

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment delivered on: 28.09.2018

+ **W.P.(C) 9294/2018 & C.M. No. Nos.35958-60/2018**

MS. STADTMUELLER GABRIELE
(GERMAN NATIONAL)

..... Petitioner

versus

UNION OF INDIA AND ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner	: Mr. Rajiv Ranjan Pandey and
	: Mr. Salil Ahuja, Advocates.
For the Respondent	: Mr. Ripu Daman Bhardwaj, CGSC with
	: Mr. T. P. Singh, Advocate for UOI.

CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

Introduction

1. The petitioner – a German National – has filed the present petition, *inter alia*, impugning an order dated 30.07.2018 (hereafter ‘the impugned order’) passed by respondent no.2 [Joint Secretary (foreigners division, MHA) & Appellate Authority] rejecting the petitioner’s application for review of the order dated 28.09.2017.

2. The petitioner is, essentially, aggrieved by the decision of the Central Government denying the petitioner’s request to be granted citizenship by naturalization in terms of Section 6(1) of the Citizenship

Act, 1955 (hereafter ‘the Citizenship Act’).

Factual context

3. The petitioner claims that she first visited India in the year 1983 with the prospect of sourcing Indian handicrafts, Gems and Jewellery but got involved in spiritual development. She claims that she visited and stayed at various places of pilgrimages and of religious importance and decided to settle down in the State of Goa. She claims that in the year 1996, she purchased a house property in Goa with the due permission of the Reserve Bank of India and has been residing there since then.

4. The petitioner further states that she also incorporated a company on 04.08.2003 and has been carrying on a small business in India.

5. The respondents state that the petitioner entered India on 23.11.2004 and was permitted to stay in India upto 18.11.2009. The respondents further state that prior to 2004, she had entered India on 04.02.1998, on strength of a visa that was valid till 01.08.1998. She again entered into India on 12.10.1998, on a visa which was valid till 06.10.1999. Subsequent thereto, she entered India on a tourist visa on 29.09.2000, which was valid till 02.06.2002. Thereafter, she had travelled to India on a Business Visa, which was valid till 18.11.2009 but was thereafter extended till 18.12.2013.

6. On 17.03.2011, the petitioner filed an application under Section 6(1) of the Citizenship Act for acquiring citizenship by naturalisation. While the said application was pending, the petitioner also applied for

extension of permission to stay in India. The said application (dated 17.03.2011) was rejected by the District Magistrate (North), Goa by an order dated 05.06.2014, principally, on the ground that the petitioner was suspected to be indulging in drug trade. The petitioner filed a revision application before the Central Government under Section 15 of the Citizenship Act impugning the decision of the District Magistrate rejecting her application for citizenship. The said revision petition was also dismissed by an order dated 26.02.2015.

7. Aggrieved by the said order dated 26.02.2015, the petitioner filed a writ petition (being W.P.(C) 2401/2015), in this Court. The said petition was disposed of by an order dated 17.03.2016 with liberty to the petitioner to file a petition in the High Court of Bombay at Goa.

8. Accordingly, the petitioner filed a writ petition in the High Court of Bombay at Goa (being W.P.(C) no. 564/2016), impugning the order dated 05.06.2014 passed by the District Magistrate (North), Goa as well as the order dated 26.02.2015 passed under Section 15 of the Citizenship Act, whereby the petitioner's revision petition against the order dated 05.06.2014, was rejected. The said petition was allowed by an order dated 30.06.2016 on the ground that the District Magistrate (North), Goa had no authority to dispose of the petitioner's application filed under Section 6(1) of the Citizenship Act. The petitioner was further granted the liberty to file a fresh application for seeking citizenship by naturalisation and it was directed that the same would be considered in accordance with law.

9. In view of the above, the petitioner filed another application dated

13.07.2016 for citizenship by naturalisation, which was rejected by an order dated 28.09.2017.

