

IN THE SUPREME COURT OF SEYCHELLES

Marek Trajter

Petitioner

Vs

The Minister of Home Affairs and Transport

Herein represented by Attorney General

Of National House, Victoria

Respondent

Civil Side MC No: 30 of 2013

=====

Mr. C. Lucas for the Petitioner

Mr. J. Chinnasamy for the Respondent

D. Karunakaran, J.

JUDGMENT

[1] This is a petition for Judicial Review. The petitioner in this matter seeks this Court for a writ of *certiorari* to quash the decision of the Respondent - the Minister of Home Affairs and Transport - dated 24th June 2013, whereby the respondent deprived the petitioner of his Citizenship of Seychelles under Section 11 (1) of the Citizenship Act, hereinafter called the "Act", and ordered him to leave the Republic of Seychelles within 30 days from the date of the said decision. The said writ is sought invoking the supervisory jurisdiction of this

Court over subordinate courts, tribunals, and adjudicating authority conferred by Article 125(1) (c) of the Constitution.

[2]The facts of the case as they transpired from the evidence on record including the Report from the Commission of Inquiry held by Justice AFT Fernando - dated 10th June 2013, held under Section 11(3) of the Act, are these:

[3]At all material times, the Petitioner Mr. Trajter was a Slovakian national by birth. He came to Seychelles for the first time on the 29th of September 2012. He stayed in La Digue and befriended many persons there including one Mr. Hansley Tape Constance, the former MNA for La Digue. During his stay in Seychelles, the petitioner started contributing towards the development of La Digue and donated 10, 000 Euros for the La Digue School in October 2012. In January or February 2013 he also contributed one million rupees for the Disaster Relief Fund. At a certain stage, the petitioner decided to become a Citizen of Seychelles. He initiated the process and made the necessary application to the relevant authority. He accordingly, caused publication of the Notice of his Intention to apply for citizenship of Seychelles in the Official Gazette and the daily newspaper - Nation - as required under regulation 4(3) of the Citizenship Regulations.

[4] Incidentally, the publication of such notice disclosing the material facts pertaining to the dates of the applicant's first arrival and his last entry into Seychelles, is a statutory requirement, which obviously, formed part of the application for Citizenship. In the case of the petitioner, the dates he had disclosed in the said Notice was false or to say the least, it contained an untrue, misleading and incorrect representation of facts as to the duration of his stay in Seychelles prior to making of the application. In fact, the petitioner, who never set foot in the Seychelles before the 29th of September 2012, gave false, incorrect and misleading information stating that he had for the first time

arrived in the Seychelles on 14th December 2007, instead of the 29th of September 2012, plucking a date and year out of thin air.

[5] Besides, he signed a declaration in the application to the effect that the information he had furnished was “true and correct”, whilst in fact, it was untrue and incorrect. He also declared therein that he had understood that incorrect, misleading or untrue information withheld in any material manner which may affect the grant of Citizenship of Seychelles, may result in the deprivation of that Citizenship. Thus, the petitioner completed all the procedural and legal requirements for acquiring Seychellois Citizenship by registration. Relying and acting upon the statements, information and declarations provided by the petitioner, the Immigration Authority, on 5th April 2013 granted Citizenship in favour of the petitioner, who took an oath of Allegiance on the 9th April 2013.

*[6]*A couple of weeks later, on the 25th April 2013, the Government of Seychelles received a Red Alert Notice from Interpol informing them that the petitioner was an accomplice in a case of an alleged murder in Slovakia and was wanted in his country of origin for criminal investigations. This Interpol Red Alert Notice prompted the Seychelles Government to audit and verify the truth and correctness of the statements, information and declarations provided by the petitioner in his application and the genuineness of his intention to acquire the Citizenship of Seychelles.

[7] Upon re-examination, it was discovered that the petitioner had misled the authority by giving false statements, information and declarations for acquiring Citizenship of Seychelles.

[8]Hence, the respondent - the Minister of Home Affairs and Transport- Mr. Joel Morgan - on the 2nd May 2013, in his capacity as the Minister responsible for Immigration, deprived the Petitioner of his citizenship of Seychelles obtained by registration on the 5th April 2013, on the grounds that the

Petitioner had obtained citizenship by means of false representation and concealment of material fact.

