
(1967) 04 AHC CK 0017
In the Allahabad High Court
Case No : Second Appeal No. 4341 of 1960

Abdul Salam

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 10-04-1967

Acts Referred:

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

Citation : AIR 1969 All 223

Hon'ble Judges : S.S. Dhavan, J

Bench : Single Bench

Advocate : S.J. Hyder, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Dhavan, J.—This is a second appeal by Abdul Salam from the decree of the Additional Civil Judge, Aligarh, affirming that of the Additional Munsif, Augarh, dismissing his suit for permanent injunction to restrain the Union of India and the State of Uttar Pradesh from deporting him to Pakistan. The plaintiff-appellant alleged in his plaint that he was born in Aligarh and domiciled there at the commencement of the Constitution of India and is a citizen of India as defined in Article 5 of the Constitution; that in March 1950, there was an outbreak of serious communal disturbances at Aligarh and several other places in Uttar Pradesh which for some time completely paralysed the civil administration and during which the members of the minority community were subjected to great misery and trouble and their houses and other property were looted and burnt and there was an extensive loss of life; that these disturbances created a sense of insecurity in the mind of the minority community; that because of the activities or communal elements in India and the State of Indo-Pakistan relations, a situation was created in which law and order were at a discount; that faced with this situation, the plaintiff decided to take temporary asylum till the situation in India became normal, and he went to Pakistan in May 1950 without

the least intention of migrating to that country on a permanent basis; that with the return of normal conditions in India, the plaintiff along with other Muslims who had sought asylum in Pakistan under similar circumstances expressed their desire to return to India; that the circumstances which compelled the plaintiff to leave his native home and the justice of his claim to return to India were recognised in the agreement between the Prime Minister of India and Pakistan, popularly known as the Nehru Liaqat Pact wherein it was mutually agreed that Indian Muslims who had left Uttar Pradesh for Pakistan because of the disturbances between February and May 1950 should be repatriated, that availing of this opportunity the plaintiff tried to return to India, but although several thousands of persons were repatriated and allowed to settle in India in pursuance of the aforesaid inter-Dominion agreement, the plaintiff continued to languish in Pakistan; that ultimately, having despaired of all hopes of obtaining permission to return to India, he came to this country on a passport issued by the Government of Pakistan because there was no other way left for him to return to his home; that his family and his parents are living in India as Indian citizens; that in these circumstances the obtaining of a Pakistani passport by the plaintiff did not in any way affect his status as a citizen of India; that the defendant Governments had issued orders directing the plaintiff to leave India; that these orders are in infringement of his fundamental rights as a citizen of India to reside and settle in any part of the country; that he cannot be compelled to leave India for Pakistan. The plaintiff appellant asked for an injunction to restrain the two Governments from deporting him.

2. The suit was resisted by both the Governments, and a joint written statement was filed. The defendants alleged that the plaintiff had not left India because of fear of disturbances but with the intention of settling down in Pakistan. It was denied that he is a citizen of India. It was further alleged that the plaintiff had come to India after obtaining a Pakistani passport but had stayed beyond the permitted period which he had no right to do. It was also pleaded that the Court had no jurisdiction to hear the suit.

3. It may be noted that the suit was filed on 5-7-1957. The importance of this date will be explained presently.

4. The trial Court framed the following four issues:--

1. Whether the plaintiff is a citizen of India?
2. Whether the Court had jurisdiction to try the suit?
3. Whether a valid notice u/s 80, Civil P. C., was served on the defendants?
4. Was the plaintiff entitled to the relief claimed?

5. The trial Court held that the plaintiff, at the time of applying for his visa, made a definite statement before the Government of India that he was a citizen of Pakistan and wanted to enter India to meet his relatives, and that the possession of a Pakistani passport was conclusive proof of the possessor being a citizen of

Pakistan. Accordingly it held that the plaintiff had not proved that he was a citizen of India.

