

(2008) 07 DEL CK 0046

In the Delhi High Court

Case No : Writ Petition (C) 3087 of 1996

Azimusshan Haider

APPELLANT

Vs

Union of india (UOI)

RESPONDENT

Date of Decision : 04-07-2008

Acts Referred:

Citizenship Act, 1955 — Section 14, 14(1), 14(2), 15, 5
Constitution of India, 1950 — Article 14, 19, 226, 6, 8

Citation : (2008) 151 DLT 659 : (2008) 104 DRJ 604

Hon'ble Judges : T.S. Thakur, J;Siddharth Mridul, J

Bench : Division Bench

Advocate : Siddharth Luthra, Anurag Ahluwalia and Abhijeet Sinha, for the Appellant; R.V. Sinha, for the Respondent

Final Decision : Allowed

Judgement

T.S. Thakur, J.—In this petition under Article 226 of the Constitution of India, the petitioner assails the constitutional validity of Section 14(1) of the Citizenship Act and prays for a declaration to the effect that the power granted to the Central Government to impose "conditions and restrictions" u/s 5(1)(b) of the Citizenship Act, 1955 is violative of Article 14 of the Constitution of India. It also prays for a writ of certiorari quashing the decision of the Government of India declining citizenship to the petitioner.

2. The petitioner is a Pakistani citizen and holds a Pakistani passport. He is presently residing in Kuwait. In May, 1992 he applied to the Indian Embassy in Kuwait for registration as an Indian citizen. That application was forwarded by the Indian Embassy in Kuwait to the Home Ministry (Indian Citizenship Section) at Delhi. The application inter alia stated that the petitioner was born in Motihari town, Distt. East Champaran of the State of Bihar, and had left India 21 years before the date of the application in search of better job opportunities. The applicant lived in Dhaka and later in Karachi between 1961-1968 before shifting to Kuwait under a Pakistani passport issued at Karachi on 4th October, 1977.

3. The petitioner's case in the writ petition now is that he did not receive any reply from the Indian Embassy in Kuwait as to the fate of the application but when contacted, the embassy advised him to take up the matter directly with the Home Ministry of the Government of India, Delhi. A letter written by the petitioner on 7th August, 1988 pointed out certain fresh developments that had taken place during the time the application filed by him remained pending. The petitioner did not, however, receive any reply to the said letter also which was then followed by a representation dated 24th June, 1993 to the Minister of Home Affairs, Government of India. A copy of the representation was simultaneously sent to Sh. Tariq Anwar, former Member of Parliament requesting him to forward his representation to the Ministry of Home Affairs which was done by Sh. Anwar. The petitioner eventually received a communication from Sh. P.M. Sayeed, the then Minister of State for Home Affairs through Sh. Tariq Anwar stating that Section 5(1)(b) of the Citizenship Act is applicable only to the stateless persons of Indian origin. Since, however, the petitioner was holding a Pakistani passport, he was not entitled to registration under the said provisions. The petitioner also received a letter dated 14th December, 1993 from the Indian Embassy in Kuwait informing him that his request for grant of Indian citizenship had not been accepted.

4. Aggrieved by the order of rejection of his application for grant of citizenship, the petitioner sent a representation in April, 1994 to the Secretary, Ministry of Home Affairs which too proved of no avail. The present writ petition was, in that backdrop, filed to assail the constitutional validity of Section 14(1) and 14(2) of the Citizenship Act as also the validity of the order by which the petitioner's request for being registered as a citizen of India has been rejected. It also assails the validity of Section 5(1)(b) of the Act to the extent, the same empowers the Central Government to lay down the "conditions and restrictions" for the grant of said registration.

5. The respondents have filed a counter affidavit to explain that there are four basic ways of procuring Indian citizenship viz; (i) by birth, (ii) by descent (iii) by registration & (iv) by naturalization. The petitioner's application seeking registration was made u/s 5 of the Act. The counter affidavit explains that Article 8 of the Constitution of India and Section 5(1)(b) of the Citizenship Act deal with persons who are citizens by virtue of birth or descent but are domiciled outside India. The counter affidavit refers to the Constitution Assembly Debates and the description which Dr. Ambedkar had given to these persons as "Indian abroad". The counter affidavit draws an inference that Section 5(1)(b) is applicable in the case of only those persons who are entitled to be citizens of India but are prevented from being so because of their being resident in a country outside undivided India and in that sense are stateless. Such persons could, according to the respondents, get themselves registered as citizens of India by following the prescribed procedure. The petitioner, however, was not covered by that provision as he was a citizen of India till 1961. He was not an "Indian abroad" he had, in fact, taken Pakistani citizenship and was granted a Pakistani passport.