[9] Simultaneously, the Immigration Division pursuant to Section 11(1) of the Citizenship Act 1994, of the Respondent issued a “Prohibited Immigrant Notice” to the Petitioner under the Immigration Decree as the petitioner’s presence in Seychelles was inimical to the public interest and he was ordered to leave the Republic before the 4th May 2013 .Upon service of the said Notice in La Digue where the Petitioner resides, he was arrested and detained in Police custody for the purpose of being deported.

[10] Aggrieved by the said detention, the petitioner on the 7th May 2013 petitioned the Supreme Court for a Writ of Habeas Corpus. Having duly heard the parties on the petition, the Supreme Court presided by His Lordship the Chief Justice found that the respondent had failed to comply with the statutory requirements under Section 11(2), 11(3) before resorting to deprivation of his Citizenship. The Court accordingly, issued the Writ and ordered the release of the petitioner from police custody. In the same Writ the Court also reminded the respondent of the petitioner’s statutory right to have the case referred to a Commission of Inquiry under Section 11(3) of the Citizenship Act before resorting to the measure of depriving the petitioner of his Citizenship.

[11] Following the Writ issued by the Court, on the 13th May 2013, in exercise of his powers under Section 11(2) of the Citizenship Act 1994, the Respondent issued a Notice to the Petitioner stating that when he applied for citizenship, he failed to disclose the fact that he was a wanted person in a criminal case as an accomplice involving a murder in Slovakia and that a request had been made to the Government of Seychelles that the petitioner is required for investigation

in Slovakia and for that reason it is proposed to deprive him of Seychelles Citizenship. The Respondent accordingly, informed the Petitioner of his statutory right to have the case referred to a Commission of Inquiry under Section 11(3) of the Citizenship Act. In fact, the Notice dated 13th May 2013 issued by the respondent reads in verbatim thus:

[12] *“TO: Mr. Marek Trajter, Residing in La Digue, Republic of Seychelles*

Notice under Section 11(2) of the Citizenship Act 1994

Take notice that the present notice is hereby issued to you, cancelling any earlier order issued to you vide section 11 of the Citizenship Act 1994.

Under the powers vested in me vide provisions of Section 11(1) of the Citizenship Act and in view of those powers, I, Joel Morgan, Minister for Home Affairs and Transport and Minister in charge of the affairs under the same Act, serve this Notice on you.

[13] *That take notice that the present notice is issued to you under Section 11(2) of the above said Act, as it is proposed to deprive you of your citizenship of Seychelles, (vide Certificate of Registration dated 5th April 2013). The ground on which it is proposed to deprive you of the Seychelles citizenship is as follows:*

[14] *I am in possession of materials that you are a wanted person in a criminal case, namely, that you are allegedly involved as an accomplice in a serious crime of murder in Slovakia and that an international Red Alert Notice has been issued against your name by the INTERPOL (a copy of which is attached herewith) and a request has been made to the Government of Seychelles that you are required for investigation in Slovakia.*

[15] *That you did not disclose the truth and facts about your past when you applied for the citizenship of this country and concealed these facts mentioned in*

the above paragraphs to the authorities of the Government of Seychelles and thereby you acquired your citizenship by fraud and concealing material facts.

That the above said facts constitute the grounds on which it is proposed to deprive your citizenship under section 11(1) of the Citizenship Act 1994;

[16]That I hereby inform you further that the Citizenship Act provides you a right to refer this subject matter for inquiry in pursuance of section 11(2) of the matter for Inquiry you are required under the law to apply to me of the same within 24 hours after the receipt of this notice. If you refuse to accept service of this notice on you it will be treated that statutory notice has been issued to you and the legal proceedings will follow immediately.

[17]That if you inform me of your wish to refer this matter for inquiry, and upon receiving the same, you will be informed to appear before a Commission of Inquiry to be established under the Citizenship Act. The name, location and the date of the inquiry shall be intimated to you upon receiving your reply to this notice within the notice period.

