

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 818 OF 2023

Lourdes Jennifer Lobo, w/o. Henry Vital Nevel Rodrigues, Aged about 60 years, H. No.277, Vaz Dourados, Capleavaddo, Ambelim Velim, ... Petitioner Salcete, Goa, 403 723.

Versus

1. Regional Passport Officer, Regional Passport Office, Goa Passport Bhavan EDC Complex Patto, Panaji, Goa.
2. Ministry of External Affairs, Original Passport Office, Panaji, Goa.
3. Union of India, represented by Secretary, Ministry of External Affairs, PSP Division, Patiala House Annex, Tilak Marg, New Delhi ... Respondents 110001.

Mr. C. A. Coutinho, Advocate with Mr. Ivan Santimano, Advocate for the Petitioner.

Shri. Raviraj Chodankar, learned Central Government Standing Counsel for the Respondents.

**CORAM: M. S. SONAK &
VALMIKI SA MENEZES, JJ.**

DATED: 3rd JANUARY, 2024

JUDGMENT : (Per Valmiki Sa Menezes,J.)

1. Rule. Rule made returnable forthwith. With the consent of the parties, the petition is heard and disposed of finally at the stage of admission.

2. This Writ Petition invokes this Court's jurisdiction under Article 226 of the Constitution of India seeking an appropriate writ to quash and set aside Order dated 21.04.2020 passed by the Joint Secretary (PSP) and Chief Passport Officer from the Ministry of External Affairs, which confirms the Order dated 03.10.2019 passed by the Passport Officer, rejecting the Petitioner's application for issuing a passport, in terms of Section 6(2)(a) of the Passport Act, 1967 (The Act).

The rejection of the Petitioner's application for issuance of passport, vide impugned Order dated 03.10.2019, is based upon the finding of the Officer that the Petitioner is not a citizen of India. The short point, therefore, for determination in this Petition is:

(a) Whether the Petitioner is a citizen of India?

(b) Whether the impugned Orders dated 21.04.2020 of the Appellate Authority under Section 11 and 03.10.2019 of the Passport Officer under Section 6(2)(a) of the Passport Act, 1967, requires to be set aside and the Petitioner is entitled to issuance of a passport ?

3. The Petition is founded upon the following undisputed facts :

(a) The Petitioner was born in the city of Kampala, in Uganda ~~03.07.1963~~ ~~Eleuterio~~ (East Africa) on ~~03.06.1963~~. Her father ~~Eleuterio~~ Antonio Caitano Dias e Lobo was born on 14.09.2021 at Raia, Salcete, Goa. The Petitioner's mother Maria Ana Mariam Ofelia Coutinho was born on 07.09.1927 at Navelim, Salcete, Goa. The parents of the

Correction carried
out in view of the
order dated 24.01.2024.

Petitioner were married at Raia, with their marriage being registered before the Civil Registrar, Salcete, at Margao on 19.03.1949, under entry no. 667/49. The certificates of birth of the Petitioner's parents issued by the concerned sub-Registrar at Goa, along with their marriage certificate are produced on record.

(b) The Petitioner's birth in Kampala was registered in the office of the Registrar General of Births and Deaths at Kampala on 12.10.1963, and the certificate of birth produced with the Petition reflects the names of both the Petitioner's parents and their nationality has been entered in the certificate as "*Portuguese citizen*".

(c) The Petitioner claims that, as a minor, she travelled from Uganda to Mormugao, Goa, by sea, with her mother and entered India through Mormugao Port, for the first time on 14.01.1965, on a passport bearing no. 176587. This statement is borne by information communicated by letter dated 25.07.2019 issued by the Superintendent of Customs (OAE) at Mormugao, Goa, certifying from the record that the Petitioner's mother Mrs. Maria Ana Lobo, holder of passport no. 176587 had arrived at Mormugao by vessel '*Safina-E-Hujjaj*' as per their records in the register of Repatriate Concessions, book no. 16, serial no. 230 at

page 57, maintained at the Goa Customs. This certificate, however, does not specify whether the referred passport was an Indian passport or one of another nationality.

(d) The Petitioner thereafter took admission and completed her schooling between 10.06.1975 and 31.12.1983 at Perpetual Succor Convent High School, Navelim, Salcete, Goa, and thereafter, completed her higher secondary examination on 28.08.1986 at Carmel College, Nuvem, Salcete, Goa. On completion of her Higher Secondary School, the Petitioner completed her Teacher's Training Certificate course under the Bureau of Government examinations, at Pune, Maharashtra, in April, 1988 and commenced teaching as a Primary teacher from 18.06.1990 till the time she applied for her passport. All these facts are supported by certificates issued by the concerned Board of Secondary and Higher Secondary Education, the concerned School and the Department of Education, State of Maharashtra. The Petitioner was issued an Aadhar card on 07.11.2011, a Pan card and an election card, all stating her residence to be in Goa.

(e) Her mother Maria Lobo obtained an Indian passport bearing no. T 0922321 at Panaji, Goa, on 21.10.2019. Her place of birth has been recorded by the Passport Officer, in her passport as Navelim, Goa, born on 07.09.1927.

(f) The Petitioner applied for a passport on 02.05.2019 at the office of the Regional Passport Officer, Panaji, Goa, which application came to be rejected by the concerned Passport Officer in terms of Section 6(2)(a) of the Passports Act, 1967, holding that the Petitioner was not a citizen of India. On an appeal filed by the Petitioner before the Appellate Authority, under Section 11 of the Act, the same is rejected vide Order dated 21.04.2020, holding that her birth certificate states her parents to be ‘Portuguese Citizens’, and further, that in terms of the provisions of Goa, Daman and Diu (Citizenship) Order, 1962 (Citizenship Order), since she was born in a territory not covered by the Order, she was not a citizen of India. It is these Orders by which the Petitioner has been held not to be a citizen of India and the consequent rejection of her application for an Indian Passport, which have been challenged before us.

