
(1965) 07 AHC CK 0023
In the Allahabad High Court
Case No : Writ Petition No. 239 of 1964

Hadi Hasan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-07-1965

Acts Referred:

Citizenship Act, 1955 — Section 18, 9(2)
Citizenship Rules, 2009 — Rule 30
Constitution of India, 1950 — Article 226

Citation : AIR 1966 All 127

Hon'ble Judges : N.U. Beg, J

Bench : Single Bench

Advocate : G.H. Jauhari, for the Appellant; J.S. Trivedi, for the Respondent

Final Decision : Dismissed

Judgement

N.U. Beg, J.—The petitioner in Hits case, Hadi Hasan, was taken into custody by the Government for the purpose of being sent back to Pakistan. Thereafter he filed the present writ petition on the allegation that he was born at Bara Banki on the 19th April, 1940, and was a citizen of India. His parents were born in India and were citizens of India till their death. The petitioner had been residing at Bara Banki on the 26th of January, 1950. Towards the close of 1954 or the beginning of 1955 he went to Pakistan in connection with his business on a temporary visit. At that time the petitioner was a minor. While in Pakistan the petitioner made several applications to the Indian Mission at Karachi to afford passage to the petitioner to India but he was unsuccessful. As a result, the petitioner had no other alternative but to apply for a Pakistani Pass-port. He obtained this Pass-port on the representation that he was a Pakistani citizen and, according to the counter-affidavit filed on behalf of the opposite-party, the year of birth given there was 1935 and not 1940. He was granted a Pass-port on the 25th May, 1955. Thereafter he was also granted a visa. On the basis of the aforesaid Pass-port and visa the petitioner entered India on the 17th July, 1960. According to the visa, he could stay in India only upto the 16th December, 1960

As he over-stayed in India, he was prosecuted for the same and convicted by the trial Court u/s 14 of the Foreigners Act, 1946, and sentenced to one month's rigorous imprisonment. He was, however, acquitted in appeal by the Sessions Judge on the ground that the question of acquisition of Pakistani nationality by him had not then been decided by the Central Government as provided by Section 9(2) of the Indian Citizenship Act. Thereafter the State reported the matter to the Central Government for a decision by it u/s 9(2) of the Citizenship Act. In the meantime, the State authority started taking preliminary steps for the purpose of deporting him. This led to his filing the present writ petition praying for the issue of a writ of mandamus against the Union of India, opposite-party No. 1, the State of Uttar Pradesh, opposite-party No. 2, and the District Magistrate, Bara Banki, opposite-party No. 3, restraining them from arresting the petitioner and deporting him to Pakistan. There was a further prayer that in case the Central Government happened to pass an order u/s 9(2) of the Indian Citizenship Act during the pendency of the writ petition, the said order may also be quashed by a writ of certiorari. It appears that during the pendency of the writ petition the Central Government did pass an order deciding that the petitioner had acquired Pakistani nationality. This order is dated the 28th December, 1963, and has been filed on behalf of the opposite-party. According to the said order, the petitioner has voluntarily acquired the citizenship of Pakistan after the 26th January, 1950, but before the 25th May, 1955.

2. The first argument of the learned counsel for the petitioner before me is that the order passed by the Central Government u/s 9(2) of the Citizenship Act is bad in law. Section 9(2) provides as follows:--

"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."

Rule 30 framed under the Act prescribes the said authority as the Central Government. The learned Counsel for the petitioner has argued that before the Central Government can determine the citizenship of a person the condition precedent is that the question regarding the acquisition of citizenship of another country should have arisen. This question in the present case arose on the 25th May, 1955, when the Pakistani Pass-port was issued to the petitioner. On that day the petitioner was a minor. So far as a minor is concerned, no question of acquisition of another nationality can arise as a minor's domicile follows the domicile of his guardian: vide *Sharafat Ali Khan Vs. State of Uttar Pradesh and Others*, . In the present case, therefore the condition precedent having not been fulfilled, the Central Government had no jurisdiction to give its decision u/s 9(2) of the Act and the decision given by it is for that reason ultra vires, and void. I find myself unable to accept this argument. In my opinion, the date of the arising of the question referred to in Section 9(2) of the Act is the date when the question arises in India before the Central Government and not when the

question arose before the Government of a foreign country at the time of the grant of Pass-port by it. The question, admittedly, arose in India in 1963. According to the petitioner's Own case, he was born in 1940, and therefore he would not be a minor on the date on which the question arose in India, being about 23 years old at that time. Any other interpretation would, in my opinion, be unreasonable and unacceptable. The Act as well as the Rules framed thereunder provide for the determination of citizenship of a person by the Government of India and not by any foreign government like the government of Pakistan. u/s 9(2) of the Citizenship Act, therefore, the relevant date is the date when the question of the acquisition of the citizenship of another country arises in India before the Central Government and not the date when the question arose in the past before any other Government. On this interpretation of Section 9(2) the further argument of the learned counsel for the petitioner that on the 25th May, 1955, the petitioner was admittedly a minor does not arise. It may, however, be mentioned that, according to the opposite-party the petitioner was born in 1935 and not in 1940. That is also the date of his birth as declared by him in his Pakistani Pass-port. If that is accepted to be correct, then he would not be a minor even on the date when the question of his nationality arose in Pakistan.

3. The next argument of the learned Counsel for the petitioner was that the finding given by the Sessions Judge that he was a minor at the time he went to Pakistan is a finding of fact that is binding on this Court and cannot be challenged in a writ petition under Article 226 of the Constitution of India. The argument appears to be obviously misconceived. The principle that a finding of fact cannot be re-opened at the writ stage except under certain special circumstances applies only when the writ application is given in connection with the order passed by authorities which have given the finding of fact. The present writ is not directed against the order of the Sessions Judge who had allowed the criminal appeal. Any finding given by the Sessions Judge cannot, therefore, be treated binding in these proceedings. Moreover, Section 9(2) of the Indian Citizenship Act states that the decision on this question is to be given by the Central Government; hence, in any case the finding that would be binding in the present case would not be the finding of the Sessions Judge but the finding of the Central Government.

4. Lastly, learned Counsel, argued that the declarations made by the petitioner in his Pakistani Pass-port were erroneous and incorrect and should, for that reason, be ignored. In a matter like this, it is not for this Court to appraise evidence in these proceedings. That was a matter for the Central Government to determine. If the Central Government have given a decision in the matter it has to be treated as final by this Court. The matter cannot, therefore, be re-opened in these proceedings without contravening the express provisions of law as contained in Section 9(2) of the Citizenship Act read with Rule 30 framed thereunder.

5. For the above reasons, I am of opinion that this writ petition has no force. I, accordingly dismiss it with costs. The interim stay order dated 10th April, 1964, is automatically vacated.