

(1973) 10 J&K CK 0005
In the Jammu And Kashmir High Court
Case No : Writ Petition No. 31 of 1971

S.Mohsin Shah

APPELLANT

Vs

Union Govt.of India & Ors.

RESPONDENT

Date of Decision : 31-10-1973

Acts Referred:

Citizenship Act, 1955 — Section 9(1), 9(2)
Citizenship Rules, 1956 — Rule 3, Schedule 3
Constitution of Jammu and Kashmir, 1956 — Section 18, 6

Citation : AIR 1974 J&K 48 : (2010) 8 JKJ 375 : (1973) JKLR 789 : (1974) KashLJ 61

Hon'ble Judges : S.M.F.Ali, C.J; Jaswant Singh, J, J; Mian Jalal-Ud-Din, J; Mufti Baha-Ud-Din Farooqi, J and Wasi-Ud-Din, J

Bench : Full Bench

Advocate : Mohi-ud-Din , M.A.Beigh, K.N.Raina, J.N.Bhan, Advocates appearing for the Parties

Judgement

Ali, CJ.

(1) This is an application by the petitioner for an appropriate writ in order to quash the orders passed by the Dy Secretary, Home Department of

Jammu and Kashmir, directing deportation of the petitioner to Pakistan in pursuance of the orders of the Union Ministry of Home Affairs. The

petitioner has also prayed for a declaration that he is an Indian citizen and is not liable to deportation from the territory of India Finally the petitioner

has asked for any other appropriate relief to which he may be entitled under law. The petition raises substantial questions of law of a unique nature

and arises in the following circumstances :

(2) The petitioner was born at Daultatabad, Khanayar, Srinagar, on 25 51925. He was educated in the Government High School at Srinagar and

joined the S P. College. The father of the petitioner, the late S Mohd Shah, was doing business in Skardu (Ladakh) In 1945 the petitioner also left

for Skardu to join his father there and in order to support himself, he accepted the post of a clerk in the Govt. hospital at Skardu in 1947/48. The

father of the petitioner died in 1967. It may be stated here that Skardu which is a part of Ladakh is in law considered to be a part of the territory of

Kashmir and therefore of India even though it is in illegal occupation of Pakistan. The petitioner all ages that he was a first class state subject within

the meaning of the Notification dated 20/4/1957 and by force of this Notification he became a permanent citizen of the State and therefore a citizen

of India. The petitioner received several letters from his relation, S. Qazim Shah, inviting him to Srinagar because his sister was to be married and

therefore he decided to Visit Srinagar in order to participate in the marriage. In pursuance of this object the petitioner applied to the Secretary to

the Government Home Department on 5/6/68 for a nonObjection Certificate. This application was forwarded by the Home Secretary to the Dy.

Secretary Union Ministry of Home Affairs and after performing a few formalities, a NoObjection Certificate was issued by the State Government.

The petitioner further states that as he had no other avenue to come back to Srinagar, he was compelled to apply for a passport from the Pakistan

authorities and obtained a visa from the High Commr. of India in Islamabad from 9/4/69 for a period of one month. Armed with the passport and

the visa the petitioner left Skardu, crossed the Hussainiwala border between India and Pakistan and reached Srinagar on 22/5/69. Since then the

petitioner has been staying in Srinagar It is further stated by the petitioner that he had applied for permission to settle permanently at Srinagar and

at one time the State Government was inclined to accept his application and recommended to the Central Government that he may be accorded

permission for permanent settlement at Srinagar The recommendation does not appear to have found favour with the Central Government which

insisted on the deportation of the petitioner. The petitioner has also made some other allegations of a personal nature against some officers who.

according to him, were out to grab the property of the petitioner at Srinagar which was inherited by him from his father, After a great deal of

correspondence between the State and the Central Governments, the latter decided that the petitioner should be asked to go back to Pakistan as

he ceased to be an Indian citizen This culminated in the orders of deportation passed by the Central Government dated 13571 and 31571. Being

unable to get any redress either from the State Government or from the Central Government, the petitioner was forced to approach this court for

an appropriate writ and hence this petition.

{}) The petition has been resisted by the two respondents namely, the Central Government and the State Government on various grounds. The

sheet anchor of the case of the Government is that the petitioner having acquired a Pakistan passport ceased to be a citizen of India and became a

Pakistan national, and he had therefore no justification to stay in India after the period of his visa was over. In the counteraffidavit filed by the

Central Government it is also suggested that the petitioner was indulging in subversive activities and was a security risk. This aspect of the matter is

not germane for the decision of the issues which are raised in the petition.

(4) The writ petition was heard by us at some length when the Central Government made an application to this Court for permission to hold an

enquiry under the provisions of S. 9 (2) of the Citizenship Act of 1955 (hereinafter to be referred to as the Act). As it was alleged that the

petitioner's case clearly fell within the purview of S. 9 of the Act, we permitted the Central Govt. to hold an enquiry as contemplated by S. 9 (2) of

the Act. In this connection we passed the following order:

"We have heard counsel for the parties at length. In our opinion, it is desirable and expedient in the interest of justice to allow the Central

Government to hold an inquiry into the matter as prayed for by it. The inquiry will, however, be subject to the decision of the petition on merits.

