners have approached this Court seeking directions to the 1st respondent to consider Ext.P12 representation submitted by the 1st petitioner and to grant citizenship to the 2nd and 3rd petitioners without insisting on a Renunciation Certificate in evidence of renunciation of Pakistani citizenship.

2. The 1st petitioner is the mother of the 2nd and 3rd petitioners. The husband of the 1st petitioner, Sri Mohammed Maroof, was born in India in a village called Kottayam-Malabar in Kannur District. Ext.P1 is the birth certificate of the husband of the 1st petitioner. Sri Mohammed Maroof became an orphan at the age of nine, and he was adopted by his grandmother. In 1977, he migrated to Pakistan along with his grandmother. He was issued with a Pakistani passport later. Sri Maroof is now employed in the United Arab Emirates. He married the 1st

petitioner, who is his uncle's daughter. In the year 2008, Sri Maroof's family moved to India on the basis of permission granted by the Indian Government to stay in India initially for a specific time frame, and the said period has been extended from time to time.

3. The petitioners submitted applications in Form VI as per Rule 8 (1) (a) of the Citizenship Rules, 2009 for registration as Indian Citizens under Section 5 (1)(f) of the Citizenship Act, 1955 ('the Act' for short). The copies of the applications submitted by the 2nd and 3rd petitioners have been produced as Exts.P2. and P2(a) respectively. On 09.11.2016, the 1st respondent issued orders in respect of the 2nd petitioner stating that the Government of India has decided to grant registration to the 2nd petitioner under Section 5(1)(f) of the Citizenship Act, 1955, subject to compliance with certain requirements and submission of documents. A similar order was issued in respect of the 3rd petitioner on 05.09.2017. The above two orders have been produced as Exts.P3 and P3(a) respectively. One of the documents that was required to be submitted is the Renunciation Certificate issued by the Pakistani Government. The 2nd and 3rd

petitioners have submitted all other documents that had been required to be submitted. The petitioners have stated in the representations submitted as Exts.P4 and P4(a) before the 4th respondent and the 5th respondent, that the Pakistani Embassy would issue a Renunciation Certificate only after they attain the age of 21 years and that in their cases such certificates cannot be issued even after the attainment of 21 years as the petitioners 2 and 3 had already surrendered their respective Pakistani passports before attaining the age of 21 years. On 08.05.2018, the Pakistan High Commission issued certificates stating that they have no objection to granting Indian citizenship to the 2nd and 3rd petitioners. Exts.P5 and P5(a) are the No Objection Certificates issued on 08.05.2018. The 2nd respondent had forwarded Ext.P6 Government Order to the 1st respondent stating that all documents except the Renunciation Certificate have been submitted. The 1st respondent sent Ext.P7 reply on 17.07.2019 stating that the No Objection Certificates that have been forwarded are not acceptable, that Renunciation Certificate is mandatory, and that petitioners 2 and 3 will remain as Pakistani Citizens in the records unless they renounce their

Pakistani citizenship.

4. Heard learned counsel for the petitioners, learned CGC for the 1st respondent and learned Government Pleader for respondents 2 to 4.

5. Section 14A of the Pakistan Citizenship Act, 1951 deals with renunciation of Pakistani citizenship. As per Section 14 A (1) of the Act, if any citizen of Pakistan residing outside Pakistan, who is not a minor and has been given by the competent authority of another country any valid document assuring him of the grant of citizenship or nationality of that country, upon renouncing his citizenship of Pakistan, makes a declaration renouncing his citizenship of Pakistan, in the prescribed manner, the declaration shall be registered by the prescribed authority. Upon registration of the declaration, the person shall cease to be a citizen of Pakistan. Rule 19A of the Pakistan Citizenship Rules. 1952 lays down the procedure for renunciation under Section 14A referred to above. As per Rule 19A, a declaration of renunciation of the citizenship of Pakistan is to be in Form X in quadruplicate and shall state the provision of law under which the applicant is a citizen of Pakistan and the