On the question of jurisdiction it held that Section 9(2) of the Citizenship Act provided that when a question arises as to whether a person has acquired the citizenship of another country, it shall be decided by the Central Government and therefore the jurisdiction of the Civil Court was barred in every case in which the question of the acquisition of the citizenship of another country arises; the Court held that this question had arisen in the present suit and the Court had no jurisdiction to try it, and dismissed the suit.

On appeal the learned Civil Judge affirmed the view of the trial Court that the jurisdiction of the Civil Court was barred u/s 9(2) of the Act. He dismissed the appeal without considering the merits of the case. The appellant Abdul Salam has come here in second appeal.

6. During the pendency of this appeal, the respondent Governments filed an application alleging that the question whether the appellant had acquired the citizenship of Pakistan had been decided by the Central Government by its order dated 8-7-1963, and asking this Court to take this document into consideration in the decision of this appeal. Therefore, the position today is that the appellant's suit was dismissed on the ground that it raised a question whether he had acquired the citizenship of Pakistan which could only be determined by the Central Government u/s 9(2) read with R. 30 of the Citizenship Rules and the Civil Court had no jurisdiction to hear the suit; but during the pendency of this appeal the Central Government itself had decided the aforesaid question and held that the appellant had acquired the citizenship of Pakistan.

7. It may be stated at the outset that the view of the Courts below that the Jurisdiction of the Civil Court to try this suit is barred u/s 9(2) of the Act is manifestly erroneous. That Sub-section merely provides, in effect, that any question as to whether a person has acquired the citizenship of another country shall be deemed by the prescribed authority. It confers exclusive jurisdiction on this authority which, under Rule 30 of the Citizenship Rules, is the Central Government. But the jurisdiction of the Civil Court to try a suit asking the Court to restrain the Government from deporting a plaintiff alleging himself to be a citizen of India is not barred. What is barred is the power of the Court to decide the question whether he has acquired the citizenship of another country, provided this question arises in the suit. If it does arise, the Civil Court cannot try the question itself. The proper course for it would be to refer any question covered by Section 9(2) to the Central Government and stay further hearing of the suit till the decision of the Central Government is received and then decide the suit in accordance with law: Samiullah Vs. State of Uttar Pradesh, , following Akbar Khan Alam Khan and Another Vs. The Union of India (UOI) and Others, In Samiullah Vs. State of Uttar Pradesh, , it was held by this Court that though neither Section 9 nor Rule 30 expressly provides for a reference by the Court to the Central Government of the questions specified in Section 9(2), such a power

to refer can be inferred. For these reasons it is obvious that the view of the Courts below that the jurisdiction of the Civil Court to try the suit itself was barred is erroneous. The proper course for the trial Court was to refer the question whether the appellant had acquired the citizenship of Pakistan for a decision by the Central Government and then decide the suit in accordance with that decision.

8. If these were the only facts, I would have allowed this appeal and remanded the case to the Court below with a direction that it should remit to the Central Government for its decision, the question whether the appellant had obtained the citizenship of Pakistan. But during the pendency of this appeal the Government of Uttar Pradesh remitted this very question for the decision of the Central Government. The latter decided it by its order dated 8th July 1963 in which it was held that the appellant had left India for Pakistan with an intention to settle down in that country permanently, that he stayed there for 5 years which showed that he wanted to make Pakistan his permanent home, that he returned to India apparently because the conditions there did not suit him, and he had obtained a Pakistani passport, and that the inescapable conclusion was that he had voluntarily acquired the citizenship of Pakistan. These findings were arrived at by Shri Fateh Singh, Joint Secretary to the Government of India, Ministry of Home Affairs. On the basis of these findings a formal order dated 8th July 1963 was drawn up. It runs as follows:--

"No. 13/417/82-I.C.

Government of India,

Ministry of Home Affairs,

New Delhi-11,

the 8th July, 1963.

ORDER

Whereas it has come to the notice of the Central Govt. that Shri Abdul Salam, son of Abdul Hakim, by caste Musalman, resident of Mohalla Sarai Bibi, Aligarh, had claimed Indian citizenship notwithstanding his having obtained a Pakistan passport and short-term visa for entry into India from Pakistan, and whereas a question has arisen as to whether the said Shri Abdul Salam 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, 1956. 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 Salam against the proposed action under the said section and rule, hereby determines that the said Shri Abdul Salam has voluntarily acquired the citizenship of Pakistan, after 26th January, 1950, and before 9th January, 1953.

