P L D 2016 Lahore 857

Before Ali Baqar Najafi, J

Mst. RUKHSANA BIBI and others---Petitioners

Versus

GOVERNMENT OF PAKISTAN and others---Respondents

Writ Petition No.5939 of 2006, decided on 18th May, 2016.

(a) Pakistan Citizenship Act (II of 1951)--

----S. 10(2)---Constitution of Pakistan, Art. 199---Constitutional petition filed by an alien/foreign national seeking directions for issuance of Pakistan passport---Alien male was not recognized as someone who could invoke the constitutional jurisdiction of the High court---Constitutional petition to the extent of such alien/foreign national was dismissed as being not maintainable.

(b) Pakistan Citizenship Act (II of 1951)--

----S. 10(2)---Constitution of Pakistan, Art.25---Universal Declaration of Human Rights (UDHR), Art.15---International Covenant on Civil and Political Rights (adopted on 23.03.1976), Art. 23---Beijing Declaration and Platform for Action of 1995, Art. 232---Foreign male national migrating to Pakistan and marrying a Pakistani woman---Right of such foreign male national to acquire Pakistani nationality---Discrimination---Alien male who had migrated to Pakistan and married a Pakistani woman was not granted a right to acquire Pakistani Nationality under S.10(2) of the Pakistan Citizenship Act, 1951---Denial of such right was discriminatory and violated not only Art.25 of the Constitution but also various instruments of international law, which the State of Pakistan was bound to follow in view of the commitments it had made to the International community---High Court directed concerned authorities to grant citizenship to the foreign national/husband of the petitioner after following the relevant procedure.

Under section 10(2) of the Pakistan Citizenship Act, 1951 alien female had been given the right to acquire the Pakistan nationality on her marriage with a man having Pakistani nationality but an alien male who had migrated to Pakistan and married a Pakistani woman was not granted a right to acquire Pakistani Nationality.

Denial of citizenship to a foreign national having a Pakistani wife appeared to be arbitrary and not founded on any rational basis and had no nexus to the object to be achieved by such classification. Constitution of Pakistan did not recognize gender discrimination.

Suo Motu Case No.1/K of 2006 PLD 2008 FSC 1 ref

Sharifan and 6 others v. The Federation of Pakistan through Secretary Ministry of Interior and Narcotics Control, Interior Division, Islamabad PLD 1998 Lah. 59 distinguished.

Both petitioner and her foreign national husband had been living together ever since they married during which a child was also born in their family in Pakistan. Husband's mother also died in Pakistan, where she was buried.

Jamal-ud-Din and others v. National Database and Registration Authority (NADRA) through Deputy Director (Verification), Islamabad and 5 others PLD 2015 Bal. 117 distinguished.

Under Article 15 of the Universal Declaration of Human Rights everyone had a right to a nationality and also to change his nationality. Further under Article 23 of International Covenant on Civil and Political Rights adopted on 23.03.1976 the right of men and women of marriageable age to marry and to form a family was recognized which was natural and fundamental group unit of the society. Article 232(2) of the Beijing Declaration and Platform for Action of 1995, the Governments were required to review national laws including customary laws and legal practices in the areas of family, civil, penal, labour or commercial law in order to ensure the implementation of the principles and procedure of all relevant international human rights instruments by means of a national legislation, revoke any remaining laws for discrimination on the basis of sex and removing gender bias in the administration of justice. The State of Pakistan was bound to adopt/follow these relevant laws keeping in view the commitments it had already made to the International Community.

Denying right of Pakistani citizenship to petitioner's husband under section 10(2) of the Pakistan Citizenship Act, 1951 was discriminatory and in violation of Article 25 of the Constitution. High Court directed concerned authorities to grant citizenship to husband of the petitioner after following the relevant procedure.

(c) Constitution of Pakistan---

----Art. 25---Right of woman to marry person of her own choice --- Such right was a basic human right---In acknowledging such right no discrimination was to be observed against Art.25 of the Constitution.

Syed Sajjad Haider Naqvi for Petitioners.

Wajid Nawaz Bhatti, Standing Counsel along with Mian Riaz Hussain, Assistant Director, Passport Office, Multan for Respondent.

