

HIGH COURT FOR THE STATE OF TELANGANA :: AT HYDERABAD

WRIT PETITION NO.163 of 2018

Between:

Dr.Ramesh Chennamaneni,
s/o. late Sri Ch.Rajeswara Rao,
Aged about 60 years, Occu: MLA,
R/o. H.no.1141, MLAs Colony,
Road No.12, Banjara Hills,
Hyderabad.

.....Petitioner

and

Union of India,
rep.by its Home Secretary,
Ministry of Home Affairs,
Grih Mantralaya, North Block,
New Delhi and others.

.....Respondents

DATE OF JUDGMENT PRONOUNCED : 10.07.2019

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers : No
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : **Yes**
marked to Law Reporters/Journals
3. Whether Their Lordship wish to : No
see the fair copy of the Judgment ?

***THE HON'BLE SRI JUSTICE P.NAVEEN RAO**

+ WRIT PETITION NO.163 of 2018

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\$ Union of India,
rep.by its Home Secretary,
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Grih Mantralaya, North Block,
New Delhi and others.

.... Respondents

!Counsel for the petitioner : Sri Vedula Venkataramana

Counsel for the Respondents : Assistant Solicitor General for Central
Government ; and
Sri V.Ravikiran Rao, counsel for 5th
respondent

<Gist :

>Head Note:

? Cases referred:

(1978) 1 SCC 248
(2005)6 SCC 321
(2001) 2 SCC 386
(2018)7 SCC 670

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.163 of 2018

ORDER:

Petitioner was Indian citizen by birth. It appears, he travelled to Germany to pursue course of study, leading to awarding of Ph.D. in Agricultural Economics. He secured employment as Assistant Professor in Humbolt University in Germany. He took citizenship of Germany in the year 1993. Consequently, he lost the Indian Citizenship. According to the petitioner, he returned to India in the year 2007. He applied for Indian Citizenship on 31.3.2008. On 21.11.2008, the petitioner was asked to furnish the details of his visiting abroad in the last 12 months preceding the date of submission of application. Petitioner replied on 28.11.2008, stating that he has not visited any country/abroad in the preceding 12 months period prior to making application for citizenship. Satisfied with the reply furnished by the petitioner, vide Certificate No.34 dated 3.2.2009, petitioner was granted Indian Citizenship. In the general elections held in the year 2009 petitioner was elected as Member of Legislative Assembly (MLA) Vemulavada constituency in Karimnagar district. He was also elected in the elections held in the years 2010, 2014 and 2018.

2. The 5th respondent Sri Adi Srinivas filed revision under Section 15 of the Citizenship Act, 1955 (for short 'the Act'), alleging that the petitioner obtained citizenship certificate by making false representation. Responding to the said revision, a show cause notice dated 31.7.2009 was served on the petitioner. Primarily it was alleged that the petitioner made false representation to secure citizenship and that why action should not be initiated under Section 10(2) and Section 17 of the Act. It appears, an enquiry committee was constituted and the petitioner appeared before the enquiry committee and requested to consider his

case under Section 10(3) of the Act. As there was no response to his request, petitioner filed W.P.No.18259 of 2017 before this Court. The said writ petition was disposed of by order dated 7.6.2017, directing the respondents therein to consider his application under Section 10(3) of the Act. The enquiry committee submitted its report holding that the petitioner played fraud in securing citizenship. Ignoring the plea taken by the petitioner and accepting the report of the enquiry committee, the competent authority passed order dated 31.8.2017 holding that the petitioner ceased to be a citizen of India. Aggrieved thereby, petitioner filed review petition under Section 15-A of the Act. Petitioner also filed W.P.No.30601 of 2017 before this Court, praying to quash the order dated 31.8.2017. The said writ petition was disposed of by order dated 11.9.2017, directing disposal of the review petition within a period of six weeks from the date of receipt of copy of the said order. Liberty was also given to the petitioner to place material before the Committee in addition to the material already furnished. Respondent No.1 was also directed to ensure proper notice and opportunity to all the parties concerned. The said review petition was dismissed by order dated 13.12.2017, affirming the earlier decision to cancel the citizenship. Challenging the order dated 31.8.2017 and the order in review dated 13.12.2017, this writ petition is filed.

3. To complete the narration, the 5th respondent challenged the election of the petitioner in E.P.No.1 of 2010. E.P. was allowed by judgment dated 14.8.2013, setting aside the election of the petitioner. Aggrieved thereby, petitioner preferred Civil Appeal Nos.8431-8432 of 2013 before the Supreme Court. By order dated 11.08.2016, Supreme Court disposed of Civil Appeals as infructuous as the term of the appellant was over. The election of the petitioner in the year 2014 was

also challenged in E.P.No.5 of 2014 by the 5th respondent. It appears, 5th respondent also challenged the election of petitioner as MLA in the General Elections held in the year 2018.

4. Heard the learned Senior Counsel Sri Vedula Venkataramana, the learned Assistant Solicitor General for Central Government and Sri V.Ravikiran Rao for 5th respondent.

5. Learned Senior Counsel made the following submissions:

5(1). The revision under Section 15 of the Act is not maintainable by a person who is no way concerned with the grant of citizenship. The 5th respondent is in no way concerned with the grant of citizenship. Merely because he contested the elections against the petitioner is no ground to challenge the citizenship granted to the petitioner. The 5th respondent has not answered the description of 'person aggrieved', which is a condition precedent to invoke remedy of revision under Section 15. Further, as order granting citizenship is not challenged, the consequential revision is not maintainable.

5(2). The orders impugned are not sustainable on the sole ground that the report of the committee appointed under Section 10(5) of the Act has not been furnished and no opportunity was afforded to the petitioner while holding that the petitioner ceased to be the citizen of India. As the order impugned has got severe civil and evil consequences, no such decision could have been made without furnishing the report of the committee and calling for objections on the findings recorded by the committee.

5(3). It is further contended that the petitioner filed application under Section 10(3) of the Act before the Committee, requesting to consider his

case under Section 10(3) of the Act without reference to the allegations made in the show cause notice. In the said petition, petitioner has narrated various steps taken by him for development/upliftment of the downtrodden in the villages falling within the Vemulavada and Siricilla Constituencies and an overwhelming response of the people for the good work done by him, thereby attracting Section 10(3) of the Act. But this aspect was not considered by the Committee in its report.

5(4). He would further submit that petitioner was under the bonafide impression that as he was citizen of Germany travelling to Germany cannot be treated as travelling abroad and therefore, the above statement cannot be treated as misrepresentation amounting to fraud. The Committee has erred in not appreciating the circumstances in which the statement made by the petitioner, that he did not travel abroad in the last 12 months preceding the date of making application for citizenship, and while holding such statement as false representation, amounting to playing fraud.

