

P L D 1999 Peshawar 18

Before Mahbub Ali Khan, C.J.
and Mian Muhammad Ajmal, J

GHULAM SANAI---Petitioner

versus

THE ASSISTANT DIRECTOR, NATIONAL REGISTRATION
OFFICE, PESHAWAR and another---Respondents

Writ Petition No.572 of 1995, decided on 10th September, 1998.

(a) National Registration Act (LVI of 1973)---

---S. 4---Constitution of Pakistan (1973), Art.199---Constitutional petition---
Issuance of National Identity Card---Father of petitioner was an Afghan
Refugee---National Identity Card which was issued to father of petitioner was
cancelled as same was obtained on furnishing false information---Validity---
Long stay of a person in foreign country, would not automatically convert any
person to be citizen of that country unless nationality was acquired by process of
law---Afghan refugees being foreigners and not citizens of Pakistan could not be
issued National Identity Cards. [pp. 19, 21] A & C

The long stay of a foreigner in a foreign country would not
automatically convert him to be the citizen of that country unless he acquired the
nationality by process of law. The Afghan refugees had been provided refuge in
Pakistan temporarily and they being not the citizen of Pakistan were governed by
the Foreigners Act, 1946 (Act XXXI of 1946) and not by the provisions of
Citizenship Act which was not applicable to them. According to the definition of
'Foreigner' given in section 2(a) of the Act XXXI of 1946, 'Foreigner means a
person who is not a citizen of Pakistan' hence an Afghan refugee being a
foreigner and not a citizen of Pakistan could not be issued a national identity
card under section 4 of the National Registration Act, 1973 (Act LVI of 1973)
which can only be issued to Pakistani citizens. [p. 21] C

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

---Ss. 3, 4 & 5---Citizenship---Person born in Pakistan after the commencement
of Pakistan Citizenship Act, 1951, shall be a citizen of Pakistan by descent if his
father was a citizen of Pakistan at the time of his birth. [p. 20] B

(c) Foreigners Act (XXXI of 1946)---

---S. 2(a)---Pakistan Citizenship Act (II of 1951), Preamble---Constitutional
petition---Afghan Refugees---Status---Applicability of provisions of Citizenship
Act, 1951---Afghan refugees had been provided refuge temporarily and they

being not citizens of Pakistan are governed by Foreigners Act, 1946, and not by
Citizenship Act, 1951, which was not applicable to them. [p. 19] A

(d) National Registration Act (LVI of 1973)---

---S. 4---Registration of citizens---Major person, who was citizen of Pakistan
had to get himself registered in accordance with provisions of National
Registration Act, 1973, whereas such minor persons had to be got registered by
their parents or guardians. [p. 21] D

(e) National Registration Act (LVI of 1973)---

---Ss. 4 & 11---Registration---False statement or information---Attestation---
Verification of such statement or information---Effect---Any person obtaining
National Identity Card on furnishing false statement or information and any
person who attested and verified such statement or information, could be
punished under S.11 of National Registration Act, 1973. [p. 22] E

A. Latif Yousafzai for Petitioner.

Tasleem Hussain for Respondents.

Date of hearing: 10th September, 1998.

JUDGMENT

MIAN MUHAMMAD AJMAL, J.---Through this Constitution petition
under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973,
Ghulam Sanai, petitioner, has prayed to direct the respondents to issue him a
National Identity Card and to refrain them from doing anything against him
which they are not permitted by law to do and to act in accordance with law.

2. According to the averments of the writ petition the petitioner was born
at Peshawar of the parents who are permanent citizen of Pakistan and is residing
at Gulbahar No.1 in his own house and passed his Middle Standard Examination
from Peshawar. On attaining the age of 18 years he applied for the issuance of
National Identity Card to respondent No.1 under section 4 of the National
Registration Act, 1973; that identity card was issued to his father in accordance
with law and thereafter Passport No.B113115 was also issued to his father,
therefore, refusal of the respondents to issue National Identity Card to the
petitioner is illegal, arbitrary without lawful authority and of no legal effect.

3. The respondents submitted their parawise comments to the writ petition
wherein it was stated that Ghulam Sakhi, father of the petitioner is Afghan
refugee and he obtained the National Identity Card by submitting false
information, hence it has been cancelled. Rejoinder to the comments was filed
by the learned counsel for the petitioner to which counter-rejoinder was filed by
the respondents.

A

4. We have heard the learned counsel for the parties and have perused the available record with their assistance.

5. The main question involved in this petition is whether the petitioner can be deemed to be a citizen of Pakistan on account of his alleged birth at Peshawar. Learned counsel for the petitioner mainly pressed into service section 4 of the Pakistan Citizenship Act, 1951 (Act II of 1951) which reads as follows:--

"4. Citizenship by birth.--Every person born in Pakistan after the commencement of this Act shall be a citizen of Pakistan by birth:

Provided that a person shall not be such a citizen by virtue of this section if at the time of his birth--

- (a) his father possesses such immunity from suit and legal process as is accorded to an envoy of an external sovereign power accredited in Pakistan and is not a citizen of Pakistan; or
- (b) his father is an enemy alien and the birth occurs in a place when under occupation by the enemy."

