
(2010) 07 DEL CK 0359

Delhi High Court

Case No: Writ Petition (C) 12520 of 2009

Syeda Afshan Rahman

APPELLANT

Vs

Unoin of India (UOI)

RESPONDENT

Date of Decision: July 2, 2010

Acts Referred:

- Citizenship Act, 1955 - Section 5, 5(1), 7A, 7A(1), 7D(a)
- Citizenship Rules, 2009 - Rule 3
- Constitution of India, 1950 - Article 226

Hon'ble Judges: Dr. S. Muralidhar, J

Bench: Single Bench

Advocate: Geeta Luthra, Parinay D. Shah, Manoj K. Singh and Sunita Pahwa, in CM appl. No. 3754/2010 for impleadment, for the Appellant; Gaurav Gupta, Malika Gahlot and Kamal Bassi, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S. Muralidhar, J.

Aggrieved by the impugned order dated 12th December 2008 passed by the Overseas Citizen of India ("OCI") Cell in the Ministry of Home Affairs (MHA) (Foreigners Division), Government of India affirming an earlier order dated 13th June 2008 cancelling the Petitioner's OCI registration granted on 2nd February 2007 u/s 7A of the Citizenship Act, 1955 ("Act"), the Petitioner has filed this petition under Article 226 of the Constitution.

2. The averments in the writ petition are that the Petitioner was born in Patna on 13th June 1968 to Syed Kalimur Rahman and Naeema Bano. It is stated that the Petitioner's grandparents were permanent residents of Patna in Bihar. The Petitioner's father Syed Kalimur Rahman was a Chemical Engineer working in the Government of India from 1965 onwards. It is stated that the Petitioner's father was

posted at Chittagong in East Pakistan and he died during the 1971 Indo-Pak War. The Petitioner's mother along with her elder son aged six years and the Petitioner who at that time was three years old, was unable to return to India. It is stated that in 1978 when the Petitioner's grandfather in Patna fell ill, the Petitioner's mother was issued a Pakistani passport on which she travelled to India. The names of the children, including the Petitioner herein, who at that time were minor, were also endorsed on the said passport. It is asserted in the petition that as such, the Petitioner never opted for or obtained a Pakistani citizenship.

3. The petition proceeds to state that after returning to India, the Petitioner, her mother and brother stayed with her paternal grandparents. In para 8 of the writ petition it is stated that on 10th September 1990 the Petitioner was issued a certificate of registration as Citizen of India u/s 5(1)(a)/(c) of the Act. A copy of the said certificate has been enclosed with the petition. As on that date i.e. 10th September 1990 the Petitioner was 22 years old. It is then stated that in the year 1995 the Petitioner married Javed Zia who was a Non-Resident Indian working in Singapore. The Petitioner alleges that Javed Zia concealed the fact that he had already been married and divorced. It is alleged that the Petitioner's marriage was as a result of deception and fraud practised upon her. She states that after the marriage, at the insistence of the Petitioner's husband Javed Zia, the Petitioner migrated to Canada with him. While in Canada, she gave birth to two children, a boy named Shiraz Zia and the second child a girl named Shabana. Both children are Canadian citizens.

4. The Petitioner states that Javed Zia took all decisions with regard to family. She states that on 24th August 1999 she was issued an Indian Passport bearing No. A8000382. According to her, she was persuaded by her husband to acquire Canadian citizenship in the year 2000. She and her husband shifted to Switzerland for a short while. It is alleged that the Petitioner's husband brought her to India with the intention of deserting her. It is further alleged that he made her travel on her Indian passport. He illegally retained her Canadian Passport and deserted her along with the minor daughter Shabana, who was barely one year old, in India. The Petitioner was separated from her son who was five years old. It is alleged that her husband took the minor male child Shiraz Zia with him to Zurich. In the meanwhile, the Petitioner's mother expired and her brother migrated to London. The Petitioner states that she and her minor daughter aged one year were left to fend for themselves.

