

(1988) 02 KL CK 0029
In the High Court Of Kerala
Case No : O.P. No. 925 of 1998-I

Cheelil Thottolil Asia

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 04-02-1988

Acts Referred:

Citizenship Act, 1955 — Section 9(2)

Citation : AIR 1988 Ker 231

Hon'ble Judges : T.L. Viswanatha Iyer, J

Bench : Single Bench

Advocate : M.K. Damodaran, V.K. Mohanan and Jonny Sebastian, for the Appellant;

Final Decision : Dismissed

Judgement

T.L. Viswanatha Iyer, J.—Petitioner's husband is one Moidu Haji. The claim is that he belongs to Panur near Tellicherry, Cannanore District, and that he is having relations and properties in Panur amsom. This Moidu Haji had acquired a Pakistani passport and on the strength of the passport he had been making occasional visits to this country. It is stated that he was employed in Karachi and that by acquiring the Pakistani passport he had not intended to abandon his Indian citizenship. The last time he entered India was on 20-1-1988, when he reached Bombay. Petitioner would contend that Moidu Haji had evinced an intention to acquire Indian passport and that for that purpose he was gathering the necessary, papers. It is stated that he was arrested on 2-2-1988 at about 10 A.M. and that he is in the process of being deported out of India. In paragraph 8 of the original petition the petitioner contends that she reliably understood that her husband entered the territory of India on the strength of a duly issued visa by the Indian authorities and that therefore the second respondent, the Superintendent of Police, Cannanore, had no authority to take her husband into custody for the purpose of deporting him to Pakistan "because the period of the visa has not expired". It is noteworthy however, that the original petition is

lacking in any details as to when the visa was issued or as to the period of its validity. Of course the petitioner takes refuge for the absence of details on the plea of being an illiterate lady, quite ignorant in these matters, and on the ground that the passport in question has been seized by the police,

2. The prayer in the original petition is fourfold; one to issue a writ of mandamus directing the respondents to refrain from deporting Moidu Haji, second, directing the first respondent to determine the citizenship of Moidu Haji before deporting him to Pakistan, third, directing the second respondent to release Moidu Haji from custody forthwith and fourth, to direct the respondents not to detain Moidu Haji till the first respondent declares the nature of his citizenship after due enquiry u/s 9 of the Citizenship Act, 1955. The third and fourth prayers do not properly form the subject matter of an original petition of this nature, inasmuch as any release which they envisage should really form the subject matter of a petition for habeas corpus. There is no such prayer in the original petition. I decline to go into those two prayers in the original petition.

3. Regarding the second prayer for a direction to the second respondent to determine the citizenship of Moidu Haji, to which the first prayer is related, it has to be noted that the petitioner's husband has not so far made any application to the first respondent u/s 9(2) of the Citizenship Act, 1955 to determine his national status. However, the extreme contention urged by counsel for the petitioner is that before Moidu Haji is deponed, there is an obligation cast on the first respondent to decide his national status and unless and until that is decided, he should not be deported.

4. At this juncture it has to be remembered that Moidu Haji, despite his numerous visits to this country, has not so far chosen to apply for determination of his national status u/s 9(2) of the Citizenship Act. He has all along been coming on the strength of the Pakistani passport, over the past nearly four decades. Even the last visit is admittedly on the strength of the visa issued by Indian Embassy on the Pakistani passport. The question of determination of the national status can arise only if the person concerned is interested in seeking such a determination or if he raises such a question and moves the concerned authorities for its determination u/s 9(2). It is not as if with regard to each and every person being deported on expiry of the period of his visa, there should be a prior determination by the Central Government of his national status, before he is deported. That will be the result if the contention raised by counsel for the petitioner is to be accepted, i.e. that the first respondent is obliged to decide the national status of Moidu Haji before he is deported. This will lead to very difficult situations, and it is neither possible nor advisable for the Central Government to be burdened with a duty of determination of the national status of every person entering the country under a foreign passport with an Indian visa to decide the question of his national status before being deported. May be, the mere acquisition of a Pakistani passport is not sufficient to hold that there is an abandonment of Indian citizenship, assuming that Moidu Haji was an Indian

citizen at any time. That does not however, absolve the person concerned from raising the question and applying for determination of the status u/s 9(2) if really his claim is to be an Indian national. If he himself is not interested in the matter and has not even moved the concerned authority for the purpose, it is not proper to hold that there is any failure to decide this question on the part of the first respondent. I do not find any obligation cast on the Central Government under the Citizenship Act to decide such a question unless the party concerned moves the Central Government for the purpose, when the entry into the country was under a foreign passport and prima facie, the person concerned is a foreign national.

5. In this view of the matter, the second prayer made by the petitioner is not sustainable. If that be so, the respondents are very, well justified in directing deportation of the petitioner's husband Moidu Haji, who has entered the country on the strength of a Pakistani passport and the visa issued by the Indian Embassy. The first prayer is also therefore not liable to be granted. The original petition has therefore, to fail.

6. However, counsel for the petitioner has a further contention based on the very vague allegation made in paragraph 8 that the period of the visa has not expired and that therefore deportation at this stage is not legal. As pointed out earlier petitioner has not chosen to support the allegation with any details of the period of the visa or the period of its expiry so that it is not possible to act on this vague allegation to sustain the retention of her husband in India. If really the period of the visa has not expired that is a matter which the petitioner should raise before the second respondent and it is for the second respondent to decide on the question with reference to the passport and the visa alleged to have been granted by the Indian Embassy. I do not think any direction can be given from this Court on such allegations. I leave it open to the petitioner to raise that point before the second respondent.

7. The original petition is dismissed subject to the above observations.

8. Issue photo copy today itself.