

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.139 of 2020

In
Civil Writ Jurisdiction Case No.19109 of 2019

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Kiran Gupta, wife of Ashok Prasad Gupta, Resident of Ward No. 10, North Panchayat Manik Chowk, Post Office and Police Station- Manik Chowk, Block- Runnisaidpur, Distt.- Sitamarhi.

... .. Petitioner- Appellant/s

Versus

1. The State Election Commission through the Secretary, Veer Chand Patel Marg, Sone Bhawan, Patna, Bihar.
2. The State Election Commissioner State Election Commission, Veer Chand Patel Marg, Sone Bhawan, Patna, Bihar.
3. The Joint Election Commissioner State Election Commission, Veer Chand Patel Marg, Sone Bhawan, Patna, Bihar.
4. The Deputy Secretary State Election Commission, Veer Chand Patel Marg, Sone Bhawan, Patna, Bihar.
5. The District Magistrate, Sitamarhi, Police Station and District- Sitamarhi.
6. The Sub Divisional Officer, Sadar Sitamarhi, District- Sitamarhi.
7. The Block Development Officer, Runnisaidpur, District- Sitamarhi.
8. Ranjit Kumar Rai @ Ranjit Rai, Son of Musafir Rai, Resident of Village and Post Office- Manik Chowk, Police Station- Runnisaidpur, District- Sitamarhi.

... .. Respondents-Respondent/s

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Appearance:

For the appellant : Mr. Rajesh Singh, Advocate
Mr. Ranvijay Narain Singh, Advocate
Mr. Jitendra Singh, Advocate
Mr. Ranjeet Choubey, Advocate

For the State Election
Commission : Mr. Amit Shrivastava, Advocate
Mr. Girish Pandey, Advocate

For the State : Mr. Lalit Kishore, A.G.
Mr. Pawan Kumar, AC to AG

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
C.A.V. JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date:12-10-2020

The primary issue for consideration before this Court is whether the appellant is a citizen of India or not.

2. Elaborately, the following issues arise for considerations in this appeal: -

- (i) Was the State Election Commission empowered to set aside the appellant's election under Section 136(1) of the Bihar Panchayat Raj Act, 2006 on the ground of her not being an Indian citizen?
- (ii) Whether voluntarily relinquishing Citizenship of Nepal confers any right of Indian Citizenship upon the appellant?
- (iii) Can the appellant's voter ID Card; PAN Card; Aadhaar Card; acquiring education or immovable property in India; having a Bank Account, function as proof of Indian Citizenship?
- (iv) Whether the appellant was disqualified from being elected to or function as Mukhiya of the Gram Panchayat in Bihar?
- (v) Can the appellant's status of Statelessness be remedied as per Indian Law?



3. The present appeal arises from an order and judgment of the learned Single Judge dated January 21, 2020, by which the appellant's writ petition assailing the order of the State Election Commission dated August 30, 2019, stands dismissed. The appellant's election is set aside on the ground of disqualification contained under sub-section 1(a) of Section 136 of the Bihar Panchayat Raj Act, 2006.

4. The appellant, Kiran Gupta, was born and brought up in Nepal. On 18th June 2003, she solemnized her marriage with Ashok Prasad Gupta and after that started permanently residing with him in India as his wife. It is not in dispute that after her marriage, she, (a) got her name entered into the voters list prepared in the year 2008 for elections to the Assembly of Bihar; (b) in her name she has (i) an account with a bank in India, (ii) a Pan Card issued by the Income Tax Department, and (iii) an Aadhaar Card; (c) names of her children born out of the wedlock are registered in India under the Registration of Births and Deaths Act, 1969 and the respective Rules framed thereunder; (d) pursued her higher education in India; (e) purchased an immovable property in India, vide sale deed dated 12th December 2017. The sale stands recorded with an entry of mutation in her name for which also she paid fee/rent to the Government of Bihar; and (g) relinquished her Nepali Citizenship on February 24, 2016.



5. The issue of her nationality became the subject matter of challenge in the year 2018 after she was elected as a Mukhiya of Gram Panchayat, ManikChouk, Block-Runnisaipur, District-Sitamarhi.

6. Ranjit Kumar Rai @ Ranjit Rai, (private respondent No.8) challenged her election on the ground of disqualification which she entailed under sub-section 1(a) of Section 136 of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as 'the Panchayat Act').

