

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.110 of 2014

1. Shri Caetano R. Silva,
Son of Shri Joao Roque,
Aged 54 years,
Resident of H.No.1560-A,
Vasvaddo, Benaulim,
Salcete, Goa .. Petitioner

V/s

1. Prescribed Authority,
Minister of Home Affairs,
NDCC-II Building,
Jai Singh Road, New Delhi.
2. Secretary,
Minister of Home Affairs,
Government of India,
North Block, New Delhi.
3. Shri John Fernandes,
Major in age,
Resident of H.No.152,
Novangully, Varca,
Salcete, Goa.
4. State of Goa, represented
by the Home Secretary having
his office at Secretariat
Complex, Porvorim, Bardez,
Goa. .. Respondents

Mr. Valmiki Menezes and Mr. Aksay Shirodkar,
Advocates for the petitioner.

Mr. M. Amonkar, Central Government Standing Counsel
for the respondent nos.1 and 2.

Mr. S. S. Kantak, Senior Advocate with Mr. P.
Talaulikar and Mr. Ryan Menezes, Advocates for the

respondent no.3.

Mr. Amir Jamdar, Additional Government Advocate for the respondent no.4.

CORAM :- C. V. BHADANG, J.

**Reserved on : 5th May, 2016/
14th October, 2016.**

Pronounced on : 20th October, 2016

JUDGMENT :

Whether the petitioner has ceased to be a citizen of India, on account of the petitioner voluntarily getting his birth registered in the Central Registry of Births at Lisbon, Portugal (Central Registry at Lisbon), is the question which falls for determination in this petition.

2. Brief facts necessary for the disposal of the petition may be stated thus :

That the petitioner was born in Benaullim village, Salcete, Goa on 21/10/1959 and his birth is registered under entry no.3125 of the Registrar of

Births maintained under "Codigo Registro Civil", which was then in force in Goa, which was under a Portuguese Colonial Rule. The petitioner is a registered voter from Benaolim constituency at Serial No.445 of part 21 of electoral roll of 32, Benaolim constituency for the Legislative Assembly of State of Goa. The petitioner had contested the election to the Goa Legislative Assembly as a candidate of Goa Vikas Party (GVP) on 06/03/2012 and has been declared elected and is presently a member of the Legislative Assembly (MLA) from the said constituency.

3. Ms. Valanca Alemao, one of the contesting candidates from the said constituency, has filed Election Petition No.1/2012 against the petitioner for setting aside the election of the petitioner, which is pending before this Court. The challenge in the said petition is on a similar ground, namely the petitioner having ceased to be a citizen of India, on account of the petitioner voluntarily getting his birth registered in the Central Registry

at Lisbon, Portugal and thereby being disqualified from contesting the election and being elected as a MLA.

4. On 09/01/2013, third respondent Mr. John Fernandes filed a petition before the Prescribed Authority of the Government of India under Section 9(2) of the Citizenship Act, 1955 (the Act of 1955, for short) read with Rule 30 and Schedule III of the Citizenship Rules, 1956 (the Citizenship Rules, 1956, for short) against the petitioner for the following reliefs :

"a) It be declared that the respondent is a Portuguese national;

b) It be declared that the respondent has voluntarily given up the citizenship of India in terms of Article 9 of the Constitution of India;

c) The name of the respondent be ordered to be deleted from the electoral rolls and from all other records wherein he has been entered as citizen of India;

d) Any other order as deemed fit and

proper."

5. It was contended that the petitioner voluntarily got his birth registered in the Central Registry at Lisbon at registration No.977517 of the year 2010 on 21/07/2010 and as a result of the same, has ceased to be a citizen of India. A notarised copy of the birth certificate (Exh.D) was produced before the Prescribed Authority. Reliance was placed on Article 9 of the Constitution of India which provides that no person shall be citizen of India by virtue of Article 5 or be deemed to be citizen of India by virtue of Article 6 or Article 8, if he has voluntarily acquired the citizenship of any foreign State. It was contended that the petitioner, suppressing this fact, had contested the election to the Goa Legislative Assembly and got elected.

6. It was contended that as per the citizenship certificate and the annotation thereon, Portuguese nationality has been conferred on the

petitioner under Article 1 of the Decree Law 37/81 of 3rd October.

7. The Prescribed Authority issued a show cause notice dated 17/05/2013 to the petitioner along with the copy of the petition filed by the third respondent Mr. John Fernandes. On 29/05/2013, the petitioner filed a reply to the said petition and produced certain documents. Indisputably, the petitioner was heard by the Joint Secretary, Ministry of Home Affairs on 04/10/2013 and 24/10/2013.