Accordingly, although, he is a resident outside undivided India he is not an "Indian abroad" no matter he was a person of Indian origin. The counter supports the order passed by the Government of India rejecting the petitioner's prayer for registration u/s 5(1)(b) on the ground of ineligibility. It further states that the petitioner can obtain a long term visa from Indian Mission abroad and after continuously staying in India for 5 years on long term visa, he can seek registration as Indian Citizen u/s 5(1)(b) of the Citizenship Act. The challenge to the validity of Sections 5(1)(b) and 14 of the Citizenship Act has been repudiated and a prayer for dismissal of the writ petition made.

6. Appearing for the petitioner, Mr. Siddharth Luthra strenuously argued that the rejection of the request made by the petitioner for registration as a citizen of India u/s 5(1)(b) is illegal. He contended that the rejection proceeded on the assumption that Section 5(1)(b) applied only to stateless persons. The Citizenship Act did not, however, envisage any such requirement as a condition precedent for registration u/s 5(1)(b). What was important, according to Mr. Luthra, was whether the person making the application was a person of Indian origin within the meaning of the Explanation to Section 5(1)(b) of the Act. That requirement was satisfied by the petitioner as the petitioner was a person of Indian origin residing beyond the limits of undivided India. Inasmuch as the respondent had rejected the prayer made by the petitioner on a ground that was wholly outside the purview of Section 5(1)(b), the same was illegal and unsustainable.

7. The other limb of Mr. Luthra's argument was that the immunity conferred upon the order passed by the Government against the requirement of giving reasons in support of the view taken by the Government was illegal and unconstitutional inasmuch as it confers to giving uncanalized and unbridled powers upon the Government of India to reject a request for registration without so much as disclosing the reason for such rejection. The requirement of giving reasons was, according to the learned Counsel, a safeguard against arbitrary exercise of the power vested in a public authority. Once that safeguard was removed, the authority could exercise its power the way it liked without there being any check upon whimsical and arbitrary use of such power.

8. Appearing for the respondent Mr. Sinha, on the other hand, argued that the Government had u/s 14(1) of the Citizenship Act unrestricted power to refuse citizenship without assigning any reason. A Pakistani national like the petitioner could not claim equal rights with that of Indian nationals nor could he question the validity of Section 14 of the Act. Support for that submission was drawn by Mr. Sinha from a decision of a Division Bench of Madras High Court in David John Hopkins V. The Union of India and Ors. AIR 1977 MaD 366. Reliance was also placed by Mr. Sinha upon a decision of the Supreme Court in Louis De Raedt v. Union of India and Ors. AIR 1999 SC 1886 where the Supreme Court has ruled that a foreigner had no right under Article 19(i)(e) to reside and settle in India and that the Government had an unrestricted right to expel foreigners from this

country. The decision of the Supreme Court in *Ekta Shakti Foundation Vs. Govt. of NCT of Delhi*, was also pressed into service by Mr. Sinha to support his submission that while exercising the power of judicial review of administrative action a writ Court does not sit as an Appellate Authority nor does the Constitution permit the Court to direct or advise the executive in matters of policy. The Court may not, Therefore, interfere even if the decision taken by the Government does not appear to be acceptable to the Court. So long as there is no infringement of a fundamental right, Courts have no occasion to interfere nor should the Court substitute its own judgment for the judgment of the executive in such matters.

