



IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.135/2024

MISS CHRISSELLA VALANKA
KUSHI RAJ NAIDU, Minor, 16 years
of age, Indian national, Resident of
H.No. 1392, Mazilvaddo, Benaullim,
Salcete, South Goa, Goa, Currently
residing at; 38, Parklands Court, Great
West Road, Hunslow, United
Kingdom, TW59AU, Through her
Natural Guardian/Mother, Ms. Cony
Fernandes, 45 years.

... PETITIONER

Versus

1. THE MINISTRY OF EXTERNAL
AFFAIRS, Government of India,
Through the Secretary, South Block,
New Delhi.

2. THE HIGH COMMISSION OF
INDIA, PASSPORT & CONSULAR
WING, India House, Aldwych,
London, WC2B4NA, United
Kingdom.

3. THE REGIONAL PASSPORT
OFFICER, Passport Seva Kendra,
Passport Bhavan, EDC Complex,
Patto, Panaji - Goa.

... RESPONDENTS

Mr Abhijeet Kamat, Advocate for the Petitioner.

Mr Raviraj Chodankar, Central Government Standing Counsel for
Union of India.

CORAM:**M. S. KARNIK &
VALMIKI MENEZES, JJ.****Reserved on:****23rd AUGUST 2024****Pronounced on:****28th AUGUST 2024**

JUDGMENT: (Per M. S. Karnik, J.)

1. Heard Mr Abhijeet Kamat for the petitioner and Mr Raviraj Chodankar, learned Standing Counsel for Central Government.
2. Rule. Rule is made returnable forthwith. With the consent of the parties the petition is heard and finally disposed of at the stage of admission.
3. Invoking the jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner prays for quashing the decision of the respondent no.2 communicated by letter dated 05.08.2020 holding that the petitioner is not eligible for a passport. The facts of the case in brief are as under.
4. The petitioner is a minor child aged about 16 years. This petition is filed through her natural guardian/mother. By the order of the Civil Court the mother has been granted permanent custody of the petitioner until she attains majority. The respondents held that the petitioner is not eligible for the Indian passport since she is “single parent minor child and the physical custody is with the parent who is a foreign national” and therefore not eligible for an Indian passport.
5. The petitioner was born on 27.10.2007 in Margao, Goa, India. The parents of the petitioner were both Indian citizens at the time of their

marriage in Goa in the year 2007. The marriage was duly registered in the office of the Civil Registrar at Margao Goa. In 2010, when the petitioner was barely three years old, her father abandoned the petitioner and her mother. Petitioner's mother filed for divorce. By Judgment and Order dated 03.01.2019 passed in Marriage Petition No.147/2016/II, the Second Additional Civil Judge, Senior Division at Margao granted dissolution of marriage.

6. The petitioner applied for and was issued Indian passport bearing No.M4016366 by the respondent no.3. The said passport was issued on 03.12.2014 and was valid upto 02.12.2019. The petitioner was also issued an Aadhar Card. In 2014, petitioner's mother in order to provide for the petitioner and herself and since she was getting employment opportunities abroad, applied for registration of petitioner's mother's birth in Portugal. The birth of petitioner's mother came to be registered in the Register of Births in Portugal on 10.02.2015 and as per the existing law, the petitioner's mother acquired Portuguese citizenship and thereafter obtained Portuguese passport. Petitioner's mother is also registered as an Overseas Citizen of India and has been issued a Certificate of Registration as an Overseas Citizen of India.

7. The petitioner travelled on the Indian passport to the United Kingdom with her mother when her mother took up employment. The

petitioner was admitted in a school in the United Kingdom for continuing her studies. The petitioner was issued a Residence Card by the Government of United Kingdom, being a family member of a Union Citizen. The Residence Card mentioned that the nationality of the petitioner was Indian. The Residence Card was issued in the year 2017 and was valid till the year 2022. Subsequently, the petitioner has been granted an “Indefinite Leave in the United Kingdom” by the Home Office of the United Kingdom by letter dated 01.12.2021.

8. The petitioner’s mother has also been granted “Limited Leave in the United Kingdom for five years” which will expire on 17.09.2024, unless extended. The petitioner’s passport was expiring in December 2019. Her mother in the year 2019 applied to the respondent no.2 for renewal of passport. By the impugned letter dated 05.08.2020, respondent no.2 communicated that the application cannot be granted. The competent authority was of the view that since the applicant is a single parent minor child and the physical custody of the child is with the parent who is foreign national, she is not eligible for the Indian passport.

