

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I.A. NO. OF 2021

IN

WRIT PETITION (CIVIL) NO. 1397 OF 2020

UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA

IN THE MATTER OF:

DR. RADHIKA THAPPETA AND ORS.

...PETITIONERS

VERSUS

UNION OF INDIA AND ORS.

...RESPONDENTS

APPLICATION FOR PERMISSION TO RAISE ADDITIONAL GROUNDS AND

BRING ON RECORD ADDITIONAL DOCUMENTS

PAPER BOOK

(FOR INDEX, PLEASE SEE INSIDE)

ADVOCATE FOR THE PETITIONERS: MS. SRISHTI AGNIHOTRI

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TO,

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS COMPANION JUSTICES OF THE
SUPREME COURT OF INDIA

THE HUMBLE APPLICATION OF THE
APPLICANTS ABOVE NAMED

MOST RESPECTFULLY SHOWETH:-

1. The instant Writ Petition seeks to assail Sections 7B(1), 7D, 8(2), and 9(1) of the Citizenship Act, 1955, under Article 32 of the Constitution. The Petitioners' contention is, inter alia, that the Overseas Citizenship Regime, as introduced into the Citizenship Act, 1955, vide the Amendment Act of 2003, and thereafter modified by the Citizenship (Amendment) Acts of 2005 and 2015, militates against the very objective of the

amendment, namely to grant *dual citizenship* to persons like the Petitioners, and severely curtails the rights of the Petitioners, thereby preventing their meaningful enjoyment of life and livelihood.

2. That the following additional grounds are relevant for the purpose of the present Writ Petition:

- a. Because, it is submitted that the Petitioners, as well as their children, are all desirous of enjoying meaningful dual citizenship, including the rights that flow therefrom, and to obey the duties that arise therein, and be full citizens of India.
- b. Because there are the following five categories of Petitioners in the present Petition, and each category is aggrieved by the impugned sections of the Citizenship Act, 1955. These categories are as follows:

Sl.no	Category	Petitioner Nos.	Grievance
1.	Overseas Citizens of India	1-4, 9-27, 29-42, 43, 45, 46, 48-50, 54-55, 57-58, 60-74, 77-80 (Total = 66)	<p>Those who reside in India:</p> <ol style="list-style-type: none"> a) Amongst OCIs there are many persons who reside in India. b) In fact of the 66 OCIs before this Hon'ble Court 57 are residents of India. c) These people are tax payers, job creators and community leaders. d) However, due to the family of Sections 7A-7D of the Citizenship Act,1955, which gives OCIs very dilute, uncertain and circumscribed rights, despite promising

Sl.no	Category	Petitioner Nos.	Grievance
			<p>them dual citizenship, the Petitioners are suffering. Their hardships, put together, are a hindrance to living a meaningful and fulfilling life.</p> <p>e) They cannot:</p> <ul style="list-style-type: none"> • Acquire agricultural or plantation properties in India (in terms of the notification issued under Section 7B). @ Page 99 of the Writ Petition paper-book Petitioner No. 63 has specifically expressed this difficulty. • Do not have parity, under law, with Indian Citizens for any professions other than <i>doctors, dentists, nurses, pharmacists, advocates, architects, chartered accountants</i>. As a result persons have faced difficulty in taking up directorial duties of organizations, or becoming patent agents. An amendment to Rule 116 by the Patents (Amendment) Rules, 2016 (under the Patents Act 1970) provides for Removal of a Patent Agent if he ceases to be a citizen

Sl.no	Category	Petitioner Nos.	Grievance
			<p>of India (and no exception is made for OCIs).</p> <ul style="list-style-type: none"> • The Regime of the FCRA also treats OCIs and foreign citizens at par, thereby making no exceptions for legitimate donations that OCIs (particularly those living in India) may want to make to charities, orphanages, or even to a small temple hundi. • Have faced varying travel restrictions, particularly during the COVID 19 pandemic, where even when OCIs were permanent residents of India they were not allowed to enter India once the lockdown was imposed (<i>while Indian citizens were repatriated</i>), and their lifelong visa under Section 7B (1) stood suspended for months on end. @ Page 90-91, of the WP Paper-book Petitioner No. 10 has specifically suffered being stranded due to the travel restrictions. @Page 88 of the WP Paper-book, Petitioner No. 4 has averred that she was unable to travel due to these travel restrictions, and could not

