JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3597 of 2019
Mst. Samina Naz and others
Versus
Pakistan through the Secretary Ministry of Interior and others

Date of Hearing:	10.03.2021
Petitioners by:	Mr. Moazzam Habib, Advocate
Respondents by:	Mr. Arshid Mehmood Kiani, learned Deputy Attorney-General Malik Shifa Ullah, Assistant Director (Litigation), Directorate General, Immigration and Passports Mr. Amjad Hameed Ghauri, Advocate for respondent No.7 Ms. Huma Noreen Hassan, Advocate for respondent No.8 Mr. Shumayl Aziz, Advocate / learned *Amicus Curiae*.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioners seek a declaration that petitioners No.2 to 4 should not be treated as foreign students by respondent No.7 (The University of Health Sciences, Lahore) **("U.H.S.")**. Furthermore, the petitioners seek a direction to respondent No.1 (Ministry of Interior) to grant Pakistani nationality to them without payment of any charges / fees.

2. Mst. Samina Naz (petitioner No.1) was originally a Pakistani citizen, born on 02.01.1970 at Mianwali. On 06.05.1995, she married her cousin, Dr. Atta Muhammad Zulfiqar, who is an Indian national. The couple had three children namely (i) Mohammad Saad (petitioner No.2) born on 24.11.1996, (ii) Mohammad Maaz (petitioner No.3) born on 20.07.1999, and (iii) Subih Siddeeqa (petitioner No.4) born on 16.06.2006.

3. On 23.10.2004, Mst. Samina Naz renounced her Pakistani citizenship. On 23.02.2005, a certificate of Indian citizenship was issued to her. She along with her children came to Pakistan in December 2018 and ever since then they have all been residing in Pakistan. Muhammad Saad (petitioner No.2) wants admission in the

U.H.S. He has passed the entry test conducted on 25.08.2019. U.H.S. is treating Muhammad Saad as a foreign student for which the fee is much higher than for a student who is a citizen of Pakistan.

4. All the petitioners have applied for Pakistani nationality on 14.10.2019. The said application has been made under Rule 20 of the Pakistan Citizenship Rules, 1952 **("the 1952 Rules")** which were made by the Federal Government in exercise of the powers conferred by Section 23 of the Pakistan Citizenship Act, 1951 **("the 1951 Act")**. The said application has till date not been decided by the Ministry of Interior. Vide letter dated 28.05.2019, the Directorate General, Immigration and Passports informed the petitioners' legal advisor that Mst. Samina Naz's Pakistani citizenship is intact and she can enjoy all the rights as a citizen of Pakistan subject to the surrender of documents including the certificate of renunciation of Pakistani citizenship, Indian citizenship certificate, Indian passport, Indian Identity Card, Pakistan Origin Card and any other documents issued by the Indian Government which show that she is an Indian citizen. There is nothing on the record to show that these documents have been surrendered by Mst. Samina Naz.

5. In the written comments, the Ministry of Interior and the Directorate General of Immigration and Passports have taken the position that if Mst. Samina Naz intends to get back her Pakistani nationality, she will first have to surrender her Indian nationality, and subsequently apply for getting Pakistani citizenship afresh like any other foreigner.

6. Section 14(1) of the 1951 Act provides *inter alia* that if any person is a citizen of Pakistan under the provisions of the said Act, and is at the same time a citizen or national of any other country, he shall, unless he makes a declaration according to the laws of that other country renouncing his status as citizen or national thereof, cease to be a citizen of Pakistan. Now, Section 14(4) of the said Act provides that nothing in Section 14(1) shall apply to a female citizen of Pakistan who is married to a person who is not a citizen of Pakistan. Bearing in mind the provisions of Section 14(1) and (4) of the said Act, Mst. Samina Naz's marriage to an Indian national would *ipso facto* not

result in her ceasing to be a citizen of Pakistan. The said provisions have been interpreted by the Hon'ble High Court of Sindh in the case of Mrs. Javed Butt Vs. A.D.J. (East) Karachi (1998 MLD 4719). In the said case, a female citizen of Pakistan had married a Saudi Arabian national and had obtained the nationality of Saudi Arabia. After relations with her husband deteriorated, she came to Pakistan and filed a suit for the dissolution of marriage. She had also filed documents surrendering her Saudi Arabian nationality before the Consulate General of Saudi Arabia. Her husband filed an application for the rejection of the suit on the ground that she was not a citizen of Pakistan at the time of the institution of her suit. The trial Court dismissed the said application but the appellate Court allowed her husband's appeal and rejected the plaint in the suit. The Hon'ble Sindh High Court, after making reference to Section 14(1) and (4) of the 1951 Act, held *inter alia* that female citizens of Pakistan married to foreigners can continue to retain dual citizenship of Pakistan and any other country in the world. Consequently, the order passed by the appellate Court rejecting the plaint was set-aside by the Hon'ble High Court of Sindh. In the said judgment, it was also held as follows:-

> ***"In spite of the marriage of the petitioner to a foreigner and having acquired the other nationality, she continues to possess a vested right of being a citizen of Pakistan by operation of law. She will therefore always be entitled to possess such valuable and beneficial rights conferred upon her by law. The Appellate Judge by rejecting the plaint has indeed committed an error as the petitioner has been deprived of the right to pursue her cause as a citizen of Pakistan."***

7. The provisions of Section 14(1) and (4) of the 1951 Act read with the law laid in the aforementioned judgment make it clear that Mst. Samina Naz cannot be deprived of her Pakistani citizenship solely on the ground that she had married an Indian national. However, in the case at hand, Mst. Samina Naz had renounced her Pakistani citizenship on 23.10.2004. After such renunciation, the Ministry of Interior has yet to decide her application to regain her Pakistani citizenship.

