IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.03.2022

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THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

Writ Petition No.31272 of 2019

Pranav Srinivasan .... Petitioner

Vs.

Government of India
Rep by its Secretary,
Ministry of Home Affairs,
MBC National Stadium,
India Gate
New Delhi-02. ...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorarified Mandamus, calling for the records of the respondent made in impugned order No.26030/51/2017-IC.I Govt. of India, Ministry of Home Affairs, dated 30.04.2019, and quash the same and further direct the respondent to declare that the petitioner had resumed his citizenship of India on his declaration before the Consular at New York in the duly prescribed form.

For Petitioner : Mr.B.Kumar, Senior Counsel
For Mr.R.Loganathan

For Respondents : Mr.Venkatasamy Babu
Senior Panel Counsel

O R D E R

The Petitioner is aggrieved by an order passed by the respondent/Government of India (GOI) dated 30.04.2019. The aforesaid order, while rejecting the application of the petitioner seeking Indian Citizenship in terms of Section 8(2) of the Citizenship Act, 1955 (in short 'CA') permits him to apply for Citizenship under Section 5(1)(f)/(g) of the CA, if he so desires.

2. A preliminary question thus arose as to why the petitioner pursues this writ petition, seeing as the impugned order does not reject his claim for citizenship in toto, but leaves an avenue open, whereunder he could still obtain the relief claimed.

3. A perusal of Section 5(1)(f)/(g) of the CA indicates the existence of certain conditions based upon which, such status will be granted. Citizenship sought under the aforesaid provisions would necessitate residence of the petitioner in India for various stipulated periods and it is for this reason that the petitioner expresses no

interest in this and would instead pursue his claim under Section 8(2) only, as he believes that he was an Indian Citizen to begin with and thus must be permitted to 'resume his citizenship'.

4. I agree with the petitioner that his entitlement under Section 8 must first be tested and only if rejected, would there be any necessity for him to proceed under the conditional status provided under Section 5. Hence I proceed to hear and decide the petitioner's claim for resumption of citizenship under Section 8(2).

5. This is thus not a case where the petitioner seeks citizenship afresh but one where he seeks *resumption* of citizenship**.** The facts, as relevant to decide the lis are as follows:

(a) The grandparents of the petitioner were, and continue to be citizens of India by birth.

(b) The parents of the petitioner, though originally Indian Citizens, renounced their citizenship and obtained citizenship of Singapore on 19.12.1998. The petitioner was a foetus, aged seven and a half months old at that time. The petitioner was born on 01.03.1999 in Singapore. He acquired citizenship of Singapore by virtue of his birth there.

(c) The petitioner attained the age of majority on 01.03.2017.

(d) On 05.05.2017, he made a declaration before the Indian Consulate at Singapore seeking resumption of his Indian Citizenship. The application was in Form XXV in terms of Rule 24(1) of the Citizenship Rules 2009, entitled *'Declaration of Intention to Resume Indian Citizenship under Section 8(2) of the CA made by a person who ceased to be an Indian Citizen on the loss of Indian Citizenship by his parents in accordance with the provisions of Section 8(1) of the CA'*.

(e) Inter alia, the petitioner proceeds on the premise that he had ceased to be an Indian Citizen by virtue of Sub Section (1) of Section 8 of the CA, on April 20, 2012, by reason of the fact that his parents became citizens of Singapore on 19.12.1998, on which date, he was en ventre sa mere, or, in the womb of his mother. His parents renounced their Indian Citizenship on 20.04.2012.

(f) Passing for a moment, learned Senior Counsel confirms at this juncture that the renunciation of citizenship by his parents was even earlier on 19.12.1998 and hence the formal renunciation of their citizenship on

20.04.2012 would not be material and need not be taken note of by the Court.

(g) Since the petitioner ceased to be an Indian citizen, he seeks renunciation of the same in terms of Section 8(2) as both his parents and grandparents were citizens of India by birth, his grandparents continue to be citizens as on date and he was an Indian citizen at the time when his parents renounced their Indian citizenship.

