

Mohd. Ayub Khan

Vs

Commissioner of Police, Madras and Another

Civil Appeal No. 250 of 1964

(K. Subha Rao, M. Hidayatullah, J. C. Shah, S. M. Sikri, K. N. Wanchoo JJ)

05.02.1965

JUDGMENT

SHAH J. -

The appellant Mohd. Ayub Khan petitioned the High Court of Madras for a writ of mandamus restraining the Commissioner of Police, Madras, from taking action pursuant to the order of the Government of Madras. Home Department, No. 83546, dated May 28, 1958 and from interfering with the appellant's rights as a citizen of India. The petition was dismissed by Balakrishna Ayyar, J., and the order was confirmed in appeal by a Division Bench of the High Court. With certificate granted by the High Court, the appellant has appealed to this Court.

The appellant, who claims that he had acquired the status of an Indian citizen on the commencement of the Constitution as a person who had been ordinarily resident in the territory of India for not less than five years immediately preceding the date, was served with a notice dated July 17, 1957 informing him that as he had obtained Pakistan Passport No. 071377, dated April 1, 1953 he should leave India within one month from the date of service of the notice, and in default of compliance he would be prosecuted and deported from India under the Foreigners Act, 1946 as amended by the Foreigners Law (Amendment) Act, 1957. On August 19, 1957, the appellant applied to the Collector of Madras for registration as a citizen of India. Later he applied to the Central Government under section 9(2) of the Citizenship Act, 1955 to determine the question whether he continued to remain a citizen of India, and prayed that he may be given an opportunity to produce all "necessary evidence in support of his claim as regards Indian citizenship". Without affording him that opportunity, however, the Government of India by order, dated May 7, 1958 rejected the application of the appellant under section 9 of the Citizenship Act.

In support of his petition before the High Court for issue of a writ of mandamus, the appellant urged that section 9 of the Citizenship Act, 1955 was ultra vires the Parliament and cl. 3 of Sch. III to the Citizenship Rules was also ultra vires the Central Government, and that in any event Rule 30 of the Citizenship Rules contemplated a quasi-judicial inquiry in which an opportunity must be given to the party sought to be affected, to make a representation and to adduce evidence to show that the acquisition of a passport from the High Commissioner for Pakistan was not voluntary. Balakrishna Ayyar, J., rejected these contentions. In dealing with the question whether the order of the Central Government was unenforceable because opportunity to prove the appellant's case that he had not voluntarily renounced Indian citizenship, the learned Judge observed that the appellant "had not indicated on what points he intended to lead evidence and what kind of evidence he intended to adduce".

In appeal the High Court held that the appellant "had in fact made a declaration on the basis of which the passport was obtained and the allegations made by him did not even imply that he was forced to make a false declaration". In the view of the High Court section 9 lays "down an objective test and when the individual had brought himself within it, the law determines the legal consequences of the situation, independently of his intent or understanding", and therefore there was no scope for an enquiry of the nature claimed by the appellant.

Before dealing with the arguments raised by counsel for the appellant in this appeal, certain constitutional and legislative provisions which have a bearing thereon may be set out. Part III of the Constitution deals with the topic of citizenship. By Art. 5 a person who at the commencement of the Constitution had his domicile in the territory of India and who was born in the territory of India, or either of whose parents was born in the territory of India, or who had been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement was deemed a citizen of India. By virtue of cl. (3) of Art. 1 the territory of India is comprised of the States, the Union territories and such other territories as may be acquired. Article 6 deals with the acquisition of rights of citizenship of persons who have migrated to India from Pakistan, and Art. 7 deals with the rights of citizenship of migrants to Pakistan. Article 8 deals with the rights of citizenship of certain persons of Indian origin residing outside India. Article 9 provides :

"No person shall be a citizen of India by virtue of article 5, or be deemed to be a citizen of India by virtue of article 6 or article 8, if he has voluntarily acquired the citizenship of any foreign State."

Article 10 provides that every person who is or is deemed to be a citizen of India under any of the foregoing provisions shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen. By Art. 11 Parliament is authorised to make provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship. Article 367 cl. (3) defined a "foreign State" as any State other than India, but the President was by the proviso thereto authorised, subject to the provisions of any law made by Parliament, to declare by order any State not to be a foreign State for such purposes as may be specified in the order. By a declaration made under the Constitution (Declaration as to foreign States) Order, 1950, it was declared that, subject to the provisions of any law made by Parliament, every country within the Commonwealth was not to be a foreign State for the purpose of Art. 9 of the Constitution. Pakistan could not therefore be regarded as a foreign State, until legislation was enacted by Parliament to the contrary. In 1955 the Parliament enacted the Citizenship Act 57 of 1955 to provide for the acquisition and termination of Indian citizenship. The Act made detailed provisions for acquisition of citizenship by birth, by descent, by registration, by naturalisation and by incorporation of territory in sections 3 to 7 of the Act. In sections 8, 9 & 10 provision was made renunciation termination and deprivation of citizenship, By section 9 it was enacted that :

"(1) Any citizen of India who by naturalisation, registration or otherwise voluntarily acquires or has at any time between the 26th January, 1950 and the commencement of this Act voluntarily acquired, the citizenship of another country shall, upon such acquisition or, as the case may be, such commencement, cease to be a citizen of India :

"Provided that nothing in this sub-section shall apply to a citizen of India who, during any war in which India may be engaged, voluntarily acquires the citizenship of another country, until the Central Government otherwise directs.

