

(1965) 09 AP CK 0013

In the Andhra Pradesh High Court

Case No : Criminal Miscellaneous Petition No. 1350 of 1965

Abdul Qadir

APPELLANT

Vs

State of Andhra Pradesh and Another

RESPONDENT

Date of Decision : 01-09-1965

Acts Referred:

Citizenship Act, 1955 — Section 9(2)
Citizenship Rules, 1956 — Rule 30, 30(3)
Criminal Procedure Code, 1898 (CrPC) — Section 491
Foreigners Act, 1946 — Section 3(2)

Citation : AIR 1967 AP 105 : (1967) CriLJ 423

Hon'ble Judges : Basi Reddy, J; Anantanarayana Ayyar, J

Bench : Division Bench

Advocate : Y. Satyanarayana and Y.V. Ramana, for the Appellant; Government Pleader, for the Respondent

Judgement

(1) The Petitioner, Mir Abdul Qadir, has filed this petition u/s 491(b) of the Code of Criminal Procedure seeking a direction from this Court in the nature of habeas corpus that the respondents 1 and 2, who are respectively the State of Andhra Pradesh represented by its Secretary, Home Department, and the Commissioner of Police (Registration Officer), Hyderabad, should produce the petitioner before the Court, coupled with a prayer that he be released from, what the petitioner alleges to be, unlawful custody.

(2) The main allegations in the petition are that about four years ago the petitioner had filed Writ Petition No. 601 of 1961 before this Court for a writ of mandamus restraining the State of Andhra Pradesh and the Commissioner of Police, Hyderabad, from deporting him under the Foreigners Act 1946. In that writ petition the Petitioner's case was that he was born in Hyderabad on 29-5-1934, that he had left for Pakistan on 23-3-1952, when he was 17 1/2 years old; that he had come over to India in May 1960 on the strength of a Pakistani Passport No. 179396 dated 22-3-1954 bearing category 'C' Visa No. 30894 dated 17-3-1960 valid upto 6-8-1960; that he had applied for extension

of stay in Hyderabad on the ground that his mother was ill; that such extension was granted on three occasions upto 25-3-1961; that when the petitioner applied again for a further extension, that was refused and a notice was served upon him to leave India before 25-3-61 failing which action would be taken against him under the Foreigners Act. The petitioner challenged the contemplated action of the Government of Andhra Pradesh on the ground that as he was born in India before the commencement of the Constitution and since he had left India after the commencement of the Constitution, he had not lost his citizenship by virtue of Art. 7 of the Constitution, and consequently the State Government had no right to treat him as a foreigner and order him to leave the country.

"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:

and inasmuch as there has been no such determination by the Central Government with regard to the petitioner's citizenships the writ petition had to be allowed and the petitioner ordered to be released from custody. The learned judge, however, made this significant observation towards the end of this judgment:

"It is stated by the petitioner that the petitioner has applied to the Central Government for determining his citizenship rights. If the decision of the central Government goes against the petitioner, it may be competent to the respondents to take appropriate action against the petitioner."

(3) Now, the present case of the petitioner is that he had received a notice dated 3-1-1965 from the Central Government directing him to send his representation bearing upon the question whether or not he had voluntarily acquired the citizenship of Pakistan, and intimating to him that upon the receipt of such representation, the Central Government would determine the question. Pursuant to that notice the Petitioner sent his representation dated 26-3-1965 setting out his case and claiming that he had not voluntarily acquired the citizenship of Pakistan, notwithstanding that he had come over to India on a Pakistani passport.

(4) The petitioner's further case is that he had received any orders upto the date of the filing of this petition, which was done on 26-8-1965, but yet the police authorities had been coming to his house and threatening to deport him from Hyderabad, and that on the morning of 26-8-1965, the police had taken him into their custody. Thereupon he filed this application u/s 491, Cr. P. C. seeking a direction in the nature of habeas corpus.

