

(1954) 03 AP CK 0001

In the Andhra Pradesh High Court

Case No : Writ Petition No. 134/3 of 1953

Sulaiman Hussain Abidi

APPELLANT

Vs

The State of Hyderabad

RESPONDENT

Date of Decision : 26-03-1954

Acts Referred:

Constitution of India, 1950 — Article 226, 7

Citation : (1954) 03 AP CK 0001

Hon'ble Judges : Misra, C.J.;Manohar Pershad, J

Bench : Division Bench

Advocate : Rashid Siddiqui Hussain, for the Appellant; B.N. Sastri, Government Advocate, for the Respondent

Judgement

Misra, C.J.—This is a petition under Article 226 of the Constitution for issue of a writ mandamus to the respondent, the State of Hyderabad. It is directed against an order of Chief Secretary to Government. The petitioner Mir Sulaiman Hussain Abidi desires that the aforesaid order which is dated 6-10-1953 and calls upon him to leave India by 16-10-1953 at the latest be ordered to be rescinded. The facts disclosed by the petitioner in his application have proved on investigation to be unfortunately untrue. The correct facts which we have been able to ascertain now from the documents in possession of the State and which are no longer denied on behalf of the petitioner are as follows:

Sulaiman Hussain left for Pakistan in 1951 without taking any certificate of identity or what is known as "No objection to return" certificate under the Influx from Pakistan Control Act and rules made thereunder from the Hyderabad Government. He went to Pakistan surreptitiously through an unauthorised route and lived there for two years and four months.

During his stay at Karachi he entered into service in a private firm. In March 1953, apparently on account of the illness of his mother who was still at Hyderabad, the petitioner applied for and secured a Pakistan passport on 13-3-1953 and a visa dated 22-6-1953 in Form C from the High Commissioner of

India in Pakistan (Karachi). In the application which he made for that purpose the petitioner gave his permanent address as A. M. 25 Road, Sadar, Karachi", his date of birth as 4-12-1933 and his national status as "Pakistanee". In the column relating to the date of his migration from India to Pakistan he entered the date of migration as "March 1951".

After arrival in India Sulaiman Hussain made several applications for extending the period of his stay. The first application in this behalf which has come to our notice is dated 22-7-1953. It contains nothing about his being a citizen of India or his desire to stay here as such. In the opening sentence of his next application dated 18-8-1953, made for a further extension he called himself a citizen of Pakistan. In similar applications submitted to the Government subsequently, the petitioner gave various reasons for further extension of his stay but in none of them he set up any claim to be a citizen of India.

It was for the first time in this Court when his mother made an application on 29-10-1953 for the issue of a writ as a guardian of the petitioner characterising him as a minor aged 17 years that it was claimed that he was an Indian citizen and had never lost his Indian citizenship because he had gone to Pakistan temporarily for pleasure and had thus never lost his Indian citizenship. The applicant claimed upon that basis that the orders calling upon him to leave India were in derogation of the fundamental rights conferred upon him by the Indian Constitution and that they should therefore be ordered to be rescinded. Stress was laid upon the fact that when the petitioner went to Pakistan he was a minor and that he is still a minor.

2. It was contended that a minor could not give up his Indian citizenship and acquire another nationality by merely crossing the borders. The argument was that the domicile and nationality of a minor must be deemed to be the nationality and domicile of his parents and since in the present case the petitioner's mother was an Indian citizen the petitioner, being a minor, could not forsake his nationality for that of Pakistan. The facts which we have given in the earlier part of this judgment belie all these allegations.

3. Article 7 of the Constitution lays down: "Notwithstanding anything in Articles 5 and 6, a person who has after the first day of March 1947, migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India unless he has returned to the territory of India under a permit for resettlement or permanent return."

4. In-- Badruzzaman Vs. The State, , while dealing with Article 7, I gave expression to a view that the word "migrate" occurring in Article 7 of the Constitution embraces in its scope two conceptions:

- (i) going from India to another country, and
- (ii) the intention to make the destination a place of future abode or residence.

I held in the context of the Constitution that the word embraced the notion of the

transference of allegiance from the country of departure to the country of adoption.

5. In -- Shabbir Husain Vs. The State of U.P. and Another, decided by the Division Bench of that Court a similar view was taken and it was observed:

The expression "migrated from the territory of India to the territory now included in Pakistan" seems to have been used in Article 7 in the sense of departure from one country to another with the intention of residence or settlement, in the other country. A temporary visit to another country on business or otherwise cannot amount to migration. Whether a person had migrated from one country to another or has gone there on a temporary visit is a question of fact, which will have to be decided on the circumstances of each case.

6. In order to determine the petitioner's intention in going to Pakistan we have to see his conduct from the moment he left India upto the present day. There are the following facts which militate against the theory that he had no intention to migrate:

- (1) The petitioner went across the borders surreptitiously and without taking any "No-objection-to-return" certificate under the Influx from Pakistan Control Act;
- (2) He settled down in Pakistan and had a permanent place of abode at Karachi;
- (3) He took up service at Karachi and remained there for a period of two years and four months;
- (4) The reason for his return to India was not to come back to his home land but only to see his ailing mother;
- (5) He secured a Pakistan passport describing him as a Pakistan re citizen;
- (6) In his application for visa to the High Commissioner of India in Pakistan he described himself as a Pakistanee national;
- (7) In his application to the Hyderabad Government dated 18-8-1953, for extension of the period of stay, he again asserted that he was a "Pakistanee";
- (8) That in the other applications made by the petitioner to the Government of Hyderabad right upto 27-9-1953 he did not make any averment to the effect that he was not a Pakistani but an Indian; and
- (9) That it was for the first time for the purposes of this writ application that he started characterising himself as an Indian citizen.

7. The allegation that the petitioner was a minor" and is still a minor is obviously wrong. We have already mentioned that according to the petitioner's own application made to the High Commissioner for India in Pakistan, he was born on 4-12-1933. His present age is therefore 20 years and 3 months. When he left for Pakistan in March 1951 he must have been just a few months short of eighteen years. He thus became a major shortly after his arrival in Karachi.

His subsequent conduct to which reference has been made above including his representations made at a time when he had attained majority to the effect that he was a Pakistanee citizen indicate without leaving any room for doubt that he intended to adopt Pakistan as the country of his domicile and it was in the capacity of a Pakistan national that he paid a temporary visit to India. His present assertion that he is a minor is merely an allegation of convenience.

8. We hold that the petitioner is not an Indian citizen and therefore not entitled to the benefits of the Indian Constitution. There is no reason, therefore, to interfere with the order complained of.

9. The application is rejected with costs, which for the purposes of this case, we assess at Rs. 50/-.