4. On these facts, it was the submission of Shri C. A. Coutinho, appearing for the Petitioner, that in terms of the Citizenship Order 1962 (Citizenship Order), every person who, or whose parents or grandparents were born before 20.12.1961 in the territory comprising of the Union Territory of Goa Daman and Diu shall be deemed to be citizen of India on that date. He submits that the birth certificates of the Petitioner’s parents clearly bear out the fact that they were born at

Salcete, Goa, within the territories specified under the Citizenship Order, prior to the appointed date of 20.12.1961, and were therefore deemed to be Indian Citizens prior to the birth of the Petitioner in 1963. He further submits that, notwithstanding the fact that the Petitioner was born in Kampala, Uganda, and even though her birth certificate issued by those authorities state that her parents were Portuguese Citizens, the Petitioner would be deemed to be a citizen of India in terms of the provisions of the Citizenship Order. It is further the Petitioner's submission that the Petitioner's Indian Citizenship is further borne out from the fact that her mother in fact possesses an Indian passport, and the fact that the certificate issued by the Customs Authority, does not specify whether the Petitioner's mother travelled on the Passport issued by the Indian Authorities or otherwise, would make no difference since she is recognised as an Indian citizen. Consequently, the Petitioner argues that the Passport Officer ought to have proceeded to issue a Petitioner an Indian passport, and held the Petitioner to be a citizen of India.

5. Opposing the Petition, and supporting the impugned decisions taken by the authorities, Shri. Raviraj Chodankar, learned Central Government Standing Counsel for the Respondents, submits that the Citizenship Order required the Petitioner or her parents to make a declaration in terms of the proviso to clause (2) thereof, stating that they desired Indian Citizenship, and failure to sign such a declaration,

would result in them being aliens. He further submits that the birth certificate of the Petitioner having stated that her parents are ‘Portuguese Citizens’, she has been rightly considered by the authorities not to be a Citizen of India’.

The Respondents further submit that the Appellate Authority has rightly held that in the facts and circumstances of this case, the Petitioner was required to obtain an Order in terms of Section 9(2) of the Citizenship Act, 1955 (Citizenship Act), declaring her to be an Indian citizen, as the Passport Officer would have no jurisdiction to decide the issue of whether the Petitioner was an Indian Citizen or not; he further submitted that such exercise is exclusive within the domain and power of the Central Government.

6. In order to decide the two points for determination framed by us, it would be advantageous to quote certain provisions of various laws and certain historical facts which would aid in the decision of this matter.

Goa was a Portuguese territory until its liberation and annexation by conquest, by the Indian army on 19.12.1961. Goa was then incorporated into the Indian Union and the operation of the Constitution of India was extended over its territory. Prior to the liberation of Goa, India attaining independence on 15.08.1947, due to partition of British India into two dominions, i.e. Pakistan and India, in

terms of Indian Independence Act. Thereafter, the Constitution of India was brought into force on 26.01.1950.

7. Part II of the Constitution deals with Citizenship and defines who would be Indian Citizens at the commencement of the Constitution. Article 6 is a provision that sets conditions for deeming a person who has migrated to the territory of India from the territory included in Pakistan at the commencement of the Constitution. Article 8 confers the right of Citizenship on persons of Indian origin residing outside India; Under Article 8, any person who, or either of his parents or any of his grandparents was born in India as defined in the Government of India Act, 1935 and who was ordinarily residing in a country outside India shall be deemed to be citizen on India if he has registered as Citizen of India at any diplomatic or consular representative in the country where he resides. Article 9 stipulates that no person shall be a citizen of India by virtue of Article 5 or deemed to be a citizen under Article 6 or Article 8 if he has voluntarily acquired a citizenship of a foreign State.

8. Article 11 of the Constitution, provides for Parliament to regulate the right of citizenship, its acquisition, termination and all other matters connected with citizenship, by enactment of a specific law.

Thus, Chapter II of the Constitution of India, conferred citizenship in these circumstances and in terms set out therein for the

period prior to the commencement of the Constitution, and also for the period after the commencement of the Constitution, until Parliament enacted the Citizenship Act, 1955, which came into force on 30.12.1955.

9. The Citizenship Act provides for modes of acquisition of Indian Citizenship under Section 3, 4, 5, 6 and 7. Section 3 provides for acquisition of citizenship by birth on every person born in India on or after 26.01.1950.

Section 4 of this Act provides for acquisition of citizenship by descent, Section 5 provides for acquisition of citizenship by registration, Section 6 for citizenship by naturalisation and Section 7 for citizenship by incorporation of territory.