10. A perusal of the said order indicates that the petitioner's application was rejected pursuant to a report dated 23.08.2017 submitted by the Government of Goa. A copy of the said report has been produced in Court. The said report indicates that the Government of Goa did not recommend the petitioner for grant of citizenship by naturalisation, principally, on the ground that the petitioner was accused of an offence under the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

11. Thereafter, on 19.10.2017, the petitioner filed a review application under Section 15A of the Citizenship Act, before the Ministry of Home Affairs seeking review of the order dated 28.09.2017 passed by the Under Secretary, Government of India. One of the grounds urged by the petitioner in the said review petition was that she was not afforded a hearing by the concerned Authority before rejecting her revision application.

12. The petitioner was, thereafter, afforded an opportunity to be heard. However, she neither appeared in person nor through her counsel; consequently, her review application was dismissed by an order dated 21.12.2017.

13. The petitioner once again filed a writ petition in this Court (W.P.(C) 1896/2018) challenging the order dismissing her review application. The same was disposed of by an order dated 27.02.2018, *inter alia*, remanding

the matter to the concerned authority with a direction to hear the petitioner and to decide the review application afresh.

14. In compliance with the aforesaid order, the petitioner was afforded a hearing on 05.04.2018 and was also permitted to produce documentary evidence. The petitioner availed of the said opportunity and was heard through her counsel.

15. Thereafter, the respondents passed the impugned order rejecting the petitioner's application for review of the order dated 28.09.2017. Aggrieved by the same, the petitioner had filed the present petition.

Reasons and Conclusion

16. As noticed above, the principal reason for rejecting the petitioner's application for citizenship stems from an allegation that she was involved in trafficking of drugs.

17. The learned counsel appearing for the petitioner contends that the said allegation is wholly unfounded, as the petitioner had been acquitted of such allegations.

18. Before proceeding further, it would be relevant to briefly indicate the reasons that have led the respondents to allege that the petitioner may be involved in trade of drugs.

19. The petitioner was scheduled to board a flight – Swiss Airlines Flight No. LX-155 dated 07.03.2007 to Zurich – from Mumbai Airport during the night intervening 06.03.2007 and 07.03.2007. She checked in a

suitcase and then proceeded for the security check. During the screening of the checked-in baggage, the security staff suspected certain concealment. The Air Intelligence Unit (AIU) at CSI Airport, Mumbai was informed and kept a watch on the petitioner's movements. The staff of the Swiss Airlines was requested to keep aside the checked-in baggage of the petitioner for a detailed examination. The petitioner was intercepted after she had cleared the immigration and customs check and was asked to identify her baggage (a black colour suit case). She identified the said suit case as her checked-in baggage. This was also verified with the baggage tag in her possession. The said suit case was opened and it was found that it contained, amongst other things, a cardboard packet which was wrapped in a piece of cloth. The said rectangular packet was removed and opened and a big rectangular slab of dark brown coloured sticky substance (stated to be *Hashish*) was found. The said substance weighted 8.4 kgs. The petitioner was arrested and samples of the said substance were taken.

20. The petitioner maintained that she was not aware that any such substance was concealed in her suit case. She further stated that the said suit case was given to her by one Michel D'Souza for carrying her belongings while going to Zurich. She stated that she had no idea that anything was concealed in the said suitcase.

21. An FIR for offences punishable under NDPS Act was filed and the petitioner was prosecuted. However, the Special Judge (NDPS) acquitted the petitioner. This was, principally, on account of certain discrepancies in the samples and the substance found. The Court also held that it was not established that the petitioner had placed the said substance in her suitcase

or was aware of the same. Admittedly, the petitioner was acquitted as the standard of proof for convicting the petitioner was not met, and she was given the benefit of doubt.

22. It is, however, undisputed that there was a serious allegation against the petitioner and she was suspected of trafficking of drugs. Indisputably, 8.4 kgs of *Hashish* is a large consignment. The petitioner has not been convicted as her involvement in the crime was not established beyond reasonable doubt; however that does not mean that the concerned authority is precluded from considering the same while evaluating whether the petitioner qualifies for naturalisation.