(Sd) Joel Morgan

Minister for Home Affairs and Transport

Government of Seychelles

Dated this 13th Day of May 2013”

[18]After the issuance of the above notice(hereinafter called the “First Notice”, the respondent again on the 17th May 2013 issued an additional Notice hereinafter called the “Second Notice” on the Petitioner, notifying that he had intentionally concealed his first date of entry and his last date of entry into Seychelles and knowingly misled the Government officials when he made the application and thereby fraudulently acquired citizenship of Seychelles. The second Notice reads thus:

“17th May 2013

Mr. Marek Trajter, La Passe, La Digue, Seychelles

Dear Mr. Trajter

RE: Additional Notice under Section 11(2) of the Citizenship Act 1994

In addition to my earlier notice dated 13th May 2013, take note the present notice is hereby issued to you, vide section 11 (2) of the Citizenship Act 1994.

[19] *Under the powers vested in me vide provisions of Section 11(1) & (2) of the Citizenship Act and in view of those powers, I, Joel Morgan, Minister for Home Affairs and Transport and Minister in charge of the affairs under the said Act, serve this additional notice on you for the purpose of bringing to your attention additional ground(s) as provided herein, additional to the grounds mentioned in my earlier notice dated 13th May 2013, on which it is proposed to deprive you of the Seychelles citizenship as follows:*

[20]- *I am in possession of materials that in your Notice of Intention to Apply for Citizenship of Seychelles you have mentioned the date of your first entry into Seychelles as 14th December 2007 (copy attached) and you effected a publication in the daily Nation dated 14th November 2012 saying that the date of your first entry into Seychelles as 14th December 2007(copy attached). Thereafter you have effected another publication in the Official Gazette No 67 dated 19th November*

2012 under the title Notice of Intention to Apply For Citizenship of Seychelles as 14th December 2007 (copy attached), whereas in your Notice of Intention to Apply For Citizenship of Seychelles, Form IIM, Regulation 4 (3) and Regulation 5 (1) you have mentioned the date of first entry into Seychelles as 14th December 2007.(copy attached)

- Further I am in possession of material to show that the date of your first entry into Seychelles was 29th September 2012.

[21] Further you have declared in your Notice of Intention to Apply for Citizenship of Seychelles the date of last entry into Seychelles before the said application as being 12th October 2012, whereas I am in possession of immigration records to show that what you had declared was false.

Accordingly, I am of the belief that you falsely declared the date of your first entry as 14th December 2007 on above occasions and in documents while the date of your first entry is 29th September 2012 as per immigration records. The fact of your first entry into Seychelles was intentionally concealed from both government officials and the public at large means that you have knowingly misled the public as to your first entry into Seychelles. The same concealment of facts also applies to your last date of entry.

[22] That by virtue of concealing the above mentioned facts from the authorities of the Government of Seychelles as well as the public of Seychelles, you acquired your citizenship by fraud.

[23] That the above said facts constitute the grounds, in addition to the grounds mentioned in my notice dated 13th May 2013, on which it is proposed to deprive your citizenship under Section 11(1) of the Citizenship Act 1994;

[24] That these facts will also constitute the grounds upon which the Commission of Inquiry, to be appointed as per your application dated 14th May 2013 to me, shall inquire into.

Yours sincerely

(Sd) Joel Morgan

THE MINISTER

[25] Having received both Notices and in exercise of his right conferred by Section 11(3) of the Act, the petitioner requested the respondent to refer his case to a Commission of Inquiry. Accordingly, a Commission of Inquiry was ordered by the respondent. The Commission presided by Justice AFT. Fernando duly conducted the Inquiry. It focused inter alia, on the allegations contained in both notices served on the petitioner. After a thorough inquiry into the entire circumstances of the case, the Commission submitted its report (hereinafter called the “Report”) dated 10th June 2013, to the respondent.

[26] The Report on the Inquiry in essence, dispelled the allegation in the “First Notice” relating to the “Interpol Red Alert Notice” since it had been issued on the 25th April 2013, that was subsequent to the granting of Citizenship to the Petitioner and presumably, the petitioner could not have had knowledge of the said Alert Notice prior to the occurrence. However, the Report upheld the allegations in the “Second Notice”, relating to the false dates of entry. Whatever be the fact, whether those incorrect dates had been given by the petitioner himself or by another person as it transpired in the documentary evidence before the Commission, the fact remains that the petitioner eventually made a declaration in the application vouching that the information given therein was true and correct and that he understood the consequences, that incorrect, misleading or untrue information withheld in any material manner may result in deprivation of that Citizenship.