9. Mr Abhijeet Kamat, learned counsel for the petitioner submitted that the petitioner continues to be an Indian citizen and has not even made any application for registration of birth in any other country nor has she applied for citizenship of any other country. It is submitted that merely

because her mother has acquired a foreign nationality cannot deprive her the fundamental right to travel abroad by holding up the passport. It is submitted that the ground for rejection of renewal is not in consonance with the Passport Act, 1967. Mr Kamat submitted that the petitioner could not travel to India earlier due to the prevailing restrictions during the pandemic and thereafter, in view of the refusal to issue a passport by the respondents. It is pointed out that the “Indefinite Leave in the United Kingdom” order issued to the petitioner requires that the petitioner can only re-enter the United Kingdom by presenting her passport. Mr Kamat submitted that as a result of non-renewal of passport, the petitioner is prevented from travelling to any other country as otherwise she will not be able to rejoin her mother who works in the United Kingdom. Mr Kamat urged that petitioner’s mother’s “Limited Leave to remain” in the United Kingdom expires on 17.09.2024 and if the same is not extended, her mother will have to leave the United Kingdom. The petitioner will not be able to accompany her mother due to the lack of passport.

10. Mr Raviraj Chodankar, learned counsel for the respondents on the other hand supported the impugned order. Our attention is invited to the provisions of the Citizenship Act, 1955 (Citizenship Act for short) and the Passports Act, 1967 (Passports Act for short) to submit that the impugned decision is in consonance with the provisions of the Act. It is submitted that petitioner’s mother has acquired foreign nationality and as she is a

single parent of the minor child whose physical custody is with her, the petitioner is not eligible for Indian passport.

11. The rival contentions now fall for our determination.

12. Before dealing with the submissions on merits, it would be useful to refer to the observations of this Court in *Lourdes Jennifer Lobo v/s. Regional Passport Officer and Ors. - Writ Petition No.818 of 2023 decided on 03.01.2024* which considered the relevant provisions of Citizenship Act and Passports Act apart from certain historical facts which would aid in the decision of this matter. In paragraphs 6 to 9 this Court observed thus:-

“ 6. 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.”

13. It would also be relevant to refer to the observations in paragraphs 12 to 21 of *Lourdes Jennifer Lobo (supra)* which read thus:-

“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 choses 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 Citizenships 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 more 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.”

14. Relevant to the context of the present case is Section 3 of the Citizenship Act which provides for acquisition of citizenship by birth.

Section 3 reads thus:-

*“3. **Citizenship by birth.**-(1) Except as provided in sub-section (2), every person born in India,-*

(a) on or after the 26th day of January, 1950, but before the 1st day of July, 1987;

(b) on or after the 1st day of July, 1987, but before the commencement of the Citizenship (Amendment) Act, 2003 and either of whose parents is a citizen of India at the time of his birth;

(c) on or after the commencement of the Citizenship (Amendment) Act, 2003, where-

(i) both of his parents are citizens of India; or

(ii) one of whose parents is a citizen of India and the other is not an illegal migrant at the time of his birth, shall be a citizen of India by birth.

(2) A person shall not be a citizen of India by virtue of this section if at the time of his birth-

(a) either his father or mother possesses such immunity from suits and legal process as is accorded to an envoy of a foreign

sovereign power accredited to the President of India and he or she, as the case may be, is not a citizen of India; or

(b) his father or mother is an enemy alien and the birth occurs in a place then under occupation by the enemy.”

15. It is thus seen that sub-section (1)(c) of Section 3 says that except as provided in sub-section (2), every person born in India on or after the commencement of the Citizenship (Amendment) Act, 2003, where (i) both of his parents are citizens of India; or (ii) one of whose parents is a citizen of India and the other is not an illegal migrant at the time of his birth, shall be a citizen of India by birth. In the facts of the present case sub-section (2) of Section 3 of the Citizenship Act will not apply.

16. In the present case, the petitioner was born in India on 27.10.2007. The petitioner has not acquired citizenship of any other country. Thus, in terms of sub-section (1)(c) of Section 3, the petitioner who was born in India after the commencement of the Citizenship (Amendment) Act, 2003, is a citizen of India by birth. It is the case of the petitioner that her mother before she acquired citizenship of Portugal, was citizen of India. The birth of the petitioner's mother came to be registered on 10.02.2015 at Portugal and as per the existing law, the petitioner's mother acquired citizenship of Portugal and has thereafter obtained Portuguese passport.