He argued that by virtue of the aforesaid provision of law any person born in Pakistan after the commencement of the Act shall be a citizen of Pakistan by birth irrespective of the nationality of his/her parents. Section 4 of the Act cannot be read in isolation and independently of the other sections of the Act. Section 5 of the Act is more relevant for the purpose of this case which is reproduced hereinbelow:--

"5. Citizenship by descent.--Subject to the provisions of section 3 a person born after the commencement of this Act shall be a citizen of Pakistan by descent if his father is a citizen of Pakistan at the time of his birth:

Provided that if the father of such person is a citizen of Pakistan by descent only, that person shall not be a citizen of Pakistan by virtue of this section unless--

- (a) that person's birth having occurred in a country outside Pakistan the birth is registered at a Pakistan Consulate or Mission in that country, or where there is no Pakistan Consulate or Mission in that country (at the prescribed Consulate or Mission or) at a Pakistan Consulate or Mission in the country nearest to that country; or
- (b) that person's father is, at the time of the birth, in the service of any Government in Pakistan."

Sections 4 and 5 of the Act ibid read together would provide that every person born in Pakistan after the commencement of the Act shall be a citizen of Pakistan

by birth and subject to the provisions of section 3 a person born after the commencement of the Act shall be a citizen of Pakistan by descent, if his father is a citizen of Pakistan at the time of his birth. Haji Ghulam Sakhi father of the petitioner an Afghan refugee, on false information managed to obtain the National Identity Card and Pakistan Passport which have been cancelled. The petitioner and his father has also purchased immovable property at Peshawar. Their stance is that they have been living in Pakistan since long and intend to remain in Pakistan, therefore, they have become Pakistan national. Para. 2 of the rejoinder to the comments filed by the petitioner is reproduced below:--

"2. The corresponding para. 2 of the writ petition is correct. Copies of the sales deed are Annexure 'A' and 'B' to the writ petition is a proof of the fact that the father of the petitioner is living in Pakistan since long and they have the intention to remain in Pakistan."

The long stay of a foreigner in a foreign country would not automatically convert him to be the citizen of that country unless he acquires the nationality by process of law. The Afghan refugees have been provided refuge in Pakistan temporarily and they being not the citizen of Pakistan are governed by the Foreigners Act, 1946 (Act XXXI of 1946) and not by the provisions of Citizenship Act which is not applicable to them. According to the definition of 'Foreigner' given in section 2(a) of the Act (XXXI of 1946), 'Foreigner means a person who is not a citizen of Pakistan' hence an Afghan refugee being a foreigner and not a citizen of Pakistan cannot be issued a National Identity Card under section 4 of the National Registration Act, 1973 (Act LVI of 1973) which can only be issued to Pakistani citizens. Section 4 of the Act VI of 1973 reads as follows:--

"4. Registration of citizens.--(1) Within such time as the Federal Government may, by notification in the official Gazette, specify in his behalf--

- (a) every citizen in or out of Pakistan who has attained the age of eighteen years shall get himself; and
 - (b) a parent or guardian of every citizen who has not attained that age shall get such citizen, registered in accordance with the provisions of this Act.
- (2) An application for registration shall be made in such form and to such authority as may be prescribed; and
 - (3) The birth of a newly born citizen, and the death of a citizen who has not attained the age of eighteen years, shall be reported to the District Registrar by such authority or officer as may be prescribed."

6. It is manifest from the above-quoted law that a major citizen of Pakistan has to get himself registered in accordance with the provision of the Act LVI of

1973 whereas minor citizens have to be got registered by their parents or guardian. 'Citizen' has been defined in Act LVI of 1973 to be a person who is, or is deemed to be a citizen of Pakistan under the Citizenship Act, 1951. Any person who is not a citizen of Pakistan if obtains National Identity Card on furnishing false statement or information and/or contravene any other provisions of the Act or the Rules, and the person who attests or verifies such statement or information can be punished under section 11 of Act LVI of 1973 besides any other penalty to which they may be liable under any other law.

7. The petitioner is neither a citizen nor deemed to be a citizen of Pakistan under the Citizenship Act, 1951, therefore, he is not entitled to the issuance of National Identity Card.

Consequently this writ petition is dismissed with costs.

Q.M.H./M.A.K./198/P

Petition dismissed.

PLD 1999 Peshawar 22

Before Muhammad Azam Khan, J

MIR HUSSAIN---Petitioner

versus

Mst. NASIM AKHTAR---Respondent

Civil Revision No.1 of 1997, decided on 11th December, 1998.

North-West Frontier Province Pre-emption Act (X of 1987)---

---S. 13---Civil Procedure Code (V of 1908), O.VI, R.17---Suit for pre-emption---Amendment of plaint---Plaintiff, during pendency of suit, filed application under O.VI, R.17, C.P.C. for amendment of plaint in order to give details of "Talbs"---Plaintiff in his plaint had clearly mentioned that "Talbe-Muwathibat" was claimed by him through notice, but description of "Talbs" was not endorsed therein---Trial Court, in circumstances, had rightly allowed amendment in plaint. [p. 24] A

PLD 1985 SC 345 and 1998 SCMR 2102 ref.

Muhammad Ayub Khan for Petitioner.

S.M. Abdul Wahab for Respondent.

Date of hearing: 11th December, 1998.

JUDGMENT

Mir Hussain (hereinafter)