

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7622 of 2024

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Biltu Ray @ Bilat Ray @ Bilat Prasad Yadav S/o Late Rambhajju Rai @ Bhajju Rai, Resident of Vill.- Larakwa, Panchaat- Bhaluaha, Dist.- Sitamarhi, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Panchayati Raj Department, Government of Bihar, Bailey Road, Veerchand Patel Road, Patna- 800015
2. The Principal Secretary, Panchayati Raj Department, Government of Bihar, Bailey Road, Veerchand Patel Road, Patna- 800015.
3. The State Election Commissioner of Bihar, Patna through its Secretary State Election Commission Bihar, Sone Bhawan, Veerchand Patel Path, Patna.
4. The State Election Commissioner, State Election Commission of Bihar, Patna, Sone Bhawan, Veerchand Patel Path, Patna.
5. The District Election Officer (Panchayat)-cum- District Magistrate, Sitamarhi, Bihar.
6. Mukesh Kumar Sah, S/o- Ram Nandan Sah, Resident of- Ward No.- 6, Sonebarsa, Parsakhurd, P.O.- Kanhauli, P.S.- Kanhauli, Dist- Sitamarhi, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s :	Mr. Dhananjay Kumar, Advocate
For the Respondent/s :	Mr. Additional Advocate General (7)
For the Respondent no 6 :	Mr. Amit Srivastava, Sr. Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT

Date : 16-07-2024

Heard Mr. Dhananjay Kumar, learned counsel for the petitioner, Mr. Amit Srivastava, learned Senior Counsel with Ms. Mallika Mazumdar for the Respondent No. 6 and learned counsel for Election Commission and State.

2. The writ petition has been filed for the grant of following reliefs ;

“(i) an appropriate writ/s, order/s, direction/s in the nature of Certiorari be issued, to quash the



order dated 01/04/2024 contained in memo no. 19/2023/685, passed in Case no.-19/2023, (Annexure-9) by the learned State Election Commissioner, Bihar (respondent no.-4).

(ii) for proper declaration that, the petitioner is a Citizen of India by virtue of Article 5 of the Indian Constitution, and by virtue of the same he was eligible for contesting the election.

(iii) an appropriate direction to the respondents not to interfere in the functioning of the petitioner as Mukhiya of Bhaluaha Gram Panchayat.

(iv) a other relief/reliefs petitioner found entitled in law, be granted to him.”

3. The brief facts of the case is/are as follows :

4. The petitioner got elected on the post of ‘Mukhiya’ from the Bhaluaha Gram Panchayat, Sonbarsa Block under the Sitamarhi District, Bihar, securing 2043 votes defeating his nearest rival candidate, Mukesh Kumar Sah (Respondent no. 6).

5. The petitioner claims that he is the permanent resident of India having been born in the village Larkwa, under the Sonbarsa block of Sitamarhi District. His father, late Ram Bhaju Rai alias Bhaju Rai was also a permanent Indian Citizen and



had never acquired citizenship of any other country till his death.

6. The petitioner claims that neither he nor any of his family member was a native of Nepal or owned properties there. One of the ancestral properties of the petitioner is situated at Village Bherahiya Larkwa. The further claim is that wife of the petitioner, Gandhi Devi having her Adhaar Card as also the election photo identity card.

7. Further, he got his education and passed the Secondary School Examination in 1986 from Bihar School Examination Board, Patna as a regular student of S.N.J. High School, Sonbarsa.

8. It is his case that he holds a valid Election photo identity card as also a permanent Account Number being AONPRXXXXR besides the Aadhar Card issued by the UIDAI. The petitioner further claimed that he was holder of Indian Passport between 25/10/1996 to 24.10.2006

9. The case is that in the year 2021, the Panchayat Elections were declared and the petitioner filed his nomination for the post of 'Mukhiya' for Bhaluaha Gram Panchayat. After scrutiny, his nomination paper was declared valid as no objection was filed against the said nomination. After the voting



took place and election result declared, he emerged as the returned candidate.

10. Respondent no. 6 who was also contesting the election and lost thereafter filed Complaint Case no. 19/2023 before the State Election Commission, Patna (henceforth for short 'the Commission') alleging that the petitioner is/was a native of Nepal and thus ineligible to contest the election.

11. After registering the aforesaid case, 'the Commission' sought report from the District Election Officer-cum-District Magistrate, Sitamarhi who verified the documents annexed with the complaint from the office of the Consulate General of India, at Birgunj, Nepal. In response thereto, the Consulate General of India, Birgunj, Nepal sent four letters to the District Election Officer, Sitamarhi which in turn were submitted to 'the Commission'.

