

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

Writ Petition No. 3831 of 2001

In the matter of:

An application under Article 102(I)(2) of the Constitution of the People's Republic of Bangladesh

-And-

In the matter of:

Md. Abid Khan and others

...Petitioners

-Vs-

The Govt. of Bangladesh and others

...Respondents

Mr. M. I Farooqui, Advocate
Mr. Zaman Akter, A.A.G.

...For the Petitioner
...For the Respondents.

The 5th May, 2003.

Present:

Mr. Justice Md. Hamidul Haque

And

Mr. Justice Zinat Ara

Zinat Ara, J:

This Rule is about the rights of the petitioners to be enrolled in the electoral roll and thus to be registered as voters of the Mohammadpur area of the capital city.

On the application of the petitioners under article 102(I)(2) of the Constitution. Rule Nisi was issued calling upon the respondents i.e. the Election Commissioner and the related election functionaries and also the Government as to why they should not be directed to register the petitioners as voters.

All the ten petitioners claim that they are Urdu speaking citizen of Bangladesh, permanent residents of the Mohammadpur area residing at the Geneva camp and are fully qualified to be registered as voters under the laws of Bangladeshi. But in the electoral rolls prepared and published on 27.5.2001 by Election Commission, there were not included. So they submitted separate applications in prescribed forms for enrollment as voters. They also personally approached respondents Nos.2 and 4 who verbally informed that the Geneva Camp residents are not entitled to be voters.

Being aggrieved by the aforesaid inactivity of the respondents resulting in deprivation of their right to be voters under the laws the petitioners have moved this court.

None of the respondents filed any affidavit in opposition to deny or challenge the facts narrated in the writ petition. However, Mr. Zaman Akter, the learned Assistant Attorney General appeared at the time of hearing.

Mr. M. I. Farooqui, the learned Advocate for the petitioners, submits that at the petitioners are citizens of Bangladesh because of their birth either in the then East Pakistan or in the independent Bangladesh: that they are permanent residents of the Mohammadpur area and residing at Geneva Camp: that they are above 18 years of age and not otherwise disqualified to be voters. In Support of his submission, Mr. M. I. Farooqui refers to the provisions of the Electoral Rolls Ordinance 1982, the Bangladesh Citizenship (Temporary provisions) Order, 1972 (P.O. No. 149 of 1972) and also two decisions of the High Court Division and one decision of the Appellate Division of the Supreme Court.

Before we proceed on to discuss the relevant laws and the decisions referred to by the learned Advocate for the petitioners. Let us examine the facts on the basis of which the petitioners have raised their claim before us.

As stated earlier, respondents have not filed any affidavit in opposition to controvert the claims of the petitioners. Mr. Zaman Akhter did not make any submission though simply opposed the Rule.

On scrutiny of the writ petition, we find that in terms of dated of birth, the petitioners fall into two categories. Petitioner No. 1 and 2 were born in Dhaka and at Mymensingh in the year 1969 and 1967 respectively. In the following paragraphs they are refer to as the first group. All the other 8 petitioners were born in Dhaka in 1977 and in different years thereafter. We referred to them as the second group hereinafter.

In support of their respective dates and places of birth. Residence at Geneva camp and their applications to the Election Commission for enrollment as voters the petitioners have fled papers (Annexures B.B/1, series of papers and C to the writ petition). We find nothing on record to disbelieve these papers.

In this backdrop, we can look for the qualifications to be enrolled in the electoral roll that are prescribed in section 7(1) of the Electoral Rolls Ordinance, 1982. This section reads as follows:-

“7. Preparation and publication of electoral rolls- (1) The Registration Officer for an electoral are or constituency shall, under the superintendence, direction and control of the Commission, prepare for the electoral area or constituency in the prescribed manner a draft electoral roll containing the name of every person who, on the qualifying date.-

- (a) is a citizen of Bangladesh;
- (b) is not less than eighteen years of age;
- (c) does not stand declared by a competent court to be of unsound mind; and
- (d) is or is deemed to be a resident of that electoral area.”

