

(1968) 01 AHC CK 0014
In the Allahabad High Court
Case No : Criminal Revision No. 1482 of 1966

Rahmat Ullah

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 18-01-1968

Acts Referred:

Citizenship Act, 1955 — Section 9(1), 9(2)
Citizenship Rules, 2009 — Rule 30
Constitution of India, 1950 — Article 77(1)
Foreigners Act, 1946 — Section 14, 2

Citation : AIR 1969 All 165 : (1969) CriLJ 450

Hon'ble Judges : S.D. Singh, J

Bench : Single Bench

Advocate : Bashir Ahmad, for the Appellant;

Final Decision : Allowed

Judgement

S.D. Singh, J.—This application arises out of a case against the applicant u/s 14 of the Foreigners Act (XXXI of 1946).

2. The prosecution allegation was that the applicant is a Pakistani national and came to India on the basis of a Pakistani passport dated 15th March, 1955, and Indian Visa dated 22nd March, 1965, and stayed on in India beyond the period fixed under the visa.

3. The applicant's contention was that he is an Indian and not a Pakistani citizen. He alleged that he was in India on 26th January, 1950, and that he had gone to Pakistan for a temporary visit, though he admits that he came to India after having obtained a Pakistani passport and an Indian visa.

4. The main question which arises for consideration in the case, therefore, was whether the applicant was an Indian citizen and reliance for the purpose was placed on behalf of the State on Section 9 of the Citizenship Act (LVII of 1955). Under Sub-section (1) of this section if a citizen of India voluntarily acquired the

citizenship of another country after the 26th of January, 1950, and before the commencement of the Act, shall upon such acquisition cease to be a citizen of India. Under Sub-section (2) of the same section if any question arises as to whether when or how any person acquired the citizenship of another country, it has to be determined by such authority in such manner and having regard to such rules of evidence as may be prescribed in this behalf. The provision to that effect is prescribed under Rule 30 of the Citizenship Rules, 1956. Under this rule if any question arises as to whether when or how any person has acquired the citizenship of another country the authority to determine such a question is to be the Central Government. It was thus contended on behalf of the State that the citizenship of the applicant has been determined by the Central Government under the aforesaid Rule 30 and reliance for the purpose was placed upon an order, Ex. Ka. 10, which purports to have been signed by one Sri C. L. Goel, Under Secretary to the Government of India. This order says that the Central Government has, acting u/s 9(2) of the Citizenship Act, 1955. and Rule 30 of the Citizenship Rules, 1956, determined that Sri Rahmatullah, who is the applicant in this revision, had voluntarily acquired the citizenship of Pakistan after 26th January. 1950, and before 15th March. 1955.

5. Learned counsel for the applicant has challenged this order from a number of points of view and it was contended that it could not be relied upon on behalf of the State in proof of the citizenship of the applicant. Under Article 77(1) of the Constitution of India all executive actions of the Government of India shall be expressed to be taken in the name of the President and it was contended that even this order should have been passed by the Central Government in the name of the President and as it was not, it is not a valid order for the determination of the citizenship of the applicant. Clause (1) of Article 77 aforesaid relates to executive action of the Government and it was contended that even a quasi-judicial order such as the one which determines the citizenship of a person is an executive action of the Government within the meaning of Clause (1) of Article 77. Reliance for this purpose was placed upon two decisions of the Supreme Court, Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, and Jayantilal Amrit Lal Shodhan Vs. F.N. Rana and Others,

6. The 1959 case aforesaid was one in respect of the interpretation of the provisions of the Motor Vehicles Act, 1939. On page 326 of this decision, their Lordships observed:--

"The concept of a quasi-judicial act implies that the act is not wholly judicial; it describes only a duty cast on the executive body or authority to conform to norms of judicial procedure in performing some acts in exercise of its executive power."

7. What has thus been held in this decision is that although an act may be quasi-judicial, if it is performed by an executive authority in the discharge of its executive functions, it would be an executive action of that authority. The 1964

case brings out the point more specifically. Their Lordships pointed out on page 655 of this decision that functions which do not fall strictly within the fields, legislative or judicial, fall under residuary class and must be regarded as executive. Proceeding further their Lordships pointed out:

"In the performance of the executive functions, public authorities issue orders which are not far removed from legislation and make decisions affecting the personal and proprietary rights of individuals which are quasi-judicial in character."

This is a clear authority for the proposition that even the quasi-judicial function of the executive Government would be an executive function and it would in that case fall within the four corners of Clause (1) of Article 77 of the Constitution.