12. The petitioner too appeared and narrated that :

i) he well as the respondent no. 6 are residents of same Gram Panchayat, situated at India-Nepal border having easy access to both the countries.

ii) further, it is a common practice that residents of the border area visit Nepal for



their livelihood,

iii) similarly, the villagers of Nepal also visit India for their livelihood and residents of both the countries have relatives across the border.

iv) the petitioner was running a small grain shop in village- Pipariya situated under Sarlahi District of Nepal while residing all along in India,

v) due to huge mass movement in Nepal during the year 2006-07, when large number of the records of the citizens were burnt, the Government of Nepal constituted a Toli (group of peoples) to conduct a ground level survey and obtained actual data of citizens.

vi) accordingly, the names of approximately 2.6 million people were included as the Citizen;

vii) in the said drive, the petitioner's name was also included without any application being made by him in this regard

viii) when the petitioner came to know about this fact, he made an application before the



concerned authorities on 11/03/2016 to remove his name as Citizen, a fact known to the respondent no. 6.

13. The State Election Commissioner thereafter after perusing the records and hearing the parties declared the petitioner as Nepalese Citizen when the election took place and thus held that he was ineligible to contest the election U/s-136(1)(a) of the Bihar Panchayati Raj Act 2006. He further held that the post of 'Mukhiya' of Bhaluaha Gram Panchayat against which the petitioner had been declared returned candidate shall be treated to be vacant and steps shall be taken for fresh election in accordance with the law (Annexure-9 to the writ petition).

14. Aggrieved, the present petition.

15. It is the case of the petitioner that he acquired the Citizenship of India by birth, his entire family members reside in India including his wife, children and other family members. It was only for his livelihood that he had opened a shop in the neighboring country Nepal in village Piparya under Sarlahi District sometimes in early 21st century.

16. It is his case that due to mass movement during the year 2006-07, when the records of the Citizens were burnt, Government of Nepal conducted special drive which followed



inclusion of 2.6 million people as citizen of that country, the petitioner being one of them.

17. Learned counsel for the petitioner submits that when he came to know about the said fact, immediately an application on 11.03.2016 was preferred for removal of his name as a citizen. Thereafter, presuming that he is no more a citizen of Nepal, he contested and got elected as 'Mukhiya' of Bhaluaha Gram Panchayat under Sonebarsa Block in the District of Sitamarhi defeating his nearest rival Mukesh Kumar (respondent No. 6).

18. He submits that having lost the poll, the respondent No. 6 started manipulating against him which ultimately resulted into Election Petition No. 19/2023 (**Mukesh Kumar Sah vs. Biltu Rai @ Bilat Rai**) before 'the Commission'.

19. Learned counsel submits that in the meantime, the **Government of Nepal**, the **District Administration Office Malangawa, Sarlahi** by his **notification No. 6468 dated 21.03.2023** informed the Ministry of Home Affairs, Kathmandu that his citizenship has been cancelled from the date, he had made an application on 11.03.2016 (Annexure-10 to the writ petition).

20. Learned counsel submits that a bare perusal of the



said Annexure would show that while he had actually made an application on March 11th, 2016 the Government of Nepal delayed the process. The Citizenship was finally cancelled on 21.03.2023 effective 11.03.2016.

21. Learned counsel has taken this Court to Section 9 of the Indian Citizenship Act, 1955 which read as follows :

“9. Termination of citizenship.

(1) Any citizen of India who by naturalization, 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] [Substituted by Act 6 of 2004, Section 9, for " person" (w.e.f. 3.12.2004).] 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.”

22. It is the submission on behalf of the petitioner that he having never relinquished his Indian citizenship, wrongly got



included in the voter list of Nepal as a Nepali citizen due to mass movement in the year 2006-07 when large number of the records of the citizens were burnt, made an application on 11.03.2016 for cancellation of the same which subsequently got cancelled on 21.03.2023 with effect from the same date when the application was made i.e. 11.03.2016 'the Commission' completely erred in passing the order communicated *vide* memo no. 1685 dated 11.04.2024 declaring his election invalid solely on the ground that he was not an Indian Citizen on the date he filed his nomination.

23. The submission is that for permitting Citizenship in Nepal there is an act namely, Nepal Citizenship Act 2063 (2006), which prescribes the provisions for acquisition of Nepalese Citizenship and for that the petitioner never fulfilled the eligibility criteria prescribed under clause 3 to 8 of 'the Act', which deals with the eligibility criteria under different category. Since the petitioner was never eligible for making any application for granting Nepalese Citizenship, thus there is no question of voluntarily obtaining Nepalese Citizenship

24. The further submission is that 'the Commission' had also erroneously considered that, though the name of the petitioner was removed from the Electoral rolls, but he was



Nepali Citizen on the day of scrutiny of his nomination papers.