5. It is then alleged that in the year 2004 the Petitioner's husband came to India and on some pretext kidnapped the daughter Shabana Zia and took her away to Bangalore. The Petitioner filed a habeas corpus petition to get back the custody of her daughter.

6. The Petitioner complained to the Canadian Embassy about the illegal retention of her Canadian passport by her husband. In March 2005 she applied for the issuance

of a duplicate Canadian passport. She approached the office of Foreigners Regional Registration Office (F.R.R.O) who advised that she should apply for the OCI status. It is further stated that on 18th May 2005 she surrendered her Indian passport No. A 8000382 issued on 24th August 1999. The Petitioner applied for OCI registration on 22nd January 2007. She was granted OCI registration on 2nd February 2007.

7. According to the Petitioner, with a view to harassing her to try and get the custody of their minor daughter, her husband Javed Zia made false complaints to the MHA, as a result of which she received a show cause notice dated 31st January 2008. The show cause notice noted that in Column 18 of the application for grant of OCI registration the Petitioner had declared that she had never been a citizen of Pakistan or Bangladesh. The show cause notice further noted that the Petitioner had renounced her Pakistani citizenship and surrendered her Pakistani Passport before the High Commissioner of Pakistan in New Delhi on 19th February 1990. Thereafter, she acquired Indian citizenship on 10th September 1990. These facts had been concealed by her while applying for registration of OCI. She was, therefore, asked to submit her explanation as to why her OCI registration should not be cancelled u/s 7D(a) of the Act.

8. In reply to the above show cause notice, by a letter dated 13th February 2008 the Petitioner, inter alia, stated that her mother decided to apply for Indian citizenship which was a lengthy procedure "but the role of Indian Government was very sympathetic, supportive and cooperative because of her late father"s cause since he was sent on deputation and died while on duty." It was, according to the petitioner, a genuine case of a family of Indian origin who became victims of circumstances which were not in their control. As for the procedural formalities she explained that "our separate Pakistani passport was made for the purpose of renunciation as we never had one and hence the family renounced and was finally granted Indian citizenship in 1989/1990, thereafter we got their Indian passport and it is a matter of record to check that since 1979 we never travelled to Pakistan which confirms the fact that we were the victim of unfortunate circumstances as I would like to emphasise the fact that my roots are very much Indian and I am a daughter of a person who gave his life while in the service of Indian government as it is also evident from the fact that in the rarest of the cases the Indian government would grant citizenship to a Pakistani but in our case it had a sympathetic attitude and the highest degree of regard for my late father." The Petitioner then proceeds to narrate how she had been a victim of her husband who had cheated and blackmailed her. He instituted false proceedings against her by filing an FIR which was thereafter investigated and closed.

9. According to the Petitioner, in May/June 2008 the Petitioner shifted to a flat at Indirapuram, Ghaziabad and due to inadvertence she did not inform the authorities. She claims not to have received a letter dated 13th June 2008 issued by the Respondent cancelling her OCI registration. She also claims not to have received a

letter dated 4th July 2008 by which she was asked to surrender her OCI registration and visa by 9th July 2008. She stated that these were sent to a wrong address.

10. The Petitioner stated that on 22nd August 2008 she went to inform the authorities about change of her address and make enquiries about the status of her reply dated 13th February 2008 to the show cause notice dated 31st January 2008. She was illegally detained by the Inquiry Officer, MHA, New Delhi who informed her that she was to be deported to Canada. Her daughter aged eight years was separated from her. The Petitioner filed Writ Petition (Civil) No. 6185 of 2008 in this Court challenging her illegal detention. By an order dated 28th August 2008 this Court directed the Respondent to release the Petitioner and give her an opportunity of being heard. The above order was made subject to the following conditions:

(a) The Petitioner will file an undertaking before the Respondent that she will not leave the country without prior permission of the Respondent;

(b) The Petitioner will report to the SHO of the concerned area once in 15 days;

(c) The Petitioner will hand over the original paper of the property bearing No. L-302, Jaipuria Apartments, New Shipra Mall, Indirapuram, Ghaziabad to the Respondent, however, learned Counsel for the Petitioner submits that there is a loan on the property and papers of title have been deposited with the Bank. A letter will be taken from the Bank clearly stating that the title deeds will not be returned to the Petitioner without prior approval of the Respondent.

