RAJASTHAN HIGH COURT

Ghaurul Hasan

Vs.

State of Rajasthan

Civil Writ Case No. 26 of 1957
(K.N. Wanchoo, C.J. and Jagat Narayan, J.)

08.04.1958

JUDGMENT

K.N. Wanchoo, C.J.

1. This is an application by Ghaurul Hasan s/o Rahim Bux, Abdul Bari s/o Abdul Ganni, Mohammad Ayub s/o Abdul Ganni, Tahira Begum wife of Ghaurul Hasan, Mst. Zebunnisa wife of Abdul Bari and Zamurud Begum wife of Mohammad Ayub under Article 226 of the Constitution challenging the order of the District Magistrate of Nagaur, dated the 8th of February 1957 by which the registration certificates issued to the applicants under the Citizenship Act (No. 57 of 1955) hereinafter called the Act, were cancelled and they were ordered to return to Pakistan within three days, failing which they would be deported according to law.

2. The case of the applicants was briefly this. The applicants were all born in India, as it was before the partition of 1947. They migrated from the territory of India, as it is, after the partition of 1947 to the I territory of Pakistan sometime in the year 1947. Thereafter they came to India on two occasions on temporary visits after obtaining passports and tried to obtain certificate for permanent settlement in India. Apparently they did not get the certificate for permanent settlement in India, though they have not said so in so many words. Ultimately they came to India in 1956 on the basis of passports issued to them by Pakistan. In December 1956 they applied under Section 5 of the Act for registration as citizens of India to the Collector of Nagaur within whose jurisdiction they were then residing. The Collector, after making enquiries, issued to them certificates of registration as citizens of India under Section 5 (1) (a) and their passports were cancelled and deposited in the Collector's Office. This happened in December 1956. But in February 1957, the Collector cancelled the certificates of

registration issued by him in December 1956 and told them that they must leave India or they would be deported according to law. Aggrieved by this order, the applicants filed the present application and their contention is that the Collector had no authority to cancel the certificate granted by him under Section 5 (1) (a) of the Act and that as they became citizens of India by virtue of these certificates, the Collector had no authority to threaten to deport them if they did not leave India within the time allowed to them.

3. The application has been opposed on behalf of the State and it is urged that the Collector had no jurisdiction to grant the certificates of citizenship under S 5 (i) (a). Reliance in this connection was placed on explanation (3) to Section 5 (1). It is also urged that as the applicants had migrated from India to Pakistan after March 1957, they lost their Indian citizenship and became citizens of Pakistan under Article 7 of the Constitution Therefore, they cannot be said to be ordinarily residents in India and even Section 5 (1) (a) did not apply to them. As for the order asking them to leave India, it was said that as the applicants were not citizens of India, they were asked to leave the country as their visas had expired and the Central Government had refused to grant them any long term visas as far back as August 1956.

4. The two main questions, therefore, that arise in this case are (1) whether the Collector had jurisdiction to grant citizenship by registration to the applicants under Section 5 (1) (a) and (2) whether having once granted the certificate under Section 5 (1) (a) the Collector could cancel it. A further question as to whether the order of the Collector asking the applicants to leave India and telling them that if they did not do so within three days, they would be deported according to law is a valid order. Section 5 (1) provides five categories of persons to whom citizenship by registration can be granted. They are as follows :

> (a) persons of Indian origin who are ordinarily residents in India and have been so resident for six months immediately before making an application for registration (b) persons of Indian origin who are ordinarily resident in any country or place outside undivided India;
> (c) women who are, or have been, married to citizens of India,
> (d) minor children of persons who are citizens of India; and
> (e) persons of full age and capacity who are citizens of a country specified in the First Schedule.

