

Union Of India vs Pranav Srinivasan on 18 October, 2024

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Bench: Abhay S Oka

2024 INSC 792

Reportabl

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE/ORIGINAL JURISDICTION

CIVIL APPEAL NO. 5932 OF 2023

Union of India

... Appellan

versus

Pranav Srinivasan

... Respondent

with

WRIT PETITION (C) NO.123 OF 2024

JUDGMENT

ABHAY S. OKA, J.

1. The issue involved in these cases concerns the grant of Indian citizenship to Pranav Srinivasan, the respondent in the civil appeal and petitioner in the writ petition.

FACTUAL ASPECTS

2. A few factual aspects must be set out to appreciate the factual and legal controversy. The paternal grandparents of Pranav were born in India before independence. Pranav's father and mother were born in India in 1963 and 1972, respectively. On 19th December 1998, Pranav's parents adopted citizenship of Singapore. Date: 2024.10.18 16:47:35 IST Reason:

On 1st March 1999, Pranav was born in Singapore as a citizen of Singapore. According to the case of Pranav, on 20th April 2012, his parents renounced their Indian citizenship. On 5th May 2017, when Pranav was eighteen years, two months and four days old, he submitted an application in Form XXV specified under Rule 24

of the Citizenship Rules, 2009, read with sub-section (2) of Section 8 of the Citizenship Act, 1955 (for short, 'the 1955 Act') for resumption of his Indian citizenship.

3. Earlier, Pranav filed a writ petition before the High Court of Judicature at Madras as his application in Form XXV was not considered. Ultimately, it was revealed that Pranav had not paid the necessary fees. Therefore, the High Court permitted Pranav to pay the required fees by the order dated 30th November 2017. The said order was modified by a further order dated 29th November 2018 in the writ petition filed by Pranav, and the High Court directed the concerned authorities to decide the application made by Pranav. By the order dated 30th April 2019, the Ministry of Home Affairs held that Pranav was not eligible for resumption of citizenship under Section 8(2) of the 1955 Act. Pranav was advised to reapply either under clause (f) or clause (g) of sub-section (1) of Section 5 of the 1955 Act. Pranav challenged the said order by filing a writ petition before the learned Single Judge of the High Court. Pranav succeeded before the learned Single Judge as it was held that he was entitled to resume his citizenship in accordance with Section 8(2) of the 1955 Act. Being aggrieved, the Union of India preferred an appeal before the Division Bench of the High Court. The appeal was dismissed. Therefore, Civil Appeal No.5932 of 2023 was preferred by the Union of India before this Court.

4. In the civil appeal, an order was passed by this Court on 7th December 2023, directing that the form filled up by Pranav on 5th May 2017 shall be treated as an application filed in Form L of the Citizens (Registration at Indian Consulates) Rules, 1956. A direction was issued to decide the application accordingly. An order was passed on 30th January 2024 by the Ministry of Home Affairs, holding that Pranav was not a person of Indian origin in terms of Section 5 of the 1955 Act. Therefore, he was not eligible for a grant of Indian citizenship under clause (b) of sub-section (1) of Section 5 of the 1955 Act. Being aggrieved, Pranav has filed Writ Petition (C) No.123 of 2024 under Article 32 of the Constitution of India.

SUBMISSIONS

5. Mr C S Vaidyanathan, the learned senior counsel appearing for Pranav, submitted that within three months of attaining majority, on 5th May 2017, Pranav declared his intention to resume Indian citizenship by filing the application in Form XXV with the Consulate Office (Consulate General of India, New York, USA). He was administered the oath of allegiance to the Constitution of India on the date of filing the application. The submission of the learned senior counsel, in short, is that apart from the fact that Pranav was entitled to resume his Indian citizenship by invoking Section 8(2) of the 1955 Act, he is deemed to be an Indian citizen under Article 8 of the Constitution of India by virtue of his grandparents' birth in undivided India. Moreover, he was entitled to seek Indian citizenship under Section 5(1)(b) of the 1955 Act.

