

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA

**WRIT PETITION NO.96 OF 2020
WITH
CIVIL APPLICATION NO.719 OF 2021(FILING)
IN
WRIT PETITION NO.96 OF 2020**

Adv. Aires Rodrigues

...Petitioner/Applicant

Versus

District Magistrate, North Goa Panaji
And 3 Ors.

... Respondents

**WITH
MISCELLANEOUS CIVIL APPLICATION NO.2419 OF
2022(FILING)
IN
WRIT PETITION NO.96 OF 2020**

Adv. Aires Rodrigues

...Applicant

Versus

District Magistrate, North Goa Panaji
And 4 Ors.

... Respondents

Mr A. F. Diniz with Mr Ryan Da Piedade Menezes, Ms Gina Maria Almeida and Ms. S. Alvares, Advocates for Petitioner.

Mr Devidas J. Pangam with Mr Deep D. Shirodkar, Additional Government Advocate for Respondent No1, 3, 4 and 5.

Mr Somnath B. Karpe, Standing Counsel with Mr Abhishek Sawant, Advocate for Respondent No.2.

**CORAM: M. S. SONAK &
BHARAT P. DESHPANDE, JJ.**

DATED : 1st February, 2023

ORAL ORDER:

1. Heard Mr A. F. Diniz, learned Senior Advocate who appears along with Mr Ryan Da Piedade Menezes, learned counsel for the petitioner. Learned Advocate General appears along with Mr Prashil Arolkar, learned Additional Government Advocate for respondents no.1, 3, 4 and 5. Mr Karpe, learned Standing Counsel appears for respondent no.2.

Correction
carried out
in view of
order dated
13.02.2023
in WP-96-
2020.

2. The petitioner has principally challenged the order dated ~~28.05.2019~~^{29.01.2021}¹ made by respondent no.2 and also sought a declaration that Rule 40 of the Citizenship Rules, 2009 is *ultra vires* and void.

3. The learned counsel for the respondents have already clarified that the District Magistrate's order dated ~~28.05.2019~~^{29.01.2021} was not an order as such but only a recommendation/report. The learned Advocate General and Mr Karpe submitted that such recommendation/report will have to be ultimately considered by the authority under the Citizenship Act, i.e. respondent no.2 herein, and decide on the issue of petitioner's citizenship. Learned counsel pointed out that full and effective hearing would be afforded to the petitioner by such authority before taking any decision in the matter.

4. Considering the aforesaid, we think that any challenge to the Rules is quite premature and need not be gone into at this stage.

5. Mr Diniz, however, pointed out several issues including the following issues in this matter:

'a. Whether the District Magistrate held any enquiry, and if yes, whether such enquiry was fair, transparent and in consonance with the principles of natural justice?

b. Whether the report of the District Magistrate was antedated?

c. Whether the report was prepared on objections received consequent upon due publicity by the District Magistrate?

d. Whether the District Magistrate followed the procedure specified in Schedule III of the Citizenship Rules and/or complied with the conditions of the notification dated 28/05/2019?

e. Whether the hearing could be bifurcated between the District Magistrate and the Central Govt?

f. Whether the District Magistrate could rely on copies of documents that had been disputed by the petitioner and without proof thereof?

g. Whether the District Magistrate could shift the burden on the petitioner to prove a negative, and/or fail to afford the petitioner an opportunity of leading evidence or making submissions as pointed out by the petitioner in pursis dated 01/02/2021?

h. Whether a person born in 1960 as a Portuguese citizen, on whom deemed citizenship was conferred by the Citizenship order dated 28/3/62 and the Citizenship Act itself came into force in Goa on 17/3/62, could lose citizenship by allegedly obtaining a Portuguese passport,

considering that he had never been deprived of his Portuguese citizenship and moreover did not hold such passport prior to 1962, which had to be surrendered by 19/01/1963?'

6. Mr Diniz submits that if the petitioner is to be relegated before the authority prescribed by respondent no.2, then, it should be clarified that the said authority will address and consider the aforesaid issues. The learned Advocate General and Mr Karpe submitted that the prescribed authority would not only consider the above issues but any other issues that arise in the matter. According to us, the authority should consider all contentions of all parties that arise in this matter and decide this issue on citizenship in accord with law and on its own merits.

7. Further, in the peculiar facts of this case, we direct that if the authority decides against the petitioner, then, the authority should not implement its decision/order, or, such decision/order should take effect after a period of 8 weeks from the date of its communication to the petitioner. This is to enable the petitioner to take out appropriate proceedings to challenge this order/decision in accordance with law.

8. Therefore, by clarifying that all contentions of all parties are left open, we dispose of this petition by permitting the respondent no.2/prescribed authority to consider and dispose of the issue of petitioner's citizenship in accord with law.

9. This petition is disposed of. There shall be no order for costs.
10. Civil Applications and Miscellaneous Civil Applications are also disposed of.
11. All concerned to act based on authenticated copy of this order.

BHARAT P. DESHPANDE, J.

M. S. SONAK, J.

MARIA SUZANA REBELLO