
(2008) 05 DEL CK 0019
In the Delhi High Court
Case No : WP (C) No. 8627 of 2007

Satish Nambiar

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 16-05-2008

Acts Referred:

Citizenship Act, 1955 — Section 14A, 15A, 7A(1), 7D
Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1, 11
Constitution of India, 1950 — Article 21, 226, 32

Citation : (2008) 150 DLT 312 : (2008) 103 DRJ 554

Hon'ble Judges : Veena Birbal, J; T.S. Thakur, J

Bench : Division Bench

Advocate : Krishnan Venugopal, Uday Nath Tiwary and Abir Phukan, for the Appellant; S.K. Dubey, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Thakur, J.—The short question that falls for consideration in this petition is whether an order passed by a writ court can be said to have been effaced by a subsequent order passed by the competent authority in exercise of its powers of review u/s 15A of the Citizenship Act. The petitioner contends that the order made by the High Court of Bombay in the writ petition filed by the petitioner before that court had no doubt upheld the order passed by the competent authority u/s 7D of the Citizenship Act, 1955 cancelling his registration as an overseas citizen of India, but the said judgment would stand effaced by the subsequent order passed by the said authority in review u/s 15A. The respondents on the other hand argue that the judgment delivered by the High Court of Bombay upholding the order of cancellation of the petitioner's registration remains binding upon the parties to the said judgment till such time the same is set aside or modified by the Apex Court. The order passed by the competent authority in review u/s 15A cannot, according to them, affect the efficacy of the adjudication by a competent court nor does the order in review give to the petitioner a fresh cause of action to challenge the original order the

validity whereof is already upheld. The controversy arises in the following circumstances:

2. The petitioner was born in Mumbai on 14th January, 1950. He started his career as a driver with an American diplomat and gradually rose to hold the post of a Works Control Clerk in the American Consulate General at Mumbai. In the year 1985, he was appointed as a Security Investigator at the American Council, Mumbai in which capacity, he continued to work till the year 1999 when he received a Special Immigrant Visa to migrate to America where he lived till the year 2005 allegedly working with private establishments. He returned to India in November, 2005 and applied for Overseas Citizen of India (OCI) Registration Card in April 2006 which was granted to him on 18th May, 2006 u/s 7A(1) of the Citizenship Act, 1955. Having obtained the said Card, the petitioner once again applied for a job with the American Consulate in Mumbai and was appointed as Site Security Investigator on 26.6.06 with the Overseas Building Operation, American Consulate of Bombay. He continued to work on the said post till 20th February, 2007 when he left the job after receiving an order dated 14th February, 2007 withdrawing the Registration granted to him in public interest.

3. Aggrieved by the withdrawal of the registration to him, the petitioner filed WP(C) No. 450/2007 in the High Court of Judicature at Bombay. The petitioner's case was that there was no material before the respondents to justify action by way of cancellation of the OCI Registration Card and the visa issued in his favor by the competent authority. The petitioner alleged that he had no criminal record and that no case had ever been registered against him nor had he violated any law for the time being in force either in India or in USA. The cancellation order was assailed on the ground of being arbitrary and unsupported by any material whatsoever.

4. In the reply affidavit filed on behalf of the respondents, it was inter alia stated that the petitioner was a foreigner governed by the Foreigner's Act and that the grant of OCI Registration did not amount to grant of Indian citizenship to him. It was further stated that the power of the Government of India to grant or terminate registration of overseas citizen was absolute and sovereign in character. Such a decision could not, argued the respondents, be made the subject matter of a challenge under Article 226 of the Constitution of India. It was further alleged that the security agency of the Government of India had given a report adverse to the petitioner.

5. A Division Bench of the High Court of Bombay that heard the above petition held that the decision of the competent authority was administrative in character and the scope of judicial review of such a decision had its own limitations. Having said so, the court examined whether the decision suffered from the vice of arbitrariness and whether it was necessary for the authority passing the order to comply with the principles of natural justice as a part of the decision making process. The court also noted the following recommendation issued by the Consulate General of USA, in favor of the petitioner:

He has at times, volunteered to go out and observe at close hand the riots of 96 and 97 in Mumbai, to find out the potential threats to mission personnel and USG citizens, enabling the post to accurately report events as they occurred.... Mr. Nambiar has shown the highest degree of devotion to American interests for more than 20 years and, with his skills and attitude, will make a valuable addition to the United States....