We would also like to make it clear that our order will not amount to a decision on the applicability or otherwise of S. 9 of the Indian Citizenship

Act, to the facts of the present case.

(5) Thereafter the Central Government issued a nonce to the petitioner and asked him to file his representation which was done by him. After

considering the representation of the petitioner and seeking further time from this court, the Central Government has forwarded its report dated

26473 to this Court. The Central Government has found that the petitioner had voluntarily acquired the citizenship of Pakistan after 2611950 and

before 410K68 As a natural consequence which flown from this finding of the

Central Government, it is urged by the State that the petitioner should now be deported to Pakistan. The petitioner has filed his objections to the report of the Central Government wherein he has attacked the findings of the Central Government on various grounds. In view, however, of the facts admitted by the counsel for the parties, this case lies within a narrow compass and it is not necessary for us to go into a host of details raised by the parties in their petition, objections and affidavits. The undisputed facts may be stated thus :

(1) That the petitioner was undoubtedly a resident of Srinagar and had gone to Skardu in 1945 at a time when Skardu was part of the erstwhile

State of Jammu and Kashmir.

(2) That the petitioner had taken employment as a clerk in the Government hospital at Skardu in 1947/48,

(3) That before applying for the Pakistani passport the petitioner never left Skardu either for any territory now included in Pakistan or for India.

(4) That after independence when the dominions of India and Pakistan were created the Maharaja of Jammu and Kashmir signed the Instrument of

Accession as a result of which the entire Jammu and Kashmir State became an integral part of India As a consequence thereof Skardu where the

petitioner was residing even after partition continued to be territory of the State of Jammu and Kashmir and also a part of India.

(5) That after the tribal raids of 1947, borders between India and Pakistan in the Jammu and Kashmir State were sealed and it was not physically

possible for anybody to cross from one territory to another without risking one's life. In most of the places border areas were strewn with mines.

(6) That the petitioner, after obtaining a Pakistani passport came to Srinagar through the Hussainiwala border and by virtue of the order of

deportation he was to be deported to Pakistan and his final destination was Skardu again which is a part of India.

(6) Thus these admitted facts raise the following issues :

(1) Whether or not the petitioner acquired the Pakistani passport out of his own sweet will or was it under duress ?

(2) Whether the petitioner who had all along been a citizen of India would lose his right of citizenship merely by obtaining a Pakistani passport

when he came from one part of India to another and intended to return also from

one place in India to another (Srinagar to Skardu).

(3) Whether or not the inquiry held by the Central Government under S 9 (2) of the Act was proper and legal.

(4) Whether the Central Government in holding the inquiry violated the principles of natural justice inasmuch as it did not allow the petitioner a

personal hearing nor did it give him a chance to adduce evidence in support of his pleas.

(7) Appearing for the petitioner, Mr. M, A. Beg submitted three main contentions. In the first place it was argued that there is no material to prove

that the petitioner secured the Pakistani passport voluntarily. On the other hand there is abundant evidence to show that the petitioner was

compelled by force of circumstances to apply for Pakistani passport because there was no other avenue for him to come to Srinagar. Secondly it

was argued that rule (3) of Schedule III of the Citizenship Rules framed under the Act is ultravires inasmuch as it lays down a substantive law

which fructifies the provisions of the parent statute. Lastly it was argued that the Central Government violated the rules of natural justice by not

giving personal hearing to the petitioner or allowing him a chance to adduce oral evidence in support of the pleas taken by him The Advocate

General and the Asstt. Advocate General appearing for the respondents have vehemently contested the arguments of the learned counsel for the

petitioner and have submitted that in view of the inquiry made by the Central Government, the petition is not maintainable, that the acquisition of the

Pakistan passport by the petitioner and his subsequent conduct clearly shows that he had secured the Pakistani passport with his own sweet will

and without any undue influence It was also submitted that the question as to whether or not the petitioner was a Pakistani Citizen has to be

decided by the Central Government and not by this court. Finally it was urged that neither S. 9 (2) of the Act nor the Rules contain any provision

which enjoins on the Central Government to give a personal hearing to the petitioner, nor was such a hearing asked for by the petitioner in his

representation and therefore the report of the Central Government cannot be assailed on this ground.

(8) We have heard counsel for the parties at length and have also perused the documents and affidavits filed before us. S. 9 (1) of the Act runs

thus :

"Any citizen of India who by naturalization, 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.

(9) A perusal of this section clearly shows that it deals with the termination of loss of citizenship by a citizen of India. This subsection lays down

three conditions:

(1) That a citizen of India has acquired citizenship of another country, (2) That such acquisition was voluntary and (3) That the acquisition was

between 26150 and the date of commencement of the Act.

