

(1999) 05 AHC CK 0061

In the Allahabad High Court

Case No : C.M.W.P. No's. 11136, 11139, 11141, 11142 and 11146 of 1999

Samad Khan

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 17-05-1999

Acts Referred:

Constitution of India, 1950 — Article 19, 21, 226, 5, 6

Citation : (1999) 3 AWC 1896

Hon'ble Judges : D.R. Chaudhary, J; Binod Kumar Roy, J

Bench : Division Bench

Advocate : B.D. Mandhyan, for the Appellant; H.R. Misra, S.C., for the Respondent

Judgement

Binod Kumar Roy and D. R. Chaudhary, JJ.—Since these five writ petitions, which have been heard together, and in which the different petitioners, who all claim themselves to be residents of C.K. 66/3, Benia Bagh, Varanasi. have come up with common prayers, namely, (i) to issue a writ in the nature of mandamus restraining the respondents from interfering with their freedom and right to live in India and not to deport or extradite him from India and (ii) commanding the respondents not to harass or curtail their liberty by insisting them to attend the police station, we dispose of these writ petitions by this common order.

THE FACTS :

2. Samad Khan, petitioner of Civil Misc. Writ Petition No. 11136 of 1999, asserts, inter alia, that he was born on 25.12.1974. out of wedlock of Zalil Khan and Sabita Khan, at 76/8, Linton Street, Calcutta, West Bengal. India appending a photo copy of his birth certificate issued by the Calcutta Municipal Corporation as Annexure-1 ; he has been living in India continuously from the date of his birth and has never left India ; he does not own any property or any other interest in any other country ; his father, who was a Pakhtooni national, had migrated to North Western province, which is included in Pakistan but he was a citizen of India under Articles 5 and 6 of the Constitution of India, the Police, however, at

the instigation of some inimical persons is harassing him and threatening to deport and extradite him from India ; the police is extracting illegal consideration and is insisting for a citizenship certificate even though it is not necessary for him to have such a certificate, since he is a natural citizen of India having born here ; since he is an Indian Citizen, he has a fundamental right under Article 19 of the Constitution of India to reside and stay in any part of India and to move about under his constitutional right guaranteed under Article 21 of the Constitution of India.

3. Akram Khan, petitioner of Civil Misc. Writ Petition No. 11139 of 1999. asserts, inter alia, that Amir Khan, a Pakhtoon national was living in India at Lumding P. S. Lumding. Nowgaon. Assam ; he was born out of wedlock of Amir Khan and an Indian Muslim Assamese lady of Lumding P. S. Lumding, Nowgaon, Assam (India) ; he has been living in India continuously from the date of his birth and he never left India ; he does not own any property or any other interest in any other country ; his father Amir Khan, who was a Pakhtoon National, had migrated from North-Western Province in Pakistan but he was a citizen of India under Articles 5 and 6 of the Constitution ; since he was born in India, therefore, he is an Indian national by birth ; the police at the instigation of some of his inimical persons is harassing him and threatening to deport and extradite him from India : the Police is extracting illegal consideration and is insisting for a citizenship certificate though it is not necessary for him to have such a certificate since he is a natural citizen of the country.

In support of his claim he has appended a Xerox copy of an Identity Card No. 5 granted by Superintendent of Police, Nawgaon, Assam certifying that Akram Khan S/o Late Amir Khan was born at Lumding Bazar Road under Lumding P. S. District Nagaon (Assam) whose father was a Pakhtoon national who had permanently resided at Lumding ; he is allowed to stay at Lumding until further orders but he must not move anywhere without prior permission from his office.

4. Mohd. Khan, petitioner of Civil Misc. Writ Petition No. 11141 of 1999, asserts, inter alia, that Aut Khan, a Pakhtoon National lived at Jalpalguri (West Bengal) India where he was married with an Indian Muslim woman in 1955 : the petitioner was born of the said wedlock in 1959 ; he has been living in India continuously from the date of his birth and has never left India nor does he own any property or any interest in any other country ; his father had migrated from North-Western Province in Pakistan ; his father was a citizen of India under Articles 5 and 6 of the Constitution of India and since the petitioner was born in India, he is its natural citizen ; local police has been harassing him and other Pakhtoon Muslim nationals residing in Varanasi and insisting to show them the citizenship certificate even though not required under the Constitution ; however, to avoid harassment by local police he applied to the Government of West Bengal to grant a citizenship certificate through representation dated 17.10.1985 (as contained in Annexure-1) and reminder dated 2.2.1987 (as contained in Annexure-2) ; he has been a member of "Pakhtoon Jirga-e-Hind Organisation"

