

Syed Khawaja Moinuddin

Vs

The Government of India and 3 Ors

Criminal Appeal No. 237 of 1966

(M. Hidayatullah, V. Bhargava, G. K. Mitter JJ)

18.01.1967

JUDGMENT

BHARGAVA, J. –

In this appeal, by Special Leave, we have already passed 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 Article 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 section 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 Article 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 section 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 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 Section 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 to 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* ([1965] 2 S.C.R. 884). 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 consequences 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 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 passport from a foreign country on any date, has before that 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 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 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, 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.

Appeal dismissed.

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