8. From 28/10/2013 to 11/11/2013, there was exchange of certain correspondence between Ministry of Home Affairs, Government of India and Indian Embassy in Portugal. Copies of these communications were not supplied to the petitioner. Ultimately, the Prescribed Authority i.e. the Deputy Secretary, Ministry of Home Affairs, passed an order on 20/11/2013, operative part of which reads thus :

"Now, therefore, the Central Government in exercise of the powers conferred on it under Section 9(2) of the Citizenship Act, 1955 and rules made there under determines that Shri Caetano Rosario Silva resident of Goa ceased to be a citizen of India from the date he registered his birth with the Central Registry of Births, Marriages and Deaths of Lisbon as Portuguese national w.e.f. 21/07/2010."

9. Feeling aggrieved, the petitioner has approached this Court for issuance of a writ of certiorary or any other appropriate writ, order or direction under Article 226 of the Constitution of India for quashing and setting aside the aforesaid order.

10. This Court had issued rule in the petition on 29/04/2014 and it was made returnable in four weeks and interim stay of the impugned order was granted. MCA No.351/2014 was filed by the third respondent for vacating the interim relief. This Court while disposing of the said MCA on 18/06/2014

had expedited the petition by fixing it for final hearing on peremptory basis. It is in these circumstances that the petition is heard and is being disposed of.

11. I have heard Shri Valmiki Menezes, the learned Counsel appearing for the petitioner and Shri Amonkar, the learned Central Government Standing Counsel for the first and second respondent. I have also heard Shri Kantak, the learned Senior Counsel for the third respondent and Shri Jamdar, Additional Government Advocate for the fourth respondent.

12. It is submitted on behalf of the petitioner that as per the additional affidavit filed on behalf of the respondent nos.1 and 2, the Competent Authority / Officer under Section 9 of the Act is the Deputy Secretary. It is submitted that however, the petitioner was heard by Joint Secretary, Ministry of Home Affairs. It is thus, contended that the Authority, which has decided, has not heard the

petitioner, which has resulted into violation of principles of natural justice.

13. The learned Counsel for the petitioner has referred to the scheme of Section 9(2) of the Act of 1956 and the Citizenship Rules, 1956, framed thereunder, in order to submit that it envisages that the Central Government initially forms an opinion on the basis of the documentary and other material collected, which has then to be put to the person, who is proceeded against. It is submitted that the show cause notice must contain some material to support such satisfaction of the Central Government. It is contended that the show cause notice is totally silent as to the material on the basis of which a prima facie opinion was formed and thus, the notice itself would be vitiated. It is submitted that the notice has to be accompanied by such material produced or collected. However, except a copy of the complaint/ petition by Mr. John Fernandes, no other document was supplied to the petitioner. The learned Counsel submitted that

subsequent to the hearing granted to the petitioner (i.e. on 04/10/2013 and 24/10/2013), there was exchange of correspondence between the Home Ministry and the Indian Embassy in Portugal during the period from 28/10/2013 to 11/11/2013 which has neither been put to the petitioner nor has he been afforded opportunity to meet the same. It is, thus, submitted that there is a violation of the principles of natural justice, causing serious prejudice to the petitioner. The learned Counsel was at pains to point out that loss of status of citizenship has serious civil consequences and such status cannot be disturbed lightly and without following the principles of natural justice.

14. It is next submitted that the impugned order also does not show that the grounds raised and the documentary evidence produced by the petitioner, was considered by the prescribed Authority. It is submitted that there is nothing on record as to how the Indian embassy in Portugal came to the conclusion about the petitioner voluntarily getting

his birth registered in Portugal.

15. It is submitted that the petitioner is holding an Indian passport and had travelled abroad several times. The learned Counsel submitted that at no point of time the petitioner had voluntarily or otherwise applied for acquisition of Portuguese nationality or for registration of his birth in the Central Registry at Lisbon, Portugal and the finding to that effect, is clearly vitiated as being perverse and not borne out of record. It is contended that the petitioner and several other similarly placed persons having opted for Indian citizenship, are still considered by the Portugal Government as Portuguese nationals, as per their law namely, Law No.2098 of 29/07/1959, Law No.2112 of 17/02/1962 and Law Decree No.308-A/75 of 24/06/1975, for no fault of theirs.

16. It is contended that the prerequisite for acquisition of citizenship in Portugal is requirement of production of "criminal record

certificate" from the concerned police authorities of the State where the applicant resides. It is contended that the petitioner has never obtained any 'criminal record certificate', from Police Authorities in Goa which is evident from the communication dated 07/10/2013 addressed by the fourth respondent to the first respondent. It is, thus, submitted that the impugned order is vitiated, requiring interference. On behalf of the petitioner, reliance is placed on several decisions of the Apex Court in (i) **Rashid Javed and others vs. State of Uttar Pradesh and another**, reported in (2010)7 SCC 781, (ii) **State of M.P. and others vs. Sanjay Nagyach and others**, reported in (2013)7 SCC 25 (iii) **Gullapalli Nageswara Rao and others Vs. Andhra Pradesh State Road Transport Corporation and another**, reported in AIR 1959 SC 308; (iv) **Luis de Reedt Vs. Union of India**, reported in 1991(3) SCC 554, (v) **Gangadhar Bhandare Vs. Erasmo De Jesus Sequiria**, reported in AIR 1975 SC 972 (vi) **Dipali Katia Chadha (Ms) Vs. Union of India**, reported in (1996)7 SCC 432 (vii) **Mohammad Ayub Khan Vs.**

