

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21<sup>ST</sup> DAY OF MARCH, 2023

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPPASANNA

WRIT PETITION No.21642 OF 2022 (GM - PASS)

**R**

**BETWEEN:**

1 . MASTER ARYA SELVAKUMAR PRIYA

REPRESENTED BY  
DR. PRIYA DURAIRAJ SELVAKUMAR,  
I.E., MOTHER AND GUARDIAN  
OF THE PETITIONER.

2 . MS. PRIYA DURAIRAJ SELVAKUMAR

PRESENTLY AT  
NO. 13025, PRESTIGE SHANTHINIKETHAN,  
WHITEFIELD MAIN ROAD,  
BENGALURU – 560 048,

KARNATAKA, INDIA.

... PETITIONERS

(BY SRI MANU P.KULKARNI, ADVOCATE)

**AND:**

- 1 . JOINT SECRETARY (PSP) AND  
CHIEF PASSPORT OFFICER  
MINISTRY OF EXTERNAL AFFAIRS,  
PSP DIVISION,  
MINISTRY OF EXTERNAL AFFAIRS,  
ROOM NO. 27, PATIALA HOUSE,  
TILAK MARG,  
NEW DELHI - 110 001.
- 2 . REGIONAL PASSPORT OFFICER, BENGALURU  
MINISTRY OF EXTERNAL AFFAIRS,  
GOVERNMENT OF INDIA,  
8<sup>TH</sup> BLOCK, 80 FEET ROAD,  
KORAMANGALA,  
BENGALURU - 560 095.
- 3 . UNION OF INDIA  
MINISTRY OF EXTERNAL AFFAIRS,  
74B, SOUTH BLOCK,  
NEW DELHI - 110 001,  
REPRESENTED BY ITS SECRETARY.
- 4 . UNION OF INDIA  
MINISTRY OF LAW AND JUSTICE,  
3<sup>RD</sup> FLOOR 'C' WING,  
LOK NAYAK BHAWAN,  
KHAN MARKET,  
NEW DELHI - 110 003,  
REPRESENTED BY ITS SECRETARY.

- 5 . CONSULATE GENERAL OF INDIA  
TORONTO,  
365 BLOOR, ST E NO.700,  
TORONTO  
ONTARIO-M4W 3L4,  
CANADA,  
REPRESENTED BY THE CONSUL GENERAL.
  
6. UNION OF INDIA  
MINISTRY OF HOME AFFAIRS  
FOREIGNERS DIVISION  
NORTH BLOCK  
NEW DELHI – 110 001  
REPRESENTED BY ITS SECRETARY.

... RESPONDENTS

(BY SRI M.N.KUMAR, CGC FOR THE RESPONDENTS)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER DTD.12.01.2022 PASSED BY THE R-1 BEARING NO.VIII/402/APP-13/2021 ANNEXURE-A AND CONSEQUENTLY ALLOW THE APPLICATION FILED BY THE PETITIONERS MOTHER BEARING REF NO.20-1005138005 DTD.18.11.2020 ANNEXURE-N AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 17.03.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

**ORDER**

The petitioners are calling in question order dated 12-01-2022 passed by the 1<sup>st</sup> respondent/Joint Secretary and Chief Passport Officer, Ministry of External Affairs declining to grant an Indian passport to the 1<sup>st</sup> petitioner and have further sought quashment of a Surrender Certificate dated 22-05-2015 issued by the 5<sup>th</sup> respondent/Consulate General of India, Toronto and a consequential mandamus directing the 2<sup>nd</sup> respondent/Regional Passport Officer, Bengaluru to issue a valid Indian Passport to the 1<sup>st</sup> petitioner. *In this order, for the sake of convenience 1<sup>st</sup> petitioner will be referred to as the son; 2<sup>nd</sup> petitioner as mother/wife and Sri Selvakumar Balasubramanian as the father/husband.*

2. *Shorn* of unnecessary details, facts germane for a consideration of the *lis*, are as follows:-

