

(1960) 03 AHC CK 0046

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 2262 of 1957

Abdul Mannan Khan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 04-03-1960

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1960 All 565

Hon'ble Judges : V.D. Bhargava, J

Bench : Single Bench

Advocate : D. Sanyal, for the Appellant; Shambhu Pd. and Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

V.D. Bhargava, J.—This is a petition under Article 226 of the Constitution, filed by one Abdul Mannan Khan who claims to be a citizen of India. He was born in Umarkhel, police station Sharan in the district of Ghazni in the State of Afghanistan. The petitioner's father had migrated to Banaras some 30 years ago and lived in house No. 66/3, Bania Bagh from where he carried on business in various parts of India and made the said house his permanent home. The petitioner was brought up by his father at Banaras and he too settled down there. The petitioner, in fact, had made Banaras his home and permanent residence with no intention of leaving the place. During the 30 years' stay in India he has hardly visited Afghanistan six times, and during the last 22 years he probably visited only twice or thrice. After the coming of the Constitution, the petitioner considered himself to be a domicile of India and its citizen.

When the Citizenship Act of 1955 came into Force, the petitioner thought of getting himself recorded as a citizen of India and therefore he applied on 20-8-56 for the grant of certificate of naturalization under Act LVII of 1955 and got a notice published in the Daily Bharat of Varanasi dated 9th and 11th December 1956. The afore-said application for citizenship was rejected by the

Government of India, and information was communicated to the petitioner by Office Memorandum No. 556 CP/VIII-D dated 28-6-57 by the Under secretary of the Home Department, U. P. Government. Thereafter on 2-9-57 the petitioner was served with a notice dated 30-8-1957 by the Senior Superintendent of Police, Varanasi asking him to leave this country within a month from the date of the service of the notice. He had been further told that if he failed to quit India within that period he would render himself liable to deportation. The petitioner had obtained a passport and visa which gave him a right to stay in India from 31-8-57 to 31-8-58. The petitioner claimed to be a citizen of India under Article 5(1)(c) of the Constitution of India. It was further contended that it was only the Union Government, who could direct his deportation and such power could not be exercised by the Senior Superintendent of police; therefore this writ petition has been filed.

2. A revision was also filed by the petitioner u/s 6 of the Citizenship Act, but he received no reply from the Ministry of foreign Affairs.

3. Union of India through the Ministry of Foreign Affairs, New Delhi is one of the opposite parties to this petition. The Ministry of Foreign Affairs is situate at New Delhi and is beyond the jurisdiction of this Court. It has been held in numerous cases and I have dealt with it at length in Altafur Rahman Fazlur Rahman Vs. Collector Central Excise, Allahabad, , that if a party is not within the jurisdiction of this Court it is not open to this Court to issue any writ or direction. In the circumstances no writ or direction can be issued against opposite party No. 1. Learned counsel for the petitioner had urged that he is prepared to delete opposite party No. 1 from the array of opposite parties to this petition.

4. At the present moment there are two orders which have, been passed one is by the Under Secretary, Home Department of the Government of Uttar Pradesh and the other is by the Senior Superintendent of Police Varanasi. So far as the order of the U. P. Government is concerned, it has only informed the petitioner that his petition to the Government of India has been rejected, and he has further been informed that his stay in India will be regulated in terms of the residential permit held by him. That order does not in any way ask the petitioner to do or to forbear to do anything, and the petitioner is not in any way affected by that order. If the petitioner is affected at all it is by the dismissal of his application for a certificate of Indian Citizenship. The State Government in the present case, while informing the petitioner, was acting only under the direction of the Union Government. This order, therefore, cannot be quashed for two reasons. Firstly, it had been issued under the direction of a party which is beyond the jurisdiction of this Court and secondly, that order does not in any way hit the petitioner's right.

5. The second order, which has been complained of, is the order of the Senior Superintendent of Police which is in the following terms:

"The Govt. of India have rejected your application for naturalization as an Indian

citizen. You are herewith served with a notice to leave this country within a month from the date of service of this notice. If you fail to comply with this notice you will render yourself liable to deportation.'"

This letter again is an information to the petitioner of the fact of the dismissal of his application for naturalization and also telling him that in case he did not leave this country within one month he would render himself liable to deportation. That order actually is not an order of deportation. It is necessary that this kind of order should be under the direction of the Central Government. If the order had been actually of deporting and that order was not justified under the provisions of the Foreigners Act, there may have been something to be said in favour of the petitioner. When another order, after the expiry of the period, of actual deportation is issued, if that order is not in accordance with law, that may be liable to be challenged in proper proceedings. I do not wish to express any opinion on this matter because that question is not before me.

Whether that order can be challenged by a separate suit or by means of a writ petition, or by neither is a matter which should be considered at the time when that occasion arises. As the present two orders do not actually affect the petitioner's right but are in the nature of information to the petitioner about the dismissal of his application for citizenship right, I do not think the petitioner at the present moment has any right to present the petition, and consequently, as I have already said, these two orders having been issued on the basis of the order of Government of India, which is beyond the jurisdiction of this Court, these matters can also not be challenged. If the Government of India has issued directions and I was to quash the orders, the Superintendent of Police and the Under Secretary of the U. P. Government would be placed in a difficult position. Either they have to obey the orders of this Court or those of their superior authorities of the Central Government.

6. Under these circumstances as I have already held in the aforesaid writ petition, in *Altafur Rahman Fazlur Rahman Vs. Collector Central Excise, Allahabad*, , this Court should not pass any order.

7. Learned counsel for the petitioner has relied upon the decision in *A. Thangal Kunju Musaliar Vs. M. Venkitachalam Potti and Another*, for the proposition that if there is an authorised agent of a person who is outside the jurisdiction of the Court, but the authorised agent is within the jurisdiction of the Court and he discharges certain functions then the Court can issue orders to the authorised agent within the jurisdiction of the Court. That may be true, when the authorised agent acts on his own authority which has been delegated to him. But if the agent acts not on his own authority but according to the directions received from his principal, then no direction can be issued to the agent. I do not think in the circumstances the authority cited above applies to the present case.

8. I see no force in this petition; it is accordingly dismissed with costs.