

(1956) 05 MP CK 0011

In the Madhya Pradesh High Court

Case No : C. Miscellaneous C. No. 25 of 1956

Naziranbai

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 07-05-1956

Acts Referred:

Citizenship Act, 1955 — Section 11, 12, 3, 5

Constitution of India, 1950 — Article 19, 19(1), 226, 367(3), 5

Citation : AIR 1957 MP 1

Hon'ble Judges : Dixit, J;Chaturvedi, J

Bench : Division Bench

Advocate : M.A. Khan, for the Respondent

Final Decision : Dismissed

Judgement

Dixit, J.—This is an application under Article 226 of the Constitution of India for the issue of a direction to the State of Madhya Bharat, restraining the State from compelling the Petitioners to leave India.

2. According to the Petitioner Naziran Bai she was born and brought up in Indore, and she married one Mohammad Ismail of Indore in 1946. In 1948 her father migrated to Pakistan. As she was expecting her first child, her father came from Pakistan and took her to Karachi on the authority of a temporary permit. The Petitioner Naseem Bano was born to her on 22-8-1949 at Karachi. Thereafter she fell seriously ill and could not come to India within the time allowed by the permit. She, therefore, applied several times to the High Commissioner for India in Pakistan as well as to other authorities in India for a permit for her permanent return to India. But no permit was granted to her.

She was, therefore, compelled to apply to the Pakistan Government for a passport to visit India, which she obtained; and sometime in March, 1954 she returned to India on a Pakistan Passport No. 151813 dated 5-1-1954. The Applicant Naziran Bai further states that on her return to India another daughter

Perween Bano was born to her on 17-11-1954 and that as the time for which she was allowed to stay in India has expired, the opponent State through the Indore police are threatening to arrest her and compel her and her minor daughters to leave India.

3. We have heard Mr. Khan learned Counsel for the Petitioners. In our opinion this petition must be rejected. The contention of Mr. Khan was that as the Petitioner Naziran Bai was born in India and had her domicile in India at the commencement of the Constitution, she was a citizen of India by virtue of Article 5 that her visit to Pakistan in 1948 and her stay there till March, 1954 was for a temporary purpose, for the delivery and medical treatment that she never migrated to Pakistan that she was and always continued to be a citizen of India and that as her husband Mohammad Ismail remained in India, she could never be said to have migrated to Pakistan because her domicile was that of her husband and the fact that she returned to India on a Pakistan pass-port was therefore, of no consequence.

I am Unable to accept the contention that the Petitioner Naziran Bai did not migrate to Pakistan after 1-3-1947. Even if it is assumed that Naziran Bai was born in India and had her domicile in India at the commencement of the Constitution and that Mohammad Ismail who remained in India is her husband, she cannot get the benefit of Article 5 because the fact that after having gone to Pakistan she came to India on a Pakistan passport and had her period of stay in this country extended from time to time shows that she migrated from the territory of India after 1-3-1947 and that her case falls under Article 7.

The fact that her husband remained in India and her domicile is that of India cannot render Article 7 inapplicable to her if she did in fact migrate to Pakistan after 1-3-1947. This has now been made very clear by the decision of the Supreme Court in *The State of Bihar Vs. Kumar Amar Singh and Others*, where a lady went to Karachi in July, 1948 leaving her husband in India and her story that she went there temporarily for medical treatment was found on the facts proved to be unfounded and it was held that Article 7 clearly overrides Article 5. It is peremptory in its scope and makes no exception for such a case i.e., of the wife migrating to Pakistan leaving her husband in India. Even such a wife must be deemed not to be a citizen of India unless the particular facts bring her case within the proviso to Article 7.

The Supreme Court's decision is an authority for the proposition that if a wife has migrated to Pakistan after 1-3-1947 leaving her husband in India, then she cannot be deemed to be a citizen of India under Article 7 notwithstanding the proposition that the wife's domicile continues throughout to be that of her husband during the continuance" of marriage. The sole question, therefore, is whether Naziran Bai migrated to Pakistan after 1-3-1947.