25. Learned counsel for the petitioner has cited the decision of the Hon'ble Apex Court in the case of **Bhagwati Prasad Dixit "Ghorewala" vs. Rajeev Gandhi** reported in **1986 AIR 1534**. Para 8 and 13 of the order read as follows:

"8. In State cf [Madhya Pradesh v. Peer Mohd. & Anr.](#), (1963) Supp. 1 SCR 429 page 438: (AIR 1963 SC 645 at p. 649), Gajendragadkar, J. (as he then was) speaking for the Constitution Bench observed :

"If a dispute arises as to whether an Indian citizen has acquired the citizenship of another country, it has to be determined by such authority and in such manner and having regard to such rules of evidence as may be prescribed in that behalf. That is the effect of [section 9\(2\)](#). It may be added that the rules prescribed in that behalf have made the Central Government or its delegate the appropriate authority to deal with this question and that means this particular question cannot be tried in Courts."

(Emphasis added)

13. Even granting that the High Court had jurisdiction to decide the said question it is seen that the allegations made in the election petition regarding acquisition of citizenship of a foreign country by the respondent were wholly



inadequate to record any finding in favour of the appellant since it is not shown that there is any provision in our law which provides that a person would automatically lose his Indian citizenship on his marriage with a person who is a citizen of a foreign country or by acquiring, even if true, property in a foreign country. On the face of it the plea was untenable. The entire ground being vexatious and frivolous is liable to be struck off.”

26. Learned counsel next cited the case of Madras High Court in the case of **S. Nalini Srikanan vs. Union of India** reported in **AIR 2007 Madras 187** with regard to paragraph 16 which read as follows :

“16. A plain reading of the ratio laid down in the above judgments implicitly spells out that only an order passed by the Central Government under Section 9(2) of the Citizenship Act which operates cession of the citizenship of a person and not his acquisition of the passport of a foreign country. notwithstanding the conclusive presumption raised under the Rules. In other words a person found to be a citizen of India cannot be treated as foreigner as long as the Central Government does not record a



decision to that effect under Section 9(2) of the Citizenship Act. We hasten to add that Section 9(2) does not provide for filing of any application by such person as suggested by the learned Assistant Solicitor General, but what the Section contemplates is the determination of the question of cessation of citizenship by the Central Government and only upon such determination he would be ceased to be citizen of India. Further, the provision for prescribing rules of evidence, having regard to which the question of acquisition of citizenship of another country has to be determined, clearly indicates that the order is not to be made on the mere satisfaction of the authority without enquiry as to whether the citizen concerned has obtained a passport of another country. The authority has also to determine as to whether the person has voluntarily acquired foreign citizenship. The enquiry would be quasi judicial in nature and reasonable opportunity must be afforded to the citizen to convince the authority that what is alleged against him is not true. Thus, the termination



of Indian citizenship does not merely depend upon the action of a foreign country in issuing a passport.

27. Learned counsel for the petitioner concludes by submitting that when the petitioner's citizenship was in question, 'the Commission' exceeded its jurisdiction in deciding the matter instead of referring the same to the Central Government.

28. Mr. Amit Srivastava, the learned Senior Counsel represents the respondent No. 6, (the complainant before 'the Commission'). He has taken this Court to the letter issued by the Election Commission of Nepal dated 21.06.2023 (Annexure-M to the counter affidavit of respondent No. 6) which read as follows :

“ELECTION COMMISSION, NEPAL

Letter No. 2079/080
Ref. No. 16

Dated: June 21, 2023

Shri Rabindra Sah Ji,
Chandranagar Rural Municipality-4, Sarlahi

Subject: Providing information whether the name is in the Voter's List

Pertaining to above subject, we came to know about your application dated June 20, 2023 to this commission for providing information whether the name is in the Voter's List. In this respect, as per the



letter ref no. 327 dated June 21, 2023 from Voter's List and Election Management Section, the name of Bilat Prasad Yadav having Citizenship Certificate no. 193063/128 and Voter's ID No 06158511 resident of ward no.1 Kabilasi Municipality, district Sarlahi has been removed from the central DVLA on May 30, 2023, the same detail is being communicated.”

Surya Prasad Aryal
Deputy Secretary/Information Officer”
(underline mine)

29. Learned Senior Counsel submits that bare perusal of the communication would show that his name has been removed from the voter list on 30.05.2023 i.e. much after the election took place in the year 2021 when the petitioner filed his nomination. He submits that mere declaration in the order making it effective from the date of application will not change the position.

