Louis De Raedt

Vs

Union of India and Others

With

B. E. Getter

Vs

Union of India and Other

With

S. J. Getter (Mrs.)

Vs

Union of India and Others

Writ Petition (Civil) Nos. 1410 and 1372 of 1987 and Writ Petition (Criminal) No. 528 of 1987

(L. M. Sharma, J. S. Verma JJ)

24.07.1991

JUDGMENT

SHARMA, J. –

1. By these three petitions under Article 32 of the Constitution, the petitioners who are foreign nationals, have challenged the order dated July 8, 1987 whereby their prayer for further extension of the period of their stay in India was rejected and they were asked to leave the country by July 31, 1987. Mr. Louis De Raedt, petitioner in W.P. (C) No. 1410 of 1987, came to India in 1937 on a Belgian passport with British visa and Mr. B. E. Getter, the petitioner in W.P. (Cri.) No. 528 of 1987 in 1948 on an American passport and both have been engaged in Christian missionary work. The petitioner in W.P. (C) No. 1372 of 1987, Mrs. S. J. Getter is Mr. B. E. Getter's wife. Mr. Verghese, the learned counsel, who appeared for the three petitioners, referred to the facts in W.P. (C) No. 1410 of 1987 and stated that the cases of the other two petitioners are similar and they are entitled to the same relief as Mr. Louis De Raedt.

2. According to his case, Mr. Louis De Raedt has been staying in India continuously since 1937 excepting on two occasions when he went to Belgium for short periods in 1966 and 1973. It has been contended that by virtue of the provisions of Article 5(c) of the Constitution of India the petitioner became a citizen of this country on November 26, 1949, and he cannot, therefore, be expelled on the assumption that he is foreigner. Referring to the Foreigners Act it was urged that power under Section 3(2)(c) could not be exercised because the Rules under the Act have not been framed so far. Alternatively, it has been argued that the power to expel an alien also has to be

exercised only in accordance with the principles of natural justice and a foreigner is also entitled to be heard before he is expelled. For all these reasons it is claimed that the impugned order dated July 8, 1987 being arbitrary should be quashed and the authorities should be directed to permit the petitioners to stay on.

3. It has been contended by Mr. Verghese that after the independence of India, appropriate orders were passed permitting many foreign Christian missionaries to stay on permanently in the country but, as in 1950 petitioner Mr. Louis De Raedt was working in certain remote area of the Adivasi belt in Bihar, he could not obtain the necessary order in this regard. Later, however, he had also filed applications for the purpose which have remained undisposed of till today, In 1985 an order was passed asking him to leave the country, and he made a representation to the authorities on September 20, 1985, a true copy whereof is Annexure I to the writ petition. On March 1, 1986 he filed another application for naturalisation, a copy whereof has been marked as Annexure II. A copy of his third application dated March 15, 1986 is Annexure III. The impugned order Annexure IV was passed in this background.

4. The main ground urged by the learned counsel is based on Article 5 of the Constitution, which reads as follows :

> "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 -
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> (a) who was born in the territory of India; or
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> (b) either of whose parents was born in the territory of India; or
>
> (c) who was been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement
>
> shall be a citizen of India."

The argument is that since Mr. Louis De Raedt was staying in this country since 1937, that is, for a period of more that five years immediately preceding the commencement of the Constitution, he must be held to have duly acquired Indian citizenship.

5. One of the necessary conditions mentioned in Article 5 of the Constitution is that the person concerned must be having his domicile in the territory of India at the commencement of the Constitution. The question is as to whether the petitioner fulfils this condition ? The facts stated by the petitioner himself do not leave any room for doubt that he did not have his domicile here. In his application dated September 20, 1985 addressed to the Home Minister, Government of Madhya Pradesh, Bhopal, Annexure I, the petitioner stated that he had been staying in this country on the basis of residential permit renewed from time to time and when he had gone to Belgium, "No Objection to Return" certificate was issued without difficulty. He asserted that since he was working in education and social work for a long period he was "more Indian that Belgian." Towards the end of his application he stated thus :

> "Therefore, I plead for a cancellation of the above order on compassionate ground.
>
> I would request Your Honour to kindly allow me to stay in India till the end of my life by extending my residential permit. For this act of kindness I will be ever

grateful to you."

