

IN THE HIGH COURT AT CALCUTTA
ELECTION PETITION JURISDICTION
ORIGINAL SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

GA 4 of 2022
EP/2/2021

ALO RANI SARKAR

-Vs-

SWAPAN MAJUMDAR

For the petitioner:	Mr. Anirban Ray, Adv., Mr. Rajarshi Datta, Adv., Mr. Piyush Agarwal, Adv., Mr. Piyush Ray, Adv., Mr. Agnish Basu, Adv., Mr. Raghav Beriwal, Adv.
For the respondent:	Mr. Jagriti Mishra, Adv., Mr. Arindam Paul, Adv., Ms. Parna Mukherjee, Adv.
For the ECI:	Mr. A. Samanta, Adv., Ms. Nabanita Chatterjee, Adv.

Hearing Concluded on: 13.05.2022

Judgment on: 20.05.2022.

BIBEK CHAUDHURI, J. : –

1. This is an application under Order VII Rule 11(d) of the Code of Civil Procedure (hereafter described as the CPC) filed by the respondent/returned candidate stating, inter alia, that the petitioner Alo Rani Sarkar has no locus standi to file the election petition challenging the general election to the Legislative Assembly for the State of West

Bengal 2021 from Assembly Constituency 96 - Bangaon Dakshin (SC) held on 22nd April, 2021. The result of the said election was declared on 2nd May, 2021.

2. It is alleged by the returned candidate that the petitioner being a foreigner cannot challenge the said assembly election under Sections 80, 80A, 81 read with Sections 100, 123 and 126 of The Representation of the People Act, 1951. It is stated by the respondent/petitioner that an election petition raising a question as to the fair election may be represented by any candidate at such election or any elector. Section 16 of The Representation of the People Act, 1951 disqualifies a person not being a citizen of India from registering his/her name in the electoral role of this country. The Act prohibits a foreigner to be a candidate in the election of legislative assembly of a state as if she is not an elector for any assembly constituency in that State. It is alleged by the respondent that the petitioner has voluntarily surrendered the citizenship of India as per Article 9 of the Constitution on her acquiring citizenship of Bangladesh. Therefore, she was not competent to contest the Assembly Election of 2021. It is further contended by the petitioner that she is a registered voter in Bangladesh and a citizen of Bangladesh. The husband of the petitioner is a Bangladeshi National and a doctor of repute employed as Professor of Medicine in *Sher-e-Bangla* Medical College, Barisal, Bangladesh. After her marriage with the said Bangladeshi National, the petitioner stayed in Bangladesh for more than five years and led her conjugal life with her husband. The relevant law of Bangladesh permits

the spouse of a Bangladeshi National to acquire the citizenship of Bangladesh, if such spouse has been residing in Bangladesh for two or more years. The name of the petitioner was recorded in the electoral roll of Bangladesh. It is provided that every citizen of Bangladesh who is eligible to be a voter in Electoral Roll Act, 2009 of Bangladesh shall have the right to obtain, in the prescribed manner and subject to payment to prescribed fees, a national identity card of the prescribed class issued by the Bangladesh Election Commission. The petitioner is the holder of the National Identity Card of Bangladesh. Therefore, the petitioner cannot claim to be a bona fide citizen of India. In support of his contention the respondent has filed a copy of National Identity Card No.7307645577 issued in the name of the petitioner. In the said National Identity Card, the petitioner is shown as a bonafide voter of Anchal-“Barisal”, Division-Barisal, District-Barisal, Sub-District-Ujirpur, Bangladesh.

3. It is also stated by the respondent that the petitioner submitted an application on 5th November, 2020 before the Secretary to the Election Commission Secretariat, Dhaka requesting him to cancel her citizenship of Bangladesh on the ground that her marital tie with her husband was severed and she returned to India. It is further contended by the respondent that Bangladeshi Citizenship of the petitioner has not been cancelled yet. Therefore, she cannot claim to be a citizen of India. Naturally, she had no right to contest the Assembly Election held on 2021 in the State of West Bengal. She obtained a false voter card in her name and on the strength of the said voter card, she contested 96 Bangaon

Dakshin (SC) Assembly Election. As the petitioner has no locus standi to contest the said election and recording of her name in the electoral role of this country is illegal and void ab initio, she has no right to file the instant election petition challenging the election of the returned candidate/respondent.

