

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I.A. No. of 2021

IN

WRIT PETITION (CIVIL) NO. 1470 of 2019

IN THE MATTER OF:-

Indian Union Muslim
League & Ors.

...Petitioners

Versus

Union of India & Ors.

...Respondents

PAPER - BOOK

(FOR INDEX KINDLY SEE INSIDE)

(Application for Directions)

ADVOCATE FOR THE PETITIONER: PALLAVI PRATAP

PAPER - BOOK

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(Application for Directions)

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I.A. No. ____ of 2021

Writ Petition (Civil) No. 1470 of 2019

IN THE MATTER OF:-

Indian Union Muslim
League & Ors. ...Petitioners

Versus

Union of India & Ors. ...Respondents

In the matter of

Indian Union Muslim League ... Applicant

APPLICATION FOR DIRECTIONS

1. That the Petitioners have preferred the present writ petition to issue a writ of certiorari or any other appropriate writ to declare:

a) the Citizenship (Amendment) Act, 2019 (hereinafter referred to as the "Amendment Act" / "CA, Act 2019"); along with

b) Order 3A of the Foreigners Order 1948 added vide Notification bearing number GSR 685(E) and GSR 686(E) dated 08.09.2015; and

c) Rule 4(ha) of the Passport (Entry into India) Rules, 1950 as added vide Notification bearing number GSR 702 (E) and GSR 703(E) dated 18.07.2016;

as void, for being in violation of Articles 14, 15 and 21 and the basic structure of the Constitution for discriminating among persons on the basis of their faith and religion. The said writ is pending adjudication before this Hon'ble Court.

2. During the pendency of the
aforementioned writ petition the
Respondent Union, Ministry of Home
Affairs has gone ahead and issued an order
dated 28.5.2021 whereby the Respondent
Union, relying on Section 16 of the
Citizenship Act 1955 (henceforth referred
to as the Act), the power to grant
citizenship under Sections 5(citizenship by
registration) and 6(citizenship by
naturalisation) have been delegated to
collectors of certain districts to grant
citizenship to persons. Surprisingly, and
illegally, the Respondent Union has
permitted the collectors of the chosen
districts to grant citizenship to persons
belonging to Hindus, Sikhs, Buddhists,
Jains, Parsis and Christians. A True Copy

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of the said order dated 28.5.2021 issued by the Respondent Union and annexed herewith as **Annexure A-1**(pages 13-15)

3. It is the humble submission of the Applicant that the order issued by the Respondent Union is manifestly illegal and runs counter to the provisions of the Act, as well as the Constitution on the following grounds:

a) Whilst Section 5 (1)(a)-(g) of the Act lays down in unequivocal terms the persons who are eligible to apply for citizenship by registration, Section 6 of the Act permits any person (not being an illegal migrant) to apply for citizenship by naturalisation.

Therefore, the attempt being made by the Respondent Union in whittling

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down the applicability of the two provisions through an executive order is illegal.

b) That the two provisions read together do not permit the classification of applicants on the ground of religion and therefore the order goes beyond what is permitted by the provision itself.

c) Furthermore, the order does not withstand the test of Article 14 inasmuch as it treats people within a particular class i.e. persons entitled to apply for citizenship by registration and naturalisation unequally by virtue of their religion.

4. That the concept of granting citizenship to persons on the basis of religion was

introduced vide the Citizenship Amendment Act, 2019 and the impugned order and rules as challenged in the present writ. The said act is against Articles 14, 15 and 21 of the Constitution and violative of the basic structure of the Constitution. And for such reasons is pending adjudication before this Hon'ble Court.

5. That the Respondent Union had, during the course of the hearing of the present writ, submitted before this Hon'ble Court and provided assurance that staying of the Amendment Act was not necessary since the rules of the Amendment Act had not been framed. However, the Respondent Union, in a roundabout way, and in an attempt to circumvent the assurance given

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to this Hon'ble Court, have sought to implement their mala fide designs envisaged under the Amendment Act through the recently issued order dated 28.5.2021.

6. It is the humble submission of the Applicant, that a bare reading of the order dated 28.5.2021 as well as the provisions challenged under the present writ petition i.e. the Amendment Act, Order 3A of the Foreigners Order 1948, Rule 4(ha) of the Passport (Entry into India) Rules, 1950 makes it abundantly clear that the intention behind the three legislation's are one and the same. That this Hon'ble Court has held in a plethora of decisions that what cannot be done directly will not be permitted to be done indirectly, and

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therefore the order dated 28.5.2021 ought to be stayed.

7. It is submitted that if the said Order is implemented and citizenship is given to persons on the basis of their religion, and, thereafter, if this Hon'ble Court strikes down the Amendment Act and rules, whereby the act of providing citizenship on the basis of religion is declared void. Then, to take back the citizenship of these persons, granted pursuant to the present Order, will be a herculean task and would be near impossible to implement.