5(5). Learned senior counsel further submitted that in the show cause notice, there was no mention of playing fraud in securing citizenship, whereas the report of the committee holds that petitioner has committed fraud. The said report was the basis for the competent authority to declare that petitioner ceased to be the citizen of India. He would further submit that if only an opportunity was provided to the petitioner, by the competent authority, this fact would have been highlighted.

5(6). He would further submit that when the petitioner applied for citizenship provision in Section 5 (1) (a) was couched in different language and as it stood then there was no requirement of continuous residency for one year preceding the date of making application for

citizenship. When the petitioner applied for citizenship, the Citizenship Rules, 1956 were in force. Rule 5-B also did not stipulate continuous stay for 12 months as mandatory requirement. Form III-B has to be read in consonance with Section 5(1)(f) and the 1956 Rules as they were in force when the application was made. The amendment made to Section 5(1)(f) requires a person to ordinarily reside in India for 12 months before applying for citizenship. Revised Citizenship Rules were notified in the year 2009. They also require ordinary residency at least for a period of 12 months on the date of making application. Thus, in analyzing clause 6 (b) in Form III-B under 1956 Rules, the provision as it stood when the petitioner submitted application for citizenship and the subsequent amendment have to be looked into to understand the scope of those provisions and the intent of the legislation. The intendment of legislation prior to amendment was very clear. There was no requirement of continuous residence in India for 12 months preceding the date of submission of application. Therefore, merely because petitioner did not stay in India continuously for 12 months and traveled at that point of time to his native country cannot vitiate the application submitted by the petitioner and the statement made by him, vis-à-vis the legal provisions then prevailing, cannot be said to be amounting to deliberate misrepresentation to hold as playing fraud.

5(7). Learned senior counsel further submitted that it was *bona fide* understanding of the petitioner that there was no embargo imposed on him to travel to his native country within 12 months prior to submission of application and there was no requirement of continuous stay for 12 months period prior to making application. He would further submit that when information was called from him on travel abroad, he has stated that he did not travel abroad. When he gave this statement, he

was under the *bona fide* impression that traveling abroad would not mean traveling to the native country and therefore he made such a statement. This aspect ought to have been appreciated while looking into the complaint made by the 5th respondent in the form of revision.

5(8). He would further submit that sub-section 2 of Section 10 prescribes conditions in which citizenship can be deprived. However, these conditions *per se* do not automatically amount to deprivation. Even if any one of the conditions is attracted, entailing deprivation of citizenship, the Central Government is required to consider deprivation only after being satisfied that it is not conducive to public good to retain the citizenship. Even assuming that what is alleged against the petitioner would amount to making false representation, playing fraud and concealment of true facts, it is not automatic to deprive citizenship. Having regard to the provisions contained in Section 10(3) of the Act, petitioner requested the Committee to consider various social activities taken up by him for uplifting the downtrodden and securing huge funds under Indo-German Collaboration, but strangely the Committee was silent on this aspect. The competent authority has not applied his mind as required by Section 10(3) and on recording of satisfaction as warranted by Section 10(3) of the Act. In the said view of the matter also, the decision of the competent authority dated 31.8.2017 amounts to a non-speaking order and made without application of mind and in violation of statutory provisions and therefore the same is *ex-facie* illegal.

5(9). The learned senior counsel further submitted that having regard to the nature of order passed on 31.8.2017 vis-à-vis the scope of Section 10(3) of the Act, petitioner preferred review under Section 15-A of the Act. Again, a mechanical order was passed rejecting the review. A reading of paragraph 7 of the order would show total non-application of mind. The

authority proceeds as if the scope of Section 10(3) was already considered and decision was made on 31.8.2017, whereas the same was not considered. He would further submit that travelling abroad within 12 months preceding the submission of application is not a disqualification, therefore citizenship cannot be cancelled on that ground. The findings of the Committee are erroneous and contrary to the statutory prescription as then in force.

6. Opposing the contention of learned senior counsel for petitioner, the learned Assistant Solicitor General, made following submissions:

6(1). According to learned Assistant Solicitor General, the petitioner submitted application to grant citizenship in Form III-B. Column 6 deals with 'Details of residence in India'. Against this column, petitioner indicated the date of entry in India as '22.1.2007'. Column 6(b) seeks declaration from the petitioner whether he resided in India throughout the period of 12 months immediately preceding the date of application and against this column he declared as 'YES', whereas, admittedly in the preceding 12 months, petitioner travelled to Germany on two occasions.

6(2). He would further submit that the petitioner was conscious of the Clauses in Form III-B and when he was not in India for a major portion of 12 months period, he could not have stated that he did not go abroad and the same amounted to suppression of fact. He would further state that the petitioner had the opportunity to correct the earlier statement made by him assuming that such statement was made *bona fide* when he was asked to submit the details of visits made abroad for the last 12 months, whereas petitioner stated that he has not visited any country/abroad for the last 12 months prior to making of application. This statement clearly shows that consciously and knowingly petitioner made

a false statement though he travelled to Germany on two occasions in 12 months period prior to making application. This would amount to suppression of true fact. Had he disclosed this fact, Central Government could not have granted citizenship. It thus amounts to playing fraud.

6(3). The learned Assistant Solicitor General further submitted that the petitioner having filed an elaborate explanation to the show cause notice, requested to give opportunity of personal hearing and to follow the mandatory provision of sub-sections (4) and (5) of Section 10 of the Act. He would further submit that sub-section (4) requires an opportunity to be afforded by the Central Government to the person against whom the order is proposed to be made by notice in writing, informing him of the ground on which it is proposed to be made and in turn thereof, such opportunity was afforded to him. Petitioner has made his submissions before the committee in oral as well as in writing. There was no requirement of providing further opportunity to the petitioner after the report of the committee.

6(4). He would further submit that the conclusions recorded by the committee are not challenged and have become final and therefore it is no more open to the petitioner to contend that the decision of the competent authority is not a speaking one. The decision of the competent authority is based on the findings recorded by the Committee which has afforded opportunity to the petitioner.

6(5). He would further submit that the contention of the petitioner that his travelling to Germany cannot be treated as travel abroad is not valid. What is required in Form-III-B of application is whether the petitioner resided in India for 12 months preceding the date of making application and he stated that he has resided. In response to the clarification sought

by the competent authority, petitioner disclosed that he did not travel abroad. Travelling to his native country also amounts to travelling abroad as the person was going out of country during the relevant period. Therefore, the statement of the petitioner that he did not travel abroad was not correct and is a deliberate misrepresentation, knowing fully well the consequences of such misrepresentation.