4. The petitioner, namely, Alo Rani Sarkar has filed an affidavit-in-opposition denying the material allegations made out by the respondent in his application under Order VII Rule 11(d) of the CPC. Beside denial of the allegation labeled against her in the aforesaid application, it is specifically stated by the petitioner that the respondent previously challenged the maintainability of the election petition filed by the petitioner and by an order dated 13th August, 2021, this Court passed an order holding the election petition maintainable in law and form. It is further stated by the petitioner that she was born in Baidyabati, Hooghly on 22nd March, 1969 and she is a citizen of India by birth under the provision Section 3(1)(1) of the Citizenship Act, 1955. The petitioner is a bona fide holder of a passport, voter identity card, permanent account number card and Aadhar Card issued by the competent authorities in India. She also owns landed property in her name in the State of West Bengal. All these documents prove her citizenship of this country. She further admits that in the year 1980 she got married to one Horendranath Sarkar, who is a citizen of Bangladesh and thereafter resided with him in Bangladesh for few years. Subsequently, due to irreconcilable differences she has broken all marital ties with her husband and presently residing at 7 Tustu Babu

Road within Police Station Kanchrapara. In the first week of November, 2020, she found that her name was erroneously enrolled in the voter list of her husband's native place. Immediately on 5th November, 2020, she made a representation to the Secretary, Election Commission Secretariat, Dhaka requesting him to delete/strike off her name from the voter list of Bangladesh and also for cancellation of her national identity card of Bangladesh. The concerned authority upon spot inspection and on the basis of inquiry observed that the petitioner is an Indian Citizen by birth vide its Memo dated 11th May, 2021 and forwarded the same to the Election Commission Secretariat, Dhaka and other concerned offices for necessary action. The concerned authority in Bangladesh also recommended for deletion of her name from the voter list of Bangladesh by its letter dated 29th June, 2021. On the basis of the said report and recommendation, the Election Commission Secretariat, Dhaka vide its memo dated 9th August, 2021 directed the concerned authorities to delete/strike off the name of the petitioner from the electoral roll of Bangladesh. The petitioner has pleaded that her name was erroneously recorded in the voter list of Bangladesh after her marriage with a Bangladeshi National and she has already taken necessary steps to get her name deleted from the voter list and National Identity Card of Bangladesh. It is also contended by the petitioner that she never gave up the citizenship of India. She was also not a citizen of Bangladesh when she filed nomination paper in the election for assembly constituency No.96-Bongoan Dakshin (SC). In paragraph 8 of the written objection, the

petitioner flatly denied the entry of her name in the National Identity Card and electoral roll of Bangladesh at any point of time. Therefore, the petitioner has prayed for rejection of the application under Order VII Rule 11(d) of the CPC filed by the respondent.

5. Mr. Anirban Ray, learned Advocate for the petitioner submits at the outset that the question as to whether the petitioner is a Bangladeshi national or not, whether the passport, voters identity card, pan card, aadhar card in the name of the petitioner are genuine or not are questions of fact to be determined by the court on the basis of evidence on record. Even assuming that the petitioner is a Bangladeshi national, the election petition filed by the petitioner is not bad in law. In order to substantiate his contention Mr. Ray refers to chapter-II of the Representation of People Act, 1951. Chapter-II of the said Act deals with Presentation of Election Petitions to Election Commission. It is contended by the learned Counsel for the petitioner that in accordance with the provision of Section 80 read with Section 80A of the Representation of People Act, 1951 the election petition is filed by the petitioner. On the following grounds, viz,

- (i) The returned candidate made wrong statement in the affidavit filed along with the nomination paper in respect of his academic qualification.
- (ii) The returned candidate went on campaigning in support of his candidature even within 48 hours before the date of election.

- (iii) The returned candidate with the help of officers and members of Central Reserve Police Force ransacked a good office of the opponent party and created an atmosphere of terror which is detrimental to free and fair election.