[27] This declaration, according to Justice Fernando - vide at page 13 of the Report brings in the element of “Strict Liability”. Besides, as rightly pointed out by Justice Fernando in his Report at page 6, that any person who, for the

purpose of procuring anything to be done or not to be done under this Act makes any statement, which the person knows to be false in any material particular, or recklessly makes any statement which is false in a material particular, is guilty of an offence in terms of Section 16 of the Act.

[28] In view and in consequence of all the above, the Respondent on the 24th of June 2013 issued an order to the Petitioner under Section 11(1) of the Citizenship Act depriving the Petitioner of his Citizenship by Registration and ordered him to leave the Seychelles within a period of 30 days on humanitarian grounds. Notice of deprivation of citizenship containing the said order (hereinafter called the “impugned decision” reads- in verbatim - thus:

[29] “Marek Trajter

La Digue, Seychelles

Dear Mr. Trajter

Deprivation of your Citizenship by registration under Section 11(1) of the Citizenship Act 1994 (Cap 30)

I Joel Morgan, Minister for Home Affairs & Transport and as Minister in charge of the administration of the Citizenship Act (Cap 30) issue this order to you ,Marek Trajter, under Section 11(1) of the said Act.

That having complied with the legal and procedural requirements of subsections (2), (3) and (4) of Section 1 of the Citizenship Act and having received a Report of the Commission of Inquiry and by virtue of the powers vested in me by the provisions of subsection (1) of Section 11 of the Act and having been satisfied that your Citizenship of Seychelles by registration (Certificate No: 008/2013) dated 5th April 2013 was obtained by making false representation, and therefore, I Joel Morgan, Minister in charge of the Citizenship Act

(Cap 30) hereby, and with immediate effect, deprive you of your Citizenship of Seychelles obtained by registration.

That you, by virtue of this order, cease to be a citizen of Seychelles from the date on which you are served this order and you are given a period of 30 days on humanitarian grounds, from the date of such service to leave the Republic of Seychelles.

Dated this 24th day of June 2013.

Yours sincerely,

(Sd) Joel Morgan

THE MINISTER”

[30]The petitioner having been aggrieved by the “impugned decision” has now petitioned this Court for a Judicial Review challenging the said decision in essence, on the following grounds:

(i) The impugned decision is irrational since the respondent did not give due consideration to the contents, weight, relevancy and legal implications of the record of the proceedings of the Commission of Inquiry and erred in the exercise of his discretion since the petitioner did not commit any fraud or false representation or concealment of material facts attributable personally to him. Besides, the Minister recited only the fact that he had followed the procedures under Section 10 (4) and (5) of the Act without having taken due consideration of the records of the proceedings of the Inquiry and its Report. The respondent in the exercise of his powers under Section 11(1) failed to give reasons for his decision in breach of the rules of natural justice.

(ii) The impugned decision is unfair and unjust since deprivation of Seychelles Citizenship would render the petitioner “Stateless” in Seychelles and cannot be deported by law to any other country that would accept him to enter into its territory.

(iii) Furthermore, it is the contention of Mr. Lucas, Learned Counsel for the Petitioner that the word “may” used in Section 11 of the Act implies that it is not imperative that the Minister must deprive “Citizenship” in all cases of fraud or false representation. The Minister has a discretion not to deprive the “Citizenship” when the gravity of the fraud or false is trivial or lesser in degree. In this particular case, the false representation is trivial as it involved only a mistake as to the dates of entry, for which the penalty of deprivation of “Citizenship” is unjustified and excessive. According to Mr. Lucas, the decision of the Minister suffers “Wednesbury unreasonableness” in that he failed to take into account all relevant circumstances, which he ought to have taken into account.

[31] Having said that I note, although in the petition it appears that the ***procedural impropriety or irregularity and illegality*** had originally been pleaded as grounds of challenge, subsequently Mr. Lucas during his final submission withdrew those grounds conceding there was no such ***procedural impropriety or irregularity or illegality***. According to Counsel, the main ground of challenge was only “Irrationality” behind the decision in question.