The Petitioner says that she went to Pakistan in 1948 on a temporary permit. But the temporary permit or a copy of it has not been filed with the petition and one

does not know as to what this permit was. She further says that she applied unsuccessfully to the High Commissioner for India in Pakistan and to other authorities for a permit for her permanent return to India. Copies of these applications have not been filed and there is no indication whatsoever as to what declarations Naziran Bai made when she applied to those authorities and the grounds on which a permit for her permanent return was refused to her.

She came to India admittedly on a Pakistan passport and had her period of stay in this country extended from time to time. That she applied for extension of the period of her stay is evident from her statement in para. 2 of this application that the Passport No. 151313 and the Visa granted thereon from time to time are a nullity.

Learned Counsel for the Petitioner produced in the Court that passport issued to Naziran Bai by Pakistan Government. It describes her as a Pakistan citizen and mentions her domicile as Pakistan. I think it is a fair assumption to make that these statements in the passport as to Naziran Bai's nationality and domicile were entered on the basis of the declarations made by her when she applied to the Pakistan authorities for the issue of a passport. The fact that on her return to India she applied for the extension of the period of her stay necessarily implies that on the expiry of that period, she wanted to return to Pakistan.

Learned Counsel for the Petitioner said that no weight should be attached to these statements in the passport. I do not agree with him. A passport is a document of identity and nationality issued to citizens or subjects of a State who intend to travel or visit foreign countries. It is a document which requests and requires in the name of the State or the Government issuing it, all those to whom it may concern to give to the bearer every assistance and protection as, a subject or the citizen of the State issuing the passport in foreign countries. (See *The King v. Brailsford* (1905) 2 KB 730 at p. 745 (B) and "*V.G. Row v. State of Madras* AIR 1954 Mad 210 (C)).

This being the nature of a passport, I am unable to view the fact that the Petitioner Naziran Bai obtained a passport from the Pakistan State describing her as a Pakistan national and came to India on that passport and got her period of stay in this country extended from time to time as one other evidence of her Pakistan nationality and of her migration to Pakistan after 1-3-1947. If then as I think the Petitioner Naziran Bai migrated to Pakistan after 1-3-1947, she cannot be regarded as an Indian citizen under Article 7. It is not her contention that her case falls under the proviso to Article 7.

4. Learned Counsel for the Petitioner then urged that even if Naziran Bai became a citizen of Pakistan, she did not cease to be an Indian citizen because by the Declaration as to Foreign States Order, 1950 issued under Article 367(3) every country within the Commonwealth was declared not to be a foreign State for the purposes of the Constitution and Pakistan was a country within the Commonwealth and that Article 9 had no applicability where Indian citizenship

was lost by acquisition of the citizenship of a foreign State after the commencement of the Constitution. A similar contention was advanced in the case of "Noor Mohammad v. The State of Madhya Bharat", Civil Misc. Case No. 17 of 1956 (S) AIR 1956 MP 211 (D) and it was repelled by us observing that:

the effect of the Declaration as to Foreign States Order, 1950 is only this that wherever the words "foreign State" appear in the Constitution they must be taken as not including countries within the Commonwealth. This is clear from the wording of Article 367(3) and of the Order referred to above. The Order does not mean that citizens of Commonwealth countries are Indian citizens even for the purposes of these Articles of the Constitution which do not contain the words "foreign State" and where the question, of the interpretation of the expression "foreign State" does not arise. Article 7 does not use the words "foreign state."

In Article 9 there is no reference whatsoever to Article 7. That Article like Article 7 is a disabling provision. The fact that Article 9 does not deal with acquisition of citizenship of a foreign State after the commencement of the Constitution cannot, however, lead to the conclusion that Article 7 is inapplicable to those persons who migrated to Pakistan after 26-1-1950 and acquired Pakistan nationality. Such a construction, would render nugatory Article 7.