Sl.no	Category	Petitioner Nos.	Grievance
			<p>accompany her minor son to his college in the USA.</p> <ul style="list-style-type: none"> • Petitioner No. 20, and OCI resident of India, has averred that she and her children constantly face logistical hurdles at banks, government offices and educational institutions, due to being OCIs @ Page 93 of the Paper-book. • Petitioner No 21 moved to India encouraged by the OCI scheme, but after having lived here for 14 years, finds the discriminations between citizens and OCIs and the daily inconveniences extremely onerous @ Page 93 of the Paper-book. <p>f) That Section 7B(1) leaves the scope of rights to be enjoyed by OCIs to the discretion of the executive, in its entirety, and without any guidance about the same.</p> <p>g) This has resulted in a regime of notifications issued under Section 7B(1) in 2005, 2007, 2009 (at Pages 7-10 of the Application for Additional Documents).</p>

Sl.no	Category	Petitioner Nos.	Grievance
			<p>h) These notifications have successively circumscribed the rights of OCIs to a greater extent, with each notification.</p> <p>i) Due to the provisions of Section 7D, which are <u>vague and overbroad</u> the Petitioners herein also stand to lose their OCI status, without any of the safeguards that are enjoyed by Indian Citizens u/s 10 of the Citizenship Act.</p>
2.	Non-Resident Indians	6, 44, 75-76 (Total = 4)	This category of persons, though they are Indian citizens, are living abroad due to professional, educational or other reasons. Such persons face restrictions in their place of residence, as they are unable/ unwilling to apply for the citizenship of the country of their residence, for fear of losing Indian Citizenship, and enjoying only the weak protection of the OCI regime. @ Page 89 of the WP Paper-book. Petitioner No. 6 has highlighted these problems.
3.	Indian Citizens who	5, 8 (Total = 2)	These Petitioners are eligible for Portuguese Citizenship, under the Portuguese Nationality Act (due to Goa's particular history). However, they are

Sl.no	Category	Petitioner Nos.	Grievance
	are residing in Goa		reluctant to explore this avenue for fears that they will be deprived of Indian citizenship. @Page 89, 90 of the WP Paper-book Petitioners have made a specific averment regarding their grievance.
4.	Highly qualified Indian citizens who wish to participate in the Global economy.	7, 28, 59 (Total = 3)	<p>These citizens and their children, want to exercise their option of studying at elite universities across the globe and take up jobs with Multinational corporations.</p> <p>They/ their children wish to be exposed to best-practices across the globe with the view to return and share their technical knowhow in India. However, the lack of a regime of dual citizenship, is a hurdle to the kind of highly globalized life these persons wish to live.@ Page 98-99, Petitioner No. 59 has made this specific averment.</p>
5.	Parents of the above categories	47, 51-53, 56 (Total=5)	<p>These persons are concerned about the rights and entitlements that inure to their OCI children. They apprehend that the agricultural land they own may not be passed on to their children, and also apprehend that due to the lack of clarity about the rights and entitlements of OCIs, their children may not be able to remain in India to take care of them in their sunset years. @Page 98 of the paper-book</p>

Sl.no	Category	Petitioner Nos.	Grievance
			of the Writ Petition, Petitioner No. 52 and 53 have specifically made averments as to their concerns on the citizenship laws being out of step with global practices, and the lack of clarity surrounding the rules for their children and grandchildren.
6.	Common problems faced by OCI Citizens, resident in India, and NRIs	4, 5, 6, 14, 31, 32, and 52	Indian Citizenship laws are not in step with global practices, while the Constitutional provisions of dual citizenship are very much in step. The absence of clarity in terms of what to expect has been expressed as a grievance. Petitioner No. 5, at Page 89 of the paper-book of the Writ Petition, has averred that in this globalized world, rules ought to enable Indians greater flexibility to travel and work across the globe.