country of which the competent authority had given any valid document assuring him grant of citizenship or nationality of that country, upon renouncing his citizenship of Pakistan. The declaration is to be made to the Pakistan Mission or Consulate in the country where the person concerned is residing, and the said Mission or Consulate is to forward the declaration to the Director of Immigration and Passports for registration. Rule 19A(3) of the Rules also says that the Director of Emigration and Passports is to maintain a register in Form XI containing the nature of persons whose declarations of renunciation of citizenship are registered under the Rule. There is no ambiguity regarding the provisions. As far as the petitioners are concerned, they had been issued with certificates from the High Commission for Pakistan in New Delhi stating that the Pakistan High Commission has no objection if the petitioners get Indian Nationality as they have already surrendered their Pakistani Passports to the High Commission. It is evident from the certificate that the petitioners will not be able to go back to Pakistan as Pakistani nationals based on any Pakistani passport since no such document is available with them. Exts.P11 and P11(a) are the

affidavits filed by petitioners 2 and 3 after they attained majority, wherein they have specifically stated that their Pakistan passports have already been surrendered and certificates have been issued to the effect that the Pakistan High Commission has no objection in granting Indian nationality to the petitioners. It is also stated in the affidavit that applications for renunciation had been submitted when they were minors, and since a renunciation certificate cannot be issued to a minor, the same had not been issued at that point in time. According to the Pakistan Citizenship Rules, a renunciation certificate can be issued only after the attainment of 21 years. The petitioners have hence stated that it is impossible for them to submit the document which has been demanded by the respondents. None of the above facts are disputed by the respondents. The contention of the respondents is that, as per the Rules, there is a requirement for the renunciation certificate for processing the application for citizenship by registration.

6. The counter affidavit filed by the respondents narrates the procedure that must be followed for the purpose of getting Indian citizenship. It is stated that the application must be

submitted online. The proforma of Form VI has been produced as Ext.R1 (d). As a matter of fact, petitioners have produced Form VI applications which have been submitted by them as Exts.P2 & P2 (a). It is evident from the said applications that the petitioners have submitted the details of the Visa issued while moving to India, and that they have given their oath of allegiance as required in Form VI. The application had been forwarded through the Kerala Government. Going by the documents produced, there can be no doubt regarding the bonafides of the application. It is thus evident that, except for the formal renunciation certificate issued by the Pakistan Government, every other document is in place.

7. Section 5 of the Citizenship Act, 1955 says that subject to the provisions of the section and such other conditions and restrictions as may be prescribed, the Central Government may, on an application made on that behalf, register as a citizen of India, any person not being an illegal migrant, who is not already such citizen by virtue of the Constitution or of any other provisions of the Act, if he belongs to certain categories. The petitioners come within the category under Section 5(1)(f) which

reads as “(f) a person of full age and capacity who, or either of his parents, was earlier citizen of independent India, and is ordinarily resident in India for twelve months immediately before making an application for registration”. Section 8 of the Act deals with renunciation of Indian citizenship which is more or less similar to the provisions contained in the Pakistan Citizenship Act. Rule 8 of the Citizenship Rules, 2009 reads thus:

“8. Application for registration under clause (f) of sub-section (1) of Section 5.—An application from a person for registration as a citizen of India under clause (f) of sub-section (1) of Section 5 shall not be entertained unless—

- (a) the application is made in Form VI;
- (b) he gives an undertaking that he shall renounce the citizenship of his country in the event of his application being sanctioned;
- (c) he is ordinarily resident in India for a period of at least twelve months on the date of making application; and;
- (d) he makes the oath of allegiance as specified in the Second Schedule to the Citizenship Act, 1955.

Provided that the period of twelve months referred to in clause (c) may, under special circumstances, be relaxed by

the Central Government under sub-section (1-A) of Section 5 of the Citizenship Act, 1955.”