6(6). The learned Assistant Solicitor General further submitted that the deprivation of citizenship can be on any of the conditions specified in sub-section (2) of Section 10. According to clause (a) of sub-section (2) of Section 10, such deprivation can be, if the applicant obtained citizenship by means of 'fraud', 'false representation' or 'the concealment of any material fact'. In the case on hand, the petitioner not only made a false representation on his residential status, but also concealed the factum of his travel to Germany on two occasions. The travel to Germany was noticed only when relevant information was obtained from the Immigration authorities. He therefore earned the wrath of clause (a) of sub-section (2) of Section 10. Therefore, the competent authority has rightly deprived the citizenship of the petitioner.

6(7). By pointing out to the relevant paragraphs of order dated 31.8.2017 and order dated 13.12.2017, the learned Assistant Solicitor General submits that while passing orders, the competent authority also considered the scope of Section 10(3) of the Act and having regard to the status of the petitioner as a Public Representative, the competent authority viewed the statement made by the petitioner before securing citizenship as amounting to serious breach of trust and confidence reposed on him and held that the petitioner practised something unethical in obtaining the citizenship by fraudulent means. Thus, the

scope of Section 10(3) was also considered and it is no more open to the petitioner to contend otherwise.

6(8). Pointing out to the scope of Section 5(1)(f) of the Act as it stood prior to the amendment, he would submit that even as per the pre-amended provision, residence in India preceding 12 months period before submission of application was required, whereas petitioner was not residing continuously in India. Form III-B has to be read in consonance with Citizenship Rules, 1956 and the Act, as it stood prior to amendment and a conjoint reading of these three, makes it clear that even according to the then existing provision, continuous residence for 12 months prior to submission of application is mandatory. What was obvious on 12 months residency in India is explicitly made clear by virtue of amendment and the petitioner cannot seek to take advantage of the language employed prior to the amendment to cover up his deliberate false statements. He would therefore submit that the petitioner has not prosecuted his claim for citizenship in a *bona fide* manner and no equities lie with him.

6(9). He would submit that with *mala fide* intention, he deliberately suppressed and therefore played fraud and fraud vitiates everything, and once fraud is proved no equities can be pleaded and the petitioner is not entitled to any relief.

7. Learned counsel Sri V.Ravikiran Rao appearing for 5th respondent supplementing the submissions of learned Assistant Solicitor General, made the following submissions:

7(1). By referring to provisions of sub-section (6) of Section 10, he would submit that once the committee is appointed to enquire under sub-section (5) and committee submits its report, the Central

Government is bound by the report of the committee and no further steps are required to be taken by the Central Government before acting upon the report. Thus, petitioner was not entitled to further opportunity as sought to be contended. He would submit that in any case it is not shown how prejudice is caused to the petitioner. Petitioner could not have improved his position even if a notice was given to him. The facts are clear and apparent. As per the facts born on record, admittedly petitioner travelled abroad on two occasions in the 12 months period preceding the date of submission of application and this fact was not disclosed and on the contrary a false statement was made as if he never travelled abroad and that he continuously stayed in India for 12 months preceding submission of application. These facts cannot be improved and when the facts are apparent and clear, merely on the ground, assuming that such a notice is required as sought to be contended by the petitioner, the proceedings cannot be held as vitiated.

7(2). As a public representative, greater responsibility is thrust on petitioner to be fair in making his submissions and to stand as an example to the people who he claims to represent. This aspect was considered while examining the review filed by the petitioner.

7(3). He would submit that Section 15 enables a person aggrieved, to challenge the citizenship granted. Section 15 is couched in very wide terms and any person can challenge the citizenship granted. The 5th respondent has been contesting the elections and he is deprived his election to the State Legislature because of the petitioner claiming himself as the citizen of this country and contesting the elections, though he obtained citizenship by playing fraud. Cancellation of citizenship would mean that the petitioner would be disqualified to contest elections. The 5th respondent being the second highest preferred candidate by the

electorate of the constituency, he is the 'person aggrieved' and is entitled to challenge the citizenship granted to the petitioner and therefore, it cannot be said that the 5th respondent has no locus-standi to challenge the citizenship granted to the petitioner. Be that as it may, having regard to the words employed in Section 15, once a person brings to the notice of the Central Government that citizenship was obtained by playing fraud, it is ultimately for the Central Government to take a decision and once decision is made, the decision so made cannot be held as illegal merely because application under Section 15 was made by citizen of the country.

7(4). He would further submit that there is full compliance of the provisions of Section 10 of the Act. The competent authority has considered the scope of Section 10(3) and in compliance thereof, decision was made. The reasons mentioned in the order passed on 13.12.2017 would make it clear that the competent authority was conscious of the provision in Section 10(3) and was not extending the exception carved out in Section 10(3) having regard to the facts of the case and status of the petitioner. According to the learned counsel, from the antecedent facts, it has to be clearly inferred that there is full compliance of Section 10(3) and the petitioner is not entitled to continuation of citizenship.

7(5). Securing Indian Citizenship is not a matter of course. A person who is seeking citizenship has to be honest in his disclosure and has to make *bona fide* claim. Though the petitioner claimed to be a well educated person and is involved in various developmental activities and participates in several conferences and workshops, he cannot plead ignorance of statutory requirement of continuous stay for 12 months prior to making application and making false statements on his travel. That being so, it is clear that he played fraud on the Constitution of India

in securing citizenship and such person is not entitled to continuation of citizenship in India and it is not conducive to the well being and constitutional principles of this country.

7(6). He would further submit that travelling abroad literally means going to foreign land/country. Germany is foreign land/country to India and whether petitioner was a citizen of Germany has no relevance. What was relevant for the purpose of the provisions of the Act, Rules and the Forms prescribed therein and the information sought by the Central Government was with reference to the travels made out of the country and admittedly petitioner travelled out of the country and was not staying in India continuously preceding 12 months.

7(7). He would submit that Section 5(1) (f) is clear and unambiguous and in terms thereof, staying in India for 12 months is required.

7(8). According to the learned counsel, it is not conducive to public good to continue citizenship if a person plays fraud to secure citizenship and therefore petitioner is not entitled to continue citizenship of this country. Even assuming that certain procedures and formalities are not complied with and merely because certain provisions of law are not followed, it is not automatic for the writ Court to grant relief to a person who has not come before this Court with clean hands and who made misrepresentations to secure citizenship and cannot seek equitable relief from this Court.

8. The issue for consideration is whether the decision to cancel the citizenship of petitioner is valid and legal?

9. Part-II of the Constitution of India deals with Citizenship. It comprises of Articles 5 to 11. According to Article 5, a person born in

India is a citizen of this country. According to Article 9 if a citizen of India acquires citizenship of another country he/she would cease to be an Indian citizen. Article 11 vests power in the Indian Parliament to make law to regulate the right of citizenship. According to Article 10 a person who is granted citizenship continues to be citizen of this country subject to provisions of law that may be made by Indian Parliament. In exercise of power vested by Article 11, The Citizenship Act, 1955 (Act 57 of 1955) was made by Indian Parliament.

