(1999) 02 DEL CK 0029

In the Delhi High Court

Case No : Criminal Writ Petition No. 1107 OF 1998 and Criminal Misc. No. 7747/98

Yaro Khan @ Ahmad Shah APPELLANT

Vs

Foreigners Regional Registration Officer and Others RESPONDENT

Date of Decision : 17-02-1999

Acts Referred:

Citation : (1999) 2 AD 124 : (1999) CriLJ 3861 : (1999) 78 DLT 442 : (1999) 3 RCR(Criminal) 113

Hon'ble Judges : A.K. Srivastava, J;A.D. Singh, J

Bench : Division Bench

Advocate : Mr. G.D. Rustgi, Advocat, for the Appellant; Mr. Sarabjit Sharma and Ms. Santosh Kohli, for the Respondent

Judgement

Anil Dev Singh, J.—The petitioner challenges the order dated December 18, 1998 passed by the first respondent Foreigners Regional Registration Officer (for short ''FRRO''), u/s 2 of section 3 of the Foreigners Act, 1946, directing the petitioner not to remain in India and to depart there from within ten days of the issue of the order. The petitioner claims that he is an Indian National having been born at Guwahati on January 10, 1950. He also claims that his father belonging to NorthWest Frontier Province came to India in 1947 as a result of the atrocities perpetrated by Pakistan at the time of partition of the country. The petitioner is stated to have lost his mother when he was nine months old. He alleges that his father abandoned him in his early teens. Thus, according to him, he did not have the support and patronage of his parents and had to fend for himself and had no schooling and is totally unlettered except that he can sign in Urdu.

2. On March 22, 1978 the petitioner claims to have started money lending business at Guwahati, Assam, and for this purpose was issued a license by the concerned authority. A year later, on July 25, 1979 the petitioner married Samar Jahan @ Amir Banu and as a result of the wedlock the petitioner has two children, a daughter and a son. The petitioner shifted his business of money

lending to Delhi. During his stay in Delhi he acquired passport No. 625055 on March 3, 1987. Subsequently, the petitioner applied for another passport which was issued in his favor on October 12, 1992 being Passport No. M289537. Besides, the acquisition of the passport, the petitioner applied for a ration card and was issued with the same on October 20, 1994. The petitioner is also stated to be possessed of an identity card issued by the Election Commission of India and a money lending license No. 3078 issued by the Collector, Money Lending, Delhi.

3. On May 5, 1998 the first respondent in exercise of powers conferred by subsection (2) of section 4 of the Foreigners Act, 1946, directed the petitioner not to remain in India and depart from it as soon as possible and in any case latest by May 15, 1998. This order was passed on the ground that the petitioner is a foreigner. The petitioner aggrieved of the order filed a writ petition before this Court, being Criminal Writ No. 397/98. In that writ petition the petitioner pleaded that he was born and brought up in India and was not having citizenship or nationality of any other country except India. It was also urged that the order dated May 5, 1998 was passed by the first respondent without affording him an opportunity of being heard. A Division Bench of this Court by its order dated August 21, 1998, set aside the order of the first respondent dated May 5, 1998 on the ground that the petitioner was not apprised of the nature of the complaint against him and was not given an opportunity to explain as to how he had procured the Indian Passport. While passing this order the Court, however, observed that no material was brought on record by the petitioner to show that he was born in India. It was further observed that the material brought on record is to the effect that in 1962 he sought permission to stay in India pending his application for grant of citizenship which fact falsifies his stand about his being an Indian citizen.

4. Pursuant to the direction of the earlier Division Bench, the first respondent issued call notices to the petitioner to attend the office of the FRRO.

5. These call notices are dated August 21, 1998, September 4, 1998, November 13, 1998, November 27, 1998 and November 30, 1998. It appears that pursuant to the call notice dated September 4, 1998 the petitioner sent a written communication to the office of the FRRO stating, inter alia, that call notice dated September 4, 1998 did not spell out any specific allegations against him which he was required to answer. It appears that on receipt of the above said communication of the petitioner, in call notice dated November 27, 1998 it was specifically stated that the petitioner was a foreign national and staying in this country illegally without any valid documents and visa and was indulging in undesirable activities. It was further stated that the allegations against him have been told to him in detail. It is not denied on both sides that the petitioner appeared before the first respondent on several occasions though on some of the dates he did not appear despite the call notices, and on December 18, 1998 the impugned order was passed whereby the petitioner has been asked to leave

India.

6. Learned counsel appearing for the petitioner vehemently contended that the petitioner was an Indian citizen and cannot be treated as an alien. He submitted that since the petitioner was an Indian citizen the provision of subsection (2) of section 3 of the Foreigners Act, 1946 were wrongly invoked against him by the first respondent. He also invited our attention to the factum of the acquisition of two Indian passports by the petitioner, an identity card issued by the Election Commission of India and a ration card issued by the concerned authority. Besides, learned counsel for the petitioner invited our attention to the intimation received by the petitioner from the Income Tax Officer, Ward 5(8), New Delhi u/s 143(1)(a) of the Incometax Act, in respect of the Incometax Return filed by him on April 30, 1997.

7. From a perusal of the relevant file of the office of the FRRO, which was made available to us, it appears that the petitioner had produced all the above said documents during the inquiry.