5. It was then said that u/s 11 of the Citizenship Act, 1955, Naziran Bai has the status of a Commonwealth citizen and as such she has the fundamental right under Article 19 of the Constitution to move freely throughout the territory of India and to reside and settle in any part of India. No doubt u/s 11 Naziran Bai has the status of a Commonwealth citizen. But as a Commonwealth citizen she can have only those rights which the Central Government may, u/s 12 of the Citizenship Act by order notified in the Gazette confer all or any of the rights or the citizens of India on the citizens of Pakistan.

Learned Counsel was unable to point out to us any order u/s 12 of the Act conferring on the citizens of Pakistan the fundamental rights guaranteed to the citizens of India under Article 19. In the absence of any such notification she cannot claim the rights under Article 19(1)(d) and (e). She cannot claim the fundamental rights under Article 19, as a citizen of Pakistan. That Article does not apply to foreigners. See *Hans Muller of Nuremburg Vs. Superintendent, Presidency Jail, Calcutta and Others*,

6. The Petitioner Naziran Bai's entry and stay in India is solely governed by the Indian Passport Act, 1920 and the Indian Passport Rules, 1950. Under those provisions she cannot stay in this country after the expiry of the period specified in the Visa and of the extended period thereafter. A similar view has been taken by us in "Noor Mohammad's case" (D) referred to above.

The further contention of the learned Counsel that the Indian Passport Act. and the rules thereunder being repugnant to Article 19 are void must be rejected on the short ground that as the Petitioner Naziran Bai has not the fundamental rights under Article 19 and as that Article does not apply to foreigners, the

question of the Passport Act and the rules thereunder, in so far as they prohibit the entry into India of foreigners except under a valid passport, being repugnant to Article 19 cannot arise.

7. Learned Counsel referred us to Mst. Allah Bandi and Another Vs. Govt. of Union of India (UOI) and Others, and Mrs. Rosetta Evelyn Attaullah Vs. Justin Attaullah and Another, Both these cases are distinguishable. The (A]lah? nd) (sic) case dealt with the question of two Mohammadan minor married girls who left for Pakistan along with their parents in 1947 and whose husbands who were citizens of India remained all along in the territory of India. The minor girls returned to India on a permanent permit issued by the High Commissioner for India in Pakistan which was, however, cancelled subsequently.

Here the Petitioner Naziran Bai has not said that, she is a minor or was one when she applied for a passport to the Pakistan authorities in (41.) (sic) The Allahabad case did not deal with the question of a major married girl, who left for Pakistan after 1-3-1947 and returned to India thereafter on a Pakistan passport. In the Calcutta case also this question did not arise for consideration. That case is altogether different on facts and deals with principles which have no applicability here.

8. The Petitioner Naziran Bai is therefore, not entitled to the relief she claims with regard to herself. As to her minor daughters one born in Karachi in 1949 and the other in Indore in 1954. they are undoubtedly Indian citizens under Article 5 of the Constitution and Section 3 of the Citizenship Act, 1955. Being minors, they take the domicile of their father and in their case there is no question of migration under Article 7. They cannot, there fore be compelled to leave India with their mother.

The Petitioner merely apprehends that her minor children may also Vie forced to leave with her. There is no basis for such an apprehension, and there need be none when I have made it clear that the minor daughters cannot be forced to leave India with their mother. It is unfortunate that the Petitioner Naziran Bai as it is has to leave India leaving her husband and minor children here. But I think she can AVOID this situation if she applies u/s 5 of the Citizenship Act, 1955 for registration as a citizen of India. I am confident that the opponent State will allow her to stay in India for sufficient time so as to enable her to apply u/s 5 for being registered as a citizen of India.

9. For the foregoing reasons this petition is dismissed.

Chaturvedi, J.

10. I agree.