6. The court then referred to the adverse comments received against the petitioner from the security agency and came to the conclusion that grant of a pre-decisional hearing to the petitioner was likely to affect the security of the country and its relationship with other countries. Relying upon a Division Bench decision of this Court in *International Cargo Services Vs. Union of India (UOI) and Commissioner of Customs (I and G)*, , the court held that certain administrative orders can always be passed without compliance with the principles of audi alteram partem depending, of course, on the facts of the case and the law applicable to such cases. The court noted that neither the provisions of Section 7-D nor any other provision in the statute book made it mandatory for the authority to grant a pre-decisional hearing. On the contrary, the provisions of Section 7D(e) of the Act empowered the Central Government to cancel the registration if it was satisfied that it was necessary to do so in the interest of the sovereignty and integrity of India, the security of India, the friendly relations of India with any foreign country or in the interest of general public.

7. Relying upon the decision of the Supreme Court in *Union of India (UOI) and Others Vs. Smt. Charanjit Kaur*, , the Court held that the satisfaction recorded by the competent authority was neither without basis nor arbitrary. The court observed:

Similarly, in the present case, the report of the Special Security Agency are more than adverse to the petitioner. The authority without any hesitation, had granted the registration and issued permanent Visa to the petitioner in the year 2006, after completion of post-verification proceedings. While relying upon the report of the Special Security Agency, they have recorded a subjective satisfaction, and passed the impugned order, cancelling the registration. The satisfaction recorded by the respondents, in view of the report produced before the Court, cannot be said to be without any basis of, prima facie, a case of arbitrary action. This decision of the authority can hardly be examined by the Court so as to measure the extent of threat or degree of adverse effect to the interest and sovereignty of the country. The power given to the Appropriate Authority is wide enough, and the cancellation of the registration could even be ordered "in the interest of general public". It is does not appear to us to be a case of irrational or arbitrary decision. The petitioner had hardly suffered any prejudice. Obviously, the petitioner is not going to attack the reports of the Security Agency, and that alone is the cause for cancellation of registration of citizenship granted to the petitioner. In such cases, the authorities are not expected to pass any reasoned orders. In other words, they are not expected to write detailed reasons,

particularly when they are relying upon the reports of the Special Security Agency. The grant of pre-decisional hearing to the petitioner, keeping in view the facts and circumstances of the case, was not mandatory; and in any case, it appears to us that the petitioner has suffered no serious prejudice by denial of such hearing.

8. The order of cancellation of registration was on the basis of the above decision upheld and the writ petition dismissed. Aggrieved by the said dismissal, the petitioner preferred a SLP before the Supreme Court. When the said petition came up for hearing before their lordships on 10th August, 2007, the attention of the court was drawn to a review petition which was pending consideration before the Additional Home Secretary. In the light of the pendency of the said petition, the petitioner sought leave to withdraw the SLP which was accordingly dismissed as withdrawn with the observation that the Additional Home Secretary may hear the petition and pass appropriate orders. The order passed by their lordships was in the following words:

Mr. Krishan Venugopal, learned Counsel appearing for the petitioner submits that he has already filed a review application before the Additional Home Secretary and which is pending disposal. In view of this he desires to withdraw this petition. The petitioner is allowed to withdraw the petition. The Additional Home Secretary may hear the petitioner and pass appropriate orders. The SLP is dismissed on withdrawal.

9. Pursuant to the above, the review petition was considered by the competent authority and dismissed by an order dated 14th November, 2007. The order recalled that a fresh evaluation report had been obtained from the security agency concerned in regard to the submissions made by the petitioner in the review application and the personal hearing granted to him on 17th September, 2007 upon consideration whereof the authority found no reason to amend its earlier order dated 14th February, 2007 cancelling the petitioner's OCI registration u/s 7D(e) of the Act. Aggrieved by the said order, the petitioner has filed the present writ petition before this Court to inter alia argue that the passing of the fresh order on the review application filed by the petitioner effaces the order passed by the High Court of Bombay and leaves the entire issue open to be examined by this Court afresh including the question whether the original order itself was unjustified and arbitrary having been passed without any material to support the same.