11. Consequent upon the above order, on 13th September 2008 the Petitioner made a representation to the MHA for restoration of her OCI registration. On 27th October 2008 she applied to the MHA to extend the regularization of her stay and visa. Her visa was extended on 19th November 2008.

12. On 12th December 2008 the impugned order came to be passed cancelling her OCI registration. Among the reasons given was that she had made a false statement in Column I8 of the application for OCI registration that she had never been a citizen of Pakistan or Bangladesh whereas it was clear that even at the time of applying for the grant of Indian citizenship on 15th December 1987 she had declared her Pakistani nationality. It was concluded that although the Petitioner was a Person of Indian Origin ("PIO") having been born in India, she could not be granted OCI registration since one of the conditions was that a PIO should never have been a citizen of Pakistan or Bangladesh. It was accordingly held that there was no reason to vary the earlier order dated 13th June 2008 cancelling her OCI registration.

13. In para 35 of the writ petition the Petitioner again asserted that "the Petitioner was never a Pakistani Citizen" and further that assuming without admitting that the Petitioner did not disclose about her being a Pakistani national at the time of acquiring Indian citizenship in 1987, that did not make her a Pakistani Citizen. The Petitioner submitted that the Respondent failed to disclose the reasons for initiating

proceedings against her for cancelling her OCI registration. Through a letter dated 22nd June 2009 issued by the Respondent she learnt that a request had been received by them from her mother-in-law Mrs. Amir Jahan to inspect the documents pertaining to the Petitioner's OCI registration. From this the Petitioner inferred that the proceedings were initiated at the instance of her husband.

14. Among the grounds urged in the writ petition are that the Petitioner was never a Pakistani citizen and thus Section 7A of the Act did not disqualify her from obtaining an OCI Card (Ground B). The endorsement of the Petitioner's name in the mother's Pakistani passport was only for the purpose of travel back to India and did not change the fact that she continued to have an Indian passport. It is further submitted that even if it assumed but not admitted that the Petitioner was a Pakistani national her subsequent acquisition of Indian citizenship would make Section 7A of the Act inapplicable (Ground F). In ground "K", the Petitioner submitted:

K. For that, the Petitioner bonafide believed that endorsement on her mother's passport was not making her a citizen of Pakistan or Bangladesh and that she having been born and brought up in India to an Indian parental grandparents had her roots in India and had only Indian citizenship. Even otherwise any such infirmity was wiped out by giving her Indian Passport and citizenship as is borne out by registration of citizenship dated 10th September 1990 and subsequently issuance of a passport to her.

15. It was reiterated in ground "M":

M. For that, without prejudice to the aforesaid contentions even if it is contended that the Petitioner had got Pakistani national by the said endorsement on her mother's passport while she was a minor which was only for the purposes of having travel documents, it is submitted, thus, any act that had happened prior to obtaining Indian registration and citizen is wiped out and has no effect and the Respondents are stopped from deporting the Petitioner on the said ground which are actuated by false representations and complaints of the Petitioner's husband who was animus against her.

16. In the counter affidavit filed by the Respondent it is pointed out that in terms of the proviso to Section 7A of the Act no person who had been a citizen of Pakistan shall be eligible for registration as an OCI. The Respondent has placed on record a photocopy of the Pakistani passport AE- 369540 on which the Petitioner's mother travelled to India in 1978. It is pointed out that this passport was issued on 7th August 1975 and clearly bears an endorsement that the Petitioner's mother is a citizen of Pakistan. It is stated that in terms of Section 8(2) of the Act since the Petitioner's mother ceased to be an Indian citizen as on 7th August 1975 (the date of issuance of her Pakistani passport), each of her minor children including the Petitioner herein also ceased to be a citizen of India. Secondly, it is pointed out that

