

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF MARCH, 2023

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.14333 OF 2022 (GM - RES)

R

BETWEEN:

1 . ██████████
D/O. AMEENA RAHIL,
AGED ABOUT 17 YEARS.

2 . ██████████
AGED ABOUT 14 YEARS.

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██████████ OAD,
██████████ .
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██████████ OAD,
BENGALURU – 560 004.

... PETITIONERS

(BY SRI S.SUDHARSAN, A/W SRI ANIRUDH A.K., ADVOCATES)

AND:

- 1 . UNION OF INDIA
REPRESENTED BY ITS SECRETARY,
MINISTRY OF HOME AFFAIRS,
NORTH BLOCK,
CENTRAL SECRETARIAT,
NEW DELHI,
DELHI - 110 001.

- 2 . DEPUTY COMMISSIONER
BENGALURU URBAN DISTRICT,
DC OFFICE,
BENGALURU,
KARNATAKA – 560 009.

- 3 . MINISTRY OF EXTERNAL AFFAIRS
UNION OF INDIA
SOUTH BLOCK
NEW DELHI - 110 001
REPRESENTED BY ITS SECRETARY.

... RESPONDENTS

(BY SRI ADITYA SINGH, CGC FOR R1 AND R3;
SRI B.V.KRISHNA, AGA FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE RESPONDENTS TO CONSIDER THE REPRESENTATION DTD 05.05.2022 OF THE PETITIONERS THROUGH THEIR MOTHER, PRODUCED HERewith AS ANNEXURE-J AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioners are before this Court seeking a direction by issuance of a writ in the nature of *mandamus* to consider their representation dated 05-05-2022 filed through their mother, natural guardian for issuance of a passport in their favour and also grant them citizenship in terms of law.

2. Heard Sri S.Sudharsan, learned counsel appearing for the petitioners, Sri Aditya Singh, learned Central Government Counsel appearing for respondents 1 and 3 and Sri B.V. Krishna, learned Additional Government Advocate for respondent No.2.

3. Brief facts that lead the petitioners to this Court in the subject petition, as borne out from the pleadings, are as follows:-

The petitioners are the children of one Smt. Ameena Rahil and Sri. Assad Malik, mother and father, who will be hereinafter referred to as such. The mother of the petitioners is an Indian citizen. The father of the petitioners is a Pakistan national. Marriage between the two would take place on 11-04-2002 at Dubai, United Arab Emirates (UAE). The petitioners were born from the wedlock

at the UAE and are currently aged 17 and 14 years respectively. Long after the marriage and birth of the petitioners herein there were non-compatible issues between the father and the mother and accordingly, they approached the jurisdictional personal Court at Dubai. The Court on considering the application in terms of personal laws applicable to wife and the husband dissolves the marriage on 07-09-2014. After the dissolution of marriage, the mother of the petitioners was conferred with permanent and sole custody of the minor children i.e., the petitioners herein. The husband had himself relinquished all his claims over the custody of his children and had filed such an agreement before the concerned Court at Dubai. Therefore, the petitioners are in the custody of the mother is the averment which is in tune with the records produced.

4. The petitioners then approached the Indian Consulate at Dubai and submitted a representation in the prescribed form for conferring Indian citizenship and the Consulate appears to have directed them to surrender the Pakistan passport which the petitioners had in their favour being the children of Sri Assad Malik, the father who was a Pakistan national. The petitioners then

surrendered the Pakistan passport with the Indian Consulate in Dubai. It is, therefore, Islamic Republic of Pakistan Consulate issued a no objection to correspond with the Indian Consulate at UAE and completion of formalities.

5. When the petitioners wanted to come to India, they had no Indian passport. At that point in time, the Indian Consulate at Dubai on a representation made by the petitioners had given temporary Indian passport on 31-05-2021 with an endorsement that citizenship status of the petitioners is pending with the Ministry of Home Affairs and passport is issued on humanitarian grounds. The petitioners, on the strength of the temporary passport, travelled to India and are now staying in India with their mother. That passport having expired, the petitioners submitted representations to the concerned and have been so representing for the last one year. Those representations having gone unheeded, the petitioners are driven to this Court in the subject petition, seeking a direction by issuance of a writ in the nature of *mandamus* for consideration of their cases for conferment of citizenship right as sought in the representations.