9. We have given our careful consideration to the submissions made at the bar and perused the record. Section 5 of the Citizenship Act, 1955 reads as under:

5. Citizenship by registration.--[(1) Subject to the provisions of this section and such other conditions and restrictions as may be prescribed, the Central Government may, on an application made in this behalf, register as a citizen of India any person not being an illegal migrant who is not already such citizen by virtue of the Constitution or of any other provision of this Act if he belongs to any of the following categories, namely:

(a) a person of Indian origin who is ordinarily resident in India for seven years before making an application for registration;

(b) a person of Indian origin who is ordinarily resident in any country or place outside undivided India;

(c) a person who is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration;

(d) minor children of persons who are citizens of India;

(e) a person of full age and capacity whose parents are registered as citizens of India under Clause (a) of this sub-section or Sub-section (1) of Section 6;

(f) a person of full age and capacity who, or either of his parents, was earlier citizen of independent India, and has been residing in India for one year immediately before making an application for registration;

(g) a person of full age and capacity who has been registered as an overseas citizen of India for five years, and who has been residing in India for [one year] before making an application for registration,

Explanation 1.- -For the purposes of Clauses (a) and (c), an applicant shall be deemed to be ordinarily resident in India if--

(i) he has resided in India throughout the period of twelve months immediately before making an application for registration; and

(ii) he has resided in India during the eight years immediately preceding the said period of twelve months for a period of not less than six years.

Explanation 2.-- For the purposes of this sub-section, a person shall be deemed to be igin if he, or either of his parents, was born in undivided India or in such other territory which became part of India after the 15th day of August, 1947.];

(2) No person being of full age shall be registered as a citizen of India under Sub-section (1) until he has taken the oath of allegiance in the form specified in the Second Schedule.

(3) No person who has renounced, or has been deprived of, his Indian citizenship or whose Indian citizenship has terminated, under this Act shall be registered as a citizen of India under Sub-section (1) except by order of the Central Government.

(4) The Central Government may, if satisfied that there are special circumstances justifying such registration, cause any minor to be registered as a citizen of India.

(5) A person registered under this section shall be a citizen of India by registration as from the date on which he is so registered; and a person registered under the provisions of Clause (b)(ii) of article 6 or article 8 of the Constitution shall be deemed to be a citizen of India by registration as from the commencement of the Constitution or the date on which he was so registered, whichever may be later.

[(6) If the Central Government is satisfied that circumstances exist which render it necessary to grant exemption from the residential requirement under Clause (c) of Sub-section (1) to any person or a class of persons, it may, for reasons to be recorded in writing, grant such exemption.].

10. It is evident from a careful analysis of the above provision that the prescribed authority may, on an application made in that behalf, register any person who is not already a citizen of India as a citizen of this Country provided he belongs to one of the classes enumerated in Clauses (a) to (e) of Sub section (1) to Section 5. The petitioner had invoked Section 5(1)(b) supra under which persons of Indian origin who are ordinarily residing in any country or place outside undivided India may be registered as citizens of India. Sub Section 3 provides that no person who is renounced or has been deprived of his Indian citizenship or whose Indian citizenship has terminated under the Act shall be registered as a citizen of India under Sub section 1 except by an order of the Central Government. A conjoint reading of Sub sections 1 and 3 of Section 5 would, Therefore, show that persons like the petitioner herein who had renounced their Indian citizenship could not be registered as citizen of India under Sub section (1) except by an order of the Central Government. In other words, it is only the Central Government who shall be the competent authority to register such persons under Clauses (a) to (e) of Sub section (1) of Section 5. To that extent there was no difficulty inasmuch as it was not the case of the petitioner that the application had not been examined by the competent authority namely the Government of India. What is, all the same, argued is that the Government had misdirected itself while considering the request made by the

petitioner. It had, while dealing with the application, assumed that a registration u/s 5(1)(b) was permissible only if the person was stateless, a concept which Section 5 does not envisage. There is, in our opinion, merit in that contention. Section 5(1)(b) does not make statelessness as a condition precedent for registration. The provision stipulates two essential conditions for such registration namely (1) Persons seeking registration must be a person of Indian origin and (2) must be ordinarily resident in any country or place outside undivided India. The expression "persons of Indian origin" has been defined in the Explanation to mean "persons who are themselves or either of whose parents are born in undivided India". It is common ground that the petitioner satisfies that requirement. It is not disputed that the petitioner was born in Motihari, Bihar and that his parents were also born in undivided India. The first requirement for registration was, Therefore, satisfied. The second requirement was also equally satisfied, in the instant case for the petitioner has been ordinarily residing in Kuwait which is outside undivided India. Such being the position the rejection of the petitioner's application on the ground that Section 5(1)(b) applied only to stateless persons appears to us to be wholly unsustainable. The provision does not restrict its application to stateless persons. It is true that persons who are stateless may also be covered by Section 5(1)(b) provided they satisfy the twin requirements stipulated in the same but that is different from saying that only stateless persons can be registered as citizens.