6. The learned senior counsel invited our attention to Articles 5 and 6 of the Constitution, which specifically use the expression "at the commencement of this Constitution." In contrast, Article 8 uses the expression "whether before or after commencement of the Constitution of India". Therefore, Article 8, as opposed to Articles 5 and 6, applies even after the commencement of the

Constitution. He submitted that by the language used in Section 5 of the 1955 Act, it is crystal clear that a person can acquire Indian citizenship either by virtue of constitutional provisions or by taking recourse to the 1955 Act. Article 8 is an independent and distinct source of citizenship.

7. It was submitted that Pranav's grandparents were born in the State of Tamil Nadu, which was part of undivided India before 15th August 1947. His maternal grandparents were also born in the undivided India before independence. Therefore, under Article 8, Pranav qualified to become an Indian citizen. It is submitted that the failure of the Union of India to recognise and enforce a constitutional provision is an arbitrary exercise of power. The learned senior counsel relied upon a decision of this Court in the case of *Anoop Baranwal v. Union of India* [Election Commission Appointments]¹ in the context of the right to vote. He also relied upon another decision in the case of *Central Board of Dawoodi Bohra Community & Another. v. State of Maharashtra & Anr.*², wherein this Court held that the role of the constitutional Courts is to interpret the Constitution, considering the changing needs of the society.

8. The learned senior counsel submitted that, independently of the constitutional provisions, Pranav is entitled to be registered as an Indian citizen under clause

(b) of sub-section (1) of Section 5 of the 1955 Act. He submitted that Pranav is a person of Indian origin as his parents were born within the territory of India after independence. He submitted that a common sense of interpretation would have to be given to the phrase "in such other territory which became part of India after the (2023) 6 SCC 161 (2023) 4 SCC 541 15th day of August 1947," occurring in Explanation-2 to Section 5 of the 1955 Act. Therefore, it includes all those territories which were part of the undivided India and continued to be a part of the independent India. He submitted that if the interpretation put to the said provision by the Union of India is accepted, persons whose parents were born in the States like Goa and Sikkim would be the persons of Indian origin but who are born in the territories which continued to be a part of India after independence, would be denied the same benefit. Therefore, a person of Indian origin can acquire Indian citizenship if it is shown that the grandparents were born in the undivided India and the parents were born in India after its independence.

9. He submitted that the words "minor child", occurring in Section 8(2) of the 1955 Act, will include an unborn child or a child in the womb. He submitted that Section 3 of the 1955 Act talks about the acquisition of citizenship by birth, whereas Section 8(2) of the 1955 Act talks about a minor child. Therefore, a child need not have been born in India to be entitled to the benefit of seeking resumption of Indian citizenship under Section 8(2) of the 1955 Act.

10. Mr K M Nataraj, the learned Additional Solicitor General (ASG) appearing for the Union of India, submitted that Articles 5 to 9 of the Constitution of India determine who the Indian citizens were at the commencement of the Constitution. These Articles provide for the acquisition of citizenship by the persons eligible therein at the commencement of the Constitution. Article 9 disqualifies a person from acquiring citizenship under Articles 5, 6 or 8 if such person has voluntarily acquired citizenship of any foreign State. He also invited our attention to Articles 10 and 11. He submitted that Article 10 provides that every person who is or is deemed to be a citizen of

India under the provisions of Part II of the Constitution of India shall, subject to the provisions of any law that the Parliament may make, continue to be such citizen. Article 11 protects the Parliament's power to make provisions concerning the acquisition and termination of citizenship.

11. The learned ASG relied upon the speech of the late Dr Babasaheb Ambedkar in the Constituent Assembly, which indicated that the provisions in the Constitution deal with citizenship on the date of commencement of the Constitution. Therefore, his submission is that Articles 5 to 9 determine who are Indian citizens at the commencement of the Constitution of India. After the enactment of the 1955 Act, India's citizenship can be acquired, terminated, or otherwise regulated under the provisions thereof. He submitted that Pranav is not a person of Indian origin. Therefore, Section 5(1)(b) of the 1955 Act will not apply.