7. Vide order dated 30thAugust 2019, the competent authority, i.e., The State Election Commission, set aside her election, which action she challenged by way of a writ petition filed under Articles 226 and 227 of the Constitution of India. The learned Single Judge, vide impugned judgment 21stJanuary 2020, passed in CWJC No.19109 of 2019 titled Kiran Gupta Versus the State Election Commission & Ors., dismissed her petition by relying upon the provisions of Articles 173 and 243F of the Constitution of India and the Indian Citizenship Act, 1955. The Court held the appellant to have voluntarily relinquished her Citizenship of Nepal on February 24, 2016, and as such not being a citizen of India, entailed disqualification under the Panchayat Act.

8. We have heard learned counsel for the parties.



9. The Issue No. (i) is well settled. The State Election Commission was empowered to set aside the appellant's election under Section 136 (1) of the Panchayat Act. The decision rendered by this Court in **Dhanwanti Devi v. The State Election Commission**, 2012 (1) PLJR 296, relied upon by the appellant, does not apply in the given facts. The appellant herself acknowledged that she was born and raised in Nepal before her marriage in 2003, and was not an Indian citizen by birth or descent under Sections 3 and 4 of the Citizenship Act, 1955. Based on the facts admitted by the appellant herself, the State Election Commission was empowered to set aside her election as Mukhiya.

10. We need not labour any further for even otherwise the issue is no longer *res Integra* after the decision of the Full Bench of this Court in **Rajani Kumari Versus State Election Commission through its Secretary &Ors.** (2019) 4 PLJR 673, wherein it held as under:

“We are in agreement that the State Election Commission has got power under sub-section(2) of Section 18 of the Bihar Municipal Act, 2007 and sub-section(2) of Section 136 of the Bihar Panchayat Raj Act, 2006 to consider an issue of pre or post election disqualification of a candidate subject to a caution which we have pointed out in our judgments in respect of a case which is in the nature of a purely election dispute and



then a matter which cannot be decided without adducement of evidence by a competent court and authority in accordance with Law. The State Election Commission shall entertain and consider the 'disqualification' issues on the basis of the unimpeachable materials placed before him. Whether a complaint brought before the Commission either suo-moto or by any other person, the Commission shall at the first instance enquire whether it is a purely election dispute and only when it is found that the dispute brought before it is not a purely election dispute, the Commission shall proceed to consider the same on the basis of unimpeachable materials. Whenever a disputed question of facts and a contentious issue is brought before the Commission as a ground and basis to render a candidate disqualified, the Commission would be required to relegate the parties to a competent court/tribunal or a fact finding body competent to decide such contentious issues after taking evidences and till such time the Commission shall not take a decision on such complaint either suo-moto or otherwise.”

(Emphasis supplied)

11. We now deal with Issues No.(ii) & (iv).

Constitution Of India

12. Part II of the Constitution of India deals with the Citizenship. It comprises Articles 5 to 11.

13. Article 5 reads as under: -



“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.”

14. Articles 6 and 7 deal with the rights of Citizenship of individual persons, who migrated to India from Pakistan with which we are not concerned. We are also not concerned with Article 8, for it is not the appellant's case that though either of her parents or grandparents were born in India but were ordinarily residing in any country outside India. Article 9 is also not relevant since the appellant has voluntarily not acquired Citizenship of any foreign State. For the adjudication of issue, related Articles 10 and 11 are reproduced as under: -

“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.”

15. A conjoint reading of these Articles lead to a conclusion of Article 10 providing right for the continuance of Citizenship, but subject to the provisions of any law, which the Parliament may make.

16. Noticeably, under Article 11, the Indian Parliament has enacted the Citizenship Act of 1955 (hereinafter defined as the Citizenship Act) providing for the acquisition of Citizenship after the commencement of the Constitution of India.

17. Chapter III of Part VI of the Constitution of India deals with the Constitution of Legislature in States. Under Article 173, only a citizen of India is qualified to be chosen to fill up a seat in the Legislature of the State.

18. Part IX of the Constitution of India deals with the Panchayats, including its composition. Article 243F contained therein reads as under: -

“243-F. Disqualifications for membership. —(1)
A person shall be disqualified for being chosen as, and for being, a member of a Panchayat—

(a) if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned:

Provided that no persons shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years.

(b) if he is so disqualified by or under any law made by the Legislature of the State.

(2) If any question arises as to whether a member of a Panchayat has become subject to any of the



disqualifications mentioned in clause (1), the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by Law, provide.”