Commissioner of Police, reported in AIR 1965 SC 1623, decisions of this Court in (viii) **State Vs. Sharifbhai Jamalbhai**, reported in CDJ 1958 BHC 065 and (ix) **Sondur Rajini Vs. Sondur Gopal**, reported in 2005(4) MhLJ 688, decision of Allahabad High Court in (x) **Abdul Salam Vs. Union of India** reported in AIR 1969 Allahabad 223, decision of Punjab and Haryana High Court in (xi) **Mohammad Ibrahim Vs. Union of India** reported in AIR 1967 Punjab 339 and a Full Bench derision of Jammu and Kashmir High Court in (xii) **S. Mohsin Shah vs. The Union of India**, reported in AIR 1974 Jammu & Kashmir and (xiii) **Brijlal Zumbarlal Sarda Vs. Amrulla Asdulla Irani and others**; CDJ 1986 BHC 098.

17. It is submitted that the third respondent is acting at the behest of Valanca Alemao, who has filed election petition against the petitioner, which is evident from the fact that the compilation produced before the Prescribed Authority is verbatim reproduction of the compilation produced in the

election petition.

18. The learned Counsel has also referred to a letter dated 26/08/2013 written by the then Home Minister to the Home Secretary (at page 228 of compilation) and office note dated 23/10/2013 signed by the officer on special duty (OSD) to the Home Minister, calling a meeting on 25/10/2013 in his chamber, in which the Joint Secretary was called for discussion on the petition, filed by the third respondent. It is pointed out that the said meeting on 25/10/2013 was on the very next day of the hearing granted to the petitioner on 24/10/2013. It is, thus, submitted that the entire matter was cooked up and the Competent Authority had already formed an opinion and a mere show of an opportunity of hearing, was made.

19. The main submissions opposing the petition were advanced by the learned Senior Counsel appearing for the third respondent.

20. It is submitted by Shri Kantak, the learned Senior Counsel for the respondent no.3 that a specific case is made out in para 5 of the petition, filed before the Competent Authority that the petitioner herein has been conferred with Portuguese Nationality under Article 1(1)(C) of the Law No.37/1981, upon his birth being registered in the Central Registry at Lisbon. It is submitted that the confirmation of Portuguese Nationality has been endorsed in the birth certificate (Exh.D), in the following words :

"Portuguese Nationality has been given under Article 1, no.1, paragraph (c) of Law No.37/1981 of 3rd October, process No.34884/Sit/09 of Central Registrar of Lisbon."

It is submitted that as per 1981 and 2006 law, such an endorsement is sufficient to prove all the contents and the fact of such birth being registered. It is, thus, submitted that on and from 21/07/2010, the petitioner has ceased to be an Indian citizen as Article 5 of the Constitution of

India does not envisage a dual citizenship.

21. It is submitted that although in para 2 of the reply filed by the petitioner before the Competent Authority, the petitioner has reserved a right to file a detailed reply, the petitioner had met all the material contentions in his reply. It is pointed out that in para 8, the petitioner has given the names of his parents/ grandparents, which match with those mentioned in the certificate Exh.D. It is pointed out that it is not the case made out that there are some other persons having the same name as the parents/ grandparents of the petitioner at Benaulim. It is submitted that thus, the certificate Exh.D cannot be faulted. The learned Senior Counsel has pointed out that it is not necessary for a person to have visited Portugal for getting his birth registered. The learned Senior Counsel has referred to the Portuguese Nationality Regulations, 2006, in order to submit that visit to Portugal is not necessary for registration of such birth. The learned Senior Counsel has pointed out

paras 15 and 20 of the reply filed by the petitioner before the Competent Authority, in order to show that birth certificate Exh.D was specifically put to the petitioner herein and he has been afforded an opportunity to meet the same. The learned Senior Counsel has referred to Rule 40 of the Citizenship Rules, 2009, in order to submit that for the purposes of subsection (2) of Section 9 of the Act of 1955, the Central Government may determine the issues as to whether, when or how any citizen of India had acquired a citizenship of any other country. It is pointed out that as per Rule 40(2) of the Citizenship Rules, 2009, the Central Government while determining any such issue, shall have due regard to the rules of procedure specified in Schedule III. It is submitted that as per clause (1) of Schedule III, where it appears to the Central Government that a citizen of India has voluntarily acquired a citizenship of any other country, it may require him to prove within such period, as may be fixed by it in that behalf that he has not voluntarily acquired the citizenship of that country

and burden of proving that he has not so acquired such citizenship, shall be on the person concerned. It is pointed out that under Clause 5(c) of Schedule III, in determining whether a citizen of India has or has not voluntarily acquired a citizenship of any other country, the Central Government may consider any circumstances, which may be relevant for the purpose. It is submitted that the Competent Authority, after considering the reply filed by the petitioner and the communication from the Indian Embassy in Portugal, has rightly come to the conclusion that the petitioner, having voluntarily got his birth registered in the Central Registry at Lisbon, has ceased to be a citizen of India. It is submitted that Police Clearance Certificate is not a requirement for registration of birth in Portugal.

