

(1959) 07 AP CK 0010

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 810 of 1957 and 122 of 1958

Mohammed Naseeruddin

APPELLANT

Vs

State of Andhra Pradesh, Hyderabad

RESPONDENT

Date of Decision : 02-07-1959

Acts Referred:

Citizenship Act, 1955 — Section 9
Citizenship Rules, 2009 — Rule 30, 32(2)
Constitution of India, 1950 — Article 5, 7

Citation : AIR 1960 AP 106

Hon'ble Judges : Chandra Reddy, C.J;Jaganmohan Reddy, J

Bench : Division Bench

Advocate : B.V. Subrahmanyam and V.V. Krishnamurthy, for the Appellant; P. Ramchandra Reddy, 3rd Govt. pleader, for the Respondent

Final Decision : Dismissed

Judgement

Jaganmohan Reddy, J.—These two writ petitions have been filed by the husband and wife against an order served on them under Clause (c) of Sub-section (2) of Section 3 of Central Act XXXI of 1946, directing the petitioners to leave India within a period specified therein. Writ Petition 810 of 1957 is by the husband, while Writ Petition 122 of 1958 is by the wife. The facts in so far as they are relevant may briefly be stated.

2. The petitioners, Nasiruddin and his wife Shafekhan begum, were born in India in or about 1931 and 1937 respectively and it is indisputable that they resided in India after its independence in 1947 and up to the time India was declared a Republic on 26-1-1950. Both the petitioners and their respective parents were natives of Nagina in Uttar Pradesh and though the parents of Naseeruddin carried on business in Hyderabad in the name of Calcutta Bakery, their contacts with Nagina were maintained. In 1946 the petitioners were married at Nagina.

It may be stated that the petitioner's wife's father had settled down in Quetta sometime in 1935 and after the partition of India in 1947 he became a citizen of

Pakistan. If is the case of the petitioners that after their marriage, both of them lived in Hyderabad from 1947 till 1952, except for a brief visit by the petitioners in 1951 to Nagina to stay with their paternal grandmother. It is alleged that the wife not having visited her parents from the time she came to Hyderabad, had a sudden desire to see her parents in 1952 and taking advantage of the visit of her brother from Quetta, she left Hyderabad for Nagina with their son Kamruddin.

The petitioner-husband went to Nagina to bring her back, but finding that she was not there went to Quetta to bring his wife and child back to Hyderabad, which according to him was on 14-5-1952. The petitioner's husband applied for a passport for himself, his wife and child to the Pakistan Government in January 1954 and that a passport was in fact granted to him by that Government in July, 1954, but his application for a lone-term visa to the High Commissioner for India in Pakistan was rejected under instructions from the Government of India by a letter dated 22-7-1954.

The Government of Hyderabad also were intimated accordingly. After the grant of the pass-port the petitioner obtained a category "C" visa on 7-9-1954 in Lahore which visa was valid for a single journey, for a stay at a specified place or places not exceeding three months, After obtaining this visa all of them crossed the Pakistani border into India on 8-9-1954 en route to Nagina. On coming to India, an application was again made for long term visa which was rejected by letter from the Government of Andhra Pradesh dated 22-1-1957 stating that his application for permanent settlement in India cannot be granted while in India and that he might renew his request through the High Commissioner on his return to Pakistan.

Thus, on the petitioners' own showing since reaching India, he has been obtaining extension of his visa in Uttar Pradesh and at Hyderabad. Both the petitioners were given extensions on various dates till 5-7-1957 with a warning that no extension would be given and that the petitioner Naseer-ruddin should leave India before 31-7-1957; but he again applied on 8-7-1957 for extension and on 19-8-1957 an order No. 228 was passed by the Andhra Pradesh Government u/s 3(2)(c) of the Foreigners Act, 1946 read with notifications Nos. 9-2-53-11-1 dated 16th July 1955 and S. R. O. 89 F. 13-13/56 dated 8th January, 1957 of the Government of India in the Ministry of Home Affairs, directing the petitioner not to remain in India after three weeks from the date of the receipt of that letter. A similar letter dated 30-11-1957 was served on the petitioner's wife Shafekhan Begum on 17-12-57.

3. The contentions of the petitioners are, that they did not migrate to Pakistan, much less did they do so with the intention of making Pakistan their permanent home, that they had gone there temporarily after which they found themselves in a predicament occasioned by the changes in the law in India and being unable to get a permit to return to India, they were forced to obtain a Pakistani passport and return to India. They say that in spite of their obtaining the passports in Pakistan and in spite of applying for extension from time to time of the visa and

in spite of applying for a long-term visa, which might seem that they were not citizens of India, they in fact never ceased to be citizens of India and that they never did or stated anything which amounted to a renunciation or termination of their citizenship of India, nor did they acquire the citizenship of any other country.