(Emphasis supplied)

19. Noticeably, person disqualified under the law in force, entails disqualification for being chosen as a member of a Panchayat, which question shall be referred to an authority in a manner provided by law.

Provisions Of The Panchayat Act

20. At this juncture, one may note the provisions of the Panchayat Act under which elections to the post of Mukhiya were held. Chapter III thereof deals with the Gram Panchayat. By virtue of Section 15, Mukhiya is to be elected directly by the voters enrolled in the Voters' list of the respective Gram Panchayat.

21. Chapter VII deals with the elections. As per Section 123, the State Election Commission is charged with the superintendence, direction and control of preparation of electoral rolls for, and conduct of, all elections to the Panchayat bodies in the State of Bihar. The relevant portion of Sections 135 and 136 of the Panchayat Act, with which we are concerned, read as follows:

“135. Qualification for Membership- Every person whose name is in the list of voters of any Panchayat constituency shall unless disqualified under this Act or any other law for the time being in force, be qualified to be elected as a member or office bearer of the Panchayat :



Provided that in the case of seats reserved for Scheduled Castes or Scheduled Tribes or Backward Classes or Women, no person who is not a member of any of the Schedule Castes or Scheduled Tribes or Backward Classes or is not a woman, as the case may be, shall be qualified to be elected to such seat.

136. Disqualification for Membership - (1) Notwithstanding anything contained in this Act, a person shall be disqualified for election or after election for holding the post as Mukhiya, member of the Gram Panchayat, Sarpanch, Panch of the Gram Katchahri, member of the Panchayat Samiti and member of Zila Parishad, if such person—

(a) is not a citizen of India.

(b) is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State:

Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years;

(Emphasis supplied)

22. Reading of Section 135 of the Panchayat Act makes it clear that every person whose name is entered in the voters' list of any Panchayat constituency, unless disqualified under the Act or any other provisional law, shall be qualified to be elected as a member or office-bearer of the Panchayat.

23. But Section 136 of the Panchayat Act commences with a non-obstante clause. The expression used is 'notwithstanding anything contained in this Act'. If a person entails any one of the disqualifications also enumerated in the said Section, a person will entail disqualification. The language used is clear. For holding the post of a Mukhiya, the person stands disqualified if she/he is not a



citizen of India. The use of the expression "shall" in subsection (1) of Section 136 indicates that a person who is not a citizen of India entails immediate disqualification. The statute covers disqualification from membership both before or after the elections. The disqualification of membership is for contesting an election and for holding the post as a Mukhiya. One of the grounds of disqualification, with which we are concerned, is a person not being a citizen of India. The expression 'citizen of India' is not defined under the Panchayat Act. We have seen that the Constitution of India itself does not confer any right of Citizenship. Hence, we have to consider the Law framed thereunder, which is the Citizenship Act enacted under Entry 17 of List I of the Seventh Schedule for acquisition and determination of Indian Citizenship.

Provisions of the Citizenship Act

24. The Citizenship Act postulates different situations under which a person can acquire Citizenship of India. Since it is not a case of acquisition of Citizenship by birth (Section 3); descent (Section 4); naturalization (Section 6); persons covered by the Assam Accord (Section 6A); incorporation of territory (Section 7), we are required to discuss only Section 5 dealing with the



acquisition of Citizenship by registration. The said Section reads as under:

“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 any other provision of this Act if he belongs to any of the following categories, namely:—

(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 for 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 a [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) (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.

(1-A) 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 supplied)



25. The object of the Citizenship Act is to provide for the acquisition and determination of Indian Citizenship. Contextually, we refer that in *State Trading Corporation of India Ltd. v. Commercial Tax Officer & Ors.*, AIR 1963 SC 1811, the Hon'ble Apex Court clarified that the Indian Constitution and the Citizenship Act exhaustively deal with the issue of Citizenship, confined only to a natural person. Further, nationality and Citizenship are not interchangeable; terms and expression 'person' under the Act have to be natural and not legal entities. Extracting the exact observation would be more apt.

"18. ... But the question still remains whether "nationality" and "citizenship" are interchangeable terms. "Nationality" has reference to the jural relationship which may arise for consideration under international law. On the other hand "citizenship" has reference to the jural relationship under municipal law. In other words, nationality determines the civil rights of a person, natural or artificial, particularly with reference to international law, whereas Citizenship is intimately connected with civic rights under municipal law. Hence all citizens are nationals of a particular State but all nationals may not be citizens of the State. In other words citizens are those persons who have full political rights as distinguished from nationals who may not enjoy full political rights and are still domiciled in that country...."