(5) We admitted the petition and ordered notice to the respondents and at the same time issued interim orders directing the respondents to stay their hands and not to deport the petitioner until the petition was decided by us. On behalf of the 1st respondent i.e. the State of Andhra Pradesh, a Counter-affidavit has been

sworn to by the Assistant Secretary in the Home Department, Government of Andhra Pradesh. After setting out what had happened in the previous Writ Petition No. 601 of 1961, the counter-affidavit goes on to say that in pursuance of the orders of this Court in that writ petition, steps were taken by the government of India to decide u/s 9(2) of the Citizenship Act 1955, whether the petitioner has acquired the citizenship of another country or not. The petitioner also had put in a petition dated 22-7-1963 requesting the Government of India to decide about his nationality. The Government of India issues a notice No. 13/415/63-IC (Ministry of Home Affairs) dated 3-1-1965 asking the petitioner to submit his representation along with any material he wished to rely upon in support of his contention that he had not voluntarily acquired the citizenship of Pakistan. The petitioner submitted his representation dated 26-3-1965 in response to the above notice to the Government of India. Thereafter the Central Government, after careful consideration of the representation made by the petitioner and with due regard to the rules of evidence contained in Schedule III of the Citizenship Rules of 1956, passed an Order No. 13/415/63-IC (Ministry of Home Affairs) dated 23-6-1965 deciding that the petitioner had voluntarily acquired the citizenship of Pakistan after 26-1-1950 and before 22-3-1954. It is necessary to reproduce the order in full:

ORDER

No. 13/415/63-I.C.

Government of India, Ministry of Home Affairs, New Delhi-II the 23rd June 1965.

Whereas it has come to the notice of the Central Government that Shri Abdul Qadeer son of Late Mir. Ebrahim Ali, by caste Musalman, resident of House No. 23-A, Class, CIB Block, Khairtabad, Hyderabad has claimed Indian Citizenship notwithstanding his having obtained a Pakistan passport and a short term visa for entry into India from Pakistan, and whereas a question has arisen as to whether the said Shri Abdul Qadeer has acquired the Citizenship of Pakistan; now, therefore, the Central Government acting u/s 9(2) of the Citizenship Act, 1955 and Rule 30 of the Citizenship Rules, 1955, and giving due regard to the principles of evidence contained in Schedule III to the aforesaid Rules, and after considering the cause shown by the said Shri Abdul Qadeer against the proposed action under the said section and rule, hereby determines that the said Shri Abdul Qadeer has voluntarily acquired the Citizenship of Pakistan, after 26th January 1950, and before 22nd March 1954.

Sd. A. M. Mirchandani, Under Secretary to the Government of India."

(6) It is further stated in the counter-affidavit that the above order of the Government was received by the State Government on 19-6-1965. Thereupon the State Government passed an order dated 8-7-1965 u/s 3(2)(c) of the Foreigners Act, 1946, directing that the petitioner who was described as a foreigner, should not remain in India after thirty days from the date of service of that order on him. A copy of that order along with a copy of the order of the

Central Government deciding that the petitioner had voluntarily acquired the citizenship of Pakistan, was sent by the State Government to the Commissioner of Police to be served upon the petitioner. The Commissioner of Police, however, in his report dated 2-8-1965 informed the State Government that the order and the notice could not be served on the petitioner as he was not to be found in his usual place of residence. The Commissioner also reported that enquiries made by the police had revealed that the petitioner was evading service of notice and that there was every likelihood of the petitioner going underground since he had no inclination to leave the country. So, a fresh order was issued u/s 3(2)(c) of the Foreigners Act by the State Government on 4-8-1965 requiring the petitioner to leave the country immediately on service of the order.

(7) It is further averred in the counter-affidavit that the petitioner could not be found in spite of the best efforts on the part of the police. Only on 26-8-1965 were the police able to apprehend the petitioner and serve the order of the Government of India and the order of the State Government directing him to leave the country. Immediately the petitioner was taken into police custody for the purpose of deporting to Pakistan. It is further mentioned in the counter-affidavit that the question whether the petitioner has or has not acquired the citizenship of Pakistan has been finally decided by the Central Government and he has been held to be a Pakistani national and as such a foreigner, and the order passed by the Central Government u/s 9(2) of the Citizenship Act, 1955, is not subject to review by this Court. It is further averred that the action taken by the respondents in apprehending the petitioner for purposes of deportation to Pakistan is perfectly legal and so this application u/s 491 Cr. P. C. is not sustainable.

