

PETITIONER:
SYED KHAWAJA MOINUDDIN

Vs.

RESPONDENT:
GOVERNMENT OF INDIA AND 3 ORS.

DATE OF JUDGMENT:
18/01/1967

BENCH:
BHARGAVA, VISHISHTHA
BENCH:
BHARGAVA, VISHISHTHA
HIDAYATULLAH, M.
MITTER, G.K.

CITATION:
1967 AIR 1143 1967 SCR (2) 401

ACT:
Citizenship Rules, 1956, Schedule III, para 3--When detailed enquiry on the acquisition of foreign citizenship necessary.

HEADNOTE:

The appellant who was born in India left for Pakistan in 1951 at the age of 13. He stayed there till 1955, when he came to India as a Pakistani citizen with a Pakistani passport. In 1963, he was deported to Pakistan. In 1964, he again came to India with a Pakistani passport. In order to determine his nationality for the purpose of deporting him, the Government of India issued notice to him to make representations, if any. The appellant made two representations, and though in both of them he urged that he had not voluntarily acquired the citizenship of Pakistan, he did not raise any plea, at any stage, that he had not voluntarily obtained the passport on the two occasions he came to India, or, that he was compelled to apply for Pakistani passports. There was no plea that he tried to obtain a permit for temporary stay when going to Pakistan nor was there any suggestion that he tried to obtain a repatriation certificate which he could have obtained if he had retained his Indian citizenship. The Government of India considered the representations and passed an order that he had voluntarily acquired Pakistani citizenship, under s. 9(2) of the Citizenship Act, 1955.

HELD: The order did not suffer from any infirmity. On the representations made by the appellant the Government was not called upon to make any detailed enquiry, when the provisions of part 3 of Schedule III of the Citizenship Rules, namely, that the authority must regard obtaining of a foreign passport on a particular date as conclusive proof that the Indian citizen had voluntarily acquired the citizenship of another country before that date, were clearly applicable. It was only when a plea was raised that a citizen had not voluntarily obtained the passport that he should be afforded opportunity to prove that fact. [404 F-H] Mohd. Ayub Khan v. Commissioner of Police, Madras, [1965] 2 S.C.R. 884, referred to.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 237 of 1966.

Appeal by special leave from the judgment and order dated October 7, 1966 of the Andhra Pradesh High Court in Criminal Misc. Petition No. 1621 of 1966.

Yerramilli Satyanarayana and K. R. Sharma, for the appellant.

B. Sen and R. N. Sachthey, for respondent No. 1.

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The Judgment of the Court was delivered by

Bhargava, J. In this appeal, by special leave, we have already passed the order on 14th December, 1966, and we now indicate our reasons for- that order.

The appellant was born on. April 6, 1938, at Suryapet in Nalgonda District, Andhra Pradesh, and was educated and brought up there until the year 1951. His father died in 1947. After the partition of India and the enforcement of the Constitution, the appellant, in August 1951, left for Pakistan where he stayed until 1955. In 1955, he returned to India on a passport obtained from the Pakistan Government as a Pakistani citizen with a visa from the Indian Government. Even after the expiry of the visa, he continued to stay in India, but in August, 1963, he was deported to Pakistan. He came again to India with a passport dated 4th December, 1963 issued by the Pakistan Government with a visa from the Indian High Commission dated 20th January, 1964. He arrived in India on 5th February, 1964. Subsequently, the question of deportation of the appellant by the Indian Government arose, and thereupon, the appellant filed a petition under Art. 226 of the Constitution challenging the order of deportation made by the Government of India. The petition was allowed by the High Court of Andhra Pradesh and the order of deportation was quashed on the ground that there had been no determination that the appellant had acquired Pakistani citizenship under s. 9 of the Citizenship Act by the Indian Government. Thereafter, the Government took up the question of determining the nationality of the appellant, and a notice was issued to the appellant on 19th March, 1965 through the Government of Andhra Pradesh asking the appellant, within one month from the date of the service of the notice on him, to submit to the Government of Andhra Pradesh for onward transmission to consideration of the Central Government any representation that the appellant might wish to make.

The appellant made two representations. The later of the two representations was sent by him in the month of May, 1965. The Government of India, on 18th August, 1965, issued an order holding that the appellant had voluntarily acquired the citizenship of Pakistan. The appellant challenged this order by another petition under Art. 226 of the Constitution before the High Court of Andhra Pradesh, and that petition was dismissed by the order now under appeal before us.