In his application dated March 1, 1986 addressed to the Collector, Surguja (Madhya Pradesh), which is Annexure II, he mentioned the subject as "request for naturalisation". In this application he referred to the provisions of Article 5 of the Constitution as a basis of his claim but concluded his prayer thus :

> "If however government decides that I have lost Lose my citizenship (sic) (Ed. : Word (sic) in original judgment) would be grateful to be informed about it. So that I can apply under one of the naturalisation Act. (sic)"

He reiterated his stand in Annexure III dated March 15, 1986.

6. The entire relevant official records were available with the learned counsel for the respondents during the hearing of the case, which indicted that the impugned order (Annexure IV) was passed on the basis of another application of the petitioner filed earlier on January 25, 1980. Photostat copies of the said application were filed and kept on the records of the case. It was stated therein that the authorised period for his stay in India was going to expire on March 3, 1980. In contained a prayer for the extension of the period of stay by one year. The petitioner mentioned the reason for extension of this stay thus : "to do further social work as a missionary". The purpose of his visit to India was also similarly mentioned : "to do social work as a missionary". There was no indication whatsoever in the said application that he intended to stay in this country on a permanent basis. The period for which the extension was asked for being one year only indicated that by 1980 he had not decided to reside here permanently.

7. Mr. Verghese has contended that the fact that the petitioner has been staying in this country since 1937 and visited Belgium only twice is sufficient by itself to establish his case of domicile in India. It was argued that the petitioner's case cannot be rejected merely for the reason that he has been holding a foreign passport. Reliance was placed on Mohd. Ayub Khan v. Commissioner of Police, Madras ((1965) 2 SCR 884 : AIR 1965 SC 1623) and Kedar Pandey v. Narain Bikram Sah ((1965) 3 SCR 793 : AIR 1966 SC 160). Reference was also made to Union of India v. Ghaus Mohammad ((1962) 1 SCR 744 : AIR 1961 SC 1526 : (1961) 2 Cri LJ 703) and it was argued that a proceeding ought to have been started against the petitioner under Section 9 of the Foreigners Act where he should have been allowed to defend. The learned counsel submitted that even a foreigner who comes on the strength of a foreign passport, in case of his over-staying has to be heard before he can be thrown out, and this has been denied to the petitioners.

8. Lastly, Mr. Verghese contended that in no event the Superintendent of Police who signed the impugned order, i.e. Annexure IV, is authorised to direct deportation of the petitioner.

9. There is no force in the argument of Mr. Verghese that for the sold reason that the petitioner has been staying in this country for more than a decade before the commencement of the Constitution, he must be deemed to have acquired his domicile in this country and consequently the Indian citizenship. Although it is impossible to lay down an absolute definition of domicile, as was stated in Central Bank of India v. Ram Narain ((1955) 1 SCR 697 : AIR 1955 SC 36 : 1955 Cri LJ 152) it is fully established that an intention to reside forever in a country where one has taken up his residence is an essential constituent element of the existence of domicile in the country. Domicile has been described in Halsbury's Laws of England (4th edition, volume 8, paragraph 421) as the legal relationship between individual and a territory with a distinctive legal system which invokes

that system as his personal law. Every person must have a personal law, and accordingly everyone must have a domicile. He receives at birth a domicile of origin which remains his domicile, whenever he goes, unless and until he acquires a new domicile. The new domicile, acquired subsequently, is generally called a domicile of choice. The domicile of origin is received by operation of law at birth and for acquisition of a domicile of choice one of the necessary conditions is the intention to remain there permanently. The domicile of origin is retained and cannot be divested until the acquisition of the domicile of choice. By merely leaving his country, even permanently, one will not, in the eye of law, lose his domicile until he acquires a new one. This aspect was discussed in Central Bank of India v. Ram Narain ((1955) 1 SCR 697 : AIR 1955 SC 36 : 1955 Cri LJ 152) where it was pointed out that if a person leaves the country of his origin with undoubted intention of never returning to it again, nevertheless his domicile of origin adheres to him until he actually settles with the requisite intention if some other country. The position was summed in Halsbury thus :

> "He may have his home in one country, but be deemed to be domiciled in another."

Thus the proposition that the domicile of origin is retained until the acquisition of a domicile of choice is well established and does not admit of any exception.

