

IN THE LAHORE HIGH COURT LAHORE

I.C.A. NO.124/98
In Writ Petition No..3585/1998

M.D. TAHIR, Advocate, 10-Syed Miran Mauj Darya Road, Lahore.

Appellant

VS

Secretary, Ministry of Foreign Affairs and others

Respondants

Parawise comments on behalf of Respondents No.1

Preliminary Objections

- Case filed for 13th before
Mr Justice N. Javed Butt
ADJL D-13
B-104*
- I. The I.C.A is not maintainable on law and facts, as the appellant is not an aggrieved person in any way.
 - II. The prayer in the Writ Petition has rightly been dismissed by the Honourable High Courts as the matter relates to the foreign policy of the Government.
 - III. It is reliably learnt that some Beharis got voting rights when the High Court declared them citizen of Bangladesh. Obviously all Beharis will now get the Bangladeshi citizenship in the light of the above decision. The appeal is liable to be dismissed on this score alone.

IV. This is a policy matter to be decided by the Government. Moreover, Pakistan can not be held responsible for the repatriation of a large number of those born after 1971 in Bangladesh.

On fact.

1. Admitted to the extent that Appellant filed writ petition which was dismissed on merit. Loves affection and relation with Pakistan by Biharis can not be a ground for granting citizenship. As regards the future of their children, Bangladesh is also a Muslim Country where their future is equally safe as for their religious rights are concerned. The citizenship of those persons residing in Bangladesh shall be decided by the Constitution of Bangladesh and Bangladesh citizenship rules. Article (6) of the Constitution of Bangladesh provides that the citizenship of Bangladesh shall be determined and regulated by law. The said article is reproduced below:

Article – 6 of the Constitution of Bangladesh:

- i) The citizenship of Bangladesh shall be determined and Citizenship regulated by law.
- ii) The citizens of Bangladesh shall be known as Bangladeshis.

2. The contents of this para are not correct. In fact the children born to Beharis since 1971 have no affiliation with Pakistan and are desirous of obtaining Bangladeshi citizenship. 10 Beharis residents of the Geneva Camp got voting rights when the High Court declared them citizens of Bangladesh on 5th May, 2003. Advocate Ruhul Kuddus Babu, the Lawyers for the petitioners said that “those born at the Camp and those who have been residing in Bangladesh since 1947 partition of India are all citizens of Bangladesh”. Their citizenship cannot be taken away just because they live in the Geneva Camp or that they opted to go to Pakistan. The decision of Bangladesh High Court offers a hope to around 400,000 Beharis in 66 refugee’s camps to remain in

Bangladesh as its nationals. On 22 May, 2003, Baroness Amos, Secretary of State for International Development made the following points:

“On 5th May, 2003 The High Court in Bangladesh granted to Beharis voting right. Beharis had lodged a case on voting rights at the time of 2001 elections. The ruling may well facilitate a process, which would allow the Beharis to obtain Bangladeshi Citizenship and remain in the country. Younger generation of Beharis strongly envisage their future within Bangladesh”.

The Bangladesh Citizenship (Temporary Provisions) Order 1972 clearly indicates that who are whose father or grand father was born in the territories now comprised in Bangladesh and who was a permanent residence of such territories on the 25th day of March 1971 shall be deemed to be a citizen of Bangladesh. Copy of the Order '1' & '2' of the Bangladesh Citizenship (Temporary Provisions) Order 1972 (P.O.No.149 1972)) is placed as Annexure-A.

The copy of the decision of the Bangladesh High Court dated 5-5-2003 granting voting rights to Beharis is not readily available and efforts are being made to obtain the said order for perusal of this Honorable High Court. However, the same shall be provided to this Honorable High Court as soon as it becomes available.

3. Admitted to the extent that the, writ petition was dismissed by the Honourable Judge with cost of Rs. 5,000/- on the petitioner. The learned Judge also passed following remarks in the order:

“In view of that has been noticed above, I find no merit in this petition which is accordingly dismissed. While announcing the order, I had directed payment of cost by the petitioner but on re-consideration I have decided not to burden the petitioner with the same.”

The contents of this para are not correct rather lack of knowledge of the appellants as Afghan refugees arrived in Pakistan on their own.

- p. No comments. The reply has already been given in para (b) above.
- q. No comments.
- r. No comments.
- s. No comments.
- t. No comments.

5. It is therefore, humbly prayed that I.C.A may kindly be dismissed with special cost.

Legal
Respondent No. 1
(Shair Bahadar Khan)
Legal Advisor
M/o Foreign Affairs

Through

Sher Zaman Khan
(Mr. Sher Zaman Khan)
Deputy Attorney General