(Sd.) R. P. SHARMA,

Under-Secretary to the Govt. of India."

9. It may be noted that this formal order is signed not by Sri Fateh Singh but by R. P. Sharma, Under-Secretary to the Government of India.

10. On August 6, 1964, learned counsel for the State filed an affidavit to which an attested copy of the aforesaid order was attached, together with an application praying that this order should be taken into consideration in deciding this appeal.

11. The appellant opposed this application and filed a counter-affidavit. He denied that the aforesaid order was an order of the Central Government. In the alternative he contended that it was illegal and invalid. He alleged that he sent to the Central Government a representation through the Government of Uttar Pradesh demanding an opportunity to be heard in person and produce evidence at the inquiry, but this demand was refused by the Central Government which asked him to put forward any material which he wanted in the form of an affidavit. He further alleged that accordingly he submitted an affidavit through the local Intelligence Unit, Aligarh, but had no knowledge whether it was forwarded for the consideration of the Central Government. He contended that as the burden of proving that he had not acquired the citizenship of Pakistan was on him, the Central Government should have given him an opportunity to discharge it. He contended that he was entitled to what he called a "maximum hearing", and that the question of citizenship could not be made on a mere consideration of the contents of his representation.

He also contended that Mr. R. P. Sharma, Under-Secretary to the Government of India, Ministry of Home Affairs, who had signed the formal order of 8-7-1963 had no jurisdiction to pass an order u/s 9(2) of the Citizenship Act, because the power to make a decision under this sub-section had not been assigned to an officer of the rank of Under-Secretary.

He also contended that Rule 30 of the Citizenship Rules which nominates the Central Government as the prescribed authority for deciding the question of citizenship u/s 9 of the Citizenship Act is ultra vires because that Government could not appoint itself as the prescribed authority.

During arguments, all the pleas raised in the appellant's counter-affidavit were not pressed, and Mr. S. J. Hyder, learned counsel for the appellant, advanced only one argument, namely, that the order of the Central Government was invalid because that Government had not given the appellant a reasonable opportunity of proving his case. Mr. Hyder contended that reasonable opportunity in the present case included the right to a personal hearing, and as this was admittedly denied to the appellant, the order was passed in violation of the principles of natural justice. Learned counsel relied on a number of decisions of the Supreme Court in support of this argument.

In the interests of justice I asked the counsel for the State whether the

Government of Uttar Pradesh and the Central Government were prepared to produce the files relating to the case of the appellant for the perusal of the Court. Counsel accepted the suggestion without any hesitation and the hearing was adjourned to enable the learned counsel to produce the files. I have examined them and they were also shown to counsel for the appellant. From the record the following facts are established and were admitted by counsel for the States. (1) The Central Government rejected the appellant's demand for an opportunity to be heard in person and produce evidence in support of his case at a personal hearing. (2) that Government permitted the appellant to produce whatever evidence or other material he desired to be considered by the Central Government in the form of affidavits. (3) The Central Government asked the State Government to forward such material together with its (the State Government's) views thereon. (4) The appellant, in pursuance of this decision filed an affidavit in which he protested that the denial of a personal hearing was bound to cause him an immense prejudice, but he had no alternative but to file an affidavit instead. (5) In his affidavit dated 13-3-1963 the appellant merely repeated his statements in his earlier representation, but produced no fresh material. (6) In paragraph 12 of his affidavit the appellant admitted that he had obtained a Pakistani passport but explained that he obtained it when he received the news that his father was seriously ill and almost on his death bed and therefore he "felt compelled to obtain a Pakistani passport and returned to his home in or about 1955".