6. Part II of the Constitution of India provides for citizenship and Article 5 for citizenship at the commencement of the Constitution. Article 6 deals with the rights of citizenship of a person who had migrated to India from Pakistan and Article 7 provides for the reverse, that is, the rights of those migrants from India to Pakistan.

7. We are concerned with Article 8 that provides for the rights of citizenship of certain persons of Indian origin who reside outside India. Articles 9 to 11 would complete Part II of the Constitution and, not being material for this case, are not referred to further.

8. Article 8 of the Constitution of India reads as follows:

> ***8. Rights of citizenship of certain persons of India origin residing outside India*** *Notwithstanding anything in Article 5, any*

person who or either of whose parents or any of whose grand parents was born in India as defined in the Government of India Act, 1935 (as originally enacted), and who is ordinarily residing in any country outside India as so defined shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him therefor to such diplomatic or consular representative, whether before or after the commencement of this Constitution, in the form and manner prescribed by the Government of the Dominion of India or the Government of India.

9. The petitioner would argue that Article 8 provides for a complete mechanism to determine citizenship of persons of Indian origin who reside in India and provides that anyone whose parents or grandparents were born in India and who is ordinarily residing in any country outside India shall be deemed to be a citizen of India, if has been registered as a citizen of India by the diplomatic or consular representative of India in the Country where he is for the time being resident, or upon an application made by him to such diplomatic or consular representative either before or after the commencement of the Constitution, in the prescribed form.

10. Thus, according to the petitioner, his declaration made on 05.05.2017 would suffice for the triggering of Article 8 and the automatic vesting of citizenship in him. However, it is not so simple. Article 8 requires registration of a person as a citizen by the Embassy or Consulate in the foreign country.

11. In the present case, the petitioner's declaration under Section 8(2) has not been accepted in full and the petitioner has been directed to the procedure set out under Section 5 of the CA. In fact, Article 8 is not a machinery provision and only sets out certain entitlements subject to the procedure being fulfilled in that regard. Thus mere reference to Article 8 would not confer the status of citizenship till such time, the consulate/embassy had taken note of and registered the petitioner's name.

12. The conferment of citizenship under Article 8 can only be in terms of either Section 8(2) or Section 5 of the CA. Since we are concerned only with the petitioner's argument under Section 8, I now proceed to test his entitlement under the same. Section 8 of the Citizenship Act reads as follows:

> ***8. Renunciation of citizenship.—***
>
> *(1) If any citizen of India of full age and capacity, makes in the prescribed manner a declaration renouncing his Indian Citizenship, the declaration shall be registered by the prescribed authority; and, upon such registration, that person shall cease to be a citizen of India: Provided that if any such declaration is made during any war in which India may be engaged, registration thereof shall be withheld until the Central Government otherwise directs.*
> *(2) Where a person ceases to be a citizen of India under sub-section (1) every minor child of that person shall thereupon cease to be a citizen of India: Provided that any such child may, within one year after attaining full age, make a declaration 3[in the prescribed form and*

manner] that he wishes to resume Indian citizenship and shall there-upon again become a citizen of India.

13. Section 8 dealing with the renunciation of Citizenship states in sub-Section (1) that any declaration made by a citizen of India declaring his renunciation of Citizenship shall be registered by the prescribed authority and upon such registration, that person shall cease to be a citizen of India. This event has transpired, as relevant to the petitioner, on 19.12.1998. The proviso to Section 8(1) is irrelevant to our case.

14. Section 8 (2) says that where a person ceases to be a citizen of India under Sub-Section (1), every minor child of that person shall thereupon cease to be a citizen of India. The proviso however states that any minor child who has ceased to be a citizen of India in terms of Section 8 (2) may, within one year after attaining full age make a declaration in proper form that he wishes to resume Indian citizenship and shall thereupon become a citizen of India.

15. Section 8(2) thus proceeds on the basis that the minor child held citizenship naturally as a consequence of the citizenship held by his parents, and had ceased to be a citizen merely by virtue of his parents renouncing their citizenship. In such circumstances, the child upon attaining majority is offered the option of

continuing with the citizenship that he has acquired with the change of his parents' citizenship, or to seek renunciation of the citizenship that he has lost.