30. Learned Senior Counsel again has taken this Court to the voter list of Sarlahi District (Nepal) of the year, 2023 which includes the name/number as also the photograph of the petitioner. He submits that the said number incorporated in the voter list (Annexure-B to the counter affidavit) matches with the communication made by the Election Commission of Nepal.

31. Learned Senior Counsel has further taken this Court to



the avernment made by the writ petitioner in the writ petition itself, wherein it has been stated that he was holder of an Indian passport between 25.10.1996 to 24.10.2006. It is his submission that after the passport lapsed on 24.10.2006, in view of the fact that he, by then had become a Nepali citizen, no renewal application made and there is nothing on record to show why the same was not renewed.

32. Learned Senior Counsel submits that there are sufficient evidence by way of documents that are on record in the writ petition itself to show that the petitioner became a Nepali citizen in the year, 2005-06 and this was the reason that having ceased to be an Indian Citizen, the petitioner did not get his passport renewed.

33. Learned Senior Counsel submits that though he claims to have submitted an application for removal of his name in the year 2016, the fact remains that the petitioner continued to be a Nepali citizen till in the year 2021 when the nominations were filed in which he also participated and on the basis of votes polled, got elected.

34. It is his submission that being a Nepali citizen, neither he could have filed his nomination nor contested and as such 'the Commission' has rightly passed the order.



35. Learned Senior Counsel relied on the decision of the Division Bench of the Patna High Court in **Kiran Gupta vs. The State Election Commission (LPA No. 139 of 2020)** and the relevant paragraph no. 21 deals with Section 136 of the Bihar Panchayat Raj Act relating to the disqualification of the Membership and read as follows :

“136. Disqualification for Membership - (1) Notwithstanding anything contained in this Act, a person shall be disqualified for election or after election for holding the post as Mukhiya, member of the Gram Panchayat, Sarpanch, Panch of the Gram Katchahri, member of the Panchayat Samiti and member of Zila Parishad, if such person—
(a)is not a citizen of India.
(b)is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State:
Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years;”

(Emphasis supplied)

36. Learned Senior Counsel has also taken to the following paragraphs of the **Kiran Gupta** (supra) order in support of the case and read as follows :

“23. But Section 136 of the Panchayat

Act commences with a non-obstante clause.

The expression used is 'notwithstanding



anything contained in this Act'. If a person entails any one of the disqualifications also enumerated in the said Section, a person will entail disqualification. The language used is clear. For holding the post of a Mukhiya, the person stands disqualified if she/he is not a citizen of India. The use of the expression "shall" in subsection (1) of Section 136 indicates that a person who is not a citizen of India entails immediate disqualification. The statute covers disqualification from membership both before or after the elections. The disqualification of membership is for contesting an election and for holding the post as a Mukhiya. One of the grounds of disqualification, with which we are concerned, is a person not being a citizen of India. The expression 'citizen of India' is not defined under the Panchayat Act. We have seen that the Constitution of India itself does not confer any right of Citizenship. Hence, we have to consider the



Law framed thereunder, which is the Citizenship Act enacted under Entry 17 of List I of the Seventh Schedule for acquisition and determination of Indian Citizenship.

Provisions of the Citizenship Act

24. The Citizenship Act postulates different situations under which a person can acquire Citizenship of India. Since it is not a case of acquisition of Citizenship by birth (Section 3); descent (Section 4); naturalization (Section 6); persons covered by the Assam Accord (Section 6A); incorporation of territory (Section 7), we are required to discuss only Section 5 dealing with the acquisition of Citizenship by registration. The said Section reads as under:

“5. Citizenship by registration.—(1) Subject to the provisions of this Section and such other conditions and restrictions as may be prescribed, the Central Government may, on an application made in this behalf, register as a citizen of India any person not



being an illegal migrant who is not already such citizen by virtue of the Constitution or any other provision of this Act if he belongs to any of the following categories, namely:—

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

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

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

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

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

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

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

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



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

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

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

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

(3) No person who has



renounced, or has been deprived of, his Indian Citizenship or whose Indian Citizenship has terminated, under this Act shall be registered as a citizen of India under sub-section (1) except by order of the Central Government.

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

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

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

(Emphasis supplied)

*25. The object of the Citizenship Act is to provide for the acquisition and determination of Indian Citizenship. Contextually, we refer that in **State Trading Corporation of India Ltd. v. Commercial Tax Officer & Ors.**, AIR 1963 SC*



1811, the Hon'ble Apex Court clarified that the Indian Constitution and the Citizenship Act exhaustively deal with the issue of Citizenship, confined only to a natural person. Further, nationality and Citizenship are not interchangeable; terms and expression 'person' under the Act have to be natural and not legal entities. Extracting the exact observation would be more apt.