(8) To this counter-affidavit, the petitioner has filed a reply affidavit stating inter alia that he was not at all aware of the order of the Central Government dated 23-6-1965, deciding about his nationality, but, he came to know about it only on 26-8-1965 at 2-30 p.m. when that order and the notice issued by the State Government calling upon him to leave India forthwith, was served upon him. The petitioner alleges that he had been taken into custody by the State Police at 5 a.m. on 26-8-1965 and that the above mentioned orders were served on him at 2-30 p.m. while he was in custody. He further stated that the first order of the State Government D/-8-7-65 asking him to leave India within one month's time after service of notice, was not served on him and that the allegation in the counter-affidavit that, that notice could not be served on him as he was not found at his residence, is not true. He adds:-

"Nothing is impossible for the police. I have been in the City of Hyderabad and my house is near to the Police Officers." It is hardly believable that the police could not, in spite of their best efforts, serve the notice. It is equally false to state that I was evading service of notice and there is every likelihood of my going underground. The respondents did not attempt to serve the order of Government of India dated 23-6-1965 and of the State Government dated

8-7-1965 u/s 3(2)(c) of the Foreigners Act and that no person on behalf of the respondents approached me (petitioner) for the last three months at any time for service of order or notice.

(9) The petitioner then goes on to say that on the merits, the determination by the Central Government is bad and unsustainable.

(10) On a consideration of the averments in the counter-affidavit filed on behalf of the respondents and denials made by the petitioner in his reply affidavit, we see no reason whatever to doubt the correctness of the averments made in the counter-affidavit filed on behalf of the 1st Respondent that the petitioner could not be served with a copy of the Central Government's order dated 23-6-1965 deciding the question of the petitioner's nationality and the notice issued by the State Government on 4-8-1965, because the petitioner was evading service and was not to be found in the usual place of his residence. It is hardly credible, that having taken the trouble in pursuance of the orders of this Court to have the crucial question regarding the citizenship of the petitioner determined by the Central Government. and having received that order on 29-6-1965, and the State Government having issued a notice on 8-7-1965 to the petitioner to quit, the police officials who were entrusted with the duty of implementing that notice, would have slept over the matter and not made any attempt to effect service if in truth the petitioner was available at his house and had not evaded service. We are not prepared to attach any importance to the assertion of the petitioner to the contrary.

We are satisfied that the notice of the State Government dated 8-7-1965 could not be served upon the petitioner in spite of the best efforts of the police, it was for that reason that a second notice was issued on 4-8-1965, requiring the petitioner to leave the country immediately upon service of the order u/s 3(2)(c) of the Foreigners Act. Furthermore, we unhesitatingly accept the statement made in the counter-affidavit, that even after that, the petitioner could not be traced till 26-8-1965, on which date the police were able to apprehend him and serve the order of the Government in India and the order of the State Government dated 4-8-1965, asking him to leave the country forthwith. It was under those circumstances that the petitioner was taken into police custody for purposes of deportation to Pakistan. These, in our opinion, being the true facts and circumstances leading to the detention of the petitioner with a view to deport him to Pakistan, there is absolutely no substance in the Contention of the petitioner that he had been illegally detained by the police with a view to deport him to Pakistan and therefore, this Court should come to his aid and direct his release in exercise of its power under S. 491, Cr. P. C.

(11) It is now well settled by a catena of decisions of the Supreme Court, the earliest of which is State of Andhra Pradesh Vs. Abdul Khader, , that u/s 9(2) of the Citizenship Act, 1955, read with Rule 30 of the Rules framed under that Act, the authority to decide the question whether an Indian citizen has acquired the citizenship of another country, is the Central Government and that question

cannot be decided by a Court even in a case where there is clinching evidence pointing to that conclusion, as for instance, where a person had come over to India on a Pakistani passport, a circumstance giving rise which lays down to a conclusive presumption arising under Rule 30 (3), that the fact that a citizen of India had obtained on any date a passport from the Government of another country, is conclusive proof of his having voluntarily acquired the citizenship of that country before that date.

(12) We see no force in the contention of the learned Advocate for the petitioner that there was no material whatever before the Central Government to reach the conclusion they did. There was in fact good material before the Central Government for them to determine the question whether the petitioner had acquired the citizenship of Pakistan. A reading of the order passed by the Central Government shows that they had applied their mind to the crucial issue and taken all relevant facts into consideration before determination that the petitioner had voluntarily acquired the citizenship of Pakistan after 26th January 1950 and before 22nd March 1954. That determination is not open to review by this Court, as that determination is final and conclusive.

In the result, we are fully satisfied that the action taken by the authorities against the petitioner is warranted by law and no case has been made out for interference by this Court u/s 491, Cr. P. C. This petition therefore, fails and is dismissed. We fix the Government Pleader's-fee at Rs. 150.

(13) Petition dismissed.