16. In this case, the question that arises is as to whether the petitioner can be termed as 'a minor child' at the time when his parents renounced citizenship on 19.12.1998. Let us remember that the petitioner was a 7 ½ month old foetus at that time and thus this writ petition would concern the rights and entitlements of an unborn child to citizenship and to resumption or otherwise of Indian citizenship.

17. At this juncture, I would also note the distinction between the specific terminology employed by Section 8(2) which is 'minor child' and not 'birth'. While some provisions of the CA, such as Section 3, which deals with the acquisition of citizenship by birth uses the term 'birth', Section 8, specifically uses the term 'minor child'. Thus, there is a distinction that is sought to be drawn between the acquisition of 'citizenship by birth' and the acquisition of 'citizenship by a minor child' by virtue of resumption of citizenship at an earlier point in time.

18. This distinction is, in my view, relevant, since it is made consciously and taking note of the fact that a child need not have been born at the time of his parents renouncing their citizenship, to be entitled to the benefit of seeking resumption of

his right to citizenship. Other enactments have also dealt with the rights of an unborn child, such as the Hindu Succession Act, 1956, which, in terms of Section 3 thereof governs right of property to an unborn child.

19. An analogy is drawn from the provisions of other enactments which protect various rights and entitlements of a child in the womb. The rights of an unborn child, to whom death was caused while causing miscarriage are protected under Section 314 of the Indian Penal Code (IPC). The Supreme Court in the case of *Dr.Jacob George V. State of Kerala*[1] considered the case of a woman who underwent treatment in the hospital of the appellant, who routinely performed abortions.

20. The mother was operated and expired as a consequence thereof. The doctor was chargesheeted on various grounds including Section 314. The autopsy revealed gross mismanagement of the uterus and consequently the death of the mother and the foetus. The surgery undertaken was found to be crude and criminal, as a result that the mother as well as the innocent life of the foetus were sacrificed. The doctor was found guilty despite the defence to the effect that the abortion was voluntarily sought by the mother.

1 ((1994 3 SCC 430)

21. The Medical Termination of Pregnancy Act, 1971 provides for guided circumstances under which abortion may be carried out. There are three permissible grounds, firstly, the health of the woman/mother, a humanitarian reason, such as, that the pregnancy arises from a crime, such as rape or intercourse with a lunatic woman or a medical or a eugenic reason, i.e., a substantial risk of the child, if born, suffering from deformities and diseases.

22. The 1971 Act provides for abortion only upto a stipulated period, i.e., upto 20 weeks and thereafter only by consent of the Court. Undoubtedly, there is some greyness as to when life of a foetus actually commences, as the very date of conception could be in the realm of hypothesis and there is no clarity as far as this aspect is concerned. There is also a specific literature available both in Christian and Hindu theology as to the exact time when life is infused into a foetus. Suffice it to say that this issue remains one of the great mysteries of science.

23. Fortunately, this need not stop us in the present case, as the foetus was 7 ½ months old, beyond any pale of doubt, expressing and exhibiting responses of a child with life and including sensory responses as well as feelings.

24. In the case of *Mahalakshmi V. District Collector*[2], a learned single Judge of this Court, while dealing with the prayer for abortion made in the case of a minor child who had been raped, observes that though a foetus, he would still consider the foetus, a child with rights.

25. A Division Bench of the Bombay High Court, in *Basayya Shivabasayya Kallur V. Baslinigayya Channayya Pujar*[3] considered the impact of the Limitation Act, 1908 in the context of a civil dispute qua the right of a child in the womb. That was a case involving three brothers, say, A, B and C. C was plaintiff's father who had been adopted into another family.

26. After his adoption, he had made a gift of certain property that he had inherited in his adoptive family to his brothers A and B. Though C had had no son at the time of making the gift, his wife had given birth to the plaintiff on 23.02.1919. When the child attained the age of majority, he staked his claim to the property already gifted away.