"23. ... There is also no doubt in our mind that Part II of the Constitution when it deals with Citizenship refers to natural persons only. This is further made absolutely clear by the Citizenship Act which deals with Citizenship after the Constitution came into force and confines it only to natural persons. We cannot accept the argument that there can be citizens of this country who are neither to be found within the four-corners of the Citizenship Act. We are of opinion that these two



provisions must be exhaustive of the citizens of this country, Part II dealing with citizens on the date the Constitution came into force and the Citizenship Act dealing with citizens thereafter. We must, therefore, hold that these two provisions are completely exhaustive of the citizens of this country and these citizens can only be natural persons....”

26. The Constitution Bench of the Hon’ble Apex Court in *Izhar Ahmad Khan v. Union of India*, AIR 1962 SC 1052, while dealing with the validity of Section 9 which deals with termination of Citizenship, held as under:-

“38. The next point to consider is about the validity of Section 9(2) itself. It is argued that this rule is ultra vires because it affects the status of Citizenship conferred on the petitioners and recognized by the relevant articles of the Constitution, and it is urged that by depriving the petitioners of the status of Citizenship, their fundamental rights under Article 19 generally and particularly the right guaranteed by Article 19(1)(e) are affected. It is not easy to appreciate this argument. As we have already observed, the scheme of the relevant articles of Part II which deals with Citizenship clearly suggests that the status of Citizenship can be adversely affected by a statute made by the Parliament in exercise of its legislative powers. It may prima facie sound somewhat surprising, but it is nevertheless true, that though the citizens of India are guaranteed the fundamental rights specified in Article 19 of the Constitution, the status of Citizenship on which the existence or continuance of the said rights rests is itself not one of the fundamental rights guaranteed to anyone. If a law is properly passed by the Parliament affecting the status of Citizenship of any citizens in the country, it can be no challenge to the validity of the said Law that it affects the fundamental rights of those whose Citizenship is thereby terminated. Article 19 proceeds on the assumption that the person who claims the rights guaranteed by it is a citizen of India. If the basic status of Citizenship is validly



terminated by a Parliamentary statute, the person whose Citizenship is terminated has no right to claim the fundamental rights under Article 19. Therefore, in our opinion, the challenge to Section 9(2) on the ground that it enables the rule-making authority to make a rule to deprive the citizenship rights of the petitioners cannot be sustained.”

(Emphasis supplied)

27. Section 5 of the Citizenship Act deals with such persons who seek Citizenship by registration. In **National Human Rights Commission Versus State of Arunachal Pradesh and another**, (1996) 1 SCC 742, the Apex Court clarified that a person can be registered as a Citizen of India only if he satisfies the requirement contained in Section 5.

28. It is an admitted fact that the petitioner was born and brought up in Nepal. She married her husband, an Indian citizen, in 2003 and has been resident in Indian since. Her acquisition of Indian Citizenship is governed by the provisions of the Citizenship Act, 1955. The Citizenship Act lays out the different avenues by which a person can become an Indian citizen. Section 5 lays out the provisions for Citizenship by registration. Under Section 5(1) (c), a person who is married to a citizen of India and ordinarily resident in India for at least seven years may make an application for Citizenship. A conjoint reading of the Citizenship Act with Entry 17 of List I of the Seventh Schedule of the Constitution tells us that it is



only the Central Government which is empowered to confer Citizenship upon Foreign nationals. Therefore, the adjudicating body for citizenship acquisition is the Central Government. The petitioner has admitted that she has not applied for Citizenship under the Citizenship Act.

29. In our considered view, it is not that anyone or everyone (person) can, as a matter of right, claim Citizenship of India. Power and discretion of conferring citizenship vests with the Central Government which, of course, has to be exercised as per settled principles of Law. Further, the Section itself categorizes the persons entitled to exercise their right to file an application requesting for registration as a citizen of India. Unless decided, the mere filing of an application does not confer any right of Citizenship. The appellant's case would fall under clause (c) of sub-section (1) of Section 5. She is married to a citizen of India and is ordinarily residing in India for the last seven years. But then, significantly and undisputedly, she never sought Citizenship by way of registration, more so, after voluntarily relinquishing her Citizenship of Nepal in February 2016. An oath of allegiance is necessarily required to be taken by the appellant. Hence, by her actions and conduct, she precluded herself from being considered as a citizen under the Citizenship Act.