If any question arises as to whether, when or how any person has acquired the citizenship of another country, it shall be determined by such authority, in such manner, and having regard to such rules of evidence, as may be prescribed in this behalf."

By section 18(1) the Central Government was authorised to make rules, inter alia, for setting up the authority to determine the question of acquisition of citizenship of another country, and the procedure to be followed by such authority and rules of evidence relating to such cases. In exercise of the authority under section 18(1) the Citizenship Rules, 1956 were framed by the Central Government and they came into force on July 7, 1956. By Rule 30, it was provided :

"(1) If any question arises as to whether, when or how any person has acquired the citizenship of another country, the authority to determine such question shall, for the purposes of section 9(2), be the Central Government.

The Central Government shall in determining any such question have due regard to the rules of evidence specified in Schedule III."

Schedule III set out the rules referred to in Rule 30(2). Clauses 1, 2 and 3 are material :

"1. Where it appears to the Central Government that a citizen of India has voluntarily acquired the citizenship of any other country, it may require him to prove within such period as may be fixed by it in this behalf, that he has not voluntarily acquired the citizenship of that country and the burden of proving that he has not so acquired such citizenship shall be on him.

"2. For the purpose of determining any question relating to the acquisition by an Indian citizen of the citizenship of any other country, the Central Government may make such reference as it thinks fit in respect of that question or of any matter relating thereto, to its Embassy in that country or to the Government of that country and act on any report or information received in pursuance of such reference.

"3. The fact that a citizen of India has obtained on any date a passport from the Government of any other country shall be conclusive proof of his having voluntarily acquired the citizenship of that country before that date."

Acquisition of citizenship at the commencement of the Constitution was governed by Arts. 5, 6 and 7. If, however, a person had voluntarily acquired citizenship of a foreign State he could not claim the status of a citizen under Art. 5, and he could not be deemed to be a citizen by virtue of Art. 6 or Art. 8. Article 10 continues, subject to the provisions of any law to be made by Parliament, the right of citizenship acquired or deemed to be acquired under the foregoing Articles. Power of Parliament to enact legislation to make provision with respect to the acquisition and termination of citizenship is as a matter of abundant caution affirmed by Art. 11. The Parliament by section 9 of the Citizenship Act, 1955 legislated in regard to determination of citizenship and provided, inter alia, that a person who has voluntarily acquired since January 26, 1950 or acquires after the commencement of the Act citizenship of another country, shall cease to be a citizen of India, and that if any question arises as to whether citizenship of another country has been acquired by a person, the question must be determined by the authority, in such manner and having regard to such rules of evidence, as may be prescribed in that behalf.

This Court has pronounced upon the legislative competence of the Parliament to enact section 9 of the Citizenship Act, 1955 in *Izhar Ahmad Khan v. Union of India* ([1962] Supp. 3 S.C.R. 235.). In the same case challenge to the validity of Rule 3 of Sch. III to the Rules framed under the Citizenship Act, 1955 was also negatived. Mr. Ram Reddy for the appellant contended that as certain important aspects of the plea of invalidity were not presented before the Court at the hearing of *Izhar Ahmad Khan's case* ([1962] Supp. 3 S.C.R. 235.), we should again proceed to consider the challenge to the validity of Rule 3 of Sch. III and section 9 of the Citizenship Act limited to those arguments. We are unable, however, to countenance the submission. This Court has held on the arguments presented before the Court in *Izhar Ahmad Khan's case* ([1962] Supp. 3 S.C.R. 235.) that section 9 of the Act was validly enacted by the Parliament, and that Rule 3 of Sch. III was competently made by the Central Government in exercise of the powers conferred by section 18 of the Citizenship Act. Assuming that certain aspects of the question were not brought to the notice of the Court, we see no grounds for entering upon re-examination of the question. It may be pointed out that the judgment of the Court in *Izhar Ahmad Khan's case* ([1962] Supp. 3 S.C.R. 235.) was followed by this Court in the *Government of Andhra Pradesh v. Syed Mohd. Khan* ([1962] Supp. 3 S.C.R. 288.).