10. We have heard learned Counsel for the parties and perused the record. Two precise questions fall for determination. These are:

1. Whether the order passed by the competent authority in review u/s 15A has the effect of effacing the order passed by the High Court of Bombay in the previous round of litigation; and

2. Whether the order in review passed by the competent authority suffers from any illegality, perversity or arbitrariness to warrant interference from this Court.

11. Re : Question No. 1:

In the previous writ petition filed before the Bombay High Court, two issues of seminal importance were examined and answered by that Court. The first related to the need for the grant of a pre-decisional hearing to the petitioner while the second examined whether the order of cancellation of registration passed by the competent authority suffered from any arbitrariness. Both these aspects were answered against the petitioner. The challenge to the validity of the order on the ground that no pre-decisional hearing had been granted to the petitioner was repelled and such a hearing was held to be unnecessary in a case where the competent authority took an administrative decision based on a fair and objective evaluation of the material placed before it. Similarly, the court examined the material on the basis of which the order of cancellation was made and held that the same did not suffer from any arbitrariness and that the material on record was sufficient to justify the view taken by the competent authority. The SLP filed against the said decision having been withdrawn by the petitioner, the order passed by the Bombay High Court has assumed finality. This implies that in a future round of litigation, if any, on the same subject matter the petitioner is bound by the finding that the absence of a pre-decisional hearing, did not vitiate the order of cancellation passed by the competent authority. It also meant that in a second round of litigation, the petitioner would not be entitled to assail the cancellation order on the ground of arbitrariness. Such being the legal consequence of withdrawal of the Special Leave Petition, there is no question of the same getting altered or effaced merely because the petitioner invoked the powers of review available to the competent authority u/s 15A of the Citizenship Act, 1955. That is so even when the Supreme Court had while dismissing the SLP filed by the petitioner, made an observation that the competent authority may dispose of the review petition and grant a hearing to him. The argument that the said observation had the effect of setting aside the view taken by the High Court of Bombay has not appealed to us. There is, in our opinion, no juristic basis for that submission nor does a reading of the order even remotely suggest that the Supreme Court had disagreed with the ratio of the decision delivered by the Bombay High Court. What is noteworthy is that the SLP was withdrawn by the petitioner and was eventually dismissed as such.

12. The observation that the competent authority may pass orders on the review petition and afford to the petitioner a hearing, is distinctly different from the dismissal of the petition on merits. That being so, the judgment delivered by the High Court of Bombay continues to hold the field and bind the parties to the same. The subsequent order passed by the competent authority in exercise of its powers under review u/s 15A of the Act does not affect the binding nature of the said judgment, leave alone efface the judgment itself as argued by the learned Counsel.

13. Learned Counsel for the petitioner has placed reliance upon the decision of the Supreme Court in *Madan Lal Rungta v. Secretary to the Government of*

Orissa 1962 (3) Supp. SCR 906, in support of his submission that the order of cancellation of the petitioner's OCI Registration has merged in the order of Respondent No. 2 in review with the result that the judgment of the High Court of Bombay stood effaced by that order thereby giving a fresh cause of action to the petitioner to challenge the original order as also the order passed in the review.

14. There is, in our opinion, no merit in that contention. The review authority has simply reaffirmed the earlier order without giving any fresh reasons in support thereof. The previous order passed by the High Court of Bombay operates as *res judicata* qua issues that were examined and finally determined by the said decisions. The principles of *res judicata* applicable to writ proceedings prevent parties to a judicial determination from agitating the same question over again. That is true even when the earlier determination may be erroneous. A party aggrieved of any such decision can no doubt challenge the same in appeal, but cannot institute fresh proceedings on the same cause of action nor can a party agitate any such issue as it constituted an essential element of the decision earlier rendered. The legal position on the subject has been summed up by the Supreme Court in *Hope Plantations Ltd. Vs. Taluk Land Board, Peermade and Another*, in the following words:

26. It is settled law that principles of estoppel and *res judicata* are based on public policy and justice. Doctrine of *res judicata* is often treated as a branch of the law of estoppel though these two doctrines differ in some essential particulars. Rule of *res judicata* prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstrably wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are "cause of action estoppel" and "issue estoppel". These two terms are of common law origin. Again once an issue has been finally determined, parties cannot subsequently in the same suit advance arguments or adduce further evidence directed to showing that issue was wrongly determined. Their only remedy is to approach the higher forum if available. The determination of the issue between the parties gives rise to, as noted above, an issue estoppel. It operates in any subsequent proceedings in the same suit in which the issue had been determined. It also operates in subsequent suits between the same parties in which the same issue arises. Section 11 of the CPC contains provisions of *res judicata* but these are not exhaustive of the general doctrine of *res judicata*. Legal principles of estoppel and *res judicata* are equally applicable in proceedings before administrative authorities as they are based on public policy and justice.