6. The respondent filed an application challenging maintainability of the election petition. This Court considered the objection of the returned candidate as to maintainability of the election petition and held that in view of the provision of Section 100(1)(d)(IV) of The Representation of the People Act, 1951 the election petition is maintainable in law and form. Subsequently, the instant application under Order VII Rule 11(d) of the CPC cannot lie. It is submitted by Mr. Ray that the law on the applicability of Order VII Rule 11(d) of the CPC has been settled by the Supreme Court that while considering an application under Order VII Rule 11 CPC, the court has to examine the averment in the plaint and the pleas taken by the defendant in the written statement would be irrelevant. The relevant facts which need to be looked into for deciding an application under Order VII Rule 11 CPC are the averments in the plaint. For the purpose of deciding an application under Clauses (a) and (d) of Order VII Rule 11 CPC, the averments in the plaint are germane. The pleas taken by the defendant in the written statement would be wholly irrelevant at this stage. In support of his contention Mr. Ray refers to a decision of the Hon'ble Supreme Court in **Liverpool and England S.P & I Association**

vs. M.V Sea I & Anr. In the said decision on the question of rejection of plaint, the Hon'ble Supreme Court in paragraph 139 of the report held:-

“139.. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in its entirety, a decree would be passed”.

Finally in paragraph 151 and 152 of the said judgment, the Hon'ble Supreme Court has laid down the ratio as to whether and under what circumstances, a plaint may be rejected on the ground that it does not disclose any cause of action. The said two paragraphs are replicated below:-

“151. In ascertaining whether the plaint shows a cause of action, the court is not required to make an elaborate enquiry into doubtful or complicated questions of law or fact. By the statute the jurisdiction of the court is restricted to ascertaining whether on the allegations a cause of action is shown. In *Vijai Pratap Singh v. Dukh Haran Nath Singh* [AIR 1962 SC 941 : 1962 All LJ 634] this Court held : (AIR pp. 943-44, para 9)

“By the express terms of Rule 5 clause (d), the court is concerned to ascertain whether the allegations made in the petition show a cause of action. The court has not to see whether the claim made by the petitioner is likely to succeed: it has merely to satisfy itself that the allegations made in the petition, if accepted as true, would entitle the petitioner to the relief he claims. If accepting those allegations as true no case is made out for granting relief no cause of action would be shown and the petition must be rejected. But in ascertaining whether the petition shows a cause of action the court does not enter upon a trial of the issues affecting the merits of the claim made by the petitioner. It cannot

take into consideration the defences which the defendant may raise upon the merits; nor is the court competent to make an elaborate enquiry into doubtful or complicated questions of law or fact. If the allegations in the petition, *prima facie*, show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact, or whether the petitioner will succeed in the claims made by him.”

152. So long as the claim discloses some cause of action or raises some questions fit to be decided by a judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. The purported failure of the pleadings to disclose a cause of action is distinct from the absence of full particulars. (See *Mohan Rawale* [(1994) 2 SCC 392]).”

7. Therefore, it is submitted by the learned Advocate for the petitioner that the issue raised by the respondent in his application under Order VII Rule 11(d) of the CPC is essentially a question of fact and cannot be decided without trial. Therefore, the application filed by the respondent is liable to be rejected.

8. Learned Advocate for the respondent, on the other hand, refers to Section 16 of The Representation of the People Act, 1950. Section 16 of the 1950 Act deals with disqualifications for registration in an electoral roll. Section 16(1)(a) of the 1950 Act says,

“A person shall be disqualified for registration in an electoral roll if he

(a) Is not a citizen of India...”.

9. From the documents annexed with the application filed by the respondent as well as the documents annexed with the written objection by the petitioner, it is crystal clear that the petitioner is a Bangladeshi national on the date of filing of nomination paper and on the dates of election and declaration of the result. From the face of the petitioner's own document, it is found that the petitioner had no right to contest the assembly election of 2021. As she is not a citizen of India, she shall not be qualified to be chosen to fill a seat in the legislature of a State in terms of Article 173 of the Constitution read with Section 16 of the Representation of People Act, 1950.

10. Mr. Mishra, learned Advocate for the respondent/returned candidate takes me to the averment made by the petitioner in the affidavit in opposition filed by her against the application under Order VII Rule 11 of the CPC filed by the respondent. In paragraph 4(II) of the affidavit in opposition she admits that in the year 1980 she got married to one Harendra Nath Sarkar, a citizen of Bangladesh and thereafter resided with her husband in Bangladesh for few years. On 5th November, 2020, she made an application for cancellation of her name from the national identity card and the electoral roll of Bangladesh. In her application she stated that she is an Indian citizen by birth. However, she became the citizen of Bangladesh after her marriage with Harendra Nath Sarkar. The principle of "dual citizenship" is not applicable in India. A person having obtained citizenship of another country, automatically ceases to be the citizen of India.