and his membership card No. Is PNP.SPL.920/69 Calcutta dated 4.1.1979 appending, a true copy of the certificate aforementioned as Annexure 3 ; in 1979 the local police again started his harassment and insisted that he being a Pakhtoon is liable to have a certificate ; he applied to the Registration Officer for Foreign 24 Parganas for permission to stay in India and be not forced to leave India on which the Registration Officer ordered that till decision of his representation he is not required to leave the District, appending a copy of his representation dated 11.5.1979 and the endorsement thereon as Annexure-4 : since he is being harassed by the district police, he is entitled to protection of this Court.

5. Mohd. Babar Khan, petitioner of Civil Misc. Writ Petition No. 11142 of 1999, asserts, Inter alia. that his father was a Pakhtoon national living in India at Bagari, P. S. Kaliabar, District Nagaon, Assam ; his father was an Indian National and the petitioner was born in India in 1962 out of wedlock of his father Noor Mohd. Khan and an Assamese Rustam lady of Bagari ; he has been living in India continuously from the date of his birth and he never left India nor does he own any property or any other Interest in any other country : his father had migrated from North-Western Province in Pakistan ; his father was a citizen of India under Articles 5 and 6 of the Constitution and since the petitioner was born in India, he is an Indian National by birth ; he has been a member of "Pakhtoon Jirga-e-Hind" ; he is being harassed by the district police and hence entitled to the protection of this Court. in support of his claim he has appended (i) X-rox copy of an Identity Card allegedly granted by Kaliabar P.S. as Annexure-1 showing his place of birth as Bagari, P. S. Kaliabar, District Nagaon, Assam, his occupation "business" and that his father was a Pakhtoon national, who has been residing permanently at Bagari (ii) X-rox copy of secret information issued by the office of the Superintendent of Police, Nagaon (Assam) as Annexure 2 describing his father as a so-called Pakhtoon National, of Bagari permitting him to visit Benia Bagh, Varanasi for a period from 6.6.1998 to 6.6.1999 for the purpose of meeting his relations and business asking him to report his arrival and departure before the authority timely.

6. Hakeem Khan, petitioner of Civil Misc. Writ Petition No. 11146 of 1999, asserts, inter alia, that Arsala Khan, a Pakhtoon National was living at Tikia Para, P.S. Dhansar, District Dhanbad in the State of Bihar. India ; he was born in 1957 out of the wedlock of Arsala Khan with an Indian girl of Tikia Para, P.S. Dhansar, District Dhanbad ; he has been living in India continuously from the date of his birth and he had never " left India nor does he own any property or any other Interest in any other country ; his father had migrated from North-Western Province, in Pakistan who was a citizen of India under Articles 5 and 6 of the Constitution : since he was born in India, therefore, he is an Indian national by birth ; his father had settled in Sumoguri, Novgaon, Assam where "the petitioner was born ; the petitioner's father as well as the petitioner both were members of "Pakhtoon Jirga-e-HInd" : since he is an Indian citizen, he has a fundamental right to reside in any part of the country but as he is being harassed by the

district police and thus he is entitled to the protection of this Court. in support of his case he has appended a X-rox copy of alleged affidavit said to have been sworn before Notary Public at Dhanbad by his father Arsala Khan stating that Hakeern aged 32 years is his son and works under Sherkhan Resident of Beniabagh. Varanasi (U. P.).

THE SUBMISSIONS :

7. Sri B. D. Mandhyan, learned counsel for the various petitioners, assisted by Sri Mohd. Zafar. contended that as despite grant of time by order dated 19.3.1999, no counter has been filed by the respondents and thus the prayers of the petitioners be allowed.

8. Sri H. R. Misra. learned standing counsel appearing on behalf of the respondents, on the other hand contended that true it is that no counter has been filed but the claim set forth by the petitioners is vague, unsupported by any cogent convincing documentary material, and thus they are not entitled to the discretionary reliefs prayed for by them under Article 226 of the Constitution of India.