12. As the perusal of the file had revealed that the Central Government had asked the State Government to attach its own comments while forwarding any evidence or other material furnished by the appellant in support of his case, I considered it necessary to make a further probe for the purpose of ascertaining whether the comments of the State Government had influenced the decision of the Central Government. Accordingly I directed that the Central Government should file an affidavit sworn by Mr. Fateh Singh, Joint Secretary, Government of India, Ministry of Home Affairs, who had considered the appellant's case and held that the petitioner had acquired the citizenship of Pakistan. The Government filed an affidavit duly sworn by Mr. Fateh Singh. In it this official admitted that the appellant had asked for an opportunity of being heard in person and to produce evidence in his case, but the Central Government decided that it was not necessary or feasible to give him a personal hearing, but he was given a further opportunity to produce any evidence in his defence in the form of an affidavit. It was also admitted by Mr. Fateh Singh that the Central Government had asked the State Government to forward any material submitted by the appellant together with their own views. It was further stated by him that in their reply the State Government had merely forwarded an affidavit sworn by the appellant without any comments and had written that the State Government had no further comments to make beyond what they have made while forwarding the appellants case earlier. It was further stated by Mr. Fateh Singh, that the appellant's matter was "processed" in the Ministry of Home Affairs according to the formal

procedure, and examined by the Under Secretary in the Ministry who put up a note on the basis of the material which had been furnished by the appellant. It was further stated that this Under Secretary had expressed a view that the explanations given by the appellant were not fit to be accepted and had recommended that it might be held that the appellant had voluntarily acquired the citizenship of Pakistan. It was admitted by Mr. Fateh Singh that the Under Secretary had prepared two drafts for the consideration of Mr. Fateh Singh, the first being a formal order informing the appellant that the Central Government had determined that he had voluntarily acquired the citizenship of Pakistan, and the second a draft of a letter to be issued to the Government of Uttar Pradesh informing them of the decision by the Central Government. It was further admitted by Mr. Fateh Singh that he had looked into the nothings and the representation and the affidavit filed by the appellant and came to the conclusion that it was quite clear that the appellant had left for Pakistan with an intention of settling down in that country permanently, and that the appellant's own representation showed that he had stayed in that country for about 5 years and returned to India after obtaining a Pakistani passport because the conditions did not suit him and as the appellant had admitted that he had obtained such a passport, there was no escape from the conclusion that he had voluntarily acquired the citizenship of Pakistan.

13. A copy of Mr. Fateh Singh's affidavit was supplied to the counsel for the appellant. At the final hearing of this appeal, Mr. Hyder did not challenge the statement of the Central Government that Mr. Fateh Singh had been duly appointed by it to consider the question whether a particular individual had voluntarily acquired the citizenship of another Country u/s 9(2) of the Citizenship Act. He did not challenge, very properly in my opinion, the veracity or correctness of the statements made by Mr. Fateh Singh in his affidavit which in my opinion contains a truthful, honest and frank statement of facts. But Mr. Hyder advanced two arguments in support of his attack on the validity of the findings arrived at by this officer. First, he contended that the order was vitiated by the denial of a personal hearing; secondly, he argued that the order was invalid as there was no finding that the appellant had voluntarily acquired a Pakistani passport.

14. I shall consider the last argument first. Mr. Hyder contended that the appellant had clearly stated in his affidavit before the Central Government that he was compelled to obtain a Pakistani passport only when he received news that his father was seriously ill and was almost on his death bed, and as there was no material before the Central Government to rebut this statement it must be accepted as correct. Therefore, (Mr. Hyder argued) it had been established that the appellant had not voluntarily obtained a Pakistani passport but had been compelled by force of circumstance to do so. Learned counsel relied on an English decision in support of his argument. In *In re, Wilkinson*; *Page v. Public Trustee*, 1926 Ch. 842 it was held that the word "voluntarily" means the doing of something as the result of the free exercise of the will, but not something done

