

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION NO.24847 OF 2019

ORDER:

This writ petition is filed seeking the following relief:

“..to issue a Writ of Mandamus or any other appropriate Writ, Order or Orders, Direction or Directions to declare the action of the 1st respondent in denying the status of Overseas Citizen of India to the petitioner vide communication put up on the website dated 06.11.2019, as arbitrary, illegal and unconstitutional and to set aside the same and direct the 1st respondent to grant the status of Overseas Citizen of India in favour of the petitioner as has been granted to his parents and sister, and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

Heard learned counsel for the petitioner, the Assistant Solicitor General appearing for respondent Nos.1 to 3 and the Government Pleader for Home appearing for respondent No.4.

It has been contended by the petitioner that he was born in India and his parents are Iranian nationals. The petitioner further submits that he has obtained Iran pass port and he has been frequently visiting India on visit visa from time to time. The petitioner further submits that when he was residing in India on stay visa, he has applied for Overseas Citizenship of India on 19.02.2016 and his case was considered by the respondents and rejected *vide* orders dated 06.11.2019 without assigning any reasons. Challenging the same, the present writ petition is filed.

Counsel for the petitioner had contended that as per Rule 32 (2) of the Citizenship Rules, 2009, if any adverse information is received by

the respondents against the petitioner for grant of Overseas Citizenship of India, then the respondents must conduct enquiry so as to ascertain whether the said information is correct or not and accordingly thereafter reject or approve the grant of Overseas Citizenship of India, but, in the instant case, no reasons have been assigned and no enquiry was conducted by the respondents for rejecting the case of the petitioner.

Counsel for the petitioner further contended that in the counter affidavit, the respondents are trying to justify their action by stating that the petitioner was working as translator in Iranian Consulate and thereby violated the visa norms and, accordingly, the case of the petitioner was rejected. Counsel for the petitioner further contended that if the impugned order stands on its own, it must stand by its own reasons, but the respondents cannot supplement the reasons in the form of counter affidavit, and to that effect, counsel for the petitioner placed reliance on the judgment of the Supreme Court in **Mohinder Singh Gill v. Chief Election Commissioner**¹, wherein at paragraph 8 it is observed as under:

“The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in *Gordhandas Bhanji* (AIR 1952 SC 16) (at p. 18):

¹ AIR 1978 SC 851

“Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

Orders are not like old wine becoming better as they grow older.”

Therefore, counsel for the petitioner contended that the impugned order is liable to be set aside as the same was passed without following Rule 32(2) of the Citizenship Rules, and let the respondents be directed to consider the case of the petitioner afresh in terms of Rule 32 (2) of the Citizenship Rules, by duly giving an opportunity to the petitioner.

The Assistant Solicitor General had contended that the respondents have conducted enquiry and during the course of enquiry, it has come to the light that the petitioner has worked as a part-time translator in the Iranian Consulate and as per the stay visa conditions, the petitioner was not supposed to work during his stay in India. It is further submitted by the Assistant Solicitor General that since the petitioner has violated the stay visa conditions, the case of the petitioner was rightly rejected and there are no merits in the writ petition and the writ petition is liable to be dismissed.

This Court, having considered the submissions of learned counsel for respective parties, is of the considered view that the respondents have rejected the case of the petitioner without assigning any reasons and a

perusal of the rejection order also would disclose that the respondents have not followed Rule 32 (2) of the Citizenship Rules and the respondents are trying to justify their action in the form of counter, which is not permissible in view of the law laid down by the Honourable Supreme Court in **Mohinder Singh Gill v. Chief Election Commissioner** referred to above. Therefore, the impugned order dated 06.11.2019 is liable to be set aside.

Accordingly, the writ petition is allowed and the impugned order dated 06.11.2019 is set aside. The respondents are directed to consider the case of the petitioner afresh strictly in terms of Rule 32 (2) of the Citizenship Rules by duly giving an opportunity to the petitioner and pass appropriate orders, in accordance with law, within a reasonable period of time, preferably within eight weeks from the date of receipt of a copy of this order. It is needless to say that the respondents shall not deport the petitioner till his application is considered as stated above. It is further made clear that the petitioner shall co-operate with the authorities in conducting a detailed enquiry in terms of Rule 32 (2) of the Citizenship Rules. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

3rd February, 2020
v v