"18. ... But the question still remains whether "nationality" and "citizenship" are interchangeable terms. "Nationality" has reference to the jural relationship which may arise for consideration under international law. On the other hand "citizenship" has reference to the jural relationship under municipal law. In other words, nationality determines the civil rights of a person, natural or artificial, particularly with reference to international law, whereas Citizenship is intimately connected with civic rights under municipal law. Hence all citizens are nationals of a particular State but all nationals may not be citizens of the State. In other words citizens are those persons who have full political rights as distinguished from nationals who may not enjoy full political rights and are still domiciled in that country...."

"23. ... There is also no doubt



in our mind that Part II of the Constitution when it deals with Citizenship refers to natural persons only. This is further made absolutely clear by the Citizenship Act which deals with Citizenship after the Constitution came into force and confines it only to natural persons. We cannot accept the argument that there can be citizens of this country who are neither to be found within the four-corners of the Citizenship Act. We are of opinion that these two provisions must be exhaustive of the citizens of this country, Part II dealing with citizens on the date the Constitution came into force and the Citizenship Act dealing with citizens thereafter. We must, therefore, hold that these two provisions are completely exhaustive of the citizens of this country and these citizens can only be natural persons....”

*26. The Constitution Bench of the Hon’ble Apex Court in **Izhar Ahmad Khan v. Union of India**, AIR 1962 SC 1052, while dealing with the validity of Section 9 which deals with termination of Citizenship, held as under:-*

“38. The next point to consider is about the validity of Section 9(2) itself. It is argued that this rule is ultra vires because it affects the status of Citizenship conferred on the petitioners and



recognized by the relevant articles of the Constitution, and it is urged that by depriving the petitioners of the status of Citizenship, their fundamental rights under Article 19 generally and particularly the right guaranteed by Article 19(1)(e) are affected. It is not easy to appreciate this argument. As we have already observed, the scheme of the relevant articles of Part II which deals with Citizenship clearly suggests that the status of Citizenship can be adversely affected by a statute made by the Parliament in exercise of its legislative powers. It may prima facie sound somewhat surprising, but it is nevertheless true, that though the citizens of India are guaranteed the fundamental rights specified in Article 19 of the Constitution, the status of Citizenship on which the existence or continuance of the said rights rests is itself not one of the fundamental rights guaranteed to anyone. If a law is properly passed by the Parliament affecting the status of Citizenship of any citizens in the country, it can be no challenge to the validity of the said Law that it affects the fundamental rights of those whose Citizenship is thereby terminated. Article 19 proceeds on the assumption that the person who claims the rights guaranteed by it is a citizen of India. If the basic status of Citizenship is validly terminated by a Parliamentary statute, the person whose Citizenship is terminated has no right to claim the fundamental rights under Article 19. Therefore, in our opinion, the challenge to



Section 9(2) on the ground that it enables the rule-making authority to make a rule to deprive the citizenship rights of the petitioners cannot be sustained.”
(Emphasis supplied)

29. In our considered view, it is not that anyone or everyone (person) can, as a matter of right, claim Citizenship of India. Power and discretion of conferring citizenship vests with the Central Government which, of course, has to be exercised as per settled principles of Law. Further, the Section itself categorizes the persons entitled to exercise their right to file an application requesting for registration as a citizen of India. Unless decided, the mere filing of an application does not confer any right of Citizenship. The appellant's case would fall under clause (c) of sub-section (1) of Section 5. She is married to a citizen of India and is ordinarily residing in India for the last seven years. But then, significantly and undisputedly, she never sought Citizenship by way of registration, more so,



after voluntarily relinquishing her Citizenship of Nepal in February 2016. An oath of allegiance is necessarily required to be taken by the appellant. Hence, by her actions and conduct, she precluded herself from being considered as a citizen under the Citizenship Act.

31. Mere relinquishment of original Citizenship cannot be perceived as an intent of seeking Indian Citizenship. The Citizenship Act does not provide for a scenario where a person residing in India, upon relinquishing her/his original Citizenship is automatically considered to be a citizen of India. Possibility of a person, though not the appellant, migrating to a third country cannot be ruled out. As such, continuous and uninterrupted stay in India cannot be a factor determining, in anticipation, of a person choosing to exercise right seeking Citizenship under the Citizenship Act.

32. The appellant failed to follow the procedure as set out in the Citizenship Act. Considered thus, neither under the Indian



Constitution nor the Laws framed thereunder, any right of Citizenship can be said to have conferred upon her. The Issues are answered accordingly.