(10) In the instant case it is not disputed that the petitioner was originally a citizen of India, being a resident of Srinagar and later of Skardu : both

places being legally and constitutionally part of India It is also not disputed that the petitioner acquired a Pakistani passport in the year 1969, i e.

between the dates mentioned in the section. In these circumstances it was contended on behalf of the Union that S. 9 applies to the facts of the

present case. We might, however, mention here that in the petition the petitioner had challenged the constitutionality of S 9 so far as it has been

made applicable to the State of Jammu & Kashmir, but in the course of arguments Mr. Beg did not press this point and therefore we would, for

the purposes of this case, assume that S 9 was validly applied to the State of Jammu and Kashmir. The whole case, however, turns upon the

interpretation of the first part of S. 9, namely, whether the acquisition of citizenship of Pakistan by the petitioner was voluntary or not. It seems to

us that word voluntary as used in ordinary legal parlance postulates that the act must be done by a person out of his own free will, his own

independent volition with free consent and nor under duress, undue influence or compulsion. After all the right of a citizen is a very valuable right

and before a person loses this right the authorities concerned must be satisfied that it was done by him consciously and knowingly. In re Wilkinson

Page v. Public Trustee. 1926 Ch. 842 it was held that the word voluntarily means the doing of something as the result of the free exercise of the

will, but not something done under a legal duty."" The same view was taken by

Bhavan J. In *Abdul Salam v. Union of India*, AIR 1969 All. 223,

228 wherein he observed as follows :

In my opinion the word voluntarily, means that the person obtaining the passport acted of his own volition and knew the nature of his act, and did

not set in performance of a legal duty, nor due to coercion or fraud, or misrepresentation, or mistake "".

(11) In *Mohd. Usman v. State of Madras*, AIR 1961 Madras 129 138 a Division Bench of the Madras High Court observed as follows :

"As regards the second) the learned Advocate General submitted that the expression 'voluntary' as used in S. 9(t) in contradistinction to an

acquisition of citizenship by the operation of law. We consider that this submission is wellfounded, and that the expression 'voluntary' is used in this

section to mean 'naturalization* in the narrow sense of that term, and as excluding compulsory, involuntary or collective naturalisation which some

States have adopted at different times.

(12) To the same effect is a decision of the Rajasthan High Court in *Inner Lall v. Lal Singh*, AIR, 1961 Rajasthan 122, 125 wherein Sarjoo Prasad

C. J. observed as follows :

In our opinion as held in *Mohd. Khan V. Government of Andhra Pradesh*, AIR 1Q57 Andh. Pradesh 1047 the mere fact that a passport is given

to a person, who, is an Indian national, where the passport is legal evidence or not cannot lead to any irresistible inference that the said person had

voluntarily acquired the citizenship of a foreign State, for such a passport could also be issued to a citizen by birth or descent

(13) A careful review of the authorities (Supra) therefore establishes the fact that before a person can lose his citizenship under S 9 it must be

shown that he had done so voluntarily. This is rather important because the sheet anchor of the case of the petitioner has been that although he did

acquire a Pakistani passport, he did not do so out of his own free will but was compelled to apply it in the circumstances in which he was placed.

Thus the petitioner's contention was that the acquisition of the passport was under duress and also without free consent, S. 9 (2) runs thus :

"If any question arise as to whether, when or how any person has acquired the citizenship of another, in such manner, and having regard to such

rules of evidence, as may be prescribed in this behalf.'1

(14) It would be seen that by virtue of subsection (2) (Supra) the authority prescribed is constituted a Tribunal by the Statute for the purpose of

deciding the question as to whether or not a person has acquired the citizenship of another country. The words 'determined having regard to such

rules of evidence as may be prescribed' clearly shows that the matter is not one of a purely administrative nature but one of substantial importance

so that the proceedings conducted by the authority concerned would be quasijudicial proceedings and therefore must be guided by rules of natural

justice. The Supreme Court in *Mr. Abub Khan v. Commr. of Police Madras*, AIR 1965 SC 1623, 1627 made this point clear in the following

words :

"Determination of the question postulates an approach as in a quasijudicial enquiry ; the citizen concerned must be given due notice of the nature of

the action which in the view of the authority involves termination of India Citizenship, and reasonable opportunity must be afforded to the citizen to

convince the authority that what is alleged against him is not true. What the scope and extent of the enquiry to be made by the authority on a plea

raised by the citizen concerned should be depends up on the circumstances of each case.

(15) Similarly in *Abdul Salam v. Union of India*; AIR 1969 All 223, 229 it was held that an inquiry under S. 9(2) was a Judicial proceeding

Dhavan J. observed as follows :

Now it is manifest that the power to decide the question whether a person has acquired the citizenship of a foreign country is quasijudicial in

nature. This means that the authority must act judicially and must give a reasonable opportunity to the person affected by its decision to rebut the

presumption which may arise against him under cl (i) of Schedule III of Rule 30 of the Citizenship Rules. What is a reasonable opportunity ? It is

neither possible nor desirable to lay down any rigid test.

