The Government of Andhra Pradesh

Vs

Syed Mohd. Khan

Civil Appeals Nos. 258-279 of 1961

(T. L. Venkatarama Ayyar, P. B. Gajendragadkar, K. N. Wanchoo JJ)

17.04.1962

JUDGMENT

GAJENDRAGADKAR, J. –

This group of twenty-two appeals has been brought to this Court with certificates granted by the Andhra High Court, and they challenge the correctness of the decision of the said High Court that r. 3 in Sch. III of the Citizenship Rules, 1956 is ultra vires. Twenty-two persons who are the respective respondents in these appeals filed twenty-two writ petitions in the Andhra High Court challenging the validity of the orders passed by the appellant, Government of Andhra Pradesh, asking each one of them to remove themselves out of India before the date specified in the notices served on them in that behalf. It appears that all the said persons had come to India with a passport issued in their favour by the Government of Pakistan, and the appellant's case before the High Court was that as a result of the conduct of the respondents in applying for and obtaining the Pakistani passport, they had lost the citizenship of this country and had voluntarily acquired the citizenship of Pakistan. That is how the appellant justified the notices served on the respondents calling upon them to leave India.

The respondents, on the other hand, contended that s. 9 of the Citizenship Act, 1955 (57 of 1955) and r. 3 in Sch. III of the Citizenship Rules were ultra vires and they urged that they had not acquired the citizenship of Pakistan and continued to be the citizens of India. These writ petitions were tried by Bhimasankaran J. The learned Judge held that the impugned section and the Rule were intra vires and he came to the conclusion that as a result of s. 9 read with r. 3 in Sch. III of the Citizenship Rules, as soon as it is shown that a person has acquired a passport from the Pakistan Government, there is an automatic statutory cesser of his citizenship of India. In the result, the learned Judge upheld the validity of the orders of deportation passed by the appellant against the respondents and dismissed the writ petitions without costs.

This decision was challenged by the respondents by preferring 22 appeals before a Division bench of the Andhra High Court. The Division Bench which heard these appeals held that s. 9 was intra vires, but found that r. 3 of Sch. 3 of the Citizenship Rules was ultra vires. In its opinion, the said Rule was outside the authority conferred on the Central Government by s. 9 (1) and it also contravened Art. 19 of the Constitution. The consequence of these findings inevitably was that the orders of deportation passed by the appellant against the respondents were held to be invalid. That is why the appeals preferred by the respondents were allowed and a writ of mandamus was issued directing the appellant to forbear from enforcing the said orders of deportation.

The Court of Appeal has also observed that under the Citizenship Act and the Rules framed thereunder, the Central Government has been constituted as a Special Tribunal for deciding the

question as to whether a person has acquired the citizenship of a foreign country or not, and so, before issuing the orders of deportation, it was necessary that the appellant should have obtained a decision of the Central Government on the point about the status of the respondents. The High Court accordingly made it clear that its decision in the appeals in question would not preclude the Central Government from determining the question whether the respondents have voluntarily acquired the citizenship of another country within the meaning of s. 9(1), but it added that in deciding the question, the Central Government must ignore r. 3 of Sch. III which, in its opinion, was ultra vires. It is against this decision of the Division Bench about the invalidity of the impugned Rule that the appellant has come to this Court.

The question about the validity of section 9 of the Citizenship Act and of r. 3 in Sch. III of the Citizenship Rules has been recently considered by this Court in petitions Nos. 101 and 136 of 1959 and 88 of 1961, and this Court has held that both s. 9(2) and r. 3 in Sch. 3 are intra vires. The point raised by the appellant in these appeals is, therefore, concluded in its favour by this decision. This position is not disputed by the respondents.

That raises the question about the proper order to be passed in the present appeals. It has been urged before us by Mr. Tatachari for the appellant that the effect of our decision in the case of Izhar Ahmad Khan is that as soon as it is shown that a person has acquired a passport from a foreign Government, his citizenship of India automatically comes to an end, and he contends that in such a case it is not necessary that the Central Government should hold any enquiry and make a finding against the person before the appellant can issue an order of deportation against him. In our opinion, this contention is clearly misconceived. In dealing with the question about the validity of the impugned section and the Rule, this Court has, no doubt, stated that "the proof of the fact that a passport from a foreign country has been obtained on a certain date conclusively datermines the other fact that before that date he has voluntarily acquired the citizenship of that country." But in appreciating the effect of this observation, it must be borne in mind that in all the cases with which this Court was then dealing, the question about the citizenship of the petitioners had been expressly referred to the Central Government and the Central Government had made its findings on that question. It was after the Central Government had recorded a finding against the petitioners that they had acquired the citizenship of Pakistan that the said writ petitions came before this Court for final disposal and it is in the light of these facts that this Court proceeded to consider the contention about the validity of the impugned section and the impugned rule. It is plain, therefore, that the observations on which Mr. Tatachari relied were not intended to mean that as soon as it is alleged that a passport has been obtained by a person from a foreign Government, the State Government can immediately proceed to deport him without the necessary enquiry by the Central Government. Indeed, it is clear that in the course of the judgment, this Court has emphasised the fact that the question as to whether a person has lost his citizenship of this country and has acquired the citizenship of a foreign country has to be tried by the Central Government and it is only after the Central Government has decided the point the State Government can deal with the person as a foreigner. It may be that if a passport from a foreign Government is obtained by a citizen, and the case falls under the impugned Rule, the conclusion may follow that he has acquired the citizenship of the foreign country; but that conclusion can be drawn only by the appropriate authority authorised under the Act to enquire into question. Therefore, there is no doubt that in all cases where action is proposed to be taken against persons residing in this country on the ground that they have acquired the citizenship of a foreign State and have lost in consequence the citizenship of this country, it is essential that that question should be first considered by the Central Government. In dealing with the question, the Central Government would undoubtedly be entitled to give effect to the impugned r. 3 in Sch. III and deal with the matter in accordance with the other relevant Rules

framed under the Act. The decision of the Central Government about the status of the person is the basis on which any further action can be taken against him. Therefore, we see no substance in the argument that the orders of deportation passed by the appellant against the respondents should be sustained even without an enquiry by the Central Government about their status. That is why we think, in substance, the direction of the High Court is right, though the High Court was in error in holding that the Central Government should hold the enquiry without reference to r. 3.

In the result, the appeals succeed on the main point of law and the decision of the High Court that the impugned r. 3 in Sch. III is invalid is set aside. Even so, we cannot accept the view of the learned trial Judge that there is an automatic cesser of the respondents' citizenship by virtue of s. 9. We hold that the question about the status of the respondents has to be tried by the Central Government and it is only after the Central Government has reached the conclusion that the respondents have acquired the citizenship of Pakistan that the appellant can issue orders of deportation against them. That being our view, we confirm the writs issued by the High Court restraining the appellant from giving effect to the impugned orders of deportation until the question about the respondents' status is determined by the Central Government. There would be no order as to costs.

Appeals allowed.

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