OUR FINDINGS :

9. Even though the petitioner Samad Khan asserts that his father was a Pakhtoon national, he has not brought on the record any document worth the name to show that his father ceased to be a Pakhtooni national and had become an Indian citizen. Nothing has been explained by him about his alleged address. The photocopy of Certificate No. 95642 alleged to have been granted by the Health Department. Calcutta Municipal Corporation. 5. S. N. Banerjee Road, Calcutta shows the date of birth as 25.12.1974 at Not Avl". It further shows the date of registration as 4th April, 1994 whereas the petitioner claims to have been born in the year 1974 that is to say 19-1/2 years after his alleged birth in India. It describes the place of birth as 76/8. Linton St.. Calcutta-14 and address as S.S. Path Road, Titagarh, 24-Pgs. It is somewhat surprising that the certificate of birth also, mentions the name of the petitioner whereas it is common knowledge that the authority which grants such certificates merely mentions birth of a male or female child and not by name. It is difficult for us to place any reliance on this alleged certificate.

10. The alleged Identity card of petitioner Akram Khan states that he must not move anywhere without prior permission from the office of the Superintendent of Police. The document appended as Annexure-2 is a X-rox copy of Secret Memo No, 10/DGB/NGN/F-B/99. dated 4,3.1999 said to have been granted to him that he has been permitted to visit "Banarash" for a period of 6 (six) month from 4.3.1999 to 4.9.1999 to meet with relatives/business/ treatment. It has also been mentioned therein to report his arrival and departure before the authority timely. From the facts narrated in the documents appended as Annexures-1 and 2, it appears that the petitioner or his father permanently resided at Lurnding.

11. The petitioner Mohd. Khan has not explained as to how when his father had allegedly married an Indian Muslim woman at Jalpaiguri in 1955, he was born of the said wedlock in the year, 1949, i.e., to say six years prior to the alleged wedlock. From Annexure-1. It appears that the petitioner on 17.10.1985 was showing him to be resident of 213A, Diamond Harbour Road, Behala, 24-Parganas and had made a prayer for granting an Indian citizenship certificate to the Deputy Secretary Home (Political) Department. Indian Citizenship Section. Government of West Bengal. Writers' Buildings, Calcutta-700001, which, however, despite expiry of 14 years by now has not been asserted to have been given to the petitioner.

12. Mohd. Babar Khan has not brought on the record any birth certificate granted by the competent authority.

13. Except from appending a self-serving alleged affidavit of his father, nothing has been brought on record by the petitioner Hakeem Khan to show that either he is an Indian citizen or his father was an Indian citizen.

14. Significantly, the petitioners have not disclosed when their fathers had died. These petitioners had also not disclosed as to who are their enemies and which police authority is threatening them to deport out of the country. Even though in the writ petitions, they claim to be residents of Varanasi, no document has been appended to support that they are residents of Varanasi. No voter list has been appended to show that they were even registered as a voter in our country. The plea of mala fide is too vague to be accepted. Besides the persons who are allegedly harassing them have not been impleaded as a party by name. It is not possible for us to accept that the highest district authorities, namely. District Magistrate. Varanasi and/or Senior Superintendent of Police, Varanasi is harassing the petitioners. On their own case, their alleged father were" Pakhtoons belonging to North-Western Frontier Province which formed part of Pakistan, and. accordingly the onus was heavy on the petitioners to prove that their fathers ceased to be citizens of Pakistan.

15. For the reasons mentioned as above, it is difficult for us to place any reliance on the documents/ certificates appended by the petitioners. In this backdrop. It is difficult for this Court to record any finding in favour of the petitioners. The allegations being vague, and, we being not satisfied at all. do not feel expedient to issue a high prerogative writ like mandamus to the respondents as desired by the petitioners.

RESULT :

16. For the reasons aforementioned we dismiss these writ petitions.

17. However, before parting, it is clarified that before taking any action against them, they will be given by the authority concerned a notice in writing justifying the action. If any, if not given to them earlier.

18. The office is directed to hand over a copy of this order to Sri H. R. Misra,

learned standing counsel within one week for its Immediate communication to the Senior Superintendent of Police. Varanasi for a follow up action as above.