(16) To the same effect is a decision of the MP High Court in *Nasiruddin v. Union of India*, AIR 1966 MP 345, 343 wherein a Division Bench of

that court observed as follows :

In our opinion Rule 30 and the various clauses of Schedule III to the Rules not only prescribe the authority competent to determine questions

mentioned in S. 9 (2) of the Act but also lay down the rules of evidence and

thereby by necessary implication, the manner in which the questions have to be determined. This is so because it is implicit in the rules of evidence that the questions have to be approached in a quasijudicial manner.

(17) It is therefore manifest that an inquiry under S. 9 (2) of the Act is of a quasijudicial nature and it must be based on a proper appreciation of

the evidence, and must comply with the coordinial rules of natural justice. The Government, however, went a step further and prescribed rules in

order to determine the procedure to be adopted by the Central Government in making an enquiry under S. 9 (2). These rules have been made

under S 18 of the Citizenship Act. Rule 3 of Schedule III runs as follows :

"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.

(18) A perusal of this rule clearly indicates that once a person acquires the passport of another country, the presumption will be that he has lost

citizenship and the onus is on the citizen concerned to show that the acquisition of the passport was not voluntary. We might here dispose of a

short argument advanced before us by Mr. Beg appearing for the petitioner. He submitted that by raising a presumption and making the said

presumption a conclusive proof of the fact that the citizenship was lost, the rule travels even beyond the powers conferred by the Act. In other

words it was contended that rule 3 is not merely a procedural provision but a piece of substantive law and is therefore invalid. This argument has to

be stated only to be rejected. Rule 3 in our opinion does no more than lay down a rule of presumptive evidence or probative proof. It is essentially

a rule of evidence and deals with the procedure to be adopted in certain cases. Merely because the onus is placed on the citizen to disprove that

the acquisition of the passport of a foreign country was not voluntary would not show that the rule has exceeded its limits and transcended the

provisions of the parent statute, particularly when the statute authorises the Government to frame rules for the purpose of regulating the inquiry to

be held under S. 9 (2). An identical argument was raised before the Supreme Court and was rejected by their Lordships in *Izhar Ahman v. Union*

of India, AIR 1962 SC 1052, 1064, wherein after an exhaustive discussion of the various aspects of the section their Lordships observed as

follows :

The fact of obtaining the passport from Pakistan on which a conclusive presumption is drawn as to the voluntary acquisition of the citizenship of

Pakistan is relevant and the rule merely makes its probative value conclusive. Therefore, we are not disposed to uphold the objection raised by the

petitioners that the impugned rule is a rule of substantive law and as such, falls outside the purview of S 9 (2) If it is a rule of evidence properly so

called, it would be within the scope of the authority conferred on the Central Government by S. 9 (2) and its validity cannot be successfully

challenged.

(19) As to what is the purport and ambit of rule 3 of Schedule III the matter is now concluded by a decision of the Supreme Court in Md. Ayub

Khan v. Commr. of Police. AIR 1965 SC 1623, 1627 wherein their Lordships observed as follows :

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 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 Sen. III and that a conclusive presumption must arise that he has acquired voluntarily citizenship of that

country."

(20) An analysis of the ratio laid down by their Lordships leads to the following conclusions:

(1) That rule 3 of Schedule III raises a presumption that if a person has acquired a passport of another country, that shall be conclusive proof of

the fact that the citizenship was lost.

(2) That before this act can be conclusively proved, the word 'obtained' clearly postulates that the passport must be acquired by free volition or voluntarily.

(3) That the onus of proving the fact that the passport was not acquired voluntarily but under duress or other circumstances is on the citizen

concerned and once this plea is raised, it has to be examined by the Central Government while making an inquiry under S. 9 (2).

(4) In other words, the expression 'obtained a passport' appearing in rule 3 of Schedule III does not include the physical or mechanical act of

receiving a passport by a person but postulates the securing of a passport wilfully and consciously, knowing full well the consequences of the same.

Once this is proved then the presumption under rule 3 will automatically apply to the acquisition of the passport and will become a conclusive proof

of the loss of citizenship. Where, however, it is proved that the passport was obtained under duress, compulsion, undue influence, fraud or fear, it

will not amount to obtaining the passport within the meaning of rule 3 Sch. III and therefore the question of treating the acquisition of the passport

as conclusive proof of the loss of citizenship would not arise.

(21) The learned counsel for the petitioner submitted that although the petitioner had clearly raised the plea in his petition as also in his

representation to the Central Government that he had acquired the Pakistani passport under force of circumstances, inasmuch as there was no

other avenue for the petitioner to come to Srinagar except by applying for a Pakistani passport, the Central Government had not considered this

plea. Illustrating this argument the learned counsel relied on the following circumstances:

(1) That the petitioner was always a citizen of India whether in Srinagar or in Skardu, and drew out attention to the provisions of S. 6 of the State

Constitution and Arts. 5 and 6 of the Indian Constitution and Arts. 5 and 6 of the Constitution of India, This position is, however, conceded by

the learned counsel appearing for the respondents.