33. This now brings us to the ancillary issue No.(iii), as to whether the documents produced by the appellant can form the basis of conferring Citizenship upon her or not. The answer in the light of the discussion cannot be in the affirmative.

*34. The Hon'ble Apex Court in **Sarbananda Sonowal v. Union of India**, (2005) 5 SCC 665, lays down certain principles in dealing with cases of illegal migrants. One of them being that the burden of proof would be upon the proceedee as he would possess the necessary documents to show that he is a citizen not only within the meaning of the provisions of the Constitution of India but also within the provisions of the Citizenship Act.*

*35. The principles stand reiterated in **Sarbananda Sonowal (II) v. Union of India**,*



(2007) 1 SCC 174.

36. The Hon'ble Supreme Court in **Rupjan Begum v. Union of India**, (2018) 1 SCC 579, held the certificate issued by the Gram Panchayat Secretary not to be proof of Citizenship, clarifying further, that such right be determined under the provisions of Citizenship Act.

37. The Hon'ble Supreme Court in **Bhanwaroo Khan v. Union of India**, (2002) 4 SCC 346, held that long stay in the country and enrolment in the voters' list would not confer any right on an alien to continue to stay in the country. Further, elaborated the right of Citizenship be determined both under the Constitution of India as also the Citizenship Act.

39. The Hon'ble Supreme Court in **State of U.P. v. Rehmatullah**, (1971) 2 SCC 113, has reiterated that the right of a person of Citizenship is considered under the Citizenship Act and observed as under:-

“11. In Shuja-Ud-Din v. Union of India [CA No. 294 of 1962,



decided on October 30, 1962] this Court speaking through Gajendragadkar, J., as he then was, said:

"It is now well-settled that the question as to whether a person who was a citizen of this country on January 26, 1950, has lost his Citizenship thereafter, has to be determined under the provisions of Section 9 of the Citizenship Act, 1955 (57 of 1955). There is also no doubt that this question has to be decided by the Central Government as provided by Rule 30 of the Rules framed under the Citizenship Act in 1956. The validity of Section 9 as well as of Rule 30 has been upheld by this Court in the case of Izhar Ahmad Khan v. Union of India. It has also been held by this Court in State of Madhya Pradesh v. Peer Mohd. (Cri. Appeal No. 12 of 1961 decided on September 28, 1962) that this question has to be determined by the Central Government before a person who was a citizen of India on January 26, 1950, could be deported on the ground that he has lost his citizenship rights thereafter under Section 9 of the Citizenship Act. Unless the Central Government decides this question, such a person cannot be treated as a foreigner and cannot be deported from the territories of India."

12. In Abdul Sattar Haji Ibrahim Patel v. State of Gujarat [Cr.A.No. 153 of 1961,



decided on February 17, 1964 : AIR 1965 SC 810 : (1964) 2 SCJ 461 : (1965) CrLJ 759] Gajendragadkar, C.J., speaking for a Bench of five Judges approved the decisions in the cases of Izhar Ahmad Khan and Syed Mohd. Khan, it being emphasized that the decision of the Government of India is a condition precedent to the prosecution by the State of any person on the basis that he has lost his Citizenship of India and has acquired that of a foreign country. That an inquiry under Section 9 of the Citizenship Act can only be held by the Central Government was again reaffirmed by this Court in Mohd. Ayub Khan v. Commissioner of Police, Madras [(1965) 2 SCR 884].”

*41. Mere registration of a person's name in the voter list, ipso facto, does not confer Citizenship. On this issue, the only exception being the judicial pronouncement of the Hon'ble Apex Court in **Lal Babu Hussein v. Electoral Registration Officer**, (1995) 3 SCC*



100. But then, that was peculiar to the attending facts and circumstances, where action for 'en-masse' deletion of names of lakhs of voters, who already exercised their right of franchise, was influenced by extraneous consideration and without any proper enquiry.

42. In **Binoy Viswam v. Union of India & Ors.** (2017) 7 SCC 59, the Hon'ble Apex Court elaborately discussed the issue of necessity, use and benefit of Pan Card issued under the provisions of Section 139AA of the Income Tax Act, 1961. Even here, the Court did not hold that possession of such a card not to confer any right of Citizenship.

44. The Gauhati High Court in **Mustt. Rabiya Khatun v. The Union of India [WP(C) 4986/2016]**; **Jabeda Begum @ Jabeda Khatun v. The Union of India & Ors. [WP(C) 7451/2019]**; **Md. Babul Islam v. Union of India [WP(C) 3547/2016]** has held a Pan Card not to be a piece of valid evidence establishing persons citizenship of India.



