

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I.A. NO. OF 2021

IN

WRIT PETITION (CIVIL) No. 1397 OF 2020

IN THE MATTER OF:

DR. RADHIKA THAPPETA & ORS.

...Petitioners

Versus

UNION OF INDIA AND ORS.

...Respondents

I.A. No. of 2021 Application for Amendment of Writ Petition

PAPER-BOOK

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ADVOCATE FOR THE APPLICANTS: SRISHTI AGNIHOTRI

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APPLICATION FOR AMENDMENT OF THE WRIT PETITION

TO

THE CHIEF JUSTICE OF INDIA AND HIS COMPANION JUSTICES OF
SUPREME COURT OF INDIA

THE HUMBLE APPLICATION OF THE ABOVENAMED

APPLICANTS

MOST RESPECTFULLY SHOWETH:-

1. That the present Writ Petition under Article 32 of the Constitution seeks to assail Sections 7B(1), 7D, 8(2) and 9(1) of the Citizenship Act, 1955 as being ultra vires Article 14, 19, 21 and 25 of the Constitution of India and violating the fundamental right to life, equality, freedom of expression, and dignity of the Applicants (Petitioners therein). The contents of the said Writ Petition may be read as part of the present Application and the same are not repeated herein for the sake of brevity.

2. That on 4th March 2021, Respondent No. 3 (the Ministry of Home Affairs) issued a Notification under Section 7B(1) of the Citizenship Act, 1955, which consists not only of a sudden and drastic reversal of the rights of OCIs, but is also illegal and violative of Articles 14, 19 and 21 of the Constitution. Given that the instant Writ Petition concerns a challenge to various provisions of the Citizenship Act, including Section 7B(1) of the said Act on the ground, inter alia, that it grants un-canalized power to the executive to determine the rights of Overseas citizens without any legislative guidance, it is necessary for the Applicants herein to draw the attention of this Hon'ble Court to the notification of 4.3.2021, and assail the validity of the same. In light of the same, the Applicants seek to add, by way of amendment, the following paragraphs to the instant Writ Petition:

(a) In Para. 9 of the Petition:

k. Whether the notification of 4th March 2021 is manifestly illegal in as much as it defines an Overseas citizen as a 'foreign national holding passport of a foreign country', in a reversal of the intent and provisions of the OCI scheme introduced into the Citizenship Act by the 2003 amendment?

l. Whether the Notification dated 4th March 2021 under Section 7B(1) of the Citizenship Act goes against the objective of the enactment of

the OCI Scheme to unequivocally grant dual citizenship to individuals?

m. Whether, citizenship being a fundamental link between an individual and a state, a reversal of a person's citizenship status, and the privileges that flow through the same, can be permitted by the means of delegated legislation?

n. Whether the Notification dated 4th March 2021 under Section 7B(1) of the Citizenship Act is an arbitrary and excessive exercise of the discretionary powers granted to the Central Government under Section 7B(1) of the Citizenship Act?

o. Whether curtailment of rights of the Applicants by means of a notification, is manifestly illegal, and violates their rights under Articles 14,19, and 21 of the Constitution, in that it robs them of their ability to plan their lives with a reasonable amount of certainty?

p. Whether a requirement for a special permit for OCIs to 'undertake research' suffers from the vice of vagueness and over-breadth, as the said term could encompass any activity involving scholarly or academic enquiry, or any routine research activity

required to be undertaken by the Petitioners in the course of their work?

(b) After Para. 22 of the Petition:

*22A. Accordingly, the Central Government has been issuing notifications under Section 7B(1) of the Citizenship Act specifying the rights of OCIs. Such notifications have been issued on various dates, namely 11th April 2005, 5th January 2007, and 5th January 2009. The latest such notification dated 4th March 2021, issued in supersession of earlier notifications, has the effect of severely curtailing the rights of OCIs and further relegating them to the position of second-class citizens in the country. A copy of the Notification S.O.1050(E) issued by the Ministry of Home Affairs dated 4th March 2021, hereto marked and annexed as **Annexure P-24** (Pages 10-13).*

(c) In Para. 54 of the Petition, after Ground oo:

VALIDITY OF NOTIFICATION DATED 4 MARCH 2021

*pp. **BECAUSE** the Notification issued by the Respondent No. 3 on 4th March 2021 is ex facie illegal as it seeks to alter or change the status of Overseas Citizens, by means of a delegated legislation. It is further entirely contrary to the avowed objective of the 2003, and 2005 amendments to the Citizenship Act, 1955, namely, the grant of*

dual citizenship to individuals like the Applicants. It is submitted that a notification cannot alter the rights and privileges set out in the parent legislation.