(2) That when the petitioner made an application to the Indian High Commr. in Pakistan, he did not at all conceal the fact that he was a resident of

Skardu which was Indian territory in illegal occupation of Pakistan In this

connection our attention was drawn by the learned counsel to the letter written by the petitioner (Annexure 12) wherein he had described himself as resident of Daulatabad, Khanyar, Srinagar (Kashmir) India, at present Skardu Baltistan, W. Pakistan. It was thus argued that the petitioner did not conceal his identity from the High Commr. of India when he applied for obtaining a no objection certificate. In his objections to the report he has filed a letter written by the First Secretary to the High Commr. of India to the petitioner which is Annexure VL and which runs as follows :

I am directed to refer to your letter dated the 5th June, 1968 regarding grant of 'NoObjection Certificate' to visit India and to say that this Mission is not issuing any such certificate for visit to India You are, therefore, advised to approach this Mission with a request for grant of visa to visit India, for which you may send the visa application form charges Paisa 40 per set for an individual to us. Thereafter the forms duly filled in, alongside three copies of photograph may please be sent to us to examine your request,

(22) It was argued on the basis of this letter that the petitioner in the first instance only wanted a no objection certificate, but he was instructed by the High Commr. of India in Pakistan to apply for a visa and as he had no other option left, he then applied for a Pakistani Passport and a visa. It is true that this letter is a very important document and if taken into consideration it might prove the plea of the petitioner that he did not secure the Pakistani passport voluntarily but under advice of the High Commr. Unfortunately however the petitioner did not produce this letter before the Central Government when he sent up his representation in obedience to the notice issued by the Central Government when it was making an inquiry under S 9 (2) of the Act. But that fact by itself is not sufficient to put the petitioner out of court The present case has had a chequered career. The petitioner came to Srinagar in 1969 to stay here for about two years or more and was permitted to do so by the Government. Then he moved this court for an appropriate writ and it was through the intervention of this court that the central Govt was permitted to hold an inquiry under S. 9 (2) of the Act. The petitioner, therefore, could not be deprived of the opportunity of producing this document in court, and since we are clearly of the view that the inquiry held by the Central Govt was per se illegal, it would be for the Central Government to hold a fresh inquiry to

consider the importance and value of the letter, the authenticity of which appears to be beyond challenge.

(23) The learned counsel for the respondents, however, suggested that the petitioner had not clearly taken the plea in his representation that he

acquired the Pakistani passport under duress or under force of circumstances. This however does not appear to be true because in the

representation filed by the petitioner to the Central Government he has made this position more than clear. After giving the entire history of the

accession etc the petitioner has stated as follows :

it is significant to note that though the petitioner's father had remained in Skardu even after its occupation by Pakistan, the Kashmir property had

not been declared as an evacuee property. On the death of the petitioner's father S. Hakim Kazim Shah started a new game.

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It is evident from the narration hereinabove mentioned that the petitioner was able to come to Srinagar due to noobjection certificate from the

Home Department of the State which was rendered available through the efforts of S Hakim Kazim Shah who was then interested in getting the

hand of the petitioner's daughter for his son so that the petitioner's property could be swallowed.

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(24) For, under the circumstances of the case, the mere fact that the petitioner obtained a Pakistani passport which could be granted only to a

Pakistan national is innocuous and inconsequential. In the case of the petitioner he was not and could not be a Pakistani national as heretofore

explained, nor was the territory of Skardu a part of the territory of Pakistan, and as such the petitioner retained his Indian Nationality and Indian

citizenship and cannot be deemed to have renounced his Indian citizenship by mere obtaining the Pakistani passport, there being no other course

open for coming to home land. All the judicial precedents bearing on this point pertain to the cases where a person had migrated to Pakistan and

for coming to India obtains a Pakistani passport. Even then it has been held that this not conclusive of the adopting of Pakistani Nationality, as the

obtainment of Pakistan passport is not out of free will but due to the pressure and stress of circumstances and therefore cannot be regarded as a

willing act.

(See pp. 36, 42, 6162 of the representation).

(25) Apart from this, the plea has been taken by the petitioner in his petition as also in the amended petition and as the inquiry made by the Central

Government forms part of the present proceedings, a plea taken in the petition would be deemed to be taken before the Central Government.

(26) I have, however, pointed out above that even in the representation the plea has been taken clearly and categorically. In my opinion the Central

Government while making the inquiry appears to have overlooked certain fundamental aspects of the grave issues involved in this case. So far there

has not been a single case in any court in India where a person while travelling from one part of India to another has had to obtain a passport from

a foreign country for travelling to that part. Decided cases deal with such cases where person from India had migrated to Pakistan either before

independence or after or returned to India on a Pakistani passport. Thus the present case has one clear distinction, and that is, whereas in other

cases which came up before the courts the person concerned had migrated to Pakistan and had actually resided there for a number of years before

taking Pakistani passport, the petitioner never migrated to Pakistan at all : he had travelled from one part of the country namely, Srinagar to another

part of the country namely Skardu, and has applied for the Pakistani passport even while he was residing at Skardu.