Section 4 provides for citizenship in the following terms:

*"Section 4 - **Citizenship by descent.** [(1) A person born outside India shall be a citizen of India by descent,--(a) on or after the 26th day of January, 1950, but before the 10th day of December, 1992, if his father is a citizen of India at the time of his birth; or*

(b) on or after the 10th day of December, 1992, if either of his parents is a citizen of India at the time of his birth:

Provided that if the father of a person referred to in clause (a) was a citizen of India by descent only, that person shall not be a citizen of India by virtue of this section unless--

(a) his birth is registered at an Indian consulate within one year of its occurrence or the commencement of this

Act, whichever is later, or, with the permission of the Central Government, after the expiry of the said period; or

(b) his father is, at the time of his birth, in service under a Government in India:

Provided further that if either of the parents of a person referred to in clause (b) was a citizen of India by descent only, that person shall not be a citizen of India by virtue of this section, unless--

(a) his birth is registered at an Indian consulate within one year of its occurrence or on or after the 10th day of December, 1992, whichever is later, or, with the permission of the Central Government, after the expiry of the said period; or

(b) either of his parents is, at the time of his birth, in service under a Government in India:

Provided also that on or after the commencement of the Citizenship (Amendment) Act, 2003(6 of 2004), a person shall not be a citizen of India by virtue of this section, unless his birth is registered at an Indian consulate in such form and in such manner, as may be prescribed,--

(i) within one year of its occurrence or the commencement of the Citizenship (Amendment) Act, 2003(6 of 2004), whichever is later; or

(ii) with the permission of the Central Government, after the expiry of the said period:

Provided also that no such birth shall be registered unless the parents of such person declare, in such form and in such manner as may be prescribed, that the minor does not hold the passport of another country.

(1A) A minor who is a citizen of India by virtue of this section and is also a citizen of any other country shall cease to be a citizen of India if he does not renounce the citizenship or nationality of another country within six months of attaining full age.]

(2) If the Central Government so directs, a birth shall be deemed for the purposes of this section to have been

registered with its permission, notwithstanding that its permission was not obtained before the registration.

(3) For the purposes of the proviso to sub-section (1), [any person] born outside undivided India who was, or was deemed to be, a citizen of India at the commencement of the Constitution shall be deemed to be a citizen of India by descent only.”

10. Thus, in terms of the provisions under Section 4 of the Citizenship Act, a person born outside India on or after 26.01.1950, but before 10.12.1992, shall be a citizen of India by descent, if his father is a citizen of India at the time of his birth. The provision further confers citizenship by descent on persons born outside India on or after 10.12.1992, if either of his parents is a citizen of India at the time of his birth.

11. Section 7 of the Citizenship Act provides for conferring citizenship upon persons by incorporation of territory and reads as under :

“Section 7 - Citizenship by incorporation of territory.—If any territory becomes a part of India, the Central Government may, by order notified in the Official Gazette, specify the persons who shall be citizens of India by reason of their connection with that territory; and those persons shall be citizens of India as from the date to be specified in the order.

It is under these provisions of Section 4 read with Section 7, that the Petitioner claims to be a citizen of India, by descent and incorporation of the territory of Goa, claiming that her father was

deemed to be a citizen of India as on 20.12.1961 under the Citizenship Order, by virtue of his birth within the territory of Goa prior to 20.12.1961.

12. As stated in the aforementioned paragraphs, the territory of Goa was incorporated into India on 19.12.1961 by a military action, pursuant to which the Central Government, in terms of the powers vested in it under Section 7 of the Citizenship Act, issued the Goa, Daman and Diu (Citizenship) Order, 1962, on 28.03.1962. The Citizenship Order is quoted below for easy reference :

“THE GOA, DAMAN AND DIU (CITIZENSHIP)
ORDER,
1962.

Notification
No. 1/1/62-IC

S.O. 959, dated the 28th March, 1962.- In exercise of the powers conferred by Sec. 7 of the Citizenship Act, 1955 (57 of 1955), the Central Government hereby makes the following order, namely :

- 1. This Order may be called the Goa, Daman and Diu (Citizenship) Order, 1962.*
- 2. Every person who or either of whose parents or any of whose grandparents was born before the twentieth day of December, 1961, in the territories now comprised in the Union Territory of Goa, Daman and Diu shall be deemed to have become a citizen of India on that day:*

Provided that any such person shall not be deemed to have become a citizen of India as aforesaid if within one

month from the date of publication of this Order in the Official Gazette that person makes a declaration in writing to the Administrator of Goa, Daman and Diu or any other authority specified by him in this behalf that he chooses to retain the citizenship or nationality which he had immediately before the twentieth day of December, 1961:

Provided that in the case of a child, the declaration under the preceding proviso of the father, or if he is dead of the mother, or if both parents are dead, of the legal guardian shall determine the citizenship or nationality of such child if on the date of such declaration he is below eighteen years of age, but such child may, within six months after attaining the age of eighteen years, make a declaration in writing to the Administrator of Goa, Daman and Diu or any other authority specified by him in this behalf that he wishes to acquire Indian citizenship and shall thereupon become a citizen of India.

(Fateh Singh)
Joint Secretary to the Govt. of India”

13. Under the Citizenship Order, every person who was born, or whose parents or grandparents were born before 20.12.1961 within the territory comprising of the Union Territory of Goa, Daman and Diu, was deemed to have become a Citizen of India on that date.

The first proviso to clause (2) specifies that if a person, within one month of the date of publication of the Order, makes a declaration in writing to the Administrator of Goa, that he chooses to retain the citizenship or nationality which he had immediately before 20.12.1961,

such person shall not be deemed to have become a citizen of India. The second proviso confers, in the case of a child, the right to make a declaration on behalf of the child, through the father, mother or legal guardian of the child.

14. A plain reading of clause (2) of the Citizenship Order, would confer Indian Citizenship upon all persons born in the territory of Goa prior to 1961, or if such person were not born in Goa, Indian Citizenship would nevertheless be conferred on such person by virtue of the fact that his parents or grandparents were born in the territory of Goa prior to 20.12.1961.

Clearly therefore, by the provisions of clause (2) of the Citizenship Order, considering the fact that neither of the Petitioner's parents had made a declaration retaining their Portuguese Citizenship within one month from 20.12.1961, would be considered Indian citizens. Further, notwithstanding that they were at the relevant time in Uganda, they would automatically be conferred with Indian Citizennships as on 20.12.1961 as on the day when the Petitioner was born on 03.07.1963. Consequently, the Petitioner would acquire Citizenship by descent in terms of Section 4(1)(a) of the Citizenship Act read with the deeming provision contained in clause (2) of the Citizenship Order.