6. The learned counsel appearing for the petitioners would contend that the petitioners are in a situation where they have no identity. They have surrendered their Pakistan passports that they had which were granted to them on the strength of their father being a Pakistan national. Temporary passports granted to the petitioners clearly indicated that citizenship status of the petitioners was pending before the Ministry of Home Affairs. The situation now is that the petitioners are nowhere without an identity. Since the mother of the petitioners is an Indian citizen and the marriage between the Pakistan national and the mother, an Indian citizen is dissolved by a competent Court of law, the petitioners will have to be treated as children of an Indian citizen and be granted Indian citizenship accordingly and consequently passports in their names.

7. On the other hand, the learned Central Government Counsel Sri Aditya Singh representing the respondents 1 and 3 would vehemently refute the submissions to contend that it cannot be such an easy task as is projected by the petitioners. The Constitution of India does not permit dual citizenship. The Citizenship Act, 1955 ('the Act' for short) mandates that one has to

surrender citizenship of another country to become a citizen of India. The Pakistan Citizenship Act, 1951 does not permit surrender of citizenship of any person unless he/she crosses 21 years age. Therefore, unless the petitioners surrender their citizenship, they cannot be conferred citizenship by this country. The petitioners will have to wait till completion of 21 years for grant of any citizenship, as it can only be considered after surrender of their existing citizenship of the other country. He would contend that mere surrender of passports before Pakistan Consulate would not mean that they have renounced their existing citizenship. He would, therefore, contend that the petition be dismissed.

8. The learned counsel for the petitioners, in reply to the aforesaid submission, would submit that he has filed an application seeking amendment of the petition raising a challenge to the communication rejecting the request of the petitioners on 29-09-2022 and also bringing to the notice of this Court that the 1st petitioner has attained the age of 18 years and it is only the 2nd petitioner who is now represented by the mother, legal guardian. He would contend that the ground on which the communication

comes about is erroneous as it has directed that the petitioners may apply in terms of Section 5(1)(d) read with Section 2(1)(b) of the Act and seeks grant of relief as prayed for.

9. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

10. The afore-narrated facts, though are not in dispute, may require a little elaboration. The story of the issue begins on 11-04-2002, when the mother of the petitioners who at that point in time was an Indian national i.e., holding Indian citizenship, gets married to one Sri Ashrad Malik holding Pakistani citizenship. From their wedlock on 15-10-2004 the 1st petitioner is born and on 12-01-2008 the 2nd petitioner is born.

11. The entire family right from the date of marriage as aforesaid, was residing in UAE/Dubai. The marriage also had taken place in Dubai. After about 12 years of their marriage, disputes arose between the couple and accordingly they applied for a divorce before the Court of competent jurisdiction in UAE. The concerned

Court in terms of the order dated 07-09-2014 dissolves the marriage between the couple. While doing so, the custody of the children was granted to the mother. The mother then continues to stay in UAE. It is the averment in the petition that it became difficult for her to continue to stay in Dubai and, therefore, wanted to come back to India as she was an Indian citizen. But, the children did not have an Indian passport. The mother represents before the Authorities seeking grant of an Indian passport. The passport is granted on humanitarian grounds with the following note:

"DUBA/CONs/431/28/2021

31 MAY 2021

Citizenship status of the applicant is pending with MHA and passport is issued on humanitarian grounds."

(Emphasis added)

With the afore-quoted endorsement the passport was granted to the 1st child i.e., the daughter. Same kind of passport was issued to the 2nd child, the son. On the strength of grant of aforesaid passports, the Consulate General of India, Dubai issues a certificate in favour of the 1st petitioner reading:

"TO WHOMSOEVER IT MAY CONCERN

Miss Aisha Malik who was holding Pakistani passport No.BZ0760723 has been issued Indian Passport No. V7740976 by Consulate General of India, Dubai with validity from 31-05-2021 till 30-05-2022. Her Pakistani passport with UAE visa stamp (validity till 10-02-2023) has been surrendered in Consulate General of India, Dubai.