under a legal duty. In that case a woman by the name of Edith Carter was left a legacy by her aunt, but the will contained a proviso that "in the event of my said niece voluntarily ceasing to make the said dwelling-house her permanent home as aforesaid, I direct that the said sum of ? 7000 and the investments representing the same shall fall into residue. Subsequently Edith Carter married and at first her husband also came to live with her in her ancestral house but later on he pressed her to change her residence and live with him in his (husband's) house. Edith Carter asked for a direction from the Court as to whether she would be deemed to have voluntarily ceased to reside in her aunt's house if she complied with her husband's wishes. The court held that the word "voluntarily" did not include an act done in the performance of a legal duty or obligation requiring a wife to reside and co-habit with her husband. It was pointed out that the duty of a wife to reside with her husband, though of imperfect obligation, was capable of enforcement by means of an action or suit for restitution of conjugal rights and therefore if the wife in compliance with her legal duty joined the husband in the new matrimonial home as a result of his direction, she could not be said to have voluntarily ceased to reside in her aunt's house. In my opinion, the principle enunciated in this decision does not apply to the appellant. There was no legal duty compelling him to obtain a Pakistani passport. Mr. Hyder argued that the news of his father's serious illness provided the necessary compulsive force which rendered his obtaining a Pakistani passport not a voluntary act. I do not agree. The desire to be present at a particular place does not create any legal obligation to be present. Hundreds of persons are unable to be present at the illness of a parent. The compulsive force must be something more than an inner urge however strong. If learned counsel's argument is accepted, a person who steals bread because his children are hungry will be able to plead that his act was not voluntary. The act of theft is voluntary though there are mitigating circumstances. Learned counsel's argument means that any act done under a strong temptation is not voluntary in law. It also implies that any person has a legal right to make a false declaration and thus obtain a false passport and a visa by fraud for the purpose of satisfying his strong urge to see a parent who is seriously ill. In my opinion the word "Voluntarily" means that the person obtaining the passport acted of his own volition and knew the nature of his act and did not act in performance of a legal duty, nor due to coercion, or fraud, or misrepresentation, or mistake. The reasons and temptations which induced him to obtain the passport do not render his act other than voluntary.

15. Mr, Hyder cited two decisions of the Supreme Court *Mohd. Ayub Khan Vs. Commissioner of Police, Madras and Another*, ; and *Government of The Government of Andhra Pradesh Vs. Syed Mohd. Khan*, . In *Mohd. Mohd. Ayub Khan Vs. Commissioner of Police, Madras and Another*, the Supreme Court held that for the purpose of Clause (3) of Schedule III of Rule 30 of the Citizenship Rules, the obtaining of a passport of a foreign country cannot in all cases be regarded as conclusive proof of acquisition of voluntary acquisition of foreign

citizenship, and that if he raises a plea that he had not voluntarily obtained the passport, he must be afforded an opportunity to prove that fact. This case is not of any help to the appellant. The Supreme Court had in mind those cases where a person may be compelled to obtain a passport due to fraud or misrepresentation or any other similar reason which will render his act not voluntary. The court observed: "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 Schedule III and that a conclusive presumption must arise that he has acquired voluntarily citizenship of that country". This observation has no application here. It is not the appellant's case that he was compelled to obtain a Pakistani passport because of fraud, misrepresentation, coercion or any other similar reason. His was a deliberate and voluntary act committed to satisfy his desire to see his father who was seriously ill. (I assume that his allegation concerning his father's illness and his desire to see him may be true). The decision in *The Government of Andhra Pradesh Vs. Syed Mohd. Khan*, is also of no help to the appellant. In that case the State Government had ordered the deportation of several persons without referring the question of their having acquired the citizenship of Pakistan to the Central Government at all. It was argued before the Supreme Court that as these persons had admittedly obtained passports of a foreign country, this raised a conclusive presumption that they had acquired the citizenship of that country and it was not necessary to refer the question for the decision of the Central Government. Rejecting this argument the Supreme Court held that a finding by the Central Government is the basis on which any further action can be taken against such a person. This decision is really an authority for the principle that whatever be the merits of the case and however conclusive the evidence of acquisition of foreign citizenship may appear to the State Government, it has no jurisdiction to decide the question which must be referred for the decision of the Central Government. But in the case before me, there has been a decision of the Central Government, and the only question is whether that decision is vitiated by any error which goes to its root.

