## CITIZENSHIP AND NON-RESIDENT INDIANS

A VERY important question of administrative law, the law relating to educational institutions and citizenship has been decided by the Gujarat High Court.[1] The petitioner's parents were born in India and resided in India, but were staying in the United States when she was born on 7.5.1974. The parents came back to India in September, 1980 and the petitioner was continuously residing and domiciled in India and was studying in India from the 1st standard to Higher Secondary Certificate Examination at Ahmedabad. After passing the Higher Secondary Examination she applied for admission in the B.J. Medical College, Ahmedabad in the physiotherapy course but was asked to produce evidence of Indian citizenship as required by the rules. Rule 1.4 of the relevant rules in Gujarati reads as under :

> Notwithstanding anything contained in these rules, candidates who are Indian citizens shall only be considered eligible for admission to the Government Medical Colleges/ Physiotherapy/ Dental Colleges in the State. However, those who are born outside India and not holding valid Indian passport and/ or holding citizenship other than Indian citizenship shall have to produce the proof of submitting the application for acquiring Indian citizenship to the competent authority before the date of interview. They will be considered eligible for admission provided they produce the Certificate of Indian Citizenship on or before 31st December of the year of joining the college failing which their provisional admission will be cancelled without giving any notice thereof.

By an interim order, the High Court had permitted the petitioner to make a detailed representation of being an Indian citizen by descent under section 4(1) of the Indian Citizenship Act 1955 and if the government did not give a satisfactory response, the petitioner could seek due process of law. Accordingly, she made a representation about her admission, which was rejected. Certain interlocutory proceedings took place on a fresh writ petition by the petitioner and at the final hearing of the fresh writ petition, the question that fell to be considered was whether she was bound to produce evidence of Indian citizenship. The petitioner's counsel argued that rule 1.4 had no application to persons who are citizens of India and if it had such an application, then it would be *ultra vires* the Citizenship Act and the Constitution, being arbitrary and unreasonable. After a review of the case law, Thakker J. held that while the court can and must decide the question whether a person is or is not a citizen of India, yet, when a question arises as to whether, when or how a person has acquired the citizenship of another country, neither a court nor any other authority can decide the question since it is in the exclusive jurisdiction of the authority to decide with a reference to section 9(1)of the

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1. *Sejal Vikrambhai Patel* v. *State of Gujarat,* A.I.R. 1993 Guj. 150.

Citizenship Act read with rule 30 of the rules made under that Act, namely, by the central government. Ultimately, the High Court, in the interest of justice, passed an order directing the central government to decide the question whether in the facts and circumstances of the case the petitioner had voluntarily acquired citizenship of any other country under section 9 of the Citizenship Act read with the rules thereunder. The following further directions were given:[2]

> The Central Government will give reasonable opportunity of being heard to the petitioner and decide the question in accordance with law. The respondent authorities are directed to grant provisional admission to the petitioner subject to the final outcome of the decision by the Central Government under section 9(2) of the Act. Since the question concerns academic career of a student in a medical course and the application form is submitted before more than seven months, it is expected that the Central Government will decide the question as expeditiously as possible. Since, the Central Government is not before me, the office is directed to send a copy of this order to the Department concerned of the Central Government, New Delhi as also to the General Administration Department and Home Department of the State Government. I am told at the Bar that academic year of 1992-93 will be over within a very short period and new term will start from June, 1993 for the next year, that is, academic year 1993-94. I have no doubt that the Central Government will consider this aspect also and will decide the question as early as possible.

In the circumstances of the case, the above judgement may be said to have done substantial justice to the parties. Nevertheless, the question on a broader level is, whether the law should not take a more positive approach. The basic question is whether citizenship by descent is or can be overriden by citizenship by birth. On the one hand, as held in *Bhagwati Prasad Dixit* v. *Rajeev Gandhi*,[3] once a person is admitted to have held an Indian citizenship, he is presumed to be, so until the central government decides to the contrary under section 9(2). On the other hand, there is the problem created by the disinclination of the law to uphold dual citizenship. In the statement of objects and reasons relevant to clause 8 of the Citizenship Bill, it was stated as under :

> This clause and clause 9 are designed to avoid dual citizenship to a certain extent. Clause 8 provides for renunciation of Indian citizenship by voluntary act in cases where the person is also a citizen or national of another country. It is possible for a person to acquire dual citizenship by birth or later and in clauses 3 to 7 which provide for the acquisition of Indian citizenship in various ways. It is not proposed that person should renounce his foreign citizenship as condition for retaining his Indian citizenship.

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2. *Id.* at 159.
3. A.I.R. 1986 S.C. 1534.

As against this, however, certain difficulty is created by the fact that there are judicial dicta against the dual citizenship. Thus, in *Izhar Ahmad* v. *Union of India*,[4] the court, speaking through Gajendragadkar J. (as he then was) observed:[5]

> The basic principle on which the Act proceeds and which has been recognised by article 9 of the Constitution itself is that no Indian citizen can claim a dual or plural citizenship.

With great respect, this dictum, while accurate as reflecting the *broad* principle, has to be read in the light of the detailed scheme of the provisions of the Citizenship Act, particularly section 4.

Unfortunately, in the present case, the petitioner's argument that she had never renounced her Indian citizenship by resort to section 8 of the Act did not find full acceptance, because of the fact that in her application form, she had written against col. 6 the figure "2" which meant that she was having citizenship of a country other than India. The petitioner's case was that this was a mistake. Dealing with this aspect, Thakker J. expressed himself as under :[6]

> The question, however, is whether the respondent authorities have committed an error of law in relying upon certain circumstances, such as holding of a valid foreign passport by the petitioner, putting figure (2) in column 6 of the application form etc. It is the contention of the petitioner that it was through error and/or bona fide mistake that figure (2) was written by her. But in the light of these circumstances, if the respondent authorities have prima facie formed an opinion that the petitioner has voluntarily acquired citizenship of some other country, can it be said that the formation of such an opinion is arbitrary, capricious or unreasonable?

The problem posed by such cases shows the need for clarification of the provisions of the Citizenship Act. As held in *Muzibur Rahaman* v. *Khurshed-ur-Rahman Khan*,[7] the mere fact that a person has gone outside India does not mean that he has lost his Indian citizenship.

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4. A.I.R. 1962 S.C. 1052.
5. Quoted in *supra* note 1 at 156.
6. *Supra* note 1 at 157.
7. 80 E.L.R. H.P. 154 at 156 (Gau).

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