

(2004) 04 MAD CK 0081

In the Madras High Court

Case No : Writ Petition No. 4617 of 1997

Devan Parameswaran

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-04-2004

Acts Referred:

Citizenship Act, 1955 — Section 5, 5(1)
Citizenship Rules, 2009 — Rule 8
Constitution of India, 1950 — Article 226

Citation : (2004) WritLR 505

Hon'ble Judges : K.P. Sivasubramaniam, J

Bench : Single Bench

Advocate : N. Paul Vasantha Kumar, for the Appellant; R. Santharam, ACGSC for R1 and V. Velumani, AGP for R2 to R5, for the Respondent

Final Decision : Allowed

Judgement

K.P. Sivasubramaniam, J.—The petitioner seeks for a Writ of Certiorarified Mandamus to call for the records relating to the order of the

second respondent dated 28.6.1996, to quash the same and to direct the third respondent to dispose of the petitioner's application dated

2.12.1992 for the grant of citizenship forthwith.

2. The petitioner's father, Parameswaran is a permanent resident of Trichur District of Kerala. He also owns property in Palakkad District. He got

employment as a Clerk in Malaysia. The petitioner was born on 17.9.1964 at Malaysia as his parents were residing at Malaysia at that time. The

petitioner was in Malaysia till 1976 and thereafter came to India. He underwent schooling in Chinmaya Vidyalaya, Palavur, Palakkad District of

Kerala State and passed SSLC in the year 1982. He also underwent A.I.M.I.E. Course in Coimbatore Institute of Technology and now he is

looking after the property of his maternal uncle and factory at Coimbatore as they have no issues. The petitioner further contends that his maternal uncle also died in June 1990. After he came to India in 1976, he had visited Malaysia only for one month during 1979 and 1983. After retirement, his father is also settled at Coimbatore District. The petitioner had obtained a passport from the Malaysian Government and the validity of the same was periodically extended till 9.7.1993. In the meanwhile, he had applied for Indian citizenship to the third respondent on 2.12.1992 u/s 5(1)(c) of the Citizenship Act 1955. The third respondent by his letter dated 22.2.1993 had directed the Revenue Divisional Officer, Coimbatore to furnish information in terms of the report as called for after due enquiry, with his recommendations. The petitioner further submitted that the Revenue Divisional Officer had directed the Tahsildar and the Tahsildar conducted an enquiry and submitted a report in favour of the petitioner for the Indian citizenship. The third respondent who is statutorily obliged to pass order has not chosen to pass any order either accepting or rejecting the registration. The petitioner again by his representation to the second respondent pointed out his difficulties in going back to Malaysia as there was no one to look after the estate of his maternal uncle and that he had applied for the Indian citizenship on 2.12.1992. As there was no response, a further reminder was sent on 24.4.1995 to the third respondent. The fourth respondent by memo dated 14.6.1995 directed the petitioner to submit an application for extension of his stay or to leave the country immediately. The petitioner addressed a letter to the third respondent again on 21.6.1995 and 26.7.1996 to take action on his application for citizenship. However, in the mean time, the second respondent, by letter dated 4.1.1996 has stated that the petitioner's stay in India was irregular and directed the petitioner to renew the passport or to leave the country immediately. All the efforts of the petitioner to get a new passport failed and was also rejected by the Assistant High Commissioner for Malaysia in Madras on 13.5.1996. Consequently, the fourth respondent by order dated 28.6.1996 issued a notice to the petitioner to leave India as the petitioner's visa had expired on 30.6.1996. The third respondent has also directed the fourth respondent to initiate criminal action against the petitioner and a criminal case was also registered in Crime No.99 of 1997. The petitioner was arrested on 24.3.1997 and he was remanded to

judicial custody. In the said back ground, the petitioner has sought for the relief as aforementioned.

3. In the counter filed on behalf of the second respondent, it is stated that till 15.6.1984, the nationals of Commonwealth Nations were not

required to obtain a visa to visit India. The requirement of visa for Commonwealth Nations was introduced from 15.6.1984. Extension of stay in

India cannot be granted for any foreigner beyond the validity of his passport. As such further extension of stay could not be granted to the

petitioner unless he gets his passport revalidated beyond 9.7.1993. Therefore, the petitioner was advised by the second respondent to get his

passport renewed beyond 9.7.1993 and as the same was not complied with, proceedings were taken against the petitioner. It is further stated that

no application for the grant of Indian Citizenship has been received by the Government from the Collector of Coimbatore.

4. I have heard both sides.

5. The facts stated above disclose the following features. The petitioner is admittedly a son of an Indian National who had been to Malaysia in

search of a job and the petitioner was born there while his father was working in Malaysia. It is also stated that the petitioner's father had retired

from service in Malaysia and had also returned to India. The petitioner who came back along with father even while he was a minor has undergone

his education only in India and being a born citizen of Malaysia, he was holding Malaysian passport and his visa was being periodically extended

upto 30.6.1996. The passport was also valid till 9.7.1993.