5. The first question, therefore, that arises is the scope of clauses (a) and (e). Clause (a) provides for grant of certificate to persons of Indian origin who are ordinarily residents in India and have been so residents for six months immediately before the application for registration is made. Clause (e) provides for grant of certificate to persons of full age and capacity, who are citizens of a country specified in the First Schedule which includes Pakistan. The question is whether these two clauses are mutually exclusive and even if they overlap in some respect, whether a case falling under clause (e) can also be dealt with under clause (a). The importance of this arises from the fact that under clause (a) it is the Collector who grants the certificate under Rule 8 of the Citizenship Rules (hereinafter called the Rules), while under clause (e) it is the Central Government which grants a certificate. We are of opinion that clauses (a) and (e) are mutually exclusive. Clause (e) refers to citizens of the countries mentioned in the First Schedule including Pakistan, while clause (a) refers to persons of Indian origin but they must not in our opinion be citizens of the countries mentioned in the First Schedule. The reason for this is clear. It is common knowledge that there are many persons of Indian origin in other countries who are not citizens of those countries, for example Ceylon and South Africa in particular. To our mind, clause (a) refers to such persons of Indian origin. But if a person of Indian origin is a citizen of any of the countries mentioned in the First Schedule, clause (e) will apply immediately and the Collector would have no authority under clause (a) to grant a certificate of citizenship by registration. We may go further and add that even if there is some overlapping between clauses (a) and (e) we are of opinion that where clause (e) applies, clause (a) will not apply. So far as Expln. (3), on which reliance was placed on behalf of the State, is concerned, we are of opinion that that will have no application, for that applies to cases covered by Sections 8, 9 and 10 and it is doubtful whether any of those three sections will apply in the case of the present applicants. But as we have said above, it is clause (e) which will apply to citizens of the countries mentioned in the First Schedule, including Pakistan, and not clause (a) even though the person may be of Indian origin.

6. Now let us turn to the facts of this case. The applicants admitted that they migrated from the territory of India to the territory of Pakistan. They have not mentioned the date; but as Pakistan came in existence only in August 1947, they must have migrated sometime thereafter. In any case, if they want to be taken out of Article 7 of the Constitution, they should have definitely stated that they migrated from what is now

the territory of India to what is now the territory of Pakistan before the 1st of March 1947. They have not said so and we must assume in the circumstances that they migrated from India to Pakistan presumably alter the 14th of August 1947 and certainly alter the 1st of March 1947. Therefore, even though they might have been born in India as it was before the partition, they cannot be deemed to be citizens of India in view of the mandatory provision of Article 7 of the Constitution. The proviso to that article does not apply to their case for they themselves admit that though they tried to obtain certificate for permanent settlement in India, they apparently never got it. Therefore, in view of the Constitution, the applicants must be deemed not to be citizens of India.

7. The next question is whether they are citizens of Pakistan. On that point, they admit that they came to India on Pakistani passports. Now R. 3 of Schedule III of the Rules provides that 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. According to this rule, therefore, the acquirement of a passport of another country is conclusive proof that the person acquiring that passport, even though he might be of Indian origin before the partition, was a citizen of the country from which he acquired the passport. It was urged that this rule, though framed under Section 18 of the Act, is ultra vires of Section 9 and reliance in this connection has been placed on *Mohammad Khan v. Govt, of Andhra Pradesh,*[1] . It has been held there that R. 3 of Schedule III of the Rules enlarges the scope of Section 9 of the Act and is, therefore, void. The reason given for this view is that R. 3 prevents a person from proving that he had not voluntarily acquired the citizenship of that country, if he holds a passport of a particular country and that this goes beyond Section 9. Now Section 9 is in these terms :

> "9. (1) Any citizen of India who by naturalization, 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 : We omit the proviso.
> (2) 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."

8. Now the learned Judges of the Andhra High Court compared Section 9 (1) with R. 3 and said that the rule went beyond the scope of Section 9 (1). Unfortunately the learned Judges did not consider Section 9 (2) in this connection. That specifically provides for framing of special rules of evidence for determining questions arising under Section 9 (1) and these special rules of evidence may be prescribed under the authority granted to the Central Government under Section 18. It is under this authority that R. 3 of Schedule III has been framed. With all respect we fail to see why R. 3 of Schedule III should be construed to go beyond the scope of Section 9 (1) and why it should not be construed to be within the rule making powers specifically granted under Section 9 (2) to deal with matters arising under Section 9 (1). As we see the matter, we are of opinion that R. 3 of Schedule III is a valid rule framed under Section 18 read with Section 9 (2) and it cannot be said to go beyond the scope of Section 9 (1), for Section 9 (2) specifically provides for framing of special rules of evidence for deciding matters arising under Section 9 (1). Suppose this R. 3 of Schedule III was put down as sub-section of Section 9, could it be said that it went beyond the scope of Section 9 (1). To our mind, the position is the same if it is framed as a rule under Section 18 read with Section 9 (2). We are, therefore, of opinion that R. 3 of Schedule III invalid and does not go beyond the scope of Section 9 (1) for it only provides the mode of determining the matters arising under Section 9 (1) and framing rules for this is specifically provided for in Section 9 (2). Therefore, as the applicants held passportsfrom Pakistan, that is conclusive proof of their having voluntarily aquired citizenship of Pakistan before the date they obtained the passports from Pakistan. The applicants thus cannot be deemed to be citizens of India by virtue of Article 7 of the Constitution. They are citizens of Pakistan by virtue of R. 3 of Schedule III on account of Pakistani passports which they admittedly held when they came to India in April 1956. In these circumstances, clause (e) of Section 5 (1) applies to them and citizenship by registration can only be granted to them by the Central Government and not by the Collector. The Collector, therefore, had no power to grant them certificates of citizenship by registration under Section 5 (1) (a) and his action in doing so was without jurisdiction.