15. At this juncture, we may also look at the matter in terms of the principles and rules of Private International Law, governing the conferment of Citizenship on minors. It is a settled rule of Private International Law that nationality and domicile of a minor are ordinarily determined by the nationality and domicile of the father of that minor. The Indian Citizenship Act incorporates this principle in Section 4(1) and Section 8(2), wherein a minor acquires the Indian Citizenship of his father if born prior to 10.12.1992, and if born after that date, acquires the Indian Citizenship of either of his parents.

16. Acquisition, conferment or loss of citizenship, may often depend, as in the case of the State of Goa on the mode of acquisition of territory. India attained independence pursuant the Indian Independence Act, when British India ceased to exist after two new independent and sovereign States, having specific territory came into existence on 15/8/1947. Thus, on the day that the State of British India disappeared, simultaneously the Indian Dominion came into existence.

Article 5 of the Constitution of India states that every person who has his domicile in the territory of India and was born in that territory or either of his parents was born in the territory, at the commencement of the Constitution, shall be citizens of India.

17. Oppenheim, in his treatise “International Law” (Vol. I-Peace) in Section 212 at page 546 states the five modes by which territory is acquired;

“The modes of acquiring territory may be divided according as the title they give is derived from the title of a prior owner-State, or not. Cession is therefore a derivative mode of acquisition, whereas Occupation, Accretion, Subjugation and Prescription are original modes”.

India, as a Country acquired its territory by cession on the passing of a Parliamentary statute, The Indian Independence Act, 1947, by which Britain ceded its territory by creating a new dominion of India.

18. Oppenheim, in his treatise “International Law” (Vol. I-Peace) in Section 219 at page 551 further states :

“As the object of cession is sovereignty over the ceded territory, all such individuals domicile thereon as are subjects of the ceded State become ipso facto by the cession subjects of the acquiring State. The hardship involved in the fact that in all cases of cession with habitants of the territory who remain use their old citizenship and are handed over to a new sovereign whether they like it or not, has created a movement in favour of the claim that no cession shall be valid until the inhabitants have by a plebiscite given their consent to the cession”.

19. The case of Goa becoming part of the Indian Union is different. Goa was annexed from the Portuguese territory, by conquest, and its territory was assimilated into India, which was the conquering State. The acquisition of territory by conquest, according to Oppenheim is acquisition of territory through subjugation. In the same treatise, he opines at para 236 at page 566:

“Conquest is the taking of possession of any territory through military force in time of war. Conquest alone does not ipso facto make a conquering State the sovereign of the conquered territory, although such territory comes through conquest for the time under the sway of the conqueror. Conquest is only a mode of acquisition, if the conqueror after having firmly established the conquest, formally annexes the territory. Such annexation makes the enemy State cease to exist and thereby brings the war to an end....”.

At para 237, he states :

“Conquered enemy territory although actually in the possession and under the sway of the conqueror remains legally under the sovereignty of the enemy until through annexation it comes under the sovereignty of the conqueror. Annexation turns the conquest into subjugation. It is the very annexation which uno actu makes the vanquished State cease to exist, and brings the territory under the conqueror’s sovereignty. Thus, the subjugated territory has not for one moment been no

State's land, but passes from the enemy to the conqueror not through cession, but through annexation".

At para 240, at page 572, Oppenheim states :

"Different from the fact that enemy subjects become through annexation subjects of the subjugating State is the question what position they acquire within it. This question is one of Municipal and not of International Law. The subjugating State can, if it likes, allow them to emigrate and to renounce their newly acquired citizenship, and its Municipal Law can put them in any position it likes, and can in particular grant or refuse them the same rights as those which its citizens by birth enjoy".

20. It is this principle, as discussed by Oppenheim above, that is found embodied in Section 7 of the Citizenship Act, 1955, an enactment made by Parliament in pursuance of the provisions of Article 10 of the Constitution of India.

21. On India taking possession of the Portuguese territory of Goa on 19/12/1961, by conquest, the conquered territory was formally annexed into the territory of India by amendments to the Constitution of India and the creation of a new Union Territory of Goa, Daman and Diu. Simultaneously, the citizenship order of 28th March, 1962 was passed in exercise of powers conferred on the Government of India by Section 7 of the Citizenship Act, 1955. By virtue of the Citizenship Act,

which is Municipal Law, Indian citizenship was conferred on every person who himself, or either of his parents, or his grandparents were born before 20th December 1961 within the territories now comprising the Union Territory of Goa, Daman and Diu, by a deeming fiction under Clause (2) of the Order. The order, however, makes provision for allowing those persons, who otherwise qualified under the order to be citizens of India, to opt for, by submitting a declaration to the Administrator of Goa, stating that they choose to retain the citizenship or nationality which they had immediately before the appointed date.

22. In the present case, the petitioner, though born in Uganda, notwithstanding the endorsement of her parents' citizenship was made in her birth certificate as being Portuguese citizens, was in fact deemed to be an Indian citizen by virtue of the Indian citizenship of her parents. Her parents were both born within the territory of Goa prior to 20/12/1961 and were therefore, deemed to be citizens of India under the Citizenship Order, in the absence of they having given any declaration of their desire to retain Portuguese or any other citizenship that they may have had prior to that date.