This Certificate is issued on being requested by the applicant's mother to produce before Immigration authorities during exit from UAE."

Similar certificate is also issued in favour of the 2nd petitioner. It is indicated that the 1st petitioner was holding a Pakistani passport, which is indicative of the fact that she was a Pakistani citizen and now she had been issued Indian Passport by the Consulate General of India, Dubai which was to be valid up to 30-05-2022. Her Pakistani passport which was to expire on 10.02.2023 had been surrendered in the Consulate General of India, Dubai. A certificate was issued for production before the Immigration authorities at Dubai during exit. The children come to India, complete their studies at Jyoti Nivas Pre-University College and Oakridge International School and the mother submits a representation on 05-05-2022 seeking Indian citizenship to the children. The representation dated 05-05-2022 reads as follows:-

"From:
Ameena Rahil,
#34, Sri Rama Mandira Road,
Basavanaguri, Bangalore-560 004

Date:05-05-2022

To
Ministry of Home Affairs,
North Block, New Delhi-110 001
India.

Sub: Request to accord of Indian Citizenship in favour of my Minor children –

- 1. Ahmed Mali, S/o Ameena Rahil, Aged about 14 years.*
- 2. Aisha Malik, D/o Ameena Rahil, Aged about 17 years.*

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I, Ameena Rahil, a teacher by profession, an Indian Citizen, hold an Indian passport. I am currently based in Bangalore. I submit that I had been employed and based out in United Arab emirates (Dubai) for the last 30 years. I hereby address my subject representation to your Good office as under:-

- 1. I submit that during my stay in UAE, Dubai my marriage was contracted with one Mr. Assad Malik a Pakistani national on April 11, 2002 in accordance with Shariah law.*
- 2. **That thereafter, out of the wedlock two children i.e., the subject mentioned individuals were born in UAE, Dubai and they are currently aged 17 and 14 respectively. On account of their birth in UAE, they were conferred the residential status therein and as per the extant law, they were accorded the status of citizenship of Islamic Republic of Pakistan, since their father is a Pakistani National. I further submit that, their birth came to be registered with the Consulate of Pakistan at UAE. On account of same the subject individuals were the holders of***

Pakistani passport issued by the Islamic Republic of Pakistan.

3. *When things stood thus, due to irreconcilable difference between my husband and myself, we had decided to dissolve our marriage by way of mutual consent. Accordingly, we had approached the jurisdictional Personal Court in Dubai, UAE for the same and vide order dated 7th September 2014 the marriage came to be dissolved. The copy of the divorce order is produced herewith as Annexure-A.*
4. *Thereafter, due to aforesaid separation I was conferred the permanent and sole custody of the subject minor children. It is pertinent to note that their father, Mr. Assad Malik had relinquished his claims over the custodial matter of our children. The agreement entered to this effect ratified by the jurisdictional personal Court is produced herewith as Annexure-B.*
5. *Thereafter, on account of the aforesaid separation, I had decided to return to my parental house in Bengaluru, in order to seek support and as well as cater to such other needs of my minor children, as I had no means of subsistence in Dubai, UAE. In order to effect the same I had further decided to apply for Indian Citizenship for my minor children.*
6. *Accordingly, I had approached the Indian Consulate at Dubai, UAE and made a representation for conferring Indian citizenship to my minor children. On the basis of my representation, I was informed by the Indian Consulate that one of the pre-conditions for the same is that my children had to surrender their Pakistani citizenship and their Pakistani passports with the Pakistan Consulate in Dubai, UAE. Upon completion of the formalities two endorsements both dated 3-06-2021 came to be issued certifying to the effect that the Pakistani passports as held by my minor children were effectively surrendered with the Indian Consulate in Dubai, UAE, copies of the Endorsements are produced herewith as Annexure-C and Annexure-D respectively.*