Date of hearing: 20th April, 2016.

JUDGMENT

ALI BAQAR NAJAFI, J.---Through this Constitutional Petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 the petitioners seek direction to the respondents to prevent discrimination and grant citizenship to petitioner No.2, husband of petitioner No.1, enabling them to live together in Pakistan with the further direction to register petitioner No.2 as citizen of Pakistan and restrain the respondents from the extradition of the petitioner No.2 from the territory of Pakistan.

2. Precise facts giving rise to the filing of this writ petition are that Mst.Rukhsana/petitioner No.1 is SST teacher serving in the Education Department for the last 26 years. Her husband died in the year 2002 and from him, there was no child. Petitioner No.2 is an Indian National presently residing at Multan who had come to Pakistan on 09.08.2003 along with his son, namely, Danyal Hassan and mother, Khurshid Bano, later died on 16.10.2005 and was buried at Multan. Sister of petitioner No.2, Mashkoor Bano, was also an Indian National who too migrated in the year 1962 to Pakistan and was married to one Syed Hassan Mian Zaidi and both are living in Multan as husband and wife, as she was already granted a Pakistani nationality.

3. With this background, and with legitimate expectation that he would start his life in this territory created in the name of Islam, on 16.02.2004 petitioner No.1 got married with petitioner No.2 and from their wedlock one daughter namely, Hamyal Zehra was born on 06.06.2005. Petitioner No.2 moved for citizenship of Pakistan but respondent No.2 directed petitioner No.2 to deposit Rs.50,00,000/- for processing the citizenship application. He continued to move for extension of visa and on 19.09.2006 his visa was finally extended for 90 days which was to end on 18.12.2006 hence this writ petition.

4. Syed Sajjad Haider Naqvi, Advocate, learned counsel for the petitioners contends that the State of Pakistan is bound to amend all discriminatory provisions available in the statute and law particularly, section 10(2) of the Citizenship Act, 1951. Further contends that a child is not to be separated from her parents but the respondents are forcing deportation of petitioner No.2 back to India which will deprive minor Himayal from the love and affection of her father. Refers to an order passed in Constitutional Petition No.1415 of 2004, "Mst. Najma Bano v. Government of Pakistan, etc." passed by Sindh High Court at Karachi. Also submits that when the sister of petitioner No.2 had been conferred the Pakistani Nationality on the basis of marriage with a Pakistani male, refusal on the part of the respondents to grant nationality to petitioner No.2 being married with a Pakistani woman/petitioner No.1 is discriminatory. Refers to the judgment on the same question given by the Federal Shariat Court in Suo Motu case No.1/K of 2006 (GENDER EQUALIY) PLD 2008 Federal Shariat Court 1] and prays for relief.

5. Mr.Wajid Nawaz Bhatti, learned Standing Counsel assisted by Mian Riaz Hussain, Assistant Director, Passport Office, Multan, contends that the petitioner No.2 has no locus standi to file the writ petition as he is not the citizen of this country. Further contends that the act of the respondents is not discriminatory but is in accordance with the prevalent law. Adds, that the stay of petitioner No.2 in Pakistan is illegal, as his visa was not extended after 18.12.2006. Submits that if the petitioner No.2 is interested

in Pakistani citizenship he can initiate the process and deposit a sum of five millions rupees as required under circular dated 16.01.1997 issued by the Ministry of Interior. Places reliance on Sharifan and 6 others v. The Federation of Pakistan through Secretary, Ministry of Interior and Narcotics Control, Interior Division, Islamabad [PLD 1998 Lahore 59] and Jamal-ud-Din and others v. National Database and Registration Authority (NADRA) through Deputy Director (Verification), Islamabad and 5 others [PLD 2015 Balochistan 117] and prays for dismissal of this petition.

6. Arguments heard. Record perused.

7. At the very outset, it is noted that petitioner No. 2 is an alien male who has not been recognized as the one who could invoke the constitutional jurisdiction of this court, therefor to his extent, this writ petition is dismissed as not maintainable. However, the case of the petitioner No.1 is examined also with reference to the human right and discrimination aspects.

