
(2000) 04 AP CK 0045
In the Andhra Pradesh High Court
Case No : Writ Petition No. 5748 of 2000

Mohd. Ayub

APPELLANT

Vs

Government of India and others

RESPONDENT

Date of Decision : 10-04-2000

Acts Referred:

Citizenship Act, 1955 — Section 9
Citizenship Rules, 2009 — Rule 3, 30
Constitution of India, 1950 — Article 5, 6, 7, 8, 9

Citation : (2000) 3 ALD 46 : (2000) 2 ALT 650

Hon'ble Judges : B. Sudershan Reddy, J

Bench : Single Bench

Advocate : Mr. T.S. Anand, for the Appellant; Mr. R. Ravi Kumar, Additional Central Government Standing Counsel and Government Pleader for Home, for the Respondent

Judgement

1. The petitioner in the instant writ petition challenges the proceeding in Rc.No.C5.723/M/99, dated 1-4-2000 on the file of the third respondent-District Collector, Krishna, Machilipatnam. The District Collector through the impugned proceedings directed the petitioner to leave India immediately under intimation to the Superintendent of Police, Krishna, Machilipatnam. The said endorsement of the District Collector itself is based upon the Government of A.P. Memo dated 18-2-2000 informing the District Collector that the request of the petitioner, a Pakistan national to stay further in India has been rejected by the Government of Andhra Pradesh.

2. Before advertng to the question as to whether the petitioner is entitled for any relief at all from this Court, it may be necessary to notice few relevant facts as stated in the affidavit filed in support of the writ petition.

3. The petitioner claims that he was born on 1-7-1933 at Sheri Daggumilli village, Gudivada Taluk, Krishna District and studied up to Vth Class in Machilipatnam Municipal Elementary School. He worked as a labourer for some

time and thereafter left to Pakistan. The affidavit is silent as to when he left to Pakistan. He claims to have secured a job in 1967 in Pakistan.

4. According to the averments made in the affidavit filed in support of the writ petition, the petitioner visited Machilipatnam during the year 1971 with a passport issued in his favour by the Government of Pakistan. He came to India to see his parents and kith and kin who are all, according to the petitioner, citizens of India. During the said visit, he married one Saleemunissa alias Faizunnisa an Indian National. Immediately after the marriage he left to Pakistan alone leaving his wife with his parents. In the year 1974 he came to India once again on a visit to see his parents and wife. After a short stay, he again left to Karachi along with his wife. Thereafter he is frequently visiting India, is the case put-forth by him. The petitioner is blessed with a daughter in the year 1979 at Karachi in Pakistan. It is stated that during the petitioner's stay along with his wife in India, two sons were born at Machilipatnam in the year 1981 and 1984. The petitioner says that he retired in the year 1997 at the age of 67 years.

5. The petitioner along with his family members arrived at Machilipatnam in India on 22-3-1999 on a Pakistan passport and under a Visa issued by the Government of India. The petitioner's authorised period of residence in India expired by 19-6-1999.

6. It is stated in the affidavit filed in support of the writ petition that desiring to settle permanently in India, the petitioner made an application on 24-4-1999 to the first respondent through the second respondent herein. The petitioner believed that his application was under consideration. While the matter stood thus, the petitioner is served with the endorsement of the third respondent dated 1-4-2000 communicating that his request to stay further in India has been rejected by the first respondent. It is that proceedings which is challenged in this writ petition.

7. Learned Counsel for the petitioner Sri T.S. Anand contends that the petitioner continues to be a citizen of India, as he was born at Machilipatnam in the year 1933. The petitioner is a citizen within the meaning of Article 5 of the Constitution of India and therefore, he is entitled to reside in India irrespective of the fact that the petitioner acquired the passport which would disclose that he had acquired citizenship of Pakistan.

8. It is required to notice that Article 7 of the Constitution of India declares that 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. Of course, nothing in Article 7 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) of Article 6 be deemed to have migrated to the territory of India after the Nineteenth Day of July, 1948.

Article 9 of the Constitution of India 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.

9. The petitioner, according to his own averments made in the affidavit filed in support of the writ petition, left India voluntarily after completing his 5th class in Machilipatnam. He must have left the country somewhere during 1940's or in the year 1950. The affidavit is bereft of any particulars in this regard. The petitioner is duty bound to reveal this Court as to in which year he left the country. The petitioner joined the service in the Standard Bank of Karachi as early as in the year 1967 and remained in service for a long period of 30 years and retired in the year 1997 at the age of 67 years. On every occasion whenever he visited India, he came on a Pakistan passport and on a Visa granted by the Government of India. In the circumstances, the contention put-forth by the learned Counsel for the petitioner that the petitioner continues to be a citizen by virtue of Article 5 of the Constitution of India is totally untenable. There is no whisper in the affidavit filed in support of the writ petition as to whether the petitioner acquired citizenship of Pakistan and if so, the details thereof. But his passport itself reveals that he had acquired citizenship of Pakistan. There cannot be any doubt whatsoever that the petitioner acquired citizenship voluntarily. In the aforesaid circumstances, the petitioner cannot be treated as a citizen of India by virtue of Article 5 or be deemed to be a citizen of India by virtue of Article 6, as he has voluntarily acquired the citizenship of a foreign State. Learned Counsel for the petitioner however, would place reliance upon the judgment of the Supreme Court in *The Government of Andhra Pradesh Vs. Syed Mohd. Khan*, . The learned Counsel places heavy reliance upon the following observations of the Supreme Court.

