
(1999) 02 AHC CK 0088

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 44777 of 1992

Yasin

APPELLANT

Vs

Home Secretary, Govt. of U.P. & Ors.

RESPONDENT

Date of Decision : 17-02-1999

Acts Referred:

Citizenship Rules, 1956 — Rule 3

Citation : (1999) 02 AHC CK 0088

Hon'ble Judges : Binod Kumar Roy, J and Yatindra Singh, J

Final Decision : Dismissed

Judgement

W. K. Roy and Yatinadru Singh, JJ.—The prayer of the petitioner is to quash the order dated 22111992 passed by the Home Secretary, Government of U.P. (Respondent No. 1) as contained in Annexure19.

2. The document appended as Annexure19 shows it to be copy of an "Extremely Confidential" letter written by Sri Hari Lal, Under Secretary, Government of U.P. to the Senior Superintendent of Police, Varanasi being No.4007/6B3213 M/92, Lucknow dated 2211 1992 dealing with the subjectmatter concerning deporting from India of Pakistani National Sri Mohd. Yasin son of Matiullah Sardar", i.e. to say the Petitioner.

3. The petitioner asserts as follows:

He is an Indian citizen. He was born of Indian parents in 1943 at Varanasi. His name figures in the Voter lists of the years 1980, 1984 and 1988. He is married with Smt. Noorun Nisa, who too is an Indian citizen and has seven children. He is permanent resident of House No. J14/151, Kazi Sadullahpura, Police Station Jaitpura District Varanasi. He is having a ration card in his name. He was issued temporary visa pursuant to Passport No. P263333 on 1421980 by the Registrar, Passport Office, U.P. Lucknow and he visited Pakistan temporarily which was extended till 1989 by the Consulate General of India. As he had overstayed there and thus convicted by the Pakistani Authorities and was imposed a fine of Rs.

500/. He was handed over to the Consulate General of India and deported to India in October, 1988 and since then he has been living peacefully. He carries on silk weaving business and earns his livelihood. Surprisingly, his enemies, who were interested in grabbing his properties, got him involved in false cases under Section 14 of the Foreigners Act, Section 3/6 of the Passport Act and Sections 420/467/468/470, I.P.C. in Case Crime No. 210 of 1992 Police Station Jaitpura District Varanasi as a result of which he was arrested on 5111992. On 22111992 the impugned order was passed illegally as from the facts and circumstances aforementioned it was an established fact that his visit to Pakistan was temporary and that he had never accepted Pakistani citizenship and/or had abandoned his Indian citizenship. It has been passed without verifying the facts and also without getting any order from the Government of India. Accordingly, the reliefs prayed for be granted with costs.

4. In the counteraffidavit, a copy of which was received by Sri Ram Shiromani Shukla, learned counsel for the petitioner on 591993, which was sworn by the Deputy Superintendent of Police, Intelligence, Varanasi it has been stated, inter alia as follows: The petitioner on 2101984 had obtained a Pakistani Passport bearing No. A 603840; thereby under Rule 3 Schedule III of Citizenship Rules this will be deemed to be a conclusive proof of having his voluntarily acquired citizenship of Pakistan be sore that date. On the basis of this passport as a Pakistani Citizen in the years 1985 and 1988, after obtaining visa from the Consulate, Karachi, he came to India; He got his entry registered in this regard in the Foreign Registration Office; His visa period was extended by 25 days on account of his illness; The documents referred to by him and produced have been fabricated by him on account of some conspiracy and to defraud the Court; His claim that he has been residing peacefully at J14/151 Kazi Sadullahpura is totally false; Even though there is an entry of his departure on 10488 in the Foreign Registration Office but the said entry is not being confirmed from the concerned check post. The Intelligence wing has come to a conclusion that instead of returning to Pakistan he is somehow residing in a clandestine way in India. Thus, the cases in question were registered. His wife, too, on a Pakistani Passport had visited India along with her three children but returned back to Pakistan on 9785 though she is residing in India which also appears to be under some conspiracy. Thus, the writ petition be rejected with costs. The counteraffidavit also appends the relevant records to prove the facts slated as above.

5. No rejoinder affidavit has been filed by the petitioner despite expiry of Five years Five months by now to the counteraffidavit.

The Submissions:

6. Sri Ram Shiromani Shukla, learned counsel appearing in support of his writ petition, contended that the assertions made by the petitioner being true and supported by documents and then made in the counteraffidavit being untrue the petitioner is entitled to the reliefs claimed for.

7. Mr. H.R. Mishra, the learned Standing Counsel appearing on behalf of the respondents, on the other hand, contended that since the statements made in the counteraffidavit which have been supported by the documents to prove their correctness, to which no rejoinder has been filed, the facts stated in the counteraffidavit be accepted as true and that of the petitioner in the writ petition as untrue which was not supported by his affidavit but of his pairvikar and the writ petition be dismissed.

Our Findings:

8. The facts stated in the counteraffidavit that the petitioner had obtained a Pakistani Passport has not been denied by him.

9. Rule 3, Schedule 111 of the Citizenship Rules, 1956 reads as follows:

"The fact that a citizen of India has obtained on any date a Passport from the Government of any other country shall be conclusive proof of his having voluntarily acquired citizenship of that country before that date."

The claim of the respondents that the petitioner had ceased to be an Indian Citizen thus has got to be accepted.

10. The statement in Paragraph 2 of the writ petition that the petitioner is an Indian Citizen has been supported by the affidavit of the Pairvikar Kutubuddin as true to his personal knowledge. The deponent ought to have stated if it was a fact, that the statement is based also on the information given by the petitioner which he believes to be true. Even though the petitioner was enlarged on bail yet he has not come to support the correctness of the statements made in the writ petition.

11. The petitioner has not brought on the record any orders of any competent Court showing that he has been acquitted of the charges framed against him.

12. The petitioner has not even disclosed who were his enemies who wanted to grab his properties. He has not even impleaded them as party respondents. In the absence of these particulars it is difficult for this Court to accept his defence that he has been falsely implicated at the instance of his alleged enemies.

13. For the reasons aforementioned we are of the view that the petitioner is not entitled to the reliefs claimed for.

14. In the result, we dismiss this writ petition but having regard to the peculiar facts and circumstances we make no order as to cost.

15. The office is directed to handover a copy of this order within one week to Sri H.R. Mishra, learned Standing Counsel for its communication to the authority concerned. Petition dismissed.