8. The certificate of renunciation of Pakistani citizenship issued by the Directorate General of Immigration and Passports to Mst. Samina Naz on 23.10.2004 provides that her minor children residing outside

Pakistan shall also cease to be the citizens of Pakistan from the date of registration as indicated above. It also provides that the children can resume citizenship of Pakistan by making a declaration to this effect under Rule 19-B of the 1952 Rules within one year of attaining the age of twenty-one years.

9. Upon the issuance of the certificate of renunciation of citizenship to Mst. Samina Naz, she and her children ceased to be citizens of Pakistan by operation of Section 14-A of the 1951 Act, which provides *inter alia* that if any citizen of Pakistan resides outside Pakistan and has been given by the competent authority of another country any valid document assuring him of a grant of citizenship or nationality of that other country upon renouncing his citizenship of Pakistan, makes a declaration renouncing his citizenship of Pakistan, the declaration shall be registered by the prescribed authority; and upon such registration that person shall cease to be a citizen of Pakistan. Learned counsel for the petitioners confirmed that it was only after Mst. Samina Naz renounced her Pakistani citizenship and after that she was granted Indian citizenship by the competent authority in India.

10. As regards Mst. Samina Naz's children, they were all born in India and are presently Indian citizens. They came along with their mother to Pakistan on a visit visa. Be that as it may, they have also applied for Pakistani citizenship. Section 5 of the 1951 Act provides *inter alia* that a person born after the commencement of the said Act shall be a citizen of Pakistan by descent if his parent is a citizen of Pakistan at the time of his birth. The word *"parent"* in Section 5 of the said Act replaced the word *"father"* through an amendment in the said section by Ordinance No.XII of 2000. Since at the time of Muhammad Saad's birth on 24.11.1996, his mother was a Pakistani citizen (having not renounced her Pakistani citizenship by then), he remained a Pakistani citizen until the renunciation of his mother's Pakistani citizenship on 23.10.2004. This would also be the case as regards Muhammad Maaz (petitioner No.3), who was born on 20.07.1999 i.e. before his mother renounced her Pakistani citizenship. As Subih Siddeeqa (petitioner No.4) was born after her mother had renounced

her Pakistani citizenship, she remained an Indian citizen at all material times.

11. Section 15 of the 1951 Act provides that every person becoming a citizen of Pakistan under the said Act shall have the status of a Commonwealth citizen. Thus, by virtue of being a citizen of Pakistan, Mst. Samina Naz was a Commonwealth citizen until the renunciation of her Pakistani citizenship. As mentioned above, Mst. Samina Naz's husband is an Indian citizen. Assuming that by virtue of having been granted Indian citizenship, Mst. Samina Naz and her children are Commonwealth citizens, they could apply under Rule 20 of the 1952 Rules for the grant of Pakistani citizenship. Mst. Samina Naz and her children have indeed applied for Pakistani citizenship through an undated application under Rule 20 of the 1952 Rules. Under the said Rule, any Commonwealth citizen or British protected person can apply for the citizenship of Pakistan to the Federal Government, if at the time of the application the applicant is a resident of Pakistan, for the citizenship of Pakistan. It is apt to mention that Section 20 of the 1951 Act provides that the Federal Government may upon such terms and conditions as it may by general or special order specify register a Commonwealth citizen or a British protected person as a citizen of Pakistan. In exercise of the powers conferred by Section 20 of the 1951 Act, the Federal Government vide notification (S.R.O. 369(K), dated 19.04.1960) prescribed the following conditions for the submission of applications by Commonwealth citizens for the citizenship of Pakistan:-

> ***"(a) A Commonwealth citizen intending to settle permanently in Pakistan shall first make an application to that effect to the Pakistan Mission in the country to which he belongs. The Mission will consult the Pakistan Government is prepared to admit him to Pakistan for the purpose of permanent settlement the Mission will grant him an immigrant visa. The grant of such visa will not entitle him to the citizenship of Pakistan; it will have to be acquired under the ordinary process of law. The grant of the visa does no more than provide the means of residence so that his application for citizenship can be duly considered.***
> ***(b) Applications by Commonwealth citizens for citizenship submitted in any other manner will be rejected without consideration."***

12. The said terms and conditions specified by the Federal Government do not envisage a situation where applicants / Commonwealth citizens residing in Pakistan apply for Pakistani citizenship. Be that as it may, the Directorate General, Immigration and Passports vide letter dated 28.05.2019 has required Mst. Samina Naz to surrender the documents listed in the said letter (and referred to in paragraph-4 above) as a condition for her to enjoy the rights of a citizen of Pakistan. The vital question that needs to be answered is whether or not the condition for the surrender of the said documents imposed on petitioner No.1 by the Directorate General of Immigration and Passports is without lawful authority. The grant of Pakistani citizenship to Mst. Samina Naz and her children without the surrender of the said documents would enable her to retain Pakistani as well as Indian citizenship. After the renunciation of Mst. Samina Naz's Pakistani citizenship, there is no warrant in the law permitting the retention of dual nationality by her. Since I do not find the said conditions imposed by the Directorate General, Immigration and Passports for granting Pakistani citizenship to Mst. Samina Naz to be arbitrary, unjust or illegal, the instant petition is dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 31/03/2021

(JUDGE)

APPROVED FOR REPORTING

*Qamar Khan**

Uploaded By: Engr. Umer Rasheed Dar