In view of all the above, Mr. C. Lucas, Learned Counsel for the Petitioner urged the Court to issue a Writ of Certiorari against the respondent quashing the impugned decision that resulted in an alleged unlawful detention, unwarranted deprivation of Citizenship and proposed expulsion from the country.

[32] On the other side, Mr. Chinnasamy, Learned Counsel for the respondent submitted that the Minister took the impugned decision in accordance with law and the procedure laid down in Section 11 of the Act. According to Mr. Chinnasamy, the respondent gave due consideration to the Report submitted by Justice AFT Fernando. The Red Alert Notice was not a bone of contention before the Commission of Inquiry nor was it a reason for the deprivation of Citizenship by the Minister. During his submission, Mr. Chinnasamy also produced a Certificate issued by the Government of Slovakia stating that the petitioner is still a Citizen of Slovakia.

[33] This fact is also corroborated by the Statutory Declaration of Concurrent Citizenship, which the petitioner signed and submitted to the Seychelles Immigration on 9th April 2013. As regards the use of the word “may” in Section 11 of the Act, Mr. Chinnasamy submitted that it is meant to be obligatory on the Minister to deprive the person of his Citizenship, if that had been obtained by means of fraud or false representation. Moreover, the Minister has given reasons in clear terms in his letter to the petitioner dated 24th June 2013. Besides, it is the contention of Mr. Chinnasamy that having regard to all the circumstances of the case the impugned decision of the Minister is legal, lawful, reasonable, fair and just, which cannot be faulted for irrationality. Therefore, Counsel urged the Court to dismiss the petition.

[34] I meticulously perused all the relevant documents on record including the file containing the record of the proceedings before the Minister. I also diligently went through the Report of the Commission of Inquiry. I gave careful thought to the arguments advanced by both counsel touching on points of law as well as facts in this matter. Incidentally, I should mention that some of the points Mr Lucas canvassed in this matter, cannot be entertained by this Court as it is not hearing an appeal against Justice AFT Fernando’s Report on the Commission of Inquiry or an appeal against the decision of the Minister.

[35] I will begin by saying that especially, in matters of judicial review it is important that the grounds of challenge, which the petitioner relies upon for the relief, should specifically and clearly be pleaded in clear terms in the petition. This is axiomatic from rule 3(b) of the Rules of the Court, which reads thus:

*“The petition under Rule 2 shall contain a statement of-
the relief sought and the grounds upon which it is sought”*

[36] What are the **grounds of challenge** that may be pleaded in a petition for a judicial review? The dictum propounded by **Lord Diplock** in the case of **Council of Civil Service Union vs. Minister for the Civil Service (1985) AC p374** indeed, sheds some light in this respect. According to **Lord Diplock** the grounds of challenge in matters of judicial review, may broadly be divided into three categories namely, (i) **illegality** (ii) **irrationality** or **unreasonableness** and (iii) **procedural impropriety**. Hence, in any petition for judicial review, the pleadings therein should disclose at least one or more of the said three categories of grounds clearly and in unequivocal terms as identified by **Lord Diplock** in the case cited supra.

[37] In the instant petition, the petitioner has pleaded inter alia, in paragraph 9 and 11 of the petition that the impugned decision was outrageous in its defiance of logic, unfair and below the acceptable moral standard.

[38] Although the expressions such as **“outrageous”, “defiance of logic”, “unfair”, “unjust”** and **“below moral standard”** used in the petition do not explicitly refer to any of the said three **categories** identified by **Lord Diplock**, the connotation behind these expressions in pith and substance, obviously constitute the category of **irrationality or unreasonableness**. For, one cannot divorce the common element of **“irrationality”** from the

vituperative epithets such as **outrageous, illogical, sub-moral, unfair or unjust** and the like.