It was not disputed, as it could not be disputed in this case, that the Government of India was competent under s. 9(2) of the Citizenship Act, 1955 to determine whether the appellant had acquired the citizenship of Pakistan. Admittedly, the appellant had gone to Pakistan in August 1951 after the enforcement of the Constitution. The question whether he had migrated with the

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intention of voluntarily acquiring the citizenship of Pakistan and had actually acquired such citizenship could,

therefore, be determined by the Government of India alone under s. 9(2) of the Citizenship Act. The order dated 18th August, 1965 passed by the Government of India, shows 'that, before giving its decision, the Government considered the cause shown by the appellant and gave due regard to the principles of evidence contained in Schedule III of the Citizenship Rules, 1956 in accordance with Rule 30 thereof. This order has been challenged on behalf of the appellant on the ground that the appellant was not given an adequate opportunity of putting forward his case before the Government of India gave its decision on 18th August, 1965 holding that the appellant had voluntarily acquired the citizenship of Pakistan. It was urged that the Government of India should have held an enquiry before arriving at this decision, and for this proposition reliance is placed on the decision of this Court in Mohd. Ayub Khan v. Commissioner of Police, Madras and Another⁽¹⁾. It was held in that case that :

"The question as to whether when and how foreign citizenship has been acquired has to be determined having regard to the rules of evidence prescribed, and termination of Indian citizenship being the consequence of voluntary acquisition of foreign citizenship, the authority has also to determine that such latter citizenship has been voluntarily acquired. Determination of the question postulates an approach as in a quasi-judicial enquiry; the citizen concerned must be given due notice of the nature of the action which in the view of the authority involves termination of Indian-citizenship, and reasonable opportunity must be afforded to the citizen to convince the authority that what is alleged against him is not true. What the scope and extent of the enquiry to be made by the authority on a plea raised by the citizen concerned should be, depends upon the circumstances of each case."

Proceeding further, the Court considered the circumstances which have to be taken into account in applying the provisions of paragraph 3 of Schedule III of the Citizenship Rules which raises a conclusive presumption that a citizen of India, who has obtained a passport from a foreign country on any date, has before that date voluntarily acquired citizenship of that country. It was held that "by the application of the rule in paragraph 3, the authority must regard obtaining of a foreign passport on a

(1) [1965] 2 S.C.R. 884.

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particular date as conclusive proof that the Indian citizen has voluntarily acquired citizenship of another country before that date. But obtaining of a passport of a foreign country cannot in all cases merely mean receiving the passport. If a plea is raised by the citizen that he had not voluntarily obtained the passport, the citizen must be afforded an opportunity to prove that fact." Relying on these views of this Court, it was urged on behalf of the appellant that, in this case, the appellant should have been given an opportunity by the Government of India to prove that he had not voluntarily obtained the passport from the Pakistan Government which was the basis, of the decision of the Government of India dated 18th August, 1965 against the appellant. We, however, find that, on the facts of the present case, there was no occasion for the Government of

India to enter into any such enquiry.

As we have mentioned earlier, the appellant made two representations to the Government of India. Though, in both those representations, he urged that he had not voluntarily acquired the citizenship of Pakistan, he did not at any stage raise any plea that he had not voluntarily acquired the passports on the basis of which he came to India on the two occasions in 1955 and 1964. In fact, though the appellant did put forward a plea that when he went to Pakistan, he was a minor, it was never urged on his behalf that he had not gone to Pakistan voluntarily, or that he had left because he was compelled by the disturbed conditions in India, or that he was taken there by abduction or against his will. In fact, he did not indicate in his representation at all the reason why he had gone, to Pakistan. The facts put by him indicated that he had gone voluntarily even though he was a minor, and there was no explanation forthcoming for exercising this volition of going to that country. Even after arrival in Pakistan, he stayed on for a period of four years, and in the representation to the Government he did not explain this long-stay there. Then, there was no plea that he was compelled to apply for the passport as a Pakistani citizen and did not, in fact, obtain it voluntarily. There is no mention that, when going to Pakistan, he tried to obtain any permit for a temporary visit nor was there any suggestion that before return, he tried to obtain a repatriation certificate which he could have obtained if he had retained his Indian citizenship. No such facts having been alleged, it is not possible for this Court to hold that the Government of India was called upon to make any detailed enquiry when the provisions of paragraph 3 of Schedule III of the Citizenship Rules, were clearly applicable, because the appellant had obtained passports in Pakistan representing himself to be a Pakistani citizen. It cannot, therefore, be said that, in this case, the Government of India failed to hold any enquiry which it was required to do, and consequently,

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the order dated 18th August, 1965 passed by the Government of India does not suffer from any infirmity. These were the reasons which led us to the view that the appeal had no merit and had to be dismissed.

v.p.s

Appeal dismissed.

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