8. One of the requirements is that the applicant should give an undertaking that he shall renounce the citizenship of his country in the event of his application being sanctioned. It is this condition that the respondents say is not complied with. The Rule does not take into account the case of a minor who had migrated to India along with her parents and had applied for citizenship by registration after becoming a major. There is no dispute that a minor could not have renounced citizenship of Pakistan which is the reason why the petitioners 2 and 3 were not able to get a renunciation certificate when they migrated. The term “minor” for the purpose of the Pakistan Citizenship Act has been defined as a person who has not completed the age of twenty-one years. It is also admitted that the petitioners 2 and 3 have surrendered their Pakistani passports. If the Rules relating to renunciation issued by the Pakistan Government is to be strictly followed, petitioners 2 and 3 will have to approach the Pakistan High Commission and submit their declaration of renunciation of Pakistani citizenship. The Pakistan High Commission will then have to forward the same to the Director of Immigration and

Passports. The declaration of the renunciation is to be registered by the Director of Immigration and Passports, in the register maintained for the purpose and then communicate back the said fact to the Pakistan High Commission with the required certificate. It is only after such a certificate is obtained that the applications submitted by petitioners 2 and 3 can be considered. Where an applicant had migrated before attaining majority, after surrendering his Pakistani passport, but has not attained the age required under the Pakistan law for the issuance of a renunciation certificate, any application filed by such persons can never be processed, going by the strict interpretation of the Rules. The question then is whether the documents that have already been submitted are sufficient evidence to show the renunciation of Pakistani citizenship and can be accepted as substantial compliance with the requirements under Rule 8 of the Citizenship rules.

9. It is settled law that the law does not expect the performance of the impossible. The Hon'ble Supreme Court held so in the judgment in **Indore Development Authority v. Manoharlal [2020 (8) SCC 129]** which was quoted with

approval in a subsequent judgment in **Delhi Development Authority v. Sunil Khatri & Ors. [(2022) SCC OnLine SC 651]**. The above statements of law are based on the Doctrine of Impossibility explained by the Hon'ble Supreme Court in its decision in **State of M.P. v. Narmada Bachao Andolan [(2011) 7 SCC 639]** in the following words:

"Doctrine of impossibility

39. The court has to consider and understand the scope of application of the doctrines of lex non cogit ad impossibilia (the law does not compel a man to do what he cannot possibly perform); impossibilium nulla obligatio est (the law does not expect a party to do the impossible); and impotentia excusat legem in the qualified sense that there is a necessary or invincible disability to perform the mandatory part of the law or to forbear the prohibitory. These maxims are akin to the maxim of Roman law nemo tenetur ad impossibilia (no one is bound to do an impossibility) which is derived from common sense and natural equity and has been adopted and applied in law from time immemorial. Therefore, when it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like an act of God, the circumstances will be taken as a valid excuse. (Vide Chandra Kishore Jha v. Mahavir Prasad [(1999) 8 SCC 266 : AIR 1999 SC 3558], Hira Tikoo v. UT, Chandigarh [(2004) 6 SCC 765 : AIR 2004 SC 3649] and HUDA v. Dr. Babeswar Kanhar [(2005) 1 SCC 191 : AIR 2005 SC 1491].)

40. Thus, where the law creates a duty or charge, and the party is disabled to perform it, without any fault on his part, and has no control over it, the law will in general excuse him. Even in such a circumstance, the statutory provision is not denuded of its mandatory character because of the supervening impossibility caused therein.”

The above principles of law have been relied on and followed in several judgments of the Hon’ble Supreme Court and this Court and the same are not being listed here.

10. The undisputed facts of this case would show that the petitioners will not be able to produce a renunciation certificate as directed to be produced. It would be directing them to do the impossible. As already stated, the petitioners surrendered their Pakistani passports when they were minors at the time of migration, and they cannot travel back to Pakistan claiming to be Pakistani citizens. They are remaining in India based on permission granted by the Indian Government and they also have been informed that the Indian Government will grant them citizenship by registration on the production of the renunciation certificate. Over and above, the Pakistan High Commission has also issued NOCs stating that they have no objection to the petitioners 2 and 3 being granted Indian Nationality and their

passports have already been surrendered. Going by the law laid down in **Narmada Bachao (supra)** and other cases, it cannot be insisted that the petitioners should produce a Renunciation certificate from the Pakistan Government.

