

IN THE SUPREME COURT OF SEYCHELLES

Miscellaneous Cause No. 19 of 2013

Marek Trajter

Applicant

Versus

The Commissioner of Police

Respondent

Counsel: Frank Elizabeth for the Applicant

Ronny Govinden, Attorney General, for the Respondent

Heard: 7 May 2013

Ruling: 7 May 2013

RULING

Egonda-Ntende, CJ.

1. The applicant, Mr. Marek Trajter, has come before this Court under Article 18 sub-article 8 of the Constitution of Seychelles. Initially he sought to be produced before this Court so that this Court can investigate the lawfulness of his detention. Yesterday I made an order requiring the Commissioner of Police to produce the applicant before me this afternoon.
2. I note with satisfaction that the Commissioner of Police has complied with that order and applicant has been produced before this Court. The Attorney General acting both for the Commissioner and I presume the Government of Seychelles filed an application with a supporting affidavit explaining the detention of the applicant in this matter. It now falls upon me to examine the material before me and determine whether Mr. Trajter is lawfully held or not.

3. The applicant, from what I can gather in the affidavit filed by Mr. Bastienne the Principal Secretary in the Ministry of Home Affairs, was until the 02nd May 2013 a citizen of Seychelles. Being a citizen of this country as of the 02nd May 2013 he was entitled to certain rights under the Law that had to be observed. Mr. Bastienne has stated on oath that the citizenship was revoked by the Minister for Home Affairs on the 02nd May 2013. And that after revocation of such citizenship the applicant became a prohibited immigrant in terms of Section 19(1) sub-section H of the Immigration Decree who was liable to deportation from the Republic of Seychelles.
4. It has been contended for the Government that in light of the revocation of the citizenship of the applicant the Minister had the power and authority to detain and deport the applicant from this jurisdiction. On the other hand Mr. Elizabeth, counsel for the applicant, has stated that the Minister in purporting to revoke the citizenship of the accused did not comply with the Law.
5. It is imperative at this stage that we examine the lawfulness of the actions of the Minister in order to determine whether the power as exercised has been rightly exercised or not and whether ultimately the applicant is lawfully held or not.
6. I will start by setting out in its entirety Section 11 of the Citizenship Act Cap 30, hereinafter referred to as the Act. It reads and I quote
 - “(1) The Minister may subject to the provisions of this Section by order deprive a citizen by registration or naturalisation of the citizenship of Seychelles if the Minister is satisfied that the registration or naturalisation was obtained by means of fraud, false representation or the concealment of any material fact.
 - (2) Before making an order under this Section the Minister shall give the person against whom the order is proposed to be made notice in writing informing the person the ground on which it is proposed to be made and of the right of the person to have the case referred for enquiry under sub-section 3.
 - (3) If a person notified under sub-section 2 applies for an enquiry within such time and in such manner as maybe prescribed the Minister shall refer the case for enquiry and report to a Commissioner appointed by the Minister for the purpose.

(4) The powers rights and privileges of a Commissioner appointed under sub-section 3 shall be the same as those conferred on a Commissioner by the Commissions of Enquiry Act and the provisions of that action, mutatis mutandis, apply in relation to an enquiry under this Section and to a person summoned to give evidence or giving evidence at the enquiry.

(5) A person shall not be qualified for appointment as a Commissioner under sub-section 3 unless the person is or has been a Judge of the Court of Appeal or of the Supreme Court”.

7. It is clear from the forgoing statutory scheme that a Minister cannot exercise the powers under section 11(1) of the Act before he has complied with section 11(2), 11(3) and 4 and 5 of the Act. The affidavit of Mr. Bastienne is quiet on whether the Minister complied with section 11(2) of the Act. During the hearing I did ask the Honourable Attorney General to inform me whether the Minister did comply with section 11(2) of the Act but I have received no direct answer to that question.
8. The applicant has stated in his application that he is a citizen of this country and his declaration of citizenship and registration was registered on the 09th April 2013. He has not stated that he received a notice of revocation or a notice of intention of revocation. Neither has Mr. Bastienne affirmed whether the Law was complied with. But when you take into account the fact that these events have happened over a very short period of time I can only reach one conclusion that the Minister did not comply with section 11(2) of the Act. For had he done so this would have been disclosed on the affidavit of Mr. Bastienne.
9. The lawfulness or otherwise of the detention of the applicant hinges on the actions of the Minister and it is clear that they fall short. The Minister has not complied with section 11(2) of the Act and as a result trigger, [or] give an opportunity to the applicant to opt for an enquiry to be made or not to be made. The rights contained in the laws of Seychelles and in the Constitution cannot be regarded as cosmetic. They are real. And Public officials that administer these laws must comply with both the letter and spirit of the law. Having found that the Minister has fallen short in this regard I can only conclude that any actions based on this foundation continue to be unlawful. If the Minister has not acted

according to law to deprive the applicant of his citizenship the applicant cannot then be treated under the Immigration Decree as a prohibited immigrant.

10. I therefore find that the applicant, on this line advanced by the state, is being held unlawfully. He should be released forthwith unless the state has some other lawful reason to continue detaining him. I so order.

Signed, dated and delivered at Victoria this 7th day of May 2013

F.M.S EGONDA-NTENDE

CHIEF JUSTICE