23. Although the petitioner was acquitted, it cannot be disputed that there were good grounds to suspect the petitioner for commission of the said offence.

24. At this stage, it would be relevant to refer to Section 6(1) of the Citizenship Act, which reads as under:

“6. Citizenship by naturalisation.—(1) Where an application is made in the prescribed manner by any person of full age and capacity [not being an illegal migrant] for the grant of a certificate of naturalisation to him, the Central Government may, if satisfied that the applicant is qualified for naturalisation under the provisions of the Third Schedule, grant to him a certificate of naturalisation:

Provided that, if in the opinion of the Central Government, the applicant is a person who has rendered distinguished service to the cause of science, philosophy, art, literature, world peace or human progress generally, it

may waive all or any of the conditions specified in the Third Schedule.

(2) The person to whom a certificate of naturalisation is granted under sub-section (1) shall, on taking the oath of allegiance in the form specified in the Second Schedule, be a citizen of India by naturalisation as from the date on which that certificate is granted.”

25. It is apparent from the above, that for an alien to be granted citizenship by naturalisation, it would be necessary for the said person to qualify the conditions as set out in the Third Schedule of the Citizenship Act. One of the conditions specified therein is that the applicant be “*of good character*” (Clause (e) of the Third Schedule of the Citizenship Act).

26. It is also important to understand that as an alien, the petitioner is not entitled to the fundamental rights – other than Article 21 and to a limited extent Article 14 of the Constitution of India – guaranteed to a citizen of India. Indisputably, the petitioner does not have any inherent right to reside in India or to be accepted as the citizen of this Country. Accepting an application for naturalisation by the Central Government is a grant of privilege in exercise of its sovereign power.

27. The decision whether a person is required to be granted citizenship is at the discretion of the Central Government. It is a subjective decision. The merits of such decision cannot be questioned in these proceedings unless it is established that the same is capricious, malafide or whimsical.

28. The law in several other countries is not much different. In terms of Section 6(1) of the British Nationality Act, 1981, the decision to issue a

certificate of naturalisation vests with the Secretary of State. In the context of the said statute, the England and Wales Court of Appeal, in *The Secretary of State for the Home Department vs SK (Sri Lanka)*: [2012] EWCA Civ 16, held as under:

“31. In relation to naturalisation, on the other hand, the test is whether the Secretary of State is satisfied that the applicant is of good character. It is for the applicant to so satisfy the Secretary of State. Furthermore, while the Secretary of State must exercise her powers reasonably, essentially the test for disqualification from citizenship is subjective. If the Secretary of State is not satisfied that an applicant is of good character and has good reason not to be satisfied, she is bound to refuse naturalisation. For these reasons too a decision in one context is not binding in the other.”

29. Similarly, Section 15 of the Irish Nationality and Citizenship Act, 1956 vests “*absolute discretion*” with the Minister to grant an application for naturalisation, if satisfied that the applicant is of a *good character*.

30. It is also necessary to bear in mind that the onus to establish that the applicant qualifies the test of a *good character* rests with the applicant and not the Central Government.

31. There is no definition of the expression ‘good character’ in the Citizenship Act. Undoubtedly, the Central Government has wide discretion in setting the standards for its satisfaction as to the good character requirement. However, the expression must be understood in the context of the statute. The standards to qualify the good character

requirement must be reasonable and as expected of a good and responsible citizen espousing the values engrafted in the Constitution of this country.

32. In *R v Secretary of State for Home Department ex p Al Fayed (No.2):[2001] Imm AR 134*, Nourse LJ explained the tests to be applied for satisfying the requirement of good character in the following words:

“41. In *R v. Secretary of State for the Home Department, ex parte Fayed* [1998] 1 WLR 763, 773F–G, Lord Woolf MR referred in passing to the requirement of good character as being a rather nebulous one. By that he meant that good character is a concept that cannot be defined as a single standard to which all rational beings would subscribe. He did not mean that it was incapable of definition by a reasonable decision-maker in relation to the circumstances of a particular case. Nor is it an objection that a decision may be based on a higher standard of good character than other reasonable decision-makers might have adopted. Certainly, it is no part of the function of the courts to discourage ministers of the Crown from adopting a high standard in matters which have been assigned to their judgment by Parliament, provided only that it is one which can reasonably be adopted in the circumstances.”