8. The General Clauses Act, X of 1897, also defines "Central Government" as meaning in relation to anything done or to be done after the commencement of the Constitution, the President. Even according to this provision the authority given to the Central Government under Rule 30 of the Citizenship Rules, 1956, is to be exercised by the President and when this authority is so exercised by him or by any other authority permitted to do so under the rules of business, the action in any case must purport to have been taken in the name of the President. In view of what "Central Government" is defined to mean u/s 3(8) of the General Clauses Act, X of 1897, viz., "the President" the order in question will be deemed to have been made in the name of the President.

9. Another contention on behalf of the applicant was that the order, Ex. ka. 10, which has been relied upon by the State was passed by an Under Secretary of the Government of India and could not, therefore, be regarded as an order of the Central Government. The order itself shows that it was not the Under Secretary who passed the order, though he had signed it, but the Central Government as is specifically mentioned in the order itself that "the Central Governmenthereby determines that the said Sri Rahmat Ullah has voluntarily acquired the citizenship of Pakistan." In signing the order, therefore, Sri G. L. Goyal was referring to a decision which had been taken by the Central Government and what Sri Goyal did by signing the order was only to communicate the aforesaid decision of the Central Government to those who were likely to be affected by it.

10. The next point which was urged on behalf of the applicant was that even if a decision was taken by the Central Government within the meaning of Rule 30 of the Citizenship Rules, that decision could be deemed to have been taken only when it was communicated to the applicant and that the prosecution in this case was premature if it originated prior to the communication of the aforesaid order to him.

11. What appears to have happened in this case is that the charge sheet against the applicant was submitted in February, 1965, as according to the order sheet in the Magistrate's file, the first order passed in the case was dated 8th February, 1965. The order, Ex. ka. 10, may be deemed to have been passed sometime in

November, 1964, though nothing is brought out in that respect clearly in the evidence. But it was communicated to the State Government under the Central Government letter dated 28th December, 1964, and served on the applicant on 29th March, 1965. The charge sheet against the applicant was framed earlier on 6th March, 1965, and the order convicting him u/s 14 of the Foreigners Act was passed on 19th April, 1966. What was urged on behalf of the applicant was that the order not having been communicated to him before the 29th of March, 1965, it will be deemed to have been passed against him on that date and the entire proceedings taken against him prior to it being premature, invalidated even the subsequent proceedings against him. Reliance for this purpose was placed upon two decisions -- one of the Supreme Court in *Bachhittar Singh Vs. The State of Punjab*, and another of a Division Bench of this Court in *Khalil Ahmad Vs. State of U.P.*,

12. The Supreme Court decision in *Bachhittar Singh Vs. The State of Punjab*, relates to an order which was passed by the State Government. Reliance in that case had been placed upon Article 166 of the Constitution which, however, uses exactly the same language which is employed in Clause (1) of Article 77 of the Constitution. It has been held in that case that an order passed under Clause (1) of Article 166 has to be expressed in the name of the Governor and that merely writing something on the file does not amount to an order. Their Lordships pointed out

"The Constitution, therefore, requires and so did the Rules of Business framed by the Raj Pramukh of Pepsu provide that the action must be taken by the authority concerned in the name of the Rajpramukh. It is not till this formality is observed that the action can be regarded as that of the State or here, by the Rajpramukh. We may further observe that, constitutionally speaking, the Minister is no more than an adviser and that the head of the State, the Governor or Rajpramukh, is to act with the aid and advice of his Council of Ministers, Therefore, until such advice is accepted by the Governor whatever the Minister or the Council of Ministers may say in regard to a particular matter does not become the action of the State until the advice of the Council of Ministers is accepted or deemed to be accepted by the Head of the State."

Proceeding further their Lordships pointed out:

"Indeed it is possible that after expressing one opinion about a particular matter at a particular stage a Minister or the Council of Ministers may express quite a different opinion, one which may be completely opposed to the earlier opinion. Which of them can be regarded as the "order" of the State Government? Therefore, to make the opinion amount to a decision of the Government it must be communicated to the person concerned."

13. Their Lordships then referred to an earlier decision, *The State of Punjab Vs. Sodhi Sukhdev Singh*, in which a similar view was taken and in which it was observed:--

"Even if the Council of Ministers had provisionally decided to reinstate the respondent that would not prevent the Council from reconsidering the matter and come to a contrary conclusion later on until a final decision is reached by them and is communicated to the Rajpramukh in the form of advice and acted upon by him by issuing an order in that behalf to the respondent."