15. Reference may also be made to the decision of the Supreme Court in *Swamy Atmananda and Others Vs. Sri Ramakrishna Tapovanam and Others*, , where the court declared that once any controversy regarding the subject matter stood

determined by the competent court, no party is permitted to reopen it in a subsequent litigation. The court observed:

The object and purport of principle of *res judicata* as contended in Section 11 of the CPC is to uphold the rule of conclusiveness of judgment, as to the points decided earlier of fact, or of law, or of fact and law, in every subsequent suit between the same parties. Once the matter which was the subject-matter of lis stood determined by a competent court, no party thereafter can be permitted to reopen it in a subsequent litigation. Such a rule was brought into the statute book with a view to bring the litigation to an end so that the other side may not be put to harassment.

16. The fact that the petitioner had withdrawn the appeal in the Supreme Court does not render ineffective the application of the doctrine of *res judicata* or estoppels, for a judgment by consent is as effective in creating an estoppel as a judgment on contest is. Reference may in this regard be made to *Raja Sri Sailendra Narayan Bhanja Deo Vs. The State of Orissa*, where the Court observed:

The plea of estoppel is sought to be founded on the compromise decree, Ex."O" passed by the Patna High Court on 2nd May, 1945, in F. A. No. 15 of 1941. The compromise decree is utilised in the first place as creating an estoppel by judgment. In *In re. South American and Mexican Company, Ex parte Bank of England 1895* 1 Ch.L.R. 37, it has been held that a judgment by consent or default is as effective an estoppel between the parties as a judgment whereby the court exercises its mind on a contested case. Upholding the judgment of Vaughan Williams, J., Lord Herschell said at page 50:

The truth is, a judgment by consent is intended to put a stop to litigation between the parties just as much as is a judgment which results from the decision of the Court after the matter has been fought out to the end. And I think it would be very mischievous if one were not to give a fair and reasonable interpretation to such judgments, and were to allow questions that were really involved in the action to be fought over again in a subsequent action.

To the like effect are the following observations of the Judicial Committee in *Kinch v. Walcott and Ors.* 1929 A.C. L.R. 482:

First of all their Lordships are clear that in relation to this plea of estoppel it is of no advantage to the appellant that the order in the liable action which is said to raise it was a consent order. For such a purpose an order by consent, not discharged by mutual agreement, and remaining unreduced, is as effective as an order of the Court made otherwise than by consent and not discharged on appeal.

The same principle has been followed by the High Courts in India in a number of reported decisions. Reference need only be made to the case of *Secretary of State for India in Council v. Ateendranath Das* I.L.R [1935] Cal. 550, *Bhaishanker Nanabhai and Ors. v. Morarji Keshavji and Co.* ILR [1911] Bom. 283 and *Raja*

Kumara Venkata Perumal Raja Bahadur, Minor by guardian Mr. W. A. Varadachariar v. Thatha Ramasamy Chetty and Ors. ILR [1911] Mad. 75. In the Calcutta case after referring to the English decisions the High Court observed as follows:

On this authority it becomes absolutely clear that the consent order is as effective as an order passed on contest, not only with reference to the conclusions arrived at in the previous suit but also with regard to every step in the process of reasoning on which the said conclusion is founded. When we say "every step in the reasoning" we mean the findings on the essential facts on which the judgment or the ultimate conclusion was founded. In other words the finding which it was necessary to arrive at for the purpose of sustaining the judgment in the particular case will operate as estoppel by judgment.

17. Reference may also be made to Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others, , where the Court reiterated the above principle and observed:

The point for consideration is whether a petitioner after with-drawing a writ petition filed by him in the High Court under Article 226 of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that Article. On this point the decision in Daryao's case (supra) is of no assistance. But we are of the view that the principle underlying Rule 1 of Order XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution once again. While the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution of India since such withdrawal does not amount to res judicata, the remedy under Article 226 of the Constitution of India should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission. In the instant case the High Court was right in holding that a fresh writ petition was not maintainable before it in respect of the same subject-matter since the earlier writ petition had been withdrawn without permission to file a fresh petition. We, however, make it clear that whatever we have stated in this order may not be considered as being applicable to a writ petition involving the personal liberty of an individual in which the petitioner prays for the issue of a writ in the nature of habeas corpus or seeks to enforce the fundamental right guaranteed under Article 21 of the Constitution since such a case stands on a different footing altogether. We, however leave this question open.