33. In *Hussain v Minister for Justice, Equality and Law Reform: [2011] IEHC 171*, the High Court of Republic of Ireland explained the good character requirement in the following words:

“15. It is against this background that the words “good character” must be understood and measured. Viewed in this statutory context, it means that the applicant’s character and conduct must measure up to

reasonable standards of civic responsibility as gauged by reference to contemporary values. The Minister cannot, for example, demand that applicants meet some exalted standard of behaviour which would not realistically be expected of their Irish counterparts. Nor can the Minister impose his or her own private standard of morality which is isolated from contemporary values.”

34. The aforesaid principles are equally applicable to the qualification of good character as specified in the Third Schedule of the Citizenship Act. Bearing the aforesaid in mind, this court may now proceed to examine the impugned order.

35. The impugned order indicates that respondent no.2 had considered the contentions advanced by the petitioner and had observed as under:-

“6. AND WHEREAS, after hearing the petitioner's advocate and going through all the records including the Oral Judgment dated 13th May, 2009 passed by the Hon'ble Court of the Special Judge for NDPS of Greater Bombay in case No. 163 of 2007 (CR No. 08/2007) and the report of the Collector & District Magistrate (North), Panji, Goa & also the report of the State Government of Goa, it is noted that though the petitioner has been acquitted by the Court of Law in the Criminal proceedings started under NDPS Act, 2005, but it cannot be denied that she had got benefit of the failure on the part of prosecution to prove their case "beyond reasonable doubt" which is a fundamental requirement to prove criminality in a criminal proceeding. Such an acquittal of the petitioner on technical grounds does not erase the fact that the contraband substance was found in the bag she was carrying, which was squarely admitted by her

during the process of inquiry at the airport on the 6th/7th March, 2007. Further, the reports and the recommendations of the District Collector & State Government are an important document/input to consider the application of a person seeking Indian citizenship. No foreigner has a right to be granted Indian nationality simply on the basis of his/her continuous stay in India or supposed good behavior. The Competent Authority has to see whether the applicant foreigner would make a good, law-abiding citizen and would not be a threat to the social, economic and security systems of the country. Adverse reports of the District Magistrate/Collector & the State a alleged involvement of the petitioner in drug trafficking seriously dent her case to grant her citizenship through the naturalization process.

7. NOW, THERFORE, in view of the reasons and facts enumerated above, the review application of the Petitioner under Section 15A of the Citizenship Act, 1995 is without any merit and is dismissed accordingly.”

36. As is evident from the above, the impugned order does indicate sufficient reason why the petitioner’s application for naturalisation has been rejected. It is clear that the Central Government is not satisfied that the petitioner qualifies the good character requirement. As noticed above, this is a subjective decision and the Central Government (and not this Court) is required to be satisfied that the petitioner is qualified for naturalisation under the provisions of the Third Schedule of the Citizenship Act. This decision cannot be subjected to judicial review except on limited grounds. The said decision cannot be held to be arbitrary, capricious or whimsical and, thus, cannot be interfered with in

these proceedings.

37. The learned counsel appearing for the petitioner had further contended that the petitioner would be rendered Stateless and, therefore, the respondents were obliged to accept the petitioner as a citizen of India. This contention is also unmerited as, admittedly, the petitioner is a German National. Her parents are also German Citizens. The petitioner was born in Germany and had, admittedly, come to India in connection with a business relating to Indian handicrafts. She may have spent a considerable time in India, but a refusal to grant her citizenship by naturalisation does not render her Stateless as contended on her behalf.

38. In view of the above, this Court finds no ground to interfere with the impugned order. The petition is, accordingly, dismissed. All pending applications stand disposed of.

SEPTEMBER 28, 2018
RK

VIBHU BAKHRU, J