The 2<sup>nd</sup> petitioner/wife gets married to one Sri Selvakumar Balasubramanian/husband on 4-11-2005. Both the husband and wife were Indian Citizens, residing in India. From the wedlock a son is born on 5-03-2008 in India – the 1<sup>st</sup> petitioner. It appears

that the husband decides to relocate to Canada owing to his avocation in the year 2011. The wife joined him at Canada along with the son. In the year 2012 the father returns to Bangalore with the son and hands over custody of the son to the parents of the wife i.e., the maternal grandparents of the child. It is the averment in the petition that after handing over the child to the grandparents, the husband lost complete touch with the family and various modes of contacting the husband have failed and he is inaccessible and untraceable even to this day. The mother continued to stay, pursuing her studies, in Canada while the son continued to stay with the grandparents in India.

3. In the year 2015 precisely on 21-02-2015, on an application being made by the mother before the authorities at Canada seeking citizenship of Canada she was granted one on 21-02-2015 and in furtherance of grant of citizenship, a Canadian passport was also issued in her favour on 07-04-2015. Therefore, the mother then becomes a citizen of Canada. After grant of citizenship the mother files an application before the Consulate General of Indian Embassy at Canada surrendering her citizenship

of India and seeking an Overseas Citizen of India card. Accepting the surrender application, the Government of India, in the Ministry of External Affairs, issued citizenship surrender certificate to the mother depicting that she has renounced Indian citizenship under the Citizenship Act, 1955 (hereinafter referred to as 'the Act' for short) and cancelled the passport. The surrender certificate was issued on 22-05-2015.

4. After issuance of surrender certificate, since the son was staying in India with the grandparents and the father was also staying in India, the grandparents applied for issuance of a minor passport to the son. An Indian passport comes to be issued to the son on 24-07-2015 for a period of five years which was set to expire on 23-07-2020. The mother then relocates, due to her avocation, to the United Kingdom and is now residing in United Kingdom.

5. On the ground that the husband had become untraceable for several years, wife registers a proceeding before the Family Court at Bangalore under Section 13(1)(ia) & (ib) of the Hindu Marriage Act for divorce/annulment of marriage that took place on

4-11-2005 in M.C.No.4807 of 2017. The concerned Court records that on failure of efforts to get the respondent served including a paper publication, there was no warrant to wait for representation of the respondent/husband and then passed an *ex parte* order annulling the marriage on 04-09-2018 and since there was no contest in the matter, it directed permanent custody of the child to the mother. This order has become final. Therefore, the custody of the child goes to the mother legally.

6. The passport of the son issued on 24-07-2015 was set to expire on 23-07-2020, he was then 12 years old. Owing to such date of expiry, the mother makes an application before the Authorities seeking re-issuance of passport to the son. At the outset, the signature of the father was sought and the mother explains that the father was untraceable, and a decree of divorce is granted and the custody of the son was with the mother. It is then, the Authorities insisted production of document of custody i.e., the order of the Court and other details of the matter. The Authorities then realized that though the custody has been granted to the mother, the mother has renounced citizenship of India way back in

the year 2015 and by operation of law the minor son also ceases to be a citizen of India. On that basis re-issuance of Indian passport to the son was declined. This led the mother filing an appeal before the Appellate Authority/1<sup>st</sup> respondent. The Appellate Authority recording the fact that Passport Rules require the parent in whose custody the minor child is, to be citizen of India for issuance of passport to the minor, affirms the order of the Regional Passport Officer who declined to re-issue passport in favour of the son. But, however, the Appellate Authority on humanitarian grounds to unite with his mother grants a temporary passport to the son to be effective from 21-03-2022 to expire on 20-03-2023. Before the expiry date would arrive, the present petition is preferred on 28-10-2022 seeking the afore-quoted prayers.

7. Heard Sri Manu P.Kulkarni, learned counsel appearing for the petitioner and Sri M.N.Kumar, learned Central Government Counsel appearing for the respondents.