22. It is submitted that although the petitioner had filed three applications seeking certain documents, those were intended to show *malafides* and were not on the merits of the matter. He has referred to the e-mails dated 29/01/2013

(pages 274-275 of the compilation), dated 25/01/2013 (pages 276-277 of the compilation), in order to submit that Indian Embassy in Portugal had confirmed about the registration of birth by the petitioner on 21/07/2010 and the petitioner being a Portuguese citizen. It is submitted that the matter involves two aspects, namely (i) factum of registration of birth and (ii) its legal effect. It is submitted that once the factum of registration of birth is established, the legal effect is that the petitioner would acquire Portuguese Nationality and would consequently, cease to be an Indian citizen. It is submitted that a decision of the Foreign country, cannot be a subject matter which can be examined before this Court.

23. It is submitted that annotation on Exh.D is sufficient and the confirmation from Portugal Government is not a new document. It is pointed out that after 24/10/2013 i.e. the day on which the petitioner was afforded an opportunity of hearing, no other document has been considered or relied upon

by the Competent Authority. In so far as the contention of the petitioner about the Authority, which heard the petitioner, not being competent and not having passed the impugned order is concerned, the learned Senior Counsel has referred to grounds i.e. (k) and (l) in the petition, in order to submit that this specific ground is not raised. It is submitted that the petitioner was heard by the Joint Secretary (Foreigners) in the presence of Deputy Secretary, which is a Competent Authority and the petitioner has not demonstrated any prejudice. It is submitted that in the absence of any prejudice being demonstrated, the order cannot be vitiated on this count.

24. Shri Amonkar, the learned Central Government Standing Counsel has supported the impugned order. The learned Counsel has referred to affidavit of Shri Anand Joshi, Under Secretary, Ministry of Home Affairs. It is submitted that the petitioner has an efficacious remedy under the provisions of the Act of 1955, which he has not

availed of. It is submitted that under Section 15 of the Act of 1955, any person aggrieved by an order made under the Act by the Prescribed Authority, other than Central Government, is entitled to prefer a Revision Petition to the Central Government and under Section 15-A of the said Act, an aggrieved person can also file an application for review. The learned Counsel has submitted that there is sufficient material on record for the Competent Authority to have come to the conclusion that the petitioner has ceased to be a citizen of India, on the petitioner voluntarily getting his birth registered in the Central Registry at Lisbon. It is submitted that the petitioner was also afforded an opportunity of personal hearing on 04/10/2013 and 24/10/2013 and as such, there is no breach of principles of natural justice. It is submitted that all relevant documents have been put to the petitioner, which would be apparent from his reply as the petitioner has sought to meet the same. The learned Counsel has then referred to the affidavit of one Mahendra Kumar, Deputy Secretary

(Citizenship), Ministry of Home Affairs. It is submitted that the Deputy Secretary/ Director, is the designated Prescribed Authority as per the Office Order dated 08/03/2010, which has been issued to streamline the processing of such cases. It is submitted that the matter was heard by the Joint Secretary, who is the Reviewing Authority in the presence of Deputy Secretary. It is submitted that the impugned order is issued by the Under Secretary. It is submitted that the impugned order dated 20/11/2013 was submitted through the Deputy Secretary to the Joint Secretary, who is superior to the designated Prescribed Authority. It is thus, submitted that the petition is without any merit.

25. I have carefully considered the rival circumstances and the submissions made.

26. The following points arise for my determination in this case :

(1) Whether the impugned order is vitiated on account of the fact that the Authority,

which has heard the petitioner, was neither a Competent Authority nor is the Authority, which has passed the impugned order ?

(2) Whether the impugned order is vitiated on account of breach of principles of natural justice ?

(3) Whether the impugned order is vitiated on account of bias and/ or malafides ?

(4) Whether the petitioner has voluntarily got his birth registered in the Central Registry of Births at Lisbon, Portugal and has consequently, ceased to be a citizen of India ?

(5) What order ?