9. The next question is whether the Collector had authority to cancel the certificates. Now it is not in dispute that there is no provision in the Act or in the Rules for cancellation of a certificate granted under Section 5 (1) (a). That, however, does not

mean that the Collector is entirely powerless to cancel a certificate once granted under Section 5 (1) (a). Under the general law of the land, if the certificate has been obtained by fraud, the Collector can always cancel it. But we agree that if there is no fraud, the Collector has no power to cancel a certificate once granted under Section 5 (1) (a). In this case fraud has not been alleged. All that has been said is that the Collector granted the certificate, under a mistake because he did not know that the Central Government had refused to grant a long term visa to the applicants. It does appear, therefore, that the Collector could not have cancelled the certificate granted by him under Section 5 (1) (a) in this case. But the question still remains whether we should interfere in favour of the applicants when we have held that the Collector had no jurisdiction to grant certificate to the applicants under Section 5 (1) (a). By cancelling the certificates the Collector has really restored the position as it was before the certificates were granted. What he has done is to cancel certificates which he had no jurisdiction to grant and which he should never have granted. In these circumstances, we are of opinion that we should not interfere with the cancellation of the certificates, for the true position has been restored by that cancellation, even though the cancellation may not be strictly legal. We are, therefore, not prepared to interfere in this case in the circumstances with the order of cancellation.

10. Lastly it was urged that the Collector should not have passed an order deporting the applicants. Now this is a misreading of the order of the Collector dated 8 2-1957. All that the Collector says in that order is that the certificates of citizenship by registration have been cancelled. He then informs the applicants that they should leave India within three days. He also tells them that if they did not do so, they will be deported according to law. This is, therefore, not an order of deportation. This is merely an information to the applicants that as their certificates of citizenship have been cancelled, the law will take its course. We do not see anything wrong with such information being given to the applicants. Learned counsel for the applicants in this connection referred to the case of Mohammad Khan (A). In that case Mohammad Khan and others were directed to quit the State. The exact terms of the order are not found in the judgment, but it seems that the order was in the form of a deportation order. The learned Judges held that no expulsion order could be passed against a citizen of India for voluntarily acquiring citizenship of a foreign country without obtaining the decision of the Central Government on the matter under Section 9. We do not think it necessary to go into the question which arose before the learned Judges of the Andhra Pradesh High Court because that question does not arise before us. In

the Andhra Pradesh case, Mohammad Khan and others had never migrated to Pakistan and Article 7 of the Constitution did not apply to them. In the present case, the applicants had migrated to Pakistan after the 1-3-1947 and cannot be deemed to be citizens of India by virtue of Article 7. That is one distinction. Secondly, in that case it seems that there was an order of expulsion in terms. In the present case, there is no order of expulsion in terms. All that the applicants have been told is to return to Pakistan. They have also been told that if they do not do so, they will be deported according to law. This, in our opinion, is not an order of expulsion. We need not consider, therefore, the further question which arose in Mohammad Khan's case namely whether an order of expulsion in terms can be passed by any authority other than the Central Government in view of Section 9 (1). We hold that there is no force in this application and it is hereby dismissed. In view of the fact that the point on which the State has succeeded was not specifically raised on their behalf, namely that the case was covered by clause (e) of Section 5 (1) and the Collector had no jurisdiction, we order parties to bear their own costs. The stay order is hereby vacated.
Application dismissed.

Cases Referred.

1. AIR 1957 Andh-Pra 1047