qq. The notification also severely curtails the rights of OCIs in an arbitrary manner and discriminates against them. The Notification now requires OCIs to hold a special permission or Special Permit from the competent authority to undertake research. It is submitted that this requirement suffers from the vice of overbreadth, over-inclusiveness and vagueness. Any scholarly enquiry (such as writing an article of the law governing Overseas citizens), or any routine research activity which many of the Petitioners herein may have to do in the course of their work as doctors, engineers, scientists, professors, and entrepreneurs, might fall under the broad sweep of the term research. Requiring a special permit for the same, is an onerous obligation that violates the fundamental rights of the Petitioners under Article 14, 19 and 21 of the Constitution and comes in their way in planning their lives with any sufficient level of certainty.

*rr. **BECAUSE** the Notification issued by the Respondent No. 3 on 4th March 2021 is unconstitutional, as it unreasonably creates a classification between OCIs and other Indian citizens by according*

parity between OCIs and NRIs for admission to seats pursuant to All India Entrance Tests. The Notification thereby makes OCIs eligible only to take up NRI/supernumerary seats in educational institutions. Thus, OCIs are arbitrarily made ineligible to take up seats in the All India/State Quotas, excluding them from a large number of higher educational institutions in the country. This is despite the fact that several OCIs have been resident in India for many years. They and their families are also working in India, paying taxes in India and have no desire to immigrate abroad. For the purposes of admission to professional colleges within India, resident OCI students complete several years of schooling on par with Indian Citizens and both equally meet domicile requirements. Such OCIs are therefore in an equal class with Indian Citizens for the purposes of admission, and the Notification's removal of parity between resident OCIs and Indian Citizens in matters of admission to professional colleges amounts to unequal treatment of equal classes and is violative of Article 14 of the Constitution.

*ss. **BECAUSE** in declaring OCIs to not be citizens of India, the said Notification issued by the Respondent No. 3 on 4th March 2021 is ultra-vires the object and purpose of the enactment of the OCI*

Scheme in the Citizenship Act, which was to unequivocally grant dual citizenship to individuals such as the Applicants;

*tt. **BECAUSE** the Notification issued by the Respondent No. 3 on 4 March 2021 violates the fundamental right to life and personal liberty of OCIs, and also violates their fundamental rights to practise a profession of their choice in posing fetters on their ability to freely undertake research.*

*uu. **BECAUSE** through the said Notification, the State has violated the principle of non-retrogression. As stated earlier, the principle of non-retrogression mandates that once rights are conferred upon the society, they cannot be taken back, but must progressively be built up. However, the said Notification has taken back the rights granted to OCIs by the notification of 5th January 2009 to appear for all India entrance tests and be eligible for admission at par with Indian citizens. It has sought to declare (in a manner that is impermissible through delegated legislation) that Overseas **Citizen** of India are foreign passport holders and foreign nationals. This, it is submitted, has caused severe hardship to petitioners whose ability to plan their lives, has been jeopardized by the sudden, and wholly illegal reversal contained in the 4.3.2021 notification.*

(d) After Prayer Clause d:

da. Pass any writ/order or direction to quash the Notification S.O. 1050 (E) dated 4.3.2021 issued by Respondent No. 3 being ultra-vires Articles 14, 19 and 21 of the Constitution.

3. That the Notification dated 4th March 2021, and the various illegalities in the said notification are material facts that were not available to the Petitioners at the time of filing the instant Writ Petition. The said Notification has been issued under Section 7B(1) of the Citizenship Act, one of the provisions in challenge in the instant Writ Petition. It affects the status of several Petitioners and their relatives, as well as their contentions in the Writ Petition relating to their OCI status.
4. It is therefore, expedient in the interest of justice that the amendments proposed above are permitted to be incorporated by way of amendment to the Writ Petition.
5. That this Application is bona-fide and in the interests of justice.

P R A Y E R

It is therefore more respectfully prayed that this Hon'ble Court may be pleased to:-

- a) Allow this application for amendment of the Writ Petition, and add the above facts, grounds, and prayer to the Writ Petition in accordance with Para. 2(a)-(d) of this Application,

- b) Permit the Applicants herein to file document viz. **Annexure P-24**, and the same may be taken on record, and/or
- c) Pass any further orders that this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

AND FOR SUCH ACT OF KINDNESS, THE APPLICANTS SHALL EVER PRAY AS IN DUTY BOUND.

DRAWN BY

SRISHTI AGNIHOTRI AND NUPUR RAUT

ADVOCATES

FILED BY:

Date: 17.03.2021

[MS. SRISHTI AGNIHOTRI]

Place: New Delhi

Advocate for the Applicants