27. POINT NO.1 :

It is not in dispute that the petitioner was born in Benaullim village, Salcete, Goa on 21/10/1959 and his birth is registered under entry No.3125 of Registrar of Births, maintained under Codigo Registro Civil, which was then in force in

Goa, which was under a Portuguese Colonial Rule. It is a matter of record that the petitioner is a registered voter from Benaullim Constituency for the Legislative Assembly of State of Goa and that the petitioner is holding an Indian passport.

28. Goa was liberated from the Portuguese Rule on 19/12/1961 and became a part of Indian Territory with effect from 20/12/1961. The Act of 1955 was extended to Goa on 17/03/1962 and the Central Government issued the Goa, Daman and Diu citizenship Order (Citizenship Order, for short) on 28/03/1962, under which every person, who was born or whose parents were born before 20/12/1961 in the said territory (falling under the erstwhile Portuguese Colonial Rule) shall be deemed to have become citizen of India on the said date, provided that such person shall not be deemed to have become a citizen of India as aforesaid, if within one month from the date of publication of the said order, in the official gazette, the said person makes a declaration in writing to the Administrator of Goa,

Daman and Diu or any other Authority specified by him in this behalf to the effect that he chooses to retain the erstwhile citizenship or nationality i.e. before 20/12/1961. It is nobody's case that the petitioner has given any such declaration.

29. Article 5 of the Constitution of India provides for citizenship at the commencement of the Constitution. According to this Article, every person, who has his domicile in the territory of India and who was born in the territory of India or either of whose parents was born in the territory of India or who has been ordinarily resident in the territory of India, for not less than 5 years immediately preceding such commencement, shall be a citizen of India. Article 9 provides that a person voluntarily acquiring citizenship of foreign state shall cease to be a citizen of India. It provides that no person shall be a citizen of India by virtue of Article 5, if he has voluntarily acquired the citizenship of any foreign state. Thus, the whole crux of the issue in the present petition is whether

the petitioner has voluntarily acquired the citizenship of the foreign state, namely Portugal. The contention is that by voluntarily getting his birth registered in Portugal, the petitioner has acquired citizenship of Portugal and has consequently, ceased to be a citizen of India.

30. It would now be necessary to make a reference to Section 9 of the Act of 1955, which reads thus :

"9. Termination of citizenship.- (1) Any citizen of India who by naturalisation, registration or otherwise voluntarily acquires, or has at any time between the 26th January, 1950 and the commencement of this Act voluntarily acquired, the citizenship of another country shall, upon such acquisition or, as the case may be, such commencement, cease to be a citizen of India:

Provided that nothing in this subsection shall apply to a citizen of India who, during any war in which India may be engaged, voluntarily acquires the citizenship of another country, until the

Central Government otherwise directs.

(2) If any question arises as to whether, when or how any citizen of India has acquired the citizenship of another country, it shall be determined by such authority, in such manner, and having regard to such rules of evidence, as may be prescribed in this behalf."

31. It can, thus, be seen that under Section 9(2) of the Act of 1955, if any question arises as to whether, when or how, any citizen of India has acquired the citizenship of another country, it shall be determined by such Authority in such manner and having regard to such rules of evidence, as may be prescribed in this behalf. Section 9(2) of the Act of 1955 has to be read with rule 40 and Schedule III of the Citizenship Rules, 2009 (which corresponds to Rule 30 of the Citizenship Rules, 1956). Rule 40 provides that for the purpose of subsection (2) of Section 9, the Central Government may determine the issue as to whether, when or how any citizen of India had acquired any citizenship of another country. Under subrule (2) of Rule 40, the

Central Government while determining any such issue shall have due regard to the rules of procedure specified in Schedule III thereof. For the present purpose, clauses 1, 2 and 5 of Schedule III would be relevant, which read thus -

"1. Where it appears to the Central Government that a citizen of India has voluntarily acquired the citizenship of any other country, it may require him to prove within such period as may be fixed by it in this behalf, that he has not voluntarily acquired the citizenship of that country; and the burden of proving that he has not so acquired such citizenship shall be on him.

2. For the purpose of determining any question relating to the acquisition by an Indian citizen of the citizenship of any other country, the Central Government may make such reference as it thinks fit in respect of that question or of any matter relating thereto, to its Embassy in that country or to the Government of that country and act on any report or information received in pursuance of such reference.

5. In determining whether a citizen of India has or has not voluntarily acquired the citizenship of any other country, the Central Government may take the following circumstances into consideration, namely:

(a) whether the person has migrated to that country with the intention of making it his permanent home;

(b) whether he has in fact taken up permanent residence in that country; and

(c) any other circumstances relevant to the purpose."

(Emphasis supplied)

It can, thus, be seen that under clause (1) of Schedule III "where it appears to the Central Government" that a citizen of Indian has voluntarily acquired a citizenship of any other country, it may require him to prove, that he has not voluntarily acquired the citizenship of that country and the burden of proving that he has not so acquired such citizenship, shall be on him.