18. In the light of the above position, we have no hesitation in answering

question No. 1 in the negative.

19. Re : Question No. 2:

Section 15A of the Citizenship Act, 1955 empowers the competent authority to review its order and may be extracted.

15A. Review- (1) Any person aggrieved by an order made by the Central Government, may within thirty days from the date of such order, make an application for review of such order:

Provided that the Central Government may entertain application after the expiry of the said period of thirty days, if it is satisfied that the applicant was prevented by sufficient cause from making the application in time:

Provided further that an application for a review of an order passed in terms of the provisions of Section 14A shall be disposed of in the manner provided for in the procedure as may be laid down under Clause (ia) of Sub-section (2) of Section 18.

(2) On receipt of an application under Sub-section (1), the Central Government shall, make such order as it deems fit, and the decision of the Central Government on such review shall be final.

20. A plain reading of the above would show that the power of the competent authority to review an order of cancellation is not subject to any limitations as such. Unlike a review under Order 47 of the CPC, permissible only if the order under review suffers from an error apparent on the face of the record, a review u/s 15A entitles the authority to modify the order under cancellation even on a fresh evaluation of the material. The power conferred by Section 15-A is in that sense wider than what is usually understood by "Review" in legal parlance. Even so, the scope of judicial review of an order passed u/s 15-A is not wider than what it was vis-?-vis the original order of cancellation. If the original order of cancellation did not attract the principle of audi alteram partem as has been held by the High Court of Bombay, an order in review u/s 15A would not attract the said doctrine either. Again if the original order of cancellation of the registration was justified and based on the material placed before the competent authority, the order in review which declines to modify that order cannot be found fault with. The order passed by the Bombay High Court dispensing with the requirement of a pre-decisional hearing to the petitioner notwithstanding a hearing in review was indeed granted to the petitioner pursuant to the observation made by the Supreme Court. To that extent, Therefore, the order in review does not even violate the principles of natural justice for the same has been made after granting an opportunity of being heard to the petitioner.

21. What then remains to be seen is whether upon a review of the material on which the original order of cancellation was passed, the authority should have modified or recalled that order. This would necessarily put the writ court in the armchair of an appellate authority, hearing an appeal against the said order. If

the original order was perfectly justified on the material available before the authority as was held by the High Court of Bombay, any order passed by the same authority declining to review and modify the said order must also be held to be valid unless there was some additional input which rendered the continuance of the cancellation order wholly illegal, unjustified and perverse. There was in the instant case an additional input in the form of a fresh evaluation report in the security agency concerned based on the submissions made in the review application. The said evaluation report, however, did not favor the withdrawal of the deregistration order. This is evident from the order in review passed by the competent authority in which the said authority has not only taken note of the submissions made in the review application but also evaluated the fresh input received from the security agency. Such being the position, the substratum of the order which had already met the approval of the High Court of Bombay continued to subsist. The submissions made in the review application and the fresh evaluation report of the security agency in regard to the submissions made in the review application did not favor a view different from the one taken earlier. The view taken by the competent authority in the review proceedings, cannot Therefore be faulted.

22. Independent of the above, we have summoned the relevant files and the official record containing the material on the basis of which the competent authority has passed the original order as also the order in review, to examine whether there is any perversity in the view taken by the competent authority on the basis of the said order. We are satisfied with the view taken by the competent authority based on the material placed before it as a reasonably possible view. We Therefore see no room for our interference in the present writ proceedings with the orders under challenge only on the ground that another view is possible assuming that such a possibility has been established by the petitioner. We need to remind ourselves that we are not sitting in appeal over the decision taken by the competent authority and would Therefore be slow in interfering with an order unless the same is legally incompetent, procedurally irregular or perverse which is not the position in the present case. Question No. 2 is accordingly answered in the negative.

23. In the result, this petition fails and is hereby dismissed but in the circumstances without any orders as to costs.