8. The learned counsel appearing for the petitioner would contend that the son is born in India from the wedlock of citizens of India, at the time when both the mother and father were citizens of



India. Therefore, in terms of Section 3 of the Citizenship Act, 1955 the son is a citizen of India by birth. The mother unknowingly or being ignorant of consequences of law, sought renunciation of her Indian citizenship. What was required to the mother was an Overseas Citizenship of India under Section 7A of the Act and not renunciation. It is his submission that the mother was advised to renounce the citizenship and, therefore, she submitted an application for surrendering citizenship. Even otherwise, the learned counsel would contend that surrender of citizenship had happened in the year 2015 and the custody of the son has come to the mother in the year 2018. Therefore, renunciation should not come in the way of grant of passport to the son, as otherwise, he would be rendered countryless or landless and will have no legal identity. Though the passport is issued to the son, it is only a temporary which would give no right of citizenship to the son. He would therefore, contend that passport be directed to be issued in favour of the son. The learned counsel for the petitioners has not advanced any contention towards the unconstitutionality of Section 8(2) of the Act.

9. On the other hand, the learned counsel representing the respondents would vehemently refute the submissions by taking this Court to the statement of objections to contend that the mother consciously applied for renunciation of citizenship as could be gathered from Annexure-11, the surrender application form, which clearly indicates the reason for surrender, as acquiring foreign nationality and renunciation of Indian citizenship. This was strictly in consonance with law. The citizenship surrender certificate is also issued in tune with what the mother had sought on 22-05-2015. He would submit that it is too late in the day for the mother to now turn around and challenge the surrender certificate so issued to her. He would submit that in terms of the Rules there cannot be any fault found with the order passed by the Authorities and passport is given to the son on humanitarian grounds which would expire and if the prayer is granted it would lead to a cascading effect and serious consequences. He would put up vehement opposition for grant of any prayer that is sought in the petition.

10. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record, in furtherance whereof the issue that falls for consideration is:

***"Whether the son is entitled to the grant/re-issuance of an Indian passport?"***

11. Before embarking upon consideration of the issue or the prayer of the petitioners for grant/re-issuance of an Indian passport to the son, I deem it appropriate to notice the legal frame work/the Citizenship Act, 1955, the Passport Act, 1967 and interplay between the two.

**Acquisition of Indian citizenship:**

12. Acquisition of citizenship is dealt with in Sections 3 to 6. What is germane to be noticed is Section 3 and it reads as follows:

***"3. Citizenship by birth.—(1) Except as provided in subsection (2), every person born in India—***

- (a) on or after the 26th day of January, 1950, but before the 1st day of July, 1987;*
- (b) on or after the 1st day of July, 1987, but before the commencement of the Citizenship (Amendment) Act,*

2003 and either of whose parents is a citizen of India at the time of his birth;

**(c) on or after the commencement of the Citizenship (Amendment) Act, 2003, where—**

**(i) both of his parents are citizens of India; or**

**(ii) one of whose parents is a citizen of India and the other is not an illegal migrant at the time of his birth,**

**shall be a citizen of India by birth.**

(2) A person shall not be a citizen of India by virtue of this section if at the time of his birth—

(a) either his father or mother possesses such immunity from suits and legal process as is accorded to an envoy of a foreign sovereign power accredited to the President of India and he or she, as the case may be, is not a citizen of India; or

(b) his father or mother is an enemy alien and the birth occurs in a place then under occupation by the enemy."

*(Emphasis supplied)*

Section 3 provides acquisition of citizenship where both the parents are citizens of India or one of whose parents is a citizen of India and the other is not an illegal migrant at the time of his/her birth. Therefore, by operation of Section 3, a person born in India on several circumstances is a citizen of India. Insofar as the present case is concerned, the son is a citizen of India in terms of Section 3(1)(c) as both the parents, at the time of his birth, were citizens of India and the son was born in India. Therefore, ***jus soli*** - by birth

the son becomes a citizen of India. This fact and the interpretation cannot be in dispute.

