

**ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C. P. No. D – 162 of 2012**

Date	Order with signature of Judge
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PRESENT:

*MR. JUSTICE AQEEL AHMED ABBASI.
JUSTICE MRS. ASHRAF JAHAN.*

Disposed of Matter

1. For orders on Misc. No. 9478/2018.
2. For hearing of Misc. No. 16101/2015.

27.03.2018:

Mr. Muhammad Arshad, advocate for the Petitioner.
Chaudhry Muhammad Farooq, Assistant Director (Legal),
NADRA, Karachi.
Mr. Asim Mansoor Khan, DAG.

ORDER

Aqeel Ahmed Abbasi, J. Petitioner, namely, Muhammad Rafiq son of Muhammad Sheeraz Ali, who claimed to be a born citizen of Pakistan, when approached the NADRA Authorities for renewal of his CNIC, was denied renewal of his CNIC by NADRA, hence filed instant petition before this Court on 19.01.2012 with the prayer to issue directions to the respondents for issuance/renewal of the CNIC of the petitioner in accordance with law.

2. Pursuant to Court Notices, comments were filed on behalf of respondent Nos. 1 to 3, wherein, it was stated that the CNIC of the petitioner has been blocked in Alien Category, for the reason that petitioner is a NARA Card holder, therefore, petitioner is required to obtain Clearance Certificate under Section 16-A of the Citizenship Act, 1951 from the Ministry of Interior and also to get his NARA Card cancelled. The aforesaid allegation was denied by the petitioner. However, in view of earlier orders passed by Divisional bench of this Court in similar circumstances, by consent of the parties, instant petition was finally disposed of vide order dated 03.12.2014 in the following terms:-

“ Learned Counsel for the respondents/Nadra submits that instant petition can be disposed of in

terms of the order dated 13.10.2014 passed by this Court in C.P. No.D-552/2011 and C.P. No.D-1284/2012. Copies of such orders have been supplied to the learned counsel for the petitioner, who after going through the contents of such orders, has given consent to dispose of the instant petition in the similar terms, however, submits that if the grievances of the petitioner would not be redressed, the petitioner may be allowed to approach before the Court for redressal of their grievances. Accordingly, by consent, the instant petition stands disposed of in terms of the orders, which read as follows:-

“ After hearing the learned counsel for the parties and the learned Standing Counsel, the instant petition is being disposed of, by consent, that the petitioner will approach the NARA authorities alongwith relevant documents, who shall examine and verify the same within two months and if the same are found to be genuine and correct, the petitioner has established his citizenship as Pakistani, the NARA card collected, if any in favour of the petitioner, may be cancelled and the same may be intimated to the NADRA authorities, who shall proceed the matter for removal of NARA NIC within two weeks after receipt of application alongwith relevant record. However, the adverse order, if any, passed by NARA, the petitioner will seek remedy against such order, in accordance with law. The instant petition stands disposed of in the above terms”.

3. After disposal of instant petition in the aforesaid terms, petitioner filed an application being Misc. No.16101/2015 under Section 151 CPC r/w Sections 3 & 4 of the Contempt of Court Act for alleged violation of Court's order by the respondents/NADRA Authorities, wherein, it has been stated that as per directions of the Court, petitioner repeatedly approached the NADRA/NARA Authorities seeking cancellation of his NARA Card and produced all the relevant documents alongwith originals, including his Birth Certificate issued by the KMC, Marriage Certificate, Birth Certificates of his children, his NIC (old), CNIC and Passport issued to the petitioner from time to time. However, the matter was prolonged unnecessarily by the respondents, and instead of

cancelling the NARA Card and issuing the CNIC to the petitioner, respondents have declined to do the needful, therefore, petitioner was left with no option but to approach this Court by filing the listed application.

4. Notice of listed application was issued on 22.06.2015 to the respondents. Pursuant to which, a statement dated 11.08.2017 has been filed on behalf of Director General RHO NADRA Karachi alongwith annexure, wherein, it has been stated that pursuant to Court directions, the case of the petitioner was processed before NARA Authority, however, petitioner could not provide any valid documents or any other prove as per law to prove his Pakistani nationality, therefore, petitioner may be directed to approach the "District Verification Committee" for clearance of his National Status.