(27) Another unique aspect of the present case is that whereas in the case of all other persons they were to go back from the place from which

they came which was a foreign country, in the instant case of petitioner had to go back to Skardu which is again a part of the territory of India.

Thus the position is that the petitioner will have to be deported from Srinagar to Skardu i. e , from one part of India to another. It was incumbent

on the Central Government to consider these broad aspects carefully because they have got farreaching consequences.

(28) Finally the representation was made by the petitioner as a lay man and does not appear to have been drafted by expert and therefore the

Central Government should have been a little more indulgent in allowing him an opportunity to prove the plea taken by him. This brings us to the

third question which arises in this case namely whether the inquiry suffers from a

legal infirmity in that it violates the principles of natural justice by not allowing the petitioner a personal hearing or a chance to adduce evidence. On this point while the counsel for the petitioner submitted that it was incumbent on the Central Government to allow the petitioner a personal hearing and a chance to adduce evidence, the Advocate General and the Asstr. Advocate General have submitted that this was not necessary because the petitioner did not ask for a personal hearing Secondly it was contended by the Advocate General that as the proceedings were not in a court, no personal hearing was necessary It is no doubt true that a personal hearing is not a necessary concomitant of the essential principles of natural justice, but the question whether or not a personal hearing should be given to a person would naturally depend on the facts and circumstances of each case having regard to the seriousness of the right involved and the repercussions that the decision of the authority concerned may cause The learned counsel appearing for the State and the Union of India however drew our attention to some authorities of the Supreme Court in support of the proposition that even in the case of quasijudicial inquiries, no personal hearing or the right to adduce oral evidence was necessary unless specifically asked for. In this connection, reliance was placed on a decision of the Supreme Court in the State of Assam Vs. Gauhati Municipality, AIR 1967 SC 1398. 1400 wherein their Lordships observed as follows:

Therefore where a provision like S 298 is fully complied with as in this case and the Board does not ask for an opportunity for personal bearing or for production of material in support of its explanation, principles of natural justice do not require that the State Government should ask the Board to appear for a personal hearing and to produce materials in support of the explanation, In the absence of any demand by the Board of the nature indicated above, we cannot agree with the High Court that merely because the State Government did not call upon the Board to appear for a personal hearing and to produce material in support of its explanation it violated the principles of natural justice.

(29) This case appears to be clearly distinguishable from the facts if the present case. In the first place their Lordships of the Supreme Court were dealing with the case of supersession of Municipalities which were purely an

administrative matter. Nonetheless a definite show cause notice containing the charge sheet against the Municipal Board had been submitted and a reply was given by the concerned Board. S. 29S of the Assam Municipal Act contained an exhaustive procedure for supersession of the Board and that procedure was strictly followed. There was no violation of any statutory or constitutional provision at all. In these circumstances it was manifest that the Municipal Board concerned got a full and reasonable opportunity as required by the statute to make out its case against the show cause notice issued by the State Furthermore in that case their Lordships did not consider it necessary to decide the question as to whether or not under S. 298 of the Assam Municipal Act production of oral and documentary evidence at any stage was called for. For these reasons therefore this case does not appear to be of any assistance to the respondents.

(30) Another case which was relied upon by the Asstt. Advocate General is Union of India Vs. Jyoti Prakash Mitter. 1971 (1) SCC 396 wherein their Lordships while construing Art. 217 (3) of the Constitution of India observed as follows :

"Art 217 (3) does not guarantee a right of personal hearing. In a proceeding of a judicial nature, the basic rules of natural justice must be followed

The respondent was on that account entitled to make a representation. But it is not necessarily an incident of the rules of natural justice that

personal hearing must be given to a party likely to be affected by the order. Except in proceedings in courts, a mere denial of opportunity of

making an oral representation will not, without more, vitiate the proceeding. A party likely to be affected by a decision is entitled to know the

evidence against him and to have an opportunity of making a representation. He however cannot claim that an order made without affording him an

opportunity of a personal hearing is invalid ',

(31) In this case their Lordships were considering the scope of a particular Article of the Constitution namely, Art. 217 (3) and held that the

language of that Article did not envisage that a personal hearing should be given in all cases to the judge concerned. Furthermore it is manifest that

under Art. 217 (3) the power to decide a matter was vested in the President, the highest authority in the whole country and it must therefore be

presumed that he would act in a fair and reasonable manner. The matter did not rest here, but the President had to consult the Chief Justice of

India who was the highest judicial authority in the country. Their Lordships further pointed out in that case that there was unimpeachable

documentary evidence to prove the age of the judge concerned. It was on the basis of the totality of these circumstances that their Lordships held

that no personal hearing was necessary and that the order of the President could not be held to be invalid because no personal hearing was given

to the Judge.