27. The defence of his uncles was that the plaintiff had been non-existent as on the date of the gift and thus could not claim benefit under Sections 6 and 8 of the

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2 2021(2) CTC 274

3 AIR 1948 Bom 150 (DB)

Limitation Act. Hence, they argued that the suit was time barred under Article 126 of the Limitation Act. However, the claim of the petitioner was upheld holding that the petitioner must be regarded as a 'person' under Section 6 of the Limitation Act, he could claim benefit of Sections 6 and 8 and the Suit was thus saved under Article 126 of the Limitation Act.

28. Hindu scripture is quoted in extenso in this judgment and various situations in which such a claim could arise was looked into. The Court examined the ratio of two earlier cases which considered the right of alienation made by a child unborn at the time of alienation, namely, *Muhammad Khan V. Ahmad Khan*[4] and *Madho Ram V. Dharam Singh*[5]. In the case of *Muhammad Khan*, the Court states as follows:

> *If a son in embryo is deemed to be a minor in existence on the date of the conception, the period of eighteen years, which would determine his disability, would run from that date. But it is clear that date can never be ascertained with any degree of certainty, and the contention urged by the learned counsel would lead to the absurd result that the plaintiff would attain the age of majority for the purposes of the law of limitation when he was only seventeen years and a few months old, though he would be a minor at that time for all other purposes.*

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4 (1928) I.L.R. 10 Lah. 713

5 [1930] A.I.R. Lah. 394

29. Thus the benefit of the saving of limitation under Section 126 was granted to an unborn child, in the mother's womb at the critical point in time. The provisions of Section 6 of the Limitation Act were amended with effect from 05.10.1963 inserting an Explanation that stated that 'minor' for the purpose of that Section would include a child in the womb.

30. It is relevant to state that as there is no clarity set out as to when a foetus assumes the status of a child, the Limitation Act proceeds on the basis that from the known time of conception, an unborn child would assume all the legal entitlements available under law of limitation.

31. The Supreme Court of New Hampshire in *Walter Bennett V. Allen W. Hymers, Stanley Bennett V. Same*[6] considered the case of a plaintiff who sought compensation for injuries inflicted on him by virtue of the negligence of the defendant. The Court cites an earlier decision in the case of *Poliquin V. MacDonald*[7] to the effect that the administratix of a still-born infant, who was a viable foetus when the collision occurred could maintain on its behalf, an action for medical negligence suffered by it while en ventre sa mere.

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6 101 N.H. 483 (1958)

7 101 N.H. 484 104

32. Several earlier decisions laying down the same proposition have also been cited. While reiterating the aforesaid long standing proposition, the Court observes as follows:

> *We adopt the opinion that the fetus from the time of conception becomes a separate organism and remains so throughout its life. Also that the mother's biological contribution from conception on is to furnish nourishment and protection for it. And the fact "that the fetus may not live if its protection and nourishment are cut off earlier than the viable stage of its development is not to destroy its separability; it is rather to describe conditions under which life will not continue. Kelly v. Gregory, supra; 27 Am. Jur., Infants, s. 3. p. 747; Maloy, Legal Anatomy and Surgery, p. 668.*
>
> ……..
>
> *Although they may not be exactly parallel situations we find it difficult to see the logic which would recognize a child's legal existence while en ventre sa mere with respect to property rights and rights of inheritance (4 Tiffany, Real Property (3d ed.) s. 1127, p. 391) and also in the field of criminal law (3 Burdick, Law of Crime, s. 858, p. 265-267: RSA 585:12, 13) and yet would deny it recognition so as to afford it protection against the torts of others.*
>
> ……
>
> *We hold therefore that an infant born alive can maintain an action to recover for prenatal injuries inflicted upon it by the tort of another even if it had not reached the state of a viable fetus at the time of injury. We so decide because we see no logical reason for not extending the protection of the law of torts to it and are impressed by the harshness of the opposite result. We recognize that there may be difficulty in proving causation and that such a holding may give rise to fictitious claims.*

33. The law of compensation for Motor Accidents as expressed by the Courts in New Hampshire is well applicable and followed by the Indian Courts as well. In *Chairman, Railway Board and others V. Chandrima Das (Mrs) and others*[8] the Supreme Court held that Articles 21 and 51 that guaranteed the right to life includes the right to live with human dignity.