the Petitioner had in her application u/s 5 of the Act declared that her date of birth was 13th June 1968. Clearly she was not an Indian citizen at that time for otherwise there was no need for making such an application for registration as an Indian citizen. The counter affidavit enclosed a letter dated 25th May 1989 written by the MHA to the Deputy Secretary of the Government of Bihar, Home (Special) Department, Patna informing that the Government of India had decided to register the Petitioner's mother Smt. Naeema Bano as Citizen of India u/s 5(1)(a) of the Act and that "she may be asked to renounce her present nationality by applying to the Pakistani Mission in India in accordance with the law of the country concerned" and produce documentary evidence thereof. Likewise, a similar communication was also sent in respect of the applications made by the Petitioner and her brother.

17. Annexure R-6 to the counter affidavit is a copy of the letter dated 19th February 1990 issued by the Embassy of Pakistan, New Delhi addressed to the Petitioner informing her of its acceptance of her request for renunciation of Pakistani citizenship. The letter dated 19th February 1990 read as under:

The Government of Pakistan has been pleased to accept request for the renunciation of Pakistan citizenship. Your Pakistan Passport No. E-812677 dated 15th November 1989 at New Delhi has been cancelled and withdrawn.

Your renunciation has been registered at Serial No. 8/90 at the relevant register of the concerned office.

18. The Respondent points out that from the above communication it is plain that the Petitioner was issued a Pakistani passport No. E-812677 dated 15th November 1989 at New Delhi when she was aged 21 years. It is stated that the above document completely demolishes the false contention of the Petitioner that her name was endorsed on her mother's passport when she was a minor and she was hence not aware of acquiring Pakistani citizenship. The above separate Pakistani passport of the Petitioner is different from the Pakistani passport of the mother which is No. AE-369540 dated 7th August 1975 issued at Karachi. The Respondent points out that none of the above facts and the corresponding documents issued by the Embassy/High Commission of Pakistan have been placed on record by the Petitioner.

19. It is stated that it was only after the renunciation of her Pakistani citizenship, that the Petitioner came to be registered as an Indian citizen u/s 5(1)(a) of the Act and was issued a registration certificate on 10th September 1990. The Respondent points out that after applying on 15th December 1987 for being declared an Indian citizen, the Petitioner voluntarily applied for and was granted citizenship and the Pakistani passport bearing No. E812677 dated 15th November 1989 was issued to her which was thereafter cancelled on 19th February 1990. It is submitted that OCI registration was granted to her on 2nd February 2007 on the basis of the false statement made by her in Column 18 of the application made on 22nd January 2007

for grant of registration of OCI that she had never been a citizen of Pakistan. The Petitioner was issued a show cause notice dated 31st January 2008 to which she replied on 13th February 2008. She was given a personal hearing on 25th February 2008. It is only thereafter that the order dated 13th June 2008 cancelling her OCI registration came to be passed. Pursuant to the order dated 28th August 2008 of this Court she was given a full-fledged hearing on 19th and 24th September 2008. The Respondent by an order dated 12th December 2008 held that there was no ground made out for varying the order dated 13th June 2008.

20. In the rejoinder to the above counter affidavit and in particular with reference to para 12 the petitioner stated as under:

...The Pakistani passport of the Petitioner dated 15th November 1989 was issued only after the Petitioner had moved an application for registration as an Indian Citizen in the year 1987. Subsequently the Government of India - Ministry of Home Affairs issued letter dated 25th May 1989 stating that application for citizenship filed by the Petitioner would be accepted provided she renounced her Pakistani citizenship. That only after this letter was sent to the Petitioner that four months later on 15th November 1987 her Pakistani passport was issued solely for the purpose of renunciation. Three months later on 19th February 1990 the Embassy of Pakistan accepted the renunciation of the passport of the Petitioner. Seven months later the Petitioner was registered as a citizen of India on 10th September 1990. The series of events clearly show that the Pakistani passport had been issued to the Petitioner only for the purpose of renunciation. That the cause for Petitioner to apply Section 5 was her own confusion and lack of knowledge of Citizenship Rules in 1987 when she was a minor. It is pertinent to note that by virtue of having made that application her citizenship status could not have changed. As stated earlier the Petitioner has not suppressed any documents. The documents not placed on record by the Petitioner are not in her possession.