[39] Be that as it may, I will now move on to examine the merits of the case in the light of the record of proceedings before the Minister, the Inquiry Report and the submissions made by counsel on both sides. To my mind, three fundamental questions arise for determination in this case. They are:

1. *Is the decision of the respondent depriving the petitioner of his Seychellois Citizenship obtained by registration and ordering him to leave the Seychelles within 30 days on humanitarian grounds, "irrational", having regard to all the circumstances of the case?*
2. *Did the respondent fail to give reasons for his decision?*
3. *Is the impugned decision unfair and unjust since deprivation of Seychelles Citizenship would render the petitioner "Stateless" in Seychelles?*

[40] Firstly, I would like to restate herein what I have stated before in ***Cousine Island Company Ltd Vs Mr. William Herminie, Minister for Employment and Social Affairs and Others - Civil Side No. 248 of 2000***. Whatever is the nature of the issue, factual or legal, that may arise for determination, the fact remains that in matters of Judicial Review, the Court is not sitting on appeal to reexamine the evidence, revisit the facts and merits of the case determined by the Minister or scrutinize the findings of the Commission of Inquiry held by Justice Fernando in this matter. Indeed, the ***system of judicial review*** is radically different from the ***system of appeals***. When hearing an appeal the Court is concerned with the merits of the case under appeal. However, when subjecting some administrative decision or act or order to judicial review, the Court is concerned only with the ***"legality"***, ***"rationality" (reasonableness)*** and ***"propriety"*** of the decision in question ***vide the landmark dictum of Lord Diplock in Council of Civil Service Union vide supra***.

[41] On an appeal the question is “Right or Wrong”? - Whereas on a Judicial Review the question is “Legal or Illegal?”, “Reasonable” or “Unreasonable”? –in other words, Rational or Irrational? - Or procedurally Proper or Improper?

[42] On the issue of legality, I note, the entity of law is always defined, certain, identifiable and directly applicable to the facts of the case under adjudication. Therefore, the Court may without much ado determine the issue of “legality” of any administrative decision, which indeed, includes the issue whether the decision-maker had acted in accordance with law, by applying the *litmus test*, based on *an objective assessment* of the facts involved in the case. On the contrary, the entity of “fairness” or “reasonableness” or “rationality” cannot be defined, ascertained and brought within the parameters of law; there is no *litmus test* to apply, for it requires *a subjective assessment* of the entire facts and circumstances of the case under consideration and such assessment ought to be made applying the yardstick of human reasoning and rationale.

[43] In considering the rationality of the impugned decision one should examine what constitutes a valid ground under Section 11 (1) of the Act, on which the Minister may deprive a Citizen by registration of the Citizenship of Seychelles. And, whether there was sufficient evidence before the Minister to satisfy himself that the petitioner had obtained registration by means of fraud, false representation, or concealment of material facts. Whether the Minister acted within the power conferred on him by Section 11 of the Act; whether the respondent allowed the petitioner to exercise his right to have the case referred to a Commission of Inquiry in terms of Section 11 (2) of the Act; have all these been considered and rightly applied by the Minister in his decision of the case?

[44]The starting point in this exercise is the interpretation of the words used in the particular section of the Act, which empowers the Minister to deprive a person of his Citizenship of Seychelles. In this regard, *Section 11 of the Act* reads thus:

‘11.(1) The Minister may, subject to the provisions of this section, by order, deprive a citizen by registration or naturalization of the citizenship of Seychelles if the Minister is satisfied that the registration or naturalization 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 inquiry under subsection (3).

(3) If a person notified under subsection (2) applies for an inquiry within such time and in such manner as may be prescribed, the Minister shall refer the case for inquiry and report to a commissioner appointed by the Minister for the purpose.

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

It is pertinent to Section 12, which inter alia, reads thus:

12.(1) A citizen who concurrently possesses the citizenship of another country shall, within 30 days after the citizen commences to concurrently possess that other citizenship, or, where the citizen is resident outside Seychelles at such commencement, within 30 days after the arrival next of the citizen in Seychelles, make a declaration to the Citizenship Officer in the prescribed manner of the name of that other country.

(2) A citizen who on the commencement of this Act, concurrently possesses the citizenship of another country shall, within 90 days after the commencement of this Act or, where the citizen is outside Seychelles during that period, within 30 days after the arrival next of the citizen in Seychelles, make the declaration required by subsection (1).

