Leelawathie V. Minister Of Defence And External Affairs

487/1965

Present: Sansoni, C. J., and Sirimane, J.

M. R. LEELAWATHIE, Petitioner, and THE MINISTER OF DEFENCE AND EXTERNAL AFFAIRS, Respondent

S. C. 148/1964—Application for a Mandate in the nature of Writ of Certiorari and Mandamus under Section 42 of the Courts Ordinance (Cap. 6)

Citizenship—Application by spouse of a citizen of Ceylon—Minister's refusal—Finality—Universal Declaration of Human Rights—Inapplicability—Citizenship Act (Cap. 349), s. 12 (4) (6).

If a spouse's application for registration as a citizen of Ceylon in terms of section 12 of the Citizenship Act is refused by the Minister, it is not necessary for the Minister to give his reasons for the refusal. Subsections (4) and (6) of section 12 make the Minister the sole and final judge of the merits of the application. In such a case, the Universal Declaration of Human Rights has no binding force.

APPLICATION for a writ of certiorari against the Minister of Defence and External Affairs.

G. Thiagalingam, Q.C., with *E. A. G. de Silva* and *N. E. M. Daluwatte*, for Petitioner.

J. G. T. Weeraratne, Senior Crown Counsel, with *F. C. Perera*, Crown Counsel, for Respondent.

Cur. adv. vult.

December 10, 1965. **SANSONI, C.J.**—

The petitioner who was an Indian citizen came to Ceylon in November 1958, and in January 1959 she married a citizen of Ceylon by descent. In 1960 she applied for registration as a citizen of Ceylon in terms of section 12 of the Citizenship Act (Cap. 349). There was an exchange of correspondence between her and the Ministry of Defence and External Affairs until 4th March 1964, when she was informed by a letter written on behalf of the Permanent Secretary to the Ministry that her application for citizenship had been disallowed. Her husband appealed against the order to the Minister of Defence and External Affairs through a Member of Parliament. On 16th April 1964 the Member of Parliament was informed, and so was the husband, that the decision to reject the petitioner's application was taken after very careful investigation as a decision taken for giving effect to Government policy, and that it cannot be altered. The present application for Certiorari and Mandamus was filed in May 1964.

Section 12 (4) of the Act provides that " the Minister may refuse an application if he is satisfied that it is not in the public interest to grant the application ". Section 12 (6) reads :—" The Minister's refusal under subsection (4) of this section to allow the application of any person for registration as a citizen of Ceylon shall be final and shall not be contested in any court. "

For the petitioner it was submitted that the reasons for the Minister's refusal should have been stated, and that the failure to do so was contrary to natural justice. The case of *Merricks v. Nott-Bower* [[1] (1964) I A. E. K. 717.] was cited. The Court of Appeal there dealt with a plea of privilege put forward by a Government Department which was asked to produce certain documents. Lord Denning, M. R. disapproved of the practice, which seemed to have grown up, of exhibiting a certificate in common form to the effect that a document ought not to be produced because it was necessary in the public interest for the proper functioning of the public service to withhold it from production. I do not think this judgment is relevant to the case we are considering, which concerns a statute that states under what

circumstances the Minister may refuse an application for registration as a citizen of Ceylon.

It is interesting to find that Lord Denning, in an earlier part of the same judgment, said :—" It is a well-known principle of our law that any powers conferred by statute or regulation on an executive or administrative authority must be exercised in good faith for the purpose for which they are granted. They must not be misused or abused by being applied to an ulterior purpose."

Although the petitioner does allege, as one of the grounds of her application, that the Minister acted wrongfully, mala fide and without jurisdiction, no grounds whatsoever are set out in justification of these allegations.

No attempt has been made to substantiate them. In short, there is nothing before us to show that there was not a real and proper exercise of discretion in good faith by the Minister. We do not think that it was necessary for the Minister to give her reasons for refusing the application. Subsections (4) and (6) of section 12 indicate clearly that the policy of the Act is to make the Minister the sole and final judge of the merits of an application, and to shut out any enquiry by a Court into the correctness of his decision. This is not surprising when one considers that it is the Prime Minister who is given the responsibility and the power to make an order on the application. Parliament may well have thought that an important matter of this nature could well be entrusted to him to decide, and that it was undesirable that the correctness of his decision should be examined in a court of law. In this connection, we were referred by Senior Crown Counsel to a passage in Judicial Review of Administrative Action by Mr. S. A. de Smith p. 241 which reads :—" The principle, many times affirmed in older cases, that even wide discretionary powers must be exercised ' judicially ', is seldom applied where the recipient of the power is a Minister of the Crown. The courts often invoke the principle of ministerial responsibility to Parliament in support of their refusal to review the manner in which a discretion has been exercised."

Another argument put forward was that in the letter written to the Member of Parliament on behalf of the Permanent Secretary it was stated that the decision was to give effect to Government policy, and that as this is not the same concept as public interest the refusal was bad in that it was made on wrong grounds. I do not see any conflict between the two concepts. The policy of the Government would presumably always be in accordance with the public interest ; the welfare of the State would be presumed to be the main object of Government policy. That policy would normally be decided by, or with the approval of, the Minister of Defence and External Affairs, and when she came to make a decision as to what was in the public interest she would not be uninfluenced by the policy of the Government. Such policy would be a proper and relevant factor to be taken into account.

Mr. Thiagalingam also argued that the provisions of section 12 (6) were unconstitutional and that it took away the right of a citizen to go to Court. We do not agree with this argument, since it appears to us that Parliament has the power to enact a statute which contains .such a provision as section 12 (6). Phrases of this sort are quite common now, and they have to be interpreted according to the context in which they are found.

A suggestion was made on behalf of the petitioner that the application was refused because she was an Indian. Such a suggestion proves nothing and it has not been explained on what basis it was made. One can well understand the anxiety of the petitioner to know the reasons for the refusal of her application, if only to enable her to attack them as unjustified and unreasonable. But I do not think that the petitioner has any right to know the reasons.

Lastly, it was submitted that the refusal was in breach of the Universal Declaration of Human Rights. Even if the principles contained in the instrument have any relevance, it is sufficient to say that while it is of the highest moral authority, it has no binding force as it is not a legal instrument and forms no part of the law of this country.

The predicament in which the petitioner and her husband find themselves is indeed a sad one, but they married at their risk and it is no argument to say that if the application fails they may have to live apart.

In the result, the application of the petitioner must be refused. I would dismiss the application with costs.

SIRIMANE, J.—I agree.

Application dismissed.