45. This Court in *Narendra Narayan Das v. State of Bihar*, AIR 2008 Pat 124, while examining the issue of a citizen of Nepal, in the backdrop of the Nepal Citizenship Act, held that Citizenship of a foreigner is determined under the Municipal laws of the parent country and not the Indian Citizenship Act.

46. The High Court of Bombay in *Motimiya Rahimmiya v. State of Maharashtra*, AIR 2004 Bombay 460, held as under:-

“9. In the instant case, the plaintiffs have not proved their birth in India and that is the basic requirement of claiming Citizenship. Therefore, the trial Court has rightly rejected the claim and contentions of the plaintiffs.

10. Counsel for the respondent-State relied upon the judgment of the Supreme Court reported in (2002) 4 SCC 346: AIR 2002 SC 1614, *Bhanwaroo Khan v. Union of India* and the another judgment reported in (1999) 9 SCC 281, *A.I. Lawyers*



Forum for Civil Liberties v. Union of India In the case of Bhanwaroo Khan, the Supreme Court has held that long stay in country and enrolment in voters list does not confer any right to an alien to continue to stay in country. In view of this and in view of the aforesaid reasons, all the Appeals are dismissed with Civil Applications. Certified copy expedited.”

47. The eligibility criteria for obtaining an Aadhaar Card is residency in India for a period of 182 days or more, not citizenship. Section 9 of the Aadhaar Act, 2016 clearly states that an Aadhaar number or authentication thereof shall not by itself confer any right of or be proof of Citizenship or domicile of the Aadhaar number holder. Hence, the appellant cannot rely on her PAN card and Aadhaar Card as proof of Indian Citizenship.

50. The appellant could not adduce any additional evidence to establish her claim to Indian Citizenship arising from these



*documents. Voter ID cards are not incontrovertible evidence of Indian Citizenship-presumption attached to the issuance of the voter ID card may be challenged by a complaint that states material facts under Section 136 of the Panchayat Act. The Supreme Court in **Hari Shankar Jain v. Sonia Gandhi**, (2001) 8 SCC 233, held that even a certificate of registration under Section 5(1)(c) of the Citizenship Act may be challenged in an election petition under Section 82(1) (a) of the Representation of the People Act, 1951.*

51. Hence Issue No. (iii) cannot be answered in favour of the appellant.

64. Nepalese citizenship law is primarily enshrined in two instruments.

- (i) The Constitution of Nepal*
- (ii) The Nepal Citizenship Act 2063 (2006)*

65. A few salient points emerge from the provisions mentioned above: the movement of Nepali citizens from across the land border to India is free and does not require



documentation or a passport, unlike other nationalities who are bound by the provisions of the Passport (Entry Into India) Act, 1920. Nepalese Citizenship is terminated upon the voluntary acquisition of Citizenship of another country, including India. To re-acquire Nepalese Citizenship, the former citizen of Nepal must return to reside in Nepal and submit a notification to the concerned authority for reinstatement of Citizenship.

69. We thus answer the issues as under: -

Issue No.(i)

70. Given the law laid down by this Court in **Rajani Kumari (supra)**, the State Election Commission was empowered to set aside the petitioner's election on the specified ground under Section 136(1) of the Panchayat Act of her not being an Indian citizen.

(underline mine)

Issue Nos.(ii) & (iv)

71. Given the law laid down by the Hon'ble Apex Court as discussed supra and



more specifically in *State Trading Corporation of India Ltd (supra)*, mere relinquishment of Citizenship of Nepal does not confer upon her any right of Indian Citizenship, which right flows only from and under Part-II of the Constitution of India and the Citizenship Act.

(underline mine)

Issue No. (iii)

72. Given the law laid down by the Hon'ble Apex Court in *Sarbananda Sonowal (supra)*; *Rupjan Begum (supra)*; *Bhanwaroo Khan (supra)*; and *State of U.P. v. Rehmatullah (supra)*, and the other judicial pronouncements discussed, mere possession of a Pan Card; a Voter ID Card; or an Aadhar Card cannot be said to be proof of Indian Citizenship.

(underline mine)

ADDITIONAL DIRECTION/ Issue No.(v)

73. Petitioner/appellant's application under the Citizenship Act, as and when filed,



shall be processed and disposed of expeditiously per law.

74. For all the reasons mentioned above, we do not find any illegality or perversity in the impugned judgment dated January 21, 2020, passed in CWJC No.19109 of 2019 titled as Kiran Gupta Versus the State Election Commission & Ors. However, we dispose of the present appeal with the observations mentioned above.

