

(1958) 03 AP CK 0025

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1013 of 1956

Mohammad Ghouse Mohiuddin

APPELLANT

Vs

The State of Andhra Pradesh and another

RESPONDENT

Date of Decision : 12-03-1958

Acts Referred:

Citizenship Act, 1955 — Section 18, 9, 9(1)

Constitution of India, 1950 — Article 19, 226, 5(c), 9

Citation : AIR 1958 AP 761

Hon'ble Judges : Satyanarayana Raju, J

Bench : Single Bench

Advocate : M.A. Khadar, for the Appellant;

Judgement

Satyanarayana Raju, J.—This is an application, under Art. 226 of the Constitution, for the issue of a writ of "mandamus" directing the State of Andhra Pradesh, represented by its Chief Secretary, to forbear from enforcing the order dated 15-9-1956 directing the petitioner to leave India within a prescribed time.

2. The petitioner alleges that he is a citizen of India; that when he was about 20 years old, he failed in the S. S. L. C. examination; that due to his then disturbed state of mind, he moved from place to place and finally to Pakistan territory; that under a mistaken advice given to him by certain people in that country, he submitted an application to the authorities for a passport and that he was given a passport bearing No. 3,79,275 dated 20-12-1955 by the Government of Pakistan.

On 28-2-1956, he came to India on the strength of Category "C" visa No. 13,724 dated 20-2-1956 issued by the High Commissioner for India in Pakistan at Karachi. The petitioner further avers that subsequent to his coming to India, he had submitted several applications to the Ministry of External Affairs, Government of India requesting them to treat him as a citizen of this country.

On 15-9-1956 he was informed by the District Magistrate, Guntur, that his

request for permanent settlement in India could not be complied with, that no further extension of his visa would be granted, and as such he should arrange to leave India before the expiry of the extended date viz., 10-10-1956.

3. The material allegations contained in the petitioner's affidavit have been denied by the respondent.

4. The learned counsel for the petitioner, Sri M.A. Khader, has raised several contentions in the writ petition, the first of which is that the Government of India can alone ask him to leave the country, that the District Collector has no jurisdiction to do so and that the mere fact that he had obtained a passport from the Government of Pakistan would not deprive him of his right to the citizenship of this country which he had acquired by reason of his having been a resident of the territory of India for not less than five years immediately preceding such commencement as provided under Art. 5 (c) of the Constitution and that he has not lost that right to citizenship by reason of the operation of Art. 9.

5. The petitioner's right to citizenship has to be judged in the light of the provisions contained in the Citizenship Act (57 of 1955). Now the Citizenship Act deals with the acquisition and termination of rights of citizenship in this country.

It provides 5 modes of acquiring citizenship viz.

- (1) citizenship by birth
- (2) citizenship by descent
- (3) citizenship by registration
- (4) citizenship by naturalisation
- (5) citizenship by incorporation of territory.

Section 9 of the Act on which considerable reliance has been placed by the petitioner runs as follows:

Section 9 (1). Any citizen of India who by naturalisation, registration or otherwise voluntarily acquires, or has at any time between 26-1-1950 and the commencement of this Act voluntarily acquired, the citizenship of another country shall, upon such acquisition or, as the case may be, such commencement, cease to be a citizen of India;

(2) If any question arises as to whether wh(sic) or how any person has acquired the citizenship another country, it shall be determined by su(sic) authority, in such manner, and having regard such rules of evidence, as may be prescribed in t(sic) behalf.

Section 18 of the Act empowers the Central Government by notification in the Official Gazette make rules to carry out the purposes of this Act Under sub-s. 2 (h) of S. 18, the Central Government is empowered to make rules providing for (sic) authority to determine the question of acquisit(sic) of citizenship of another

country, the procedure be followed by such authority and the rules evidence relating to such cases.

6. In exercise of the powers conferred S. 18 of the Citizenship Act, the Government India made the Citizenship Rules, 1956. They (sic) vide for the forms of application for registration form of application for naturalisation and mat(sic) pertaining to the declaration of renunciation citizenship. The rule relevant for purposes of present petition is rule 30 which reads:

30 (1) If any question arises as to whether when or how any person has acquired the citi(sic) ship of another country, the authority to deter(sic) such question shall, for the purposes of S. 9 be the Central Government.

(2) The Central Government shall in deter(sic)ing any such question have due regard to the (sic) of evidence specified in Schedule III.

7. Schedule III provides:

(1) Where it appears to the Central Government that a citizen of India has voluntarily quired the citizenship of any other country, it require him to prove within such period as be fixed by it in this behalf, that he has not v(sic)tarily acquired the citizenship of that country; the burden of proving that he has not so acquire such citizenship shall be on him.

8. Clause 3 of Schedule III states: "The fact that a citizen of India has obt(sic) on any date a passport from the Government any other country shall be conclusive proof o(sic) having voluntarily acquired the citizenship of country before that date." Clause 4 of Schedule III enumerates the circumstances which may be taken into consideration the Central Government in determining whether citizen of India has or has not voluntarily acquire the citizenship of any other country.

9. Clause 5 of Schedule III provides t(sic) citizen of India shall be deemed to have volu(sic) acquired the citizenship of Pakistan under the circumstances mentioned in:

5 (a), (b), (c)... an if he has obtained a temporary permit for into India from Pakistan.