The question which survives for determination is whether the appellant can challenge the validity of the order of the Commissioner of Police pursuant to the order made by The Central Government under section 9(2) of the Act on the plea that he had not "voluntarily obtained" a passport from the High Commissioner for Pakistan in India. In the petition as originally filed, the Union of India was not impleaded as a party-respondent and on the state of authorities then in force the appellant could not implead the Union of India as a party-respondent to the petition filed by him in the High Court of Madras. When this appeal was heard on December 7, 1964, notice was issued calling upon the Union to produce the orders and proceedings under section 9(2) of the Citizenship Act relating to the case of the appellant. Pursuant to the direction the relevant proceedings and order have been produced and an affidavit has been filed by the Under Secretary in the Ministry of Home Affairs. It is now common ground that in the inquiry contemplated by Rule 30 of the Citizenship Rules, no opportunity was afforded to the appellant to prove his case that he had not obtained the passport voluntarily from the High Commissioner for Pakistan.

Section 9(1) of the Citizenship Act provides for termination of citizenship of an Indian citizen if he has (subject to the proviso which is not material) by naturalisation, registration or otherwise, voluntarily acquired citizenship of another country. Subject to the exception in the proviso therefore naturalisation, registration or acquisition of citizenship of another country operates to terminate the citizenship of India. Acquisition of citizenship of another country to determine Indian citizenship must however be voluntary. By sub-section (2) provision is made for setting up an authority to determine the question where, when and how citizenship of another country has been acquired, and by Rule 30 the Central Government is designated as the authority which is invested with power to determine the question in such manner, and having regard to such rules of evidence as may be prescribed. Provision for prescribing rules of evidence, having regard to which the question of acquisition of citizenship of another country has to be determined, clearly indicates that the order is not to be made on the mere satisfaction of the authority without enquiry, that the citizen concerned has obtained a passport of another country. 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.

Paragraph 1 of Sch. III which raises a rebuttable presumption, when it appears to the Central Government that a citizen has voluntarily acquired foreign citizenship, casts the burden of proof upon the citizen to disprove such acquisition, and Paragraph 2 which authorises the Central Government to make enquiries for the purpose of determining the question raised, strongly support the view that the Central Government must arrive at a decision that the Indian citizen has voluntarily acquired foreign citizenship, before action can be taken against him on the footing that his citizenship is terminated. Paragraph 3 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 other country. By the application of the rule in Paragraph 3 the authority must regard obtaining of a foreign passport on a 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. Cases may be visualized in which on account of force a person may be compelled or on account of fraud or misrepresentation he may be induced, without any intention of renunciation of his Indian citizenship, to obtain a passport from a foreign country. It would be difficult to say that such a passport is one which has been "obtained" within the meaning of Paragraph 3 of Sch. III and that a conclusive presumption must arise that he has acquired voluntary citizenship of that country.

We are not concerned in this case with the truth or otherwise of the plea raised by the appellant in his petition before the High Court that he was compelled to obtain the passport from the High Commissioner for Pakistan. Balakrishna Ayyar, J., observed that the plea of the appellant was not bona fide. But it is not the function of the court to determine the question whether the plea raised is true or not : it is for the authority invested with power under section 9(2) to determine that question if it is raised. The High Court in appeal was of the view that section 9 laid down an objective test and once it was found that the passport was obtained in fact by an Indian citizen from another country, the law determined the legal consequences of that conduct and no question of his "intent or understanding arose". We are unable to agree with that view. If voluntary acquisition of citizenship of another country determines Indian citizenship within the meaning of section 9(1), and by virtue of Paragraph 3 of Sch. III of the Citizenship Rules a conclusive presumption of voluntary acquisition of citizenship is to be raised from the obtaining of a passport from the Government of any other country, it would be implicit that the obtaining of a passport was the result of the exercise of free volition by the citizen. This view is strengthened by the scheme of section 9(2) read with Rule 30 which contemplates an enquiry by an authority prescribed under sub-section (2) for determination of the question whether citizenship of another country has been acquired by an Indian citizen.

Counsel for the State of Madras submitted that the question whether the passport was voluntarily obtained must be decided by the foreign country, representative of which issues the passport, and mere issue of a foreign passport must always be regarded as decisive of the question that the passport was voluntarily obtained. But section 9(2) read with Rule 30 confers the power to determine whether Indian citizenship is terminated upon the specified authority, and in exercising that power the authority is guided by the statutory rules of evidence. It would be impossible to hold

that termination of Indian citizenship depends upon action of a foreign country in issuing the passport.

We are therefore of the view that the High Court was in error in holding that the decision of the Government of India without giving an opportunity to the appellant to prove his case that he had been compelled by the police to obtain a passport from the High Commissioner for Pakistan will sustain the order of deportation against the appellant. It will of course be open to the Central Government to determine whether the appellant has lost the citizenship of India by voluntarily acquiring the citizenship of Pakistan by obtaining a passport from the High Commissioner for Pakistan, or in any other manner. But the determination must be made in accordance with law.

The appeal is allowed, and it is ordered that the order of deportation passed by the Commissioner of Police, Madras shall not be enforced until the Central Government determines the status of the appellant according to law. No order as to costs.

Appeal allowed.

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