11. Mr. Mishra next takes me to the page 32 of the affidavit in opposition filed by the petitioner which appears to be an inquiry report on the application filed by the petitioner on 5th November, 2020. It is stated in the said inquiry report that the petitioner, daughter of one Samar Halder and their ancestors lived in Necharabad Upojela (sub-divison) of Pirojpur District, Bangladesh. During inquiry the petitioner admitted over phone that her mother and brother still reside in Necharabad. The petitioner used to live in India with her uncle in North 24 Pgs in the State of West Bengal from her childhood. She used to visit Bangladesh occasionally. Her marriage was solemnized with Dr. Harendra Nath Sarkar and after her marriage she stayed in Bangladesh for a long time. Subsequently, she returned to India. During inquiry she admitted that she enrolled her name in the voter list of India first subsequently she came to Bangladesh in 2012 to stay with her husband and recorded her name in the electoral roll of Bangladesh out of mistake. She also stated that due to matrimonial discord with her husband she has been staying in India permanently. During inquiry it was also revealed that before enrolling her name in the electoral roll, the petitioner produced SSC Certificate and the certificate of chairman and on the basis of the said documents her name was recorded in the electoral roll of Bangladesh. The Senior District Electoral Officer, Barisal obtained the opinion of the husband of the petitioner, opinion of the chairman of the Union Parisad, opinion of the member of the ward, opinion of the village police and on 29th June, 2021 the Senior District Election Officer Barisal recommended

that the name of the petitioner may be deleted/struck off from the electoral roll of Bangladesh.

12. It is submitted by Mr. Mishra that the court can very well rely upon the aforesaid document filed by the petitioner. From the inquiry report at page 32 of the written objection, it is clear that the petitioner admitted during inquiry over phone from India that her parents used to reside at Pirojpur in the district of Barisal. During his childhood she left Bangladesh for India and had been staying with her uncle at North 24 Pgs in West Bengal. Her mother and one brother still reside in village Pirojpur. Therefore, the averment made by the petitioner that she was born in Baidyabati, Hooghly is a false statement and it is false to the knowledge of the petitioner. Therefore, the petitioner's claim that she is an Indian citizen by birth cannot stand. The petitioner failed to prove that her parents used to reside in Baidyabati, Hooghly and she was born at Baidyabati. Therefore, it is submitted by the learned Advocate for the respondent that the petitioner was a Bangladeshi national on the date of filing of the nomination in the assembly election of 2021 and on the date of election and declaration of result. Therefore, she cannot maintain an election petition against the respondent.

13. In reply, the learned Advocate for the petitioner submits that the Representation of People Act, 1951 is a self contained enactment so far as the elections are concerned, which means that whenever the court has to ascertain the true position in regard to any matter connected with elections, the court will only look at the Act and Rules made thereunder.

In support of his contention, the learned Advocate for the petitioner refers to a decision of the Hon'ble Supreme Court in **N.P Ponnuswami vs. Retuning Officer, Namakkal Constituency, Namakkal, Salem Dist. And Four Ors**, reported in **AIR 1952 SC 64**. He also refers to a recent decision of the Apex Court in the case of **Srihari Hanumandas Totala vs. Hemant Vithal Kamat & Ors** reported in **(2021) 9 SCC 99**. The fact involved in the said decision is that the defendant filed an application under Order VII Rule 11 (d) of the CPC raising the issue that the suit is barred by *res judicata*. In paragraph 25.4 of the said judgment, the Hon'ble Supreme Court held:-

“25.4. Since an adjudication of the plea of *res judicata* requires consideration of the pleadings, issues and decision in the ‘previous suit’, such a plea will be beyond the scope of Order VII Rule 11 (d), where only the statements in the plaint will have to be perused.”