17. There is nothing on record to indicate that the petitioner's father does not continue to be a citizen of India. The petitioner's father, an Indian citizen, is untraceable. It is further not the case that the petitioner's mother is an illegal migrant at the time of the petitioner's birth. Thus, at the time of the petitioner's birth, in terms of sub-section (1)(c)(i) of Section 3 of the Citizenship Act, her parents were citizens of India and in any case in terms of sub-section (1)(c)(ii) of Section 3 to confer citizenship of India on the petitioner by birth, one of her parent viz. the petitioner's father is a citizen of India and her mother was not an illegal migrant at the time of her birth.

18. No doubt, the custody of the petitioner is with her mother. The marriage of the petitioner's parents stood dissolved by way of divorce by Judgment and Order dated 03.01.2019 passed by the Civil Court. It is the petitioner's mother who acquired the citizenship of Portugal in 2015. The question is whether the petitioner in such circumstances can be said to be not an Indian citizen merely because she is in the custody of her mother.

19. It would be relevant to consider the provisions of termination of citizenship provided by the Citizenship Act. The termination of citizenship can be by renunciation of citizenship in terms of Section 8, voluntary acquisition of citizenship of another country in terms of Section 9 or the

citizenship can be deprived in terms of what is provided in Section 10. The provisions of Sections 8, 9 and 10 are as under:-

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

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

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

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

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

Provided that nothing in this sub-section shall apply to a citizen of India who, during any war in which India may be engaged,

voluntarily acquires, the citizenship of another country, until the Central Government otherwise directs.

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

10. Deprivation of citizenship.-(1) *A citizen of India who is such by naturalisation or by virtue only of clause (c) of article 5 of the Constitution or by registration otherwise than under clause (b) (ii) of article 6 of the Constitution or clause (a) of sub-section (1) of section 5 of this Act, shall cease to be a citizen of India, if he is deprived of that citizenship by an order of the Central Government under this section.*

(2) Subject to the provisions of this section, the Central Government may, by order, deprive any such citizen of Indian citizenship, if it is satisfied that-

(a) the registration or certificate of naturalisation was obtained by means of fraud, false representation or the concealment of any material fact; or

(b) that citizen has shown himself by act or speech to be disloyal or disaffected towards the Constitution of India as by law established; or

(c) that citizen has, during any war in which India may be engaged unlawfully traded or communicated with an enemy or been engaged in, or associated with, any business that was to

his knowledge carried on in such manner as to assist an enemy in that war; or

(d) that citizen has, within five years after registration or naturalisation, been sentenced in any country to imprisonment for a term of not less than two years; or

(e) that citizen has been ordinarily resident out of India for a continuous period of seven years, and during that period, has neither been at any time a student of any educational institution in a country outside India or in the service of a Government in India or of an international organisation of which India is a member, nor registered annually in the prescribed manner at an Indian consulate his intention to retain his citizenship of India.

(3) The Central Government shall not deprive a person of citizenship under this section unless it is satisfied that it is not conducive to the public good that the person should continue to be a citizen of India.

(4) Before making an order under this section, the Central Government shall give the person against whom the order is proposed to be made notice in writing informing him of the ground on which it is proposed to be made and, if the order is proposed to be made on any of the grounds specified in sub-section (2) other than clause (e) thereof, of his right, upon making application therefor in the prescribed manner, to have his case referred to a committee of inquiry under this section.

(5) If the order is proposed to be made against a person on any of the grounds specified in sub-section (2) other than clause (e) thereof and

that person so applies in the prescribed manner, the Central Government shall, and in any other case it may, refer the case to a Committee of Inquiry consisting of a chairman (being a person who has for at least ten years held a judicial office) and two other members appointed by the Central Government in this behalf.

(6) The Committee of Inquiry shall, on such reference, hold the inquiry in such manner as may be prescribed and submit its report to the Central Government; and the Central Government shall ordinarily be guided by such report in making an order under this section.”

20. The petitioner’s mother has not renounced her citizenship of India for Section 8 to have any application. Having acquired citizenship of Portugal, by operation of law in terms of Section 9, the petitioner’s mother ceases to be a citizen of India.