21. This Court has heard the submissions of Mr. Parinay D. Shah, learned Counsel appearing for the Petitioner and Mr. Atul Nanda, learned Counsel for the Respondent. In rejoinder Ms. Geeta Luthra, learned Senior counsel advanced lengthy arguments on behalf of the Petitioner.

22. Apart from reiterating what has been stated in the writ petition, learned Counsel for the Petitioner placed reliance upon the decisions in *Karimun Nisa v. State Government of Madhya Pradesh* AIR 1955 Nagpur 6 and [S. Nalini Srikanan Vs. Union of India \(UOI\)](#), to urge that in the present case the inquiry u/s 9(2) of the Act which was mandatory, was not carried out by the Respondent prior to forming an opinion that the Petitioner had voluntarily acquired Pakistani citizenship. It is submitted that the mere issuance of a Pakistani passport to her did not mean that the Petitioner had voluntarily acquired Pakistani citizenship. It is submitted that in terms of the proviso to Section 7A of the Act, in order to hold the Petitioner to be ineligible for the grant of OCI registration, it was not enough for the Respondent to show that the

Petitioner had been a citizen of Pakistan. It had to be shown that the Petitioner had voluntarily acquired the citizenship of Pakistan. In the instant case, it was on the advice of the Indian passport authorities that the Petitioner applied for and obtained a Pakistani passport only to renounce it within three months thereafter. It is submitted that the Petitioner was under the bonafide impression that she had never become a Pakistani national at any point of time. This explained her statement in Column 18 of the application which should therefore not be treated to be a false representation for the purpose of Section 7D(a) of the Act. It is submitted that the entire proceedings are malafide and have been initiated only at the instance of the Petitioner's husband who was hell bent on harassing her and making her life miserable. It is alleged that the officials of the MHA have colluded with her husband in getting her OCI registration cancelled. It is submitted that in the special circumstances of the case, appreciating that the Petitioner was placed in dire straits she should be accorded sympathetic treatment and her OCI registration should be restored.

23. Mr. Nanda, learned Counsel appearing for the Respondent on the other hand submits that the willful suppression of material facts in the writ petition by the Petitioner was inexcusable. It is pointed out that although the Petitioner was fully aware of the consequences when after becoming a major she applied for Pakistani passport on 15th November 1989 and surrendered such passport to the Government of Pakistan on 19th February 1990, she deliberately omitted to mention these material facts. The corresponding documents were also not placed on record. It is submitted that for the purpose of the proviso to Section 7A of the Act the mere fact that the Petitioner had been a Pakistani national at any earlier point in time was sufficient to disentitle her to an OCI registration.

24. The above submissions have been considered by this Court. The present petition concerns the validity of the order dated 13th June 2008 passed by the Respondent, reaffirmed by the impugned order dated 12th December 2008, whereby the OCI registration granted to the Petitioner on 2nd February 2007 has been cancelled. The relevant provision is Section 7A of the Act which reads as under:

7A Registration of overseas citizens of India - (1) The Central Government may, subject to such conditions and restrictions as may be prescribed, on an application made in this behalf, register any person as an overseas citizen of India -

(a) any person of full age and capacity. -

(i) who is citizen of another country, but was a citizen of India at the time of, or at any time after, the commencement of the Constitution; or

(ii) who is citizen of another country, but was eligible to become a citizen of India at the time of the commencement of the Constitution; or

(iii) who is citizen of another country, but belonged to a territory that became part of India after the 15th day of August 1947; or

(iv) who is a child or a grand-child of such a citizen; or

(b) a person, who is a minor child of a person mentioned in Clause (a):

Provided that no person, who is or had been a citizen of Pakistan, Bangladesh or such other country as the Central government may, by notification in the Official Gazette, specify, shall be eligible for registration as overseas citizen of India." (emphasis supplied)

25. The language of the proviso to Section 7A(1) is plain and unambiguous. It does not talk of "voluntary acquisition" of Pakistani citizenship. The mere fact of having been a Pakistani national at any time in the past is sufficient to attract the bar under the proviso to the grant of OCI registration.