8. In the counter affidavit filed by Shri Dharmendra Kumar, FRRO/Civil Authority, on behalf of the first respondent it is stated that discreet enquiries against the petitioner reveal that he was holding Afghan passport No. CR041971 dated September 29, 1992 issued at Kabul. The counter affidavit also alludes to the fact that the petitioner succeeded in obtaining Indian passport by fraudulent means. It is also averred that the name of the father of the petitioner as disclosed in the passport issued at Kabul is Nick Mohammad whereas in the Indian passport his father''s name is given as Alim Khan. The counter affidavit also goes on to state that as per the information gathered from various sources the petitioner is the kingpin in hawala and smuggling business. In the affidavit it is also asserted that pursuant to the order of the Division Bench of this Court dated August 21, 1998 a fresh inquiry was conducted and the petitioner was given call notices to attend the office of the FRRO in connection with the inquiry. It is further stated that the petitioner was apprised of the nature of the complaint against him. According to the counteraffidavit, the petitioner submitted his reply during the course of inquiry on September 8, 1998 and November 28, 1998, but he failed to produce any relevant material in support of his claim that he was born in India.

9. During the inquiry the petitioner was asked as to whether he was born at Zarmat Kulalgu or Paktia in Afghanistan to which he replied that he does not know, thus contradicting his earlier answers that he was born in Guwahati. It is stated by the petitioner in the writ petition that he had applied for Indian citizenship while he was in Assam. According to his own showing, pursuant to his application the Superintendent of Police and Registration Officer, Kamrup, furnished a certificate dated April 25, 1962 whereby he certified that the petitioner had applied for grant of Indian citizenship. This certificate, a copy which has been produced by the petitioner as Annexure 2 to the writ petition, reads as follows :

"OFFICE OF THE SUPERINTENDENT OF POLICE, D.I.B., KAMRUP.

This is to certify that the holder of this card Mr. Yaro Khan Pathan S/o Alim Khan is reported to be a Pakistan National. He has applied to the Govt. of Assam for Indian citizenship, which is under consideration of the Govt. He may not be disturbed from any quarter till receipt of any order from the Govt.

Seal of Registration Officer

Seal and signed Seal of Inspector General of Police. for Supdt.of Police & R.O. Kamrup. 25.4.62. " The petitioner is also stated to have made an application to the Passport Department, Assam Secretariat (Civil), for being allowed to stay in India. Pursuant to the application, the Superintend ent, Passport Department, Assam Secretariat (Civil), passed the following order :

"Yaro Khan Guahati

His application for stay in India is hereby acknowledged. It is under consideration of Government after inquiry and he will be intimated in due course. He may be allowed to stay in India pending disposal of his petition.

Signed

Superintendent,

Passport Department, Assam

(Seal) Secretariat (Civil)

16.1.63

(Seal)"

10. The contention of the petitioner that he is an Indian citizen and was born in India is belied the fact that he had made an application for grant of Indian citizenship and also an application for permission to stay in India. Learned counsel for the petitioner submitted that the petitioner was misguided in making the applications. It is significant to note that the petitioner does not claim to have moved any application to the concerned authorities withdrawing his earlier applications seeking Indian citizenship and permission to stay in India. It is also not his case that he had made applications to the concerned authorities clarifying the position that as he was born in India and is an Indian citizen the application for grant of Indian citizenship and the application seeking permission to stay in India were made under a wrong advice. It appears that the plea that the petitioner had made the said applications on a wrong advice is an after thought. The petitioner having applied for Indian citizenship and for grant of permission to stay in India and having acquired Afghan passport repels the contention of the petitioner that he is an Indian citizen. In Abdus Samad Vs. State of West Bengal, , where the appellant had made an application u/s 5(1)(a) of the Citizenship Act, 1955, for being registered as a citizen of India, it was held that the application for registration as an Indian citizen totally repels any plea of

citizenship of the appellant. Thus, the claim of the appellant that he had come to Calcutta in 1914 and Therefore at the commencement of the Constitution he became a citizen under Article 5(c) of the Constitution, did not find favor with the Apex Court.

11. Learned counsel for the respondent has invited our attention to the International Driving license of the petitioner bearing No. 7159 issued at Kabul by Kabul Traffic license Department, and Identity Card No. 237658 of the petitioner issued by the Royal Government of Afghanistan on September 30, 1338 (...Nov, 1958). As against this the petitioner has not placed on record any material or evidence to show that he was born at Guwahati. We are also not impressed by the submission of the learned counsel for the petitioner that the passport produced by the first respondent as that of the petitioner was never issued by the State of Afghanistan. It is well settled that an alien cannot have a right of permanent abode in India. In Louis De Raedt and Others Vs. Union of India and others, , it was held that the fundamental right of the foreigner is confined to Article 21 and does not include the right to reside and settle in this country. In Hans Muller of Nurenburg Vs. Superintendent, Presidency Jail, Calcutta and Others, , the Supreme Court held that the power of the Government in India to expel foreigners is absolute and unlimited and there is no provision in the Constitution fettering this discretion.

12. The contention of the learned counsel for the petitioner that the petitioner was not given proper opportunity by the first respondent before passing the impugned order is of no substance. The petitioner was aware of the case which he was required to meet before the first respondent. He had filed a writ petition No. 397/98 in which the respondent had brought out the material against him. The petitioner, in accordance with the order in that writ petition, was given call notices. It was only after the petitioner had a say in the matter before the first respondent that the impugned order was passed.

13. In the circumstances, there is no merit in the writ petition. Accordingly, the same is dismissed.

14. Copy of this order may be given dusty to learned counsel for the parties.