**Renunciation of citizenship:**

13. Renunciation of citizenship under the Act is dealt with under Section 8 of the Act and it reads as follows:

***"8. Renunciation of citizenship.—(1) If any citizen of India of full age and capacity, makes in the prescribed manner a declaration renouncing his Indian Citizenship, the declaration shall be registered by the prescribed authority; and, upon such registration, that person shall cease to be a citizen of India:***

***Provided that if any such declaration is made during any war in which India may be engaged, registration thereof shall be withheld until the Central Government otherwise directs.***

***(2) Where a person ceases to be a citizen of India under sub-section (1) every minor child of that person shall thereupon cease to be a citizen of India:***

***Provided that any such child may, within one year after attaining full age, make a declaration in the prescribed form and manner] that he wishes to resume Indian Citizenship and shall thereupon again become a citizen of India."***

Section 8 deals with renunciation of citizenship. The method of renunciation of citizenship is depicted in terms of the Rules promulgated by Government of India in exercise of its power under

Section 18 of the Act. It is germane to notice Rule 23 and it reads as follows:-

**"23. Declaration of renunciation of citizenship.—(1) A declaration of renunciation of citizenship of India under sub-section (1) of Section 8 shall be made by a citizen of India in Form XXII.**

**(2) On receipt of the declaration of renunciation of citizenship of India under sub-rule (1), an acknowledgement in Form XXIII shall be issued by the concerned Authority referred to in Rule 38, to the declarant.**

**(3) On being satisfied about the correctness of the particulars of the declaration made under sub-rule (1), the declaration shall be registered by the concerned Authority referred to in sub-rule (2) and a Certificate of Renunciation of Indian citizenship in Form XXIV shall be issued by him to the declarant.**

**(4) The concerned Authority referred to in sub-rule (2) shall maintain a register in Form XXIV-A containing the details of declarants whose declaration of renunciation of citizenship are registered under this rule."**

*(Emphasis supplied)*

In terms of Section 8, a citizen of full age and capacity may in the prescribed manner declare renouncing his Indian citizenship and the declaration shall be registered by the prescribed Authority and upon such registration the declarant will cease to be a citizen of India. Sub-section (2) of Section 8 depicts that when a person ceases to be a citizen of India under sub-section (1) which would mean who ever would renounce citizenship, the minor child of that declarant

who has renounced citizenship of India will thereupon i.e., from the date of such renunciation ceases to be a citizen of India. The purport of the Act is that if the mother or the father renounces citizenship of India, the minor would cease to be a citizen of India. The proviso to sub-section (2) further permits that the child who has lost citizenship of India, if on attaining the full age i.e., 18 years then within one year thereafter can make a declaration that he wishes to resume Indian citizenship. Rule 23 depicts the method of declaration of renunciation of citizenship. There are three types – that declaration under sub-section (1) of Section 8 is to be made in Form No.XXII, the said declaration is to be acknowledged by the prescribed Authority in Form No.XXIII and on being satisfied with the declaration of the declarant the certificate of renunciation of Indian citizenship in Form No.XXIV should be issued. In the light of Rule 23 depicting three forms for renunciation to be completed, I deem it appropriate to notice the very forms that are part of the Rules. They read as follows:

*"FORM XXII*

*[See rule 23 (1)]*

*The Citizenship RULES, 2009*

**DECLARATION OF RENUNCIATION OF CITIZENSHIP UNDER SECTION 8 OF THE ACT MADE BY A CITIZEN OF INDIA WHO IS ALSO A CITIZEN OR NATIONAL OF ANOTHER COUNTRY**

1. I, .....(here insert name and address of declaration) am of full age and capacity and was born at (with Tehsil, District, State and Country).....on.....
2. I have/have not been married.
3. I hereby renounce my citizenship of India.
4. I hereby renounce my citizenship of India and surrender my Indian Passport No. .... with date of issue.....
5. Name and full particulars of minor children who are Citizens of India, if any .....

I,..... do solemnly and sincerely declare that the foregoing particulars stated in this declaration are true and I make this solemn declaration conscientiously believing the same to be true.

Signature .....

Made and subscribed this ..... day of .....  
..... 20.....before me.