23. There is yet another circumstance that we take into consideration while deciding the question of the citizenship of the Petitioner. As a matter of fact, the Petitioner was a minor, in fact hardly two years old when she travelled from Uganda to India and entered through

Mormugao Port on 14/1/1965 along with her mother. Though the nationality status of the Petitioner's mother, whose passport has been referred to in the communication dated 17/7/2023 of the Commissioner of Customs was not clear, the Petitioner's mother was issued an Indian Passport on 21/10/2019, clearly reflecting her Indian citizenship. By a combined reading of the documents and by virtue of the provisions of the Citizenship Order, there would be absolutely no doubt in our minds that the Petitioner was a citizen of India by descent, both her parents being deemed Indian citizens by birth, even though at the relevant time of Goa being annexed to the Indian Union, having residence in Uganda. We are also mindful of the general principles of International Law, which do not encourage or foster a situation, where, due to circumstances which arise for a minor whose parents are not known or due to war or unrest, is left without any Citizenship conferred upon him. Such a situation is not desirable, since it would lead to denial of fundamental or human rights which would be otherwise be conferred upon such a person by birth or by the descent.

24. The Respondents have, however, raised an objection that since the Petitioner's citizenship was an issue that needed to be decided, it was only the Central Government who was vested with the power to decide whether a person was a citizen of India or had acquired a foreign citizenship, in terms of the proviso-ins of Section 9 (2) of the

Citizenship Act. It was contended that neither the Passport Officer, nor this Court would have the jurisdiction to decide this issue, and until the Central Government gives its decision in terms of the provisions of Section 9(2) of the Act, the Petitioner will not be entitled to an Indian Passport. Reliance was placed by the Respondents on the Judgment Patna High Court in ***Kiran Gupta V/s. State Election Commission, reported in 2020 (6) BLJ 539*** in support of this contention.

25. The provisions of Section 9 of the Citizenship Act, 1955, read 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 an 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."

26. Sub-section (1) of Section 9 of the Act stipulates that where a citizen of India voluntarily acquires the citizenship of another country, he shall cease to be a citizen of India.

Sub-section (2) of Section 9 stipulates that where a question arises as to when or how **a citizen of India** has acquired the citizenship of another country that question alone shall be decided by the Central Government. Sub-Section(2) therefore proceeds on the premise that the person in question possessed Indian citizenship and had lost it due his voluntary act of acquiring the citizenship of another country. Sub-Section(2) does not stipulate that all questions of whether a person is a citizen of India or not, are to be exclusively decided by the designated Authority i.e. the Central Government.

27. In **State of Andhra Pradesh V/s Abdul Khader, reported in AIR 1961, SC 1467**, a similar question arose in a criminal proceeding whereby a person was convicted under the Foreigners Act, 1946. While construing the provisions of Section 9 and whether the question whether a person was a Indian citizen or not fell within the exclusive jurisdiction and purview of sub-Section (2) of Section 9, the Supreme Court has held as under :

"8. Now, Section 9(2) of the The Citizenship Act, 1955, provides that if any question arises as to whether an Indian citizen has acquired the citizenship of another country, it shall be determined by such authority and in such manner as may be prescribed. Under Rule 30 of the rules framed under that Act, the authority to decide that question is the Central Government. So the question whether the respondent, an Indian citizen, had acquired Pakistani citizenship cannot be decided by courts. The learned Magistrate had no jurisdiction therefore to come to the finding on the strength of the passport that the respondent, an Indian citizen, had acquired Pakistani citizenship. Nor was there anything before the learned Magistrate to show that the Central Government had decided that the respondent had renounced Indian citizenship and acquired that of Pakistan. The learned Magistrate thought that the fact that the Central Government had refused to extend the respondent's visa proved that it had decided that he had acquired Pakistani nationality. This view again was not warranted. There is nothing to show that the Central Government had refused to extend the respondent's visa. Even if it had, that would not amount to a decision by it, that the respondent, an Indian citizen, had acquired subsequently Pakistani nationality for there may be such refusal when an applicant for the extension had all along been a Pakistani national. Furthermore, in order that there may be a decision by the Central Government that an Indian citizen has acquired foreign nationality, an enquiry as laid down in Rule 30 of the Rules framed under the Citizenship Act has to be made and no such enquiry had at all been made. That being so, it cannot be said that the Central Government had decided that the respondent, an Indian citizen, had acquired the citizenship of Pakistan.

9. The question whether a person is an Indian citizen or a foreigner, as distinct from the question whether a person having once been an Indian citizen has renounced that citizenship and acquired a foreign

nationality, is not one which is within the exclusive jurisdiction of the Central Government to decide. The courts can decide it and, therefore, the learned Magistrate could have done so. He, however, did not decide that question, that is, find that the respondent had been a Pakistani national all along. On the evidence on the record such a finding would not have been warranted. For all these reasons we think that the conviction of the respondent by the learned Magistrate was not well founded".

28. Thus, in *Abdul Khader (Supra)*, as held by the Supreme Court, the question whether a person is Indian citizen or a foreigner is distinct from whether he has voluntarily acquired another citizenship and thus, ceased to be an Indian citizen. It was held that the question of whether the person was an Indian citizen or a foreigner can be decided by Courts or Authorities by themselves and was not within the exclusive jurisdiction of the Authority and sub-Section(2) of Section 9.

