

(2017) 06 KL CK 0028
In the High Court Of Kerala
Case No : 24865 of 2015 (G)

JOY SCARIA

APPELLANT

Vs

THE MEENACHIL GRAMA PANCHAYATH COMMITTEE

RESPONDENT

Date of Decision : 23-06-2017

Acts Referred:

[Citizenship Act, 1955](#), [Section 2](#) -
Mines And Minerals (Development And Regulation) Act, 1957, Section 5 -
Kerala Minor Mineral Concession Rules, 2015, Rule 26

Citation : (2017) 06 KL CK 0028

Hon'ble Judges : K.Vinod Chandran

Bench : SINGLE BENCH

Advocate : V.G.ARUN, T.R.HARIKUMAR, GEORGEKUTTY MATHEW, VINEETHA HARIRAJ

Final Decision : Dismissed

Judgement

1. The petitioner in W.P.(C) No.24865/2015, an Overseas Citizen of India Cardholder ("Overseas Citizen" for short), as defined under sub section (ee) of Section 2 of the Citizenship Act, 1955, challenges Ext.P7 order of the Tribunal for Local Self Government Institutions.

The subject matter is the conduct of a quarry, which the petitioner submits has been permitted by the District Geologist and has been carried on with necessary sanctions and permissions from various statutory authorities except the Panchayat.

2. The challenge before the Tribunal was the

refusal of the Panchayat to grant renewal of D&O license, for the year 2014-2015. There were also certain residents of the locality who were opposed to the quarrying operations. They have filed W.P.(C) No.26397/2015 and W.P.(C) No.33499/2016, the former of which challenge the Tribunal's order and the latter raises a new ground with respect to the citizenship of the petitioner; in the absence of which the petitioner would be dis-entitled to have a quarrying lease.

3. The parties are referred to as the objectors, the lease holder and the Panchayat, whose Counsel have been elaborately heard by me.

4. The Tribunal interfered with the rejection of renewal as passed by the Secretary of the Panchayat, but, however, on grounds of a water tank and the existence of inhabitants, both within 300 meters (a church) in violation of Regulation No.164 of Metalliferous Mines Regulation. The appeal before the Council was directed to be reconsidered. The lease holder objects to such remand order on the ground that the interference caused by the Tribunal was not proper. The objectors challenge the Tribunal's order on the ground that their contentions were not properly addressed by the Tribunal. It was when these two writ petitions were pending that W.P.(C) No.33499/2016 was filed raising the question of the citizenship, the disposal of which has to be taken up first before consideration of the other two writ petitions.

5. The objectors, refer to Section 5 of the Mines

and Minerals (Development and Regulation) Act, 1957 ("Act of 1957" for short) as also Rule 26 of Kerala Minor Mineral Concession Rules, 2015 (for brevity KMMC Rules). Section 5 of the Act of 1957, by sub section (1) interdicts a State Government from granting a reconnaissance permit, prospecting license or mining lease to any person unless such person is an Indian national. Explanation to the above provision also puts the matter in the correct perspective insofar as an individual can be considered to be an Indian national only if he is a citizen of India. Rule 26 of the KMMC Rules provides for a quarrying lease to be granted to any person other than Indian nationals with the previous approval of the Central Government.

6. To understand the issue properly, one has to look at the Citizenship Act, 1955 also. The Citizenship Act provides for Citizenship by birth, descent, registration, naturalisation and by incorporation of territory, of which the former alone is applicable to the petitioner. There is no dispute that the petitioner was a citizen of India by birth, but as is evidenced from Ext.P8 passport produced along with I.A. No.12478/2015 in W.P.(C) No.24865/2015; he is now a citizen of Canada. On his acquiring such citizenship, going by Article 9 of the Constitution of India, he has forsaken his citizenship of India for reason of he having voluntarily acquired citizenship of a foreign Country.

7. In such circumstance, there can be no dispute that the petitioner, as per the Citizenship Act, could come only under the definition of "Overseas Citizen".

Overseas Citizenship was brought in by Act 6 of 2004, incorporating Sections 7A to 7D . By Section 7A(1)(a)(i), a person who was a citizen of India at the time of, or at any time after the commencement of the Constitution and who is a citizen of another country, of full age and capacity, would be entitled to be an Overseas Citizen. The rights conferred on an Overseas Citizen is provided under Section 7B . Under sub section (1) of Section 7B it is specifically provided that the rights so provided to an Overseas Citizen shall be notified by the Central Government in the Official Gazette, except those rights specified under sub section (2); which stands specifically excluded. Having the capacity to obtain a mining lease is not one of the rights specifically excluded under sub section (2) of Section 7B . But, however, there is also no notification brought out by the Central Government conferring such right.

8. In this context, it has to be noticed that Rule 26 of the KMMC Rules would not enable the Central Government to merely approve a mining lease to an Overseas Citizen, on the request of the State Government. The KMMC Rules are framed under the Act of 1957 and the prohibition of granting a mining lease to any person other than a Indian national, would make the said provision in the KMMC Rules ultra vires the Act of 1957. It cannot but be disputed that the Central Government, under the Citizenship Act, if brings out a notification, such right would be conferred on an Overseas Citizen also.

9. In this respect, one

has to look at the counter affidavit filed by the Central Government in W.P.(C) No.33499/2016, paragraph 5 of which is extracted hereunder:

" Section 5 of the Mines and Minerals (Development and Regulation) Act, 1957 imposes restrictions on the grant of prospecting licenses or mining leases. In the instant case, OCI Cardholder is not one of the categories of persons entitled for mining lease under Mines and Minerals (Development and Regulation) Act, 1957."

10. The notifications brought out under the Citizenship Act, conferring power under Section 7B(1), are also produced at Annexures R7(a) and R7(b). None of these contain the right of obtaining a quarry lease and hence, the permit granted to the petitioner itself would suffer from the vice of illegality.

11. W.P.(C) No.33499/2016, hence, has to be allowed. The lease granted at Exts.P1 and P2 shall stand set aside. In the context of the petitioner's lease having been set aside by this Court, W.P.(C) No. 24865/2015 is rendered infructuous and W.P.(C) No. 26397/2015 has to be allowed, setting aside the order of remand made by the Tribunal, but, on the grounds as stated herein above. The Tribunal's order is of no consequence since the mining lease itself is set aside. The Contempt Case (Civil) No.1516/2015 arises from an interim order passed by this Court in W.P.(C)

No.24865/2015. The writ petition itself having been dismissed, the Contempt Case would stand closed. No Costs.