\* Signature.....  
\*Designation .....

**Particulars**

1. Full name .....
2. Address .....
3. Profession or occupation .....
4. Place and date of birth .....
5. (Second) Nationality .....
6. Single, married, etc.....
7. Name of wife or husband .....
8. Names and nationalities of parents .....
9. Names and full particulars of children, if any .....

I, the undersigned, hereby state that I am an Indian citizen



otherwise than by naturalization that I am householder, and that I am not the solicitor or agent of ..... I vouch for the correctness of the statements' made by.....in his application for .....

Date ..... Signature .....  
Name (in BLOCK LETTERS).....  
Full Postal address.....

\* Signature and designation of the officer authorized under rule 38 of the Citizenship Rules, 2009, before whom the registration, declaration or oath of allegiance is made or taken.

**FORM XXIII**

[See rule 23(2)]

THE CITIZENSHIP RULES, 2009

**ACKNOWLEDGEMENT FOR THE DECLARATION OF RENUNCIATION OF CITIZENSHIP OF INDIA UNDER SECTION 8 OF THE CITIZENSHIP ACT, 1955**

Received declaration of renunciation of Indian citizenship under section 8 of the Citizenship Act, 1955 from Miss/Ms./Mr .....d/o, w/o, s/o .....resident of..... along with his/her Indian Passport No.....with date of issue .....

Date.....  
Signature with seal of the receiving officer

**FORM XXIV**

[See rule 23(4)]

THE CITIZENSHIP RULES, 2009

**REGISTER OF DECLARATIONS OF RENUNCIATION OF INDIAN CITIZENSHIP**

Sl. No.	Full name of declarant and address	Profession or occupation	Place and date of birth	Nationality of declarant's parents	Full names of parents	Married, Single, Widower or divorced	Place where and date when declaration made	Reference to orders etc., from Ministry of Home Affairs	Attestation by Secretary, Joint Secretary, Deputy Secretary/Under Secretary, Ministry of Home Affairs	Reference to letter along with which declaration of renunciation received	Remarks
1	2	3	4	5	6	7	8	9	10	11	12

*This Form when completed should be forwarded in triplicate to the Chief Secretary to the Government of the State in which applicant is resident."*

Therefore, form Nos. XXII, XXIII and XXIV are for different and specific purposes. This is the legal frame work for renunciation of citizenship.

14. The issue in the *lis* is required to be considered on the bedrock of the aforesaid legal frame work. Certain facts are not in dispute. The husband and the wife get married in India on 4.11.2005. Both the husband and the wife were Indian citizens born in India at the time of their marriage and were residing in India. From the wedlock, the son is born on 05-03-2008 in India to the parents who were Indian citizens. Therefore, by operation of Section 3, the son becomes a citizen of India by birth having born to Indian citizens. In 2011 the husband relocates to Canada. The

wife follows him along with the son. In 2012 the husband comes back to India along with the son and hands over the child to the maternal grandparents of the child i.e., the parents of the wife and appears to have disappeared and the averment is, the father is not traceable even to this day.

15. The mother who pursued her higher education in Canada applies for Canadian citizenship and was granted such citizenship on 21-02-2015. On such grant of Canadian citizenship, she was granted a Canadian passport on 07-04-2015. Therefore, from 07-04-2015 she becomes a full blown citizen of Canada. Since the Act does not permit dual citizenship, the mother submits an application form for surrender/renunciation of Indian citizenship. The surrender application form is appended to the statement of objections. The reason for surrender as depicted in the application by the mother is as follows:

***"Reason for Acquiring Foreign Nationality/  
Surrender: Renunciation of Indian Citizenship."***

The reason is acquiring foreign nationality/renunciation of Indian citizenship. Upon this the Ministry of External Affairs, accepting the

application of the mother and on verification of documents issues a citizenship surrender certificate on 22-05-2015. The surrender certificate reads as follows:

"CAN/SC/03086615

Date: 22-MAY-2015

**CITIZENSHIP SURRENDER CERTIFICATE**

***Consequent upon renunciation of Indian citizenship under Section 8 of the Citizenship Act, 1955 and acquiring of Canadian citizenship by Mrs. PRIYA SELVAKUMAR on 21.02.2015 her Indian passport No.H7541155 issued on 18-SEP-2009 at Bangalore has been cancelled and returned to the holder. Fee has been charged vide receipt No.CANT03086615 dated 11-MAY-2015."***

*(Emphasis added)*

Thereafter, it is the claim of the respondent/Ministry of External Affairs that it has been registered that the mother has renounced Indian citizenship and is no longer a citizen of this country.

