

Ghaurul Hasan And Others vs The State Of Rajasthan on 5 April, 1961

Equivalent citations: 1967 AIR 107, 1962 SCR (1) 772, AIR 1967 SUPREME COURT 107

Author: A.K. Sarkar

Bench: A.K. Sarkar, Bhuvneshwar P. Sinha, S.K. Das, K.C. Das Gupta, N. Rajagopala Ayyangar

PETITIONER:
GHAURUL HASAN AND OTHERS

Vs.

RESPONDENT:
THE STATE OF RAJASTHAN

DATE OF JUDGMENT:
05/04/1961

BENCH:
SARKAR, A.K.
BENCH:
SARKAR, A.K.
SINHA, BHUVNESHWAR P.(CJ)
DAS, S.K.
GUPTA, K.C. DAS
AYYANGAR, N. RAJAGOPALA

CITATION:
1967 AIR 107 1962 SCR (1) 772

ACT:
Citizenship-Order of registration by Collector-Cancellation of such order by him-Validity of cancellation-Citizenship Act, 1955 (57 of 1955), ss. 5(1)(a), 10(2)(a).

HEADNOTE:
The petitioners were granted certificates of registration as Indian Citizens under s. 5(1)(a) of the Citizenship Act, 1955, by the Collector of Nagaur. Later the Collector passed orders canceling the certificates. The power to cancel was based on

S. 10 (2)(a) Of the Citizenship Act, 1955, and S. 21 Of the General Clauses Act, 1897.

Held, that S. 10(2)(a) of the Citizenship Act, 1955, had no application for, apart from any other considerations, that section could apply only where the registration was obtained by means of fraud, false representation or concealment of any material fact and no such thing had been proved.

The Collector had no power under S. 21 of the General Clauses Act, 1897, either to cancel the order of registration as citizens which had been made by him since the orders mentioned in that section are not of the kind contemplated by S. 5 Of the Citizenship Act.

The orders canceling the registration are set aside.

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition No. 60 of 1958. Writ Petition under Art. 32 of the Constitution of India for enforcement of Fundamental Rights.

H. J. Umrigar and A. G. Ratnaparkhi, for the appellant. S. K. Kapoor and P. Gupta, for the respondents. 1961. April 5. The Judgment of the Court was delivered by SARKAR, J.-The petitioners were born in India before the commencement of the Constitution. Sometime in 1947, they went away to the territory since included in Pakistan. They used to come to India from time to time and the last time that they came, was in April, 1956. Each time they came to India, they did so on passports issued by the Government of Pakistan.

In December., 1956, they applied to the Collector of Nagaur in Rajasthan where they resided, for registration as citizens of India. On December 19, 1956, the Collector of Nagaur issued certificates of registration to them under s. 5(l)(a) of the Citizenship Act, 1955. Subsequently on February 5, 1957, two of the petitioners made applications for grant of citizenship certificates to their minor children under s. 5(l)(d) of that Act. On February 6, 1957, an officer of the Collectorate of Nagaur took back the registration certificates issued to petitioners Nos. 2 and 3 on the representation that they were required for recording in them the names of the minor children for whose registration as citizens of India applications had been made. On February 8, 1957, notices were issued by the Collector of Nagaur canceling the registration certificates issued to the petitioners and directing them to return to Pakistan within three days.

The petitioners have presented this petition for a writ quashing the order of the Collector of Nagaur canceling their registration as citizens of, and requiring them to leave, India. The respondents to this petition originally were the State of Rajasthan and the Collector of Nagaur. Subsequently, under our order notice of the petition was given to the Union of India and the Union has appeared. The only question is whether the cancellation of the registration of the petitioners as citizens of India, was valid. It was said on behalf of the respondents that the Collector had power to cancel the registration under s. 10(2)(a) of the Act. That provision states, amongst other things, that the Central Government may by order deprive certain citizens of India of their citizenship "if it is satisfied that

the registration was obtained by means of fraud, false representation or concealment of any material fact". The petitioners' answer to this contention was that the cancellation of their registration was not by the Central Government but by the Collector. They also contended that their registration as citizens could not be cancelled under sub-sec. (2) of s. 10. They pointed out that subsection (2) started with the words "Subject to the provisions of this section" and contended that the powers under that subsection could, therefore, be exercised subject to the other provisions of s. 10. They then referred to sub-sec. (1) of s. 10 which so far as relevant provided, "A citizen of India who is such by registration otherwise than under cl. (a) of sub-section (1) of s. 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". They contended that they became citizens of India by registration under s. 5(1)(a) of the Act and they could not be deprived of their citizenship under sub-section (2) of s. 10.

On the facts of this case it is unnecessary to express any opinion on these contentions. In any event, under cl. (a) of sub-section (2) of s. 10 a citizen can be deprived of his citizenship only if it is proved that the registration was obtained by means of fraud, false representation or concealment of any material fact. This power cannot, therefore, be exercised unless such fraud, false representation or suppression of a material fact exists. It was contended by the respondents that the petitioners had obtained registration as citizens of India by suppressing the fact that they had earlier applied to the Government of India for long term visas for permanent settlement in India which had been refused by that Government. The making of the previous applications and their rejection are no doubt material facts. The contention however that these facts were concealed is clearly unfounded. It has been proved to our satisfaction by the production of the original applications for registration made by the petitioners that they had mentioned the fact that their applications for permission to settle permanently in India had been rejected by the Government. As we understood learned counsel for the respondents, he also accepted this position. The only other point that was taken by the respondents was that the Collector having the power to grant the registration certificate under the Citizenship Act had by virtue of s. 21 of the General Clauses Act, and apart from s. 10(2) of the Citizenship Act, the power to cancel it. We are entirely unable to agree that s. 21 conferred on the Collector any such power. The orders mentioned in that section are not orders of the kind contemplated in s. 5 of the Citizenship Act.

It seems to us therefore that the orders canceling the registration of the petitioners as citizens were wholly illegal and unsupportable and they are accordingly set aside. The petitioners will be entitled to the costs of this application.

Petition allowed.