10. The Citizenship Act, 1955 (Act 57/1955) and the Rules made there under regulate all aspects of citizenship. The provisions of the Act, Rules, and Forms prescribed, to the extent relevant, read as under:

I. Section 5 (1)(f) of the Act: (i) prior to amendment:

(1) Subject to the provisions of this Section and such other conditions and restrictions as may be prescribed, the Central Government may, on an application made in this behalf, register as a citizen of India any person not being an illegal migrant who is not already such citizen by virtue of the constitution or of any other provision of this Act if he belongs to any of the following categories, namely:-

(f) a person of full age and capacity who, or either of his parents, was earlier citizen of independent India, and has been residing in India for one year immediately before making an application for registration.

Section 5 (1)(f) of the Act : (ii) after amendment

(1) Subject to the provisions of this Section and such other conditions and restrictions as may be prescribed, the Central Government may, on an application made in this behalf, register as a citizen of India any person not being an illegal migrant who is not already such citizen by virtue of the constitution or of any other provision of this Act if he belongs to any of the following categories, namely:-

(f) a person of full age and capacity who, or either of his parents, was earlier citizen of independent India, and (is ordinarily resident in India for twelve months) immediately before making an application for registration.

II) Rule 5-B of the Citizenship Rules, 1956 reads as under:

Rule 5B. Application for registration under clause (f) of sub-section(1) of section 5:

(1) An application for registration by a person of full age and capacity under clause (f) of sub-section (1) of Section 5 shall be made in Form III-B and shall be accompanied by an undertaking in writing that he or she will renounce the citizenship of his or her country in the citizenship of his or her country in the event of his or her application being sanctioned.

III) **Part-III-B to the extent relevant read as under:**

(6) Details of residence in India:

- a) Date of entry in India
- b) I have resided in India throughout the period : Yes/No
of 12 months immediately preceding the date of :
application :

IV) **Rule 8 of the Citizenship Rules, 2009 reads as under:**

Rule 8. Application for registration under clause (f) of sub-section (1) of Section 5

An application from a person for registration as a citizen of India under clause (f) of sub-section (1) of section 5 shall not be entertained unless—

- (a) the application is made in form VI;
- (b) he gives an undertaking that he shall renounce the citizenship of his country in the event of his application being sanctioned;
- (c) he is resident in India for a continuous period of at least one year on the date of making application; and
- (d) he makes the oath of allegiance as specified in the Second Schedule to the Citizenship Act, 1955.

V) **Paragraph-6 of Form-VI read as under:**

6. Details of residence in India:

- (a) date of entry in India ----
- (b) I have resided in India continuously : Yes/No
For a period of 12 months immediately
Preceding the date of application :

VI) **Section 10 of the Citizenship Act, 1955 reads as under:**

Section 10. Deprivation of citizenship

- (1) A citizen of India who is such by naturalization or by virtue only of clause © of article 5 of the Cionstitution or by registration otherwise than under clause b(ii) of article 6 of the Constitution or clause (a) of sub-section (1) of section 5 of this Act, shall cease to be a citizen of India, if he is deprived of that citizenship by an order of the Central Government under this Section.
- (2) Subject to the provisions of this Section, the central Government may, by order, deprive any such citizen of Indian citizenship, if it is satisfied that----
 - (a) the registration or certificate of naturalization was obtained by means of fraud, false representation or the concealment of any material fact; or
 - (b) the citizen has shown himself by act or speech to be disloyal or disaffected towards the Constitution of India as by law established; or
 - (c) that citizen has, during any war in which India may be engaged unlawfully traded or communicated with an enemy or been engaged

- in, or associated with, any business that was to his knowledge carried on in such manner as to assist an enemy in that war; or
- (d) that citizen has, within five years after registration or naturalization been sentenced in any country to imprisonment for a term not less than two years; or
 - (e) that citizen has been ordinarily resident out of India for a continuous period of seven years, and during that period, has neither been at any time a student of any educational institution in a country outside India or in the service of a government of India or of an international organization of which India is a member, nor registered annually in the prescribed manner at an Indian consulate his intention to retain his citizenship of India.

3) The Central Government shall not deprive a person of citizenship under this section unless it is satisfied that it is not conducive to the public good that the person should continue to be a citizen of India.

4) Before making an order under this section, the Central Government shall give the person against whom the order is proposed to be made notice in writing informing him of the ground on which it is proposed to be made, and if the order is proposed to be made on any of the grounds specified in sub-section (2) other than clause (e) thereof, of his right, upon making application therefore in the prescribed manner, to have his case referred to a committee of inquiry under the section.

5) If the order is proposed to be made against a person on any of the grounds specified in sub-section (2) other than clause (e) thereof and that person so applies in the prescribed manner, the Central Government shall, and in any other case it may, refer the case to a Committee of Inquiry consisting of a chairman (being a person who has for at least ten years held a judicial office) and two other members appointed by the Central Government in this behalf.

(6) The Committee of Inquiry shall, on such reference, hold the inquiry in such manner as may be prescribed and submit its report to the Central Government, and the Central Government shall ordinarily be guided by such report in making an order under this section.

11. As per Section 3, a person born in India shall be the citizen of India by birth. Section 5 enables a person who is not a citizen of India to apply for citizenship by registration. On application made by non-citizen, the Central Government shall consider, process and if satisfied, grant Indian Citizenship by certification.

12. Section 5 of the Act provides categories of persons, who can apply for Indian citizenship. Petitioner falls into category (f) of Section 5(1). When petitioner applied for citizenship, Section 5 (1) (f) provided the requirement as *“has been residing in India for one year immediately before making an application for registration”*. By way of amendment Act 1 of 2015, the words *“has been residing in India for one year”* were replaced by the words *“in ordinarily resident of India for twelve months”*.

Rule 5B of the 1956 Rules, only requires an applicant to submit application in Form-III(B). In this form, against clause 6(b), the applicant is required to mark 'yes or no' on the statement, which would read as applicant is residing in India throughout the period of 12 months immediately preceding the date of application. In other words, the Form III-B improves upon the requirement of residence in India in the preceding 12 months, though the provision as it stood then in Section 5(1)(f) did not prescribe such requirement. Amended provision makes this requirement explicit.

13. Section 10 deals with deprivation of citizenship. As per sub-section (2), the Central Government is competent to deprive Indian Citizenship if any of the conditions therein are attracted. As per sub-section 2 (a), which is relevant for the purposes of this case, the deprivation can be on the ground of obtaining citizenship by means of 'fraud', 'false representation' or 'concealment of any material fact'. As per sub-section (1), once an order is passed under sub-section (2), the person who is deprived of citizenship ceased to be citizen of India.