14. Then their Lordships finally expressed their opinion that until the order is communicated to the person affected by it, it would be open to the Council of Ministers to consider the matter over and over again and, therefore, till then the communication of the order cannot be regarded as more than anything provisional in character. According to this view, therefore, the mere passing of the order in the file is not enough to show that a decision had been taken. The decision must be taken and after the approval to that decision is given by the authority whose approval is required under the Rules of Business, it must be communicated to the person concerned.

15. A question may arise in this connection whether the order will be deemed to have been passed within the meaning of what their Lordships of the Supreme Court have expressed in this decision, on the date on which it was actually served upon the person affected by the order or even on the date on which necessary steps may have been taken by the Central Government to communicate the aforesaid order or decision to the person concerned. In this case the evidence indicates that the Central Government had written to the State Government on 28th December, 1964, that the order may be communicated to the present applicant. The possibility of the Central Government changing its decision within the meaning of what has been observed by their Lordships of the Supreme Court in *Bachhittar Singh Vs. The State of Punjab*, ceased on the date this letter dated 28th December, 1964, Ex. Ka. 11, was sent to the State Government. Thereafter could it not be said that the chance of the advice of the Ministers being changed still existed? Since it had gone out of the precincts of the office of the Central Government on that date, it could be said in respect of it that the decision had in any case been taken by them.

16. The view taken by the Allahabad High Court in *Khalil Ahmad Vs. State of U.P.*, is that a person cannot be prosecuted u/s 14 of the Foreigners Act without first obtaining the decision of the Central Government u/s 9(2) of the Citizenship Act. One of the questions which was referred to a Division Bench in that case was: "Whether the question of citizenship can be decided by the Central Government or by the law Courts"?

17. In answering this question the Division Bench observed:

"Our answer to question no. 1 therefore is that the question of citizenship can only be decided by the Central Government in accordance with Section 9(2) of the Citizenship Act. We further hold that there being no decision of the Central Government in the present case that the applicant was not a citizen of India he could not be prosecuted and convicted u/s 14 of the Foreigners Act."

Earlier in the judgment it is pointed out at page 387:

"It was next contended that u/s 9(2) read with Rule 30 of the Citizenship Rules the proper authority to determine the question as to nationality of the petitioner was the Central Government and that the applicant could not have been prosecuted without first obtaining the decision of the Central Government u/s 9(2) of the Citizenship Act. In our opinion the objection raised by the applicant is sound."

18. It was contended on the basis of this decision that unless the decision of the Central Government is obtained, a person cannot even be prosecuted u/s 14 of the Foreigners Act. It appears difficult, however, to accept this interpretation of the decision of the Division Bench. In this case the decision of the Central Government was not obtained at all and it was consequently held that without such decision the applicant could not be prosecuted or convicted u/s 14 of the Foreigners Act. This decision, in my opinion, cannot be interpreted to mean that even if the decision is given after a person has been prosecuted as aforesaid, that decision can be of no avail during the hearing of that case and the prosecution must fail merely on the ground that the decision of the Central Government was given after the applicant had been prosecuted.

19. The purpose behind Section 9 of the Citizenship Act and Rule 30 of the Citizenship Rules is that it is the Central Government and the Central Government alone which can decide the citizenship of a person who is supposed to adopt the citizenship of another country, and if such a decision is given by the State Government by the time it becomes necessary for the court to give a decision in the case, there does not appear to be any reasonable ground for disregarding such a decision and deciding the case as if no decision had been given in the case. It will of course have to be seen whether in any particular case any prejudice has been caused to an accused person on account of the late securing of the decision of the Central Government; but unless there is some question of prejudice being caused, it should not be open to courts to disregard the decision of the Central Government.

20. The main question which was put on behalf of the applicant, however, was that even if he had acquired citizenship of Pakistan and the decision of the Central Government on that question is final under Sub-section (2) of Section 9 of the Citizenship Act 57 of 1955 read with Rule 30 of the Citizenship Rules, 1956, all that the Central Government could decide was that the applicant had acquired citizenship of Pakistan with effect from the date determined by the Central Government and that the acquisition of the citizenship of a foreign country did not automatically make the applicant a foreigner for purposes of Section 14 of the Foreigners Act XXXI of 1946. Section 14 aforesaid makes a person liable to be punished if he contravenes the provisions of the Act or of any order made thereunder. In this particular case, the applicant is alleged to have contravened the provisions of paragraph 7 of the Foreigners Order, 1948 under which provision every foreigner who enters India on the authority of a visa