16. I now come to the other argument of Mr. Hyder. He contended that the Central Government's finding is illegal because the appellant was denied the opportunity of being heard in person. He also argued that the finding of Mr. Fateh Singh is illegal because he relied upon the opinion and remarks and notes of his brother officers while deciding the question of the appellant's citizenship. Now it is manifest that the power to decide the question whether a person has acquired the citizenship of a foreign country is quasi-judicial in nature. This means that the authority must act judicially and must give a reasonable opportunity to the person affected by its decision to rebut the presumption which may arise against him under Clause (i) of Schedule III of Rule 30 of the Citizenship Rules. What is a reasonable opportunity ? It is neither possible nor desirable to lay down any

rigid test. As observed by the Supreme Court in Mohd. Mohd. Ayub Khan Vs. Commissioner of Police, Madras and Another, : "What the scope and the 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."

17. In my opinion, a person who receives notice under Clause (i) of Schedule III to show cause why it should not be held against him that he has voluntarily acquired the citizenship of another country and upon whom is the burden of proving that he has not so acquired such citizenship is ordinarily entitled to a personal hearing. Particularly, a person who admits that he obtained a passport of another State but tenders before the competent authority evidence which, if believed, will prove that he did not obtain it voluntarily, is entitled to a personal hearing. In this case the appellant asked for a personal hearing but his request was rejected. In my opinion this was a departure from the principles of natural justice ordinarily governing such cases.

18. Moreover, the inquiry being of a quasi-judicial nature, the authority hearing the case must act judicially that is, apply its own mind to the case before it and not rely upon any other official's opinion or notes or comments on the merits of the controversy. The ordinary executive procedure of "processing", if I may borrow a phrase from Mr. Fateh Singh's affidavit, cannot be followed in deciding a question u/s 9(2) of the Citizenship Act. In this case Mr. Fateh Singh has frankly admitted that before deciding this case he consulted the notes and comments of another officials of the Department. This he could not do as he was acting judicially.

19. If these were the only considerations I would have allowed the appeal and decreed the petitioner's suit for an injunction. But whatever be the irregularities committed by the Central Government or the authorities hearing his case, the finding against him that he voluntarily acquired the citizenship of Pakistan is based on the appellant's own statement in his affidavit that he obtained a Pakistani passport with the object of coming to India to see his ailing father in other words, on his virtual admission that he voluntarily obtained such a passport. It was not the appellant's case that he was compelled to obtain a Pakistani passport due to fraud, mis-representation, coercion, or any other similar reason. Therefore, even if the petitioner had been given a personal hearing and Mr. Fateh Singh had decided this case without consulting any notes or comments made by any other officer, there was no option for him but to hold under Clause (3) of Schedule III of the Citizenship Rules that the appellant had voluntarily acquired the citizenship of Pakistan. On these facts, any Other findings would have been in violation of the conclusive presumption imposed by law under Clause (3). The comments of Other officials were superfluous and unnecessary, and the failure of the Central Government's refusal to give the appellant a personal hearing could not, and did not, prejudice him. Therefore, I am compelled to hold that though there has been a violation of the principles of natural justice and irregularities have been committed in the decision of this

case, the result could not have been different even if there had been, no such violation or irregularities.

20. If the petitioner's case in his affidavit filed before the Central Government had been that he had been compelled to obtain a Pakistani passport, not voluntarily, but due to fraud or mis-representation or coercion or the like, and he had been denied a personal hearing to prove his case by evidence. I would have held that he had been materially prejudiced. But the petitioner's own case is that he obtained a Pakistani passport because he desired to see his ailing father. But, as explained above, a strong desire to see an ailing parent does not make the obtaining of a foreign passport less than voluntary. Where a person, in response to a notice under Clause I of Schedule III of the Citizenship Rules admits that he obtained a Pakistani passport and does not place any material to establish a prima facie case that the obtaining of the passport was not voluntary, the authority concerned is bound to hold that he acquired the citizenship of the country whose passport he obtained, and he cannot plead that the denial of a personal hearing materially prejudiced him.

21. The appeal is dismissed, but in the circumstances I direct that the parties shall bear their own costs throughout.