8. After hearing the learned counsel for the parties and perusing the available file, it is observed that said provisions of section 10(2) of The Pakistan Citizenship Act, 1951 have been made the topic of discussion they be reproduce below for ready reference:--

> S.10(2).....
> Subject to the provisions of subsection (1) and subsection (4) a woman who had been married to a citizen of Pakistan or to a person who, but for his death would have been a citizen of Pakistan ,under section 3,4 or 5 shall be entitled, on making application therefor, to the Federal Government in the prescribed manner, and, if she is an alien, on obtaining a certificate of domicile and taking the oath of allegiance in the form set out in the Schedule to this Act, to be registered as a citizen of Pakistan whether or not she has completed twenty one year of her age and is of full capacity."

9. A perusal of the said section reveals that alien female has been given the right to acquire the Pakistan nationality on her marriage with a man of having Pakistani nationality but an alien male migrated to Pakistan and married a Pakistani woman is not granted a right to acquire Pakistani Nationality.

10. This section was discussed in Suo Motu Case No.1/K of 2006 in re (Gender Equality) [PLD 2008 Federal Shariat Court 1] where it was held by the Federal Shariat Court on 12.12.2007 that suitable steps for amendment of Section 10(2) of Pakistan Citizenship Act, 1951 be taken for the grant of Pakistani nationality to an alien male married to a Pakistani woman. It was held as follows:-

> "In view of the above, we are of the view that section 10 of the Citizenship Act, 1951 is discriminatory, negates gender equality and is in violation of Articles 2(a) and 25 of the Constitution of Islamic Republic of Pakistan and also against International commitments of Pakistan and, most importantly is repugnant to Holy Qur'an and Sunnah."

However, Civil Shariat Appeal No.1 of 2008 has been filed against the said judgment before the Hon'ble Supreme Court of Pakistan (Shariat Appellate Bench) and on 23.12.2014 notices have been issued.

11. The discrimination under Article 25 of the Constitution of Islamic Republic of Pakistan, 1973 has also been discussed in various judgments of the Hon'ble Supreme Court. Before referring to some of the relevant case law, it is appropriate to reproduce Article 25 of the Constitution of Islamic Republic of Pakistan, 1973:-

> **Article 25**
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> "Equality of citizens.--(l) All citizens are equal before law and are entitled to equal protection of law."
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> 2. There shall be no discrimination on the basis of sex 1(xxx)
>
> 3. Nothing in this Article shall prevent the State from making any special provision for the protection of woman and children.

This article was basically interpreted in I.A. Sharwani and others v. Government of Pakistan through Secretary Finance Division, Islamabad and others [1991 SCMR 1041], later re-enforced in Secretary Economic Affairs Division, Islamabad and others v. Anwarul Haq Ahmed and others [2013 SCMR 1687], Para 26 of the former judgment is relevant, which is re-produced as under:-

> "26. From the above cited cases the following principles of law are deducible:-
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> (i) that equal protection of law does not envisage that every citizen is to be treated alike in all circumstances, but it contemplates that persons similarly situated or similarly placed are to be treated alike;
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> (ii) that reasonable classification is permissible but it must be founded on reasonable distinction or reasonable basis;
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> (iii) that different laws can validly be enacted for different sexes, persons in different age groups, persons having different financial standings, and persons accused of heinous crimes;
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> (iv) that no standard of universal application to test reasonableness of a classification can be laid down as what may be reasonable classification in a particular set of circumstances, may be unreasonable in the other set of circumstances;
>
> (v) that a law applying to one person or one class of persons may be constitutionally valid if there is sufficient basis or reason for it, but a classification which is arbitrary and is not founded on any rational basis is no classification as to warrant its exclusion from the mischief of Article 25;
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> (vi) that equal protection of law means that all persons equally placed be treated alike both in privileges conferred and liabilities imposed;
>
> (vii) that in order to make a classification reasonable, it should be based
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> (a) on an intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out;
>
> (b) that the differentia must have rationale nexus to the object sought to be achieved by such classification.

It lays down that persons similarly situated or similarly placed to be treated alike. Different laws can be validly enacted for different financial standings and persons accused of heinous crime. Surely marriage by petitioner to a foreigner male will not be covered in that category. The discussion regarding discriminatory application of Citizenship Act, 1951 is confined to the facts of the present case under which denial of citizenship to a foreign national having a Pakistani wife appears to be arbitrary and not

founded on any rational basis and has no nexus to the object to be achieved by such classification. Above all, our constitution is specific about the person and do not recognize the gender discrimination.