7. *Thereafter upon my representation my minor children were conferred Indian passport on 31-05-2021 with an endorsement stating "Citizenship status of the applicant is pending with MHA and passport is issued on humanitarian grounds". Copies of the passport as issued to my minor children are produced as Annexure-E and Annexure-F respectively.*
8. *In view of the aforesaid passports my minor children are currently are residents of India and are residing with me at my parental home in Bengaluru. Copies of the academic records substantiating the submission are collectively produced herewith as Annexure-G.*
9. *In view of the foregoing my children are entitled for citizenship by registration in the manner as contemplated by Section 5(1)(d) of the Citizenship Act, 1955. I further submit that my application on behalf of my minor children has pending consideration on the file of your good officers for the last one year.*
10. *I further urge your good offices that any further delay in granting citizenship to my minor children shall impair their future and my minor children shall be deprived of Right to Life as conferred under Article 21 of the Indian Constitution. Furthermore, as I being an Indian citizen and as well as being the only custodial guardian of my minor children, and as a result they are entitled for Indian citizenship under Section 5(1)(d) of the Citizenship Act, 1955.*

I further urge before your good offices that I being a single parent having source of my subsistence in Bengaluru request your good offices to consider subject representation in a favourable manner."

(Emphasis added)

When the respondents did not reply to the representation, the petitioners knocked at the doors of this Court seeking a direction to consider the representation so submitted. During the pendency of

the writ petition, the representation comes to be rejected on 29-09-2022. The order of rejection reads as follows:

To

*Mrs. Ameena Rahil,
34, Sri Rama Mandira Road,
Basavanagudi,
Bangalore – 560004, Karnataka.*

Subject: Request to accord status of Indian Citizenship in favour of minor children (1) Master Ahmed Malik, S/o Mrs. Ameena Rahil, Aged about 14 years and (1) Miss. Aisha Malik, D/o AmeenaRahil, Aged about 17 years.

Madam,

I am directed to refer to your representation dated 05-05-2022 on the subject mentioned above and to inform that:

(i) As per extant procedure, any eligible foreigner who wish to apply for Indian Citizenship, has to apply online only at MHA website <https://indiancitizenshiponline.nic.in> under relevant section of the Citizenship Act, 1955. The applicant has to take print out of the submitted application and to submit the application along with requisite documents to the District Collector/DM/DC of his area/ locality.

(ii) Citizenship Rules, 2009 has been notified by the Central Government in exercise of the power conferred by Section 18 of the Citizenship Act, 1955 (57 of 1955). In terms of Rule 11 of the Citizenship Rules, 2009 (at Annexure-I), an application for registration under Section 5 or naturalization under section 6 of the Citizenship Act, 1955 may be submitted by eligible foreigners to the Collector within whose jurisdiction the applicant is ordinarily resident and on the receipt of the application, the Collector shall issue an acknowledgment in Form IX. Thereafter before forwarding the application to the State Government or the Union Territory Administration, as the case may be, the Collector shall administer to the applicant, who has

applied for grant of citizenship by registration, the oath of allegiance as specified in the Second Schedule to the Citizenship Act, 1955.

(iii) In terms of Rule 12(1) of the Citizenship Rules, 2009, the Collector shall forward every application received by him under clauses (a), (c), (d), (e), (f) and (g) of sub-section (1) of Section 5 or sub-section (1) of Section 6 to the State Government or the Union territory administration, as the case may, within a period of sixty days from the date of its receipt along with a report as to whether the applicant –

- (a) Satisfies all the conditions laid down in the relevant clauses of Section 5 or Section;*
- (b) Has an intention to make India his permanent home;*
- (c) Has signed the oath of allegiance as specified in the Second Schedule to the Citizenship Act, 1955; and*
- (d) Is of good character and is a fit and proper person to be registered or naturalized as the case may be, as a citizen of India.*

(iv) In terms of Rule 12(2) of the Citizenship Rules, 2009 (at Annexure-II), the State Government or the Union territory Administration, as the case may be, shall forward the application along with its recommendations and the report of the Collector, to the Central Government within a period of thirty days from the date of receipt of the report of the Collector under sub-rule (1).

