

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P. No. 1254 of 2022

Fazal Haq
Vs
NADRA, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
03)	<u>20.10.2022.</u>	Mr Umer Ijaz Gillani Advocate, for the petitioner. Mr Obaid ur Rehman Advocate, for NADRA.

The learned counsel who has appeared on behalf of the National Database and Registration Authority has stated that the application filed by the petitioner is being processed.

2. It is noted that section 4 of the Pakistan Citizenship Act, 1951 [Hereinafter referred to as the "**Act of 1951**"] has been interpreted by this Court in the case reported as "Hafiz Hamdullah Saboor v. Government of Pakistan, etc." [PLD 2021 Islamabad 305]. The relevant portions are reproduced below:

"A careful reading of the Citizenship Act as a whole unambiguously shows that it is a complete self-contained special statute to deal with all matters relating to 'citizenship' of the State of Pakistan. The distinct categories have been expressly dealt with. Citizenship by birth or descent, as the case may be, are distinguishable from the other categories. In case of 'citizenship by

birth' the person becomes a citizen of Pakistan automatically i.e. by operation of law. The status of such a person as a citizen is not subject to discretionary powers vested in the State as in the case of other categories e.g. citizenship by migration, naturalization etc. Rule 8 of the Citizens Rules would become relevant and attracted in cases where a person 'claims' to be a citizen by birth and seeks to obtain a certificate from the competent authority as an acknowledgment. No such process is required to be adopted by persons who are citizens by birth because it is by operation of law. Section 16 empowers the Federal Government to deprive a person of citizenship of Pakistan in certain specific and clearly described circumstances. The powers of the Federal Government under subsections 2 and 3 do not extend to 'citizenship by birth' nor 'citizenship by descent'. The power of the Federal Government in the case of circumstances described under subsection 4 of section 16 covers 'any citizen' but to justify exercising the power, the onus would be on the competent authority to establish the eventualities explicitly mentioned in the provision and, in addition, explain the reasons for being satisfied that it would be in the public interest to deprive a citizen of the latter's citizenship. A citizen

who renounces citizenship voluntarily under section 14-A may resume it in the manner provided under rule 19 B of the Citizenship Rules. Moreover, in certain specific cases, citizenship can be lost as described under section 16-A of the Citizenship Act. In a nutshell, a person cannot be denied the right of being a citizen nor deprived of it otherwise as provided under the Citizenship Act."

"Citizenship is the most valuable basic right of a human. All other rights, whether social or political, cannot be enjoyed if a person does not have a bond of citizenship with a State. The fundamental rights guaranteed under the Constitution are rendered meaningless if a person is stripped of citizenship. It has a devastating impact on human lives. A person once registered as a citizen cannot be deprived of citizenship otherwise than as is provided under the law. Article 15 of the 1948 Universal Declaration of Human Rights declares that 'everyone has the right of nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality'. Article 7 of Convention on the Rights of a Child recognizes that every child has the right to acquire a nationality. The 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness

discourages States from creating statelessness. In a nut shell, citizenship is the sole and effective bond between a State and a human which enables the latter to enjoy all the rights guaranteed under the Constitution. It entitles the individual to the protection of the State and to enjoy civil and political rights. A State cannot adopt policies which will have the effect of even inadvertently rendering a person stateless. The Citizenship Act and the Citizenship Rules and the statutory safeguards prescribed therein are consistent with the mandate of the Constitution and the international obligations. Citizenship is so precious a right that cannot be taken away in a reckless or perfunctory manner.”

3. In fact, Islamic Republic of Pakistan is one of the thirty countries that automatically grant citizenship to those born on its soil subject to conditions explicitly stated in the relevant law/statute. This right is based on the principle of ‘jus soli’ i.e. law of the soil. Many nations have changed their respective laws e.g. France in 1993 and the United Kingdom in 1983. The State of Pakistan has not changed nor reformed section 4 of the Act of 1951. The birth right citizenship, therefore, cannot be denied in Pakistan unless the exemptions explicitly described under the Act of 1951 are attracted.

4. The respondents, therefore, while processing the application of the petitioner are expected to consider the principles and law highlighted in the aforementioned judgment.

5. Relist, on 28.10.2022.

(CHIEF JUSTICE)

Tanveer Ahmed/*