4. The main question in these writ petitions is whether the petitioners are citizens of India entitled to exercise the fundamental rights under Article 19 of the Constitution of India. The answer to this question would depend upon the relevant provisions of the Constitution of India and the Citizenship Act of 1955. Articles 3 - 11 deal with the criteria for the ascertainment of citizenship at the commencement of the Constitution. Article 5 provides that at the commencement of the Constitution, every person who has his domicile in the territory of India and who was born in the territory of India, or either of whose parents was born in the territory of India, or who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement shall be a citizen of India.

Article 6 deals with the rights of citizenship at the commencement of the Constitution of certain persons who have migrated to India from Pakistan. While Article 7 lays down the test for ascertaining the rights of citizenship of certain migrants to Pakistan after the 1st day of March, 1947, article 8 concerns with the citizenship rights of persons of Indian origin residing outside India and Article 9 declares that no person shall be a citizen of India by virtue of Article 5, or be deemed to be a citizen of India by virtue of Article 6, or Article 8, if he has voluntarily acquired the citizenship of any foreign state.

Article 10 affirms that every person who is or is deemed to be a citizen of India under any of the above provisions would continue to be such a citizen, while Article 11 authorises and confers the law making power in this regard on the Parliament. Article 7 has to be considered more specifically as it is relevant and applicable to the facts of this case. It reads as follows ;

7. Notwithstanding anything in Articles 5 and 6, a person who has after the first day of March, 1947 migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India :

Provided that nothing in this article shall apply to a person who after having so migrated to the territory now included in Pakistan, has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of Clause (b) or Article 6 be deemed to have migrated to the territory of India after the nineteenth day of July, 1948.

From a plain reading of this article, which is a dis-abling provision, it is clear that a person migrating to Pakistan after 1-3-1947 is not deemed to be citizen of India. Learned advocate for the petitioners, Sri Subrahmanyam, contends that this article of the constitution is applicable only to these migrants who have migrated to Pakistan between 1-3-1947 and 26-1-1950, the date of the

commencement of the Constitution. We must reject this contention as being without substance. Articles 5 and 6 specifically refer to the rights of persons who are deemed to be citizens of India at the commencement of the Constitution and in contrast with these provisions, Article 7 makes no reference to the commencement of the Constitution.

In our considered view, there is nothing in Articles 5 - 11 of the Constitution which would persuade as to the conclusion that Article 7 is inapplicable to those persons who migrated to Pakistan after 1950. Such a construction would make Article 7 nugatory. In the view we have taken, therefore, any person who, though he was a citizen of India at the commencement of the Constitution, has migrated from the territory of India to Pakistan cannot be deemed to be a citizen of India. If a person has migrated from India to Pakistan and that fact is established, it is unnecessary to further show that that person has voluntarily acquired the citizenship of that country within the meaning of Article 9.

These provisions are, however, subject to any law which may be made by Parliament in exercise of the power conferred on it by Article 11 with respect to the acquisition and termination of citizenship and all other matters relating thereto. Such a law is that embodied in the Citizenship Act LVII of 1955. That Act, however, in our view, has no application to cases of persons migrating to Pakistan before it was enacted. Citizens of India who by virtue of Article 7 have been deemed no longer to be citizens of India, can only regain citizenship by returning to the territory of India under a permit for resettlement or a permit issued by any authority under the Law, and if he has not regained his citizenship before the enactment of the Citizenship Act 1955, that Act will have no application to him, he-cause it does not deal with regaining of citizenship already lost under Article 7 of the Constitution. The Citizenship Act provides for the mode of acquiring Citizenship.

Sections 3 - 7 deal with the acquisition of Citizenship by birth, by descent, by registration, by naturalisation and by incorporation of territory. Sections 8, 9 and 10 deal with the renunciation, termination and deprivation of Citizenship. None of these sections are applicable to the case of the petitioners, because there is no question of deprivation of the petitioner's Indian citizenship. For, what is alleged is that they long ago lost such a citizenship by migration. Their Lordships of the Supreme Court in the case of *The State of Bihar Vs. Kumar Amar Singh and Others*, , held that even if Article 5 could be said to be applicable to the migrants, Article 7 has an overriding effect, and it is peremptory in its scope.

