

Court No. - 32

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 801 of 2020

Petitioner :- Nageshwar Mishra

Respondent :- The Union Of India And 2 Others

Counsel for Petitioner :- Shailesh Kumar Tripathi

Counsel for Respondent :- A.S.G.I.,Arvind Agrawal

Hon'ble Shashi Kant Gupta,J. Hon'ble Shamim Ahmed,J.

1. The present writ petition in the form of Public Interest Litigation has been filed inter alia for the following relief:-

"(a) issue a writ, order or direction in the nature of Mandamus commanding the respondent authorities to deprive the Indian Citizenship of the Kanhaiya Kumar (Respondent No. 3)."

2. The allegations have been made in the petition against the Respondent No. 3, Kanhaiya Kumar, a former President of the Students' Union of Jawahar Lal Nehru University Delhi for allegedly raising anti national slogans during an event that took place in JNU campus on 9.2.2016. Following the said incident Kanhaiya Kumar and others are facing the trial after receiving nod for prosecuting them in a sedition case.

3. Learned counsel for the petitioner stated that despite the anti-national slogans raised by the Respondent No. 3, Kanhaiya Kumar, the Government of India, is not taking any action to terminate his Indian Citizenship. It has been further averred in the writ petition that Kanhaiya Kumar and his associates are supporting the freedom struggle of terrorist groups who are working on the instigation of Pakistan to destabilize the unity and disturb the peace and tranquility of our country. It has been further averred that a

criminal case has been instituted by lodging an FIR (No. 110 of 2016) under Sections 124-A, 323, 143, 149 and 120-B IPC against Kanhaiya Kumar and his associates for raising anti-national slogans. It has been further stated that keeping in view the anti-national activities, Respondent No. 3, Kanhaiya Kumar be deprived of citizenship under Clause (2) of Section 10 of the Indian Citizenship Act, 1955.

4. Heard Sri, Shailesh Kumar Tripathi, learned counsel for the petitioner, Sri Arvind Agrawal, learned counsel representing the Union of India, Respondent No. 1 and perused the record.

5. From the perusal of the record, it appears that the learned counsel for the petitioner before filing the present writ petition has neither gone through the provisions of Constitution of India nor The Indian Citizenship Act, 1955. It will be appropriate, at this stage, to quote Sub-clause 1 and 2 of Section 10 of The Indian Citizenship Act, 1955 which are as follows:-

"10. Deprivation of citizenship.— (1) A citizen of India who is such by naturalisation or by virtue only of clause (c) of article 5 of the Constitution 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 naturalisation was obtained by means of fraud, false representation or the concealment of any material fact; or

(b) that 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

(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 in India or of an international organisation 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 therefor in the prescribed manner, to have his case referred to a committee of inquiry under this 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."

6. A bare reading of Section 10 of The Indian Citizenship Act, 1955 and the relevant provisions i.e. Article 5 to 11 of Constitution of India contained in Part II of the Constitution of India dealing with the citizenship clearly indicates that the provision for depriving the citizenship can be invoked only against those persons who have become citizen of India by naturalisation or by virtue only of clause

(c) of Article 5 of the Constitution of India or by registration otherwise than under clause (b) (ii) of Article 6 of the Constitution of India or clause (a) of sub-section (1) of section 5 of this Act. Such persons shall cease to be citizens of India, if they are deprived of their citizenships by an order of the Central Government under this section.

7. In the present case, admittedly, the Respondent No. 3, Kanhaiya Kumar was born in the territory of India, as such, by virtue of Article 5(a) of Constitution of India, he is a citizen of India. For ready reference, Article 5 of the Constitution of India is quoted hereinbelow:-

"5. Citizenship at the commencement of the Constitution:- At the commencement of this Constitution every person who has his domicile in the territory of India and-

(a) who was born in the territory of India; or

(b) either of whose parents was born in the territory of India; or

(c) who has been ordinarily resident in the territory of India for not less than five years preceding such commencement, shall be a citizen of India"

8. Thus in view of the above Respondent No. 3, cannot be deprived of his citizenship, in as much as he has not become a citizen of India by naturalisation or by virtue only of clause (c) of Article 5 of the Constitution of India or by registration as provided under sub section (1) of Section 10. Therefore, the powers under sub section (2) of Section 10 cannot be invoked against him, since they are expressly subject to the provisions of Section 10 and can only be invoked for **such citizens** as provided for under Sub section (1) of Section 10. Therefore it is evident that the petition is completely devoid of merit and is wholly misconceived.

9. In any view of the matter, the question of deprivation of citizenship cannot arise, merely because the Respondent No. 3 is facing Trial before the Court in Delhi on charges of allegedly raising the inflammatory slogans. Also, under the present proceedings we are not competent to express any opinion with regard to the merit of the criminal case pending against the Respondent no. 3. 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.

10. It appears that the present writ petition, filed under the

garb of public interest litigation has been preferred with the sole motive of gaining cheap publicity, without even going through the relevant provisions of the Constitution of India and The Indian Citizenship Act, 1955. As such, valuable time of this Court, which is functioning in its limited strength, during the period of the pandemic, has been wasted by filing the present writ petition. Intention of the petitioner, in our opinion, is not to espouse the interest of the public, but only of his own self, by gaining publicity. Such conduct is highly condemnable. The present public interest litigation is wholly frivolous and an abuse of the process of law. Therefore, we deem it fit to impose heavy cost.

11. In view of the above, we dismiss the present public interest litigation imposing a cost of Rs. 25,000/- (Rs. Twenty Five Thousand Only) on the petitioner. The petitioner is directed to deposit the said cost of Rs. 25,000/- by way of Bank Draft in favour of the Registrar General, High Court Allahabad within a period of 30 days from today.

12. The amount so deposited with the Registrar General, High Court shall be remitted to the Advocate Association, High Court, Allahabad.

13. In case of default in depositing the said money within the stipulated period, the same shall be recovered from the petitioner as arrears of land revenue by the District Collector, Varanasi.

14. Let a copy of this order be placed before the Registrar General of this Court to ensure necessary compliance of this order.

15. A copy of this order may also be sent to the District Collector, Varanasi for necessary follow up action.

Order Date :- 2.9.2020

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