6. The petitioner being basically an Indian but had acquired Malaysian citizenship only because of the fact that he was born there when his father

was employed at Malaysia. He has undergone his education and settled in India once and for all, having regard to the facts stated above. In the

said back ground, in a perfectly legitimate manner, even before the visa or the passport had lapsed, on 2.12.1992 itself, had applied for Indian

Citizenship to the third respondent. The petitioner has filed not only his application but also filed the letter of the District Collector dated 22.2.1993

addressed to the Revenue Divisional Officer (RDO) calling upon him to enquire into the application of the petitioner with his recommendations

along with the records as enlisted therein. In response to the same, the RDO by

his letter dated 8.5.1993 has directed the Tahsildar to take further action.

7. In the back ground of the said facts, the contention of the second respondent that no application for the grant of Indian citizenship has been received by the Government from the Collector of Coimbatore cannot at all be appreciated. The District Collector has been impleaded as the third respondent and no separate counter has been filed by the District Collector disputing or denying receipt of the said application. Apart from the fact that no counter has been filed, the communications as stated above of the Collector as well as RDO clearly establish the fact of the petitioner having forwarded an application for registering him as an Indian citizen. The failure on the part of the Collector to place the necessary facts before the Court cannot also be appreciated.

8. In the back ground of the aforesaid facts, the question which arises for consideration is as to whether the impugned proceedings dated 4.1.1996 of the second respondent for prosecution of the petitioner and the order of the fourth respondent for deportation would be justified?

9. Having regard to the fact that the visa was valid upto 30.6.1996 and the passport was valid till 9.7.1993, it is seen that the petitioner has applied for citizenship much earlier on 2.12.1992 itself. The failure on the part of the respondents to properly process the said application has resulted in non renewal of the visa and the passport. As a result of the petitioner having sought for citizenship, and the said facts were within the knowledge of the High Commissioner of Malaysia, as could be expected, the visa and passport were not extended. However, the respondents herein without considering the issue in an objective manner, have issued orders both for deportation and prosecution of the petitioner.

10. The attitude adopted by the respondents cannot at all be appreciated. Here is a case where the petitioner, who is basically an Indian, seeks for Indian Citizenship even though he had acquired citizenship of Malaysia due to his family circumstances and has applied for citizenship during the time even while his visa and passport were valid. Without processing his application for citizenship for reasons best known to the respondents, the respondents are active enough to take action against the petitioner for deportation and prosecution which cannot at all be sustained. While dealing

with the application for citizenship, the respondents are discharging the functions which are quasi-judicial in nature and without disposing of the

application for citizenship, to blame the petitioner for lapse of his visa and passport and initiating action for deportation cannot at all be sustained.

The entire episode is due to failure on the part of the office of the Collector of Coimbatore District in not pursuing the application in a proper manner.

11. In fact, the Collector is only a forwarding authority after collecting all the necessary particulars and the Collector cannot by himself reject the

application. The Collector has to forward the application to the appropriate authority in terms of Section 5 of the Citizenship Act 1955 and

Citizenship Rules 1956. The power to reject or to deal with the application is only with the appropriate authority constituted under Rule 8 of the

Citizenship Rules vide the judgment of Supreme Court in National Human Rights Commission Vs. State of Arunachal Pradesh and Another, .

Therefore, in the back ground of the bona fide and genuine steps taken by the petitioner for registration of his citizenship, the impugned actions

which are penal in nature cannot be sustained. As stated earlier, the petitioner was disabled from obtaining for renewal of visa and passport only

because he has already applied for Indian Citizenship. The entire factual back ground ought to have been considered by the respondents in an

objective manner instead of dealing with the issue in a mechanical manner, more so, when the respondents are to be blamed for not dealing with

the application for citizenship in a prompt manner. The petitioner cannot at all be blamed for the situation in which he is now placed.

12. With the result, I am inclined to pass the following orders:

(i) Both the impugned orders are quashed and the respondents are directed not to take any further action until the final disposal of the petitioner's

application for citizenship dated 2.12.1992.

(ii) The District Collector of Coimbatore is directed to pursue the application of the petitioner for the citizenship dated 2.12.1992 and to forward

the same with all the records to the appropriate authority within a period of three months from the date of receipt of a copy of this order. The

petitioner is directed to send a copy of the application forthwith to the Collector. It is made clear that the application shall not be rejected on the

ground that as on today the petitioner was not holding a valid passport or visa, bearing in mind that the petitioner had applied well in advance even while both the documents were valid.

The Writ Petition is allowed subject to the above observation. No costs.