Under clause (2), the Central Government

for determining any such question, may make such reference as it thinks fit in respect of that question or any matter relating thereto, to its Embassy in that country or to the Government of that country and act on any report or information received in pursuance of such reference.

Under clause (5), the Central Government may take into consideration (a) Whether the person has migrated to that country with intention of making it permanent home; (b) Whether he has in fact taken a permanent residence in that country; and (c) any other circumstances relevant to the purpose.

32. In the facts of the present case, clauses (5)(a) and (b) are not applicable. Be that as it may, a bare perusal of Schedule III would show that it casts a heavy burden on the person to prove that he has not voluntarily acquired the citizenship of any foreign country, provided it 'appears', to the Central Government in the first instance, that a citizen of India has voluntarily acquired the

citizenship of any other country. In other words, the Central Government has to be first *prima facie* satisfied that the person has voluntarily acquired citizenship of any other country. It is only then that such satisfaction along with the material supporting it, can be put to the concerned citizen, whereupon it would be for him to prove that he has not so voluntarily acquired the citizenship of that country. It is necessary to emphasis at the cost of repetition that it has to 'appear', to the Central Government, in the first instance that the citizen has voluntarily acquired citizenship of any other country. There cannot be any manner of dispute that loss of citizenship has serious civil consequences as far as the concerned citizen is concerned and such a declaration that a person has ceased to be a citizen of India can be given on specific grounds being made out and which are substantiated. Although any person may claim that a person has lost his citizenship to the notice of the Competent Authority (as has been done in the present case by the respondent no.3), the question whether a person

has ceased to be a citizen, is essentially between the Central Government/ Competent Authority and the person proceeded against, as held by the Division Bench of this Court in the case of **Brijlal Sarda** (supra). In para 8, this Court has held that the matter of citizenship is one between the person, who claims it and the Central Government and no other person is concerned therewith. Be that as it may, the affidavit of Mr. Mahendra Kumar, Deputy Secretary (Citizenship), Ministry of Home Affairs makes it clear that as per the approved channel of submission, the Deputy Secretary/ Director is the designated Prescribed Authority constituted as per the order dated 08/03/2010, while the Joint Secretary is the Reviewing Authority. The affidavit claims that the matter was heard by the Joint Secretary, who is Reviewing Authority however, in the presence of the Deputy Secretary. The petitioner has filed a rejoinder, denying that the Joint Secretary had heard the petitioner "in the presence of the Deputy Secretary (Citizenship) or Deputy Secretary (Foreigners)". It is claimed that

hearing took place before Shri V. Vumbunmang, the Joint Secretary (Foreigners), Ministry of Home Affairs and not before the Deputy Secretary (Citizenship) or Deputy Secretary (Foreigners) or before the Under Secretary of the said Ministry. It is significant to note that para 5 of the impugned order sets out that the petitioner was afforded an opportunity of personal hearing on 04/10/2013 and 24/10/2013 before the Joint Secretary (Foreigners). In the first instance if the Competent Authority constituted for the purpose is the Deputy Secretary, it is the Deputy Secretary, who alone has to afford the hearing to the petitioner and not Joint Secretary. Even assuming that such a hearing was afforded in the presence of the Deputy Secretary, the same cannot serve the purpose. That apart the impugned order does not show that such a hearing was afforded by the Joint Secretary in the presence of the Deputy Secretary. It is trite that the order cannot be supported on the basis of reasons, which are extraneous and which are not found in the order and which are for the first time tried to be brought

on record by virtue of the affidavit of Mr. Mahendra Kumar. Thus, in the first instance, it cannot be accepted that such a hearing was afforded by the Joint Secretary in the presence of the Deputy Secretary and even assuming that it was so afforded in the presence of the Deputy Secretary, it cannot cure the defect. Hon'ble Apex Court in the case of **Rasid Javed** (supra), has *inter alia* held that the person, who hears must decide and that the divided responsibility is destructive of the concept of judicial hearing is too fundamental a proposition to be doubted. Hon'ble Supreme Court has referred to its earlier decision in the case of **Gullapalli Nageswara Rao** (supra). In that case, the rules framed under the Motor Vehicles Act, 1939 imposed a duty on the Secretary to hear and the Chief Minister to decide the question of cancellation of Transport Permit, issued under the Act and such a divided responsibility was held to be destructive of the concept of judicial hearing. It is true that in the present case, the rules do not provide any such divided responsibility, but they clothe the Deputy

Secretary with the necessary powers as the Competent Authority, to decide the matter under Section 9(2) of the Act of 1955. Thus, it is expected that it is the Competent/ Designated officer should hear and decide the matter. It is not necessary to multiply authorities on the point. In my considered view, the very fact that it was the Joint Secretary, who afforded hearing would vitiate the impugned order in as much as it was the Deputy Secretary, who was the Competent Authority while the Joint Secretary was only a Reviewing Authority. Therefore, I answer point no.1 in the affirmative.

