

Form No. J.(2)
Item No. 24
Court No. 1
KS

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

HEARD ON: 10.11.2025
DELIVERED ON: 10.11.2025

**CORAM:
THE HON'BLE ACTING CHIEF JUSTICE SUJOY PAUL
AND
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)**

W.P.A.(P) 480 of 2025

Aatmadeep

Vs.

The Union of India & Ors.

Appearance:-

Mr. Mainak Bose, Sr. Adv.

Mr. Arif Ali

Mr. Supratic Roy

Mr. Prabhat Kr. Srivastava

Mr. Sudipta Roy

Mr. Sarban Bhattacharjee

Mr. Shuvajit Roy

Mr. D. Sharma

.....For the Petitioner

Mr. Jahar Lal De, Ld. A.G.P.

Mr. Sutanu Chakrabarti

.....For the State

Mr. Ashok Kumar Chakraborti, Ld. A.S.G.I.

Ms. Amrita Pandey

.....For the Union of India

Mr. Soumya Mazumder, Sr. Adv.

Ms. Anamika Pandey

Mr. Suryaneel Das

.....For the Respondent No.2

Ms. Sonal Sinha

Ms. Nilam Shaw

.....For the State Election Commission (Respondent No.3)

ORDER (ORAL):

Sujoy Paul, ACJ.:-

1. We have heard Mr. Mainak Bose, learned senior counsel for the petitioner, Mr. Ashok Kumar Chakraborti, learned senior counsel for the Union of India, Mr. Soumya Mazumder, learned senior counsel for the respondent no.2 and Ms. Sonal Sinha, learned counsel appearing for the State Election Commission on admission.
2. The petitioner is an N.G.O. In this public interest litigation, the grievance highlighted by the petitioner is that certain persons belonging to Hindu, Sikh, Buddhist, Jain, Parsi and Christian community entered India from neighbouring countries viz. Afghanistan, Bangladesh and Pakistan and they are covered by the definition of “illegal migrant” mentioned in Section 2(1)(b) of the **Citizenship Act, 1955** (in short, “Citizenship Act”). By taking this Court to Section 6B, which deals with special provision as to citizenship of person covered by proviso to Clause (b) of Sub-Section 1 of Section 2. Learned senior counsel appearing for the petitioner submits that second proviso to Sub-Section 3 of Section 6B makes it clear that the person, who made an application for citizenship under this section shall not be deprived of his right and his privileges to which he was entitled on the date of receipt of his application on the ground of making such application.
3. During the course of hearing, learned senior counsel for the petitioner urged that there are approximately 50,000 such applicants, who entered India on or before 31st

December, 2014, who are entitled to get protection of second proviso to Section 6B(3) of the said Act.

4. The principle argument of learned senior counsel for the petitioner is that in terms of Rule 12 of **Citizenship Rules, 2009**, such persons preferred applications for grant of citizenship of India, which are pending consideration before the respondents. Since the applications are pending and no decision has been taken thereupon the rights, which applicants were enjoying on the date of submission of such application must be extended in their favour.
5. It is submitted that in the Special Intensive Revision (SIR), such applicants' cases have not been considered whereas the second proviso to Section 6B of the Act, in no uncertain terms, makes it clear that such applicant is entitled to the rights and privileges, which were available on the date of receipt of application. Learned senior counsel for the petitioner placed reliance on the order of the Hon'ble Supreme Court in *Basudev Dutta Vs. The State of West Bengal & Ors.* reported in *2024 SCC OnLine SC 3616*.
6. We have heard the learned Additional Solicitor General, who represents the Central Government submits on instructions that if directed, affidavit may be filed within 15 days.
7. Mr. Majumder, learned senior counsel, who represents the Election Commission of India submits that the main role is of Central Government for the purpose of grant of citizenship etc.