The facts in that case were that Kumar Rant Sayeeda Khatoon who was the wedded wife of Captain Maharaj Kumar Gopal Saran Narayan Singh of Gaya was born in India and was the wife of a person who still is an Indian citizen. The Kumar Rani went to Karachi in July, 1948, and came to India in December 1948 and did so on a temporary permit stating in her application that she was domiciled in Pakistan and that she was a Pakistani national. She went back in April, 1949 on the expiry of the temporary permit and returned to India on a

permit for permanent return on 14-5-1950, but this permit was cancelled on 12-7-1950 on the ground that the State Government had not consented to the issue thereof.

On these facts, it was held by the Supreme Court that the petitioner had migrated from the territory of India after 1-3-1947 and that even if it could be said that Article 5 was applicable to her, on the assumption that her husband was a citizen of India, her case came within the mischief of Article 7 of the Constitution. Having regard to this authoritative pronouncement, it is unnecessary to refer to the many cases of the various High Courts cited by the learned Government Pleader in which it has been held that a person who has migrated to Pakistan and has returned to India on a Pakistani passport cannot be deemed to be a citizen under Article 7.

5. Learned advocate for the petitioners has relied on *Nasir Ahmed Vs. The Chief Commissioner, Delhi and Another*, ; *State Vs. Abdul Majid and Others*, and *The State Vs. Mahmud Khan Navrang Khan*, . But these cases in our view, do not support his contention. In the Punjab case decided by a single Judge, the facts showed that the petitioner merely visited Pakistan for a very short time in 1950 after the commencement of the Constitution and returned to India on a permit granted to him by the Indian High Commissioner, in Pakistan. The several facts admitted in that case, might have influenced the Judge to find that the petitioner did not migrate to Pakistan. In any case, we find that the applicability of Article 7 to the facts of the case was not considered. The whole question was dealt with as if under the Citizenship Act and the foreigners Act, the petitioners were Indian citizens even after their return to India. *Bishan Narain J.* with reference to Article 7 at the conclusion, merely stated thus :

"I may make it clear that if a person at the commencement of the Constitution is not a citizen of India or is deemed not to be so under Article 7 then he can be treated as a foreigner unless subsequently he acquires or has acquired citizenship of this country under the provisions of the Citizenship Act of 1955."

No exception can be taken to this statement, but as we have already said, the applicability of Article 7 to the facts of the case was not considered. The Rajasthan case dealt with a national of Pakistan who arrived in India with a Pakistani passport on 14-3-1956 and did not thereafter leave India. On the date when he arrived, the Foreigners Act was not amended; as such a Pakistani national could not be treated as a foreigner. The amendment was only made in 1957 and it was held not to be retrospective. In a prosecution under the Foreigners Act, it was held that the Act did not apply to him, because he did not enter India as a foreigner. In the Bombay case also, the question of the applicability of the Foreigners Act was under consideration. There the accused who had come to India on 12-7-1956 on a passport obtained from the Government of Pakistan with a visa from the High Commissioner for India in Pakistan, did not leave India after the expiry of the period and was thereupon prosecuted for an offence u/s 14 of the Foreigners Act, 1946 and for having

contravened para 7 of the Foreigners Order, 1948, and Section 13 of the Act. There also it was held that the accused was not a foreigner even assuming that he was not a citizen of India. It was only after the amendment that Pakistani nationals became foreigners.

6. The main stay of the contention of the learned advocate for the petitioners is the decision in the case of Mahomad Khan v. Govt. of Andhra Pradesh 1957 2 An WR 527: AIR 1957 AP 1047 to which one of us was a party. On this decision he has founded two arguments, (1) that a passport is not the basis of legal evidence to establish the fact of citizenship, and (2) that u/s 9 read with Section 18 of the Citizenship Act and Rule 30(2) and the rule specified in Schedule III, the Central Government is the authority to determine whenever any question arises as to whether, when or how any person has acquired the citizenship of another country, in accordance with the rules specified in Schedule III.

It is contended that in as much as a Special Tribunal, namely, the Central Government is created for deciding the said question and a duty is cast on it to do so whenever the question is raised, the State Government has no power to pass any order before the Central Government determines the question of citizenship of the petitioners, In our view, both these arguments are untenable. What was decided in that case must be considered in direct relationship with the facts of that case which are at variance with the facts of this case. In that case, the petitioner was a citizen of India and had not migrated to Pakistan. It is true that he was born in Quetta District in Baluchistan, which on partition formed the territory of Pakistan.