(v) The Ministry vide letter dated 16-09-2019 (Annexure-III) had decided that any physical (paper mode) application/forwarding letter/supporting documents for Indian citizenship irrespective of the submission date, shall not be accepted by the Ministry w.e.f. 15th October 2019 and shall be returned to the authority concerned. It was also decided that the original/documents and hard copies of supporting documents shall not be forwarded to the Ministry in offline mode and instead these shall be kept in the offices of authorities for record, after uploading the same in online citizenship module.

(vi) AS per extant procedure for processing the citizenship applications, all relevant documents are uploaded by the District Collector an thereafter

citizenship case file is processed by District Collector and the State Government in online mode in the citizenship module and thereafter it is sent online to this Ministry. The Central Government dispose the application in terms of the provisions of the Citizenship Act, 1955 and rules made there under specially Rule 13-15 of the Citizenship Rules, 2009.

2. It is informed that the citizenship of India is governed by the provisions of the Citizenship Act, 1955 and rules made there under. Further details in this regard, kindly visit MHA website <https://indiancitizenshiponline.nic.in>

3. After examining the case, it has been observed that you have not applied for grant of Indian citizenship in respect of minor children online so far. One of the parents (mother) of the minor children is an Indian citizen whereas father of the children is a Pakistan national. In order for consideration under Section 5(1)(d) of the Citizenship Act, 1955, both the parents are required to be Indian citizen. Therefore, the children are not eligible for registration as Indian citizen in terms of Section 5(1)(d) read with Section 2(1)(b). However, you may apply under relevant section on fulfilling the requirements as per the provisions of the Citizenship Act, 1955 and rules made thereunder. Your representation is hereby disposed of

4. This issues with the approval of the competent authority."

(Emphasis supplied)

The representation is disposed of with the aforesaid direction that the mother has to make an application in accordance with the Act with all the necessary documents that are required to consider the representation.

12. The submission of the learned counsel for the petitioners that the children are entitled to the Indian citizenship cannot at this juncture be accepted as the father of the children was a citizen of Pakistan, a Pakistani national and the mother, an Indian citizen an Indian national both of whom did not reside in India but were residing in Dubai. After the divorce was granted by the Dubai Court, custody of the petitioners was handed over to the mother. By then, the children had been declared to be citizens of Pakistan by virtue of the father being a Pakistani national. In fact, children held Pakistan citizenship and Pakistan passports. It now becomes germane to notice Sections 4 and 5 of the Citizenship Act, 1955 and they read as follows:

*“4. **Citizenship by descent.**-(1) A person born outside India shall be a citizen of India by descent,-*

(a) on or after the 26th day of January, 1950, but before the 10th day of December, 1992, if his father is a citizen of India at the time of his birth; or

(b) on or after the 10th day of December, 1992, if either of his parents is a citizen of India at the time of his birth:

Provided that if the father of a person referred to in clause (a) was a citizen of India by descent only, that person shall not be a citizen of India by virtue of this section unless—

- (a) *his birth is registered at an Indian consulate within one year of its occurrence or the commencement of this Act, whichever is later, or, with the permission of the Central Government, after the expiry of the said period; or*
- (b) *his father is, at the time of his birth, in service under a Government in India.*

Provided further that if either of the parents of a person referred to in clause (b) was a citizen of India by descent only, that person shall not be a citizen of India by virtue of this section unless-

- (a) *his birth is registered at an Indian consulate within one year of its occurrence or on or after the 10th day of December, 1992, whichever is later, or, with the permission of the Central Government, after the expiry of the said period; or*
- (b) *either of his parents is, at the time of his birth, in service under a Government in India:*

Provided also that on or after the commencement of the Citizenship (Amendment) Act, 2003, a person shall not be a citizen of India by virtue of this section, unless his birth is registered at an Indian consulate in such form and in such manner, as may be prescribed,-

- (i) *within one year of its occurrence or the commencement of the Citizenship (Amendment) Act, 2003, whichever is later; or*
- (ii) *with the permission of the Central Government, after the expiry of the said period;*

Provided also that no such birth shall be registered unless the parents of such person declare, in such form and in such manner as may be prescribed, that the minor does not hold the passport of another country.