12. He submitted that Section 8(2) of the 1955 Act will have no application. He submitted that Pranav's parents lost their citizenship the moment they acquired the citizenship of Singapore. When Pranav was born, his parents were no longer Indian citizens. They lost Indian citizenship upon the acquisition of Singapore citizenship. He would, therefore, submit that Pranav is not entitled to Indian citizenship.

13. The learned senior counsel appearing for Pranav submitted that Article 8 will apply in the present case. He submitted that it was never the stand of the Union of India before the High Court that the Indian citizenship of Pranav's parents came to an end by termination. This stand is taken for the first time before this Court by the Union of India.

CONSIDERATION OF SUBMISSIONS CITIZENSHIP UNDER THE CONSTITUTION

14. 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 therefor 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.” On the face of it, Article 5 will apply to a person who is domiciled in the territory of India on 26th January 1950.

Therefore, this provision will not apply in the present case. Article 6 will have no application as it applies to persons who have migrated to India from Pakistan. Article 7 deals with the rights of the citizenship of certain migrants to Pakistan.

15. Now, let us analyse Article 8. It applies to a person:-

(i) who was born in India as defined in the Government of India Act, 1935 (for short, ‘the 1935 Act’) as originally enacted; or

(ii) either of whose parents were born in India as defined in the 1935 Act as originally enacted; or

(iii) any of whose grandparents were born in India as defined in the 1935 Act as originally enacted.

and who is ordinarily residing in any country outside India so defined.

Such a person 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 in prescribed form before such diplomatic or consular representative, before or after the commencement of the Constitution. The words “before or after the commencement of this Constitution” qualify the words “the diplomatic or consular representative of India in the country where he is for the time being residing”. Therefore, a person who is qualified in terms of the first part of Article 8 can apply to the diplomatic or consular representative of India in any country where he is residing before or after the commencement of the Constitution. He need not apply to the diplomatic or consular representative of India in the country where he was residing at the commencement of the Constitution.

16. If Article 8 was intended to apply to a foreign national born after the commencement of the Constitution, the provision would not be referring to “who is ordinarily residing in any country outside India so defined”. So defined means India as defined in the 1935 Act, as originally enacted. Moreover, Article 8 uses the expression “who is ordinarily residing”. Therefore, the provision will only apply to someone ordinarily residing on the date of commencement of the Constitution in any

country outside India as defined in the 1935 Act, as originally enacted. If the interpretation sought to be given on behalf of Pranav to article 8 is accepted, someone born, say in the year 2000, who is ordinarily residing in any country outside India as defined in the 1935 Act, as originally enacted, would be entitled to claim citizenship of India on the ground that any of his parents or grandparents were born in that part of Pakistan or Bangladesh which was part of India as defined in the 1935 Act, as originally enacted. We are giving this illustration to show that the interpretation of Article 8 sought to be made on behalf of Pranav would produce absurd results which the framers of the Constitution never intended. Therefore, Article 8 will have no application to Pranav's case.

17. Article 10 provides that every citizen deemed to be a citizen of India by virtue of the provisions of Articles 5 to 8 shall continue to be such citizen subject to the provisions of any law made by Parliament. Article 11 protects the power of the Parliament to make any provision with respect to the acquisition and termination of citizenship or all the matters relating to citizenship.

CITIZENSHIP UNDER THE 1955 ACT

18. Now, we turn to the provisions of the 1955 Act. Pranav has not claimed citizenship by birth (Section 3) or citizenship by descent (Section 4). He has claimed citizenship under clause (b) of sub-section (1) of Section 5 of the 1955 Act. Section 5 of the 1955 Act reads thus:

“5. Citizenship by registration. (1) Subject to the provisions of this section and such other conditions and restrictions as may be prescribed, the Central Government may, on an application made in this 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 provision of this Act if he belongs to any of the following categories, namely: (a)

(a) a person of Indian origin who is ordinarily resident in India for seven years before making an application for registration;

(b) a person of Indian origin who is ordinarily resident in any country or place outside undivided India;

(c) a person who is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration;

(d) minor children of persons who are citizens of India;

(e) a person of full age and capacity whose parents are registered as citizens of India under clause (a) of this sub-section or sub-section (1) of section 6;

(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;

(g) a person of full age and capacity who has been registered as an Overseas Citizen of India Cardholder for five years, and who is ordinarily resident in India for twelve months before making an application for registration.