But the other facts showed conclusively that he was a citizen of India, because in 1940 he left his native place and settled down at Kovvur in Andhra Pradesh. He started business in that place and married at Kowur one Amirunnisa whose father was a permanent resident of that place and was employed in Government service, and his two children were born and bred up there. Further, he purchased a site and constructed a house worth of about Rs. 10,000/- and was also engaged in the business of lorry transport. It was his allegation that after the division of India, unable to bear the pressure of the local police and without proper guidance and appreciation of his citizenship rights, he applied for a passport and recieved one under the seal of the High Commissioner for Pakistan in India which was valid up to 6-3-1958.

He also applied for a visa as required by the local police to stay in India, but than was refused and he was by an order dated 7-4-1955, directed to quit the State by 30-4-1955. That he was a citizen of India under Article 5 on the date of his applying for a passport cannot be gainsaid and if it was so, he would continue to be such, unless he voluntarily acquired the citizenship of another country. That case did not involve the application of Article 7 and is clearly distinguishable on that fact alone. Nor was any provision of law of Pakistan referred to before that Bench by which it could be considered that the mere obtaining of a Pakistani passport would confer Pakistani citizenship on the grantee.

In the absence of any such proof, the question of voluntary acquisition of citizenship of another country without a change of domicile was a matter which had to be determined under the Citizenship Act and in so determining it was held that Rule 3, which lays down that the obtaining of a passport of another country by a citizen of India is conclusive proof of his having voluntarily acquired the citizenship of that country, enlarges the scope of Section 9 and is, therefore, void. That conclusion was based upon a consideration of the legal effect and the incidents of a passport. It was held by a reference to the case of *V.G. Row Vs. The State of Madras*, and *Urtetiqui v. D' Arcy* (1862) 9 Law Ed. 276 that a passport issued by a Government to a citizen does not make it a document of title or a piece of evidence in a court of law to establish that fact, and is only a link in the chain of international intercourse.

It cannot, therefore, be said that the mere issue of a passport to a person, which may be obtained by fraud, mistake or under pressure, is conclusive of the fact that he has voluntarily acquired the citizenship of that country which has granted him the passport. If in this view it is a rebuttable presumption, then Rule 3 by the device adopted completely bars the applicant from establishing that he has not acquired the citizenship of Pakistan. Subba Rao, C.J. as he then was, observed, "the irrebuttable presumption from a fact which is not legal evidence of the fact of citizenship, much less of the fact of citizenship, obtained otherwise than by voluntary acquisition, has certainly the effect of depriving the appellant's right without the enquiry guaranteed by the section and therefore, amounts to an unreasonable restriction on the fundamental rights of the appellants under Article 19 of the Constitution of India".

These observations should be confined to the facts of that case and cannot have wider application. In *Rex v. Brailsford* (1905) 2 K.B. 730, Lord Alvers-ton C.J., dealing with the nature of the passport observed at page 745, "it will be well to consider what a passport really is. It is a document issued in the name of the Sovereign on the responsibility of a Minister of the Crown to a named individual, intended to be presented to the Governments of foreign Nations and to be used for that individual's protection as a British subject in foreign countries and it depends for its validity upon the fact that foreign office in an official document vouches the respectability of the person named.

"Passports have been known and recognised as official documents for more than three centuries and in the event of war breaking out become documents which may be necessary for the protection of the bearer, if the subject of neutral state as against the officials of the belligerents, and in time of peace in some countries as in Russia they are required to be carried by all the travellers." Sir William Malkin in Volume 9 of the *Law Quarterly Review*, page 439 speaks of "the extensive though perhaps somewhat ill defined branch of International Law which may be called "the diplomatic protection of citizenship". It is, in our considered judgment the universal recognition of the customary law of nations that every State has the right to protect its citizens abroad, that forms the basis

of the innovation of a passport. Be that as it may, it is unnecessary for the purposes of this case to determine whether a passport obtained by a national of one country from another country would establish affirmatively that he is a citizen of the country which granted him the passport. However, the question whether a person is a citizen of a country or not is a question of fact.

7. It now remains to be determined whether the petitioners migrated to Pakistan within the meaning of Article 7 and thereby ceased to be Indian citizens. The word migration in its natural connotation would mean to move from one country to the other or departure from one country to another with the intention of settlement or residence in that other country. When a person is said to have migrated from the territory of India to a territory included in Pakistan within the meaning of Article 7, it means that he has gone to a territory included in Pakistan with the intention of making that place his future abode or residence.

