

D/L. 55.  
October 3, 2023.  
MNS.

WPA No. 16013 of 2023

Priya Das and others  
Vs.  
Union of India and others

Mr. Kallol Basu,  
Mr. Shibaji Kumar Das,  
Mr. Ahshan Ahmed,  
Mr. Samik Sarkar,  
Ms. Rupsa Sreemani,  
Ms. Atreya Chakrabarti,  
Mr. Swapnamoy Sarkar

... for the petitioners.

Mr. Asok Kumar Chakrabarti,  
Ms. Susmita Saha Dutta

...for the Union of India.

Mr. Anuran Samanta

...for the Election Commission of India.

Mr. Piush Chaturvedi,  
Mr. Tarun Kumar Das

...for the respondent no. 12.

1. The matter is being heard for the purpose of consideration of the prayer for interim order.
2. Learned counsel for the petitioners, upon it being pointed out by learned counsel appearing for the private respondent/husband of the petitioner no. 1 that the relevant memorandum annexed at page 270 has not been assailed in writ petition, submits that the

dissatisfaction and affectation of the petitioners even with the memorandum annexed at page 270 pertaining to the cancellation of Aadhaar Cards of the petitioners as proposed by the Deputy Director of Ministry of Home Affairs has been mentioned in paragraph no. 2 of the writ petition. However, counsel submits that there has been an inadvertent omission to include a challenge to the said memorandum in the prayer portion of the writ petition.

3. Learned counsel submits that the respondent authorities, in blatant contravention of the provisions of law, have taken action on the basis of the memoranda impugned in the present writ petition as annexed at pages 270 to 273 of the writ petition.
4. On the prayer of learned counsel for the petitioners, the learned Advocate-on-record for the petitioners is granted leave to amend the prayer portion of the writ petition by incorporating a challenge to the memorandum annexed at page 270 of the writ petition, bearing Memo no. 14051/96/2021-F.VI(i) dated October 18, 2022 as well.

5. Learned counsel for the petitioners, by placing particular reliance on the annexures to the writ petition and the supplementary affidavit filed by the petitioners, argues that the provisions of the Citizenship Act, 1955 and the corresponding Rules of 2009 as well as the extant Regulations pertaining to Aadhaar Cards have been violated by the respondent authorities. During pendency of the writ petition, it is submitted, the Aadhaar Card of the petitioners have been deactivated, leading to their Voters' ID Cards as well as the PAN Cards having also been suspended consequentially.
6. Learned counsel submits that no reasonable enquiry as contemplated under Rule 29 of the Aadhaar (Enrolment And Update) Regulations, 2016 (2016 Regulations) has been given to the petitioners, nor has any copy of any field enquiry, which is mandatorily required under the said provision, been handed over to the petitioners.
7. It is submitted that the deactivation of the Aadhaar numbers of the petitioners had to be under Regulation 28 of the 2016 Regulations. However, the respondent authorities failed to

furnish any ground as contemplated under the said Regulation for suspending the Aadhaar Cards of the petitioners.

8. It is contended by learned counsel further that the provisions of the 2009 Citizenship Rules, in particular, Rules 26, 27 and 28, stipulate a specific modality for the purpose of depriving a person of citizenship of India. The provisions of Schedules II and III are also to be adhered to for such purpose, which has not been done at all in the present case.
9. It is argued that in the absence of any challenge to the citizenship of the petitioners and/or any steps having been taken in that regard, the respondents acted palpably without jurisdiction in deactivating the Aadhaar Cards without any plausible reason whatsoever.
10. Learned counsel appearing for the private respondent/husband of the petitioner no. 1 submits that the said respondent has furnished sufficient documents to indicate that the petitioner no. 1 is a holder of Bangladeshi passport and other documents, including a Voter Card of Bangladesh, which clinch beyond any reasonable doubt the fact that the

petitioner no. 1 and her family are Bangladeshi citizens. Hence, the Indian Passport, Adhar Card, PAN Card and other documents were obtained fraudulently by the petitioner no. 1 and her entire family.

11. It is submitted that irrespective of the fact that a matrimonial litigation is going on between the private respondent and the petitioner no. 1, the petitioner no. 1 is a citizen of Bangladesh and, as such, the memoranda of the Government of India which are under challenge in the writ petition were rightly issued in respect of the petitioner no. 1 and her family.

12. It is further submitted that the petitioners have not preferred any effective challenge in the prayer portion of the writ petition to the memorandum pertaining to the proposed cancellation of Indian Aadhaar Cards of the petitioners and, as such, no interim relief can be granted on such count.

13. Learned counsel submits that since the filing of a supplementary affidavit, incorporating certain subsequent facts regarding the de-activation of the Aadhaar Card, does not supplant the writ petition or the reliefs claimed

therein, no interim relief can be granted on the basis of such supplementary affidavit, insofar as the deactivation of the Aadhaar Card of the petitioner is concerned.

