

**(1961) 09 GAU CK 0003**  
**In the Gauhati High Court**  
**Case No : Civil Rule No. 232 of 1961**

Abdul Rashid Mia

APPELLANT

Vs

Superintendent of Police

RESPONDENT

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**Date of Decision :** 25-09-1961

**Acts Referred:**

Citizenship Act, 1955 — Section 9, 9(2)  
Citizenship Rules, 2009 — Rule 30  
Constitution of India, 1950 — Article 226, 6  
Foreigners Act, 1946 — Section 14, 3, 9(2)

**Citation :** (1961) 09 GAU CK 0003

**Hon'ble Judges :** G. Mehrotra, C.J.; S.K. Dutta, J

**Bench :** Division Bench

**Advocate :** B. Islam, for the Appellant; R.K. Goswami, Sr. Govt. Advocate, for the Respondent

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## Judgement

G. Mehrotra, C.J.—This rule arises out of an application under Article 226 of the Constitution of India.

2. The Petitioner claims to be an Indian citizen and his case is that he was born in the district of Dacca in 1922 and migrated to Jalpaiguri, now in West Bengal, some time in the year 1932. Thereafter he came to Dhubri and worked as manager in his uncle's hotel. The Petitioner went to Pakistan but he came back to India on a passport obtained from the Government of Pakistan in the year 1952. Since then he has been staying at Dhubri. In 1957 he applied for registration of his name as a citizen of this country, but shall application was refused. Thereafter an order was passed by the Superintendent of Police asking him to quit India, For violation of the order to was prosecuted u/s 14 of the Foreigners Act but was acquitted on the ground that the order of the Superintendent of Police was without any authority. Thereafter, on the 20th of July, 1961 the present order was passed by the Superintendent of Police asking him to leave india within thirty days. On receipt of the order, the present petition is filed in this Court.

3. The validity of the order has been challenged mainly on the ground that the Petitioner is not a foreigner within the meaning of the Foreigners Act, and, thus, no order u/s 3 of the Act could have been passed against him. The bases his contention mainly on the provisions of Article 6 of the Constitution. His contention is that prior to 1948 he migrated to India and since then he has been residing in India continuously, and as such, he was a citizen of India at the commencement of the Constitution of India in the year 1950. He has continued to be an Indian citizen and merely by coming to India in the year 1953 on a Pakistani passport he did not lose his citizenship right.

The State has entered appearance in opposition to the present petition and two-fold contentions have been raised by the learned Counsel for the State. Firstly, it is urged that in the year 1932 when the Petitioner came to India, he had no intention to settle here and thus he did not migrate to India within the meaning of Article 6 of the Constitution. It is further urged that the Petitioner never continued to reside in India and thus he was not an Indian citizen at the commencement of the Constitution. It is also urged that even if he be deemed to be a citizen of India in the year 1950, in 1952 when he came to India on a passport obtained from the Government of Pakistan in which he showed himself to be a citizen of Pakistan his citizenship right terminated within the meaning of Section 9 of the Indian Citizenship Act passed in the year 1955.

4. Mr. Islam, who appears for the Petitioner, contends that the State case mainly is that the Petitioner was never a citizen of India at the date of the Constitution coming into force, and, therefore, the proper relief which the Petitioner is entitled to is to remit an issue to the District Judge for determination of the question of fact as to whether the Petitioner migrated to India prior to 1948 and whether thereafter resided there continuously or not. It is contended that the position of the State is that even if the Petitioner was an Indian citizen at the commencement of the Constitution, he lost his Indian citizenship by virtue of the fact that he came to India in the year 1952 on a Pakistani passport.

5. Section 9 of the Citizenship Act, 1955, provides that 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 Anr. country shall, upon such acquisition or, as the case may be, such commencement, cease to be a citizen of India, Clause (2) of Section 9 provides that if any question arises as to whether, when or how any person has acquired the citizenship of Anr. country, it shall be determined by such authority, in such manner, and having regard to such rules of evidence, as may be proscribed in this behalf. In exercise of the powers u/s 9(2) of the Citizenship Act, certain rules have been framed and Rule 30 provides that the authority to decide the question as to whether any person has lost Indian citizenship is the Central Government. Rules of evidence are incorporated in Schedule III of Rule 30 framed u/s 9 of the Citizenship Act, which make the entry in the passport a conclusive evidence of the acquisition of the citizenship right of

the country issuing the passport.

The contention of the learned Counsel for the State is that as under the rules the entry in the passport has been made a conclusive evidence against the person, it is not a case where the Petitioner has prima facie established that he is a citizen of India, and therefore, the Petitioner is not entitled to any relief under Article 226 of the Constitution, Reliance is placed on the case of Syed Shah Mohammad Abdali and Another Vs. The State of Bihar, That case mainly decides the various provisions of Rule 30, which make the entry in the passport conclusive evidence. The petition in that case was, however, rejected on the ground that the Petitioner failed to prima facie establish that he was an Indian citizen. Besides the entry in the passport, there were other materials before the Patna High Court to come to the conclusion that the Petitioner prima facie failed to prove that he was an Indian citizen. Apart from that, their Lordships have observed that the decision does not mean that the citizen cannot approach the Central Government for determination that he is an Indian citizen and has not lost his Indian citizenship right u/s 9.

Before deciding whether the Petitioner has lost Indian citizenship or not, he, in our opinion, has to be given an opportunity to substantiate his case, and unless that matter has been decided by a competent authority, it cannot be said that the Petitioner is a foreigner and an order could be passed against him under the Foreigners Act. The Petitioner is, therefore, entitled to a relief quashing the order issued against him. It is, however, clear that the authority to determine whether the Petitioner has or has not lost his Indian citizenship is the Central Government and we quash the order of the Superintendent of Police asking the Petitioner to leave India within thirty days. The Petitioner will, however, within one month from today, apply to the Central Government for determination of the fact whether he has or has not lost his Indian citizenship as provided u/s 9(2) of the Foreigners Act, 1946. In case he fails to apply within the time allowed, it will be open for the authorities to pass any proper order under the Foreigners Act.

S.K. Dutta, J.

6. I agree.