If once this fact is proved then Article 7 applies to him with full force and effect and he is deemed not to be a citizen of India. Misra, C.J., in *Sulaiman Husain Abidi v. State of Hyderabad* ILR 1954 Hyd 753 : (S) (AIR 1955 Hyd 34); as also in *Badruzzaman Vs. The State*, while dealing with Article 7, gave expression to a similar view, namely, that "the word 'migrate' occurring in Article 7 of the Constitution embraces in its scope two conceptions: (i) going from India to another country, and (ii) the intention to make the destination a place of future abode or residence." He held in the context of the Constitution, that the word embraces the notion of transference of allegiance from the country of departure to the country of adoption.

The question whether a person has migrated from one country to another or has gone there on a temporary visit is a question of fact and has to be determined on the facts and circumstances of the particular case. It is indisputable that the petitioners left India for Pakistan after the enforcement of the Constitution. Although it is alleged in the petitions of both the petitioners that they left India in 1952, there is no doubt from a perusal of the applications for visa, as late as 5th February and 5th March, 1957, that they have admitted having migrated to Pakistan in April 1950. The circumstances in which they migrated also makes it clear that the petitioner and his wife both left for Pakistan due to some financial disputes with the father of the petitioner.

The wife first went to her father's place in Quetta and the husband followed her. Neither of the petitioners owns any property in the territory of India, though the petitioner husband's father has a bakery in Hyderabad. Thirdly, they stayed in Pakistan for a period of over four years before they thought of returning to India, which they did on their own admission to see their ailing parents. Fourthly, they applied for and obtained a passport stating that they were Pakistani citizens which under the Pakistani Citizenship Act, 1951 is only granted to citizens of Pakistan.

Apart from these declarations which showed that they owed allegiance to

Pakistan, they have in several applications presented for the extension of the visa, after their return to India, declared and claimed to be Pakistani citizens. In the application dated 18-7-1956 and those on 5th February and 5th March 1957, the petitioner has described himself as a Pakistani national. In the further applications he has moved the Government for giving him a permit for permanent settlement in India, which can be only on the basis that he was not an Indian citizen. The father of the petitioner Naseemuddin in his application dated 21-8-1957 stated that his son has quarrelled with him in financial affairs and left for Nagina in Bejjanur District of Uttar Pradesh from where he has gone to Pakistan without his knowledge. This circumstance clearly militates against any contention that the petitioners did not intend to migrate to Pakistan in 1950 or 1952 as the case may be. Again, in his letter dated 14-6-1957 addressed to the Home Department, Government of Andhra Pradesh, the petitioner Nasuruddin says as under :

"I beg to state that I am a Pakistan National who arrived in Hyderabad City along with my wife, Shafiqan Begum, on the strength of a joint Pakistan passport No. 022699. My case for the renewal of visa is under the consideration of the Government. I am ailing since a long time due to heart troubles In view of the above facts and the recommendation made in the enclosed Medical Certificate, I request your honour kindly to grant three months" extension of stay in the authorised period of myself and my wife." These facts prima facie establish that the petitioners did migrate to Pakistan and ceased to be Indian citizens.

8. The further proposition urged by the learned advocate for the petitioners as arising from the judgment in the case of 1957-2 Andh WR 527: (AIR 1957 Andh Pra 1047), namely, that the Central Government is alone competent to determine whether, when or how any person has acquired the citizenship of another country, as we have already pointed out, does not arise in this case as we are not called upon to determine whether the petitioners have acquired the citizenship of Pakistan, but are only concerned with the laws of Indian citizenship prior to the passing of the Citizenship Act. If the petitioners are not Indian citizens at the time when they entered India in 1954 on a Pakistani passport, the provisions of the Citizenship Act would be inapplicable to them. Even otherwise, with respect we agree with the observations of our brother Satyanarayana Raju, J. in Mohammad Ghouse Mohiuddin v. State of Andhra Pradesh AIR 1958 AP 761 that where a person claimed that he was a citizen of this country and that he had not voluntarily relinquished that citizenship, he might raise a dispute which, when raised will be considered by the Central Government under Rule 30 of the Citizenship Rules, 1956, but until he raises such a dispute, the terms under which he came, namely, to depart on the expiry of the duration specified in the visa must be given effect to.

9. For the aforesaid reason, we have no hesitation in holding that these petitions are not maintainable and must be dismissed with costs one set. Advocate's fee Rs. 100/-.