14. 5th respondent lodged complaint with the competent authority requesting to invoke power under Section 10 (2) to deprive citizenship of petitioner. He alleged that petitioner did not reside in India continuously in 12 months period preceding submission of application for citizenship. On enquiry, it was revealed that on two occasions petitioner travelled to Germany and was not continuously residing in India. This fact was not disputed by the petitioner. Further on 21.11.2008, Government of India addressed a letter to the Secretary, Home (Passport) Department, the then Government of Andhra Pradesh requesting the State Government to obtain information from the petitioner about the details of his visits abroad if any were made during the last 12 months preceding the date of

making citizenship application. Petitioner replied on 28.11.2008 stating that he has “not visited any countries abroad for 12 months”. Petitioner was confronted with this statement vis-à-vis the information available with the respondents to allege that petitioner suppressed the factum of his visit to Germany on two occasions in 12 months period preceding submission of application for citizenship and the same would amount to suppression of true and correct facts, making a misleading statement and, therefore, liable for action under the Act.

15. On a careful reading of Section 5 (1)(f) as it stood then, it is apparent that the provision did not require a person applying for citizenship to be ordinarily residing in India continuously for a period of 12 months preceding making an application for citizenship. However, when petitioner applied, Form-IIIB under 1956 Rules was in force. Rule 5B requires applicant to submit his application in Form-IIIB. Clause 6(b), of Form III-B, requires clear statement from the applicant i.e., he has resided in India throughout the period of 12 months. Petitioner stated ‘yes’, though he did not reside in India continuously. Whether continuous stay in India was required as a condition precedent to apply for citizenship ought to have been left to the competent authority, but petitioner could not have assumed that there was no such requirement and answered in positive terms as if he resided in India continuously, when he did not reside in India continuously. When clarification was sought from him, he ought to have clarified about the factual position and ought to have brought to the notice of competent authority about the requirements of section 5(1)(f), leaving it to the competent authority to decide. In other words, petitioner gave wrong declaration when he submitted his application and made wrong statement when a clarification was sought from him.

16. The contention of learned senior counsel that petitioner was a citizen of Germany and he travelled to his native country and, therefore, it did not amount to travel abroad, cannot be countenanced. The ordinary meaning of 'abroad' is 'in or to a foreign country or countries'. For India, Germany is a foreign country and travel to Germany would amount to 'travelling abroad to a foreign country'. Whether such foreign country was a native country of the petitioner has no relevance for the purpose of elucidating the information from the petitioner and petitioner ought to have been careful in responding to the information sought from him and ought to have been fair in stating true facts. Petitioner is trying to cover up his delinquency by stating that he travelled to his native country and same does not amount to travel abroad. Person seeking citizenship of India has to be fair and should disclose all relevant facts for consideration to grant citizenship. Thus, what was disclosed by petitioner was a clear misstatement of fact/false representation. In his over anxiety to gain citizenship of this country, petitioner could not have made such wrong statement, misleading the competent authority in processing the application to grant citizenship. Therefore, the action initiated and what was alleged cannot be said as invalid nor can it be described as one made in excess of power vested in the competent authority.

17. The next issue for consideration is on finding that false representation/misstatement of fact was made by petitioner, would it *per force* result in deprivation of citizenship ?

18. There are two aspects to the issue of deprivation of citizenship. First is, whether conduct of person amounted to violation of any of the clauses in Section 10 (2) and if so, whether by such conduct person's continuation of the Indian citizenship is '*not conducive to public good*'.

19. Section 10(2) of the Act incorporates conditions which may entail deprivation of citizenship. However, Indian Parliament has not stopped at that stage. It has consciously incorporated Section 10 (3). Section 10(3) of the Act imposes restriction on exercising power under Section 10(2) to deprive citizenship. At this stage, it is necessary to look into the language employed in sub-sections (2) and (3) of Section 10. In sub-section 10 (2) crucial words read as 'Central Government **may** deprive'. In sub-section (3) crucial words read as 'Central Government **shall** not deprive'. In other words, Section 10 (2) is an enabling provision vesting discretion in the competent authority to initiate or not to initiate action on the allegation of a person violating any or all of the clauses in that sub-section. If such discretion is exercised, action is initiated, enquires into the allegation and comes to the conclusion that the person has violated any or all of the clauses in Section 10(2), he must first satisfy whether by such violation continuation of citizenship of such person is not conducive to public good. Only on such satisfaction can a person be deprived of citizenship. The distinct phraseology employed in two subsections clearly brings out the legislative intent. It expresses clearly that mere violation of clauses in section 10 (2) is not automatic to deprive citizenship. Two aspects have to be satisfied to deprive citizenship.

20. It would thus be apparent, that any and every statement made by a person to secure citizenship is not to be viewed as *per se* grave to deprive citizenship. Once the conditions specified in sub-section (2) are attracted and opinion to that effect is formed, the competent authority is required to satisfy itself that in view of the violation of the clauses in Section 10(2) it is no more conducive to public good to continue his citizenship. In other words, even after the competent authority arrives at a firm opinion that the person has earned disqualification as

enumerated in sub-section (2) and citizenship can be deprived, it would not automatically culminate in depriving the citizenship merely on such violation, but Central Government must be satisfied that continuation of citizenship of that person is 'not conducive to the public good'. Only then citizenship should be deprived. This consideration is a mandatory requirement of the scheme of deprivation. No exception is made even when allegation of fraud in securing citizenship is proved. It is thus apparent that the Act views deprivation as a serious issue and such power has to be invoked in exceptional circumstances on assessing the conduct and character of the person having regard to parameters of Section 10(3).

21. While the committee appointed under Section 10 (5) was enquiring into the allegation, on 10.02.2017, petitioner submitted application requesting the committee to direct the Central Government to consider the case of petitioner under Section 10(3) of the Act. From the report of the committee, it is seen that the committee has not considered this aspect. It is useful to extract the operative portion of the opinion expressed by the committee in its report dated 10.03.2017. It reads as under:

"In our considered opinion, on the receipt of above communication from Government of India, Dr. Ramesh Chennamnaneni was supposed to make honest disclosure about his visits to Germany of the 12 months period prior to making the application for citizenship on 31.03.2008. in the said disclosure he could have taken the stand that visit to Germany should not be considered as a visit abroad and should have left to the Government of India to take appropriate decision. By not making honest disclosure about his visits to Germany and, on the other hand, by choosing to make false representation in his communication dated 27.11.2008, our conclusion is that Dr. Ramesh Chennamaneni obtained the Certificate of Indian Citizenship by playing fraud upon the Government of India. It is held accordingly."