21. In the context of cases where a question arises as to the loss of Indian citizenship and whether a person has voluntarily acquired a foreign citizenship, the said questions can be decided by the authority under sub-section (2) of Section 9. Sub-section (2) of Section 9 was also a subject matter of consideration in *Lourdes Jennifer Lobo (supra)*. This Court while considering the scope of sub-section (2) of Section 9 relied upon the decisions in *State of Andhra Pradesh V/s Abdul Khader, reported in AIR 1961, SC 1467, Akbar Khan Alam Khan V/s Union of India, reported in 1961 SCC Online SC 4, State of Uttar Pradesh v/s. Shah Mohammed,*

reported in (1969) 1 SCC 771, Bhagwati Prasad Dixit 'Gorewala' V/s. Rajeev Gandhi, reported in (1986) 4 Supreme Court Cases 78, and Gangadhar Yeshwant Bhandare V/s. Erasmo Jesus De Sequeira, reported in (1975) 1 SCC 544. It would be apposite to refer to paragraphs 26 to 31 which read thus:-

“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-sec. (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 Indian 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.”

22. Having considered the relevant provisions of law and the various judicial pronouncements relied upon by the learned counsel, we are of the opinion that the petition must succeed. In the present case, by virtue of the provisions of Section 3, the petitioner has acquired citizenship of India by birth. Further, this is not a case where it can be said that the petitioner's Indian citizenship ceases or is terminated in terms of what is provided in Sections 8, 9 and 10 of the Citizenship Act. Merely because the petitioner's custody is with her mother is no ground to assume that the petitioner is no longer a citizen of India or that there is termination of her Indian citizenship. The Citizenship Act does not provide for such a consequence. The petitioner has not acquired citizenship of another country. The petitioner therefore is a citizen of India in terms of Section 3 of the Citizenship Act.

23. Mr Chodankar, learned counsel for the respondents relies upon the Office Memorandum (OM) dated 31.07.2024 in support of the impugned order. The OM dated 31.07.2024 reads thus:-

*“No. VI.401/1/1/2018
Government of India
Ministry of External Affairs
(PSP Division)*

*Patiala House Annexe, Tilak Marg
New Delhi, 31st July 2024*

OFFICE MEMORANDUM

Subject: Clarification regarding surrender of Indian Passport and Renunciation of Indian Citizenship by parents (of Indian Origin) and its effect on re-issue of Passport of minor children

Reference our earlier OM dated 18th April 2024 clarifying that "Surrender of Indian Passport" and "Renunciation of Indian Citizenship" are entirely two different services.

2. A number of references have been received from various PIAs seeking clarification regarding re-issue of Passports to minor children whose Parent(s) have obtained Foreign Citizenship and/or Renounced their Indian Citizenship. The matter has been taken up with Ministry of Home Affairs. A couple of inter- ministerial meetings have been held and number of communications sent to MHA to provide clarification on this. MHA vide their OM dated 26th July 2024 has provided clarification on the issue. (Copy enclosed)

3. Based on the discussions and clarifications received from MHA, the following may be noted in this regard:

(a) As prescribed u/s 8(1) of the Citizenship Act, 1955 Any "Citizen of India" of full age and capacity can renounce Indian citizenship.

(b) Accordingly, those foreign nationals of Indian Origin who have already acquired citizenship of any other country is not eligible to renounce their citizenship, In fact, their citizenship has already been

terminated u/s 9 of the Citizenship Act 1955 by acquiring citizenship of other country. [Reference e-mail dated 20th December 2018 from MHA (copy enclosed)]

(c) In following cases, the citizenship of minor children under section 8(2) of the Citizenship Act 1955 is not affected:

(i) When one parent renounces the Indian Citizenship before the birth of the minor child and other parent remain Indian citizen;

(ii) When one parent who presently hold foreign citizenship, was never an Indian and other parent is Indian;

(iii) If parent of minor child have voluntarily acquired citizenship of another country, they cease to be a citizen of Indian under provisions of Section 9 of the Citizenship Act. It is to state that Section 9 of the Act does not have any provision of termination of citizenship of minors of such persons. [Reference OM No. 26030/68/2019-IC-I dated 02nd July 2019 (copy enclosed)]

4. When one parent renounces the Indian citizenship u/s 8 of the Citizenship Act and other parent continues to hold Indian citizenship and the parents either get divorced and the custody of child is given to one of the parents or without divorce the court has given legal custody of the child of one of the parents In such case (if only one parent has renounced Indian citizenship and the other parent is still an Indian citizen), the citizenship of minor shall be of that parent who has the legal custody of that minor child. [Reference MHA letter No.

26030/24/2015-IC-I(Vol-III) dated 08th March 2018 (copy enclosed)]

5. In this regard the revised FAQ dated 05th July 2024 (copy enclosed) on renunciation of Indian Citizenship uploaded on the online citizenship portal may also be referred. The earlier FAQ dated 16th September 2021 (copy enclosed) had a question asking foreign citizens (of Indian Origin) to renounce Indian citizenship.