So, the two vital issues to be decided in this writ petition are citizenship of the petitioners and the legal implications of their residence at Geneva camp.

The laws regulating the citizenship a Bangladesh are the Citizenship Act, 1951 (Act II of 1951) and the Bangladesh Citizenship (Temporary Provisions) Order, 1972 (P.O. No. 149 of 1972) hereinafter referred to as the said President's Order.

On the citizenship issue of the first group of petitioners, Mr. M.I. Farooqui relies mainly on Article 2 of the said President's Order which reads as follows:

"2. Notwithstanding anything contained in any other law, on the commencement of the Order, every person shall be deemed to be a citizen of Bangladesh:-

(i) Who or whose father or grandfather was born in the territories now comprised in Bangladesh and who was a permanent resident of such territories on the 25th of March, 1971, and continues to be so resident; or

(ii) Who was a permanent resident of the territories now comprised in Bangladesh on the 25th day of March, 1971 and continues to be so resident and is not otherwise disqualified for being a citizen by or under any law for the time being in force;

Provided that if any person is a permanent resident of the territories now comprised in Bangladesh or his dependent is in the course of his employment or for the pursuit of his studies, residing in a country which was at war with, or engaged in military operations against Bangladesh and is being prevented from returning to Bangladesh, such person, or his dependents, shall be deemed to continue to be resident in Bangladesh."

So, according to provisions quoted above, the first group of petitioners having been in the territories now comprised in Bangladesh they can very well claim citizenship under Article 2 clause (i), if they are not disqualified. Under Article 2B which is quoted below:

"2B(1) Notwithstanding anything contained in Article 2 or in any other law for the time being in force, a person shall not, except as provided in clause (2), qualify himself to be a citizen of Bangladesh if he

(i) owes, affirms or acknowledges, expressly or by conduct, allegiance to a foreign state, or

(ii) is notified under the proviso to Article 2A.

Provided that a citizen of Bangladesh shall not, merely by reason of being a citizen or acquiring citizenship of a state specified in or under clause (2), cease to be a citizen of Bangladesh,

(2) The Government may grant citizenship of Bangladesh to any person who is a citizen of any state of Europe or North America or of any other state which the Government may, by notification in the official Gazette specify in this behalf:

(3) In case of doubt as to whether a person is qualified to be deemed to be a citizen of Bangladesh under Article 2 of this Order the question shall be decided by the Government, which decision shall be final."

Article 2A is not relevant in the instant writ petition and thus needs no discussion.

Now the question is whether the first group of petitioners owed affirmed or acknowledge, expressly or by conduct allegiance to a foreign state so as to disqualify them from being citizens of Bangladesh.

The petitioners, according to their dates of birth, as mentioned in the writ petition were only 2 and 4 years old at the time of liberation. The respondents do not claim that the petitioners ever owed, affirmed or acknowledged, expressly or by conduct allegiance to a foreign state there is nothing on record to show that even parents of the first group of petitioners had or has acknowledged allegiance to a foreign state.

However, the next issue relating to the first group is whether their residence at Geneva Camp may be termed as allegiance to another state by conduct. As to the status of Geneva Camp we have no information on record. However upon our query both the learned Advocate for the petitioners and the learned Assistant Attorney General could not say anything except that it was set up by the International Committee of Red Cross. But we consider it an appropriate case for this court to take judicial notice (section 57 of the Evidence Act, 1872) if the fact of liberation struggle of Bangladesh and subsequent connection of the Urdu speaking persons in this camp, popularly known as Geneva Camp, after the liberation of Bangladesh for security reasons due to the situation prevailing immediately after liberation.

We do not think that only because of the concentration of Urdu speaking people, who were citizens of the erst while East Pakistan the so called Geneva camp has attained any special status so as to be excluded from the operation of the laws of the land including the said President Order, the Electoral Rolls Ordinance, 1982 or the Citizenship Act, 1951. So mere residence of the first group of the petitioners at the Geneva Camp cannot be termed as allegiance to another state by conduct.