16. Later, the grandparents of the son in whose custody the son was throughout, applied for an Indian passport and the son was issued a minor passport on 24-07-2015 for a period of 5 years. The passport was set to expire on 23-07-2020. During the said period, the mother institutes proceedings seeking annulment of marriage before the Family Court at Bangalore. The family Court in terms of its order dated 04-09-2018 recording the fact that the husband did

not appear before the Court despite paper publication grants a decree of divorce as was sought by the wife and since there was no contest, the custody of the son was ordered to be permanently with the mother. The order reads as follows:

*"Petition filed by the petitioner/wife under Section **13(1)(ia) and (ib) of the Hindu Marriage Act** is hereby allowed.*

***The marriage solemnized between petitioner and the respondent on 4-11-2005 at SNR Kalyana Mantapa, Kolar Main Road, Bangarpet, Kolar District is hereby dissolved by granting decree of divorce and registered in No.BPT-HM 112-2009-10 dated August 27, 2009 in the office of the Registrar of Marriages, Bangarpet is hereby cancelled.***

***The petitioner is appointed as a permanent guardian of the child born to the petitioner and the respondent on 05-03-2008 at St. Martha's Hospital, Bengaluru and she is entitled for the permanent custody of the child by name Master Arya Priya Selvakumar."***  
(Emphasis added)

After the grant of divorce and permanent custody of the son, the mother applies for re-issuance of Indian passport to the son. It is then the Authorities seek the signature of the father only to be told that there is a decree of divorce and permanent custody is with the mother; the Authorities then seek decree of the Court and documents of the mother. Thereafter, the Authorities get to know that the mother has renounced citizenship of India and on such

renouncement it was opined that the son cannot be re-issued the Indian passport, as the Passport Rules would indicate that passport to a minor can be issued only when the parent to whose custody the child has been granted, is on the date of consideration of the application for re-issuance of passport of the minor, an Indian citizen. Therefore, taking note of the documents of the mother, the passport of the son is declined to be re-issued. The legal guardian and the mother then filed an appeal before the Appellate Authority/1<sup>st</sup> respondent, who by the impugned order dated 12-01-2022 affirms the order passed by the Regional Passport Officer. The order reads as follows:

*"12. **And now, therefore,** having gone through all the records and in the light of the full facts and circumstances of the case, I, as the Appellate Authority, as per the provisions u/s 11 of the Passports Act, 1967, decide the appeal as under:*

*(i) As per section 5(2)(c) of the Passports Act, 1967, on receipt of an application, the passport authority, after making such inquiry, if any as it may consider necessary, shall subject to the other provisions of this Act, by order in writing:*

*(c) refuse to issue the passport or travel document or, as the case may be, refuse to make on the passport or travel document any endorsement.*

*(ii) **As per section 6(2)(a) of the Passports Act, 1967, 'subject to the other provision of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country***

**under clause (c) of sub-section (2) of Section 5 on any one or more of the following grounds, and no other ground, namely:**

