

HON'BLE SRI JUSTICE P. KESHA RAO

WRIT PETITION No.24812 of 2007

ORDER:

Heard the learned counsel for the petitioner as well as the respondents.

The prayer sought in the writ petition is as under:

“... Hon'ble Court may be pleased to issue an appropriate writ or orders or directions more particularly in the nature of writ of mandamus declaring the inaction of the respondents in disposing off the application of the petitioner made u/s 5(1) of the Citizenship Act, 1955, as illegal, arbitrary, violative of principles of natural justice and offensive to the Article 22 of Constitution of India and consequently to direct the respondents to accord to the petitioner citizenship of India in accordance with law.”

The case of the petitioner is that her parents and ancestors are born and brought up in Hyderabad, A.P. When the petitioner was seven (7) years old, she came to India in the year 1962 along with her mother Mrs. Iqbal Begum. On 02.06.1964, her mother died leaving the petitioner to her brother, Mr. Younus Siddiqui. On 09.05.1975, the petitioner married Mr. Abdul Waheed Khan, citizen of India not only by birth, but also from generations. Out of wedlock, they were blessed with six children. All these years the petitioner never left India even for a single day. In fact, she has been seeking extension of visa from time to time, which was duly accorded to her. On 08.07.1993, the petitioner made an application to the 3rd respondent for grant of citizenship of India as provided under Section 5 of the Citizenship Act, 1955 (for short, “the Act”). The petitioner received letter dated 23.07.1994 from the Under Secretary to Government of India requiring information regarding her residential permit, police verification, proof of

citizenship of her husband. The information, as sought, was furnished to the Under Secretary through letter dated 06.08.1994. Ever since, thereafter, the respondents were engaged only in correspondence particularly asking the petitioner information in one form or the other. Subsequently, she was asked to appear before the 3rd respondent for taking oath. Pursuant thereto, the petitioner complied with the directions and appeared before the 3rd respondent on 10.11.2005. Thereafter, she was directed to arrange a person to witness the oath taking ceremony. In compliance thereto, she was accompanied by one of her relatives Mr. Ahmed Shareif, s/o. Taher Sharief. His statement was also recorded to testify the fact that the petitioner has taken an oath. Thereafter, there was no further enquiry and no orders have been passed under Section 5 of the Act and still the petitioner is being treated as a national of Pakistan. Therefore, she was constrained to file the present writ petition.

Respondent No.3 filed a counter affidavit stating as under:

“In response to this office letter, the Commissioner of Police submitted that Mrs. Razia Begum is holder of Pakistani Passport No.K401564, dated 17.09.2001 issued at New Delhi valid up to 16.09.2005 and she is staying in Hyderabad along with her Indian national husband and children on LTV basis since 1976. Her passport bearing No.K401564 dated 17.09.2001 issued at High Commission of Pakistan at New Delhi and subsequently renewed up to 16.09.2005. She was granted extension of stay beyond 04.07.2005 for two years without valid of passport. She was permitted to go to Delhi vide Govt. Memo No.15231/OOTS/A1/2007-2, dated 27.11.2007 and the same was served to her on 13.12.2007. She has not gone to Delhi for renewal of passport but approached the Hon’ble High Court and filed the present writ petition alleging that she has not granted citizenship even after completing formalities for the grant of citizenship.

The enquiry of the respondent revealed that Under Secretary to the Government of India, Ministry of Home Affairs, New Delhi addressed the Secretary, Government of Andhra

Pradesh, Home (Passport) Department, A.P. Secretariat, Hyderabad vide letter dated 05.08.2008 stating that:

“It is not possible to accept the request of the applicant/petitioner for grant of Indian Citizenship under Section 5(1)(c) of the Act as the applicant has failed to furnish valid and up to date copy of passport as well as that of LTV/residential permit despite several reminders and it is needless to say that a foreigner is required to stay in India with proper authority in the absence of which she treated as an ‘illegal migrant’ and an illegal migrant is not eligible for grant of Indian citizenship as per the provisions of the Act.”

The same was communicated to Mrs. Razia Begum, Pak-National vide this office memo No.D5/2827/1996, dated 12.09.2008 (copy enclosed).”

Respondent No.4 also filed a counter affidavit stating that when the petitioner was minor she came to Aurangabad, Maharashtra State. On 05.05.1975, she came to Hyderabad to attend her brother's marriage without any intimation to the Superintendent of Police, Aurangabad. At that time, she was not having any travel documents and this was informed vide Lr.No.SB/803/B2/76/5669 dated 21/25.02.1977 to the Assistant Secretary to Government, Home (Passport-A) Department, Government of A.P., Hyderabad. However, all of a sudden her marriage was fixed and she started staying in Hyderabad with her Indian national husband, Mr. Abdul Waheed Khan, at H.No.12-2-281, Murad Nagar, Hyderabad. Her stay was extended in Aurangabad from 26.02.1974 to 26.02.1981 by State of Maharashtra duly regularizing the overstay period up to 26.02.1980. Thereafter, the Government of A.P., extended her stay up to 26.02.1983. The Government of A.P. vide Memo No.565/PPT.A/83-1 dated 16.04.1983 while communicating a copy of the representation of the petitioner with the medical certificate