Mr. M.I. Farooqui, in support of his submission, refers to the decision in the case of Mukter Ahmed Vs. Government of Bangladesh and others, reported in 34 DLR 29. In this case the following observation of their Lordships are relevant:

“The mere fact that he filed an application for going over to Pakistan cannot take away his citizenship. The Bangladesh Citizenship Order. P.O. 149/72, has enumerated different situations in which a person shall be deemed to be a citizen of Bangladesh but it has not discriminated among its citizen no matter in which way they have become citizens of this country. So the petitioner is non the same footing as any other citizen. His citizenship, therefore, clings to him. He could voluntarily renounce it or he could be deprived of it if he had incurred any disqualification. Though he filed the application, he did not even pursue it. He filed an affidavit affirming his allegiance to Bangladesh in 1972. The petitioner having not acquired the citizenship of any other country his citizenship of Bangladesh which he acquired long before cannot evaporate and he continues to be a citizen of this country.”

Similar principle is also laid down in the case of Abdul Khaleque Vs. The Court of Settlement and others, reported in 44 DLR 273. In this case it was observed by their Lordships that mere filing of an application for repatriation cannot take away the citizenship of a person.

Lastly in the case of Bangladesh Vs. Prof. Golam Azam, reported in 46 DLR (AD) 192 it was observed that even a diehard pro-Pakistani born in this country is entitled to be citizen of Bangladesh if he fulfils the requirements under Article 2 and is not disqualified under clause (1) of Article 2B.

We fully agree to the submission of the learned Advocate for the petitioners that the principles of law on citizenship stated in the three cases cited above are applicable to the first group of petitioners. Rather they are in a much better footing than the petitioners in the above-cited cases. They did not even apply for citizenship of another country nor did they apply for repatriation in Pakistan.

In view of the discussions and decisions stated above, we find that the first group of petitioners are citizens of Bangladesh in view of Article 2(i) of the said Pakistan's Order as they are not disqualified under clause (1) of Article 2B.

Now let us look into the citizenship issue about the second group of petitioners (3-10), They were born in Dhaka after independence of Bangladesh in different years starting from 1977

onwards. Petitioner No.3 was born in Dhaka and others in Geneva Camp, Mohammadpur Dhaka. Their case appears to be simple in view of section 4 of the Citizenship Act, 1951 (Act II of 1951), hereinafter referred to as the said Act. The provisions of section 4 read as follows:-

“4. Citizenship by birth-Every person born in Bangladesh after the commencement of this Act shall be a citizen of Bangladesh by birth:

Provided that a person shall not be such a citizen by virtue of this section if at the time of his birth-

(a) his father possesses such immunity from suit and legal process as it accorded to an envoy of external sovereign power accredited in Bangladesh and is not a citizen of Bangladesh; or

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

The proviso to this section is not applicable to the petitioners because the respondents do not make any such claim.

We have already decided the status of Geneva Camp Earlier. So, birth of the second group of the petitioners in Geneva Camp or their continued residence in Geneva Camp do not affect the citizenship by birth acquired under section 4 of the Act, So, we find that the second group of the petitioners are also Bangladesh citizens by birth.

On consideration of the above facts and decisions cited above, it is found that the petitioners are citizens of Bangladesh and their residence in the Geneva Camp, Mohammadpur is not a bar to be enrolled as voters and therefore they are entitled to be enrolled in the electoral roll and registered as voters if they are not otherwise disqualified to be included as such under section 7 of the Election Rolls Ordinance, 1982.

In the result, the Rule is made absolute. The respondents are directed to enroll the names of the petitioners in the electoral roll and register them as voters if not otherwise disqualified under provisions of section 7(1)(b)(c) and (d) of the Electoral Rolls Ordinance, 1982.

Zinat Ara.

MD. Hamidul Haque, J:

I agree.

H. Haque

Courtesy of

**Association of Young Generation of
Urdu Speaking Community (AYGUSC)**