34. In the case of a rape victim, they speak, at paragraphs 24 and 25, about the importance of International Covenants and Declarations in the interpretation of domestic law jurisprudence as well. The aforesaid paragraphs read thus:.

> *24. The International Covenants and Declarations as adopted by the United Nations have to be respected by all signatory States and the meaning given to the above words in those Declarations and Covenants have to be such as would help in effective implementation of those rights. The applicability of the Universal Declaration of Human Rights and the principles thereof may have to be read, if need be, into the domestic jurisprudence.*
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> *25. Lord Diplock in Salomon v. Commr. of Customs and Excise28 said that there is a prima facie presumption that Parliament does not intend to act in breach of international law, including specific treaty obligations. So also, Lord Bridge in Brind v. Secy. of State for the Home Deptt. 29 observed that it was well settled that, in construing any provision in domestic legislation which was ambiguous in the sense that it was capable of a meaning which either conforms to or conflicts with the International Convention, the courts*

8 (2000) 2 SCC 465

would presume that Parliament intended to legislate in conformity with the Convention and not in conflict with it.

26. The domestic application of international human rights and norms was considered by the Judicial Colloquia (Judges and Lawyers) at Bangalore in 1988. It was later affirmed by the Colloquia that it was the vital duty of an independent judiciary to interpret and apply national Constitutions in the light of those principles. Further Colloquia were convened in 1994 at Zimbabwe, in 1996 at Hong Kong and in 1997 at Guyana and in all those a Colloquia, the question of domestic application of international and regional human rights specially in relation to women, was considered. The Zimbabwe Declaration 1994, inter alia, stated:

> *"Judges and lawyers have duty to familiarise themselves with the growing international jurisprudence of human rights and particularly with the expanding material on the protection and promotion of the b human rights of women."*

But this situation may not really arise in our country.

35. This assumes relevance in the present case owing to the United Nations Convention on the Rights of the Child (‘Convention’), accredited on 11.12.1992, to which India is a signatory. The preamble itself states that one of the objects of the Convention was that one must bear in mind, as indicated in the Declaration that *‘the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth’.*

36. Article 1 of the Convention defines a 'child', as every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier**.** Thus, what is stipulated is only an upper limit and there is no lower limit or starting point for when a child is to be understood as being a child.

37. The distinction between pre-birth and post-birth thus loses all significance and a foetus en ventre sa mere, must also be considered a child, particularly when the provisions of Section 8(2) indicate as much, and specifically so. Article 7 of the Convention has been referred to by the petitioner and reads as follows:

> ***Article 7***
>
> *1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and. as far as possible, the right to know and be cared for by his or her parents.*

38. This article refers to the registration of a child immediately after birth and states that upon such registration, the child shall have the right from birth, to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents.

39. In my considered view, the use of the phrase 'right from birth' should apply ejusdem generis to name, nationality and parental care. However and having stated so, the Article does not disturb the inherent vesting of rights upon a foetus, such as the right to citizenship. Thus, Article 7 of the Convention, in line with tone and tenor of the other articles of the definition, would also support the view that a child en ventre sa mere would also be entitled to a host of rights including citizenship.

40. An important aspect is that while interpretation of various enactments in this context have uniformly held in favour of the unborn child, it is only in a positive sense. Thus, while Courts have, thus far, granted several rights to unborn children, such rights would only enure to the benefit of the child or lead to a positive result and has never lead to a passing on of liabilities upon a child in the womb.

41. In *Visaka and others V. State of Rajasthan and* others[9], the application of International Conventions and norms consistent with the spirit of the fundamental rights were held to be relevant for interpretation of our Constitution. Thus, where domestic law gives scope for discretion on any particular aspect, relevant Conven-

9 (1997) 6 SCC 241

tions as ratified by India can be invoked by the Courts as an aid to the interpretation of the provisions.