5. In response to above statement filed on behalf of NADRA, petitioner has filed counter-affidavit, wherein, allegations as contained in the letter issued by the Deputy Director (Tech), NADRA, have been denied, and it has been stated that inspite of having verified the genuineness of the Birth Certificate of the petitioner issued by the KMC, and the other relevant documents produced by the petitioner, NADRA officers have illegally declined the renewal the CNIC of the petitioner, while assigning extraneous reasons, which are contrary to facts and law. Learned counsel for the petitioner has vehemently argued that petitioner was born at Karachi, Pakistan in the year 1969 (25.04.1969), who is in possession of original Birth Certificate, which has been duly verified at the request of NADRA Authorities by the KMC/DMC, Nikahnama of petitioner and his wife, namely, Mst. Samina Bano, Marriage Certificate of the petitioner, Birth Certificates of his children, old NIC, CNIC and Passport, is running from pillar to post for renewal

of his CNIC, whereas, pursuant to order dated 03.12.2014 passed by this Court, petitioner has approached the NADRA Authorities alongwith relevant documents for cancellation of the NARA Card, which according to learned counsel for the petitioner, was never issued to the petitioner, however, the needful has not been done and renewal of the CNIC of the petitioner has been declined once again on extraneous conditions and in violation of relevant law, Rules and Regulations, which has caused serious hardships and humiliations to the petitioner. It has been prayed that contempt of Court proceedings may be initiated against the delinquent official(s), who may be directed to issue the CNIC of the petitioner duly renewed at the earliest.

6. We have heard the learned counsel for the parties as well as the learned DAG, perused the record with their assistance as well as the relevant law relating to issuance/renewal of CNIC, National Database and Registration Authority Ordinance, 2000; National Database and Registration Authority (National Identity Card) Rules, 2002; and Pakistan Citizenship Act, 1951. From perusal of record, it appears that when the petitioner has filed instant petition, he has annexed following document, relating to petitioner, namely, Muhammad Rafiq and his brother, namely, Muhammad Abdul Mateen both sons of Muhammad Sheeraz Ali alongwith some other documents pertaining to his relatives:-

(a) MUHAMMAD RAFIQ S/O MUHAMMAD SHEERAZ ALI

- (i) Photocopy of CNIC No. 42401-1907656-9
- (ii) Photocopy of old NIC No. 504-91-467741
- (iii) Photocopy of Driving License No. CLA 1040301
- (iv) Photocopy of Token of CNIC No. 42401-1907656-9
- (v) Voter List containing name of Muhammad Rafiq
- (vi) Computerized National Identity Card form
- (vii) Birth Certificate of Muhammad Rafiq registered at UC-I, Page No.51, Serial No. 1280
- (viii) 'B' Form issued by NADRA for child less than 18 years'

- (ix) Nikahnama of Muhammad Rafiq
- (x) Photocopy of CNIC of Mst. Samina Bano (wife)
- (xi) Online verification of CNIC No. 42401-1907656-9
- (xii) Payment Slip of Muhammad Rafiq of May 2010 working as Electric Supervisor
- (xiii) Overtime Payment Slip of 12.2011 working as Electric Supervisor

(b) MUHAMMAD ABDUL MATIN S/O MUHAMMAD SHEERAZ ALI

- (i) Photocopy of CNIC No. 42201-6911724-7
- (ii) Photocopy of Passport No. C 291127
- (iii) Identity Card of Karachi Bar Association
- (iv) Certificate of Registration
- (v) Letter bearing No. ED(O&M)25/74-101 dated 26.09.1974 issued by Bangladesh
- (vi) Suit No. 54/1993 filed by Muhammad Abdul Matin

The aforesaid documents prima facie establish that petitioner was borne in Karachi on 25.04.1969, who has already been issued the Birth Certificate, NIC (old), CNIC, Nikahnama, Marriage Certificate, 'B' Form in respect of his children under the age of 18 years' as well as payments slips etc. However, in view of comments filed on behalf of respondent alleging that the petitioner was issued a NARA Card, the above petition was disposed of by consent vide order dated 03.12.2014 in terms of earlier orders passed by this Court in similar petitions with the directions that "*the petitioner will approach the NARA authorities alongwith relevant documents, who shall examine and verify the same within two months and if the same is found to be genuine and correct, the petitioner has established his citizenship as Pakistani, the NARA card collected, if any, in favour of the petitioner, may be cancelled and the same may be intimated to the NADRA authorities, who shall proceed the matter for removal of NARA NIC within two weeks after receipt of application alongwith relevant record. However, the adverse order, if any, passed by NARA, the petitioner will seek remedy against such order, in accordance with law*".