- c. Because citizenship of a country is an enabling principle. Besides being the bond between the individual and the nation, calling for certain allegiances and commitments (called duties and rights), it is also an enabling and facilitating principle. It is a founding instrument as it would enable a human being to plan and organise all matters of life. It guarantees the individual certain freedoms and choices of life organisation and arrangement. It guarantees liberty and several

civil and political rights, as also economic social and cultural rights. *The panoply of these entitlements constitute the beauty and appeal of citizenship.*

- d. Because in the context of dual or multiple citizenships, it is expected that the grant or availability of one does not decimate or dilute the other, nor a demand that the retention of one must be at the cost of lesser dimensions of the other. Both need to stand on equal pedestal.
- e. Because the contemporary globalised world, where territorial frontiers are soft in terms of migration of capital, Human Resources, trade and commerce, science and technology, and movement of information and data, planning one's life has become complex. Life and livelihood choices have become variegated. Mobility of human beings across frontiers are exposed to dynamics which are not easily captured in any formulas. Thus, what the International court of justice has said in the Nottebohm case [(Liechtenstein v. Guatemala) [1955] ICJ Rep 4, 22 "*nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties ...*"] deserves to be kept in view while discussing dual citizenship.
- f. Because Overseas Indians currently going abroad in pursuit of education or employment, are still deeply rooted in Indian soil. They are not the same as the hordes of immigrants to various countries in the distant past when travel time was high and connectivity was low, with the view to permanently migrate their loyalties as well. The myriad factors of life choices in relation to pursuits of life, being complex, ought not to be subjected to rigid rules or norms. Thus, an overseas Indian shuttling between India and another country, should be granted the same enabling comfort and certainty for planning one's life choices, without

being exposed to uncertain and vague conditions, or conditions that can rock the bottom of legitimate expectations.

- g. Section 7B is a classic instance of a vague, unguided, and un-canalised provision. It confers on the central Government powers which force an OCI into conditions of status that can be upset any time, without room for meaningful alternatives in matters of work, economic ventures, social missions, family connections, relationships etc. An enabling instrument cannot reduce itself to a debilitating or disabling instrument. Certainty and rights protection comfort must inform the law.
 - h. Because when executive orders and notifications are the source of rights, as is the case with the OCI Petitioners, it reduces the certainty and predictability for planning the Petitioners' lives and causes hardship and suffering.
 - i. Because, in view of the above facts and circumstances, keeping in mind the objects of the Citizenship (Amendment) Acts of 2003, 2005, and 2015, this Hon'ble Court be pleased to direct the Respondents to grant all the incidents of citizenship to the wards of the Petitioners who are Indian citizens, and to such of the other Petitioners who are overseas Indian citizens without any discrimination, in order to alleviate the hardships caused by the present regime of overseas citizenship under the "*Overseas Citizenship*" Chapter of the Citizenship Act, 1955.
3. That the following documents are relevant for the purpose of the present Writ Petition and are annexed along with this Application:
 - a. A copy of a representation/grievance dated 8 April 2017 filed by, inter alia, Petitioner No. 4, Petitioner No. 6, Petitioner No. 14, Petitioner No. 31, Petitioner No. 32, and Petitioner No. 52, with Registration Number: MINHA/E/2017/02088, at Centralized

Public Grievance Redress And Monitoring System (accessible at pgportal.gov.in), inter alia seeking dual citizenship, and a modification of the present OCI regime, has been annexed herewith and marked as **ANNEXURE P-24 (Pages 14-18)**.

- b. The Ministry of Home Affairs was pleased to answer on 14 June 2017 noting that there is no provision at present for dual citizenship in India (except for minors under section 4 of Citizenship Act, 1955) as per the Citizenship Act, 1955 and the rules made thereunder. The reply of the Ministry of Home Affairs dated 14 June 2017 has been annexed herewith and marked as **ANNEXURE P-25 (Page 19)**.

P R A Y E R

In these circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to: -

- I. Pass an order permitting the Petitioner to rely upon the Additional grounds enumerated above; and take **Annexures P-24-25** on record as an additional document;
- II. Pass any other order or orders as may be just and deemed fit.

SETTLED BY:
SHRI R VENKATRAMANI
SENIOR ADVOCATE

DRAWN AND FILED BY:

PLACE: New Delhi

SRISHTI AGNIHOTRI
ADVOCATE FOR THE PETITIONERS

DATE: 23.02.2021