

Vijay Manchanda and anr. Vs. State of J and K and ors.

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Court : Jammu and Kashmir

Decided On : Oct-08-1987

Reported in : AIR1989J& K10

Judge : R.P. Sethi, J.

Acts : Constitution of Jammu and Kashmir Permanent Resident Certificate (Procedure) Act, 1963 - Sections 4, 5 and 6; ;Jammu and Kashmir Hindu Adoptions and Maintenance Act, 1960 - Section 6; ;[Constitution of India](#) - Article 5; ;Hindu Law; ;Mohammadan Law

Appeal No. : W.P. No. 215 of 1985

Appellant : Vijay Manchanda and anr.

Respondent : State of J and K and ors.

Advocate for Def. : B.A. Khan, AAG

Advocate for Pet/Ap. : S.T. Hussain, Adv.

Disposition : Petition allowed

Judgement :

ORDER

R.P. Sethi, J.

1. The petitioners who claim to be the grandsons of Kahan Chand applied to the Dy. Commissioner, Srinagar for the grant of certificate of being permanent residents of the State as they happened to be the State subjects under law. On their application being dismissed by the Dy. Commissioner, the petitioners preferred a revision petition before the Dy. Chief Minister/Revenue Minister of the State of J & K, who vide his order annexure A held that the petitioners were entitled to the status of permanent residents of the State and set aside the order of Dy. Commissioner. Aggrieved by the order of Dy. Chief Minister, the respondent-State presented a petition before the Revenue Minister for the review of his judgment who vide his order dt. 8th Aug. 1978 dismissed the same by upholding the order of giving State subject status to the petitioners. As the respondents did not act upon the judgment of the competent authority, this petition has been filed with the prayer to issue an appropriate direction directing the respondents to grant permanent residents certificate to the petitioners in pursuance and in accordance with the orders of the Dy. Chief Minister/Revenue Minister dt. 18-10-1977 and 8-8-1978. It is further submitted that the petitioners filed writ petition No. 377/82 which was withdrawn on 26th Oct. 1984 upon the assurance of the learned Advocate General to consider the prayer of the petitioners regarding issue of State subject certificate within a period of two months.

2. In the counter-affidavit filed on behalf of the respondents it is admitted that the petitioners had applied for the grant of permanent residence certificate in their favour which was rejected by the Dy. Commissioner vide his order dt. 25th July, 1977 against which a revision was filed before the then Dy-Chief Minister who was also the Revenue Minister and the same was accepted by setting aside the order of respondent No. 3, the Dy. Commissioner. Aggrieved by the aforesaid order, a review petition was moved by the State which was also dismissed by the Revenue Minister vide his order dated 8-8-1978. It is submitted that thereafter a reference was made by the Divisional Commissioner to the Government in terms of the provisions of Sec. 6 of the Jammu and Kashmir Grant of Permanent Resident Certificate (Procedure) Act, 1963, as the matter involved a substantial question of law and public interest. It is alleged that the Government was still seized of the matter and its decision as to whether the order of the then Dy. Chief Minister

should be rescinded or not, is under active consideration of the State. It is disputed that the Dy. Chief Minister/Revenue Minister was competent to pass the order relied upon by the petitioner.

3. I have heard the learned counsel for the petitioner and perused the record.

4. Permanent resident of the State means a person who is or which is deemed to be permanent resident under Section 6 of the Constitution of J & K State. Section 6 of the Constitution of J & K Provides :

'Permanent residents :

(1) Every person who is, or is deemed to be, a citizen of India under the provisions of the [Constitution of India](#) shall be a permanent resident of the State, if on the fourteenth day of May, 1954 -

(a) he was a State subject of Class I or class II; or

(b) having lawfully acquired immoveable property in the State, he has been ordinarily resident in the State for not less than ten years prior to that date.

(2) Any person who, before the fourteenth day of May, 1954, was a State subject of Class I or of Class II and who having migrated after the first day of March, 1947, to the territory now included in Pakistan, returns to the State under a permit for resettlement in the State or for permanent return issued by or under the authority of any law made by the State Legislature shall on such return be a permanent resident of the State.