11. There is yet another aspect that needs to be considered. The law no longer insists on strict construction of the statutory provisions in all circumstances. In **Standard Chartered Bank v. Directorate of Enforcement, [(2005) 4 SCC 530]**, the Hon'ble Supreme Court quoted with approval, a passage from Craies on Statute Law, 7th Edition, at pages 531 and 532, dealing with the construction of Penal Acts, which is extracted below for reference.

"24. The distinction between a strict construction and a more free one has disappeared in modern times and now mostly the question is "what is true construction of the statute?" A passage in *Craies on Statute Law*, 7th Edn. reads to the following effect:

"The distinction between a strict and a liberal construction has almost disappeared with regard to all classes of statutes, so that all statutes, whether penal or not, are now construed by substantially the same rules. 'All modern Acts are framed with regard to equitable as well as legal principles.' 'A hundred years ago,' said the

court in *Lyons' case* [*Lyons v. Lyons*, 1858 Bell CC 38 : 169 ER 1158] , 'statutes were required to be perfectly construction of the Act, and thereby criminals were often allowed to escape. This is not the present mode of construing Acts of Parliament. They are construed now with reference to the true meaning and real intention of the legislature."

At page 532 of the book, the author has quoted the following passage from Sedgwick in Statutory Law 2nd Edition, which had been cited with approval in **Foley v. Fletcher [(1858) 3 H&N 769]**.

"The more correct version of the doctrine appears to be that statutes of this class are to be fairly construed and faithfully applied according to the intent of the legislature, without unwarrantable severity on the one hand or unjustifiable lenity on the other, in cases of doubt the courts inclining to mercy."

12. Considering the facts of this case, in the backdrop of the law stated above, this Court is of the opinion that a purposive construction is required to meet the circumstances. The purpose of Rule 8 of the Citizenship Rules, 2009, is to ensure that a person is given registration as an Indian citizen, only after he renounces his foreign citizenship and gives an oath of allegiance to the Constitution of India as by law established

and also swear to faithfully observe the laws of India and fulfill duties as a citizen of India. Such an oath of allegiance has already been given in the case of the petitioners. The requirement for the renunciation certificate can only be treated as a rule of evidence and cannot be treated as a substantive requirement. It is evident that the petitioners do not intend to and cannot also go back to Pakistan as Pakistani nationals, as they had surrendered their Pakistani passports long back when they migrated. The Pakistan High Commission, which is representing the Government of Pakistan, in India, has already issued certificates declaring that the Pakistan High Commission has no objection to the Indian Government granting nationality to the petitioners. I am of the opinion that the aforementioned documents, in the undisputed fact situation, are sufficient to show that the petitioners have renounced their Pakistani citizenship. The above conclusion has support in the view expressed by a Division Bench of this Court in **George Davis Mookan v. Ollukaran Thomakutty Varied [AIR 1975 Ker 163]**, where a question arose as to whether the Metropolitan had renounced his Syrian citizenship. The issue arose in a civil

suit. The Metropolitan who was examined gave oral evidence stating that he had renounced his Syrian citizenship. His statement was not effectively challenged in cross-examination. One of the trustees of the Church of the East, who was examined, gave evidence by proving a certificate granted by the Embassy of the Syrian Republic, New Delhi, stating that the authorities of Syria have allowed the Metropolitan to relinquish his Syrian citizenship and to acquire Indian Nationality. The Division Bench of this Court considered the said items of evidence strong enough in support of the claim of the Metropolitan that he had renounced Syrian citizenship and was not in possession of any Syrian passport.

In the result, the writ petition is allowed. The 1st respondent is directed to consider Ext.P12 representation submitted by the 1st petitioner and grant citizenship to the 2nd and 3rd petitioners without insisting on a Renunciation Certificate, treating the No Objection Certificates issued by the Pakistan High Commission for the grant of Indian Nationality to the petitioners 2 and 3 and the fact that they had surrendered their Pakistani passport while they were minors, while migrating to India, as sufficient proof of

renunciation of Pakistan citizenship. Necessary orders shall be issued at the earliest, at any rate within 3 months from the date of receipt of certified copy of this judgment.