(32) On the other hand the Supreme Court has itself indicated that there may be cases where the right of personal hearing and the right to adduce

oral evidence may be given. In Mohd Ayub Khan Vs. Commr. of Police Madras, 1965 SC 1623 (Supra) it was pointed out that the scope and

the extent of the inquiry to be made by the Authority depends upon the circumstances of each case. In a recent case in Mohd Iliyas Vs Union of

India, UJ (SC) 1970, 441 their Lordships observed as follows :

"This court in Mohd. Ayub'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 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.

x x x x

"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,

x x x x

"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.

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.

(33) The observations (Supra) clearly imply that where a person raises a special plea that he was compelled by force of circumstance"" to obtain a

passport from a foreign country, the Government would certainly consider the desirability of giving him a personal hearing and opportunity to

adduce evidence It was also pointed out in that case that where such a plea is raised, the citizen should be afforded an opportunity to prove that fact.

(34) In the instance case the petitioner has raised a specific plea that he was an Indian citizen, that he had no intention of renouncing his citizenship

but was forced to apply for passport under compelling circumstances because he wanted to visit his home State. In these circumstances if he had

to be given an opportunity to prove his plea it was inherent and implicit that not only should he have been given a chance of making a

representation but also a personal hearing and the right to adduce oral evidence to prove that the renunciation of citizenship was not voluntary.

Finally the present case contains special and peculiar features which in our opinion necessitated a personal hearing and the right to adduce

evidence. These circumstances are as follows:

(a) The decision of the Central Government was actually a determination and the inquiry was undoubtedly a quasijudicial proceeding.

(b) The inquiry related to deciding a very valuable right of the citizen which was not only statutory but constitutional and which tended to affect his entire destiny.

(c) This was a unique case where the petitioner being the resident of Pakoccupied territory of Jammu and Kashmir was undoubtedly a citizen of

India under S. 6 of the State Constitution as also the relevant provisions of the Constitution of India : because the Pakoccupied territory also is

included in the schedule of the territories to which the Constitution of India applies. The petitioner was seeking to travel from one part of the

country to another through a foreign country and had to obtain a passport perforce because his passage through a foreign country was involved

and there was no other way of visiting his home State which was also an integral part of India.

(33) Having regard to the unusual complexity of the issues and the far reaching consequences involved in the determination of the right of the

petitioner, can it be said that the petitioner was not entitled either to a personal hearing or a right to adduce evidence in order to show that Vie had

not renounced his citizenship voluntarily ? We have no hesitation in holding that in the facts and circumstances of the present case the Central

Government was bound to give a personal hearing to the petitioner as also the right to adduce oral evidence and should have informed the

petitioner that he had this right, when the notice was Used to him to send the representation. In fact the notice Annexure A issued to the petitioner

runs as follows :.

.....Now therefore the said Shri Syed Mohsin Shah is required to prove within a period of one month that he has not voluntarily acquired the

citizenship of Pakistan before the 4th October, 1968.

And for this purpose the said Shri Syed Mohsin Shah is required to submit within one month from the date of service of this notice on him to the

Govt. of Jammu and Kashmir for onward transmission to and consideration of the Central Government any representation that he may wish to

make in the matter and any other material that he may wish to rely upon to prove that he has not voluntarily acquired the citizenship of Pakistan.

It will be seen that all that the notice contains is a direction to the petitioner to submit his representation or any other material on which he chose to

rely. There is absolutely no mention in this notice either that the petitioner had the right to adduce oral evidence or that he was entitled to a personal

hearing. It is true that the petitioner has submitted a long representation and has not specifically asked for a personal hearing but that by itself in our

opinion does not put him out of court. The petitioner has mentioned in his representation that at the time he was called to file the same he could not

got any legal assistance because his lawyer was out of India. This was an additional reason why the petitioner should have been given a more

detailed notice and should have been allowed a chance of personal hearing On the other hand in reply to the report filed by the respondents the

petitioner has produced a letter Ex VI written by the First Secretary to the High Commission of India at Islambad (see page 16 of this judgment)

which clearly shows that the petitioner was advised by the High Commissioner's office to obtain a passport and the petitioner therefore obtained a

passport under the advice of the High Commission. The authenticity of this letter cannot be doubted and has not been contested by the

respondents. It seems to us that if the Central Government were to consider the effect of this letter the entire complexion of the case might change.

(36) In view of our decision regarding the failure of the Central Government to

give the petitioner a personal hearing or a right to adduce oral

evidence to prove his plea, it follows that the inquiry held by the Central Government is vitiated and the Central Government has given its report

without a proper inquiry in accordance with law and the rules of natural justice and as the report of the Central Government is based on an inquiry

which was not valid, the report stands vitiated. In these circumstances the order of the deportation of the petitioner on the basis of the report of the

Central Government based on an invalid inquiry must also fall to the ground.