(3) In this section, the expression 'State Subject of Class I or of Class II' shall have the same meaning as in State Notification No, I-L/84 dt. the twentieth April, 1927, read with State Notification No. 13/L dt. the twenty-seventh June, 1932.'

Sections 4 and 5 of the Jammu and Kashmir Grant of Permanent Resident Certificate (Procedure) Act, 1963 provide the procedure for presentation of an application for the grant of a certificate of permanent residence. Section 6 of the aforesaid Act provides that the Government may, at any time either on its own motion or on the application to it in this behalf, call for the record of any case

pending before or disposed of by a competent authority and may uphold or reverse the orders of the competent authority or may pass any other order or give any direction as it may deem fit. It is further provided that if it appears to the competent authority that a substantial question of law or public interest is involved in any proceedings under the Act, it may report to the Government and the Government may pass any orders or issue any directions, it may deem fit. A perusal of Section 6 would clearly show that the power of revision is vested in the Government which according to the Business rules is exercised by the concerned Minister as in this case, the Revenue Minister. The Revenue Minister while exercising his powers under Section 6 of the said Act was conscious of the fact that he was exercising the powers for and on behalf of the Government and was seized of a matter pertaining to the grant of certificate of permanent residence to the heirs of an adopted son of a State subject. The State also filed a review petition in which the revisional authority held :

'The Tahsildar and Assistant Commissioner fear that if an adoptive is permitted to adopt a non-State subject, it will open flood gate, I think Hindu law puts severe restriction on adoption, i.e. an adoptive must be without male issue up to 4th degree. Therefore such cases of adoption will be few and far between.

In respect of nature of consequence after adoption, it is well settled that adoptions cause Civil death of the adopted in the natural father's family and he is grafted in adoptive father's family for purpose of both inheritance and religious ceremonies, On this point there cannot be any difference.

The learned counsel for Manchandas has referred me to notification No.IL/84 dt. 20th April, 1927 which contained Chief Secretariat-General Command order No. 42H of 1947 dt. 10th June, 1947. The notification is clear that no review or appeal lies against the order of Revenue Minister passed in the case of a State subject, and that Revenue Minister's order is final. No doubt the legal position is so, but as the case was much agitated, I allowed several hearings to give opportunity to the applicants for challenging the order dt. 18th Oct. 1977. The applicants have not been able to establish their case or advance any substantial grounds for interference in my previous order. Therefore, their case is rejected and the order

giving State subject status to Vijay Manchanda and Satish Manchanda is upheld.

In future care should be taken that where State subject status is claimed through adoption or adoption intervenes in such proceedings Revenue Officer should take extraordinary care in passing final orders for granting the State Subject status. Before such State subject Certificate is allowed or is to be allowed they should submit the case to Revenue Minister for approval. This order should be circulated to all the Revenue Officers.'

The revisional authority having exercised its right on behalf of the Government and having dismissed the review petition has no right to reconsider the matter upon a reference allegedly made by the Divisional Commissioner to the Government. There, appears to be a misconception about the powers exercised by the then Deputy Chief Minister/Revenue Minister as it is argued that the powers exercised were that of the Deputy Chief Minister and not that of the Government. This submission is without any force in view of clear provisions of the said Act. I have also perused the order passed by revisional authority and am convinced that the same is legal, valid and according to law particularly with respect to adoption under the Hindu Adoptions and Maintenance Act.

5. Adoption under the Hindu Law was recognised by the ancient Hindu Philosophers as the presence of a son was considered essential to achieve religious salvation. The object of adoption has been considered to be twofold; first is religious, intended to secure spiritual benefit to the adopter and his ancestors by having a son for the purpose of offering funeral cakes and libation of water to the males of the adopter and his ancestors. The second is secular, intended to secure an heir to perpetuate the adopter's name and his family. According to Hindu 'Shashtras', the adoption is considered as a sacred gift voluntarily made. Manu, the ancient Hindu Jurist required the gift of adoption to be 'confirmed by pouring water'. A gift of daughter under the Hindu Law is known as Kanyadan' and gift of a son as a 'Putradan'. The adoption is not recognised by Mohammadan Law, but is prevalent in some parts of the country on account of the custom prevalent. The Muslim jurisprudence being based on different conception of legitimacy, adoption was considered out of place in it. Wherever a custom of adoption is proved to be