- (a) That the applicant is not a citizen of India;**
- (iii) As per Section 8 of Passports Act, 1955, (1) When a citizen of India of full age and capacity, declares in a prescribed manner furnishes a declaration renouncing his Indian citizenship, the declaration shall be registered by the prescribed authority and, upon such registration, that person shall cease to be a citizen of India;**
- (2) When a person ceases to be a citizen of India under sub-section (1), every minor child of that person shall thereupon cease to be a citizen of India.**
- (iv) the applicant's mother had acquired Canadian nationality and formally renounced her citizenship u/s 8(1) of C.A. 1955.**
- (v) The legal custody of child has been granted to the mother, vide Court order dated 4-09-2018, by Family Court, Bangalore in petition M.C.No.4807 of 2017.**
- (vi) As per extant rules, in cases where one parent has renounced the Indian citizenship and the other parent is still an Indian citizen, the citizenship of the minor shall be of that person who has legal custody of that minor child and the eligibility of an Indian passport will be determined on the basis of his/her citizenship.**
- (vii) Therefore, the child is not eligible for Indian passport. The action of PO in refusing the applicant's passport application No.BN2073143318320 dated 10-12-2020 u/s 6(2)(a) read with Section 5(2)(c) of the Passports act, 1967 was in order.**

*(viii) However, on the request of child's mother, he may be issued a short validity passport on humanitarian grounds, so as to enable him to travel abroad to reunite with his mother."*

What could be gathered from the order is that once the citizenship is renounced under Section 8 of the Act, the passport cannot be issued to the child as the applicant i.e., the mother is no longer a citizen of India on her acquiring Canadian nationality and formally renouncing her Indian citizenship. As per the Passport Rules, in case where one parent has renounced Indian citizenship and the other parent is still an Indian citizen, the citizenship of a minor shall be of that person who has legal custody of the minor child. The legal custody of the minor child is with the mother and the mother is now a citizen of Canada. By operation of law the child also has lost his Indian citizenship and can be regained only after he attains full age i.e., 18 years. The Appellate Authority however grants a short validity passport on humanitarian grounds to enable the child to travel abroad and re-unite with his mother. The kindness displayed by the Appellate Authority is appreciable. The mother is now working in United Kingdom and the boy has joined the mother in the United Kingdom on the strength of the passport. The



passport so granted has also expired on 20-03-2023. Insofar as the challenge to the validity of Section 8(2) of the Act is concerned, the petitioners have not advanced any contention in support of the prayer that is sought. Even otherwise, merely because it has created prejudice to the mother, the provision of law cannot be held to be unconstitutional on the ground that it is arbitrary. The said prayer deserves to be rejected, as the foundation is fundamentally flawed.

17. On a coalesce of all the aforesaid facts and the legal frame work, the result is that the child has lost his Indian citizenship and cannot become a citizen of any other country in terms of their laws and for regaining Indian citizenship he has to come of full age, in terms of the proviso to sub-section (2) of Section 8 of the Act. That stage has not yet arrived as the child is now 15 years old. Three years have to pass by for the son to exercise his discretion either to become a citizen of any other country or to regain Indian citizenship, but till then he is rendered **Stateless.**

**Statelessness:**

18. A Stateless child is an individual who does not hold the citizenship of any State. Stateless children are among the most vulnerable individuals in the world, as being stateless implies several consequences. They would not have any rights, legal protection, benefits of education, healthcare, freedom of movement *inter alia* and Statelessness has a lifelong impact on a child who is rendered one. India is a signatory to the Universal Declaration of Human Rights, 1948. Article 15 of the said treaty expressly provides that everyone has a right to one nationality. International Convention on the rights of a child, as well as the Convention on reduction of Statelessness provide particular norms with respect to right to nationality for children. In theory, basic human rights should be available to everyone and everywhere. All states reserve certain rights for their citizens, a Stateless child does not get any entitlement for those rights which have been conferred upon citizens by particular countries. A child is a soul with a being and a being who is entitled to all human rights. Merely because a minor/child has no voice in the affairs of the state *qua* citizenship or

otherwise, the Courts exercising jurisdiction under Article 226 of the Constitution of India, both for justice and equity, cannot shut its doors to the cry of a child, who would be rendered Stateless without the aid of interference at the hands of this Court. It is in public domain that it is the endeavour of the comity of nations to eradicate Statelessness of children in particular, as **LAW ABHORS STATELESSNESS OF CHILDREN**. If law is abhorrent to Statelessness of a child, the situation in the case at hand has to be redeemed, failing which, it would result in the Statelessness of the son.