42. In the case of *Prakash and others V. Arun Kumar Saini and another*[10] the question that arose was as to whether an unborn child in womb should be considered at par with a minor child for the purpose of computation of compensation in a motor accident case.

43. The views of the Karnakata and Madhya Pradesh High Courts in the cases of *The Divisional Controler, B.T.S.Division, Karnataka State Road Transport Corporation V. Vidya Shindhe*[11] and *Bhawaribai V. New India Assurance Co. Ltd.*[12], that the death of foetus should be considered as a death of the child for the purposes of compensation were cited, to hold that a still born baby would also be considered as a child for an award of compensation.

44. The analogies in the context of Criminal Law and Law of Property as discussed by this Court were noticed by the Delhi High Court and the decision of the Andhra Pradesh High Court in the case of *Oriental Insurance Co. Ltd. V. Santhilal*

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10 2010 SCC online Del 478

11 2005 ACJ 69

12 2006 ACJ 2085

Fatal[13] and Kerala High Court in the case of *Manikuttan V. M.N.Baby*[14] in favour of the unborn child, were accepted and followed.

45. In *Jabbar and others Vs. State*[15], a learned single Judge of the Allahabad High Court considered the case of an unborn child in the context of Criminal Law and at paragraph Nos. 15 and 16, equated an unborn child in the mother's womb to a 'person', as employed in Section 304 A of the Indian Penal Code (IPC) and 'a quick unborn child' as contemplated under Section 316 of IPC. At paragraph No.17 the Court states as follows:

> *17. An unborn child can be regarded as a living entity with a life of its own. The word "person" is defined in the Shorter Oxford English Dictionary in two ways: firstly, it is defined as "an individual human being" or "a man, woman, or child"; and, secondly, as "the living body of a human being". I do not think that it can be denied that an unborn child in advanced stages of pregnancy has a being or life of its own and that it has a body. It may he that its life and body are not independent of the mother's existence so that the unborn child cannot be said to have a separate exist-once. The word "person" has not been defined in such a way as lo involve a separate existence or the living creature spoken of as "a person". As there is no such technical definition, 1 prefer to adopt the ordinary meaning of the term "person" as including a "child" whether born or unborn. Even if the child is unborn and within the womb of the mother, it is capable of being spoken of as a "person" if its*

13 2007 (4) ACD 835

14 2009 ACJ 1497

15 1965 SCC Online All 337

body is developed sufficiently to make it possible to call it a "child". The post mortem report shows that the child had developed sufficiently to have an identity of its own as a child? That would, in my opinion, be enough to satisfy the definition of the term "person" as used in Section 304-A, I.P.C.

46. In *Priyesh Vasudevan V. Shameena P. and others*[16], a Division Bench of the Kerala High Court considered whether a posthumous child of a teacher in an aided School, who died in harness was entitled for compassionate appointment upon the child attaining majority. The Court noted that the word 'minor' was not defined under the compassionate employment scheme and neither that the Kerala Education Act nor allied Rules, defined the term.

47. They thus took aid of Section 3 of the Indian Majority Act which stipulated the age of 18/21 years, Section 6 of the Limitation Act 1963, Section 20 of the Hindu Succession Act 1956, Sections 2(e) and 7 of the Indian Succession Act, 1925, Sections 13 and 20 of the Transfer of Property Act 1882 and Sections 312 and 316 of the Indian Penal Code 1860, in coming to the conclusion that the child would indeed have acquired the right to seek compassionate appointment and should be taken to be a person, even though in the womb, at the time of his father's demise.