[45] In his decision, the Minister has obviously, examined the facts of the case in the light of the above provisions of law, the Report and upon satisfaction has come to the right conclusion *that the petitioner falsely declared the date of his first entry as being 14th December 2007, while the date of his first entry was admittedly, on the 29th September 2012. The fact of his first entry into Seychelles was concealed from both government officials and the public at large. This misled the Government and the public as to his first entry into Seychelles. A similar false representation as to the date applies to the petitioner's last entry as well.*

[46] In the circumstances, I hold that the decision of the Minister cannot be faulted in this respect, when he concluded that the petitioner did obtain "Citizenship of Seychelles" by Registration *by means of false representation or the concealment of material fact as to the dates of his entries into Seychelles.*

[47] I will now, turn to the second issue as to “**Rationality**” or “**reasonableness**” of the decision in question. What is the test the Court should apply in determining the reasonableness of the impugned decision in matters of judicial review?

[48] In order to determine the issue as to *reasonableness of a decision* one has to invariably go into its merits, as formulated in ***Associated Provincial Picture Houses V Wednesbury Corporation [1948] 1 KB 223***. Where judicial review is sought on the ground of **irrationality or unreasonableness**, the Court is required to make value judgments about the quality of the decision under review. The merits and legality of the decision in such cases are intertwined.

[49] Unreasonableness is a stringent test, which leaves the ultimate discretion with the judge hearing the review application. To be unreasonable, an act must be of such a nature that no reasonable person would entertain such a thing; it is one outside the limit of reason (Michael Molan, Administrative Law, 3 Edition, 2001). Applying this test, as I see it, the court has to examine whether the decision in question is unreasonable or not.

[50] At the same time, one should be cautious in that, the “Judicial review is concerned not with the merits of a decision, but with the manner in which the decision was made. Thus, the judicial review is made effective by the court quashing an administrative decision without substituting its own decision and is to be contrasted with an appeal where the appellate tribunal substitutes its own decision on the merits for that of the administrative officer.” ***Per Lord Fraser Re Amin [1983] 2 All E R 864at 868***.

[51] In determining the issue of reasonableness of the decision in the present case, the court has to make *a subjective assessment* of the entire facts and

circumstances of the case and consider whether the decision of the Minister is reasonable or not. *In considering reasonableness, the duty of the decision-maker is to take into account all relevant circumstances as they exist at the date of the hearing that he must do in what I venture to call a broad commonsense way as a man of the world, and come to his conclusion giving such weight, as he thinks right to the various factors in the situation. Some factors may have little or no weight; others may be decisive but it is quite wrong for him to exclude from his consideration matters, which he ought to take into account* **per Lord Green in Cumming Vs. Jansen (1942) 2 All ELR at p656.**

[52] In my considered view, the Minister in his decision has rightly considered the evidence on record and the relevant facts and circumstances of the cases as they existed, at the date of his determination in arriving at his decision. Obviously, the petitioner's contention to the contrary, stating that he has acted unreasonably and without evidence is highly farfetched. Hence, the submission of the petitioner's counsel that the Minister acted unreasonably, without evidence or without taking into account all relevant circumstances, did not appeal to me in the least.

[53] In any event, in the absence of any evidence to the contrary, the Minister was right, rational and reasonable in satisfying himself that the petitioner obtained "Citizenship of Seychelles" by means of false representation of material facts" and depriving the petitioner of his "Seychellois Citizenship" and accordingly and rightly so ordered him to leave the Republic of Seychelles giving him a grace period of 30 days on humanitarian grounds. In my judgment, any reasonable adjudicating authority/ decision-maker would have arrived at the same conclusion, which the **Minister** has arrived at in the instant case, in his respective consideration and determination of the case.

[54] In any event, in considering reasonableness/rationality as lucidly and succinctly formulated by **Lord Green (in Cumming Vs. Jansen supra)** *the duty of the decision-maker is to take into account all relevant circumstances as they*

exist at the date of the hearing that he must do in what Lord Green ventured to call a broad commonsense way as a man of the world, and come to his conclusion giving such weight, as he thinks right to the various factors in the situation. Although some factors might have little or no weight as pointed out by Mr. Lucas; others might be decisive as pointed out by Mr. Chinnasamy in their respective submissions; but as I see it, the Minister in the instant case has taken all relevant factors into consideration and has not excluded from his consideration, matters, which he ought to take into account. Hence, I find the answer to the first fundamental question in the negative. The decision of the respondent depriving the petitioner of his Seychellois Citizenship obtained by registration and ordering him to leave the Seychelles within 30 days on humanitarian grounds is neither **irrational**”, **nor can it be faulted on** “Wednesbury Unreasonableness”, having regard to all the circumstances of the case.

