

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5359 of 2019

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Tejilal Prasad @ Tejilal Prasad Gupta aged about 65 years (male), Son of Late Ekballi Sah, Resident of Village, P.O. and P.S. Pirari, District West Champaran.

... .. Petitioner

Versus

1. The Union of India through the Secretary, Home Affairs, New Delhi.
2. The Secretary, Ministry of Home Affairs, Govt of India, New Delhi.
3. The Principal Secretary, Home, Bihar at Patna.
4. The Collector, West Champaran at Bettiah.
5. The Superintendent of Police, Bettiah West Champaran.
6. The Station House Officer, Pirari P.S, District West Champaran.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Amarendra Nath Verma, Advocate.
For the U.O.I.	:	Mrs. Kanak Verma, C.G.C.
For the State	:	Mr. Mrigendra Kumar, AC to GA-4.

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER

2 27-03-2019 Heard the parties.

The present writ application has been filed by the petitioner for termination of Indian citizenship of his son Mukesh Kumar Gupta from the date his son voluntarily acquired citizenship of Nepal.

It has been submitted on behalf of the petitioner that his son namely, Mukesh Kumar Gupta, since his childhood has been living in Nepal at his maternal home and he has started own business at Parsa in Nepal. Somewhere in the year 2016, the son of the petitioner has voluntarily acquired citizenship of



Nepal by naturalization. He has also been allotted PAN 608771308 by the Department of Internal Revenues, Ministry of Finance, Govt of Nepal, and a passport has also been issued to him by the Department of Passport, Ministry of Foreign Affairs, Govt. of Nepal.

It has been further submitted that the son of the petitioner being a citizen of India by virtue of his birth, accordingly, his name has been included in the Voter's List and AADHAR being also issued to him. The son of the petitioner deems it proper to renounce his Indian Citizenship, therefore, the instant writ petition has been filed by the petitioner for termination of Indian Citizenship of his son.

Before considering the issue involved in this writ petition, I must take notice of the relevant provisions of the Indian Citizenship Act, 1955 (herein after referred to as 'the Act'). Under Chapter '**Termination of Citizenship**' Sections 8 & 9 of the said Act read thus;

“8. Renunciation of citizenship.- (1) If any citizen of India of full age and capacity, makes in the prescribed manner a declaration renouncing his Indian Citizenship, the declaration shall be registered by the prescribed authority; and, upon such registration, that person shall cease to be a citizen of India:



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

(2) Where [a person] ceases to be a citizen of India under sub-section (1) every minor child of that person shall thereupon cease to be a citizen of India :

Provided that any such child may, within one year after attaining full age, make a declaration [in the prescribed form and manner] that he wishes to resume Indian Citizenship and shall thereupon again become a citizen of India.

9. Termination of citizenship.- (1) Any citizen of India who by naturalisation, registration 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 sub-section 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.”

There has been a similar provision under Article 9 of the Constitution of India about the ceasation of citizenship of India. Article 9 of the Constitution of India reads thus :

“9. Persons voluntarily acquiring citizenship of a foreign State not to be citizens.- No person shall be a citizen of India by virtue of article 5, or be deemed to be a citizen of India by virtue of article 6 or article 8, if he has voluntarily acquired the citizenship of any foreign State.”

Section 9(2) of the Act, stipulates that if any question arises as to acquisition of 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. The law is well settled that an enquiry under Section 9(2) of the Act, by the Central Government itself or under delegated power of the State Government under Article 258 of the Constitution of India, having of quasi-judicial in nature which requires ‘fairness in action’ from the Government and all its agencies.

In the present case, the person, whose Indian Citizenship is the ‘matter in issue’ has not approached this Court



rather his father has moved this Court, whereas for issuance of writ of Mandamus, the condition precedent is that the petitioner must have a legal right. There must be legally protected and judicially enforceable right before an applicant may claim mandamus. Therefore, the existence of right is thus the foundation of the jurisdiction of a Writ-Court to issue mandamus. Threat to legal right of anyone other than the petitioner under normal circumstances cannot be made subject matter of mandamus. Apart the discussions made above, Rule 40 of the Indian Citizenship Rules, 2009, provides that for the purpose of sub-section (2) of Section 9, the Central Government may determine the issue as to whether, when or how any citizen of India had acquired the citizenship of another country and while determining any such issue the Central Government shall have due regard to the rules of procedure specified in Schedule III of the said Rules. The said Schedule prescribes very specified procedure to be followed and circumstances mentioned therein to be considered in order to determining any question relating to the acquisition of the citizenship of any other country by an Indian Citizen.

In view of the discussions and observations made above, this petitioner must not be allowed to ventilate the



grievance, if any, of his son before this Court, in the facts and circumstances of this case relating to termination of Indian Citizenship of his son.

Therefore, the writ application is, accordingly, dismissed.

It is made clear that while dismissing this writ petition, this Court has not expressed any opinion regarding the Indian citizenship of the son of the petitioner or otherwise.

(Sudhir Singh, J)

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