

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

MONDAY, THE 10TH DAY OF AUGUST 2015/19TH SRAVANA, 1937

WP(C).No. 31686 of 2005 (V)

PETITIONER(S):

**T.K. MOHAMMED ALI, AGED 64,
S/O. KUNHI MOIDU, THANDAMKOLI HOUSE, PALAPPETTY P.O
PONNANI TALUK, MALAPPURAM DISTRICT.**

BY ADV. SRI.S.MOHAMMED AL RAFI

RESPONDENT(S):

- 1. THE UNION OF INDIA,
REPRESENTED BY SECRETARY, MINISTRY OF HOME AFFAIRS
NEW DELHI.**
- 2. THE UNDER SECRETARY (FI),
FOREIGNERS DIVISION, MINISTRY OF HOMA AFFAIRS
NEW DELHI.**
- 3. THE STATE OF KERALA,
REPRESENTED BY PRINCIPAL SECRETARY, HOME DEPARTMENT
THIRUVANANTHAPURAM.**
- 4. THE CIVIL AUTHORITY &
DISTRICT COLLECTOR, MALAPPURAM.**
- 5. THE SUPERINTENDENT OF POLICE,
MALAPPURAM DISTRICT.**

ADDL.R6 IMPEADED

**ADDL.R6 THE VILLAGE OFFICER
PERUMPADAPPU, PERUMPADAPPU PO.,
MALAPPURAM DISTRICT.**

[ADDL.R6 IMPEADED AS PER ORDER DATED 12.07.2006 IN IA 8875/06.]

**R1-R2 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R3-R5 BY SRI.P.V.ELIAS, GOVERNMENT PLEADER**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10-08-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

- P1 : COPY OF EXTRACT OF ADMISSION REGISTER IN GOVERNMENT FISHERIES UP SCHOOL, PALAPPETTY OF THE PETITIONER**
- P2 : COPY OF THE VOTERS LIST IN THE PONNANI CONSTITUENCY**
- P3 : COPY OF REPRESENTATION DATED 25.07.2005 SUBMITTED BY THE PETITIONER BEFORE THE FIRST RESPONDENT**
- P4 : COPY OF THE ACKNOWLEDGMENT CARD EVIDENCING THE RECEIPT OF EXT.P3 REPRESENTATION**
- P5 : COPY OF APPLICATION DATED 17.04.2006 SUBMITTED BEFORE THE VILLAGE OFFICER, PERUMPADAPPU, MALAPPURAM DISTRICT BY THE PETITIONER**
- P6 : COPY OF THE ACKNOWLEDGEMENT CARD EVIDENCING RECEIPT OF EXT.P5**

RESPONDENTS' EXHIBITS:

- R5(A) : COPY OF MINISTRY OF HOME AFFAIRS (KERALA) LETTER DATED 21.11.2005**

//TRUE COPY//

P.A. TO JUDGE

JV

ANIL K. NARENDRA, J.

W.P.(C) No.31686 of 2005

Dated this the 10th day of August, 2015

JUDGMENT

The petitioner has approached this Court seeking a writ of mandamus commanding the 1st respondent to consider Ext.P3 application filed under Section 9(2) of the Citizenship Act, 1955 (hereinafter referred to as 'the Act') and an order to permit him to stay in India permanently considering the predicament situation faced by him.

2. Going by the averments in the writ petition, the petitioner was born on 10.11.1941 at Palappetty in Ponnani Taluk, Malappuram District, Kerala. His parents are Indian citizens. His father Kunhi Moidu was a resident of Malappuram District. The petitioner studied in Government Fisheries UP School, Palappetty from 19.5.1947 to 14.06.1954. In order to substantiate the aforesaid fact, the petitioner would rely on Ext.P1 extract of Admission of Register. Therefore, the petitioner would contend that he had acquired Indian citizenship by virtue of birth and domicile.

