

(1995) 08 MAD CK 0046
In the Madras High Court
Case No : W.P.No. 11063 of 1995

Daivid John Hopkins

APPELLANT

Vs

Union of India and another

RESPONDENT

Date of Decision : 31-08-1995

Acts Referred:

Citizenship Act, 1955 — Section 14, 15, 4(1), 5, 6
Constitution of India, 1950 — Article 12, 14, 16(1), 21, 226

Citation : AIR 1996 Mad 314 : (1995) 2 CTC 335

Hon'ble Judges : Jagadeesan, J

Bench : Single Bench

Advocate : Dr. K.P. Krishna Shetty, for the Appellant;

Judgement

1. The petitioner is the citizen of United Kindom. He came to India in the year 1970. Between 1970 and 1985 he stayed at Swami Vivekananda

Sevashram, Swami Vivekananda Home of Renunciation and Service and he was initiated into Sanhasin Disciple of the Ramakrishna Order. He

decided to become the citizen of India. On 11-6-1985, he assumed the Hindu name Swami Shivapranananda. But, however, on 22-3-1988 he

gave up the assumed Hindu name and reverted back to his original name. In the meanwhile, on 1-2-1985 he sent an application to the respondents

to get Indian Citizenship. The petitioner was informed by the second respondent in his proceedings dated 6-4-1985 that since Rules have not been

framed for registration of the British Citizens as Indian Citizens, the petitioner's application for registration does not lie and cannot be considered.

The petitioner did not take any steps to agitate the matter. By the end of April, 1985 the petitioner returned to England. Till October, 1992 he

stayed there except for a short visit of two months during 1987. In 1992 he

came to India and stayed for six months. Again in April, 1993 he went back to England. During January, 1994 once again he came to India and stayed for six months. In July, 1994 he returned to England and December, 1994 he visited India on tourist visa. In January, 1995 he returned to United Kingdom and in April, 1995, once again he came to India.

2. The petitioner has filed this writ petition challenging Section 14(1) of the Citizenship Act and prays for declaration that the said Section 14(1) of the Citizenship Act, 1955 is ultra vires of Article 14 of the Constitution of India.

3. The learned counsel for the petitioner contended that the petitioner has applied for the registration of the Indian Citizenship u/s 5(1)(C) of the Citizenship Act and repeatedly his request has been rejected for registration as Citizen of India, due to the non-framing of the Citizenship Rules in

respect of British Citizens. The executive has failed to frame the Rules and it is not open to them to keep quiet without framing the necessary Rules

for ever, whereby depriving the British Citizens like the petitioner to become the Indian Citizen. Further S. 14(1) of the Citizenship Act empower

the prescribed authority or the Central Government either to grant or refuse an application for registration u/s 5 or 6 of the said Act without

assigning any reason for such grant or refusal, when Article 14 of the Constitution of India enshrines the rule of law, the said Section 14(1) of the

Citizenship Act giving the concerned authority with arbitrary power as there is no guideline provided thereunder either to reject or to grant the

registration. Further the power not to assign any reason is also bad.

4. The learned counsel for the petitioner also referred to the judgment reported in Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress

and Others, and contended that the absolute power is destructive of freedom and wider the discretion, the greater the chances of abuse. The

absolute discretion marks the beginning of the end of the liberty.

5. Heard the counsel for the Petitioner. It is clear from the averments made in the affidavit of the petitioner that the petitioner had stayed in India

from 1970 to 1985. Then he left to his native place. From 1985 to 1995, except the sporadic visit on three occasions he stayed in United

Kingdom. After coming to India in April, 1995 now the petitioner has filed this writ petition challenging the validity of Section 14(1) of the

Citizenship Act.

6. It has to be seen that the petitioner was informed by the second respondent in his proceedings dated 6-4-1985 as follows:

With reference to your letter dated the 25th March, 1985, on the subject mentioned above, I am directed to say that rules have not so far been

framed for registration of British Citizens as Indian Citizens u/s 5(1)(c) of the Citizenship Act, 1955. As such your application for such registration

does not lie and cannot be considered.

If really the petitioner wanted to become the Indian Citizen, having stayed from 1979, he ought to have challenged the order of the second

respondent dated 6-4-1985. Without challenging the said order, the petitioner accepted the authority of the second respondent in refusing the

petitioner's application for registration of his Citizenship and left India. Now after ten years of his stay in his native place in United Kingdom, the

petitioner returned to India and has filed this writ petition.

7. . Section 5 of the Citizenship Act reads as follows:--

5. Citizenship by registration. -- (1) Subject to the provisions of this section and such conditions and restrictions as may be prescribed, the

prescribed authority may, on application made in this behalf, register as a citizen of India any person who is not already such citizen by virtue of the

Constitution or by virtue of any of the other provisions of this Act and belongs to any of the following categories (a) persons of Indian origin who

are ordinarily resident in India and have been so resident for five years immediately before making an application for registration;

(b) persons of Indian origin who are ordinarily resident in any country or place outside undivided India;

(c) persons who are, or have been, married to citizens of India and are ordinarily resident in India and have been so resident for five years

immediately before asking an application for registration.