Sd/-

**T.R.RAVI
JUDGE**

dsn

APPENDIX OF WP(C) 18750/2022

PETITIONER EXHIBITS

- Exhibit P1 A TRUE COPY OF THE BIRTH CERTIFICATE.
- Exhibit P2 A TRUE COPY OF THE APPLICATION SUBMITTED BY THE 2ND PETITIONER DATED 12.12.2014 UNDER FORM VI AS PER RULE 8(1)(A) OF THE CITIZENSHIP RULES, 2009 FOR REGISTRATION AS AN INDIAN CITIZEN UNDER SECTION 5(1)(F) OF THE CITIZENSHIP ACT.
- Exhibit P2(A) A TRUE COPY OF THE APPLICATION SUBMITTED BY THE 3RD PETITIONER DATED 5.9.2016 UNDER FORM VI AS PER RULE 8(1)(A) OF THE CITIZENSHIP RULES, 2009 FOR REGISTRATION AS AN INDIAN CITIZEN UNDER SECTION 5(1)(F) OF THE CITIZENSHIP ACT.
- Exhibit P3 A TRUE COPY OF THE ORDER MHA.NO. 26027/0099/2014-ICII DATED 9.11.2016 IN RESPECT OF THE 2ND PETITIONER.
- Exhibit P3(A) A TRUE COPY OF THE ORDER MHA.NO. 26027/0105/2016IC-11 DATED 5.9.2017 IN RESPECT OF 3RD PETITIONER.
- Exhibit P4 A TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE 2ND PETITIONER.
- Exhibit P4(A) A TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE 3RD PETITIONER.
- Exhibit P5 A TRUE COPY OF THE NO OBJECTION CERTIFICATE DATED 8.5.2018 IN RESPECT OF THE 2ND PETITIONER.
- Exhibit P5(A) A TRUE COPY OF THE NO OBJECTION CERTIFICATE DATED 8.5.2018 IN RESPECT OF THE 3RD PETITIONER.
- Exhibit P6 A TRUE COPY OF THE G.O.NO. SS-B1/54/2018/HOME DATED 20.5.2019.

- Exhibit P7 A TRUE COPY OF THE REPLY TO EXHIBIT P6 G.O., ISSUED BY THE 1ST RESPONDENT WHICH IS G.O. (NO. 26027/99/2014-IC.II DATED 17.07.2019.
- Exhibit P8 A TRUE COPY OF THE G.O.NO. HOME-SSB2/174/2017-HOME DATED 26.2.2018.
- Exhibit P9 A TRUE COPY OF THE ORDER MHA.NO. 26027/0105/2016-IC.II DATED 19.3.2018.
- Exhibit P10 A TRUE COPY OF THE G.O.NO. B1/51/2018/HOME DATED 3/10/2018.
- Exhibit P11 A TRUE COPY OF THE AFFIDAVIT DATED 31.1.2018 OF THE 2ND PETITIONER.
- Exhibit P11 A A TRUE COPY OF THE AFFIDAVIT DATED 11.10.2017 OF THE 3RD PETITIONER.
- Exhibit P12 A TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE 1ST PETITIONER DATED 20.9.2019.
- Exhibit P13 A TRUE COPY OF THE ACKNOWLEDGEMENT RECEIPT DATED 6.3.2017 ISSUED BY THE PAKISTAN HIGH COMMISSION TO THE 2ND RESPONDENT

RESPONDENT EXHIBITS

- EXHIBIT R1 (A) TRUE COPY OF THE RELEVANT PORTION OF THE CITIZENSHIP RULES 2009
- EXHIBIT R1 (B) TRUE COPY OF LETTER NO. 26030/266/2014-IC.II (VOL.II) DATED 16.09.2019 ISSUED BY THE DIRECTOR, MINISTRY OF HOME AFFAIRS, FOREIGNERS DIVISION
- EXHIBIT R1 (C) TRUE COPY OF THE RULE 8 OF THE CITIZENSHIP RULES 2009
- EXHIBIT R1 (D) TRUE COPY OF THE FORM VI APPLICATION FOR REGISTRATION AS A CITIZEN OF INDIA