11. That brings us to the question whether this Court ought to interfere with the rejection order passed by the Government having regard to the fact that the Government have unrestricted power to refuse citizenship without assigning any reason. According to the respondents if the Government could reject the prayer for registration without assigning any reason, it would make little difference if the rejection, as in the instant case, was made for a reason duly disclosed by the Government. The situation could as well be viewed to be analogous to a case where rejection was without any reason whatsoever.

12. Section 14 of the Citizenship Act of 1955 is as under:

14. Disposal of application under Sections 5 and 6 -

(1) The prescribed authority or the Central Government may, in its discretion, grant or refuse an application u/s 5 or Section 6 and shall not be required to assign any reasons for such grant or refusal.

(2) Subject to the provisions of Section 15 the decision of the prescribed authority or the Central Government on any such application as aforesaid shall be final and shall not be called in question in any court.

13. A reading of the above would show that the Central Government may, in its discretion, grant or refuse an application for registration and while doing so it shall not be required to give any reason for such grant or refusal. Any decision on the application for registration is also treated to be final and is beyond review by any Court of law. We are not, however, dealing with a case where the

Government have, without disclosing the reason for refusal of Citizenship to the petitioner, rejected the application. We have at hand a case where the refusal is sought to be justified on a ground which the Government have disclosed without being compelled to do so. The question is whether the two situations can be compared and interference declined even when the consideration by the Government is not found to be in order or is ex facie misdirected. Our answer to the same is in the negative. In a case where the Government did not choose to disclose the reason for granting or refusing citizenship to a person seeking registration u/s 5, the Court may not insist upon disclosure of the reasons. It may uphold the order on the settled legal position that a foreigner does not have a fundamental right to reside and settle in India and the Government have an unrestricted right to expel. The decision of the Supreme Court in *Louis De Raedt's* case (supra) provides considerable support for the proposition that the Government have unrestricted power to expel a foreigner and that there is no hard and fast rule about the manner in which the person concerned has to be given an opportunity to place his case. The position, however, is not the same in case the Government have on their own disclosed the reasons as to why the application for registration has been declined and the disclosed reason is patently irrelevant to a proper consideration of the request u/s 5. The prescribed authority or the Government of India cannot misdirect themselves and pass an order for a reason that is wholly extraneous to the scheme of the Act or the factors relevant for proper consideration of the matter, and yet argue that even when the power is statutory in character and even when there is an obligation cast upon them to consider the matter fairly and objectively on the basis of relevant parameters, they can decline the request on a wholly irrelevant and extraneous ground. No public authority in this country, howsoever high, can support its order even when the order proceeds on grounds irrelevant or extraneous on the face of the record. No authority exercising statutory or executive power can act arbitrarily or whimsically. That requirement does not arise out of the effected party being a citizen of this Country. It arises out of the nature of power being exercised by the authority in a country that is governed by the rule of law with the power of judicial review vested in the judiciary. Arbitrariness or non-application of mind is an antithesis to the Constitutional creed and even when a foreigner may have no fundamental right to settle in this country, he still enjoys the right to demand a fair and proper consideration of his request according to law of the land. That is the glory of the system prevalent in this Court which upholds the basic tenets of fair play and probity in public administration no matter the person complaining of the breach is a non-citizen. Viewed thus the rejection order passed by the Government of India is unsustainable not because the Government have not given reason in support of the order but because the reason given is not tenable. Such being the case, we consider it unnecessary to go into the constitutional validity of Sections 5(1)(b) and 14 of the Act.

14. In the result, this petition succeeds and is hereby allowed but only to the limited extent that the rejection of the petitioners request for registration as an

Indian citizen shall stand quashed and the matter remitted back to the Government for a fresh consideration of the petitioner's case in accordance with law keeping in view the observations made in the body of this order. The needful shall be done expeditiously but not later than six months from today.

15. No costs.