22. There is no discussion in the Committee report on the effect of such representation vis-à-vis Section 10 (3). From the reading of the order of Central Government dated 31.08.2017, it is seen that there is no discussion on the scope of Section 10(3) in the order. In fact there is no discussion in the order except accepting the report of the committee and holds that the petitioner earned disqualification and 'ceased to be a citizen of India'.

23. The learned senior counsel for petitioner asserted that the order dated 31.8.2017 is not a speaking order; prior to passing the order no notice was issued to him; he was not supplied the copy of the report; and petitioner was deprived of an opportunity to explain his stand vis-à-vis the report of the committee. On the contrary, learned Assistant Solicitor General as well as learned counsel appearing for 5th respondent relied on Section 10(6) of the Act to contend that once committee enquires into and submits its report, the same is binding on the Central Government and no further action is required to be done.

24. On plain reading of sub-section (6), the said contention of the respondents cannot be countenanced. According to this provision, Central Government should ordinarily be guided by the report. It does not dispense with supply of copy of the report of the committee to the person and consideration of his objections. When the report is adverse to the person and acceptance of recommendation in the report would deprive citizenship, affected person ought to have been put on notice and called for his explanation before taking a final decision. Such course is mandatory when report is adverse and acceptance of such report results in evil consequences, i.e., deprivation of citizenship. Section 10(6) only requires competent authority to be guided by the report. The language employed is clear and unambiguous. Competent authority is not bound

by the report. What it would mean is once a committee is appointed under Section 10 (6), the competent authority need not undertake the exercise of conducting enquiry on his own. The report of the Committee would aid him to take decision. That being so, competent authority could not have dispensed with issuing notice and an opportunity to be heard. Further, from the material on record, it does not appear that competent authority consciously decided not to issue notice.

25. Having regard to the scheme of deprivation and its consequences, supplying the copy of report of the committee and consideration of explanation offered thereon is a necessary concomitant of due opportunity. It must be read into Section 10(3). In the facts of this case, it cannot be said that issuance of notice would be an empty formality.

26. On the aspect of due opportunity when decision of competent authority results in penal consequences, I am guided by the precedent decisions rendered by Hon'ble Supreme Court, few of which are delineated hereunder:

26.1. While exhaustively considering the scope of application of principles of natural justice, a seven member Constitution Bench of the Supreme Court in **MANEKA GANDHI Vs UNION OF INDIA**¹ observed:

"12. This Court, speaking through Hegde, J., in *A.K. Kraipak case* [(1969) 2 SCC 262 : (1970) 1 SCR 457] quoted with approval the above passage from the judgment of Lord Parker, C.J., and proceeded to add : (SCC p. 272, para 20)

"The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it.... Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice

¹ (1978) 1 SCC 248

one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far-reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in *Suresh Koshy George v. University of Kerala* [(1969)1 SCR 317] the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principles of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of the case.”

This view was reiterated and re-affirmed in a subsequent decision of this Court in *D.F.O., South Kheri v. Ram Sanahi Singh* [(1971) 3 SCC 864] . ***The law must, therefore, now be taken to be well settled that even in an administrative proceeding, which involves civil consequences, the doctrine of natural justice must be held to be applicable.***

(emphasis supplied)

26.2. In **CANARA BANK Vs V K AWASTHY**², it is held:

“14. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression “civil consequences” encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.”

(emphasis supplied)

26.3. In **OM KUMAR Vs UNION OF INDIA**³ Supreme Court observed:

“27. The principle originated in Prussia in the nineteenth century and has since been adopted in Germany, France and other European countries. The European Court of Justice at Luxembourg and the European Court of Human Rights at Strasbourg have applied the principle while judging the validity of administrative action. But even long

² (2005)6 SCC 321

³ (2001) 2 SCC 386

before that, the Indian Supreme Court has applied the principle of “proportionality” to legislative action since 1950, as stated in detail below.

28. By “proportionality”, we mean the question whether, while regulating exercise of fundamental rights, the appropriate or least-restrictive choice of measures has been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of the administrative order, as the case may be. Under the principle, the court will see that the legislature and the administrative authority “maintain a proper balance between the adverse effects which the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind the purpose which they were intended to serve”. The legislature and the administrative authority are, however, given an area of discretion or a range of choices but as to whether the choice made infringes the rights excessively or not is for the court. That is what is meant by proportionality.”

(emphasis supplied)

26.4. In **UNION OF INDIA Vs RAM LAKHAN SHARMA**⁴, Supreme Court held:

“34.When the statutory rules are silent with regard to the applicability of any facet of principles of natural justice the applicability of principles of natural justice which are not specifically excluded in the statutory scheme are not prohibited. When there is no express exclusion of particular principle of natural justice, the said principle shall be applicable in a given case to advance the cause of justice.”

(emphasis supplied)

27. Further, petitioner has specifically asserted before the committee to apply section 10(3) to his case but the committee was silent on the plea raised by the petitioner. It is also appropriate to note, in W.P.No.18259 of 2017 it was alleged that representation made by petitioner on 10.02.2017 seeking to consider the aspect under Section 10(3) was not being looked into. The Court disposed of the writ petition by order dated 07.06.2017 directing to deal with the representation of petitioner dated 10.02.2017 in accordance with the provisions of the Citizenship Act, 1955. Thus, it was all the more necessary to consider the application. These facts could have been brought to the notice of

⁴ (2018)7 SCC 670

competent authority and to persuade him to take a different view if petitioner was put on notice after the report of the Committee.

28. Further, even if Committee has not adverted to scope of Section 10(3), the competent authority is bound by the mandate of Section 10 (3). Sub-section (6) has to be read in consonance with other sub sections, and the scheme of deprivation. Provision in Section 10 (3) being mandatory, the competent authority was required to satisfy himself on desirability of continuation of citizenship before taking a decision. No such satisfaction was recorded by competent authority.

29. The order dated 31.08.2017 is not a speaking order. It does not assign reasons in support of the decision. It only goes by the report of the Committee. There is no independent application of mind.

30. Further, petitioner filed review on 08.09.2017 praying to review the decision made on 31.08.2017. In this review, petitioner alleged that though petitioner made representation on 10.02.2017, to consider his case under section 10(3) and to make recommendation accordingly to the Central Government and though High Court directed to consider such application, the same was not considered by the committee. Petitioner also contended that enquiry report was not furnished to him, and that no notice was issued and the same would be amounting to violation of principles of natural justice. It was also contended that non-consideration of application of petitioner under Section 10(3) was illegal.