7. After disposal of the petition in the aforesaid terms vide a consent order dated 03.12.2014, petitioner approached the respondents alongwith all the relevant documents, as referred to

hereinabove, as well as some additional documents, including his Marriage Certificate with Mst. Samina Bano, but the needful was not done and the NADRA Authorities refused to cancel the NARA Card and the issue CNIC to the petitioner. The petitioner therefore, filed the listed application i.e. CMA No.16101/2015 under Section 151 CPC read with Section 3 & 4 of the Contempt of Court Act for violation of Court's order dated 03.12.2014, alongwith its Annexures including, Extract of Entries of City Register of Births in the Municipal Limits of Karachi having Serial No.42798, City Register No.UC-1, Page No. 51 at Serial No.1280 in respect of the petitioner, namely, Muhammad Rafiq son of Muhammad Sheeraz Ali vide letter dated 12.02.2015 issued by Deputy Director (Tech) Ministry of Interior, National Database & Registration Authority, Aliens Registration Affairs to the Registrar, Birth & Death Section, Karachi Metropolitan Corporation, Karachi seeking verification of Birth Certificate of the petitioner, a letter No.Incharge/BD/SFZ/072/2015 dated 06.03.2015 issued by Incharge Birth & Death Section, Shah Faisal Zone, DMC Korangi, addressed to the Deputy Director (Tech), Ministry of Interior, National Database & Registration Authority, Karachi, whereby, the Birth Certificate of the petitioner as referred to hereinabove, has been verified to be genuine. The Marriage Registration Certificate of the petitioner, namely, Muhammad Rafiq and his wife, namely, Mst. Samina Bano issued by the Secretary Union Council Gabol Colony, Orangi Town, Karachi showing his date of marriage as 02.08.1996 as well as CNIC No.4240119076569, four Birth Certificates of his children, namely, Muhammad Saqib, Reeza, Riffat Rafiq & Sawaira Rafiq all son & daughters of Muhammad Rafiq issued by the Secretary Union Council Gabol Colony, Orangi Town, Karachi, whereas, the aforesaid documents were produced by the petitioner before the NADRA/NARA Authorities, however, it

is regretted to note that without finding any defect in the aforesaid documents issued by various Government Departments, including NADRA, or declaring the same as forged or bogus documents, respondents have declined to renew the CNIC of the petitioner without assigning any cogent reason, whereas, on the basis of totally extraneous reasons, which do not have any factual or legal basis, the petitioner is being dragged since the year 2012 in frivolous proceedings by NADRA. No material or evidence has been produced by the respondents, which may suggest that petitioner was not born at Karachi, Pakistan on 25.04.1969 and since then, he is living in Pakistan, nor it has been alleged by the respondents that the documents as produced by the petitioner, are forged or bogus documents. From perusal of the documents attached through statement filed on behalf of respondents/NADRA, it has been observed that admittedly the petitioner produced all such documents before the NADRA Authorities and was summoned alongwith his wife before a panel of officers, namely, Khaliq-ur-Rehman, Deputy Director (Admin); Syed Nayab Hassan Zaidi, Deputy Director (Tech); & Zubair Jabbar, A.P.S. and while producing the aforesaid documents, categorically stated that he is living in Karachi, Pakistan since his birth 25.04.1969. However, the panelist in their wisdom observed that since the petitioner was not fluent in speaking Urdu, therefore, petitioner was directed to obtain Citizenship Certificate in accordance with law. We may observe that under the Qanun-e-Shahdat Order 1984, legal presumption is attached with regard to genuineness of public documents issued by the Government Authorities and Departments, unless proved to be forged or bogus document by competent authority/Court, whereas, in the case of petitioner, inspite of lapse of considerable time of more than six years and the remand of the matter by this Court vide order dated 03.12.2014 to the respondents for the purposes of

verification of petitioner's documents and his claim that he was born at Karachi, Pakistan on 25.04.1969, the respondents have miserably failed to either disprove such documents or to bring any evidence on record, which may otherwise suggest that the petitioner is not residing in Pakistan since his birth i.e. 25.04.1969.

8. In view of hereinabove facts and circumstances of the instant case, the decision of the aforesaid panelist of NADRA/NARA Authorities requiring the petitioner to obtain citizenship certificate in terms of Section 16-A of the Pakistan Citizenship Act, 1951, is totally arbitrary and, as well erroneous, contrary to facts and law. Moreover, provisions of Section 16-A of Citizenship Act, 1951 are not attracted in the case of petitioner, who was born at Karachi in the year 1969 and since then, he has claimed to have been voluntarily residing in Pakistan continuously. Accordingly, without drawing any adverse inference against the alleged contemnors, listed application is granted with the directions to the respondents to immediately cancel the NARA Card, if issued, in the name of the petitioner within fifteen days, and to issue the CNIC to the petitioner by processing his application in accordance with law, whereas, CNIC shall be issued to the petitioner within one month thereafter. Respondents shall submit compliance report to this Court through Member Inspection Team-II of this Court within two months from the date of this order, failing which appropriate action will be taken against delinquent officers as per law.

Listed application stands disposed of in the above terms.

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