19. On the bedrock of the aforesaid mandate of Human Rights and rights of a child *qua* the Conventions, the relief that is to be granted to the son is required to be considered. It is not in dispute that the child is born in India, to Indian citizens at the time of birth, which was in the year 2008. Both the parents relocate to Canada. The child has intermittently stayed in Canada and then in India with the grandparents. After staying for one year in Canada, the father comes back to India with the son, leaves him with the maternal grandparents and abandons the son. The mother continues to stay

in Canada and also acquires citizenship of Canada and later, renounces the citizenship of India. The son then is issued a minor passport in the year 2015. The family Court grants a divorce to the couple and orders permanent custody of the son to be with the mother. This happens long after the mother had renounced the citizenship of this nation. Neither the father nor the mother thought of the child at that point in time i.e., at the time when the mother renounced her Indian citizenship. The passport issued to the son expires in 2020. It is then the mother wakes up and tries to retrace her steps with regard to renouncement of citizenship and the surrender certificate that was given by her in Canada in the year 2015. The parents forgot the child in the jugglery of settling their scores. The cry of such a child cannot be ignored by this Court. The obligation of the International Conventions *qua* child rights to which India is a signatory is that "no child should be left Stateless". Therefore in the aforesaid facts, leaving open to the Ministry of Home Affairs to put up all its defence in any given case, I deem it appropriate to direct the respondents 1 and 2 to issue a passport to the 1<sup>st</sup> petitioner for the period between today and his

attaining the age of 18 years, failing which, he would be rendered Stateless.

20. Perhaps, the law makers would not have envisaged a situation of this kind that is brought before the Court for them to think of a solution in its Rules, guidelines or procedures stipulated under the Circulars, be it under the Act or the Passports Act. Though, in the considered view of this Court, a one of solution to a one of problem is to be rendered, such problems recurring will generate apathy towards a child. Therefore, it is for the Authorities to bring about necessary solution to redeem such unprecedented situations whenever they would occur.

21. The son cannot but be held to be a citizen of India having taken birth in this land to the parents who were citizens of India at the time of birth of the son. Myriad circumstances prevailed leading to the defenceless situation of the child. The biological father though is now separated from the mother is still an Indian, notwithstanding the fact that he is not traceable. Merely because the father is not traceable and the mother has been reckless in not

knowing the consequences of renouncement of citizenship, the fate of the child cannot be left in limbo. It becomes a fit case where this Court has to exercise its jurisdiction under Article 226 of the Constitution of India to remedy the wrong *qua* the son of the 2<sup>nd</sup> petitioner, a wrong never committed by the child as **"IF NOT THE COURTS WHO and IF NOT NOW, WHEN"**.

22. For the aforesaid reasons, I pass the following:

**ORDER**

- (i) Writ Petition is allowed in part.
- (ii) The challenge to the Constitutional validity of Section 8(2) of the Citizenship Act, 1955 or the prayer to read it down stands rejected.
- (iii) The challenge to the impugned order dated 12-01-2022 is rejected.
- (iv) The challenge to the Surrender Certificate dated 22-05-2015 is rejected.

- (v) *Mandamus* issues to the respondents 1 and 2 to issue/extend/re-issue the passport that is issued to the son/1<sup>st</sup> petitioner to be operational till the son attains the age of 18 years bearing in mind and adhering to the observations made in the course of the order, as the son cannot be rendered a Stateless child.
- (vi) Liberty is reserved to the son/1<sup>st</sup> petitioner to resume Indian Citizenship once he comes of full age in terms of proviso to 8(2) of the Act.
- (vii) The respondents 1 and 2 shall issue/extend/re-issue the passport in favour of the son/1<sup>st</sup> petitioner forthwith, till the time of such issuance, the existing passport shall stand extended and no coercive or precipitative action shall be taken against the son/1<sup>st</sup> petitioner.

Pending applications if any, also stand disposed, as a consequence.

**Sd/-  
JUDGE**

bkp  
CT:MJ