31. In the order dated 13.12.2017 rejecting review, it is asserted that the requirement of residing in India throughout the period of 12 months immediately preceding the date of application was mandatory and petitioner did not stay in India and that petitioner suppressed the true facts and, therefore, adopted fraudulent means to obtain citizenship. It

is further ordered that no new facts have been brought out by the applicant in the review on the claim for continuation of citizenship. It was stated that as a public representative, petitioner should show impeccable integrity to set an example for others, whereas petitioner practised unethical means and adopted fraudulent means to suppress material facts for personal gain. It was also observed that the issue on scope of section 10(3) was already considered when the decision was made on 31.08.2017.

32. On going through the report of the Committee, and the order dated 31.08.2017, it is apparent that scope of section 10(3) was not considered. There was no discussion on contentions urged by petitioner in his review. These aspects would show that there was no application of mind and issue was mechanically considered and disposed of at the stage of review also.

33. Further, the issue for consideration is as to how important recording of satisfaction is and how to arrive at satisfaction by the competent authority.

34. It is appropriate to note that the Act and the rules are silent on how to record satisfaction. It appears, no guidelines are notified by the Central Government to guide the competent authority while considering the issue of deprivation of citizenship under Section 10 of the Act and the terms 'false representation', 'concealment of any material fact', 'fraud' and 'conduciveness to the public good' are not defined in the Act, Rules or elsewhere. No precedent pronouncements on the issue are placed before me. It is an un-charted road. This required the proverbial *travelling abroad* to consider how law has evolved in other countries on deprivation of citizenship, more particularly Commonwealth countries.

35. On 7.8.1914 United Kingdom notified the British Nationality and Status of Aliens Act, 1914. 1914 Act, is an Act consolidating various enactments notified earlier. It appears, the first British Nationality Act is traceable to 1730. In the year, 1948, British Nationality Act was notified. This was superseded by British Nationality Act, 1981. All these enactments deal with various aspects of citizenship including deprivation. Section 7 of 1914 Act deals with deprivation of citizenship. According to Section 7(1) if the Secretary of State is satisfied that certificate of nationalisation was obtained by **'false representation'** or **'fraud'** or **'by concealment of material circumstances'**, he should revoke the certificate. Section 20 of the 1948 Act, deals with deprivation of citizenship. There is a clear departure from the Scheme of 1914 Act on issue of deprivation. According to Section 20(2) Secretary of State **may** deprive citizenship if he is satisfied that registration certificate was obtained by means of **'fraud'**, **'false representation'** or **'concealment of any material fact'**. Sub section (5) is couched in mandatory terms. It requires the Secretary of State to satisfy himself that continuation of citizenship of such person is not conducive to the public good. Thus, as against provision in Section 7(1) of the Act, 1914, a departure is made. First, it vests discretion in Secretary of State to consider whether person indulged in **'fraud'** / **'false representation'** / **'concealment of any material fact'** and once such consideration was made, he should satisfy that continuation of citizenship is not conducive to public good. Only then can the person's citizenship be deprived.

36. Making further departure, 1981 Act vests complete discretion on both aspects {Section 40 (2) and (3)}. Thus, even if Secretary of State is satisfied that continuation of citizenship is not conducive to public good, he may deprive, but not automatic. It goes further to add 'statelessness'

as an aspect. In other words, even after Secretary of State is satisfied and decides to deprive, he is required to consider whether such deprivation would result in making that person stateless. In such a case he may not deprive citizenship even if he was satisfied that continuation of citizenship of that person is 'not conducive to public good'.

37. On 27th June, 1946, Canada notified the Canadian Citizenship Act. Section 21 deals with revocation of citizenship. It vests discretion in the Governor in Council to record satisfaction holding that a person has obtained a certificate of naturalization or Canadian citizenship by 'false representation' or 'fraud' or 'by concealment of material circumstances'. (Section 21 (1)(b) of Canada Citizenship Act). According to sub-section (3), it is permissible to the Governor in Council to direct conducting of enquiry by a Commission presided over by a person appointed by the Governor in Council, who holds or has held high judicial office. This provision also vests discretion in the Governor in Council to conduct enquiry by the superior Court of the province. It is thus apparent that Canadian Act, 1946 envisaged enquiry by an independent Commission headed by the person, who holds or has held high judicial office or by the superior Court before taking a decision to deprive citizenship.

38. In supersession of the earlier Act, Canada notified new Citizenship Act in the year 1985. Section 10 of the Act deals with revocation of citizenship. This Act was amended in the year 2017 to strengthen 'Canadian Citizenship Act'. By this amendment, new grounds for revocation of citizenship are introduced. It has made provisions to streamline revocation process. Earlier there were three stages for revocation, i.e., by Minister, by Federal Court and Governor in Council. Under the new revocation provisions, the role of Governor in Council is dispensed with except in rare cases. As per the amended provision,

Minister is vested with discretion to revoke person's citizenship, on he being satisfied, on a balance of probabilities, that the person obtained citizenship by 'false representation' or 'fraud' or 'by knowingly concealing material circumstances'. According to Section 10.1 (1), if the Minister has reasonable grounds to believe that a person obtained the citizenship by any of the three grounds mentioned above, he can revoke citizenship only if he seeks a declaration stating the grounds in an action he commences before the Court of law and the Court makes such a declaration. In other words, citizenship can be revoked by the Minister only after a declaration is given by the competent Court. As per Section 10.4, any decision made under Sections 10(2) and 10.1(2) would not operate to authorize any decision/action/declaration that would be in conflict with any international human rights instrument regarding 'statelessness' to which Canada is signatory.

39. Commonwealth of Australia notified Nationality Act, 1920 on 02.12.1920. According to Section 12 (1), on being satisfied that a certificate of naturalization was secured by obtaining false representation/fraud/or by concealment of material circumstances, the Governor General should revoke the certificate by an order. 1920 Act was superseded by the Australian Citizenship Act, 1948, which was then repealed by the Australian Citizenship Act, 2007. Section 34 deals with revocation. It vests discretion in the Minister to revoke citizenship if the same was secured by fraud. According to sub-section (3) of Section 34, it mandates not to revoke citizenship if the revocation would result in a person not becoming a national or citizen of any country. Sub-section (8) defines what is meant by 'fraud'. According to this sub-section, under various provisions mentioned therein, if a person is convicted of an offence before the approval was given by the Minister and that such a Act

or omission that constituted the offence is connected with the Minister approving the applicant becoming an Australian citizen, it would amount to fraud. Thus, restrictive scope of consideration on fraud is mentioned in this section. Sub-section (6) defines 'migration related fraud'. If any person is convicted of an offence mentioned in the said section before Minister gave the approval and that such act or omission that constituted the offence was connected with the person's entry into Australia or the grant to the person of a Visa or of a permission to enter and remain in Australia, it amounts to fraud. Sub-section (7) clarifies what is meant by material fact. It holds that Minister should be satisfied that the act or omission constituting the offence was not in any way, directly or indirectly, material to the person becoming a permanent resident. According to sub-section 2(c) of Section 34, Minister has to be satisfied that it would be contrary to the public interest for the person to remain an Australian citizen.