"Therefore, there is no doubt that in all cases where action is proposed to be taken against persons residing in this country on the ground that they have acquired the citizenship of a foreign State and have lost in consequence the citizenship of this country, it is essential that that question should be first considered by the Central Government. In dealing with the question, the Central Government would undoubtedly be entitled to give effect to the impugned Rule 3 in Schedule III and deal with the matter in accordance with the other relevant Rules framed under the Act. The decision of the Central Government about the status of the person is the basis on which any further action can be taken against him. Therefore, we see no substance in the argument that the orders of deportation passed by the appellant against the respondents should be sustained even without an enquiry by the Central Government about their status."

We cannot accept the view of the learned trial Judge that there is an automatic cesser of the respondent's citizenship by virtue of Section 9. We hold that the question about the status of the respondents has to be tried by the Central Government and it is only after the Central Government has reached the

conclusion that the respondents have acquired the citizenship of Pakistan that the appellant can issue orders of deportation against them."

10. In my considered opinion, the judgment rendered by the Supreme Court would not lend any support to the case of the petitioner. In the said case, the petitioners against whom deportation order was passed contended that Section 9 of the Citizenship Act, 1955 and Rule 3 of Schedule III of the Citizenship Rules, 1956 were ultra vires and they urge that they had not acquired the citizenship of Pakistan and continued to be the citizens of India. It is under those circumstances, the Apex Court while upholding the Constitutional validity of Section 9 of the Citizenship Act and the Rules framed there under made the aforementioned observations.

11. Here is the case where there is not even an assertion in the affidavit that the petitioner had not acquired the citizenship of Pakistan voluntarily. The petitioner never raised any dispute in this regard. Section 9 of the Citizenship Act, 1955 (for short "the Act") says that any citizen of India who by naturalisation, registration or otherwise voluntarily acquires, or has at any time between the 26th January, 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. The petitioner admittedly, voluntarily left the country somewhere in 1940's or in the year 1950 and obtained Pakistani citizenship as is evident from his passport. It is true, 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 that behalf. Rule 30 of the Citizenship Rules, 1956 prescribes the authority to determine such question for the purpose of Section 9(2), be the Central Government. The Central Government shall in determining any such question have due regard to the rules of evidence specified in Schedule III. Rule 3 of Schedule III in turn declares that the fact that a citizen of India has obtained on any date a passport from the Government of any other country shall be conclusive proof of his having voluntarily acquired the citizenship of that country before that date. This is the statutory scenario relating to the cases where an Indian citizen voluntarily relinquished his citizenship and obtained the citizenship of a foreign country.

12. It is so obvious that the Central Government would have to determine such question as to whether any Indian citizen voluntarily acquired the citizenship of a foreign country. As noticed, there is no whisper in the affidavit filed in support of the writ petition that the petitioner had not acquired Pakistani citizenship voluntarily. The petitioner never raised any dispute in this regard. The petitioner never asserted his right to continue himself as a citizen of this country. Ever since he left the country, he claims to have visited this country on a passport issued by Pakistan. There is no dispute requiring any resolution as such by the Central Government. His permit admittedly expired on 19-6-1999.

13. Let us have a look at his application purported to have been filed before the Secretary, Ministry of Home, Passport Department, Government of Andhra Pradesh dated ...4-1999. The petitioner in categorical terms requested the second respondent herein to consider his case on "sympathetic humanitarian grounds and allow me to stay for one year in my mother land". In his application, the details of his acquisition of Pakistani nationality are not stated. It is nowhere stated that he did not voluntarily acquire the Pakistani citizenship after he left his country somewhere during 1940"s or in the year 1950. The petitioner never raised any dispute in this regard. On the other hand, he merely wanted the authority to consider his request to stay for one more year. In Form B-application for an extension of visa to be filled in by Pakistani national desiring to extend stay in India, the petitioner in categorical terms stated in Column 14 as against the period for which extension is required as one year i.e., from 20-6-1999 to 19-6-2000. It is a different thing altogether that even without such extension is being granted by the Competent Authority, the petitioner over stayed by almost one year and thus his request had worked out itself. The respondents having considered the request of the petitioner rejected the same. The petitioner has no right in law for an extended stay in India. In the circumstances of the case on hand, I hold that the order passed by the respondents is not violative of any principles of natural justice.

15. For the first time in the affidavit filed in support of the writ petition, the petitioner asserted that he continued to be a citizen of India. Even in this writ petition, there is no assertion that he did not voluntarily acquire the citizenship of Pakistan. No dispute had arisen about the petitioner acquiring Pakistani citizenship voluntarily. Hence no resolution as such is required. In the circumstances, the judgment in Syed Mohd. Khan"s case (supra) upon which heavy reliance is placed by the learned Counsel for the petitioner has no application to the facts in this writ petition. The writ petition is totally misconceived.

16. No other point is urged.

17. The writ petition fails and shall stand accordingly dismissed. No order as to costs.