
(1972) 10 AHC CK 0035
In the Allahabad High Court
Case No : Second Appeal No. 2575 of 1968

Union of India (UOI) and Another

APPELLANT

Vs

Smt. Chand Putli

RESPONDENT

Date of Decision : 12-10-1972

Acts Referred:

Citizenship Act, 1955 — Section 9
Citizenship Rules, 2009 — Rule 30

Citation : AIR 1973 All 362 : (1972) 42 AWR 898

Hon'ble Judges : K.B. Asthana, J

Bench : Single Bench

Advocate : P.K. Darbari, for the Respondent

Final Decision : Dismissed

Judgement

K.B. Asthana, J.—The plaintiff-respondent Smt. Chand Putli entered India on a Pakistani passport. She overstayed the term of her visa at Agra. She was apprehended by the police authorities for deportation to Pakistan. Thereupon she commenced the suit giving rise to this appeal alleging that she was an Indian citizen and was not liable to be deported. A relief for injunction was sought against the State Government and the Union of India. The suit was contested on behalf of the Union of India on the ground that the plaintiff was a citizen of Pakistan and not a citizen of India and that the civil court had no jurisdiction to entertain the suit and determine the question of citizenship. The plaintiff then got the hearing of the suit stayed and applied to the Central Government for determination of her status u/s 9 of the Citizenship Act, 1955. She was asked to make such representations as she wished by filing affidavits and other material evidence which she did. She however, requested the Central Government to afford her a personal hearing but the Central Government declined to grant her any personal hearing. The decision of the Central Government was conveyed to the plaintiff by its order dated 2-5-1967 which is as follows:--

"Whereas it has come to the notice of the Central Government that Smt. Chand

Putli daughter of Smt. Kariman, by caste Musalman, resident of Idgah Kutlupur Lohron Ki Bagichi, Agra has claimed Indian citizenship notwithstanding her having obtained a Pakistan passport and a short term visa for entry into India from Pakistan, and whereas a question has arisen as to whether the said Smt. Chand Putli has acquired the citizenship of Pakistan. Now therefore the Central Government acting u/s 9(2) of the Citizenship Act, 1955, and Rule 30 of the Citizenship Rules, 1956, and giving due regard to the principles of evidence contained in Schedule III to the aforesaid rules and after considering the cause shown by the said Smt. Chand Putli against the proposed action under the said section and rule hereby determines that the said Smt. Chand Putli has voluntarily acquired the citizenship of Pakistan after 26th January, 1950, and before 28-6-1954."

2. The plaintiff then got her plaint amended and questioned the validity of the said order of the Central Government on the plea that she not having been afforded reasonable opportunity to meet the case against her, having been denied a personal hearing there has not been any determination of her status as required by the law and she could not be deprived of her fundamental rights as a citizen to remain in India. This was then the only material plea remaining in the suit.

3. The learned Munsif held that in denying the plaintiff a personal hearing the Central Government violated the principles of natural justice and its order determining the status of plaintiff as being a citizen of Pakistan would be invalid and ineffective for the reason of lack of reasonable opportunity to the plaintiff to convince the Central Government that she had not voluntarily obtained the passport as a citizen of Pakistan. The suit was decreed in terms of the reliefs claimed. On appeal by the defendants the decree of the learned Munsif was affirmed by the learned Civil Judge. The defendants have now come up in second appeal.

4. Two contentions were raised by the learned Standing Counsel in support of the appeal. The first contention was that the civil Court had no jurisdiction to entertain the suit for affording a relief of injunction to the plaintiff by going behind the determination of the Central Government to regard to the status of the plaintiff. The second contention was that a personal hearing not being a necessary ingredient of affording a reasonable opportunity no infirmity attaches to the determination of the Central Government merely because the plaintiff was refused a personal hearing when her case on the basis of affidavits and other documents was fully considered by the Central Government.

5. It cannot be doubted that a de-termination by the Central Government u/s 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 the Supreme Court in the case of Mohd. Ayub Khan Vs. Commissioner of Police, Madras and Another, that the determination of the question postulates an approach at in a

quasi judicial 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 citizen concerned should depend upon the circumstances of each case.

6. In Mohammad Ayub Khan's case the Supreme Court had occasion to consider the question of the conclusive presumption contained in paragraph 3 of Schedule III of the Citizenship Act when obtaining a Pakistani passport declaring himself as a Pakistani citizen. It was held by the Supreme Court that the conclusive presumption will not bar that citizen to convince the authority that though he got the passport but he never really Intended to renounce his Indian citizenship. Similar is the case of the plaintiff Smt. Chand Putli. She had submitted her statement and affidavit to the Central Government. The evidence shows that she was asked by the Central Government more than once to answer queries and supply material which she gave in writing and through affidavits. She also repeatedly asked the authority concerned to allow her a personal hearing to explain her position. In fact the correspondence shows that when she was again asked to furnish information by further affidavit she replied in disgust declining to furnish any further evidence and asking for an opportunity for a personal hearing and of producing evidence in support of her case. She also asked for being supplied with the material which the Government had collected against her but she was not supplied with the evidence against her in possession of the Central Government.

7. The learned Munsif in a very well considered and well written judgment substantially basing his approach on the decision of the Supreme Court in the case, of Mohammad Ayub Khan held that on the facts and circumstances of the case re-fusing the plaintiff a personal hearing amounted to a denial of a reasonable opportunity being afforded to her to convince the authority that what was alleged against her was not proved. The lower appellate Court affirmed this finding of the learned Munsif. In view of the decision of the Supreme Court in Mohammad Ayub's case the two contentions raised by the learned Standing Counsel in support of the appeal are rendered untenable and devoid of force. The legal approach of the court below cannot be validly assailed. It is the correct approach. The civil Court can always afford relief to a person on a legal cause of action. The plaintiff in the instant case will have a legal cause of action inasmuch as the defendants cannot deport her unless her status has been determined in accordance with law by the appropriate authority. This has not yet been done as the so-called determination by the Central Government of her status is not in accordance with law as reasonable opportunity was not afforded to the plaintiff to meet the case against her.

8. The learned Standing Counsel relying on a Division Bench decision of this Court in Abdul Majid v. Senior Supdt. (1967 All WR (HC) 104) contended that the

denial by the Central Government to grant a personal hearing would not render the order passed by it illegal or ineffective. I do not think in Abdul Majid's case the High Court laid down any rule of law that a determination of the Central Government can never be struck down on the ground that the personal hearing was not granted to the citizen concerned even though the circumstances of the case established that unless a personal hearing is granted the rule as to reasonable opportunity would not be complied with. May be that a right to personal hearing is not a necessary ingredient of reasonable opportunity just as filing of affidavits is not a necessary ingredient of reasonable opportunity but it will depend on the facts and circumstances of each case. There is a concurrent finding recorded by the courts below that on the facts and circumstances of the instant case it appeared necessary for the Central Government to afford an opportunity to the plaintiff for personal hearing. That is an inference of fact drawn by the court below on the facts established on record. This will amount therefore to a finding of fact binding in second appeal, which has not been shown to be vitiated by any error of law or procedure.

9. The result is that this appeal is found without force and is dismissed with costs.