6. All the earlier instructions requiring a foreign citizen (of Indian origin) to 'Surrender Indian Passport' and 'Renounce Indian Citizenship' may be treated withdrawn. Other necessary measures are being taken to remove any such anomaly available in any legal and procedural perspectives.

7. PLAs may process the re-issue of Passport applications of such minor children on the above lines. PLAs may also take necessary measures to disseminate this information.

sd/-

*(Dr. K. J. Srinivasa)
Joint Secretary (PSP) &
Chief Passport Officer*

24. In our opinion, the OM does not in any manner support the contention of the respondents. The OM is issued more in the context of Section 8 of the Citizenship Act which provides for renouncing Indian citizenship. If at all anything, the OM supports the case of the petitioner. Clause 3(c)(iii) of the OM says that the citizenship of minor children

under Section 8(2) of the Citizenship Act, 1955 is not affected if the parent of minor child has voluntarily acquired citizenship of another country. The parent ceases to be the citizen of India under the provisions of Section 9 of the Citizenship Act. The OM then says that Section 9 of the Act does not have any provision of termination of citizenship of minors of such persons.

25. The contention of Mr Chodankar that as per Clause 4 of the OM the citizenship of the minor should be that of her mother as she has legal custody of that minor child, according to us, is not tenable. Clause 4 of the OM is in the context of a parent renouncing Indian citizenship under Section 8 of the Citizenship Act which is not the fact situation in the present case. The OM therefore does not advance the cause of the respondents.

26. Now we turn to the impugned order. The Passport Officer could have rejected petitioner's application for issuance of passport under Section 6 of the Passports Act, only on the ground specified in sub-section (1) or sub-section (2) thereof. Section 6 reads thus:

“6. Refusal of passports, travel documents, etc. - (1) Subject to the other provisions of this Act, the passport authority shall refuse to make an endorsement for visiting any foreign country under clause (b) or clause (c) of sub-section (2) of section 5 on any one or more of the following grounds, and no other ground, namely: -

(a) that the applicant may, or is likely to, engage in such country in activities prejudicial to the sovereignty and integrity of India:

(b) that the presence of the applicant in such country may, or is likely to, be detrimental to the security of India;

(c) that the presence of the applicant in such country may, or is likely to, prejudice the friendly relations of India with that or any other country,

(d) that in the opinion of the Central Government the presence of the applicant in such country is not in the public interest.

(2) Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under clause (c) of sub-section (2) of section 5 on any one or more of the following grounds, and on no other ground, namely: -

(a) that the applicant is not a citizen of India.,

(b) that the applicant may, or is likely to, engage outside India in activities prejudicial to the sovereignty and integrity of India.,

(c) that the departure of the applicant from India may, or is likely to, be detrimental to the security of India;

(d) that the presence of the applicant outside India may, or is likely to, prejudice the friendly relations of India with any foreign country;

(e) that the applicant has, at any time during the period of five years immediately preceding the date of his application, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;

(f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India;

(g) that a warrant or summons for the appearance, or a warrant for the arrest, of the applicant has been issued by a court under any law for the time being in force or that an order prohibiting the departure from India of the applicant has been made by any such court;

(h) that the applicant has been repatriated and has not reimbursed the expenditure incurred in connection with such repatriation;

(i) that in the opinion of the Central Government the issue of a passport or travel document to the applicant will not be in the public interest.”

27. Sub-section (2) of Section 6 of the Passports Act provides that subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under clause (c) of sub-section (2) of section 5 on any one of the following grounds i.e. (a) to (i), and on no other ground. Thus, once we find that the petitioner is a citizen of India, refusal of the passport on the ground

mentioned in the impugned order is not sustainable. The view that the petitioner is not eligible for the Indian Passport since the applicant (mother) is a single parent minor child and the physical custody of the petitioner is with the parent who is a foreign national, is unsustainable. The acquisition of a foreign nationality by the petitioner's mother will not affect the citizenship status of the petitioner. The child cannot be left 'stateless'.

28. The petition must therefore succeed. The impugned order issued by respondent no.2 is set aside. The petitioner is entitled to be issued a passport on the basis of her Indian citizenship. Respondent no.2 may issue such passport unless any ground exists for refusal of issuance of a passport in terms of Section 6 of the Passports Act.

29. The Rule is made absolute. The petition is disposed of without any order for costs.

VALMIKI MENEZES, J.

M. S. KARNIK, J.