(1A) A minor who is a citizen of India by virtue of this section and is also a citizen of any other

country shall cease to be a citizen of India if he does not renounce the citizenship or nationality of another country within six months of attaining full age.

(2) If the Central Government so directs, a birth shall be deemed for the purposes of this section to have been registered with its permission, notwithstanding that its permission was not obtained before the registration.

(3) For the purposes of the proviso to sub-section (1), any male person born outside undivided India who was, or was deemed to be, a citizen of India at the commencement of the Constitution shall be deemed to be a citizen of India by descent only.

5. Citizenship by registration.- (1) Subject to the provisions of this section and such other conditions and restrictions as may be prescribed, the Central Government may, on an application made in this behalf, register as a citizen of India any person not being an illegal migrant who is not already such citizen by virtue of the Constitution or of any of the other provision of this Act if he belongs to any of the following categories: –

(a) a persons of Indian origin who are ordinarily resident in India seven years before making an application for registration;

(b) a person of Indian origin who is ordinarily resident in any country or place outside undivided India;

(c) a person who is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration;

(d) minor children of persons who are citizens of India;

(e) a person of full age and capacity whose parents are registered as citizens of India under clause(a) of this sub-section or sub-section (1) of section 6;

(f) a person of full age and capacity who, or either of his parents, was earlier citizen of independent India, and [ordinarily resident in India for twelve months] immediately before making an application for registration;

(g) a person of full age and capacity who has been registered as an [Overseas Citizen of India Card holder] for five years, and who [is ordinarily resident in India for twelve months] before making an application for registration.

Explanation 1.—For the purposes of clauses (a) and (c), an applicant shall be deemed to be ordinarily resident in India if –

- (i) he has resided in India throughout the period of twelve months immediately before making an application for registration; and*
- (ii) he has resided in India during the eight years immediately preceding the said period of twelve months for a period of not less than six years.*

Explanation 2.-For the purposes of this sub-section, a person shall be deemed to be of Indian origin if he, or either of his parents, was born in undivided India or in such other territory which became part of India after the 15th day of August, 1947.]

(1A) The Central Government, if it is satisfied that special circumstances exist, may after recording the circumstances in writing, relax the period of twelve months, specified in clauses (f) and (g) and clause (i) of Explanation 1 of sub- section (1), up to a maximum of thirty days which may be in different breaks.

2) No person being of full age shall be registered as a citizen of India under sub-section (1) until he has taken the oath of allegiance in the form specified in he Second Schedule.

(3) No person who has renounced, or has been deprived of, his Indian citizenship or whose Indian citizenship has terminated, under this Act shall be registered as a citizen of India under sub-section (1) except by order of the Central Government.

(4) The Central Government may, if satisfied that there are special circumstances justifying such registration, cause any minor to be registered as citizen of India.

(5) A person registered under this section shall be a citizen of India by registration as from the date on which he is so registered; and a person registered under the provisions of clause(b)(ii) of article 6 or article 8 of the Constitution shall be deemed to be a citizen of India by registration as from the commencement of the Constitution or the date on which he was so registered, whichever may be later.

(6) If the Central Government is satisfied that circumstances exist which render it necessary to grant exemption from the residential requirement under clause (c) of sub-section (1) to any person or a class of persons, it may, for reasons to be recorded in writing, grant such exemption."

(Emphasis supplied)

Section 4 of the Act prohibits dual citizenship, as, if a citizen who is beyond 18 years or a minor cannot be a citizen of this Country, as well as of any other country. Section 5(1)(d) permits citizenship to those children whose parents are citizens by India origin, notwithstanding the fact that they are residing outside India. Therefore, to claim citizenship under Section 5(1)(d) of the Act, both parents of those children who seek to claim, must be Indian

citizens. In the light of the afore-quoted legal framework, the communication made by the Consulate General of India, Dubai on the representation of the mother requires to be noticed. It reads as follows:

"DUBA/CONS/402/01/2021(127) 20TH April, 2021

The Consulate General of India, Dubai presents its complements to the Consulate General of Islamic Republic of Pakistan, Dubai and has the honour to convey that this Consulate was approached by Ms. Ameena Rahil an Indian national, holder of Indian passport number S8134339, married to Mr. Assad Liaquat Saeed a Pakistani national, holding passport number DV5976462, and are currently divorce, for Indian nationality/passport for her children, namely:

- i. Ahmed Assad Liaquat Saeed Malik, Pakistani Passport No.DF1165652.***
- ii. Aisha Malik, Pakistani Passport No.BZ0760723***

2. As per the process laid down for registration of a child under Section 4(1) of the Citizenship Act, 1955, Consulate General of India, Dubai, will consider the request for grant of passport to Master Ahmed Assad Liaquat Saeed Malik and Miss Aisha Malik, minor children, provided they renounce their Pakistani nationality. Once they surrender their Pakistani nationality and passport, they may apply for registration by birth and passport at this Consulate.

3. the Consulate General of India, Dubai avails itself of this opportunity to renew to the Consulate General of the Islamic Republic of Pakistan, Dubai, the assurances of its highest consideration."

(Emphasis added)

The Consulate General of India, Dubai communicates to the Consulate General of the Islamic Republic of Pakistan, Dubai bringing to the notice of the Pakistan Authorities that they have been approached by the mother of the children, an Indian national holding an Indian passport who is married to Ashrad Malik, the Pakistani national holding Pakistan passport for grant of Indian nationality for her children. It has been indicated therein that on renunciation of Pakistan nationality and surrendering passport, they may apply for registration of birth and passport at the Consulate General of India, Dubai. The Consulate further observes that opportunity to renew the passport in the Consulate General of the Islamic Republic of Pakistan, Dubai was also open. It now becomes germane to notice the Pakistan Citizenship Act, 1951. Section 14-A of the Pakistan Citizenship Act, 1951, reads as follows:

"14-A. Renunciation of citizenship.- (1) *If any citizen of Pakistan residing outside Pakistan, who is not a minor and:-*

- (a) *is also a citizen or national of another country, or*
- (b) *has been given by the competent authority of another country any valid document assuring him of the grant of the citizenship or nationality of that other country upon assuring him of the grant of the citizenship or nationality of that other country upon renouncing his citizenship of Pakistan, makes in the prescribed manner a declaration renouncing his*

citizenship of Pakistan, makes in the prescribed manner declaration renouncing his citizenship of Pakistan, the declaration shall be registered by the prescribed authority; and upon such registration that person shall cease to be a citizen of Pakistan:

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

(2) *Where a male person ceases to be a citizen of Pakistan under subsection (1)-*

(a) *Every such minor child of that person as is residing outside Pakistan shall thereupon cease to be a citizen of Pakistan:*

Provided that any such child may, within one year of his completing the age of twenty-one years, make a declaration that he wishes to resume the citizenship of Pakistan and shall upon the making of such declaration become a citizen of Pakistan; and

(b) *Every such minor child of that person as is residing in Pakistan shall continue to be a citizen of Pakistan."*

*Section 14-A of the Pakistan Citizenship Act, 1951, deals with renouncement of citizenship of Pakistan. A child can renounce the citizenship of Pakistan or regain within one year after completion of 21 years of age.¹ The reply rendered by the Consulate General of the Islamic Republic of Pakistan requires to be noticed. It reads as follows:

¹ *Section 14-A is quoted drawing from an open source available on the internet

"No.DXB-N-5/2021/029

29th April, 2021

The Consulate General of the Islamic Republic of Pakistan, Dubai presents its compliments to the Consulate General of India and has the honour to refer to their Note Verbale No.Duba/Cons/402/01/2021 (127),dated 20th April 2021 regarding renunciation of Pakistani Citizenship of children of Mr. Assad Liaquat.

Under Section 14-A of Pakistan Citizenship Act, 1951 only an individual above the age of 21 can apply for his/her renunciation of Citizenship of Pakistan by virtue of which his/her minor children (below the age of 21) residing outside Pakistan, cease to be citizen of Pakistan. Therefore, minor child cannot renounce the citizenship of Pakistan himself/herself.