existing among the Muslims, the same has to be recognised and conferred all such statutory rights and obligations upon the adopter son. Adoption is now recognized in various countries of the world as well. The ancient Hindu Law recognized 12 kinds of sons of whom five were adopted sons. The adopter son was known as 'Dattaka'. Result of 'Dattaka' adoption has the effect of transferring the adopter boy from his natural family into the adopter-family. It confers upon the adopter the same rights and privileges in the family of the adopter as the legitimate son. Adoption under the Hindu Law being a sacrament cannot be revoked or cancelled by any one.

6. After the passing of the Jammu and Kashmir Hindu Adoptions and Maintenance Act, 1960 (hereinafter called 'the said Act') material and important changes and modifications in the law relating to adoption have been brought about, overriding any text, rule or interpretation of Hindu Law or any custom or usage as part of that law in force immediately before the commencement of the said Act. No adoption can be made after the commencement of the said Act by or to a Hindu except in accordance with the provisions contained in Chap. II, and any adoption made in contravention of the said provisions has to be declared void. A void adoption neither creates any right in the adopter family in favour of any person which he or she could not have acquired except by reason of the adoption nor destroys the rights of any person in the family of his or her birth. According to Section 6 of the said Act no adoption shall be valid unless-

- (i) The person adopting has the capacity, and also the right, to take in adoption;
- (ii) The person giving in adoption has the capacity to do so;
- (iii) The person adopted is capable of being taken in adoption; and
- (iv) The adoption is made in compliance with the other conditions mentioned in this chapter.

7. Sections 7 and 8 of the said Act define the persons who have the capacity to take in adoption. Section 9 specifies the persons capable of giving in adoption and Section 10 mentions the persons who can be adopted. Section 11 of the Act

provides other conditions for a valid adoption besides those referred to in the earlier part of Chapter II of the Act.

8. In view of the stringent provisions made and restrictive limitations imposed the apprehension of the respondent-State that by permitting the adopted son to acquire the status of a State subject would open the flood gates for non-State subjects to acquire the status of State subject in the State of Jammu and Kashmir, is, therefore, without any basis and misconceived.

9. As held by the Revenue Minister and noted in this judgment the adoption can be allowed under the Hindu Adoptions and Maintenance Act only in genuine cases and in accordance with the restrictions imposed by the statute. Merely because some persons may get the status of a State subject would not justify the withholding of the issuance of State subject certificate in favour of the petitioner whose father has been held to have been validly adopted by Khanchand, admittedly a permanent resident of the State of Jammu and Kashmir. There is no dispute regarding the adoption of the father of the petitioners by the said Khanchanda nor it is alleged by the respondents that the petitioner's father's adoption was merely eye-wash or mala fide carved out for the purposes of getting the benefit of the grant of State subject in their favour. The respondent-State would in appropriate cases be justified in refusing to grant the State subject certificate to a person who is found to be not validly adopted by a person having the status of State subject and in that eventuality a person aggrieved could establish his right in a Civil Court where after the authorities concerned may be in a position to decide about his status. The respondent-State after having assured the petitioners on 26th Oct., 1984 in writ petition No. 377/82 for granting a State subject certificate in their favour within a period of two months cannot now resist the prayer on false pretexts. There is no justification for the respondent-State not to implement the directions of the statutory authority even after the expiry of about a decade and not even passing appropriate orders upon alleged reference made by the Divisional Commissioner to the Government. The petitioners are, therefore, held entitled to the grant of prayer made in their writ petition.

10. While accepting this petition, it is directed that the respondents shall take effective steps for the implementation of the orders of Deputy Chief Minister/Revenue Minister dt. 10-10-1977 and 8-8-1987 by issuing the permanent resident certificate in favour of the petitioners as directed in the aforesaid orders. The respondents shall comply with the directions within a period of three months from today. The petitioners are also held entitled to Rs. 200/- as costs.

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