40. United States of America notified Nationality Act, 1940. Section 338 deals with revoking and setting aside the order admitting the person as citizen of America. It requires the district attorneys of the concerned district, upon an affidavit showing good cause thereof, to institute proceedings in any Court, in the judicial district in which naturalized citizen would reside, on the ground of fraud or on the ground that such order and certificate of naturalization was illegally procured. Thus, the revocation of citizenship is preceded by proceedings in the Court of law and based on the declaration given by the Court of law, citizenship can be revoked.

41. On a review of enactments brought out by the various countries on citizenship, revocation of citizenship is preceded by a detailed procedure and affording due opportunity to the individual and such revocation is

subject to determination as to whether it would not be conducive to the public good for retention of citizenship / that it was a grave misdemeanour on the part of the individual necessitating deprivation of the citizenship / would not make him stateless etc. Enough safeguards are provided before determining the continuation of citizenship status of a person. In Canada and United States of America more rigorous procedure is prescribed before depriving citizenship.

42. There is a common thread running through Citizenship Acts in all Commonwealth countries. Mostly they draw inspiration from the United Kingdom enactments on Nationality. It is also apparent from these enactments that deprivation is not automatic even if a person is stated to have made false representation to secure citizenship.

43. The Citizenship Act, 1955 is almost the adoption of British Act, 1948 with certain modifications to suit Indian conditions/requirements. Section 20 of British Act is telescoped into Section 10 of the Citizenship Act, 1955. Section 20 (2) of British Nationality Act, 1948 is similar to Section 10 (2) (a) of Citizenship Act and Section 20 (5) to that of Section 10 (3). British Nationality Act, 1981 was notified in supersession of 1948 Act. In 1981 Act, Section 40 deals with deprivation of citizenship. Section 40(3) is analogous to Section 10(2)(a) of Act, 1955 and Section 40(2) is similar to Section 10(3). For the first time, 1981 Act deals with statelessness of a person and provides further safeguards against it. In United Kingdom, as things stand now, after competent authority comes to conclusion that a person obtained citizenship by means of fraud, false representation or concealment of material facts, he has to ensure two aspects before depriving citizenship. Firstly, he has to satisfy that continuation of citizenship is not conducive to public good; and secondly, he has to satisfy that deprivation would not make a person stateless.

Only in exceptional circumstances, even if a person becomes stateless, he can be deprived citizenship, if conditions mentioned in Section 40 (4A) are satisfied.

44. The three British enactments are also silent on how to record the satisfaction and to deprive citizenship. Under the 1981 Act, British Government notified detailed guidelines on various aspects of citizenship including power to deprive the citizenship. These guidelines point out how power to deprive citizenship ought to be exercised and what is meant by 'conduciveness to the public good'.

45. Part-1 in Chapter 55, deals with deprivation. 55.4 incorporates definitions to terms 'false representation', 'concealment of any material fact', 'fraud' and 'conduciveness to the public good'. Para-55.4.4 of British Government, which defines this term, which reads as under:

"55.4.4. "Conduciveness to the Public Good" means depriving in the public interest on the grounds of involvement in terrorism, espionage, serious organised crime, war crimes or unacceptable behaviours."

46. Reading of these guidelines would *prima facie* show that United Kingdom would deprive citizenship of a person only if he is involved in terrorism, espionage, serious organised crime, war crime or unacceptable behaviour. Thus, every violation may not result in deprivation, even if fraud is proved. This is also apparent from provision in Section 10(3) of Citizenship Act, 1955.

47. Several countries have made provisions not to deprive citizenship if it results in a person becoming stateless. In the modern context of Nation State once a citizenship of a country is granted, person has to forego citizenship of other country and cannot have citizenship of two countries. Further, depriving citizenship of one country would not restore

citizenship of another country. In this context, it is appropriate to note that though the 1955 Act, is silent on statelessness while arriving at the satisfaction of whether the continuation of citizenship is not in public good, this factor may also require consideration. As averred in additional affidavit and as required by the Act, 1955, petitioner lost citizenship of Germany. Depriving citizenship of India would not automatically restore his German citizenship.

48. It must be noted that deprivation of citizenship is a serious aspect as it would affect a person's right to live in India, and it may also result in making the person stateless.

49. United Nations brought out Convention on the Reduction of Statelessness, which was adopted on 30.08.1961 and entered into force on 13.12.1975. It complements the 1954 convention relating to the Status of Stateless Persons. These two conventions would address the issue of statelessness. One of the issues the convention seeks is prohibiting the withdrawal of citizenship from the States' nationals, either through loss, renunciation or deprivation of nationality, if it would result in statelessness. Article 7(1)(a) holds that if the law of a contracting state permits renunciation of nationality, such renunciation should not result in loss of nationality unless the person concerned possesses or acquires other nationality. According to Article 8, a contracting State should not deprive of a person of its nationality if such deprivation would render him stateless. Clause 2(b) carves out an exception to this requirement, where it is obtained by misrepresentation or fraud. However, it appears, so far India has not signed the treaty. The United Nations conventions resolve not to deprive citizenship as a matter of course. No doubt, it is the prerogative of a sovereign state whether to continue citizenship of a person or to deprive, but these

Conventions, even if a nation is not a signatory, throw enough light on scope of exercise of such power.

50. Viewed from all the above aspects, the decision to deprive citizenship of petitioner, impugned herein, is not sustainable. It is accordingly set aside. Matter is remitted to Competent Authority for consideration from the stage of submission of report by the Committee. Since, a copy of report is already available with petitioner, he may file his objections. 5th respondent is also entitled to file his response. Petitioner and 5th respondent, respectively, shall exchange their written submissions, if any made, before they are submitted to the competent authority. Written submissions, if any, may be filed within three weeks from the date of receipt of copy of this order. After receipt of written submissions and/or expiry of time mentioned above, as the case may be, the Competent Authority shall fix a date to hold personal hearing, on which date both parties shall appear without fail. He shall consider the written and oral submissions, if any made, and the material on record. He shall also consider whether by his conduct, continuation of Indian citizenship status to petitioner 'is not conducive of the public good'. On such consideration, he shall take a decision as warranted by law, assigning reasons in support of the decision and communicate the decision to petitioner and 5th respondent. The entire exercise shall be completed within twelve weeks from the date of receipt of copy of this order.

51. The Writ Petition is accordingly allowed. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 10.07.2019
DA/KKM

HONOURABLE SRI JUSTICE P.NAVEEN RAO



WRIT PETITION No.163 of 2018

Date: 10.07.2019

DA/KKM