14. Finally in paragraph 26 and 27 the Hon'ble Supreme Court decides as follows:-

“26. In the present case, a meaningful reading of the plaint makes it abundantly clear that when the first respondent instituted the subsequent suit, he had been impleaded as the second defendant to the earlier suit (OS No. 103/2007) that was instituted on 13 March 2007. The first respondent instituted the subsequent suit, OS 138/2008 though he had knowledge of the earlier suit. The plaint in the subsequent suit which was instituted by the first respondent indicates that the he was aware of the mortgage executed in favour of KSFC, that KSFC had executed its charge by selling the

property for the recovery of its dues and that the property had been sold on 8 August 2006 in favour of the predecessor of the appellant. As a matter of fact, the plaint contains an averment that there was every possibility that the first respondent may suffer a decree for possession in OS 103/2007 which “has forced” the first respondent to institute the suit for challenging the legality of the sale deed. Given the fact that an argument was raised in the previous suit regarding no challenge having been made to the auction and the subsequent sale deed executed by the KFSC, it is possible that the first respondent then decided to exercise his rights and filed the subsequent suit.

27. Be that as it may, on a reading of the plaint, it is evident that the first respondent has not made an attempt to conceal the fact that a suit regarding the property was pending before the civil court at the time. It is also relevant to note that at the time of institution of the suit (OS No. 138/2008) by the first respondent, no decree had been passed by the civil court in OS No. 103/2007. Thus, the issues raised in OS No. 103/2007, at the time, had not been adjudicated upon. Therefore, the plaint, on the face of it, does not disclose any fact that may lead us to the conclusion that it deserves to be rejected on the ground that it is barred by principles of res judicata. The High Court and the Trial Court were correct in their approach in holding, that to decide on the arguments raised by the appellant, the court would have to go beyond the averments in the plaint, and peruse the pleadings, and judgment and decree in OS No. 103/2007. An application under Order VII Rule 11 must be decided within the four corners of the plaint. The Trial court and High Court were

correct in rejecting the application under order VII Rule 11(d).”

15. Thus, it is submitted by Mr. Ray, learned Advocate for the petitioner that the question raised by the respondent in the instant proceeding can at best be treated as a mixed question of law and fact which cannot be decided under Order VII Rule 11(d) of the CPC. Mr. Ray submits that Article 173 of the Constitution cannot be read in isolation but it shall be read along with the provision of Section 33 of the Representation of People Act, 1951. The petitioner filed nomination paper as a candidate for election to fill up a seat. Her nomination paper was scrutinized by the Election Commission. She was declared qualified to be chosen to fill that seat. Under the provision of the Constitution and the Representation of People Act, 1951, therefore, the court cannot hold her to be disqualified under Section 16 of the 1950 Act without trial.

16. Having heard the learned Counsels for the parties and on perusal of the application and written objection, this Court at the outset records that an application under Order VII Rule 11 of the CPC can only be disposed of on the basis of averment made by the petitioner in the plaint. Now, after filing of the election petition the returned candidate has filed the instant application stating, inter alia, that as the petitioner is a foreign national and not a citizen of India, the election petition filed by her is barred by law.

17. It is not disputed that the petitioner has claimed herself to be a citizen of India on the strength of passport issued by the passport authority in her name, voters card, pan card, aadhar card etc.

18. It is further admitted by the petitioner that after her marriage she became a Bangladeshi citizen and her name was recorded in national identity card of Bangladesh. Her name was also enrolled in the electoral roll. However the petitioner has claimed that she enrolled her name as a citizen of Bangladesh in the electoral roll of Bangladesh out of mistake and she has already filed an application before the concerned authority in Bangladesh for deletion of her name from NID and electoral roll of Bangladesh. Thus, it is not in dispute that the petitioner was at some point of time a Bangladeshi citizen. The petitioner has claimed that her marriage was solemnized with one Dr. Harendra Nath Sarkar in 1980. Therefore, the name of the petitioner was enrolled in the NID and electoral roll of Bangladesh at any point of time after 1980. According to the petitioner her name was mistakenly recorded in the electoral roll of Bangladesh sometimes in 2012. Surprisingly enough, from the documents filed by the petitioner it is ascertained that she was enrolled as a voter as per epic card issued by the Election Commission of India on 1st March, 2012. Therefore, during 2012 admittedly she possessed voter identity card of India and at the same time her name was enrolled in the electoral roll of Bangladesh. It is needless to say that as soon as the petitioner's name was recorded in the electoral roll of Bangladesh and she was enrolled as a

citizen of Bangladesh, her citizenship of India automatically ceases to exist.

