

(1970) 03 SC CK 0015
In the Supreme Court Of India
Case No : Civil Appeal No. 201 Of 1967

Mohd. Ilyas	Vs	APPELLANT
Union of India (UOI) and Another		RESPONDENT

Date of Decision : 06-03-1970

Acts Referred:

Citizenship Act, 1955 — Section 18, 9
Constitution of India, 1950 — Article 6, 8, 9

Citation : (1970) 3 SCC 61

Hon'ble Judges : K. S. Hegde, J;J. C. Shah, J;A. N. Grover, J

Bench : Full Bench

Final Decision : Disposed Of

Judgement

K.S. Hegde, J.—The only question that arises for decision in this appeal by special leave is whether the Union of India failed to conform to the principles of natural justice while disposing the representation of the appellant made u/s 9(2) of the Citizenship Act, 1955 read with Rule 30 of the Citizenship Rules, 1950.

2. According to the appellant, he was born at Hapur in Meerut District. He was domiciled in that city. In 1949, while he was 15 years' of age, he came to live with his sister at Delhi. He continued to live at Delhi till March, 1950. In that month there was an outbreak of serious communal disturbances all over Northern India. His sister's family being panic stricken left for Pakistan. They took the appellant who was a minor at that time to Pakistan. But his parents continued to live in India. After sometime the appellant was desirous of coming back to India but he was unable to get the necessary permit. Under these circumstances he applied for and obtained a Pakistani passport on August 20, 1953, and after obtaining the necessary visa from the Indian High Commission at Karachi, came to India. After the expiry of the period for which visa had been issued to him, the Government took steps to deport him to Pakistan. At that stage, he made a representation to the Government u/s 9(2) of the Citizenship Act contending that he was an Indian citizen and as such he could not be

deported. In that representation he asked for an opportunity to personally appear before the Government of India to represent his case and also to adduce such oral evidence as may be necessary. The Government of India after examining his representation, rejected the same. It held that he was not an Indian citizen and therefore he cannot be permitted to stay in this country. The contention of the appellant is that the Government of India contravened the principles of natural justice in considering his representation inasmuch as it did not afford him an opportunity to represent his case and further it did not give him an opportunity to adduce evidence in support; of his case.

3. It is seen from the application made by the appellant for a visa that he was born on May 1, 1934. It is also seen from that application that he had declared his Nationality as Pakistani. In that application he had mentioned that his occupation was:

Private Service J.B. Manon Confectionery, Murich Bazar, Sukkar.

4. The visa was applied for a period of three months only. The places that he desired to visit were mentioned therein as (1) Hapur to see his father and (2) Aligarh to see his sister's husband. It may be noted that at that time the appellant obtained the passport as well as the visa, he was major though at the time he went to Pakistan, he was a minor.

5. The question for consideration is whether on the facts and circumstances of this case, it can be said that there was any contravention of any principle of natural justice in the consideration of the representation made by the appellant to the Government of India.

6. It is no more in controversy that an enquiry u/s 9(2) is a quasi-judicial enquiry (see Mohd. Ayub Khan v. Commissioner of Police, Madras and Anr. (1) On the facts of this case, it is unnecessary for us to decide whether in an appropriate case, the Government of India is bound to give personal hearing to those who make representations u/s 9(2) or to afford opportunity to them to adduce oral evidence. It is well settled that principles of natural justice are not embodied rules. What principle of natural justice applies to a given case depends on the facts and circumstances of that case. All that can be broadly stated is that the procedure adopted must be conducive to arrive at a just conclusion.

7. Article 9 of the Constitution provides that no person shall be a citizen of India by virtue of Article 6, 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. Hence if the appellant is said to have voluntarily acquired Pakistani citizenship then he cannot be held to be an Indian citizen.

Section 9 of the Citizenship Act provides :--

(1). 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:

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 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.

8. Section 18(1) of the Citizenship Act authorises the Central Government to make rules, inter alia for setting up an authority to determine the question of acquisition of citizenship of another country and the procedure to be followed by such authority and rules of evidence relating to such cases. In exercise of that power, the Central Government framed Citizenship Rules, 1956 and the same came into force on July 7, 1956. By Rule 30, it was provided:

(1) If any question arises as to whether, when or how any person has acquired the citizenship of another country, the authority to determine such question shall, for the purpose of Section 9(2), be the Central Government.

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

9. Schedule III sets out the rules referred to in Rule 30(2). Clauses 1, 2 and 3 of that Schedule are relevant. They read:

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

2. For the purpose of determining any question relating to the acquisition by an Indian citizen of the citizenship of any other country, the Central Government may make such reference as it thinks fit in respect of that question or of any matter relating thereto, to its Embassy in that country or to the Government of that country and act on any report or information received in pursuance of such reference.

3. 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.

10. If we hold that the appellant had obtained the passport, to which reference has been made earlier, from the Pakistan Government then that circumstance amounts to a conclusive proof of the fact that he had acquired voluntarily citizenship of Pakistan. Therefore the only question that we have to decide is

whether he had obtained the passport in question.

11. This Court in Mohd. Ayuh's case (*supra*) made distinction between receiving of a passport and obtaining of a passport. It observed that obtaining of a passport of a foreign country cannot in all cases mean receiving the passport as cases j may be visualised in which on account of force or fraud a person may be compelled or induced to obtain a passport from a foreign country. Therein this Court further observed that it will be difficult to say that in such a case the passport has been 'obtained' within the meaning of paragraph 3 of Schedule III. As laid down by this Court in *Syed Khawaja Moinuddin v. Government of India* and on; (2) that on a representation made by a person, the Government is not called upon to make any detailed enquiry when the provision of para 3 of Schedule III of the Citizenship Rules, namely that the authority must regard obtaining of a foreign passport on a particular date as conclusive proof that the Indian citizen had voluntarily acquired the citizenship of another country before that date, were clearly applicable. It is only when a plea is raised that a citizen had not voluntarily obtained the passport that he should be afforded an opportunity to prove that fact.

12. On the allegations made above the appellant challenged by means of a suit the order made by the Central Government holding that he had voluntarily acquired the citizenship of Pakistan. That suit was dismissed and the judgment of the trial court was affirmed both in first appeal as well as in second appeal.

13. On his own showing the appellant had voluntarily applied for and obtained the Pakistani passport. If he was an Indian citizen and that he happened to be in Pakistan, the appropriate course for him was to apply for entry permit from the Indian High Commission at Karachi. Without doing that, he represented to the authorities that he was a citizen of Pakistan and that he wanted to visit India to see his parents as well as sister's husband. It is not his case that he was compelled by force to obtain a passport from Pakistan or that he was a victim of any fraud. Therefore we are unable to appreciate the contention advanced by the learned Counsel for the appellant that the passport was not voluntarily obtained by the appellant. On the admitted facts, no occasion arose for the Government to give him a personal hearing or to give him an opportunity to adduce oral evidence.

14. In the result this appeal fails and the same is dismissed. In the circumstances of the case we make no order as to costs.