30. Indian citizens can marry a foreign national under the Special Marriage Act 1954. The foreign national does not become an Indian citizen on marriage with a citizen under the Act. After the marriage, the foreign national has an option to get registered as an Indian citizen. Even then, the person must fulfil the requirement of residency before they can apply for Indian Citizenship.

31. Mere relinquishment of original Citizenship cannot be perceived as an intent of seeking Indian Citizenship. The Citizenship Act does not provide for a scenario where a person residing in India, upon relinquishing her/his original Citizenship is automatically considered to be a citizen of India. Possibility of a person, though not the appellant, migrating to a third country cannot be ruled out. As such, continuous and uninterrupted stay in India cannot be a factor determining, in anticipation, of a person choosing to exercise right seeking Citizenship under the Citizenship Act.

32. The appellant failed to follow the procedure as set out in the Citizenship Act. Considered thus, neither under the Indian Constitution nor the Laws framed thereunder, any right of Citizenship can be said to have conferred upon her. The Issues are answered accordingly.

33. This now brings us to the ancillary issue No.(iii), as to whether the documents produced by the appellant can form the basis



of conferring Citizenship upon her or not. The answer in the light of the discussion cannot be in the affirmative.

34. The Hon'ble Apex Court in *Sarbananda Sonowal v. Union of India*, (2005) 5 SCC 665, lays down certain principles in dealing with cases of illegal migrants. One of them being that the burden of proof would be upon the proceedee as he would possess the necessary documents to show that he is a citizen not only within the meaning of the provisions of the Constitution of India but also within the provisions of the Citizenship Act.

35. The principles stand reiterated in *Sarbananda Sonowal (II) v. Union of India*, (2007) 1 SCC 174.

36. The Hon'ble Supreme Court in *Rupjan Begum v. Union of India*,(2018) 1 SCC 579, held the certificate issued by the Gram Panchayat Secretary not to be proof of Citizenship, clarifying further, that such right be determined under the provisions of Citizenship Act.

37. The Hon'ble Supreme Court in *Bhanwaroo Khan v. Union of India*, (2002) 4 SCC 346, held that long stay in the country and enrolment in the voters' list would not confer any right on an alien to continue to stay in the country. Further, elaborated the right of Citizenship be determined both under the Constitution of India as also the Citizenship Act.



38. This Court in **Vijoy Kumar Chaudhary v The State Election Commissioner** (LPA No.510 of 2008) has held that the voter ID is not sufficient and conclusive evidence of Citizenship. Enrolment in a voter roll is based on the applicant filing a declaration with authority via Form 6 under Rules 13(1) and 26 of Registration of Electors Rules, 1960, stating that they are a citizen of India. The legal status of the applicant's Citizenship precedes her enrolment on the electoral rolls. If such a declaration of Citizenship is found to be false, the applicant is liable for punishment.

39. The Hon'ble Supreme Court in **State of U.P. v. Rehmatullah**, (1971) 2 SCC 113, has reiterated that the right of a person of Citizenship is considered under the Citizenship Act and observed as under:-

“11. In *Shuja-Ud-Din v. Union of India* [CA No. 294 of 1962, decided on October 30, 1962] this Court speaking through Gajendragadkar, J., as he then was, said:

"It is now well-settled that the question as to whether a person who was a citizen of this country on January 26, 1950, has lost his Citizenship thereafter, has to be determined under the provisions of Section 9 of the Citizenship Act, 1955 (57 of 1955). There is also no doubt that this question has to be decided by the Central Government as provided by Rule 30 of the Rules framed under the Citizenship Act in 1956. The validity of Section 9 as well as of Rule 30 has been upheld by this Court in the case of *Izhar Ahmad Khan v. Union of India*. It has also been held by this Court in *State of Madhya Pradesh v. Peer Mohd.* (Cri. Appeal No. 12 of 1961 decided on September 28, 1962) that this question has to be determined by the



Central Government before a person who was a citizen of India on January 26, 1950, could be deported on the ground that he has lost his citizenship rights thereafter under Section 9 of the Citizenship Act. Unless the Central Government decides this question, such a person cannot be treated as a foreigner and cannot be deported from the territories of India.”