Explanation 1. □ For the purposes of clauses (a) and (c), an applicant shall be deemed to be ordinarily resident in India if □

(i) he has resided in India throughout the period of twelve months immediately before making an application for registration; and

(ii) he has resided in India during the eight years immediately preceding the said period of twelve months for a period of not less than six years.

Explanation 2. □ For the purposes of this sub-section, a person shall be deemed to be of Indian origin if he, or either of his parents, was born in undivided India or in such other territory which became part of India after the 15th day of August, 1947.

(1A) The Central Government, if it is satisfied that special circumstances exist, may after recording the circumstances in writing, relax the period of twelve months, specified in clauses (f) and (g) and clause (i) of Explanation 1 of sub-section (1), up to a maximum of thirty days which may be in different breaks.

(2) No person being of full age shall be registered as a citizen of India under sub-section (1) until he has taken the oath of allegiance in the form specified in the Second Schedule.

(3) No person who has renounced, or has been deprived of, his Indian citizenship or whose Indian citizenship has terminated, under this Act shall be registered as a citizen of India under sub-section (1) except by order of the Central Government.

(4) The Central Government may, if satisfied that there are special circumstances justifying such registration, cause any minor to be registered as a citizen of India.

(5) A person registered under this section shall be a citizen of India by registration as from the date on which he is so registered; and a person registered under the provisions of clause (b)(ii) of article 6 or article 8 of the Constitution shall be deemed to be a citizen of India by registration as from the commencement of the Constitution or the date on which he was so registered, whichever may be later.

(6) If the Central Government is satisfied that circumstances exist which render it necessary to grant exemption from the residential requirement under clause (c) of sub-

section (1) to any person or a class of persons, it may, for reasons to be recorded in writing, grant such exemption.” (emphasis added) For applicability of clause (b) of sub-section (1) of Section 5 of the 1955 Act, Pranav will have to establish that he is a person of Indian origin who is an ordinary

resident in any country or place outside undivided India. In view of explanation 2 to Section 5, a person shall be deemed to be of Indian origin if (i) he or either of his parents were born in undivided India or (ii) in any such other territory which was not part of undivided India, but became part of India after 15th August 1947. There is no third category mentioned in the explanation. If undivided India were to include India after independence, the legislature would not have included the category of the person or either of his parents being born in such other territory which became part of India after the 15th August 1947. Section 2(h) of the 1955 Act provides that “undivided India” means India as defined in the 1935 Act. If we read “undivided India” as India as on or after 15th August 1947, we would be doing violence to the plain language of the Explanation. We cannot read something that is not in the provision, especially when there is no ambiguity in the provision. Therefore, we cannot read Explanation 2 the way the learned senior counsel of Pranav wants us to read. Pranav and both his parents were not born in the undivided India. His parents were born after independence in independent India. They were not born in any part of undivided India or any territory that became part of India after 15th August 1947. Therefore, Section 5(1)(b) of the 1955 Act has no application.

19. At this stage, it is necessary to refer to Sections 8 and 9 of the 1955 Act, which read thus:

“8. Renunciation of citizenship.□(1) If any citizen of India of full age and capacity, makes in the prescribed manner a declaration renouncing his Indian Citizenship, the declaration shall be registered by the prescribed authority; and, upon such registration, that person shall cease to be a citizen of India:

Provided that if any such declaration is made during any war in which India may be engaged, registration thereof shall be withheld until the Central Government otherwise directs.