19. It is needless to say that a passport, voters identity card, pan card, aadhar card are not documents of citizenship of India. If a person claims citizenship of this court, he/she must prove her citizenship under Part-II of the Constitution of India. Article 9 of the Constitution states that 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. The NID certificate issued by Bangladesh Election Commission shows that the petitioner is a Bangladeshi citizen and a bona fide voter of Bangladesh. It is not clear even on this date as to whether her name has been deleted from the electoral roll of Bangladesh. The petitioner has not claimed acquisition of citizenship under Section 3 or 4 of the Citizenship Act, 1955. She has not acquired citizenship by registration under Section 5 of the Citizenship Act of 1955. The petitioner also does not fall within the purview of the Citizenship (Amendment) Act, 2019. Therefore, even if the petitioner has voter identity card, aadhar card and passport, the said documents do not prove her citizenship of this country.

20. It is needless to say that the petitioner has claimed to be the citizen of this country by birth. But from the inquiry report which she relies in her written objection against the application under Order VII Rule 11(d) of the CPC it is ascertained that her parents used to live in Bangladesh and

she came to India with her uncle in her childhood, meaning thereby that the petitioner was born in Bangladesh.

21. Article 5 of the Constitution of India speaks about citizenship at the commencement of the Constitution. Article 5 runs thus:-

Citizenship at the commencement of the Constitution.-

At the commencement of this Constitution, every person who has his domicile in the territory of India and-

- a) Who was born in the territory of India; or
- b) Either of whose parents was born in the territory of India; or
- c) Who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement, shall be a citizen of India.

22. From the enquiry report dated 29th June, 2021, regarding deletion of name of petitioner from the Electoral Roll of Bangladesh which the petitioner has relied upon in her affidavit-in-opposition, it is ascertained that the parents of the petitioner all along used to reside in Bangladesh. Admittedly her mother and brother are still residing in Bangladesh. Therefore, petitioner's claim that she became the citizen of India by birth by virtue of the provision of Article 5 of the Constitution or Section 3 of the Citizenship Act is proved to have been false.

23. This Court has already pointed out that in her EPIC Card, Pan Card and Aadhar Card, the petitioner mentioned her date of birth as on 22nd March, 1969. However, in NID Certificate issued by Bangladesh Election

Commission in favour of the petitioner, her date of birth was recorded as on 15th January, 1967. Therefore, there is discrepancy between the said two documents. The petitioner could not produce any document in support of her date of birth and place of birth. There is absolutely no record to prove that the parents of the petitioner came to India from Bangladesh and acquired citizenship of this Country following the procedures contained in Section 3(2) to Section 6 of the Citizenship Act, 1955. Therefore, from the documents submitted by the petitioner it is found that the parents of the petitioner were not the citizens of India . The petitioner never acquired citizenship of this country following the provisions of the Citizenship Act, 1955. On the contrary the admitted position is that the petitioner was a Bangladeshi citizen on the date of declaration of General Election of West Bengal State Assembly by the Election Commission, filing of the nomination paper, date of election and declaration of the result. It is further found from the petitioner's own documents that though she claimed that she severed all marital relation with her husband, she herself mentioned her husband's name Harendra Nath Sarkar in the Voters Identity Card and Aadhar Card. Needless to mention that Voter Identity Card was issued in the name of petitioner on 1st March, 2012, and Aadhar Card was issued subsequent to the issuance of Voter Card. Thus, on the date of issuance of Adhar Card marital tie of the petitioner existed with the said Harendra Nath Sarkar who is a Bangladeshi national. The petitioner herself admitted that her marriage with Harendra Nath Sarkar was solemnized in the year 1980 and while

she was living with her husband she applied for citizenship of Bangladesh and on the basis of her application her name was recorded in the electoral roll of Bangladesh and National Identification Certificate was issued in her name. Even assuming that in the mean time the name of the petitioner was struck off by the concerned authority, on the date of Assembly Election the petitioner was not a citizen of India.

24. Under such backdrop the question as to whether such admitted facts can be taken into consideration to hold that the election petition filed by the petitioner is barred by the provision of Article 173 read with Section 16 of The Representation of the People Act, 1951 while disposing of an application under Order VII Rule 11 of the CPC.