12. In *Abdul Sattar Haji Ibrahim Patel v. State of Gujarat* [Cr.A.No. 153 of 1961, decided on February 17, 1964 : AIR 1965 SC 810 : (1964) 2 SCJ 461 : (1965) CrLJ 759] Gajendragadkar, C.J., speaking for a Bench of five Judges approved the decisions in the cases of *Izhar Ahmad Khan* and *Syed Mohd. Khan*, it being emphasized that the decision of the Government of India is a condition precedent to the prosecution by the State of any person on the basis that he has lost his Citizenship of India and has acquired that of a foreign country. That an inquiry under Section 9 of the Citizenship Act can only be held by the Central Government was again reaffirmed by this Court in *Mohd. Ayub Khan v. Commissioner of Police, Madras* [(1965) 2 SCR 884].”

40. Reading of the Representation of the People Act 1950 shows that non-citizens are disqualified from entering their names in the voter list. Additionally, under Section 22 it also contemplates a possibility that an erroneous or defective entry is made in the voter list and such cases provide the registration officer with authority to correct the voter list. The Act does not provide that name in the electoral roll (voter list) would be proof of Citizenship of India.



Further, to obtain a Voter identity card and get a name added to the voter list, a person need only submit - (a) recent passport size photo (b) proof of residence and (c) proof of age, along with the relevant Form. Persons are not required to submit any evidence of Citizenship for this registration. Necessary documents to obtain the card do not act as proof of Citizenship; it indicates that voter identity card and name on voter list would not be proof of Citizenship.

41. Mere registration of a person's name in the voter list, *ipso facto*, does not confer Citizenship. On this issue, the only exception being the judicial pronouncement of the Hon'ble Apex Court in ***Lal Babu Hussein v. Electoral Registration Officer***, (1995) 3 SCC 100. But then, that was peculiar to the attending facts and circumstances, where action for 'en-masse' deletion of names of lakhs of voters, who already exercised their right of franchise, was influenced by extraneous consideration and without any proper enquiry.

42. In ***Binoy Viswam v. Union of India & Ors.*** (2017) 7 SCC 59, the Hon'ble Apex Court elaborately discussed the issue of necessity, use and benefit of Pan Card issued under the provisions of Section 139AA of the Income Tax Act, 1961. Even here, the Court did not hold that possession of such a card not to confer any right of Citizenship.



43. The purpose of the PAN card is to facilitate the payment of taxes to the Indian State, which foreigners may also be required to pay.

44. The Gauhati High Court in **Mustt. Rabiya Khatun v. The Union of India [WP(C) 4986/2016]; Jabeda Begum @ Jabeda Khatun v. The Union of India &Ors.[WP© 7451/2019];Md. Babul Islam v. Union of India [WP(C) 3547/2016]** has held a Pan Card not to be a piece of valid evidence establishing persons citizenship of India.

45. This Court in **Narendra Narayan Das v. State of Bihar**, AIR 2008 Pat 124, while examining the issue of a citizen of Nepal, in the backdrop of the Nepal Citizenship Act, held that Citizenship of a foreigner is determined under the Municipal laws of the parent country and not the Indian Citizenship Act.

46. The High Court of Bombay in **Motimiya Rahimmiya v. State of Maharashtra**, AIR 2004 Bombay 460, held as under:-

“9. In the instant case, the plaintiffs have not proved their birth in India and that is the basic requirement of claiming Citizenship. Therefore, the trial Court has rightly rejected the claim and contentions of the plaintiffs.

10. Counsel for the respondent-State relied upon the judgment of the Supreme Court reported in (2002) 4 SCC 346: AIR 2002 SC 1614, *Bhanwaroo Khan v. Union*



of India and the another judgment reported in (1999) 9 SCC 281, *A.I. Lawyers Forum for Civil Liberties v. Union of India* In the case of *Bhanwaroo Khan*, the Supreme Court has held that long stay in country and enrolment in voters list does not confer any right to an alien to continue to stay in country. In view of this and in view of the aforesaid reasons, all the Appeals are dismissed with Civil Applications. Certified copy expedited.”

47. The eligibility criteria for obtaining an Aadhaar Card is residency in India for a period of 182 days or more, not citizenship. Section 9 of the Aadhaar Act, 2016 clearly states that an Aadhaar number or authentication thereof shall not by itself confer any right of or be proof of Citizenship or domicile of the Aadhaar number holder. Hence, the appellant cannot rely on her PAN card and Aadhaar Card as proof of Indian Citizenship.