26. The ground on which the OCI registration has been cancelled is Section 7D(a) of the Act which reads as under:

7D Cancellation of registration as overseas citizen of India - The Central Government may, by order, cancel the registration granted under Sub-section (1) of Section 7A , if it is satisfied that-

(a) the registration as an overseas citizen of India was obtained by means of fraud, false representation or the concealment of any material fact;

27. In the first place it must be mentioned that nowhere in the writ petition the Petitioner has disclosed the fact that she was issued a Pakistani passport E81 2677 on 15th November 1989 and that she surrendered that passport on 19th February 1990. In the show cause notice dated 31st January 2008 it was specifically mentioned that the Petitioner had in Column No. 18 of her application for grant of OCI registration falsely stated that she had never been a citizen of Pakistan or Bangladesh. This was despite the fact that prior to being issued a certificate on 10th September 1990 u/s 5(1)(a) of the Act that she was an Indian citizen, the Petitioner had applied for and been issued a Pakistani passport which she surrendered on 19th February 1990. In the reply to the said show-cause notice by a letter dated 13th February 2008 the Petitioner did not deny the above facts but tried to explain them away by saying that "for the procedural formalities our separate Pakistani passport was made for the purpose of renunciation."

28. Ms. Luthra, learned Senior counsel for the Petitioner, referred to the above reply to the show cause notice and sought to urge that since a copy thereof was enclosed with the writ petition, there was no suppression of any material fact although no specific averment is made in the writ petition. The above cannot be accepted as a bonafide error by the Petitioner. The facts not mentioned are material to the writ petition. The paragraphs of the writ petition extracted above would show that the

Petitioner has repeatedly asserted that she was never a Pakistani citizen. She has sought to project that apart from the fact that her name had been endorsed while she was a minor in her mother's passport, there is no other document to show that she was a Pakistani national. This Court cannot view this as anything but a deliberate and willful suppression of material facts.

29. Ms. Lutheran then urged that the Petitioner was not fully aware of the legal niceties and that since all decisions were taken by her husband, she cannot be blamed for not stating the complete facts. This Court finds this explanation to be unacceptable. The writ petition was filed on 13th October 2009 by which time the Petitioner and her husband were no longer together. There was litigation between them concerning the custody of the minor daughter. In the circumstances, the husband could not have played any role in the Petitioner not disclosing the complete facts in the writ petition.

30. The above wilful suppression by the Petitioner of material facts within her knowledge is, in the considered view of this Court, sufficient to disentitle her to any relief under Article 226 of the Constitution. Nevertheless since submissions were advanced at length on the questions of law that arise, this Court proposes to deal with them as well.

31. The provisions concerning grant of OCI registration were inserted in the Act by the Amendment Act 2004. Clearly one of the essential conditions for grant of OCI registration is that applicant should be "citizen of another country". This is apparent from Clauses (i), (ii) and (iii) of Section 7A(1)(a) of the Act. Therefore, the repeated assertion by the Petitioner that she always continues to be an Indian citizen is apart from being factually incorrect also legally untenable. It also contradicts the fact that she sought OCI registration u/s 7A of the Act on the basis that she is not an Indian citizen. Admittedly the Petitioner is, as of today, a Canadian citizen. Her assertion is that consequent upon her acquiring a Canadian citizenship, she had on 18th May 2005 surrendered her Indian passport No. A-8000382 dated 24th August 1999. Clearly, therefore, it is not open to the Petitioner to contend that although she is a citizen of Canada, she has not voluntarily given up Indian citizenship.