29. In ***Akbar Khan Alam Khan V/s Union of India, reported in 1961 SSC Online SC 4***, the question before the Supreme Court was whether a Civil Court would have jurisdiction to decide and declare whether a person was a citizen of India or not. There, the suit for declaration of the Plaintiff's status as an Indian citizen was filed prior coming into force of the Citizenship Act, 1955. The question raised before Supreme Court was whether a Civil Court, in the light of the new legislation of Section 9 of the Citizenship Act, would

have the jurisdiction to try this issue. The Supreme Court answers the question in the following manner :

"It seems to us clear that sub-see. (2) of B. 9 of the Citizenship Act bars the jurisdiction of the civil court to try the question there mentioned because it says that those questions shall be determined by the prescribed authority which necessarily implies that it cannot be decided by anyone else. The only question, however, which a civil court is prevented by Section 9(2) of the Citizenship Act from determining is the question whether a citizen of India has acquired citizenship of another country or when or how he acquired it. The civil courts are not prevented by this provision from determining other questions concerning nationality of a person. There is no doubt that the suit by the appellants raised the question whether they had lost their Indian citizenship by acquiring the citizenship of Pakistan. The appellants themselves had raised that question by pleading in their plaint that they had not voluntarily acquired the citizenship of Pakistan. To that extent, it has to be held that the appellants' suit was barred. It seems to us however that the suit raised other questions also. The appellants' claim to the citizenship of India was resisted on the ground that having migrated to Pakistan in 1948, they had never acquired Indian citizenship. That might follow from Article 7 of the Constitution. The jurisdiction of a civil court to decide that question is not in any way affected by Section 9(2) of the Citizenship Act. Therefore it seems to us that the entire suit should not have been dismissed. The Courts below should have decided the question whether the appellants had never been Indian citizens. If that question was answered in the affirmative, then no further question would arise and the suit would have to be dismissed. If it was found that the appellants had been on January 26, 1950, Indian citizens, then only the question whether they had renounced that citizenship and acquired a foreign citizenship would arise. That

question the Courts cannot decide. The proper thing for the court would then have been to stay the suit till the Central Government decided the question whether the appellants had renounced their Indian citizenship and acquired a foreign citizenship and then dispose of the rest of the suit in such manner as the decision of the Central Government may justify. The learned Attorney-General appearing for the respondents, the defendants in the suit, conceded this position. He did not contend that there was any other bar to the suit excepting that created by Section 9 of the Citizenship Act."

30. In ***State of Uttar Pradesh v/s. Shah Mohammed,*** reported in (1969) 1 Supreme Court Cases 771, a similar question was raised and referring to the provisions of the Constitution of India and to the Citizenship Act, the Supreme Court holds as under:

"It must be remembered that Article 9 of the Constitution provides that 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. This means that if prior to the commencement of the Constitution a person had voluntarily acquired the citizenship of any foreign State he was not entitled' to claim the citizenship of India by virtue of Articles 5 and 6 or 8. This Article thus deals with cases where the citizenship of a foreign State had been acquired by an Indian citizen prior to the commencement of the Constitution (vide Ishar Ahmad Khan v. Union of India- (1962) 1 SCR 779). Article 11, however, makes it clear that Parliament has the power to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship. The Parliament could thus regulate the right of citizenship by law. As pointed out in the above decision of this Court it would be open to the Parliament to affect

the rights of citizens and the provisions made by the Parliamentary statute cannot be impeached on the ground that they are inconsistent with the provisions contained in other Articles, in Part II of the Constitution. The Act has been enacted under the powers of the Parliament preserved by Article 11 in express terms. The Parliament had also legislative competence under Entry 17, List I of Seventh Schedule. It could thus make a provision about the forum where the question as to whether a person had acquired citizenship of another country could be determined and this is what has been done by Rule 30. The cases that would ordinarily arise about loss of Indian citizenship by acquisition of foreign citizenship would be of three kinds: (1) Indian citizens who voluntarily acquired citizenship of a foreign State prior to the commencement of the Constitution; (2) Indian citizens who voluntarily acquired the citizenship of another State or country between January 26, 1950 and December 30, 1955 i.e. the date of commencement of the Act and (3) Indian citizens who voluntarily acquired foreign citizenship after the date of commencement of the Act i.e. December 30, 1955. As regards the first category they were dealt with by Article 9 of the Constitution. The second and the third categories would be covered by the provisions of Section 9 of the Act. If a question arises as to whether, when or how an Indian citizen has, acquired the citizenship of another country that has to be determined by the Central Government by virtue of the provisions of sub-section (2) of Section 9, read with Rule 30 of the Citizenship Rules.”

31. This ***Bhagwati Prasad Dixit ‘Gorewala’ V/s. Rajeev Gandhi, reported in (1986) 4 Supreme Court Cases 78***, was a judgment that arose from an election petition, wherein the contention raised by the Petitioner was that the elected party had ceased to be a

citizen of India. The Petitioner argued that this was a question which could be heard exclusively by the appropriate authority under Section 9 alone. The Supreme Court has proceeded on the assumption that the person was an Indian citizen first, and held that only if the question arose as to whether a person had voluntarily acquired a foreign citizenship, such question would be referred to the appropriate authority. It has held so in the following terms :

“12. In the circumstances it is difficult to agree with the view of the High Court that when a question whether a person has acquired the citizenship of another country arises before the High Court in an election petition filed under the Representation of the People Act, 1951, it would have jurisdiction to decide the said question notwithstanding the exclusive jurisdiction conferred on the authority prescribed under Section 9(2) of the Citizenship Act, 1955 to decide the question. Whatever may be the proceeding in which the question of loss of citizenship of a person arises for consideration, the decision in that proceeding on the said question should depend upon the decision of the authority constituted for determining the said question under Section 9(2) of the Citizenship Act, 1955.”

