
(2014) 06 AP CK 0123

In the Andhra Pradesh High Court

Case No : Writ Petition No: 26890 of 2007

Mohd. Hussain

APPELLANT

Vs

Government of Andhra Pradesh

RESPONDENT

Date of Decision : 17-06-2014

Acts Referred:

Citizenship Act, 1955 — Section 9, 9(2)

Citation : (2014) 5 ALD 290 : (2015) 1 ALT 246

Hon'ble Judges : A. Ramalingeswara Rao, J

Bench : Single Bench

Advocate : Vedula Srinivas, Advocate for the Appellant

Final Decision : Allowed

Judgement

A. Ramalingeswara Rao, J.—Heard learned counsel for the petitioners and none appeared for the respondents.

2. In this writ petition the petitioners challenge the action of the respondents in insisting the petitioners to leave India forthwith without issuing any notice and without giving any reasons.

3. The case of the petitioners is that the first petitioner is an Indian National having been born on 05.09.1956 at H.No. 22-3-942, Purani Haveli, Dabeerpura, Hyderabad. His father was an Iranian National who came to India in 1934-35 and has been continuing to live in India. His father married Sakina Khanom, mother of the first petitioner, and Kolsum Begum who are Indians by birth. His father married Sakina Begum on 12.12.1950 in Hyderabad and the marriage certificate evidences the same. His mother gave birth to 3 sons and 3 daughters during their marital life and the first petitioner is one among them. The first petitioner further states that since 1956 they have been living in India and he married the 2nd petitioner who is also an Indian by birth having been born on 09.07.1957 at Mumbai. During their wedlock, the first petitioner and the 2nd petitioner were blessed with petitioners 3 to 6. The first petitioner states that he is doing hotel

business in Hyderabad from the age of his majority. His children have been studying in Hyderabad in various schools and colleges and none of his family members are involved in any criminal activities. While so, on 07.12.2007 the officials of the 3rd respondent visited the house of the first petitioner and asked him to leave India without valid reason and when he asked for reason, he was told that the writ petition, W.P. No. 21803 of 1994, filed by him challenging the action of the Commissioner in pressurizing them to leave India was dismissed for default in the year 2001. The restoration petition was also dismissed. Challenging the action of the respondents, the present writ petition was filed.

4. Even after seven years, the respondents did not choose to file any counter-affidavit.

5. Section 9 of the Citizenship Act, 1955, reads as follows:

Termination of citizenship:-(1) Any citizen of India who by naturalization, registration 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:

Provided that nothing in this sub-section shall apply to a citizen of India who, during any war in which India may be engaged, voluntarily acquires, the citizenship of another country, until the Central Government otherwise directs.

(2) If any question arises as to whether, when or how any [citizen of India] 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.

6. Rule 30 of the Citizenship Act, 1955, says that if any question arises as to whether, when or how any person had acquired the citizenship of another country, the authority to determine such question shall, 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.

7. The Apex Court in *Md. Ayub Khan V. Commissioner of Police, Madras* held as follows, while allowing the appeal and quashing the order of deportation passed by the Commissioner of Police, Madras:

Paragraph 1 of Sch. III which raises a rebuttable presumption, when it appears to the Central Government that a citizen has voluntarily acquired foreign citizenship, casts the burden of proof upon the citizen to disprove such acquisition, and Paragraph 2 which authorizes the Central Government to make enquiries for the purpose of determining the question raised, strongly support the view that the Central Government must arrive at a decision that the Indian citizen has voluntarily acquired foreign citizenship, before action can be taken against him on the footing that his citizenship is terminated. Paragraph 3 raises a

conclusive presumption that a citizen of India who has obtained a passport from a foreign country on any date, has before that date voluntarily acquired citizenship of that other country. By the application of the rule in Paragraph 3 the authority must regard obtaining of a foreign passport on a particular date as conclusive proof that the Indian citizen has voluntarily acquired citizenship of another country before that date. But obtaining of a passport of a foreign country cannot in all cases merely mean receiving the passport. If a plea is raised by the citizen that he had not voluntarily obtained the passport, the citizen must be afforded an opportunity to prove that fact. Cases may be visualized in which on account of force a person may be compelled or on account of fraud or misrepresentation he may be induced, without any intention of renunciation of his Indian citizenship, to obtain a passport from a foreign country. It would be difficult to say that such a passport is one which has been "obtained" within the meaning of Paragraph 3 of Sch. III and that a conclusive presumption must arise that he has acquired voluntarily citizenship of that country.

8. In the instant case, no order has been passed by respondents 1 and 2 and the petitioner is unaware of the reason for asking to leave the country of his birth.

9. In the circumstances, the writ petition is allowed. But this will not prevent respondents 1 and 2 to pass reasoned orders if they want to take action in pursuance of Section 9 of the Citizenship Act, 1955 and Rule 30 of the Citizenship Rules, 1956. Till such action is concluded, the petitioner shall not be deported out of India.

10. Pending miscellaneous petitions, if any, shall stand dismissed in consequence. No costs.

That Rule Nisi has been made absolute as above. Witness the Hon''ble Sri Kalyan Jyoti Sengupta, the Chief Justice on this Tuesday, the Seventeenth day of June, Two Thousand and Fourteen.