25. The law on this point is no longer *res integra*. In order to dispose of an application under Order VII Rule 11 CPC, the court can look into the averments in the plaint and no other document. In other words, only the pleadings of the petitioner as disclosed in the election petition can be considered while disposing of an application under Order VII Rule 11 CPC. Even the pleadings made out by the petitioner in her affidavit-in-opposition cannot be considered.

26. At the same time the court has come to this conclusion that the petitioner filed the election petition claiming to be a citizen of India. She filed nomination paper as a citizen of India. She contested the election as a citizen of India. But from the documents filed and relied on by the petitioner in her affidavit-in-opposition, it is ascertained that in the month of June 2021, her application for deletion of her name from the electoral

roll of Bangladesh was under consideration before the appropriate authority of Election Commission of Bangladesh. Thus, her name was not deleted till 29th June, 2021 from NID and Electoral Roll of Bangladesh. The record shows that the petitioner filed nomination to contest the State Assembly seat of 96-Bangaon Dakshin of SC(Constituency) on 31st March, 2021. Election was conducted on 22nd April 2021 and the result was published on 2nd May, 2021. The election petition was filed on 11th June, 2021. Therefore, admittedly on all the above dates, the name of the petitioner appeared on in the Electoral Roll of Bangladesh.

27. Thus, the election petition is barred under the provision of Article 173 of the Constitution of India read with Section 16 of the Representation of the People Act, 1950. This Court comes to the above decision not from any pleading filed by the respondent, but from the pleadings and documents annexed thereto in support of the pleadings of the petitioner in her plaint and written objection.

28. However, when this Court finds that though the election petition is barred under the above mentioned provisions of law, the court cannot reject the plaint under Order VII Rule 11 of the CPC because such pleadings were not the part of the election petition filed by the petitioner. At this stage, under the facts and circumstances involved in the instant case, this court finds that the court can dispose of the election petition under Order XII Rule 6 of the CPC.

29. Order XII Rule 6 speaks about judgment on admissions. The said provision runs thus:-

(1) R 6(1). Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit having regard to such admissions.

(2) Whenever a judgment is pronounced under Rule 1 a decree shall be drawn up upon in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.

30. From plain reading of the above provisions, it appears that the power of the court under Order XII Rule 6, is very wide. It is open to the court to pronounce a judgment on admission on the pleading or otherwise. The word “otherwise” in the said provision clearly indicates that it is open to the court to base the judgment on statements made by a party not only in the pleadings but also de hors the pleadings. Such admission may be made either expressly or constructively.

31. Thus, in order to pronounce a judgment under Order XII Rule 6 CPC , it is not necessary that the defendant shall have to admit the claim of the plaintiff in his written statement. He can admit any claim or fact even otherwise. In the instant case the petitioner admitted that she

acquired citizenship of Bangladesh mistakenly. However, the name of the petitioner still exists in the Electoral Roll of Bangladesh. I am in agreement with the learned advocate for the respondent that the principle of 'Dual Citizenship' is not applicable in India. Therefore, the petitioner cannot claim to be a citizen of India when her name appeared in the Electoral Roll of Bangladesh. The relevant date is the date of filing nomination paper by the petitioner. It is admitted from the documents filed by the petitioner that on the date of filing of the nomination paper by her she was a Bangladeshi national.

32. In view of such circumstances, it is open for the court to pronounce judgment under Order XII Rule 6 of the CPC.

33. For the reasons stated above this Court finds that continuation of the proceeding in Election Petition 2/2021 will be unnecessary and fruitless exercise of judicial process and time.

34. The court can under the facts and circumstances dated above pass a judgment on admission.

35. In view of the above discussion, the election petition is liable to be dismissed under Order XII Rule 6 of the CPC.

36. The instant application is thus disposed of.

37. The order of dismissal of election proceeding be passed in EP2/2021.

38. In view of the peculiar facts and circumstances of this case, a copy of this order be sent to the Election Commission of India for information and taking necessary action in respect of the petitioner's status in this

country as on this date, through the learned Registrar General, High Court, Calcutta.

(Bibek Chaudhuri, J.)

Later

After delivery of the judgment, the learned advocate for the petitioner has prayed for stay of the direction passed by this Court that sending a copy of this order to the Election Commission of India for sanction and taking necessary action in respect of the petitioner's status in this country as on this date.

I do not find any necessary to stay the operation of the said order. Therefore, the prayer is considered and rejected.

(Bibek Chaudhuri, J.)