(2) Where a person ceases to be a citizen of India under sub-section (1), every minor child of that person shall thereupon cease to be a citizen of India:

Provided that any such child may, within one year after attaining full age, make a declaration in the prescribed form and manner that he wishes to resume Indian citizenship and shall thereupon again become a citizen of India.

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.” (emphasis added) 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).

20. Section 8(1) will apply if any citizen of India of full age and capacity makes, in the prescribed manner, a declaration renouncing his Indian Citizenship. Section 8(1) will not apply to the involuntary cessation of citizenship by the operation of law as provided in Section 9(1). Section 8(2) will apply only if the minor child's parents had voluntarily renounced citizenship by making a declaration. In the facts of the case, on 19th December 1998, when Pranav’s parents voluntarily acquired citizens of Singapore, they immediately ceased to be citizens of India by operation of Section 9(1). Therefore, there was no occasion for Pranav’s parents to renounce their citizenship on 20th April 2012 by the mode provided under Section 8(1) as they had already ceased to be citizens of India on 19th December 1998 when they voluntarily acquired the citizenship of Singapore. As Pranav’s parents ceased to be citizens of India, not voluntarily but by the operation of Section 9(1), Section 8(2) does not apply to Pranav. Therefore, Section 8(2) will not assist Pranav.

21. In the case of State of U.P. v. Dr. Vijay Anand Maharaj³, this Court held thus:

“8.

The fundamental and elementary rule of construction is that the words and phrases used by the (1962) 45 ITR 414 : 1962 SCC OnLine SC 12 legislature shall be given their ordinary meaning and shall be construed according to the rules of grammar. When a language is plain and unambiguous and admits of only one meaning, no question of construction of a statute arises, for the Act speaks for itself. It is a well-

recognized rule of construction that the meaning must be collected from the expressed intention of the legislature.” (emphasis added) The language used in the provisions of the 1955 Act is plain and simple. Hence, the same should be given ordinary and natural meaning. Moreover, we are dealing with a law which provides for the grant of citizenship of India to foreign nationals. There is no scope to bring equitable considerations while interpreting such a statute. As the language of Sections 5, 8 and 9 is plain and simple, there is no scope for its liberal interpretation. Citizenship of India cannot be conferred on foreign citizens by doing violence to the plain language of the 1955 Act.

22. Now, only clause (f) of sub-section (1) of Section 5 of the 1955 Act survives for consideration. However, under the said provision, Pranav can apply for Indian citizenship provided he is an ordinary resident of India for twelve months immediately preceding the date of application. There is a power to relax the period of twelve months vested in the Central Government if it is satisfied that special circumstances exist. That is the provision in sub- section (1A) of Section 5 of the 1955 Act. We may note here that it is not the case made out that Pranav fulfils the criteria in clause (g) of Section 5(1) of the 1955 Act.

23. Therefore, the view taken by the High Court was completely erroneous as the High Court held that Pranav had resumed Indian citizenship under sub-section (2) of Section 8 of the 1955 Act.

24. Some arguments were made that this Court should exercise its extraordinary jurisdiction under Article 142 of the Constitution of India. The power under Article 142 is an extraordinary power which should be exercised to deal with exceptional circumstances. We do not think that this case warrants the exercise of power under Article 142 of the Constitution of India. This Court will have to be very circumspect when it comes to the exercise of power under Article 142 for the grant of citizenship of India to a foreign national.

25. Therefore, the impugned orders in Civil Appeal No.5932 of 2023 are set aside. Appeal is allowed. Writ Petition (C) No.123 of 2024 is dismissed. However, this judgment will not preclude Pranav from applying for citizenship by invoking clause (f) of sub-section (1) of Section 5 of the 1955 Act. It will also be open for him to apply to the Central Government for the exercise of power under sub-section (1A) of Section 5 of the 1955 Act of relaxation of the period of twelve months provided in clause (f) of sub-section (1) Section 5 of the 1955 Act.

.....J. (Abhay S Oka)J. (Augustine George Masih) New
Delhi;

October 18, 2024.