3. According to the petitioner, in the year 1965 he had gone to Pakistan for the purpose of employment since he did not find any suitable employment in India. One Kunhi Bava, brother-in-law of the petitioner was employed in Pakistan at that time and it was through him, he went to Pakistan. He was staying with the aforesaid Kunhi Bava in Pakistan. While so, Kunhi Bava died in 1967 and consequent to his death, the travel documents of the petitioner were lost. Thereafter, the petitioner was constrained to stay in Pakistan without any document to prove his Indian Citizenship. The petitioner would submit that, he had obtained a Pakistani Passport only for the limited purpose of returning to India and he never wished or intended to be a citizen of Pakistan. Relying on Ext.P2 voters list of Ponnani Constituency, the petitioner would contend that his name was included in the voters list of that constituency. When proceedings were initiated at the instance of respondents 4 and 5 to deportate the petitioner, he had submitted Ext.P3 application under Section 9(2) of the Act before the 1st respondent seeking an order to declare his nationality as Indian. Relying on Ext.P4 acknowledgment card, the petitioner would contend that Ext.P3 application was acknowledged by the 1st

respondent on 16.08.2005.

4. On 20.11.2006, this Court passed the following order:

"Petitioner who is a Pakistani citizen has approached this Court against apprehended arrest. Government Pleader reported that all Pakistani citizens are under surveillance. It is open to the Government to conduct an enquiry in the matter and it is important to enquire about petitioner's source of livelihood. It is for the Police to conduct enquiry about the source of his funds; if the petitioner is living in affluent circumstances.

In the circumstances, there will be a direction to the 5th respondent not to arrest the petitioner on condition that petitioner will report before the Sub Inspector of Police under whose jurisdiction the petitioner is residing once in a week as fixed by the 5th respondent. Petitioner will produce a copy of the order before the 5th respondent for compliance."

5. Later, by order dated 03.07.2015 this Court has directed the learned Government Pleader to get instructions from the Superintendent of Police, Malappuram District as to whether the petitioner is regularly appearing before the concerned Sub Inspector of Police in terms of the order passed by this Court dated 20.11.2006.

6. Pursuant to the said order, the learned Government Pleader on instructions submitted that the petitioner is regularly

appearing before the Sub Inspector of Police of Perumpadappu Police Station in terms of the order passed by this Court dated 20.11.2006. Then the learned Assistant Solicitor General of India sought time to get instructions as to whether Ext.P3 application submitted by the petitioner under Section 9(2) of the Act is still pending before the Central Government.

7. Today, when the case was taken up for final hearing, the learned Assistant Solicitor General of India on instructions submitted that Ext.P3 application submitted by the petitioner is not received in the Office of the 1st respondent and that, if the petitioner submits a fresh application under Section 9(2) of the Act within a period of three weeks from today, such application shall be considered by the 1st respondent in accordance with law.

8. I heard the arguments of the learned counsel for the petitioner, the learned Assistant Solicitor General of India appearing for respondents 1 and 2 and also the learned Senior Government Pleader appearing for respondents 3 to 5.

9. The Apex Court in **State of U.P. v. Mohammed Din and Others [AIR 1984 SC 1714]** has reiterated that, from the amplitude of the language employed in Section 9 of the Act, the legislative intention has been made clear that all cases which

come up for determination where an Indian Citizen has voluntarily acquired the citizenship of a foreign country after the commencement of the constitution, that is after 26.01.1950 and before the commencement of the Act, that is 30.12.1955, have to be dealt with and decided in accordance with the provisions contained in Section 9(2) of the Act. The Apex Court has also held that, the Central Government alone has been constituted the exclusive forum to deal with such issues.

10. The petitioner would contend that Ext.P3 application under Section 9(2) of the Act is still pending consideration before the 1st respondent. But the specific stand taken by the 1st respondent, through the learned Assistant Solicitor General of India is that no such application is received in the Office of the Ministry of Home Affairs at New Delhi. The learned Assistant Solicitor General has also submitted that if any application filed by the petitioner under Section 9(2) of the Act is received within a period of three weeks, the same shall be considered and appropriate orders passed thereon without any further delay.

In such circumstances, this writ petition is disposed of directing the petitioner to submit an application under Section 9 (2) of the Act before the 1st respondent, within a period of three

weeks from the date of receipt of a certified copy of this judgement. If any such application is received, the 1st respondent shall consider the same and pass appropriate orders thereon, as expeditiously as possible, at any rate, within a period of three months thereafter. Till such a decision is taken and communicated to the petitioner, he shall strictly comply with the conditions stipulated in the order passed by this Court dated 20.11.2006.

No order as to cost.

SD/-
ANIL K. NARENDRA,
JUDGE

JV