(37) In *Government of Andh. Pra. Vs. Mohd Khan*, AIR 1962 SC 1778, 1780 it was held that the orders of deportation passed against a citizen

without an inquiry by the Central Government were not sustainable. In this connection their Lordships observed as follows :

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 inquiry by the Central Government about their status."

(38) Whether there is no inquiry at all or the inquiry made is illegal, the legal consequence, is the same namely that the order passed on such an

inquiry is not sustainable. It therefore, follows that the provisions of S. 9 (2) of the Act have not been complied with in this case and therefore the

order of deportation by the Central Government is invalid.

(39) For these reasons I allow this petition and direct the respondent not to deport the petitioner unless the matter is decided afresh by the Central

Government after a proper inquiry as pointed out in this judgment. In the circumstances of this case, there will be no order as to costs.

Sd/. S. M. F. Ali C. J.

I agree Sd/ Mian JalaludDin. (Judge)

I agree Sd/ Syed WasiudDin (Judge)

Per Jaswant Singh

(1) I have had the advantage of going through the judgment proposed to be delivered by my lord the Hon'ble Chief Justice in the above noted

case. In view of the exhaustive and illuminating review of the facts and case law bearing on the matter, I have very little to add. I wish only to say

that in view of the decisions of the Supreme Court in *Md Ayub Khan Vs. Commissioner of Police, Madras and ors*, AIR 1965 Supreme Court,

1923 and Mohd Ilyas Vs. Union of India, UJ (SC), 1970, 441, it cannot but be held that in case of an enquiry under Section 9(2) of the

Citizenship Act 1955, which is undoubtedly a quasijudicial enquiry, if a plea is raised by a citizen that the obtaining of the foreign passport by him

was not voluntary, the Central Government should consider the desirability of giving him a personal hearing and afford him a reasonable

opportunity of proving the fact by adducing evidence in view of the rule regarding conclusive presumption contained in Paragraph 3 of Schedule III

to the rules framed under the Citizenship Act.

(2) The view expressed by the Hon'ble Chief Justice regarding personal hearing also receives support from the following observations made by

single bench of the Allahabad High Court in Union of India and another Vs. Smt. Chand Purli, AIR 1973 Allahabad; 362 :

It cannot be doubted that a determination by the Central Government under Section 9 of the Citizenship Act of 1955 and Rule 30 framed

thereunder without affording a reasonable opportunity to the person concerned would be illegal and would be no determination of the status in the

eye of law. It has been held by Supreme Court in the case of Mohimmad Ayub Khan Vs Commr. of Police, Madras, AIR 1965, SC 1923, that

the determination of the question postulates an approach as in a quasijudicial enquiry, the citizen concerned must be given due notice of the nature

of the action which in the view of the authority involves determination of Indian Citizenship and reasonable opportunity must be afforded to the

citizen to convince the authority that what is alleged against him is not true. What the scope and extent of the enquiry to be made by the citizenship

concerned should depend upon the circumstances of each case.

(3) I also agree with the conclusion of the Hon'ble Chief Justice that in view of the peculiar facts and circumstances of the instant case, it can not

be said that a full enquiry in accordance with the provisions of section 9 (2) of the Citizenship Act was held by the Central Government.

Sd/ Jaswant Singh, Judge.

S. Mohsin Shah Vs. The Union of India & nrs.

Per Mufti J.

(1) Broadly speaking, this case raises two questions :

Whether, in its application to the citizens of India belonging to the State of Jammu and Kashmir, Section 9 of the Citizenship Act was validly

enacted and validly made applicable to the such citizens;

(2) Whether the enquiry and the order eventually made under section 9 (2) of the Act in the instant case was vitiated.

(3) Although at the hearing of the application made by the Union Government for permission to hold an enquiry under section 9 of the Citizenship

Act, a controversy was raised before us, though only briefly, as regards the first question, on account whereof, we observed that our order on the

application will not amount to a decision on the applicability or otherwise of section 9 of the Citizenship Act to the facts of the present case, but it

was not pursued at the final hearing of this petition, due perhaps, to the change of counsel for the petitioner inbetween. Accordingly as observed by

my Lord the Chief Justice we shall assume that section 9 of the Citizenship Act, in so far as it applies to the citizens of India belonging to the State

of Jammu and Kashmir, was validly made applicable to such citizens.

(4) Coming to the second question, it is amply clear that the enquiry held and the order eventually passed by the Union Government under section

9 (2) of the Citizenship Act are vitiated because the Union Government has not considered all the pleas raised by the petitioner or even all the

documents bearing on the same nor also given an opportunity to the petitioner to produce his evidence or even afforded an opportunity to him to

be heard personally. In view of the fact that the question of citizenship is a vital matter affecting the life and career of a person and his progeny, it

will be idle to contend that the enquiry need not be detailed and objective or that the person affected by the order need not be afforded an

opportunity to produce evidence or be heard personally. In that view I agree with the order proposed to be made by my Lord the Chief Justice.