32. Thus, it is only in cases where the question arises as to the loss of Indian citizenship and whether a person has voluntarily acquired a foreign citizenship that would be decided by the Authority under sub-Section(2) of Section 9. In the present case we have already held that the Petitioner, by virtue of the Citizenship order was a citizen of India by descent, both her parents having being born in the territory of Goa

prior to 20th December, 1961. Sub Section 2 of section 9 would be attracted only if it was the case of the Authorities that being an Indian citizen, the Petitioner had, at some point of time or due to some circumstance, which was part of the record and which the Authorities had information or proof of, voluntarily acquired the citizenship of another country. It is only when such a question is to be determined, that the designated Authority under Section 9 of the Act, would be called upon to decide such question.

Such is not the case of the Petitioner, nor is there any material referred to by the Respondents to even suspect that the Petitioner has voluntarily acquired the Citizenship of another country. The objections as to jurisdiction are therefore totally misplaced.

33. The question of what would be the status of a person who had executed a declaration to the Administrator of Goa under the Citizenship order, expressing his desire to retain his original citizenship, but had not executed the same voluntarily, was considered and decided by the Supreme Court in ***Gangadhar Yeshwant Bhandare V/s. Erasmo Jesus De Sequeira, reported in (1975) 1 SCC 544***, in the following terms :

“ 2. According to the appellant, prior to December 20, 1961 when the Union Territory of Goa, Daman & Diu was liberated from the Portuguese domination and became a part of the Indian Union the said territory was a Portuguese possession and the respondent was

Portuguese citizen. Following the liberation and merger of that territory with the Union of India, the Government of India in exercise of the powers conferred by Section 7 of the Citizenship Act, 1955 issued on March 28, 1962 Goa, Daman and Diu (Citizenship) Order, 1962 (hereinafter referred to as Citizenship Order) conferring the citizenship of India on persons born in the above mentioned territory before December 20, 1961 on the terms and conditions set out in the order. The relevant part of clause 2 of that order was as under :

Every person who or either of whose parents, or any of whose grand parents was born before the twentieth day of December 1961 in the Territories now comprised in the Union Territory of Goa, Daman and Diu shall be deemed to have become a citizen of India on that day:

Provided that any such person shall not be deemed to have become a citizen of India as aforesaid if within one month from the date of publication of this Order in the Official gazette that person makes a declaration in writing to the Administrator of Goa, Daman and Diu or any other authority specified by him in this behalf that he chooses to retain the citizenship or nationality which he had immediately before the twentieth day of December, 1961;

It is stated that the respondent chose to maintain his Portuguese nationality and citizenship by making a declaration in writing dated April 27, 1962 as required by the above clause. The respondent thereafter proceeded on foreign travel as an alien on the basis of a Portuguese passport issued to him on or about June 25, 1958 by the former Portuguese Administration. As the said passport was due to expire on June 21, 1962 the respondent on arrival in London in June 1962 applied to the Portuguese Consul in London for a new Portuguese passport which was granted to him on June 18, 1962. The new passport was valid up to June 17,

1964. The respondent returned to India in October 1962 and as an alien applied for and obtained residential permit in India, The permit was renewed from time to time.

3. On December 20, 1962 the Central Government published the Citizenship (Amendment) Rules, 1962 and inserted in Schedule III to the Citizenship Rules, 1956 clause 3A which reads as under:

3-A. Where a person, who has become an Indian citizen by virtue of the Goa, Daman and Diu (Citizenship) Order, 1962 or the Dadra and Nagar Haveli (Citizenship) Order, 1962, issued under Section 7 of the Citizenship Act, 1955 (57 of 1955), holds a passport issued by the Government of any other country, the fact that he has not surrendered the said passport on or before the 19th January, 1963 shall be conclusive proof of his having voluntarily acquired the citizenship of that country before that date.

It is stated by the-appellant that the respondent deliberately failed to surrender his Portuguese passport before January 19, 1963 as required under the above clause. In January 1964 the respondent returned his Portuguese passport to the Special Officer, Ministry of External Affairs and claimed Indian citizenship. No reference was made in that communication by the respondent to the fact that he had made a declaration retaining his Portuguese citizenship. On December 15, 1964 a letter was sent on behalf of the Administration of Goa, Daman and Diu to the respondent stating that prima facie he had become a citizen of India by virtue of the Citizenship Order. In July 1970 the respondent addressed a communication to the Central Government for a certificate under Section 13 of the Citizenship Act. In response to that the respondent was informed by letter dated July 27, 1970 that the said certificate was not necessary for him as the Goa Administration had already conveyed to him that he was prima facie an Indian citizen. The appellant asserts that the

information conveyed to the respondent by the Goa Administration in letter dated December 15, 1964 was not correct and contrary to documentary evidence. An objection was raised at the time of scrutiny by the appellant that the respondent was not a citizen of India but that objection was overruled by the Retuning Officer. The appellant accordingly prayed that the election of the respondent to the Lok Sabha be declared to be void.

16. It has next been argued by Mr. Bhandare that whatever might be the reason which might have weighed with the respondent in making declaration Ex. P3 dated April 27, 1962 regarding his Portuguese nationality and the retention of the Portuguese passport till after January 19, 1963 the law must take its course and the court should give effect to the proviso to clause 2 of the Citizenship Order and clause 3A of Schedule III to the Citizenship Rules, 1956. In accordance with the above provisions, the respondent, it is urged, should be held to be a Portuguese citizen and not an Indian citizen.