10. In a recent decision of this Co(sic) Mohammad Khan v. State of Andhra Pradesh 1957 2 AP WR 527 : (AIR 1957 AP (A), a Division Bench consisting of Subbarao and Jaganmohan Reddy J., observed that S. the Citizenship Act is intra vires the powers (sic) Parliament; that the provisions of that section (sic)stitutes a reasonable restriction of the Funda(sic) rights within the meaning of Art. 19 of the constitution; that S. 9 read with S. 18 of the A(sic) pressly empowers the Central Government t(sic) scribe the authority to determine the question acquisition of citizenship of another country the Central Government did not exceed its (sic) in constituting itself as the authority to det(sic) the question as to whether a person has (sic) (sic)t voluntarily acquired the citizenship of another country and whether such person has or has not (sic)ased to be a citizen

of this country.

The learned Judges held that the Act and the (sic)les framed thereunder created a Special Tribunal, namely the Central Government for deciding (sic)e question and a duty is cast on it to do so whenever the question is raised and that the respondent (State of Andhra Pradesh) therefore, before taking the orders expelling the appellant should (sic)ve raised the question before the Central Government as to whether the persons who were asking to leave the country are not the citizens of this country and should have obtained its decision. They (sic)ld that the orders made by the State of Andhra Pradesh ignoring the said provisions are not valid.

11. The learned counsel for the petitioner (sic)ing himself on this decision has contended that (sic) State Government should have referred the (sic)tter to the Central Government and obtained its decision on the question as to whether the petitioner is or is not a citizen of this country by rea(sic) of the fact that he has voluntarily acquired (sic) citizenship of another country and that the (sic)er passed by the District Magistrate without ob(sic)ine the decision on that question is therefore (sic)alid.

12. It is important to remember that the petitioner obtained a passport from the Government of (sic)istan. This passport was obtained by the petitioner on an application made by him in that be(sic). It is undoubted that in the application filed him before the Government of Pakistan and the basis of which he obtained the passport he described himself as a citizen of Pakistan.

The passport itself describes him as a citizen that country. It is no doubt true that the petitioner now avers that under the then existing circumstances and in his anxiety to return to this (sic)try he had no option but to apply for a pass(sic) in the manner he did, but all that was done (sic)r a misapprehension of his rights and that he (sic)inues to be a citizen of this country; that he (sic)no intention or animus of acquiring the citi(sic)hip of another country and that the order asking him to leave this country cannot therefore be (sic)ed.

13. After obtaining the passport on 20-12-(sic) the petitioner came to India on 28-2-1956 the strength of category "C" visa No. 13724 (sic) 20-2-1956 issued by the Indian High Commissioner, Karachi. Before I proceed further it (sic)d be useful to understand the nature of a (sic)gory "C" visa. It is granted to Pakistan (sic)nals who are not eligible for, or who do not (sic)re, visas of categories A, B, D, E and F or (sic)it visas, but who wish to visit India.

This visa will be valid for specified places in and for a single journey of specified dura(sic) not exceeding three months. A holder of this will enter India through a checkpoint and will (sic)er himself at once at the checkpoint; and with (sic) hours of his arrival at the specified place (sic)aces in India and 24 hours before his depar(sic) will report in writing to the Superintendent (sic)lice or the nearest police station in the juris(sic)n of which the place or places specified in (sic)sa lie.

14. Therefore, it is clear that the petitioner (sic)ot only obtained a passport on his representation that he is a citizen of Pakistan but has also (sic)ed a visa on the foot of that passport. That petitioner obtained a visa on the faith of his (sic)entation is indeed admitted by him. Thereafter, on 2-8-1956 he sent an application to the Secretary to the Government of Andhra Pradesh, Home Department stating that he had applied on 29-5-1956 to the Ministry of External Affairs requesting them to grant him permission to stay in India permanently and that therefore he may be granted such permission.

A copy of this application was sent by the petitioner to the District Magistrate, Guntur, and in reply thereto the petitioner was informed by the District Magistrate in his Memorandum No. 4374/58 dated 15-9-1956 that his request for permanent settlement in India could not be complied with.

15. It has been argued by the learned Government Pleader that having regard to the fact that the petitioner came to India for obtaining a category "C" visa which enabled him only to enter and make a stay of short duration in this country, it is not open to him to turn round and say that he is not a Pakistan national and that he is a citizen of this country and that the authorities concerned cannot ask him to leave.

16. Even in the application, submitted by him to the Government on 2-8-1956, the petitioner only requested them to permit to stay in India permanently. It is not possible to decide within the limited scope of writ proceeding as to whether the petitioner has or has not voluntarily acquired the citizenship of another country. But the passport and the subsequent visa, obtained by the petitioner for his entry and stay in India furnish prima facie evidence of his intention.

It may be open to the petitioner to convince the Government of India that he had not voluntarily acquired the citizenship of another country. It may be that he can request the State Government to move the Central Government to determine the question as to whether or not he had ceased to be a citizen of this country. But so far what all he has done is merely to request the State Government to permit him to stay in India permanently.

The record produced before me does not also show that at any time previously, the petitioner asked the State Government to move the Central Government to determine his citizenship rights.

17. The petitioner makes a claim that he is a citizen of this country and therefore entitled to insist on residing there. If the petitioner makes a claim that he is a citizen of this country and that he has not voluntarily relinquished that citizenship, he might raise a dispute which, when raised will be considered by the Central Government under R. 30; but until he raises such a dispute, the respondent is entitled to have regard to the terms under which the petitioner came to this state, namely, the permission contained in the visa, and to require the petitioner to depart on the expiry of the duration of the permission contained in the visa as subsequently extended.

18. For the above reasons, I hold the writ petition should be dismissed with costs. Advocate's fee: Rs. 100/-.