

(2011) 10 DEL CK 0115

Delhi High Court

Case No: LPA 868 of 2011

Yaro Khan @ Ahmad Shah

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision: Oct. 19, 2011

Acts Referred:

- Foreigners Act, 1946 - Section 3(2)

Hon'ble Judges: S.P. Garg, J; Pradeep Nandrajog, J

Bench: Division Bench

Advocate: Bahar U.Barqi, for the Appellant; Ravinder Agarwal, Advocate for R-1 and R-2
Ms. Jubeda Begum, Advocate for R-3 and R-4, for the Respondent

Final Decision: Dismissed

Judgement

Pradeep Nandrajog, J.

CM No.19316/2011 in LPA No. 868/2011

CM No.19318/2011 in LPA No. 869/2011

Allowed.

LPA 868/2011 and LPA 869/2011

1. The two appeals lay a challenge to a common order dated 12.09.2011 dismissing W.P.(C) No.2599/2007 and W.P.(C) No.4112/2007 filed by the appellant.
2. The first writ petition sought a declaration that the appellant be declared a citizen of India by birth and order dated 13.04.2006 deporting appellant from India to Afghanistan be quashed.
3. The second writ petition challenged the order impounding the Indian passport issued in the name of the appellant treating him as an Indian National.

4. Dismissing both writ petitions by a common order, for the reason relief in the second writ petition was dependant and would have automatically flown from the relief qua the first.
5. The two writ petitions have been held to be barred by res judicata as also without any merit and for the latter view taken, the learned Single Judge has noted the relevant facts.
6. It is not in dispute that appellant had earlier on filed W.P.(Crl.) No.397/1998 challenging an order dated 05.05.1998 issued u/s 3(2) of Foreigners Act 1946 directing appellant to depart from India latest by 15.5.1998.
7. In the said writ petition the appellant claimed that he was born in Guwahati on 13.01.1952 and that his father had migrated to India from Pakhtoonistan and had married a native woman "Shap Paro". He had pleaded that he had filed an application with the competent authority at Kamrup (Assam) to be granted Indian citizenship.
8. The writ petition was dismissed on merits holding that the appellant had entered India on a passport issued by the authorities in Afghanistan and since appellant had relied upon a passport issued in his name by the Government of India, it was held that the said passport was obtained by the appellant by playing a fraud.
9. The Division Bench noted that the very fact that the appellant had applied for Indian citizenship showed that he was not a natural born citizen of India.
10. The petitioner was thereafter directed, vide order dated 18.12.1998 to depart from India and he challenged the same by and under W.P.(Crl.) No.1107/1998.
11. He raised the same issues which he had raised earlier and dismissing W.P.(Crl.) No.1107/1998 it was noted by the Division Bench that the appellant had obtained in his name an international driving license from the Kabul Traffic License Department and also possessed identity card No.237658 issued by the Royal Government of Afghanistan and it was observed that the appellant was misusing the process of law. The said decision of the Division Bench was unsuccessfully challenged by the appellant before the Supreme Court.
12. The petitioner went underground and was detected in the year 2006 when vide order dated 13.4.2006 he was directed to leave India and a simultaneous request was made to the Islamic State of Afghanistan to issue necessary travel documents to the appellant and his Indian passport was revoked.
13. Once again claiming himself to be a citizen of India by birth, the appellant now relies upon a certificate dated 07.09.2006 issued by the Registrar of Births, Government of Nagaland as per which appellant was born at Deemapur on 10.01.1950.

14. We need to highlight that when W.P.(Crl.) 397/1998 was filed by the appellant he claimed to be born on 13.01.1952 in Guwahati and now he claims to be born on 10.01.1950 at Deemapur.

15. We further need to highlight that the certificate relied upon by the appellant pertains to an entry made in the register of births and deaths on 07.09.2006 and it is apparent that the entry is not a contemporaneous record of information given qua the fact recorded in the entry.

16. We concur with the view taken by the learned Single Judge that the birth certificate now relied upon is a procured document more so for the reason when sent for verification it was informed to the Court that the relevant record is not available in the office of the Registrar of Birth, Government of Nagaland.

17. The learned Single Judge has highlighted, and we concur, that the registration obtained pertains to an entry under the Registration of Births and Deaths Act 1969 which Act, as opined by the Division Bench of the Kerala High Court in the judgment reported as 1987 (2) KLT 1028 Usman Vs. Hindustan Machine Tools Ltd. did not permit retrospective birth entries being made. Prior thereto births and deaths were required to be registered in the State of Assam under the Births, Deaths and Marriages Registration Act 1886 and we highlight that whether appellant was born in the year 1950 or the year 1952 State of Nagaland did not exist. The territory now comprised in the State of Nagaland was a part of the State of Assam.

18. Lastly we note that the Islamic Republic of Afghanistan, as per its letter dated 16.01.2003 recognizes appellant as a citizen of Afghanistan.

19. The learned Single Judge has correctly opined that the two writ petitions are barred by res judicata and even on merits the claim of the appellant predicated on birth certificate issued by the Government of Nagaland inspires no confidence and in the teeth of the overwhelming evidence to the contrary, the claim cannot succeed.

20. Both appeals are dismissed in limine.

21. No costs.

CM No.19315/2011 in LPA No.868/2011

CM No.19317/2011 in LPA No.869/2011

Since pending final hearing of the appeal stay of the impugned order has been prayed for, the applications are dismissed as infructuous as the appeals have been dismissed in limine.