14. Learned Additional Solicitor General submits that there are several justifications for the deactivation of the Aadhaar Card of the petitioner.

15. It is contended that the Ministry of Home Affairs of the Government of India, upon having received reports from the Central Security Agency, which the Union is ready to present before the court if so directed, took the decision to cancel the Indian Aadhaar Cards of the petitioners, since those were fraudulently obtained by the petitioners, who are Bangladeshi Nationals.

16. It is further contended that it is within the domain of the State, as the sovereign, to take appropriate action in the event it transpires that a person who has fraudulently obtained documents of Indian citizenship turns out to be a national of a different country.

17. It is reiterated that dual citizenship is not approved by Indian law and, as such, the

impugned memoranda were rightly issued by the Government.

18. In any event, it is submitted that sufficient hearing was given to the petitioners and, as such, even the deactivation of Aadhaar Cards of the petitioners do not merit any interdiction by any interim order of this court.

19. Keeping in mind the constraints of the court while deciding on an interim prayer, the arguments of the parties are not elaborated further but will be dealt with presently in the order which is being passed hereunder.

20. The provisions under which the citizenship of an Indian citizen can be interdicted are provided in the Citizenship Act, 1955.

21. Relevant to the present context are Sections 9 and 10 of the said Act. Section 9 speaks about termination of Citizenship and Section 10 about deprivation of citizenship.

22. Needless to say, under the Act of 1955 read with Rules 26, 27 and 28 of the Citizenship Rules, 2009 framed thereunder and Schedules II and III, sufficient procedure has been laid out, keeping in view the tenets of natural justice, for the purpose of depriving or terminating the citizenship of a person.

23. However, at the present juncture, the high ground of termination of citizenship has not been invoked by the respondent authorities, since the petitioners are still in possession of valid passports.

24. Since the petitioners have not yet been deprived of their citizenship by the respondents, we need not look into the provisions of the Citizenship Act and the consequential Rules at this juncture. However, the citation of the said statute becomes relevant insofar as the present action of deactivating the Aadhaar Cards of the petitioners might have the consequence, *de facto*, of terminating the Indian citizenship of the petitioners, since the deactivation of their Aadhaar Cards has severe consequences on the petitioners' right to live a dignified life as enshrined in Article 21 of the Constitution of India and to pursue vocations under Article 19 of the Constitution of India.

25. Considering the provisions of the Aadhaar Regulations of 2016 in such context, we find that Regulation 27 thereof provides for cases requiring omission of Aadhaar number. However, the authorities have resorted to



Regulation 28(c) of the 2016 Regulations, as declared in the documents annexed to the pleadings.

26. As per the said provision, the Aadhaar number shall be deactivated where it is found at a later stage that enrolment has been carried out without valid supporting documents. The Aadhaar number in such context shall be deactivated till it is updated by the Aadhaar number holder after furnishing valid supporting documents.

27. The memorandum issued at page 270 of the writ petition does not speak in any manner about, or advert to, Regulation 28 or any other Regulations within the preview of the 2016 Regulations.

28. The proposed cancellation of the Indian Aadhaar Card held by the petitioners, as suggested by the Ministry of Home Affairs, Government of India, is on the ground that apparently the Ministry has received report from the Central Security Agency that the petitioner no. 1 is a Bangladeshi national.

29. The said memorandum, surprisingly, does not disclose any iota of reference as to why the documents furnished by the petitioners while

obtaining the Aadhaar Cards showing the petitioners' Indian Citizenship are vitiated.

30. Even if we assume for the sake of argument that the petitioner no. 1's husband, against whom the petitioner no. 1 has initiated a matrimonial suit and an alimony application, furnished certain documents, which are purportedly documents of the petitioner no. 1's Bangladeshi nationality, there is no reason as to why *ipso facto* such documents, without further scrutiny, field enquiry and justified reasoning, would vitiate the documents produced by the petitioner no. 1 herself regarding her Indian Citizenship.

31. The presumption might have been otherwise if such documents regarding purported Bangladeshi Citizenship were discovered or recovered from the custody of the petitioners themselves.

32. In the present case, it is for the private respondent to prove beyond all reasonable doubt that the petitioners are Bangladeshi citizens and were so at the juncture when the documents-in-question, including the Aadhaar Cards etc. were issued in favour of the petitioner no. 1.

33. In the criminal proceeding initiated at the behest of the petitioner no.1's husband (the private respondent) against the petitioner no. 1, a police report has been furnished by the police authorities.

34. A perusal of the same shows that even the Sub Inspector of Police of the concerned Police Station is unsure as to whether the petitioner no. 1 is a Bangladeshi national. The relevant extract of the said report indicates that the accused persons, that is, the petitioners, who are a family, are holding a number of documents pertaining to identity proof of the said persons with regard to their Indian citizenship as specifically showed at this present juncture. It is very difficult to prove, found the police in their report, that the petitioners are Bangladeshi nationals.