17. We are unable to accede to the above submission. The respondent was admittedly born before the twentieth day of December 1961. in the Union Territory of Goa, Daman and Diu. As such, but for declaration Ex. P3 signed by him, he would according to clause 2 of the Citizenship Order be deemed to have become a citizen of India on the 20th day of December 1961. Question then arises as to what is the effect of declaration Ex. P3 made by the respondent on April 27, 1962 and the retention of the Portuguese passport by him after January 19, 1963. We have found above that even though the respondent wanted to become an Indian citizen, he signed declaration Ex.P3 and retained the Portuguese passport till January 1964 because of the secret mission which had been entrusted to him in connection with the affairs of the State. it cannot, therefore, be said that the choice to retain Portuguese nationality as expressed in declaration Ex. P3 as well as the choice to retain the Portuguese passport after January 19, 1963 represented

the real choice of the respondent exercised by him voluntarily and of his free volition. On the contrary, it was because of the necessity and the compulsive reason of ensuring the success of the secret mission entrusted to him in connection with the affairs of the State that the respondent signed declaration Ex. P3 and retained the Portuguese passport till after January 19, 1963. The evidence on record establishes that declaration Ex. P3 was a sham declaration which did not embody the real intention or choice of the person signing it. It was not intended to be acted upon and was signed at the instance of a senior officer acting on behalf of the Government of India because it was considered to be a necessary camouflage and cover to facilitate the carrying out of the secret mission entrusted to him in connection with the affairs of the State. The same was reason for the retention of the Portuguese passport by the respondent after January 1963. As such, declaration 3 and the retention of the pass-port by the respondent after January 1963 cannot have the effect of depriving the respondent of the benefit of Indian citizenship. It would indeed look anomalous if a declaration signed in the above circumstances were to result in the evil consequence of the respondent being denied the right to become an Indian citizen. We may observe that once a declaration like Ex.P3 is signed by a person and he retains a Portuguese passport after the due date, the onus would be very heavy upon him to prove that the declaration was not signed by him voluntarily and that the retention of the Portuguese passport by him was also not a voluntary act. Unless he discharges that onus by clear and cogent evidence, the law would takes its course and he would not be regarded an Indian citizen. Where, however, as in the present case the person concerned discharges that onus and it is established by clear and cogent evidence that the real choice and intention of the person concerned was to become an Indian national and that he signed the declaration and retained the passport because of the

compulsion of a secret assignment entrusted to him in connection with the affairs of the State, he cannot be deprived of his entitlement to Indian citizenship.”

In *Gangadhar Bhandare (Supra)*, it has been held, that even if a declaration to retain the original citizenship were given, but the same was not done voluntarily, that would still not deny a person born in the territory of Goa prior to 20th December, 1961, the conferment of the Indian Citizenship.

34. The Judgment rendered by the Patna High Court in *Kiran Gupta (Supra)*, arose from the order of the State Election Commission setting aside the Petitioner's election on the ground that the Petitioner had herself admitted that she has relinquished her Citizenship of Nepal by birth, and was not an Indian citizen, either by birth or descent. The Patna High Court, whilst addressing a challenge to this order, held the mere filing of the application for registration as Indian citizen in term of Section 5 of the Citizenship Act would not confer any right of Indian Citizenship of India. The judgment further held that the Petitioner's case would fall under clause (c) of Sub Section (1) of Section (5) of that Act and she could seek Citizenship of India by registration on the ground that she was permanently domicile at her Indian husband's residence. Consequently, a direction was

given to the Authority to consider her case expeditiously. That was not a judgment where the citizen in question was initially a citizen of India either, by birth or descent and had at a later point voluntarily acquired a Citizenship of another country. The ratio in *Kiran Gupta (Supra)* would therefore not apply on facts, to the case before us since the Petitioner was by descent a citizen of India.

We therefore hold the first point for determination in favour of the Petitioner and hold that the Petitioner was a citizen of India by descent in terms of the Citizenship order, her parents, both being citizens of India by birth.

35. This brings us to the second point for determination in this petition. Having held that the Petitioner is a Citizen of India, the Passport Officer could have rejected the Petitioner's application for issuance of a Passport under Section (6) of the Passport Act, only on the grounds specified in Sub Section (1) or Sub Section (2) thereof. The impugned orders refer to rejection of the application on the ground that the applicant is not a Citizen of India in terms of clause (a) of Sub Section (2) of Section (6). The order of the Passport Officer appears to refer to some adverse information, but

does not disclose how this information would constitute any ground for rejecting the application.

The Appellate Authority appears to have referred to the Citizenship order, but erroneously interprets its provisions to mean that the declaration referred to in the order, was one to be given by all persons who were opting for Indian Citizenship. This interpretation is diametrically opposed to the plain meaning of the provisions of the order which require only persons intending to retain their original Citizenship to execute such a declaration. All other persons born in the territory of Goa prior to 20th December, 1961 would be deemed to be Indian citizens.

The Appellate order also ignores the fact that the Petitioner, though born in Uganda was deemed to be an Indian Citizen by descent. The finding that the Passport on which the Petitioner travelled with her mother to India does not seem to be an Indian Passport, is also dehors the records and in view of the fact that the Petitioner was a citizen of India by descent, the further conclusion that her Citizenship requires to be determined by the Ministry of Home Affairs is also uncalled for and without any basis in any provision of law. Consequently, we quash and set aside both

impugned orders dated 03/10/2019 and 21/04/2020. The Respondent No. 1 is hereby directed to issue the Petitioner an Indian Passport.

36. For the reasons stated above, we quash and set aside both impugned orders dated 03/10/2019 and 21/04/2020. The Respondent No. 1 is hereby directed to issue the Petitioner an Indian Passport. Consequently, Rule is made absolute in terms of prayer at paragraph 19 of the petition. No order as to costs.

VALMIKI SA MENEZES, J.

M. S. SONAK, J.

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SUZANA
REBELLO

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MARIA SUZANA
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Date: 2024/01/19
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