48. The Registration Act, 1908, which provides for mutation of names in the case of transfer of property, only requires that document by which property is transferred be registered (Section 17) along with affixing of passport size photo thumbprint on the document (Section 32A). Therefore mutating name in the register is only proof of ownership of property and is silent on the status of Citizenship of person to whom property is transferred.



49. Banking regulations under the RBI are silent on bank accounts or documents as proof of Citizenship. For Prevention of Money Laundering, proof of identity and address is required from persons opening bank accounts. However, Citizenship is not a criterion for having a bank account in India.

50. The appellant could not adduce any additional evidence to establish her claim to Indian Citizenship arising from these documents. Voter ID cards are not incontrovertible evidence of Indian Citizenship- presumption attached to the issuance of the voter ID card may be challenged by a complaint that states material facts under Section 136 of the Panchayat Act. The Supreme Court in **Hari Shankar Jain v. Sonia Gandhi**, (2001) 8 SCC 233, held that even a certificate of registration under Section 5(1)(c) of the Citizenship Act may be challenged in an election petition under Section 82(1) (a) of the Representation of the People Act, 1951.

51. Hence Issue No. (iii) cannot be answered in favour of the appellant.

52. We now deal with Issues No. (v).

INTERNATIONAL PERSPECTIVE ON STATELESSNESS

53. The material facts here are that the appellant, of her admission, was born and raised in Nepal before her marriage to an Indian citizen in 2003.



54. However, the appellant has placed on the record that she surrendered her Nepali Citizenship No.97962476 on February 24/2016, which was accepted by the Administrative Officer of Sarlahi District of Nepal. The failure of the appellant to meet the requirements for Indian Citizenship by registration, coupled with her surrender of Nepali citizenship, leaves her citizenship status in limbo.

55. There is no doubt that matters of nationality, migration, and immigration are a nation state's sovereign prerogative. In Indian law, this prerogative is vested in the Government of India under the Citizenship Act, 1955, which flows directly from Article 11 and Entry 17 of List I of the Seventh Schedule of the Constitution. However, the development of international relations and international law over the past few decades has placed certain consideration on the state's prerogative in regulating nationality. Article 51(c) of the Constitution mandates the State to foster respect for international law and treaty obligations in the dealings of organized people with one another.

56. The UNHRC 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness are presently the leading multilateral treaties about the prevention and reduction of statelessness. Both conventions simply confirmed the prevailing international law custom of a state's duty to prevent and reduce statelessness. While India is not a signatory to



either Statelessness Convention, this duty to prevent statelessness has been consolidated in several other international legal instruments that India is a party to. This includes Article 15 of the Universal Declaration of Human Rights ('UDHR'); Article 24 of the International Covenant on Civil and Political Rights ('ICCPR'); Article 9 of the Convention on Elimination of All Forms of Discrimination Against Women ('CEDAW'); Article 5 of the International Convention of Elimination of All Forms of Racial Discrimination ('ICERD'); Article 7 of the Convention on the Rights of the Child ('CRC'), and the Convention on the Nationality of Married Women. It may be helpful to reproduce some of these provisions here.

57. Article 15 of the UDHR states:

“(1) Everyone has the right to a nationality.
(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.”

58. Article 5 of the ICERD is as follows:

“In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:



(a) The right to equal treatment before the tribunals and all other organs administering justice;

...

(c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;

(d) Other civil rights, in particular:

(i) The right to freedom of movement and residence within the border of the State;

(ii) The right to leave any country, including one's own, and to return to one's country;

(iii) The right to nationality;

(iv) The right to marriage and choice of spouse; ...”

59. Article 9 of the CEDAW is as follows:

“1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.”

60. It is important to note that India has not made any reservations against any of these listed articles.



61. Additionally, Article 15(2) of the UDHR prohibits arbitrary deprivation of nationality. This is an important protection in situations where the denial of nationality leads to statelessness. India played an active role in the introduction of this right into the draft Article 15 during the UDHR drafting sessions. Ms. Hansa Mehta, the Indian representative at the UDHR drafting sessions, called the right against arbitrary deprivation of nationality as ‘the fundamental right’.

62. India and Nepal have a history of bilateral engagement. Article 7 of the Treaty of Peace and Friendship between the Government of India and the Government of Nepal, 1950, promises the grant of privileges relating to movement, residence, ownership of property, trade and commerce etc. between the two countries on a reciprocal basis.