8. Furthermore, in the event the said exercise is conducted, it would render

the entire batch of writ petitions
infructuous.

9. That, in light of these grounds, the Respondent Union must halt any further proceedings in relation to the said Order dated 28.5.2021 till the present writ is pending before this Hon'ble Court.
10. This application is bona fide and made in the interest of justice.

PRAYER

It is therefore most respectfully prayed
that this Hon'ble Court may be pleased to:

- (a) Pass orders directing the Respondent Union to stay any further proceedings pursuant to the said Order dated 28.5.2021 issued by the Union of India, Ministry of Home Affairs till such time the

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present writ is pending before this Hon'ble Court; and

- (b) Pass any other order/s as deem fit and proper to meet the ends of justice.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

present writ is p

AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

Filed by:

(Pallavi P.)

Dated: 15.05.2021

Advocate for the Petitioner

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Annexure A1

भारत का राजपत्र The Gazette of India

सी.जी.-डी.एल.- 33004/99-28052021-227219
CG-52021-227219

REGD. No. D. L.-33004/99

असाधारण
EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

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PUBLISHED BY AUTHORITY

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सूचना
(विदेशी प्रभाग)

आदेश

नई दिल्ली, 28 मई, 2021

का.आ. 2069(अ).—केन्द्रीय सरकार, नागरिकता अधिनियम, 1955 (1955 का 57) की धारा 16 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि अफगानिस्तान, बांग्लादेश और पाकिस्तान के अल्पसंख्यक समुदायों के किसी भी व्यक्ति अर्थात् हिन्दू, सिख, बौद्ध, जैन, पारसी और ईसाई (जिसे इसमें इसके पश्चात् "आवेदक" कहा गया है) जो नीचे खंड (क) में उल्लिखित जिलों और खंड (ख) में उल्लिखित राज्यों में रह रहे हैं, को नागरिकता अधिनियम, 1955 की धारा 5 के अधीन भारत के नागरिक के रूप में रजिस्ट्रीकृत करने अथवा धारा 6 के अधीन उसे देशीयकरण संबंधी प्रमाण-पत्र प्रदान करने के लिए उनके द्वारा प्रयोग की जाये, शक्तियों का निम्नलिखित द्वारा भी प्रयोग किया जाएगा-

(क) निम्नलिखित जिलों के संबंध में कलेक्टर, जिसकी अधिकारिता में आवेदक साधारणतया निवासी है -

- गुजरात राज्य में मोरबी, राजकोट, पाटन एवं बड़ौदरा;
- छत्तीसगढ़ राज्य में दुर्ग तथा बलौदाबाज़ार;
- राजस्थान राज्य में जालौर, उदयपुर, पाली, बाड़मेर तथा सिरोही;
- हरियाणा राज्य में फरीदाबाद; तथा
- पंजाब राज्य में जालंधर।

(ख) हरियाणा के फरीदाबाद जिले तथा पंजाब के जलंधर जिले के सिवाय हरियाणा एवं पंजाब राज्यों के गृह विभाग के सचिव, जिनकी अधिकारिता में आवेदक साधारणतया निवासी है, नागरिकता नियम, 2009 (जिसे इसमें इसके पश्चात उक्त नियम कहा जाएगा) के उपबंधों के अनुसार निम्नलिखित शर्तों के अधीन रहते हुए प्रयोग किया जायेगा, अर्थात् :-

- (अ) उक्त नियमों के अधीन आवेदक द्वारा भारत के नागरिक के रूप में रजिस्ट्रीकरण या भारत के नागरिक के रूप में देशीयकरण प्रमाणपत्र प्रदान किए जाने के लिए आवेदन आनलाइन किया जाएगा ;
- (आ) आवेदक का सत्यापन यथास्थिति, कलक्टर अथवा सचिव द्वारा जिला एवं राज्य स्तर पर साथ-साथ किया जाएगा तथा आवेदन-एवं उससे संबंधित रिपोर्ट केन्द्रीय सरकार को एक साथ आनलाइन पोर्टल पर उपलब्ध कराई जाएगी ;
- (इ) आवेदक की उपयुक्तता को सिद्ध करने के लिए, यथास्थिति, कलक्टर अथवा सचिव, जैसा आवश्यक समझे वैज्ञानिक कराएगा तथा उस प्रयोजन के लिए उस आवेदन को आनलाइन ऐसे अभिकरणों की सत्यापन और टिप्पणियों के लिए भेजेगा जो ऐसी जांच पूर्ण करने के लिए अपेक्षित हो और इस संबंध में केन्द्रीय सरकार द्वारा समय-समय पर जारी अनुदेशों का संबंधित राज्य या संघ राज्य क्षेत्र और जिला द्वारा कठोर अनुपालन किया जाएगा;
- (ई) खंड (इ) में निर्दिष्ट अभिकरणों की टिप्पणियों को ऐसी अभिकरणों द्वारा आनलाइन अपलोड किया जाना है तथा इन्हें, यथास्थिति, कलक्टर अथवा सचिव और केन्द्रीय सरकार को उपलब्ध कराया जाना है ;
- (उ) यथास्थिति, कलक्टर अथवा सचिव, आवेदक/आवेदिका की उपयुक्तता के संबंध में संतुष्ट होने पर आवेदक/आवेदिका को रजिस्ट्रीकरण अथवा देशीयकरण द्वारा भारतीय नागरिकता प्रदान करेगा और उक्त नियमों में यथाविहित प्रारूप में आनलाइन पोर्टल से सम्यक् रूप से मुद्रित तथा यथास्थिति, कलक्टर या सचिव द्वारा हस्ताक्षरित यथास्थिति, रजिस्ट्रीकरण या देशीयकरण का प्रमाणपत्र जारी करेगा;
- (ऊ) उक्त नियमों के अनुसार कलक्टर और सचिव द्वारा एक आनलाइन के साथ-साथ भौतिक रजिस्टर भी रखा जाएगा जिसमें भारत के नागरिक के रूप में इस प्रकार रजिस्ट्रीकृत अथवा देशीयकृत व्यक्तियों का ब्यौरा होगा तथा उस रजिस्टर की एक प्रति ऐसे रजिस्ट्रीकरण अथवा देशीयकरण के सात दिन की अवधि के भीतर केन्द्रीय सरकार को भेजी जाएगी ।