75. No order as to costs.”

37. Learned Senior Counsel concludes by submitting that the order in question is reasoned one and no interference is required. The present writ petition is fit to be dismissed.

38. Mr. Ravi Ranjan, learned counsel represents the State Election Commission, Bihar and according to him, ‘the Commission’ looked into the fact and held that during the course of hearing, the petitioner accepted that his name was incorporated in the Nepali citizenship register as also in its voter list which now have been deleted. Learned counsel submits that ‘the Commission’ has relied on the documents submitted by the different authorities and thus, came to the conclusion that the



petitioner preferred nomination by suppressing the facts and making false affidavit which resulted into his disqualification from the post of 'Mukhiya' which is fully justified.

39. Having gone through the facts of the case and the materials on record as also the submissions put forward by the parties, it is clear that the petitioner sometimes in the year 2005-06, as per his own admission, became the citizen of Nepal. As per Section 9 of the Indian Citizenship Act, 1955 (1), any citizen of India who by naturalization, 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.

40. The proviso to Section 9 read as follows :

“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 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] [Substituted by Act 6 of 2004, Section 9, for " person" (w.e.f. 3.12.2004).] 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."

41. However, in the considered view of this Court, the same is not applicable on the petitioner inasmuch as in his case, the petitioner accepted to have acquired the Nepali citizenship in the year 2005-06 continued with it for a decade and as per his own admission, made an application in the year 2016 which according to the writ petition remained pending and no effort was taken to get the same adjudicated. As such, during the 2021 election, he was a Nepali Citizen and thus unable to contest election. However, suppressing, the aforesaid facts, the petitioner filed nomination papers and subsequently got elected.

42. The facts which emerges and the learned Senior Counsel drew attention of this Court from the writ petition itself shows that the name of the petitioner continued to be in the



voter list of Nepal up-till the year 2020 and the number incorporated the voter list matches with the communication dated 21.06.2023 made by the Deputy Secretary of the Election Commission, Nepal according to which the name of the petitioner came to be deleted on May 30, 2023. The Indian passport of the petitioner lapsed in the year 2006 and the petitioner has not made any further statement why it was not renewed. This is the same time when his name came to be included as a citizen of Nepal

43. It is not the case of the petitioner that he had ever approached the prescribed authority in the Government of India to declare that he remained a citizen of India. It is further not the case of the petitioner that he ever approached any competent Court for declaring him as a citizen of India as he wrongly got himself enrolled as a citizen of Nepal in the year 2005-06 till his name came to be deleted in the year 2023.

44. So far as the case of **Bhagwati Prasad Dixit** (supra) is concerned, the said case is entirely different from the case of the petitioner. The citizenship of the then Prime Minister of India was questioned on the ground that he married a lady from the foreign country. In that background, the Hon'ble Apex Court held that there is no provision in our law which provides



that a person would automatically lose his Indian citizenship on his marriage with a person who is a citizen of a foreign country.

45. Here the admitted fact is that the petitioner became a citizen of Nepal and there are numerous documents to show that he continued to be a Nepali citizen. Worse, the petitioner accepts the same and further also claims to have submitted his application but again the fact remains that his name came to be deleted from the citizenship register only in the year 2023, when he was already declared elected in the year 2021.

46. Again the decision of **S. Nalini Srikanan** (supra) do not come to his rescue in the background of the fact that here the petitioner has accepted that he has been a Nepali Citizen pursuant to special drive in the year 2005-06 and further he has not denied his name in the electoral roll of Nepali Citizen. Only alibi is that he preferred an application in the year 2016.

47. So far as the case of **Kiran Gupta** (supra) cited by the learned Senior Counsel is concerned, the same squarely covers the decision taken by 'the Commission'. The Division Bench clearly held that the State Election Commission was empowered to set aside the election of the petitioner on the specified ground under Section 136(1) of the Panchayat Act.

48. In this case, the fact is on record that on the day, the



petitioner submitted his nomination, he was not a citizen of India. Any further document/submission will not change the basic fact and/or better his case. The petitioner’s claim to have submitted the application in the year 2016 cannot come to his rescue as mere relinquishment of Citizenship do not automatically makes him the Citizen of India. There is every possibility of a person moving to a third country after he/she decides to relinquish his/her Citizenship of a country.

49. In the aforesaid background, the reasoned order passed by the State Election Commission, Bihar disqualifying him from the post of ‘Mukhiya’ which was communicated to the petitioner *vide* memo no. 1685 dated 01.04.2024 need no interference.

50. The writ petition is bereft of merits and is dismissed. Interim order dated 08.05.2024 stands vacated.

(Rajiv Roy, J)

Prakash/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	
Transmission Date	