12. The judgment titled "Sharifan and 6 others v. The Federation of Pakistan through Secretary, Ministry of Interior and Narcotic Control, Interior Division, Islamabad [PLD 1998 Lahore 59] from respondent's side relates to the situation in which male husband was not granted Pakistani nationality, since after marrying a woman of Pakistani nationality, he took her to his country where she delivered a child but in the present case both spouses have been living together ever since they married during which a child was also born in their family in Pakistan. Mother-in-law of petitioner No.1 also died who was buried in Pakistan. Moreover, with due respect to the view expressed by the single bench of this Court in the year, 1998, this world has changed and the concept of discrimination against the weaker sex of our society has come a long way and by now male discrimination is also being viewed seriously. The other judgment Jamal-ud-Din and others v. National Database and Registration Authority (NADRA) through Deputy Director (Verification), Islamabad and 5 others [PLD 2015 Balochistan 117] does not relate to this case as here the question of admission by husband of the petitioner to any educational institution is not involved.

13. Learned Standing Counsel have pleaded that the grant of citizenship right will increase the rate of divorce, increase unemployment ratio, grant a blanket approval to the foreign nationals who may act as spy of their countries maintaining their earlier allegiance which would be against the security of Pakistan and is likely to jeopardize the Indo-Pak relationship.

14. However, this issue can be addressed by categorization of citizenship into various types after conducting a verification based on close watch and survey, whereafter such person can be declared fit for the citizenship.

15. It is pertinent to mention here that right of a woman to marry of her own choice is the basic human right and to acknowledge this right no discrimination is to be observed against Article 25 of the Constitution of Islamic Republic of Pakistan.

16. Under Universal Declaration of Human Rights Article 2, everyone is entitled to the right of freedom irrespective of race, colour, sex, language, religion political or other opinion, national or social origin, property, birth or other status and under Article 13 everyone has right to freedom of movement and residence within the borders of each States and also a right to live in country including his own. Under Article 15 everyone has a right to a nationality and also to change his nationality. Under International Covenant on Civil and Political Rights adopted on 23.03.1976, everyone is free to leave any country including his own and will not be subjected to any restrictions except provided under the law, and necessary to protect national security, public order, public health or moral or the rights and freedom of others as provided under Article 11 thereof. Under Article 13 of the said Covenant, an alien person unlawfully in a territory of a States may be expelled in pursuance of a decision reached in accordance with law and except where compelling reasons of national security otherwise required, will be allowed to present the case and have represented before the competent authority. Under

Article 23 thereof the right of men and women of marriageable age to marry and to form a family is recognized which is natural and fundamental group unit of the society. Under resolution 34 of 180 dated 18.12.1979 on convention of elimination of all forms of discrimination of women adopted by General Assembly under Article 9 States are bound to grant women equal rights with men to acquire, change or retain their nationality. They shall ensure that their marriage to an alien or change of nationality of their husband during marriage shall not automatically change the nationality of the wife or force her to get the nationality of her husband and that States shall also grant women equal rights with respect to the nationality of their children. Under Article 16 the States shall ensure same rights to the women to enter into the marriage, choose their spouses and to continue with the marriage and its dissolution. Under Article 232(2) of Beijing Declaration of 1995, the Governments were required to review national laws including customary laws and legal practices in the areas of family, civil, penal, labour or commercial law in order to ensure the implementation of the principles and procedure of all relevant international human rights instruments by means of a national legislation, revoke any remaining laws for discrimination on the basis of sex and removing gender bias in the administration of justice. The State of Pakistan is bound to adopt/follow in the relevant law keeping in view the commitments it had already made to the International Community.

17. For what has been discussed above, this petition is allowed and respondents Nos.1 and 2 are directed to grant citizenship to Hassan Asghar s/o Ali Asghar husband of the petitioner after following the procedure as denying this right under section 10(2) of the Citizenship Act is declared as discriminatory being in violation of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973.

MWA/R-17/L Petition allowed.

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