33. POINT NO.2 :-

The entire action was initiated on the basis of the petition filed by the third respondent, placing reliance on the birth certificate Exh.D, claiming that by virtue of the same, the petitioner has been conferred with Portuguese Nationality with effect from 21/07/2010. The petitioner received a notice dated 12/03/2013 issued by the Home Secretary, Home Affairs, Government of Goa,

forwarding a copy of the letter dated 19/01/2013, sent by the Ministry of Home Affairs along with a copy of the petition filed by the third respondent. The petitioner filed a reply on 29/05/2013, raising various contentions. The petitioner set out that he was born in Benaullim village, where his birth is registered. He was married on 02/05/1992 which marriage is registered with Civil Registrar, Salcete, Goa. The marriage took place at the Church of St. John de Baptist at Benaullim. The petitioner has two children, who are permanent residents of Benaullim, Salcete, Goa. The petitioner has relied upon 19 documents, including passport/s as set out in para 10 of the reply. The petitioner also claimed that he never visited or entered the republic of Portugal and never intended to adopt or apply for conferring with the citizenship of Portugal. He also claimed that neither he, nor his parents made any declaration to retain any foreign citizenship in terms of the citizenship order. He denied the correctness of the birth certificate produced by the third respondent before the

Competent Authority. The impugned order shows that the Competent Authority has relied upon the petition filed by the third respondent and birth certificate bearing registration No.977517 of the year 2010 from the Civil Registry at Lisbon. It then records that the petitioner was afforded an opportunity of personal hearing on 04/10/2013 and 24/10/2013 before the Joint Secretary (Foreigners). It also records that the petitioner had requested for cross-examination of the third respondent and the perusal of the office records, which was not granted on the ground that rules of procedure prescribed under Rule 40(2) of Citizenship Rules, 2009 do not provide for such cross-examination and there is no past precedent of such practice. It then records that the documents received with the application were referred for verification to the Embassy of India, Lisbon, which has confirmed that the petitioner is a Portuguese National since 21/07/2010 and this is based on his birth registration dated 21/07/2010. It then records that the Embassy of India, Lisbon has also confirmed that

Police Clearance Certificate is not the legal requirement for birth registration in Portugal. Finally, it records that after considering the reports of the State Government and the Security Agency and the written statement of the petitioner, the petitioner has "conclusively" acquired Portuguese Nationality, because of which he "automatically" ceases to be a citizen of India under Section 9(1) of the Act of 1955 from the date of registration of his birth with the Central Registry at Lisbon.

34. At this stage, it would be significant to note that there was exchange of certain correspondence between the Ministry of Home Affairs, Government of India and the Indian Embassy at Portugal from 28/10/2013 to 11/11/2013. This is subsequent to the grant of personal hearing to the petitioner. It is not shown that copies of this correspondence were supplied to the petitioner or he was afforded an opportunity to meet or explain the same. In this regard, a reference may be made to the

three communications. The first is dated 28/10/2013, which is a DO letter addressed to Shri B. B. Tyagi, Ambassador, Embassy of India, Portugal, for seeking verification of the following aspects :

"(i) Confirmation of the name in the Birth Registration against 977517 of 2010.

(ii) Whether the Birth Registration is possible in Portugal without taking Police clearance from the city of residence; and

(iii) Complete copy of the letter dated 19/08/2013 mentioned above may be sent as we have not received the second page of the letter."

By the communication dated 11/11/2013, Indian Embassy at Lisbon, Portugal informed the Ministry of Home Affairs, with regard to point no.2 above, stating that as per the information obtained from "Portuguese Authorities", the Police Clearance Certificate is not the legal requirement for birth registration in Portugal. By a subsequent communication dated 06/11/2013, again from the Embassy of India at Lisbon, Portugal, to the Ministry of Home Affairs, the Embassy confirmed that

the name appearing on the Birth Certificate No.97751 (which in all probability refers to the number 977517) of 2010 is that of Caetano Rosario with surname Silva. This is according to the information sought from the Ministry of Foreign Affairs of the Portuguese Republic. It can be seen that the necessity or otherwise of the Police Clearance Certificate was one of the aspects in dispute, as the petitioner was claiming that such Police Clearance Certificate was necessary and was never obtained and sent by the Government. In that view of the matter, the communication, as referred above, which claims that the Police Clearance Certificate was not necessary, was required to be put to the petitioner. In any event, there is certain correspondence obtained after the petitioner was heard, which has been considered, while passing the impugned order. Therefore, I answer point no.2 in the affirmative.