[55] Regarding the second question, it is so apparent that the respondent has given the reasons for his decision in unequivocal terms in his first Notice dated 17th May 2013 and the Second Notice dated 24th June 2013, rehearsed in extensor supra. The reasons are in black and white; namely, false representation as to the dates of the petitioner’s entries into Seychelles. With due respect, I do not understand what else the petitioner as a reasonable person expects as reasons from the Minister for his decision.

[56] Moving on to the third question, undoubtedly the petitioner is still a Citizen of Slovakia, his country of origin as per the Certificate dated the 18th July 2013 issued by the Government of Slovakia. This is undoubtedly, a conclusive proof, confirmed by the statutory declaration made by the petitioner to the Seychelles Immigration Authority on the 9th April 2013 confirming his concurrent citizenship.

[57] Before I conclude, I should mention that in ordinary usage “may” is permissive or directory and “shall” is imperative. In accordance with such

usage, the word “*may*” in a statute, will not generally be held to be mandatory. In some cases, however, it has been held that, that expression - to say the least - has to be mandatory *vide Cooper v. Hall [1968] 1 W.L.R 360*. There are various tests to determine whether a particular provision of a statute that carries the term “*may*” is “mandatory” or “directory” in nature. One of the tests is: If the statute itself provides for a punishment or a penal consequence implying that the act so done would be invalid or unlawful, then, naturally the provision of the statute is mandatory in nature *vide S.G.G.Edger “Craies on Statute Law”, (London, 7th ed., Sweet & Maxwell 1971)*. I quite agree with Mr. Chinnasamy in his statutory-interpretation that the use of the word “may” in Section 11 of the Act, implies that it is punishable and so obligatory on the Minister to deprive the person of his Citizenship, if he is satisfied that it had been obtained by means of fraud or false representation or concealment of material facts.

[58] Obviously, fraudulence, falseness and concealment are questions of facts, not of degree. In legal sense and implications, “*a fraud is, a fraud “or “a falseness is a falseness”*. There cannot be a small falseness and a small fraud in the technical eye of the law. Hence, Mr. Lucas’ contention that the Minister has discretion not to deprive the “Citizenship” of a person, when the gravity of the fraud or falseness is small or lesser in degree, in my considered view, does not hold water. Once, if the Minister is satisfied that Citizenship by registration has been obtained by anyone by means of fraudulence or falseness, the Minister is under a statutory obligation - to say the least - it is compulsory that he should exercise his powers under Section 11 (1) of the Act, and deprive that person of his Citizenship after having duly complied with the provisions of law under Section 11(2), (3) and (4) of the Act. This, he has done reasonably in the instant case, in accordance with law and so I find.

[59] Having said that, for the purpose of appeal if any, against this judgment, I would concur with the reasoning and the findings of Justice AFT

Fernando in his Report at page 13, in that, the petitioner's declaration -in the application, vouching that the information given therein was true and correct and that he understood the consequences that incorrect, misleading or untrue information withheld in any material manner could result in the deprivation of that Citizenship - brings in the element of "Strict Liability". Besides, as rightly pointed out by Justice AFT Fernando in his Report at page 6, that any person who, for the purpose of procuring anything to be done or not to be done under this Act makes any statement, which the person knows to be false in any material particular, or recklessly makes any statement which is false in a material particular, is guilty of an offence in terms of Section 16 of the Act.

[60] For the reasons stated hereinbefore, I hold that that the decision and "order" of the Minister dated 24th July 2013 depriving the petitioner of his "Citizenship of Seychelles" and ordering him to leave the Republic of Seychelles within 30 days from the date of the said order made in this matter, is neither ***illegal*** nor ***irrational***, nor ***unreasonable*** nor ***procedurally improper***. Therefore, I decline to grant the *writ of certiorari* and dismiss this petition accordingly. I make no orders as to costs.

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D. Karunakaran

Judge

Dated this 22nd day of July 2013