The Consulate General of the Islamic Republic of Pakistan, Dubai has no objection if the esteemed Consulate General of India, Dubai may grant Indian nationality to Ahmed Assad Liaquat Saeed Malik holder of Pakistani Passport No.DF 1665652 and Aisha Malik holder of Pakistani passport No.BZ0760723.

The Consulate General of the Islamic Republic of Pakistan, Dubai avails itself of this opportunity to renew to the Consulate General of India, Dubai the assurances of its highest consideration."

(Emphasis added)

The Consulate General of the Islamic Republic of Pakistan in the aforesaid reply observes that under Section 14-A of the Pakistan Citizenship Act, 1951 only an individual above the age of 21 can apply for his/her renunciation of citizenship of Pakistan by virtue of which his/her minor children below the age of 21 residing outside Pakistan will cease to be citizen of Pakistan. It is categorically

indicated that minor children cannot renounce citizenship of Pakistan by himself/herself. The Pakistan Authorities would further indicate that they have no objection for grant of Indian nationality to the children. Therefore, the situation is now under the Act, no person can hold dual citizenship, be it a minor or a person beyond the age of 18 years.

13. Admittedly, both the children who have now knocked at the doors of this Court, even as on date are citizens of Pakistan, as their citizenship has not been renounced in terms law of the Islamic Republic of Pakistan. Unless they renounce the citizenship of Pakistan, they cannot become citizens of this Country. It is not a case where these children are without citizenship or landless or Stateless. Even as on date they are citizens of the Islamic Republic of Pakistan. It is the laws of Pakistan that do not permit them to renounce citizenship of Pakistan. The Consulate General of the Islamic Republic of Pakistan at Dubai is categorical in his reply that a minor child/children cannot renounce the citizenship of Pakistan till they attain the age of 21 years. Unless, they renounce the citizenship of Pakistan, the Citizenship Act, 1955 does not grant

citizenship to those persons who are already citizens of another country and who also hold passports of any other country, be it a major or a minor. If laws of Pakistan are inflexible to a situation of this kind; so are the laws of this nation, which cannot be made flexible in the peculiar facts of this case. The children who are now seeking Indian citizenship can seek only after they renounce the citizenship of Pakistan as admittedly, the biological father is a citizen of Pakistan. The children are declared to be citizens of Pakistan. The mother may be an Indian citizen, unless violence is done to the language of the Citizenship Act, 1955, the children cannot be granted citizenship as they are already citizens of Pakistan and this Court by its order would not indulge in any such violence to the language of the mandate of the statute.

14. Section 5(1)(d) of the Act mandates that both the parents are required to be Indian citizens for the purpose of grant of citizenship to the minors and, therefore, it is clearly indicated in the order that all the documents which would be necessary for grant of citizenship should be produced before the Authorities. If the law elsewhere i.e., Pakistan does not permit renunciation of citizenship

by minors up to a certain age, the law of this nation would not permit grant of citizenship to such persons. Therefore, it is for the mother of the petitioners to produce all the documents necessary before the concerned Authorities in India for an Indian citizenship to be accorded in terms of the Act. To iterate, the children as on today are not Stateless. They are citizens of Pakistan. They have only surrendered the passport but they have not renounced citizenship of Pakistan, mere surrender of the passport does not amount to renunciation of citizenship. Unless such renunciation comes about, no directions could be issued to the Ministry of External Affairs, to consider the case of the mother for grant of citizenship to the children. Therefore, it is for the mother, to place all those materials that are sought for by the Authorities, to consider grant of such citizenship in favour of the petitioners. No *mandamus* would lie in the peculiar facts of this case.

15. For the aforesaid reasons, the following:

ORDER

a. The petition stands rejected.

b. The rejection of the writ petition will however not come in the way of the respondents – Authorities in considering the case of the petitioner, in the event, they fulfill all the necessary requirements as is observed in the communication dated 29.09.2022.

c. In the event, the Authorities would reconsider, they shall bear in mind the observations made in the course of the order.

I.A.No.1 of 2022 also stands disposed.

**Sd/-
JUDGE**

bkp
CT:MJ