10. For the acquisition of a domicile of choice, it must be shown that the person concerned had a certain state a mind, the animus manendi. If he claims that he acquired a new domicile at a particular time, he must prove that he had formed the intention of making his permanent home in the country of residence and of continuing to reside there permanently. Residence alone, unaccompanied by this state of mind, is insufficient.

11. Coming to the facts of the present cases the question which has to be answered is whether at the commencement of the Constitution of India the petitioners had an intention of staying here permanently. The burden to prove such an intention lies on them. Far from establishing the case which is not pressed before us, the available materials on the record leave no room for doubt that the petitioners did not have such intention. At best it can be said that they were uncertain about their permanent home. During the relevant period very significant and vital political and social changes were taking place in this country, and those who were able to make up their mind to adopt this country as their own, took appropriate legal steps. So far the three petitioners are concerned, they preferred to stay on, on the basis of their passports issued by other countries, and obtained from time to time permission of the Indian authorities for their further stay for specific periods. None of the applications filed by the petitioners in this connection even remotely suggests that they had formed any intention of permanently residing here.

12. None of the cases relied upon on behalf of the petitioners is of any held to them. The case to Mohd. Ayub Khan ((1965) 2 SCR 884 : AIR 1965 SC 1623) was one where the appellant had made an application to the Central Government under Section 9(2) of the Indian Citizenship Act, 1955 for the determination of his citizenship. Section 9(1) says that if any citizen of India acquired the citizenship of another country between January 26, 1950 and the commencement of the Citizenship Act, he ceased to be a citizen of India and sub-section (2) directs that if any question arises as to whether, when or how any person has acquired the citizenship of another country, it shall be determined by the prescribed authority. Mohd. Ayub Khan was a citizen of this country at the commencement of the Constitution of India and was to leave the country for the reason that he had obtained a Pakistani passport. The question which thus arose in that case was entirely different. The case of Kedar Pandey v. Narain Bikram Sah ((1965) 3 SCR 793 : AIR 1966 SC 160) does not help

the petitioners at all. On a consideration of the entire facts and circumstances this Court concluded that "the requisite animus manendi as has been proved in the finding of the High Court is correct". The respondent Narain Bikram Sah, who claimed to have acquired Indian citizenship, had extensive properties at large number of different places in India and had produced many judgments showing that he was earlier involved in litigations relating to title, going up to the High Courts in India and some time the Privy Council stage. He was born at Banaras and his marriage with a girl from Himachal Pradesh also took place at Banaras and his children were born and brought up in India. Besides his other activities supporting his case, he also produced his India passport. In the cases before us the learned counsel could not point out a single piece of evidence or circumstance which can support the petitioners' case, and on the other hand they have chosen to remain here on foreign passports with permission of Indian authorities to stay, on the basis of the said passports. Their claim, as pressed must, therefore, be rejected.

13. The next point taken on behalf of the petitioners, that the foreigners also enjoy some fundamental rights under the Constitution of this country, is also of not much help to them. The fundamental right of the foreigner is confined to Article 21 for life and liberty and does not include the right to reside and settle in this country, as mentioned in Article 19(1)(e), which is applicable only to the citizens of this country. It was held by the Constitution Bench in Hans Muller of Nurenburg v. Superintendent, Presidency Jail, Calcutta ((1955) 1 SCR 1284 : AIR 1955 SC 367 : 1955 Cri LJ 876) that the power of the government in India to expel foreigners is absolute and unlimited and there is no provision in the Constitution fettering this discretion. It was pointed out that the legal position on this aspect is not uniform in all the countries but so far the law which operates in India is concerned, the executive government has unrestricted right to expel a foreigner. So far the right to be heard is concerned, there cannot be any hard and fast rule about the manner in which a person concerned has to be given an opportunity to place his case and it is not claimed that if the authority concerned had served a notice before passing the impugned order, the petitioners could have produced some relevant material in support of their claim of acquisition of citizenship, which they failed to do in the absence of a notice.

14. The last point that the impugned order (Annexure IV) was passed by the Superintendent of Police, who was not authorised to do so, is also devoid of any merit. The order was not passed by the Superintendent of Police; the decision was of the Central Government which was being executed by the Superintendent, as is clear from the order itself.

15. For the reasons mentioned above, we do not find any merit in the petitions, which are accordingly dismissed, but without costs.

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