issued in pursuance of the Indian Passport Act, 1920 shall depart from India before the expiry of the period during which he is allowed to stay in India. The contention was that even though the applicant may have acquired foreign citizenship as a necessary consequence of the order of the Central Government passed u/s 9(2) of the Citizenship Act, he did not cease to be a citizen of India automatically on his acquiring foreign citizenship and that since he continued to be a citizen of India he would not, for purposes of section 14 of the Foreigners Act, be deemed to be a foreigner as defined in Clause (a) of Section 2 of that Act. This Clause (a) of section 2 of the Foreigners Act defines "foreigner" as a person who is not a citizen of India, In order therefore that a person must be a foreigner he must not be a citizen of India and if the applicant Rahmat Ullah had not lost his citizenship of India even though he had acquired Pakistani citizenship, he may not have committed a breach of paragraph 7 of the Foreigners Order, 1948.

21. As to whether or not Rahmatullah ceased to be a citizen of India on his having acquired Pakistani citizenship we will have to look back again to the provisions of section 9, Sub-section (1) of the Citizenship Act, 1955. This Sub-section (1) reads :--

"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."

This Sub-section refers to a citizen of India acquiring citizenship of another country within two periods of time, one subsequent to the commencement of the Act and the other between 26th January, 1950 and the commencement of the Act. Normally this would cover the entire period since January 26, 1950 but the consequences of acquiring foreign citizenship within these two periods of time are a little different. Towards the end of Sub-section (1) it provides:--

"Shall, upon such acquisition or, as the case may be, such commencement, cease to be a citizen of India."

This part of Sub-section (1) of Section 9 thus provides that in one case the loss of citizenship of India will be with effect from the date of acquisition of a foreign citizenship and in the other with effect from the commencement of the Act. That portion of Sub-section (1) which connects the loss of citizenship of India to the date of acquisition of foreign citizenship refers to the acquisition of foreign citizenship subsequent to the commencement of the Act, while the loss of citizenship of India with effect from the date of the commencement of the Act relates to the acquisition of foreign citizenship between 26th January, 1950 and the commencement of the Act. The Central Government may determine the date of the acquisition of foreign citizenship somewhere between the 26th January, 1950 and the commencement of the Citizenship Act, but that would not be the

date of loss of citizenship of India, as Sub-section (1) clearly provides that in all such cases in which the date of acquisition of foreign citizenship is between the 26th January, 1950 and the commencement of the Citizenship Act, 1955 that date will be the date of the commencement of the Act. It is only in subsequent acquisition of foreign citizenship that the two dates will be the same, not so in case in which foreign citizenship has been acquired prior to the commencement of this Act. There is obviously an anomaly in the law inasmuch as a person who acquired citizenship of a foreign country before the commencement of the Citizenship Act, 1955, will have double citizenship in between the aforesaid date and the date of the commencement of this Act which is 30th December, 1955. A "foreigner" in Clause (a) of Section 2 of the Citizenship Act, 1955 is defined not as a person who has acquired foreign citizenship; it is only that person who is not a citizen of India who can be treated as a foreigner and not a citizen of India. Rahmatullah was a citizen of India upto the time of the commencement of the Citizenship Act, 1955, and did not lose this citizenship, even though he had acquired the citizenship of Pakistan. He was not, therefore, a "foreigner" under the Foreigners Act on the date he entered India and consequently could not be prosecuted for an offence of breach of paragraph 7 of the Foreigners Order, 1948 u/s 14 of the Foreigners Act.

22. It is certainly true that on the date Rahmatullah was prosecuted u/s 14 of the Foreigners Act he was a foreigner, but he did not enter India as a foreigner and paragraph 7 of the Foreigners Order cannot be made to cover the case of a person who having entered India as a citizen of India fails to depart from India even though he may have ceased to be a citizen of India. In order that there may be a breach of paragraph 7 it is necessary that the accused must have entered India as a foreigner. If he entered India as a citizen of India, this paragraph could not apply and this is also the view taken by a Division Bench of this Court in State Vs. Yakub, .

23. The applicant could not, therefore, be convicted u/s 14 of the Foreigners Act. This application in revision is, accordingly, allowed. The conviction of the applicant u/s 14 of the Foreigners Act and the sentence of 18 months' R.I. and a fine of Rs. 200/- thereunder are set aside. He is on bail. He need not surrender to his bail bonds which shall stand cancelled.