32. In terms of the proviso to Section 7A(1) of the Act once it is shown that person "had been a citizen of Pakistan" that person becomes ineligible for grant of OCI registration. There is no challenge to the validity of this provision. In fact the Petitioner is seeking grant of OCI registration in terms of this provision. The said proviso has to be construed strictly. It is not possible to read into the said provisions words that do not find place there. It is irrelevant for this purpose to inquire whether the Petitioner has "voluntarily acquired" the citizenship of Pakistan. It is enough to show that the Petitioner had been a citizen of Pakistan. There can be no better proof of a person being a citizen of a country, than the fact that such person was issued a passport of that country. Fully aware of this, the Petitioner surrendered her Pakistani passport on 19th February 1990 to the Embassy of Pakistan at New

Delhi and a certificate of renunciation was issued. Then she produced it before the Indian authorities and on that basis she was granted a certificate of registration as Indian citizen on 10th September 1990. The statement made by the Petitioner in Column 18 of her application for grant of OCI registration that she had never been a citizen of Pakistan was therefore palpably false and false to her knowledge. In the circumstances, the making of such false statement cannot be accepted as bonafide.

33. At the time that she was issued a Pakistani passport on 15th November 1989, the Petitioner was 21 years old. She was under no compulsion to apply for a Pakistani passport. It was on the basis of such application, that she was issued a Pakistani passport. Clearly this is indicative of the fact that she voluntarily acquired Pakistani citizenship. This is de hors the fact that while she was a minor her name was endorsed on her mother's passport, which is a separate passport bearing No. AE-369540 (which was surrendered on 19th February 1990). It is not possible to accept the explanation now offered that the Petitioner acquired a separate Pakistani passport "solely for the purpose of renunciation". The renunciation took place three months after the issuance of the Pakistani passport. If indeed she had no intention of acquiring Pakistani citizenship, there was no need at all for the Petitioner to apply for and obtain a Pakistani passport particularly when her application for grant of Indian citizenship was purportedly pending. The letter dated 25th May 1989 asking the Petitioner to submit proof of her having renounced her Pakistani citizenship, by no means required her to apply for the issuance of a fresh Pakistani passport. The Petitioner could well have informed the authorities that she was not a Pakistani national and therefore was unable to renounce such status. In the alternative she should have written to the Pakistani Embassy in India stating that she had, with the surrender of her mother's passport, renounced her Pakistani nationality. The Petitioner did neither. It is not possible to accept the explanation that the Petitioner, who was 21 years of age at that time, was unaware of the implications of applying for and being issued a separate Pakistani passport on 15th November 1989.

34. In the considered view of this Court the above fact straightway attracts the proviso to Section 7A of the Act and disentitles the Petitioner to an OCI registration. The failure by the Petitioner to disclose complete facts and in making a false statement in her application for grant of OCI registration clearly attracted the ground u/s 7A of the Act. Consequently, there is no legal infirmity in the impugned order dated 12th December 2008 passed by the Respondent which reaffirms the earlier order dated 13th June 2008 issued by it cancelling the Petitioner's OCI registration.

35. Neither of the decisions relied upon by learned Counsel for the Petitioner has any relevance to the questions that arise in this petition. The decision in S. Nalini Srikanan refers to Rule 3 of Schedule III of the Citizenship Rules 1956 in the context of Section 9(1) of the Act which states that person shall cease to be a citizen of India if he "voluntarily acquires the citizenship of another country". The question here

arises u/s 7A of the Act which is in a different context. The decision in Karimun Nisa was in the context of a person who was an Indian national returning to India in 1955 on a Pakistani passport. It was held that notwithstanding the fact that the person had been issued a Pakistani passport, criminal proceedings under the Foreigners Act, 1946 could not be instituted without holding an inquiry u/s 9(2) of the Act and arriving at a conclusion that such person had voluntarily acquired Pakistani citizenship. As already noticed this is not the question which arises in the present case.

36. For all the aforementioned reasons, there is no merit in this petition and it is dismissed as such. The interim order stands vacated.

CM APPL No. 3754/2010 (for impleadment)

37. Since the writ petition has been dismissed, there is no need to entertain this application. It is dismissed as such.