35. As such, even in the criminal proceeding, the police report itself indicates that the petitioner no. 1 and her family are in custody of several documents to prove their Indian Citizenship. The corresponding worth of the documents furnished by the petitioner no. 1 and her family on the one hand and the private respondent

on the other, pitted against each other, has to be decided by a competent authority.

36. Before such adjudication and/or a formal enquiry being undertaken, the respondent authorities cannot, in any manner, take away the basic rights of the petitioner no. 1 and her family as citizens of India, as in the present case.

37. The petitioner no. 1 and her husband, the private respondent, are locked in a legal battle and the acrimony is obvious.

38. Even Regulation 28(c) of the 2016 Regulations states that where it is found at a later stage that enrolment has been carried out without valid supporting documents, the Aadhaar number may be deactivated.

39. In none of the communications made by the respondent authorities or the Ministry do I find any specific particular of the alleged fraud or suppression alleged to be perpetrated by the petitioners while furnishing the relevant documents for the issuance of the Aadhaar cards in their names.

40. Learned Additional Solicitor General right argues that particulars of fraud are required to be pleaded. However, we cannot put the cart

before the horse insofar as it is for the respondent authorities and the private respondent, who are alleging that the petitioners' Indian citizenship documents were obtained by a fraud, to prove the same for the purpose of taking away the rights of the petitioners as Indian citizens.

41. The inquiry contemplated under Regulation 29 of the 2016 Regulations, as rightly argued by learned counsel for the petitioners, has two limbs. The first limb of the same is the field enquiry report, which shall be the primary basis of the decision to deactivate the Aadhaar card, which may or may not be supplemented by hearing being given to the petitioners.

42. In the present case, hearing was given to the petitioners. However, we do not find from the records that any field enquiry report was relied on by the authorities or copy thereof was furnished to the petitioners for the petitioners to deal with the same in due process of law.

43. Under Regulation 29(3) of the 2016 Regulations, the authority may initiate necessary action upon receiving the report and the decision to omit or deactivate an

Aadhaar number shall be taken thereafter.

Sub Regulation (2) stipulates that an agency nominated by the authority shall examine/inquire and submit a report to the authority as per the procedures as may be specified by the authority for such purpose.

44. We do not find any iota of any such inquiry report being furnished to the petitioners by the authorities to indicate that the provisions of Regulation 29 were complied with duly for deactivation of the petitioners' Aadhaar cards.

45. The challenge of the petitioners to all impugned the memoranda are on the same premise. The very basis on which the petitioners' Indian citizenship is being sought to be assailed by the respondents is the presumption that the petitioners are Bangladeshi nationals.

46. All the challenged memoranda ranging from pages 270 to 274 of the writ petition have been issued on the same premise. In view of such identity of the grounds of challenge in the present writ petition, it cannot be said that the petitioners, due to the initial failure to challenge the memo annexed at page 270 pertaining to the Aadhaar card, are not

entitled to any interim injunction on such count. The deactivation of the Aadhaar cards of the petitioners during pendency of the writ petition is a necessary fall-out of the challenged memoranda dated October 18, 2022.

47. Hence, the court cannot be said to be without jurisdiction in passing necessary interim orders in connection with the deactivation of the Aadhaar card and all consequential actions taken by the respondent authorities in terms of the impugned memoranda during pendency of the writ petition.

48. The relief, if granted on such score, shall only be in aid of the main relief sought in the writ petition.

49. In view of the above discussions, a sufficiently strong *prima facie* case has been made out by the petitioners to challenge the memoranda, insofar as the appropriate preceding steps were apparently not carried out by the respondent-authorities before issuing such memoranda. Insofar as the deactivation of the Aadhaar card during pendency of the writ petition is concerned, the same also *prima facie* appears to be *de hors* the procedure as

laid down in the 2016 Regulations pertaining to Aadhaar cards.

50. Accordingly, the deactivation of the petitioners' Aadhaar cards and all consequential action taken by the respondent-authorities shall remain stayed during pendency of the writ petition.

51. However, it is made clear that nothing in this order shall prevent the respondent-authorities from proceeding on the basis of the communication made in the memoranda under challenge in the writ petition, during pendency of the writ petition, subject to the rider that the respondents shall comply with all due procedure as stipulated in the concerned Statutes, including the Citizenship Act and other *pari materia* Statutes dealing with the fields covered by the said memoranda.

52. The respondents shall file their affidavits-in-opposition within November 24, 2023. Reply, if any, shall be filed within December 1, 2023.

53. The matter shall be listed for hearing on December 5, 2023.

(Sabyasachi Bhattacharyya, J.)