requested to furnish immediate remarks. In response to the said memo, a report was submitted to the Government of A.P. informing that she was granted extension of stay up to 26.02.1983 without any valid permit, which is in contravention of the provisions of the Foreigners Act and the Rules by overstaying without valid passport and valid permit beyond 26.02.1983. Since she was staying in India without any valid permit, a notice No.SB/B3/803/TV/76 dated 14.03.1983 was served on the petitioner directing her to leave India immediately by taking suitable endorsement from the concerned office, failing which legal action would be taken against her under the provisions of the Foreigners Act and the Rules framed thereunder. In spite of receiving the said notice, the petitioner did not comply with the orders and continued to overstay in Hyderabad since 26.02.1983. In that connection, Crime No.42 of 1983 was registered by the Station House Officer, Asifnagar Police Station and the petitioner was arrested on 30.07.1983 and produced before the learned XII Metropolitan Magistrate, Hyderabad. Thereafter, the petitioner addressed letter dated 12.04.1983 to the Additional Secretary to Government, Home Department, A.P., informing that she was not granted further extension. Since she was not aware of the exact date of expiry of her previous extension and also due to health problems, she could not apply for further extension. A detailed report was sent to the Government of A.P. vide letter dated 04.05.1983 informing the facts and stating that the petitioner can undertake journey and she was also instructed to produce the renewed Pakistan passport for

further extension of stay. Thereafter, on 19.02.1986 the petitioner submitted her representation requesting to grant permission for stay in Hyderabad from 26.02.1983 to 26.02.1987. In fact, she also applied for extension of stay from 1983 to 1989 and again up to 27.02.1990, but she was not having any valid passport. In those circumstances, the petitioner was advised to submit the renewed passport. In spite of several reminders, the petitioner has not produced the renewed passport. Therefore, Memo No.SB/F9/LTV/803/76 dated 29.06.1989 was issued from the office of the 4th respondent informing the petitioner that her request for grant of extension of stay at Hyderabad was rejected and she was directed to leave Hyderabad immediately after taking suitable endorsement from the office. Subsequently, the Government of A.P., has informed that the case of the petitioner was referred to the Government of India, Ministry of Home Affairs, New Delhi and their decision is awaited apart from other aspects.

When the matter is taken up, written instructions have been placed on record from the Superintendent (Tahsildar Cadre), Collectorate, Hyderabad District, dated 28.04.2018 and Inspector of Police, Special Branch, Pakistan Branch, Hyderabad dated 01.03.2018. The said written instructions are made as part of the record. A perusal of the same would indicate that the Under Secretary to the Government of India, Ministry of Home Affairs, New Delhi, addressed to the Secretary, Government of A.P., Home (Passport) Department, A.P. Secretariat, Hyderabad vide letter dated 05.08.2008 stating as under:

“It is not possible to accept the request of the applicant/petitioner for grant of Indian citizenship under Section 5(1)(c) of the Act as the applicant has failed to furnish valid and up to date copy of passport as well as that of LTV/residential permit despite several reminders and it is needless to say that a foreigner is required to stay in India with proper authority in the absence of which she is treated as an “illegal migrant” and an illegal migrant is not eligible for grant of Indian Citizenship as per the provisions of the Act.”

Basing on the above said letter, the Government of A.P., through office of the Collector, Hyderabad District, addressed Memo No.D5/2827/96 dated 12.09.2008 to the petitioner stating as under:

- “1. It is not possible to accept the request of Smt. Razia Begum, Pakistan national for grant of Indian citizenship under Section 5(1)(c) of the Citizenship Act.
2. As she has failed to furnish a valid and up to date copy of passport, LTV/residential permit.
3. A foreigner is required to stay in India with proper authority, in the absence of which she is treated as an “illegal migrant”.
4. Illegal migrant is not eligible for grant of Indian Citizenship as per provisions of the Act.”

Learned counsel appearing for the petitioner would submit that the petitioner has not received both the letters dated 05.08.2008 and 12.09.2008, wherein it was informed to the petitioner that it is not possible to accept her request for grant of Indian citizenship under Section 5(1)(c) of the Act, since she failed to furnish a valid and up to date copy of passport, LTV/residential permit and etc.

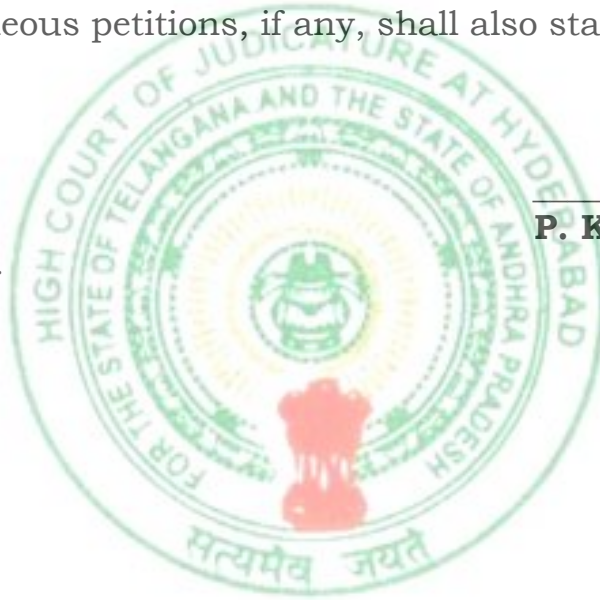
In the light of the above, unless and until the petitioner furnishes the required information to the concerned authority, this Court is of the opinion that the respondents are not expected to act on the application submitted by the petitioner for grant of Indian

citizenship under Section 5(1)(c) of the Act. However, taking into consideration the submission made by the learned counsel for the petitioner that the letters dated 05.08.2008 and 12.09.2008 have not been furnished to the petitioner, this Court is inclined to direct the respondents to furnish copies of the said letters to the petitioner as expeditiously as possible, enabling her to take appropriate steps as per law.

With the above observations, the writ petition is disposed of.
No order as to costs.

Miscellaneous petitions, if any, shall also stand disposed of.

Date: 13.11.2018.
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P. KESHA RAO, J