16 2005 SCC OnLine Ker 718

48. They relied on the case decided by the Privy Council in *Elliot Vs. Lord Joicey*[17], extracting the following paragraphs therefrom:

> *From the earliest times the posthumous child has caused a certain embarrassment to the logic of the law, which is naturally disposed to insist that at any given moment of time a child must either be born or not born, living or not living. This literal realism was felt to bear hardly on the interests of posthumous children and was surmounted in the Civil Law by the invention of the fiction that in all matters affecting its interests the unborn child in utero should be deemed to be already born. The classical statement is to be found in the words of Paulus: "Qui in utero est, perinde ac si in rebus humanis esset, custoditur, quoties de commodis ipsius partus quaeritur: quanquam alii, antequam nascatur, nequaquam prosit" (Dig. Bk.I. Tit. v. De Statu Hominum, sect.7), thus rendered in monro's translation: "An unborn child is taken care of just as much as if it were in existence, in any case in which the child's own advantage comes in question; though no one else can derive any benefit through the child before its birth." "There is indeed," says Craig, commenting on this passage, "no reason in the case of a posthumous child to aggravate the calamity it suffers by the premature death of the father, nor to make that event a ground for diminishing its rights" (Jus Feudale, Lib. II., Dieg. 13,S.15; Lord Clyde's translation II.p..843).*

49. Some light is also thrown on this aspect by the commentary on Article 21 of the Constitution of India[18], where, after discussing the contra views taken by the West German and American Constitutional Court on the question of abortion,

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17 1935 Appeal Cases 209

18 Commentary on the Constitution of India by D.D.Basu 9th Edition

reference is made to the *Abortion Reform Law Case*[19], wherein the following propositions were laid down.

> *(1) Everyone in Art. 2 includes an unborn being.*
>
> *(2) Human life exists in embryo from the 14th day of conception.*
>
> *(3) It is the duty of the State to protect and promote the life of the foetus and defend it from unlawful interference by other person.*
>
> *(4) The right to development accrues in the foetus from mother's womb and is not complete even after birth.*
>
> *(5) If the foetus was considered only as a part of the maternal organism, termination of pregnancy would remain entirely in the sphere of private life, not warranting public interferences. But because the foetus is "an autonomous human being" under protection of the Constitution, termination of pregnancy has a social dimension which demands public regulation.*
>
> *(6) The Constitution also protects a woman's right to free development of her personality, which includes freedom to decide against parenthood. But this right is not guaranteed without limitations. The right of others, the constitutional order, the moral code all restrict it.*
>
> *(7) A compromise which guarantees both protection of the foetus as well as freedom of abortion of the pregnant woman is impossible because termination of pregnancy always means "destruction of unborn life". The legal order cannot, therefore, make a woman's self-determination, the principle of its regulations. On the other hand, protection of the foetus must be given priority to the woman's right of self-determination.*

19 (1975) 39 B Verf GE

(8) The State is to effectively fulfill its duty to 'protect' "developing life". In discharging this duty the State is to make a reasonable adjustment between unborn's right to life and woman's right to her own life and health. The unborn's rights to life can lead to burdens for the woman which sharply exceed those of a normal pregnancy. In such a case, the State may exempt the pregnant woman from punishment for destroying the foetus where it is necessary to protect the pregnant woman from a threat to her life or a threat of a serious impact on her health or other cases, where the burden is extraordinary.

(9) The duty of the court is not to put itself in the legislator's place, but to determine whether the Legislature has fulfilled its duty to protect the "developing life" and made a reasonable adjustment between the right of the unborn and the right of the pregnant woman.

50. I have devoted anxious study in setting out the discussion as aforesaid and can arrive at no other conclusion except to state that a foetus or embryo, particularly one who was 7 ½ months on the critical date, that is 19.12.1998, certainly has acquired the status of a child. With this status, he acquires citizenship of his parents, i.e, Indian Citizenship and one that they renounced on the aforesaid date. Thus the protection/entitlement available under Section 8(2) for resumption of citizenship cannot be denied to him.

51. The impugned order insofar as it seeks to deny the petitioner such status is, in my view, contrary to the clear language and avowed intention of Section 8(2) as well as copious jurisprudence available in this regard. On the basis of the detailed

discussion as above, the impugned order is set aside. The petitioner is entitled to resumption of citizenship and will be issued a document of citizenship, within a period of four (4) weeks from date of issue of this order.

52. This Writ Petition is allowed. No costs.

25.03.2022

Index: Yes/No
Speaking order/Non-speaking order
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To

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Rep by its Secretary,
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Dr.ANITA SUMANTH, J.

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