(d) minor children of persons who are citizens of India, and

(e) persons of full age and capacity who are citizens of a country specified in the first Schedule;

Provided that in prescribing the conditions and restrictions subject to which persons of any such country may be registered as citizens of India

under this clause, the Central Government shall have due regard to the conditions subject to which citizens of India may, by law or practice of that

country, become citizens of that country by registration.

Explanation. -- For the purposes of this sub-section a person shall be deemed to be of Indian origin, if he, or either of his parents, or was born in undivided India.

(2) No persons being of full age shall be registered as a citizen of India under subsection (1) until he has taken the oath of allegiance in 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 Act 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.

Proviso to Section 5(1) makes it clear that in prescribing the conditions and restrictions subject to which persons of any such country may be registered as citizens of India under this clause the Central Government shall have due regard to the conditions subject to which citizens of India may, by law or practice of that country, become citizens of that country by registration. So it is open to the Central Government to frame Rules depending upon the Rules framed by the other country i.e., this more or less reciprocal one. When the Government has not framed any Rules for granting Citizenship Certificate for the citizens of United Kingdom, it is not open to the petitioner to compel the Government to frame Rules. The aforementioned proviso clearly shows that the intention of the legislature was that persons of a country mentioned in Schedule I would be qualified to be registered as Citizen of India if there exists a corresponding law in that country permitting citizens of India to become citizens of that country by registration. It is not the case of the petitioner there exists a corresponding

law in his country, permitting citizens of India to become citizens of that country by registration and India alone has failed to frame the reciprocal Rules.

8. Section 14 of the Citizenship Act empowers the prescribed authority or the Central Government either to grant or refuse application u/s 5 or 6

of the said Act and the prescribed authority or the Central Government is not required to assign any reason for such grant or refusal. Section 15 of

the Citizenship Act promises a revision against the order of either the prescribed authority or the Central Government passed u/s 14(1) of the

Citizenship Act. If really the petitioner is aggrieved by the order of the second respondent dated 6-4-1985, he ought to have filed a revision u/s 15

of the Citizenship Act. The petitioner has not chosen to do so and hence that order has become final and now by filing this writ petition the

petitioner virtually and impliedly challenging the validity of the order of the second respondent dated 6-4-85. I am of the view that it is not open to

the petitioner now in challenge the said order of the second respondent in an indirect manner.

9. Coming to the judgment referred to by the counsel for the petitioner, the judgment in more than one place refers to the rights of a citizen of India.

In the said judgment, at page 190, in paragraph 246 it is stated as follows:

The trinity of the Constitution assure to every citizen Special and Economic Justice, Equality of Status and of opportunity with dignity of the

person.

The citizen refers therein would mean only citizen of India. Likewise in paragraph 264 the learned Judges have held as follows:--

Thus it could be held that Article 14 read with Article 16(1) accords right to an equality or an equal treatment consistent with the principles of

natural justice. Any law made or action taken by the employer, corporate statutory or instrumentality under Article 12 must not fairly, justly and

reasonably. Right to fair treatment is an essential inbuilt of natural justice. Exercise of unbridled and uncanalised discretionary power impinges upon

the right of the citizen; vesting of discretion is no wrong provided it is exercised purposively judiciously and without prejudice. Wider the discretion,

the greater the chances of abuse. Absolute discretion is destructive of freedom than of man's other inventions. Absolute discretion marks the

beginning of the end of the liberty. The conferment of absolute power to dismiss a permanent employee is antithesis to justness or fair treatment.

The exercise of discretionary power wise of mark would breed arbitrary, unreasonably or unfair actions and could not be consistent with reason

and justice. The provisions of a statute, regulations or rules that empower an employer or the management to dismiss, remove or reduce in rank of

an employee must be consistent with just, reasonable and fair procedure. It would, further, be held that right to public employment, which includes

right to continued public employment till the employee is superannuated as per rules or compulsorily retired or duly terminated in accordance with

the procedure established by law is an integral part of right to livelihood which in turn is an integral facet of right to life assured by Art. 21 of the

Constitution. Any procedure prescribed to deprive such a right to livelihood or continued employment must be just, fair and reasonable procedure.

In other words an employee in a public employment also must not be arbitrarily, unjustly and unreasonably be deprived of his/her livelihood which

is ensured in continued employment till it is terminated in accordance with just, fair and reasonable procedure. Otherwise any law or rule in

violation thereof is void.

Need for harmony between social interest and individual right.

The Supreme Court deals with the right of an employee who is the Citizen of India. It would go without saying that a right of a citizen cannot be

taken away without assigning any reason. Whenever the right of an individual is involved, and such right is affected, then only it can be said that the

action of the authority is unreasonable.

10. So far as the petitioner is concerned, or any account, it cannot be said that he has get a right to get Citizenship in this Country. It is only a

privilege that can be conferred on him by the action of either the prescribed authority or the Government of India. Of course the Citizenship Act

governs and the procedure that should be followed in dealing with the application for registration for the Indian Citizenship. No foreigner can have

a fundamental right or much less a right to register himself as Indian citizen. If that would be the position, then no right of the foreigner, like the

petitioner is involved and as such it is not open to the petitioner to challenge (he provisions of the enactment as ultra vires of the Constitution of

India.

11. For the foregoing reasons, the writ petition is dismissed.

12. Petition dismissed,