2. यह आदेश राजपत्र में इसके प्रकाशन की तारीख को प्रवृत्त होगा और आगामी आदेशों तक विधिमाम्य होगा।

[फा.सं. 26030/266/2014-आईसी-II(खंड-II)(पार्ट.)]

सुमंत सिंह, संयुक्त सचिव

MINISTRY OF HOME AFFAIRS

(Foreigners Division)

ORDER

New Delhi; the 28th May, 2021

S.O. 2069(E).—In exercise of the powers conferred by section 16 of the Citizenship Act, 1955 (57 of 1955), the Central Government hereby directs that powers exercisable by it, for registration as a citizen of India under section 5, or for grant of certificate of naturalisation under section 6, of the Citizenship Act, 1955, in respect of any person belonging to minority community in Afghanistan, Bangladesh and Pakistan,

[फा.सं. 26030/266/2014-आईसी-II(खंड-II)(पार्ट.)]

सुमंत सिंह, संयुक्त सचिव

namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians (hereinafter referred to as "the applicant"), residing in the districts mentioned in clause (a) below and the States mentioned in clause (b) below, shall also be exercisable by —

(a) the Collector, within whose jurisdiction the applicant is ordinarily resident, in relation to the districts of -

- (i) Morbi, Rajkot, Patan and Vadodara in the State of Gujarat ;
- (ii) Durg and Balodabazar in the State of Chhattisgarh ;
- (iii) Jalore, Udaipur, Pali, Barmer and Sirohi in the State of Rajasthan ;
- (iv) Faridabad in the State of Haryana ;
- (v) Jalandhar in the State of Punjab ;

(b) the Secretary of the Department of Home of the States of Haryana and Punjab within whose jurisdiction the applicant is ordinarily resident, except the district of Faridabad in Haryana and the district of Jalandhar in Punjab, in accordance with the provisions of the Citizenship Rules, 2009 (hereinafter referred to as the said rules), subject to following conditions, namely :-

(A) the application for registration as citizen of India or grant of certificate of naturalisation as citizen of India under the said rules shall be made by the applicant online;

(B) the verification of the application is done simultaneously by the Collector or the Secretary, as the case may be, at the district level and the State level and the application and the reports thereon shall be made accessible simultaneously to the Central Government on online portal;

(C) the Collector or the Secretary, as the case may be, makes such inquiry as he considers necessary for ascertaining the suitability of the applicant and for that purpose forwards the application online to such agencies for verification and comments as may be required for completing such an inquiry and the instructions issued by the Central Government from time to time in this regard shall be strictly complied with by the State or Union territory and District concerned ;

(D) the comments of the agencies referred to in clause (C) are uploaded online by such agencies and accessible to the Collector or the Secretary, as the case may be, and the Central Government ;

(E) the Collector or the Secretary, as the case may be, on being satisfied with the suitability of the applicant, grants him the citizenship of India by registration or naturalisation and issues a certificate of registration or naturalisation, as the case may be, duly printed from online portal and signed by the Collector or the Secretary, as the case may be, in the Form as prescribed in the said rules; and

(F) the Collector and the Secretary shall maintain an online as well as physical register, in accordance with the said rules, containing the details of the person so registered or naturalised as a citizen of India and furnish a copy thereof to the Central Government within seven days of such registration or naturalisation.

2. This Order shall come into force on the date of its publication in the official Gazette and shall remain valid until further orders.

[F. No. 26030/266/2014-IC-II (Vol.II) (Pt.)]

SUMANT SINGH, Jt. Secy.