8. No other point is raised by the learned senior counsel for the parties.
9. We have heard the parties at length on admission. This petition is filed by an NGO and is pregnant with applications of certain persons, who have allegedly preferred applications in Form VIIIA of the Citizenship Rules, 2009 before the authorities.
10. Before dealing with the aforesaid contention of the learned counsel for the petitioner, it is apposite to consider the definition of “**illegal migrant**”, which reads thus:-

*“[(b) “**illegal migrant**” means a foreigner who has entered into India –*

- (i) without a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf; or*
- (ii) with a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf but remains therein beyond the permitted period of time;*

[Provided that any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31st day of December, 2014 and who has been exempted by the Central Government by or under clause (c) of sub-section (2) of section 3 of the Passport (Entry into India) Act, 1920 (34 of 1920) or from the application of the provisions of the Foreigners Act, 1946 (31 of 1946) or any rule or order made there under, shall not be treated as illegal migrant for the purposes of this Act;]”

(Emphasis Supplied)

11. The next reliance was on Section 6B, which is reproduced in toto.

[6B. Special provisions as to citizenship of person covered by proviso to clause (b) of sub-section (1) of section 2.—*(1) The Central Government or an authority specified by it in this behalf may, subject to such conditions, restrictions and manner as may be prescribed, on an application made in this behalf, grant a certificate of registration or certificate of naturalisation to a person referred to in the proviso to clause (b) of sub-section (1) of section 2.*

(2) Subject to fulfillment of the conditions specified in section 5 or the qualifications for naturalisation under the provisions of the Third Schedule, a person granted the certificate of registration or certificate of naturalisation under sub-section (1) shall be deemed to be a citizen of India from the date of his entry into India.

(3) On and from the date of commencement of the Citizenship (Amendment) Act, 2019, any proceeding pending against a person under this section in respect of illegal migration or citizenship shall stand abated on conferment of citizenship to him:

Provided that such person shall not be disqualified for making application for citizenship under this section on the ground that the proceeding is pending against him and the Central Government or authority specified by it in this behalf shall not reject his application on that ground if he is otherwise found qualified for grant of citizenship under this section:

*Provided further that the person who makes the application for citizenship under this section **shall not be deprived of his rights and privileges to which he was entitled on the date of receipt of his application on the ground of making such application.***

12. The opening sentence of Section 6B makes it crystal clear that it is a special provision regarding citizenship of a person covered by proviso to Subsection (3) of Section 6B.
13. Thus, in order to get the protection under the second proviso of Sub-Section 3 of Section 6B, the applicant must establish with accuracy and precision that he satisfies the twin conditions mentioned in provision to Section 2(1)(b) of Act.
14. A microscopic reading of the proviso to the definition of “illegal migrant” makes it clear that such persons, who entered India must satisfy twin conditions viz. (i) they entered into India on or before 31st day of December, 2014 and (ii) who has been exempted by the Central Government by or under Clause – C of Sub-Section 2 of Section 3 of the **Passport (Entry into India) Act, 1920** or any rule or law holding the field.

15. On a specific query from the Bench, no pleading or proof could be shown to us that above second condition has been satisfied by these applicants. In absence thereof, second proviso of Section 6B cannot be pressed into service.
16. Needless to emphasise that cases regarding Citizenship Act are based on the peculiar factual backdrop of each case. The date and mode of entry to India may vary from case to case. Similarly, where there exists an exemption under any law the date and nature of exemption may also vary from person to person. Thus, these aspects cannot be looked into in a Public Interest Litigation. The individual person if aggrieved, may file appropriate proceeding.
17. It is noteworthy that the present PIL appears to have been filed on apprehension. No material is available on record to establish that pending consideration of applications for citizenship, any right, privilege or entitlement of such applicants have been declined or taken away.
18. As noticed above, the present petition/PIL is filed by an NGO raising questions of facts and law in relation to several individual persons. Individual rights are based on the peculiar factual matrix of each case. These cannot be clubbed together and decided in a PIL. Accordingly, PIL is not an appropriate remedy and hence we deem it proper to decline interference in our discretionary jurisdiction under Article 226 of the Constitution.
19. So far the order of Supreme Court in **Basudev Dutta** (supra) is concerned, suffice it to observe that in the said case, where right entitlement or interest of an individual was allegedly breached, the individual himself

became petitioner before the Court. This order cannot be pressed into service for entertaining a PIL filed by an NGO. In view of the foregoing discussion, admission is declined. The PIL is **dismissed** by reserving liberty to approach appropriate forum at appropriate stage. It is made clear that this Court has not expressed any opinion on the merits of the case. The observations made hereinabove were made only for the purpose of deciding the entertainability of the PIL.

(SUJOY PAUL, ACJ.)

I agree.

(CHAITALI CHATTERJEE (DAS), J.)