63. Rule 4(1)(g) of the Passport (Entry Into India) Rules, 1950 exempts Nepalese and Bhutanese from carrying a valid passport when entering India from land or air from the Nepalese or Bhutanese frontier.

64. Nepalese citizenship law is primarily enshrined in two instruments.

- (i) The Constitution of Nepal
- (ii) The Nepal Citizenship Act 2063 (2006)

65. A few salient points emerge from the provisions mentioned above: the movement of Nepali citizens from across the



land border to India is free and does not require documentation or a passport, unlike other nationalities who are bound by the provisions of the Passport (Entry Into India) Act, 1920. Nepalese Citizenship is terminated upon the voluntary acquisition of Citizenship of another country, including India. To re-acquire Nepalese Citizenship, the former citizen of Nepal must return to *reside* in Nepal and submit a notification to the concerned authority for reinstatement of Citizenship.

66. There can be little doubt that the petitioner failed to register herself as a citizen under Section 5 of the Citizenship Act. Her voter ID cannot function as proof of Citizenship, since the status of Indian Citizenship precedes the enrolment onto the electoral roll. It must be emphasized that the conferral of Indian Citizenship is the prerogative of the Central Government. Whether the petitioner intentionally misrepresented facts in her Form-6 application for her voter ID, or whether it was a bona fide mistake as she presumed the electoral roll process was sufficient as registration for Indian Citizenship, is a question we will not delve into.

67. However, we cannot ignore the question of the petitioner's current legal status. She relinquished her Nepalese Citizenship in 2016. She does not seem to possess any other nationality. She owns assets, immovable property here. She has continuously resided in India since her marriage and has two



children, both resident in India, from the wedlock. These facts together, perhaps, do demonstrate her intention to make India her permanent home/domicile. There is an additional bureaucratic hurdle in registering herself under the Citizenship Act – the documents to be attached for an application under Section 5, per Form III under Rule 5(1)(a) of the Citizenship Rules, 2009, include a copy of valid Foreign Passport and a copy of the valid Residential permit. To re-obtain her Nepalese Citizenship, she will have to return to "reside" in Nepal before applying for Citizenship, away from her immediate family in India.

68. Yet, at the same time, this Court is not permitted to direct the Central Government to grant the petitioner Indian citizenship. This would impinge upon the Executive's functions. However, in light of the peculiar situation of the petitioner; her ordinary residence and family life in India; and India's international law obligations to prevent statelessness, we direct that upon receipt of the petitioner's application, if so filed, the appropriate authority may consider her application expeditiously, keeping in mind the complications that have emerged in her legal status as enumerated above.

69. We thus answer the issues as under: -

Issue No.(i)



70. Given the law laid down by this Court in **Rajani Kumari (supra)**, the State Election Commission was empowered to set aside the petitioner's election on the specified ground under Section 136(1) of the Panchayat Act of her not being an Indian citizen.

Issue Nos.(ii) & (iv)

71. Given the law laid down by the Hon'ble Apex Court as discussed supra and more specifically in ***State Trading Corporation of India Ltd (supra)***, mere relinquishment of Citizenship of Nepal does not confer upon her any right of Indian Citizenship, which right flows only from and under Part-II of the Constitution of India and the Citizenship Act.

Issue No. (iii)

72. Given the law laid down by the Hon'ble Apex Court in **Sarbananda Sonowal (supra); Rupjan Begum (supra); Bhanwaroo Khan (supra); and State of U.P. v. Rehmatullah (supra)**, and the other judicial pronouncements discussed, mere possession of a Pan Card; a Voter ID Card; or an Aadhar Card cannot be said to be proof of Indian Citizenship.

ADDITIONAL DIRECTION/ Issue No.(v)



73. Petitioner/appellant's application under the Citizenship Act, as and when filed, shall be processed and disposed of expeditiously per law.

74. For all the reasons mentioned above, we do not find any illegality or perversity in the impugned judgment dated January 21, 2020, passed in CWJC No.19109 of 2019 titled as Kiran Gupta Versus the State Election Commission & Ors. However, we dispose of the present appeal with the observations mentioned above.

75. No order as to costs.

(Sanjay Karol, CJ)

S. Kumar, J. I agree.

(S. Kumar, J)

sujit/-

AFR/NAFR	AFR
CAV DATE	19.02.2020
Uploading Date	12.10.2020
Transmission Date	