35. POINT NO.3 :-

The petitioner has relied upon an office

note by OSD to the then Home Minister, dated 23/10/2013, whereby a meeting was called by the then Hon'ble Home Minister regarding disqualification of the petitioner on 25/10/2013. It is contended that the note was issued a day prior to 24/10/2013, when the petitioner was heard and the meeting was called on the very next day. On behalf of the petitioner, reliance is placed on the decision of the Hon'ble Supreme Court in the case of **State of M.P. and others** (supra), in order to submit that the Statutory Authority, clothed with powers to discharge quasi-judicial functions, must act independently. In view of my findings on point nos.1 and 2, I do not find it necessary to dwell on the aforesaid issue, also because I am inclined to send the matter back to the Competent Authority for deciding it afresh, in accordance with law. Consequently, this point would not survive.

36. POINT NO. 4 :-

As noticed earlier, the crux of the matter

is a voluntary act of the petitioner of acquiring the citizenship of Portugal. The impugned order does not record a finding that the petitioner has 'voluntarily got his birth registered', which has the effect of conferral of Portugal citizenship on the petitioner. In my considered view, for this reason also, the impugned order would stand vitiated.

In this regard, a useful reference can be made to the decision of the Supreme Court in the case of **Gangadhar Bhandare** (supra), which arises out of the claim of citizenship with reference to the Goa, Daman and Diu Citizenship Order. In that case, reliance was placed on a declaration (P3), signed by the respondent, who was admittedly born before 20/12/1961 in the then Union Territory of Goa, Daman and Diu. Hon'ble Supreme Court in para 18 of the judgment, has noticed that, but for the declaration P3 signed by the respondent, he would, according to the clause 2 of Citizenship Order, be deemed to have become a citizen of India on 20/12/1961. The question was what is the effect of declaration P3,

which was made by the respondent no.1 on April, 27, 1962 and retention of Portuguese Passport by him after January 1963. The Hon'ble Apex Court found that the respondent signed the declaration P3 and retained Portuguese passport much after January, 1963, because of secret mission, which was entrusted to him, in connection with the affairs of the State. It was, thus, held that the declaration was not signed by the respondent voluntarily and of his own free volition, but it was because of the necessity and of compulsive reason of ensuring the success of secret mission entrusted to him.

It can, thus, be seen that the establishment of some voluntary act which has the effect of conferral of citizenship of foreign country, is a *sine qua non* for the person for ceasing to be a citizen of India. In the case of **Gangadhar Bhandare** (supra), even in the face of the respondent holding a Portuguese passport, which was retained much after January, 1963 and a declaration it was held that, the respondent could not have lost the Indian citizenship. Hon'ble Apex Court in para

24 of the judgment has also noticed that the Government of India had issued a passport in favour of the respondent in 1965 and thereafter in 1970.

37. In the case of **Dipali Chadha** (supra), on which a common reliance is placed by the petitioner and the third respondent, the question was whether the petitioners are entitled to claim citizenship by descent by virtue of Section 4(1) of the Act of 1955 and if so, whether they had voluntarily acquired the citizenship of any other country, since they had obtained passports from Governments of Briton and Finland. Hon'ble Apex Court had directed the Government of India to consider this question afresh keeping in mind the affidavits submitted before the Hon'ble Supreme Court. It was also submitted that before the Government decides under Section 9(2) of the Act of 1955, it will follow the procedure it ordinarily follows while holding such an enquiry. In para 7, Hon'ble Apex Court has held that one of the considerations, which arises is whether the petitioners had voluntarily acquired citizenship of

any other country since they had obtained passports from Governments of Briton and Finland. It can, thus, be seen that in the face of a strong circumstance such as the respondent obtaining passports of foreign countries, it was held that the question whether they have voluntarily acquired the citizenship, still subsists.

38. In the case of **Md. Ayub Khan** (supra), again it was held in para 11 that if according to para 3 of Schedule III of the Citizenship Rules, 2009, a conclusive presumption of voluntary acquisition of citizenship is to be raised from obtaining of the passport from the Government of any other country, it would be implicit that obtaining of a passport was the result of exercise of free volition by the person concerned. Hon'ble Apex Court has held that this is clear from the scheme of Section 9(2) of the Act of 1955 read with Rule 30 of Citizenship Rules, 1956 (which corresponds to Rule 40 of Citizenship Rules, 2009). I thus, find that at this stage, the impugned order lacks the consideration and the

finding as to whether there is any voluntary act on the part of the petitioner in getting his birth registered, assuming that the birth is so registered in Portugal. In view of the fact that I am remitting the matter back, this point is left open to be gone into by the Competent Authority.

39. In the result, the following order is passed :

- (i) The petition is partly allowed.
- (ii) The impugned order dated 20/11/2013 is hereby set aside.
- (iii) The matter is remanded to the Competent Authority for deciding it afresh, in accordance with law.
- (iv) The Competent Authority shall decide the matter as expeditiously as possible and preferably within a period of three months from the receipt of this order.
- (v) Rival contentions of the parties are left open.

(vi) Rule is partly made absolute in the
aforesaid terms, with no order as to
costs.

C. V. BHADANG, J.

SMA